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Shepard's® BriefCheck™ Summary Report

Cite # / Page	Citations	Shepard's®	QuoteCheck™	Full Text
1/2	Idaho Code § 45-1506(8)	Done	OK	Done
2/2	Idaho Code § 45-1506(8)	See #1	No quotes	See #1
3/2	Idaho Code § 45-1508	Done	OK	Done
4/2	Idaho Code § 45-1506	See #1	See Report	See #1
5/2	Idaho Code § 45-1506	See #1	No quotes	See #1
6/3	80 W. Va. 476 Richlands Brick Corporation v. Hurst Hardware Co.	Done	See Report	Done
7/3	49 Idaho 494 Merchants Trust v. Davis	Done	No quotes	Done
8/3	47 Nev. 33 Moore v. De Bernardi	Caution	No quotes	Caution
9/3	169 P.2d 78 Davis v. Kleindienst, Ariz.	Caution	No quotes	Caution
10/3	13 Idaho 138 Froman v. Madden	Done	See Report	Done
11/3	76 Kan. 764 Mangum v. Stadel	Done	No quotes	Done
12/3	55 Tex.Civ.App. 144 LaBrie v. Cartwright	Done	No quotes	Done
13/3	82 App. Div. 362 Salmon v. Norris	Done	No quotes	Done
14/3	40 N.M. 380 Shephard v. Van Doren	Done	No quotes	Done
15/3	13 Idaho 138 Froman v. Madden	See #10	No quotes	See #10
16/3	76 Kan. 764 Mangum v. Stadel	See #11	No quotes	See #11
17/6	109 Idaho 192 Sewell v. Neilsen, Monroe, Inc.	Done	No quotes	Done
18/6	126 Idaho 581 Ambrose v. Buhl Joint School Dist. 412	Caution	No quotes	Caution
19/7	531 P.3d 1115 Wright v. Parish	Done	No quotes	Done
20/7	2014 Ida. Dist. LEXIS 31 Fannie Mae v. Ormesher	Done	No quotes	Done
21/7	Idaho Code § 45-1506	See #1	No quotes	See #1
22/7	Idaho Code § 45-1508	See #3	No quotes	See #3
23/7	151 Idaho 924 Pines Grazing Ass'n v. Flying Joseph Ranch, LLC	Done	See Report	Done
24/7	Idaho Code § 45-1508	See #3	No quotes	See #3

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25/8	92 Idaho 865 Petricevich v. Salmon River Canal Co.	Done	No quotes	Done
26/10	Idaho Code § 45-1508	See #3	No quotes	See #3
27/10	Idaho Code § 45-1504	Done	No quotes	Done
28/10	Idaho Code § 45-1504	See #27	No quotes	See #27
29/11	21 F. Supp. 225 In Kane v. Union State Bank	Caution	No quotes	Caution
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31/12	Idaho Code § 45-1510(1)	Done	No quotes	Done
32/12	143 Idaho 42, 47 The Idaho Supreme Court in Federal Home Loan Mortg. Corp. v. Appel	Caution	No quotes	Caution
33/13	Idaho Code § 45-1506	See #1	No quotes	See #1
34/13	124 Idaho 885 Wells Fargo Bank, N.A. v. Renz	Caution	No quotes	Caution
35/13	Idaho Code § 55-809	Done	No quotes	Done
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37/14	15 U.S.C. § 78fff	Done	No quotes	Done
38/14	12 U.S.C. § 1821	Caution	No quotes	Caution

Key

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- A** Analysis - Citing Refs. With Analysis Available
- I** Cited - Citation information available
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Shepard's®: Report Content

History:Requested

A Citing Decisions:Narrowed By:

Other Citing Sources:Narrowed By:

Shepard's®. A Comprehensive Report for [Idaho Code sec. 45-1506](#)

[Subsection reports by specific court citation](#)

History (1)

1. 1957, ch. 181, § 6, p. 345; am. 1967, ch. 74, § 1, p. 170; am. 1983, ch. 190, § 3, p. 514; am. 1990, ch. 401, § 2, p. 1122; am. 2011, ch. 323, § 1, p. 939; am. 2012, ch. 326, § 1, p. 905; am. 2016, ch. 364, § 1, p. 1071.

Citing Decisions (84)

Idaho Supreme Court

1. [Worthington v. Thunder](#), 541 P.3d 694 

LB Cited by: 541 P.3d 694 p.699

Court: Idaho | **Date:** January 3, 2024

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2. [Breckenridge Prop. Fund 2016, LLC v. Wally Enter.](#), 170 Idaho 649 

B Interpreted or construed by: 170 Idaho 649 p.659; 516 P.3d 73 p.83

LB Cited by: 170 Idaho 649 p.653, p.655, p.656; 516 P.3d 73 p.77, p.79, p.80

Court: Idaho | **Date:** August 22, 2022

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3. [Gordon v. United States Bank Nat'l Ass'n](#), 166 Idaho 105 

LB Cited by: 166 Idaho 105 p.116, p.117; 455 P.3d 374 p.385, p.386

Court: Idaho | **Date:** December 18, 2019

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4. [Kempton-Baughman v. Wells Fargo Bank, N.A.](#), 162 Idaho 174 

LB Cited by: 162 Idaho 174 p.182; 395 P.3d 393 p.401

Court: Idaho | **Date:** May 26, 2017

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5. [Fannie Mae v. Hafer](#), 158 Idaho 694 

LB Cited by: 158 Idaho 694 p.706, p.707; 351 P.3d 622 p.634, p.635

Court: Idaho | **Date:** June 22, 2015

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6. [Parkwest Homes, LLC v. Barnson](#), 154 Idaho 678 

B Interpreted or construed by: 154 Idaho 678 p.686; 302 P.3d 18 p.26

Court: Idaho | **Date:** April 18, 2013

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7. [Trotter v. Bank of N.Y. Mellon](#), 152 Idaho 842 

LB Cited by: 152 Idaho 842 p.847; 275 P.3d 857 p.862

Court: Idaho | **Date:** March 23, 2012

8. [Trotter v. Bank of N.Y. Mellon](#), 2012 Ida. LEXIS 33 

LB Cited by: 2012 Ida. LEXIS 33

Court: Idaho | **Date:** January 25, 2012

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9. [Black Diamond Alliance, LLC v. Kimball](#), 148 Idaho 798 

B Interpreted or construed by: 148 Idaho 798 p.801; 229 P.3d 1160 p.1163

LB Cited by: 148 Idaho 798 p.800; 229 P.3d 1160 p.1162

Court: Idaho | **Date:** March 25, 2010

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10. [Spencer v. Jameson](#), 147 Idaho 497 

B Cited in Concurring Opinion at: 147 Idaho 497 p.508; 211 P.3d 106 p.117

B Interpreted or construed by: 147 Idaho 497 p.503, p.504; 211 P.3d 106 p.112, p.113

LB Cited by: 147 Idaho 497 p.502; 211 P.3d 106 p.111

Court: Idaho | **Date:** June 16, 2009

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11. [PHH Mortg. Servs. Corp. v. Perreira](#), 146 Idaho 631 

B Interpreted or construed by: 146 Idaho 631 p.640; 200 P.3d 1180 p.1189

LB Cited by: 146 Idaho 631 p.633, p.635; 200 P.3d 1180 p.1182, p.1184

Court: Idaho | **Date:** January 30, 2009

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12. [Fed. Home Loan Mortg. Corp. v. Appel](#), 143 Idaho 42 

LB Cited by: 143 Idaho 42 p.44, p.45, p.46, p.47; 137 P.3d 429 p.431, p.432, p.433, p.434

Court: Idaho | **Date:** May 25, 2006

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13. [Taylor v. Just](#), 138 Idaho 137 

LB Cited by: 138 Idaho 137 p.139, p.141; 59 P.3d 308 p.310, p.312

Court: Idaho | **Date:** November 22, 2002

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14. [Diamond v. Sandpoint Title Ins., Inc.](#), 132 Idaho 145 

LB Cited by: 132 Idaho 145 p.147, p.150; 968 P.2d 240 p.242, p.245

Court: Idaho | **Date:** November 2, 1998

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15. [Frontier Fed. Sav. & Loan Ass'n v. Douglass](#), 123 Idaho 808 

LB Cited by: 123 Idaho 808 p.813, p.814; 853 P.2d 553 p.558, p.559
Court: Idaho | **Date:** June 18, 1993

16. [123 Idaho 808](#) 

LB Cited by:
Court: Idaho | **Date:** April 23, 1993

17. [Frazier v. Nielsen & Co.](#), 115 Idaho 739 

LB Cited by: 115 Idaho 739 p.746; 769 P.2d 1111 p.1118
Court: Idaho | **Date:** February 21, 1989

18. [Allied Inv. v. Dunn](#), 104 Idaho 764 

LB Cited by: 104 Idaho 764 p.764, p.765; 663 P.2d 300 p.300, p.301
Court: Idaho | **Date:** May 4, 1983

19. [Ellis v. Butterfield](#), 98 Idaho 644 

LB Cited by: 98 Idaho 644 p.647; 570 P.2d 1334 p.1337
Court: Idaho | **Date:** July 13, 1977

20. [Roos v. Belcher](#), 79 Idaho 473 

LB Cited by: 79 Idaho 473 p.474, p.478; 321 P.2d 210 p.210, p.212
Court: Idaho | **Date:** January 29, 1958

Idaho Court of Appeals

21. [Watson v. Bank of Am., N.A.](#), 2016 Ida. App. Unpub. LEXIS 464 

LB Cited by: 2016 Ida. App. Unpub. LEXIS 464
Court: Idaho Ct. App. | **Date:** October 27, 2016

22. [Watson v. Bank of Am., N.A.](#), 2016 Ida. App. Unpub. LEXIS 394 

LB Cited by: 2016 Ida. App. Unpub. LEXIS 394
Court: Idaho Ct. App. | **Date:** September 15, 2016

23. [Deutsche Bank Nat'l Trust Co. v. Breinholt](#), 2014 Ida. App. Unpub. LEXIS 551 

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Court: Idaho Ct. App. | **Date:** December 3, 2014

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24. [Wilhelm v. Johnston](#), 136 Idaho 145 

LB Cited by: 136 Idaho 145 p.148; 30 P.3d 300 p.303

Court: Idaho Ct. App. | **Date:** July 30, 2001

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25. [First Interstate Bank, N.A. v. Eisenbarth](#), 123 Idaho 895 

LB Cited by:

Court: Idaho Ct. App. | **Date:** June 3, 1993

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26. [Willis v. Realty Country](#), 121 Idaho 312 

LB Cited by: 121 Idaho 312 p.314; 824 P.2d 887 p.889

Court: Idaho Ct. App. | **Date:** November 5, 1991

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27. [First Fed. Sav. & Loan Ass'n v. East End Mut. Elec. Co.](#), 112 Idaho 762 

LB Cited by: 112 Idaho 762 p.765; 735 P.2d 1073 p.1076

Court: Idaho Ct. App. | **Date:** April 1, 1987

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28. [First Sec. Bank, N.A. v. Stauffer](#), 112 Idaho 133 

LB Cited by: 112 Idaho 133 p.138; 730 P.2d 1053 p.1058

Court: Idaho Ct. App. | **Date:** December 29, 1986

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29. [Farber v. Howell](#), 111 Idaho 132 

LB Cited by: 111 Idaho 132 p.134; 721 P.2d 731 p.733

Court: Idaho Ct. App. | **Date:** June 25, 1986

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30. [Security Pac. Fin. Corp. v. Bishop](#), 109 Idaho 25 

LB Cited by: 109 Idaho 25 p.27, p.29, p.30; 704 P.2d 357 p.359, p.361, p.362

Court: Idaho Ct. App. | **Date:** July 31, 1985

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31. [Owens v. Idaho First Nat'l Bank](#), 103 Idaho 465 

LB Cited by: 103 Idaho 465 p.466; 649 P.2d 1221 p.1222

Court: Idaho Ct. App. | **Date:** August 17, 1982

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32. [440 v. Riverbank](#), 2014 Ida. Dist. LEXIS 34

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Court: Idaho Dist. Ct. | **Date:** November 19, 2014

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33. [440 v. Riverbank](#), 2014 Ida. Dist. LEXIS 37

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34. [Fannie Mae v. Noordam](#), 2014 Ida. Dist. LEXIS 15

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35. [Ormesher v. Citimortgage, Inc.](#), 2014 Ida. Dist. LEXIS 42

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Court: Idaho Dist. Ct. | **Date:** July 30, 2014

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36. [Fannie Mae v. Ormesher](#), 2014 Ida. Dist. LEXIS 31

LB Cited by:

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37. [Liberty Bankers Life Ins. Co. v. Witherspoon](#), 2014 Ida. Dist. LEXIS 16

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** January 8, 2014

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38. [Mt. W. Bank v. Tate](#), 2012 Ida. Dist. LEXIS 44

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** September 4, 2012

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39. [Mortensen v. Ace Mortg. Funding](#), 2012 Ida. Dist. LEXIS 62

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** March 23, 2012

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40. [Payne v. Chiase Home Fin.](#), 2011 Ida. Dist. LEXIS 44

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** November 15, 2011

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41. [In re La Paglia](#), 8 B.R. 937 

LB Cited by: 8 B.R. 937 p.945

Court: Bankr Eastern Dist. N. Y. | **Date:** February 11, 1981

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42. [United States v. Stadium Apartments, Inc.](#), 425 F.2d 358 

LB Cited by: 425 F.2d 358 p.364

Court: 9th Cir. Idaho | **Date:** April 14, 1970

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43. [Jensen-Edwards v. US Bank Nat'l Ass'n](#), 2021 U.S. Dist. LEXIS 124592 

LB Cited by: 2021 U.S. Dist. LEXIS 124592

Court: Dist. Idaho | **Date:** July 1, 2021

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44. [Jensen-Edwards v. Us Bank Nat'l Ass'n](#), 2021 U.S. Dist. LEXIS 65216 

LB Cited by: 2021 U.S. Dist. LEXIS 65216

Court: Dist. Idaho | **Date:** April 1, 2021

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45. [Allen v. Campbell](#), 706 F. Supp. 3d 1047 

LB Cited by: 706 F. Supp. 3d 1047 p.1056

Court: Dist. Idaho | **Date:** November 23, 2020

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46. [Schaeffer v. JP Morgan Chase Bank, N.A.](#), 2017 U.S. Dist. LEXIS 219261 

LB Cited by: 2017 U.S. Dist. LEXIS 219261

Court: Dist. Idaho | **Date:** December 22, 2017

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47. [Rheinschild Family Trust v. Rankin](#), 2016 U.S. Dist. LEXIS 38917 

LB Cited by: 2016 U.S. Dist. LEXIS 38917

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48. [Hansen v. United States Bank](#), 2015 U.S. Dist. LEXIS 118696 

LB Cited by: 2015 U.S. Dist. LEXIS 118696

Court: Dist. Idaho | **Date:** September 4, 2015

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49. [Deckys v. BAC Home Loans Servicing LP](#), 2013 U.S. Dist. LEXIS 86586 

LB Cited by: 2013 U.S. Dist. LEXIS 86586

Court: Dist. Idaho | **Date:** April 17, 2013

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50. [Ceperich v. Countrywide Home Loans, Inc.](#), 2013 U.S. Dist. LEXIS 26038 

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Court: Dist. Idaho | **Date:** January 15, 2013

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51. [Sykes v. Pioneer Title](#), 2013 U.S. Dist. LEXIS 24911 

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52. [Showell v. BAC Home Loans Servicing, LP](#), 2012 U.S. Dist. LEXIS 134020 

LB Cited by: 2012 U.S. Dist. LEXIS 134020

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53. [Homeyer v. Bank of Am., N.A.](#), 2012 U.S. Dist. LEXIS 134026 

LB Cited by: 2012 U.S. Dist. LEXIS 134026

Court: Dist. Idaho | **Date:** August 27, 2012

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54. [Mortensen v. Mortgage Elec. Registration Sys.](#), 2012 U.S. Dist. LEXIS 140933 

LB Cited by: 2012 U.S. Dist. LEXIS 140933

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55. [O'Banion v. Select Portfolio Servs.](#), 2012 U.S. Dist. LEXIS 135813 

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56. [Purdy v. Aegis Wholesale Corp.](#), 2012 U.S. Dist. LEXIS 140931 

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57. [**Hofhines v. BAC Home Loans Servicing, L.P.**](#), 2012 U.S. Dist. LEXIS 116079 

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58. [**Fannie Mae v. Palmer**](#), 2012 U.S. Dist. LEXIS 82023 

LB Cited by: 2012 U.S. Dist. LEXIS 82023

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59. [**Mitcham v. CWB Mortg. Ventures, LLC**](#), 2012 U.S. Dist. LEXIS 61146 

LB Cited by: 2012 U.S. Dist. LEXIS 61146

Court: Dist. Idaho | **Date:** March 20, 2012

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60. [**Hobson v. Wells Fargo Bank, N.A.**](#), 2012 U.S. Dist. LEXIS 19944 

LB Cited by: 2012 U.S. Dist. LEXIS 19944

Court: Dist. Idaho | **Date:** February 15, 2012

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61. [**Russell v. OneWest Bank FSB**](#), 2012 U.S. Dist. LEXIS 20404 

LB Cited by: 2012 U.S. Dist. LEXIS 20404

Court: Dist. Idaho | **Date:** February 10, 2012

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62. [**Fannie Mae v. Palmer**](#), 2011 U.S. Dist. LEXIS 136353

LB Cited by: 2011 U.S. Dist. LEXIS 136353

Court: Dist. Idaho | **Date:** November 28, 2011

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63. [**Anglada v. Bank of Am. Corp.**](#), 2011 U.S. Dist. LEXIS 126141 

LB Cited by: 2011 U.S. Dist. LEXIS 126141

Court: Dist. Nev. | **Date:** October 24, 2011

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64. [**Russell v. Onewest Bank FSB**](#), 2011 U.S. Dist. LEXIS 121836 

LB Cited by: 2011 U.S. Dist. LEXIS 121836

Court: Dist. Idaho | **Date:** October 20, 2011

65. [Miller v. BAC Home Loan Servicing, LP](#), 2011 U.S. Dist. LEXIS 116696 
LB Cited by: 2011 U.S. Dist. LEXIS 116696
Court: Dist. Idaho | **Date:** September 9, 2011
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66. [Sterling Sav. Bank v. Ralston](#), 2010 U.S. Dist. LEXIS 37445
LB Cited by: 2010 U.S. Dist. LEXIS 37445
Court: Dist. Idaho | **Date:** April 13, 2010
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67. [1302 N. Main St. Meridian LLC v. Meridian Kids Club, Inc.](#), 2010 U.S. Dist. LEXIS 26474 
LB Cited by: 2010 U.S. Dist. LEXIS 26474
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68. [Edmunds v. Sinkinson](#), 2009 U.S. Dist. LEXIS 97761
LB Cited by: 2009 U.S. Dist. LEXIS 97761
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69. [Anderton v. Avery Fin. Group](#), 2006 U.S. Dist. LEXIS 108424 
LB Cited by: 2006 U.S. Dist. LEXIS 108424
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70. [Davis v. Keybank Nat'l Ass'n](#), 2005 U.S. Dist. LEXIS 29435 
LB Cited by: 2005 U.S. Dist. LEXIS 29435
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- 9th Circuit - U.S. Bankruptcy Courts**
71. [In re Frost](#), 2023 Bankr. LEXIS 2474 
LB Cited by: 2023 Bankr. LEXIS 2474
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72. [Baker v. Nationstar Mortg., LLC \(In re Baker\)](#), 574 B.R. 184 
LB Cited by: 574 B.R. 184 p.190
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73. [Beach v. Wells Fargo Bank, NA \(In re Beach\)](#), 2011 Bankr. LEXIS 4027 

LB Cited by: 2011 Bankr. LEXIS 4027

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74. [Thorien v. Baro Enterprises, LLC \(In re Thorien\)](#), 2008 Bankr. LEXIS 3910 

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75. [Thorian v. Baro Enters., LLC \(In re Thorian\)](#), 387 B.R. 50 

LB Cited by: 387 B.R. 50 p.62, p.63

Court: Bankr. Dist. Idaho | **Date:** March 21, 2008

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76. [Thorien v. BARO Enters., LLC \(In re Thorien\)](#), 349 B.R. 59 

LB Cited by: 349 B.R. 59 p.63

Court: Bankr. Dist. Idaho | **Date:** April 24, 2006

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77. [In re Rodriguez](#), 336 B.R. 462 

LB Cited by: 336 B.R. 462 p.475

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78. [In re Jay](#), 2002 Bankr. LEXIS 1547 

LB Cited by: 2002 Bankr. LEXIS 1547 p.9, p.16

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79. [Young v. Washington Fed. Sav. & Loan Ass'n](#), 156 B.R. 282 

LB Cited by: 156 B.R. 282 p.283

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80. [In re Wells](#), 1992 Bankr. LEXIS 74

LB Cited by:

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81. [In re Grever](#), 1991 Bankr. LEXIS 1400

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82. [Rosenberg v. Smidt](#), 727 P.2d 778 

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83. [Sloan v. Horizon Credit Union](#), 2010 Wash. App. LEXIS 1629 

 **Cited by:** 2010 Wash. App. LEXIS 1629

Court: Wash. Ct. App. | **Date:** July 29, 2010

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84. [Sloan v. Robinson](#), 2008 Wash. App. LEXIS 1568 

 **Cited by:** 2008 Wash. App. LEXIS 1568

Court: Wash. Ct. App. | **Date:** July 3, 2008

Other Citing Sources: (80)

Annotated Statutes

1. [Idaho Code sec. 6-310](#)

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2. [Idaho Code sec. 6-311](#)

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12. [Idaho Code sec. 45-1510](#)

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13. [Idaho Code sec. 45-1602](#)

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Practical Guidance

14. Methods of Residential Foreclosure State Law Survey
2024 PG LEXIS 8098

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15. Eviction, Unlawful Detainer, and Tenant Protections State Law Survey
2020 PG LEXIS 14490

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16. Nonjudicial Foreclosure State Law Survey
2020 PG LEXIS 14438

Content: Practical Guidance

Law Reviews and Periodicals

17. [**ARTICLE: Pacific Lumber and Philadelphia Newspapers: The Eradication of a Carefully Constructed Statutory Regime Through Misinterpretation of**](#), 85 Am. Bank. L.J. 127

Content: Law Reviews | **Date:** 2011

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18. [**ARTICLE: STOP SHUTTING THE DOOR ON RENTERS: PROTECTING TENANTS FROM FORECLOSURE EVICTIONS**](#), 20 Cornell J. L. & Pub. Pol'y 243

Content: Law Reviews | **Date:** 2010

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19. [**ARTICLE: REFORMING FORECLOSURE: THE UNIFORM NONJUDICIAL FORECLOSURE ACT**](#), 53 Duke L.J. 1399

Content: Law Reviews | **Date:** March 1, 2004

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20. [**NOTE: REGULARLY CONDUCTED NON-COLLUSIVE MORTGAGE FORECLOSURE SALES: INAPPLICABILITY OF**](#), 52 Fordham L. Rev. 261

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End of Document



**Citation # 1 (as appears in page 2 of Document)
Idaho Code § 45-1506(8)**

QuoteCheck™ Report

Idaho Code § 45-1506 (8)

About your quote:

Your quote is substantially the same as the retrieved quote.

QuoteCheck™ Request: Idaho Code § 45-1506 (8)

Your Quote:

The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder.

[Idaho Code § 45-1506(8)]

Retrieved Quote:

The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder.

[Idaho Code § 45-1506 starting at 45-1506.(8)]

Excerpt from document:

An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in section 45-1506A, Idaho Code, unless the sale is postponed as provided in this subsection or as provided in section 45-1506B, Idaho Code, respecting the effect of an intervening stay or injunctive relief order. **The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder.**

Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee.

The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to section 45-1506C(1), Idaho Code, the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons

as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

End of Document



Idaho Code § 45-1506

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds (§§ 45-1501 — 45-1515)

45-1506. Manner of foreclosure — Notice — Sale.

- (1) A trust deed may be foreclosed in the manner provided in this section.
- (2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:
 - (a) The grantor in the trust deed and any person requesting notice of record as provided in [section 45-1511, Idaho Code](#).
 - (b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.
 - (c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.
- (3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.
- (4) The notice of sale shall set forth:
 - (a) The names of the grantor, trustee and beneficiary in the trust deed.
 - (b) A description of the property covered by the trust deed.
 - (c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.
 - (d) The default for which the foreclosure is made.
 - (e) The sum owing on the obligation secured by the trust deed.
 - (f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.
- (5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days, each of which attempts must be made at least thirty (30) days prior to the day of the sale, to

serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

(6) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment.

(7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

(8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in [section 45-1506A, Idaho Code](#), unless the sale is postponed as provided in this subsection or as provided in [section 45-1506B, Idaho Code](#), respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to [section 45-1506C\(1\), Idaho Code](#), the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

(9) The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

(11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

(12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or

advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of [section 45-1502, Idaho Code](#), and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

- (13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.
- (14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.
- (15) On or after the tenth day, as provided in subsection (11) of this section, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may:
- (a) Dispose of any titled personal property remaining on the premises in the manner described by applicable law; and
 - (b) Remove any nontitled personal property from the premises and place it in suitable storage. The purchaser may dispose of the nontitled personal property only after providing ninety (90) days' written notice as follows:
 - (i) First class mail to the last known address of the last known occupant of the property; and
 - (ii) Posting a notice in a conspicuous place on the premises that such nontitled personal property may be disposed of following such ninety (90) day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such nontitled personal property; and
 - (iii) The notice shall generally describe the nontitled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method of disposition.
 - (c) If the owner of the nontitled personal property fails to claim the nontitled personal property within ninety (90) days of the date that written notice was provided under paragraph (b) of this subsection, then any and all of his rights in said property shall extinguish, and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

History

1957, ch. 181, § 6, p. 345; am. 1967, ch. 74, § 1, p. 170; am. 1983, ch. 190, § 3, p. 514; [am. 1990, ch. 401, § 2](#), p. 1122; [am. 2011, ch. 323, § 1](#), p. 939; [am. 2012, ch. 326, § 1](#), p. 905; [am. 2016, ch. 364, § 1](#), p. 1071.

Annotations

STATUTORY NOTES

RESEARCH REFERENCES

A.L.R.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 323, added the last three sentences in subsection (8).

The 2012 amendment, by ch. 326, added the second sentence in subsection (6).

The 2016 amendment, by ch. 364, added subsection (15).

Legislative Intent.

Section 5 of [S.L. 1990, ch. 401](#) read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

"a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#);

"b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#);

"c. The changes reflected in Section 4 [[§ 45-1510](#)] of this act; and

"d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of [S.L. 2011, ch. 323](#) provided: "This act shall be in full force and effect on and after September 1, 2011."

Section 2 of [S.L. 2012, ch. 326](#) declared an emergency. Approved April 5, 2012.

JUDICIAL DECISIONS

Applicability.

The buyer protections afforded by [§ 45-1508](#) apply only to sales challenged for a failure to comply with the procedural provisions of this section; good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. Section 45-1508 does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. [Baker v. Nationstar Mortg., LLC, 574 B.R. 184, 2017 Bankr. LEXIS 2110 \(Bankr. D. Idaho 2017\)](#).

Costs Recoverable by Beneficiary.

Expenses of the trustee's sale, including a reasonable charge by the trustee and a reasonable attorney's fee incurred up to the time of sale, interest accrued from the date of sale to the date of judgment at the rate provided in the promissory note, and costs of the action for a deficiency and reasonable attorney fees incurred in the action were recoverable by the beneficiary in an action to obtain a deficiency judgment. [Farber v. Howell, 111 Idaho 132, 721 P.2d 731, 1986 Ida. App. LEXIS 433 \(Ct. App. 1986\)](#).

Curing Default.

A tender of money to cure a default under subsection (12) of this section, which would usually be indispensable, is not required when its futility is shown; however, the fact that a bank manager had stated that he would have to check to see if a payment curing the default could be accepted was not enough, standing alone, to establish that an actual tender would have been futile. [Owens v. Idaho First Nat'l Bank, 103 Idaho 465, 649 P.2d 1221, 1982 Ida. App. LEXIS 252 \(Ct. App. 1982\).](#)

In order to constitute a valid tender of money, the law requires an actual, present, physical offer and a mere spoken offer to pay does not qualify as a valid tender; therefore, where an agent for property owners, whose property was to be sold after they defaulted on a note to a bank, only made an oral offer to cure the default in a phone conversation with the bank manager, the offer did not constitute a valid tender. [Owens v. Idaho First Nat'l Bank, 103 Idaho 465, 649 P.2d 1221, 1982 Ida. App. LEXIS 252 \(Ct. App. 1982\).](#)

Agreement between the parties did not merely provide that the sale would be postponed; it eliminated the default by altering the terms of the promissory note so that there were no longer any sums past due. [Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 \(2002\).](#)

Excessive Bid.

Because the lender bid in excess of the amount of credit available to it under one of the deeds of trust, it did not pay the price owing before the trustee executed the trustee's deed as required by this section. However, it was unnecessary to set aside the sale, as the sale became final when the trustee accepted the lender's bid. [Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 2009 Ida. LEXIS 96 \(2009\).](#)

Injunction Against Foreclosure.

If plaintiff had produced money and defendant had refused to accept the amount, an injunction to stay foreclosure would have been in order; however, where there was no evidence that there was an actual production or delivery of money coupled with plaintiff's offer to pay, an injunction against foreclosure was properly denied. Statement of defendant that the entire balance of the deed of trust was due was not sufficient to constitute a refusal, thus excusing plaintiff from making a valid tender in order to avoid foreclosure of deed of trust. [Allied Invs., Inc. v. Dunn, 104 Idaho 764, 663 P.2d 300, 1983 Ida. LEXIS 442 \(1983\).](#)

Postponement.

Any alleged error occurring at the postponement of a foreclosure was remedied through the later notices of, and the borrower's apparent acquiescence to, the postponement where she was properly informed. [Gordon v. United States Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232 \(2019\).](#)

Procedure.

In 1957, [§ 45-901](#) and [45-904](#) were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to [§ 6-101](#) and [6-104](#) which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed. [Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 \(1958\).](#)

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to subsection (8) of this section; but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to [§ 45-1506A](#). If a stay has been lifted before the scheduled sale date, then postponement proceeds according to [§ 45-1506B](#). [Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82 \(2006\).](#)

Unlike sales postponed under [§ 45-1506A](#) or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under [§ 45-1506B](#) is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to [§ 45-1506B\(3\)](#) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. [Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82 \(2006\)](#).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the notice of sale was published in the Idaho Statesman; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale, because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. [Thorian v. BARO Enters., LLC, 387 B.R. 50, 2008 Bankr. LEXIS 828 \(Bankr. D. Idaho 2008\)](#).

This section requires that notice of the foreclosure sale be mailed to the personal representative of the estate of the deceased person who was entitled to notice. At the time the notice was mailed in this case, the owner was not the personal representative of the estate; the fact that she was appointed as personal representative eighteen months later did not retroactively validate the failure to comply with the section. [PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18 \(2009\)](#).

Where a mortgagor defaulted upon her mortgage loan repayment obligation, a trustee's sale was scheduled, the sale was postponed when the mortgagor agreed to make a partial payment in exchange for the postponement. The trustee verbally announced the time and place for the rescheduled sale, and the property was sold at the rescheduled sale. The buyer instituted an ejectment action to remove the mortgagor from the property, and the mortgagor claimed that she was deprived of due process because she did not receive notice of the postponed sale date. The notice was sufficient because the trustee's announcement at the original sale date complied with subsection (8) of this section. While the mortgagor might have prevailed if she had persisted in her argument that the sale had been cancelled rather than postponed, her attorney failed to pursue this argument on appeal, and the court was not in a position to act upon a ground not presented on appeal. [Black Diamond Alliance, LLC v. Kimball, 148 Idaho 798, 229 P.3d 1160, 2010 Ida. LEXIS 57 \(2010\)](#).

Pursuant to [§ 45-1505](#), a trustee may initiate nonjudicial foreclosure proceedings on a deed of trust without first proving ownership of the underlying note or demonstrating that the deed of trust beneficiary has requested or authorized the trustee to initiate those proceedings. Trustee is not required to prove it has standing before foreclosing on a deed of trust. [Trotter v. Bank of N.Y. Mellon, 152 Idaho 842, 275 P.3d 857, 2012 Ida. LEXIS 84 \(2012\)](#); [Purdy v. Bank of Am., No. 1:11-CV-00640-EJL-REB, 2012 U.S. Dist. LEXIS 140935 \(D. Idaho Sept. 26, 2012\)](#).

Simultaneous Foreclosure.

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. [First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053, 1986 Ida. App. LEXIS 499 \(Ct. App. 1986\)](#).

Cited in:

[Ellis v. Butterfield, 98 Idaho 644, 570 P.2d 1334, 1977 Ida. LEXIS 441 \(1977\)](#); [Security Pac. Fin. Corp. v. Bishop, 109 Idaho 25, 704 P.2d 357, 1985 Ida. App. LEXIS 690 \(Ct. App. 1985\)](#); [Young v. Washington Fed. Sav. & Loan Ass'n, 156 B.R. 282, 1993 Bankr. LEXIS 964 \(Bankr. D. Idaho 1993\)](#); [Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 \(1993\)](#); [Wilhelm v. Johnston, 136 Idaho 145, 30 P.3d 300, 2001 Ida. App. LEXIS 74 \(Ct. App. 2001\)](#).

Terms of Sale.

In a suit concerning the legality of an auctioneer providing the terms of sale at the time of the foreclosure sale, without providing earlier notice to potential bidders, the printed conditions of the foreclosure sale were binding on plaintiff when announced by the auctioneer, whether it knew of the conditions beforehand or not. [Breckenridge Prop. Fund 2016, LLC v. Wally Enter., 170 Idaho 649, 516 P.3d 73, 2022 Ida. LEXIS 96 \(2022\)](#).

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Idaho Code
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[Subsection reports by specific court citation](#)

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1. 1957, ch. 181, § 8, p. 345; am. 1990, ch. 401, § 3, p. 1122.

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4. [Spencer v. Jameson](#), 147 Idaho 497 

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Content: Court Filings | **Date:** August 31, 2011

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Citation # 3 (as appears in page 2 of Document)
Idaho Code § 45-1508

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Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

[Idaho Code § 45-1508]

Retrieved Quote:

Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

[Idaho Code § 45-1508]

Excerpt from document:

A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale.
Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

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Idaho Code § 45-1508

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds (§§ 45-1501 — 45-1515)

45-1508. Finality of sale.

A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under [section 45-1506, Idaho Code](#), and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with [section 45-1506, Idaho Code](#), shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of [section 45-1506, Idaho Code](#), shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

History

1957, ch. 181, § 8, p. 345; [am. 1990, ch. 401, § 3](#), p. 1122.

Annotations

STATUTORY NOTES

Legislative Intent.

Section 5 of [S.L. 1990, ch. 401](#) read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

"a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#);

"b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#);

"c. The changes reflected in Section 4 [[§ 45-1510](#)] of this act; and

"d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Compiler's Notes.

The term "this act" near the beginning of the section refers to S.L. 1957, Chapter 181, which is compiled as [§§ 45-901, 45-902, 45-904, 45-905, 45-907, 45-908, 45-1003, 45-1502](#) to [45-1506](#), and [45-1507](#) to [45-1515](#).

JUDICIAL DECISIONS

Applicability.

The buyer protections afforded by this section apply only to sales challenged for a failure to comply with the procedural provisions of [§ 45-1506](#); good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. This section does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. [Baker v. Nationstar Mortg., LLC, 574 B.R. 184, 2017 Bankr. LEXIS 2110 \(Bankr. D. Idaho 2017\)](#).

Bankruptcy.

Where prior to the commencement of bankruptcy proceedings, a purchaser at a trust deed sale was an entity under a specific local law against whom a subsequent bona fide purchaser could not perfect an interest, notwithstanding the provisions of the general recording laws, the rights of purchaser of bankrupt debtor's residence, as of the time of the sale, could not be avoided under [§ 544 \(a\) \(3\) of the Bankruptcy Code \(11 U.S.C. § 544 \(a\) \(3\)\)](#). [Young v. Washington Fed. Sav. & Loan Ass'n, 156 B.R. 282, 1993 Bankr. LEXIS 964 \(Bankr. D. Idaho 1993\)](#).

Claims Against Mortgagor's Successor.

A mortgagee is not precluded from suing to collect the entire debt secured by a mortgage where the debt was not due and where there was no basis to foreclose the mortgage at the time the property was sold to a third party by the trustee of prior deeds of trust for less than the fair market value of the property. [Idaho Power Co. v. Benj. Houseman Co., 123 Idaho 674, 851 P.2d 970, 1993 Ida. LEXIS 100 \(1993\)](#).

Constitutionality.

The statutory right of redemption, following an execution sale of real property, given by [§§ 11-310, 11-401, 11-402](#) and following judicial foreclosure of a mortgage, given by [§ 6-101](#) is expressly denied to the grantor in a trust deed by this section where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is effected only in cases where the property owner by his contract so agrees. [Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 \(1958\)](#).

Discharge of Security Interest.

Although the seller of various items of fruit packing machinery had retained a security interest to secure the purchase price, a subsequent foreclosure sale of the real property to which the machinery was affixed discharged the security interest held by the seller of the machinery, where the purchase at the foreclosure sale of the real estate and fruit packing machinery was in good faith. [Northwest Equip. Sales Co. v. Western Packers, Inc., 623 F.2d 92, 1980 U.S. App. LEXIS 15872 \(9th Cir. 1980\)](#).

Equitable Remedies.

Although this section prevents the purchaser from redeeming the property sold, it does not prevent equity from ordering compensation to the vendor for her conveyance of the property. [Pichon v. L.J. Broekemeier, Inc., 108 Idaho 846, 702 P.2d 884, 1985 Ida. App. LEXIS 656 \(Ct. App. 1985\)](#).

Good Faith Purchaser.

Bidder was not a good faith purchaser because the foreclosure sale was void for failure to comply with [§ 45-1505\(2\)](#); and the bidder was not a good faith purchaser for value because he did not acquire title to the real property. [*Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 \(2002\)*](#).

Irregularity In Sale.

This section does not require that the grantor to a deed of trust demonstrate harm resulting from an irregularity in a non-judicial foreclosure sale in order to have the sale set aside. The district court may not impose this additional requirement, thereby increasing the grantor's burden. [*Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 2009 Ida. LEXIS 96 \(2009\)*](#).

Completed foreclosure sale was not invalidated or reversed, despite any alleged error in postponement or a purported violation of [§ 45-1506\(8\)](#), where the borrower received proper notice of the initial foreclosure sale and proper subsequent procedures remedied any prior problems with the postponement. [*Gordon v. United States Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232 \(2019\)*](#).

Cited in:

[*Bear Lake W., Inc. v. Stock, 36 B.R. 413, 1984 Bankr. LEXIS 6355 \(Bankr. D. Idaho 1984\); PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18 \(2009\)*](#).

Shepard's request: Idaho Code § 45-1506

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Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®. [**I Richland Brick Corp. v. Hurst Hardware Co.**](#) 80 W. Va. 476, 92 S.E. 685, 1917 W. Va. LEXIS 55: (W. Va. May 8, 1917)

No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

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Court: W. Va. | **Date:** May 8, 1917

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Discussion:    | **Court:** W. Va. | **Date:** November 6, 1951 | **Headnotes:** HN1, HN2

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3. [London & Lancashire Indem. Co. v. Cromwell](#), 118 W. Va. 318 

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Discussion:    | **Court:** W. Va. | **Date:** March 2, 1937 | **Headnotes:** HN2

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4. [Barthelmess v. Cavalier](#), 2 Cal. App. 2d 477 

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5. [Imig v. McDonald](#), 77 Idaho 314 

LB Cited by: 291 P.2d 852 p.855

Discussion:    | **Court:** Idaho | **Date:** December 20, 1955 | **Headnotes:** HN1, HN2

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6. [Union Oil Co. v. Lull](#), 220 Ore. 412 

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Discussion:    | **Court:** Or. | **Date:** February 3, 1960

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-
3. [3C M.J., Commercial Law @ 20](#)

Content: Treatises

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1. [Hayden v. Charter Oak Driving Park](#), 63 Conn. 142

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First Ref:92 S.E. 685 at p.686

Discussion: | Court: Conn. | Date: May 22, 1893

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2. [Chandler v. Sprague](#), 5 Met. 306

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3. [First Nat'l Bank v. Dearborn](#), 115 Mass. 219

Citing

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Discussion: | Court: Mass. | Date: June 18, 1874

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4. [American Zinc, Lead & Smelting Co. v. Markle Leadworks](#), 102 Mo. App. 158

Citing

First Ref:92 S.E. 685 at p.686

Discussion: | Court: Mo. Ct. App. | Date: November 3, 1903

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5. [Bowman v. Griffith](#), 35 Neb. 361

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First Ref:92 S.E. 685 at p.686

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6. [MARINE BANK OF CHICAGO v. WRIGHT & LOSEE](#), 46 Barb. 45

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First Ref:92 S.E. 685 at p.686

Court: N.Y. Sup. Ct. | **Date:** April 2, 1866

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7. [Meyer v. Safe Deposit & Trust Co.](#), 230 Pa. 106 

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First Ref:92 S.E. 685 at p.686

Discussion:  | **Court:** Pa. | **Date:** January 3, 1911

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8. [Hamilton-Brown Shoe Co. v. Lyons](#), 6 Tex. Civ. App. 633 

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Discussion:  | **Court:** Tex. Civ. App. Austin | **Date:** March 21, 1894

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9. [Gordon v. Rixey](#), 76 Va. 694 

 **Citing**

First Ref:80 W. Va. 476 at p.479

Discussion:  | **Court:** Va. | **Date:** October 4, 1882

West Virginia Supreme Ct. of Appeals

10. [Ullman, Einstein & Co. v. Biddle Bros.](#), 53 W. Va. 415 

 **Citing**

First Ref:80 W. Va. 476 at p.482

Discussion:  | **Court:** W. Va. | **Date:** April 28, 1903



Citation # 6 (as appears in page 3 of Document)
Richlands Brick Corporation v. Hurst Hardware Co., 80 W. Va. 476

QuoteCheck™ Report

80 W. Va. 476

About your quote:

QuoteCheck could not find a match for your quote.

QuoteCheck™ Request: 80 W. Va. 476

Your Quote:

One who relies for protection upon the doctrine of being a bona fide purchaser must show that at the time of the purchase he paid a valuable consideration and upon the belief and the validity of the vendor's claim of title without notice, actual or constructive, of any outstanding adverse rights of another.

[80 W. Va. 476](#)

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Cited
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Richland Brick Corp. v. Hurst Hardware Co.

Supreme Court of Appeals of West Virginia, Charleston

April 24, 1917, Submitted ; May 8, 1917, Decided

No Number in Original

Reporter

80 W. Va. 476 *; 92 S.E. 685 **; 1917 W. Va. LEXIS 55 ***

RICHLANDS BRICK CORPORATION v. HURST
HARDWARE CO.

Prior History: [***1] Error to Circuit Court, Mingo County.

Suit by the Richlands Brick Corporation against the Hurst Hardware Company. Judgment for plaintiff on a directed verdict, and defendant brings error.

Affirmed.

Disposition: Affirmed.

Core Terms

brick, bill of lading, purchaser, delivery, shipment, vendor, ownership

Case Summary

Procedural Posture

Defendant company appealed a judgment of the Circuit Court, Mingo County (West Virginia), which directed a verdict for plaintiff corporation in its action to recover the value of three carloads of bricks which the company used in the construction of a building.

Overview

The corporation manufactured and sold bricks. The company ordered bricks from the corporation for a building project. A brick layer also ordered bricks from the corporation for another building project. The brick layer's contractor rejected the bricks ordered by the brick layer because they came in too fast and he had no

place to store them. The brick layer notified the corporation of the rejection and it directed him to deliver the bricks to the company, which had ordered additional bricks. Instead, the brick layer sold the additional bricks to the company. The company paid the freight and used the bricks. The corporation sued the company to recover the value of the bricks. The trial court directed a verdict for the corporation and the company appealed, contending that it was a purchaser for value without notice of the corporation's claim of ownership. The court affirmed, holding that one wholly without title could not transfer title to a person claiming to be a bona fide purchaser from him. The brick layer had no semblance of ownership and he sold to the company under a false pretense which the company, by the exercise of reasonable diligence, could and ought to have discovered.

Outcome

The court affirmed the trial court's judgment.

LexisNexis® Headnotes

Contracts Law > Personal Property > Bona Fide Purchasers

Evidence > Burdens of Proof > General Overview

Real Property Law > Title Quality > Adverse Claim Actions > General Overview

HN1 Personal Property, Bona Fide Purchasers

To constitute one a bona fide purchaser he must, at the time he consummates the transaction, advance a new and valid consideration representing a fair cash value for the property, upon the implicit belief that the vendor had complete title to the article sold, and without notice actual or constructive of any outstanding adverse right or claim thereto. On him who bases his right to protection upon this doctrine rests the burden of showing to the satisfaction of a reasonable mind that he is such a purchaser. It will not do to say merely, "I purchased without notice of any defect in or want of title of the vendor to the property sold and paid him for it." He must show how he paid the agreed price, that the amount paid was a fair cash value for the thing sold, that he did not have actual or constructive notice of any defect in the title he bought, or of any adverse claim to it, and did not have immediate access to a source of knowledge which if pursued would have enabled him to ascertain the actual infirmity or lack of completeness in the title to the property. Without this showing, he cannot defend his claim as against the true owner.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Evidence > Burdens of Proof > General Overview](#)

HN2 [Personal Property, Bona Fide Purchasers](#)

To prove that one is a bona fide purchaser, it is necessary to show the bona fides of the transaction, if the purchaser would defeat recovery as against the rightful claimant. The proof must show that the acts relied upon to sustain the contention that the purchaser acted in good faith and paid a valuable consideration were such as will warrant the conclusion either that his vendor had an unimpeachable title to the subject matter of the transaction or had ample authority from the owner to make the sale, or that such acts as the vendee relies upon as indicative of the ownership of his vendor were such as to preclude the true owner.

[Contracts Law > ... > Sales of Goods > Title, Creditors & Good Faith Purchasers > Passing of Titles](#)
[Business & Corporate Compliance > ... > Sales of Goods > Title, Creditors & Good Faith Purchasers > Passing of Titles](#)

[Commercial Law \(UCC\) > Documents of Title](#)

[\(Article 7\) > Negotiations & Transfers](#)

[Transportation Law > Carrier Duties & Liabilities > Bills of Lading](#)

[Business & Corporate Compliance > ... > Sales of Goods > Title, Creditors & Good Faith Purchasers > General Overview](#)
[Contracts Law > ... > Sales of Goods > Title, Creditors & Good Faith Purchasers > General Overview](#)

HN3 [Title, Creditors & Good Faith Purchasers, Passing of Titles](#)

A transferee of duplicate bills of lading takes the goods shipped, even against the consignor or owner, who retains the original bills, if the duplicates have been transferred with the intention of passing title.

[Contracts Law > Types of Commercial Transactions > Sales of Goods > Modification, Rescission & Waiver](#)
[Business & Corporate Compliance > ... > Sales of Goods > Readjustments > Modification, Rescission & Waiver](#)

[Transportation Law > Carrier Duties & Liabilities > Bills of Lading](#)

[Business & Corporate Compliance > ... > Sales of Goods > Performance > General Overview](#)
[Contracts Law > ... > Sales of Goods > Performance > General Overview](#)

[Business & Corporate Compliance > ... > Sales of Goods > Performance > Delivery & Shipment by Seller](#)
[Contracts Law > ... > Sales of Goods > Performance > Delivery & Shipment by Seller](#)

HN4 [Readjustments, Modification, Rescission & Waiver](#)

Symbolical delivery of goods, by transfer of bills of lading, has no more efficacy than a manual delivery of the property itself. Neither deprives the vendor of the right to rescind or assert his title. Delivery of the bills of lading, though not endorsed, passes title to the same extent and with like effect, and no more, as an actual delivery of the goods, on the theory that the bills

represent the chattels for which they were given.

Transportation Law > Carrier Duties & Liabilities > Bills of Lading

HN5 Carrier Duties & Liabilities, Bills of Lading

A bill of lading is strong proof of the intention of the parties with respect to the property described in it, but not conclusive. If the bill shows that a consignment was made for the benefit of the consignor or his order, it is very strong proof of his intention to reserve the *ius disponendi*. On the other hand, if the bill of lading shows that the shipment is made for the benefit of the consignee, it is almost decisive of the consignor's intention to part with the ownership of the property.

Commercial Law (UCC) > Documents of Title (Article 7) > Negotiations & Transfers

Contracts Law > Personal Property > Bona Fide Purchasers

HN6 Documents of Title (Article 7), Negotiations & Transfers

One wholly without title can transfer none to a person claiming to be a bona fide purchaser from him.

Syllabus

1. SALES--*Bona Fide Purchaser--Requisites to Claim.*

One who relies for protection upon the doctrine of *bona fide* purchaser must show that at the time of his purchase he paid a valuable consideration and how he paid it; and that he purchased with honest motives, upon the implicit belief in the validity of his vendor's claim of title, without notice actual or constructive of any outstanding adverse right of another, or immediate access to a source of knowledge which if pursued would have enabled him to ascertain the actual infirmity or lack of completeness of the title be acquired. (p. 479).

2. CARRIERS--*Bill of Lading--Bona Fide Purchaser.*

If upon the face of a bill of lading there appears evidence sufficient to put an ordinarily prudent man upon inquiry as to the true ownership of the

consignment, a purchaser, without such investigation as would disclose the true owner, from one (other than the consignee) who transfers to him the bill of lading by mere delivery, and who has no title to the property, can not claim protection as a *bona fide* purchaser. (p. 479).

Counsel: S. D. Stokes and Wade H. Bronson, for plaintiff in error.

Goodykoontz & Scherr, for defendant in error.

Judges: LYNCH, PRESIDENT.

Opinion by: LYNCH

Opinion

[*477] [**685] LYNCH, PRESIDENT:

The Richlands Brick Corporation, a Virginia concern engaged in the manufacture and sale of brick, sued the Hurst Hardware Company for the value of three carloads of its product, which that company used in the construction of a business building in Williamson. The plaintiff recovered judgment for the full amount of its claim, upon a verdict directed by the court.

At the same time the Hurst building was in process of construction, C. W. McNulty & Company contracted to erect a building of the same material for A. Goodman in Williamson. J. H. Norris, a brick layer, agreed with the contractor to furnish the material and complete the brick work on the Goodman building. He also performed some work on the Hurst building. Plaintiff quoted a price of \$ 8.35 per thousand on the brick to [***2] be used in the two buildings. The Hurst Hardware Company purchased of plaintiff the brick it needed for its building. On June 23, 1913, Norris wrote the Richlands Brick Corporation: "Please ship to me 225,000 rough brick for the A. Goodman building. Let these brick come at once. Mr. Hurst wants to know if the remaining of his brick are on the road". To which the next day plaintiff replied: "We have your letter of the 23rd inst., and enter order for 225,000 common brick, 75% hard, at \$ 8.35 per thousand, [*478] delivered f. o. b. Williamson, to be shipped and invoiced to Mr. A. Goodman, and will start shipment within a few days on this order"; and in effect saying a shipment was then on the way to the Hurst Hardware Company and they were for it then loading several other cars. The Hurst company paid for all the brick it purchased direct from the plaintiff, and the superintendent of the McNulty company for those

shipped to Goodwin, except the three cars in controversy.

This correspondence, read together with the bills of lading and invoices, create the impression that Goodman, not Norris, was by plaintiff intended as the real purchaser of the brick referred to in the Norris letter, [***3] among the less than one half of which, actually furnished, were the three car loads involved in this action. From these papers it appears that the plaintiff treated Goodman as the person to whom it sold the brick. To him it consigned each shipment, sent the invoices and copies of the bills of lading. On the face of each of them they purport to convey the information that the brick were sold to Goodman. It is true there is also on each of them the words, "customer's No. 6/23-Norris". But the notation "6/23" apparently was intended to serve no purpose other than as a memorandum of the date of Norris' letter, namely, June 23. It seems to have no other signification.

Goodman, it is true, testified that he had no dealings whatever with the plaintiff. But he rejected the brick now in suit, consigned to him July 26 and 29, 1913; because they came too fast for immediate use and he had no place to store them. Norris notified plaintiff of the rejection, and it directed him to deliver the three car loads to the defendant company, which a few days before had notified the plaintiff of the need of additional brick for the Hurst building. But, instead of obeying plaintiff's instructions, Norris [***4] sold the three car loads to the defendant, for which its general manager says in general terms it paid him. It did pay the freight, unloaded the cars, and used the brick. It seeks to defeat recovery in this action on the theory that the facts proved constituted it a purchaser for value without notice of plaintiff's claim of ownership.

[*479] But HN1[[↑]] to constitute one a *bona fide* purchaser he must at the time he consummates the transaction advance a new and valid consideration representing a fair cash value for the property, upon the implicit belief that the vendor had complete title to the article sold, and without notice actual or constructive of any outstanding adverse right or [**686] claim thereto. On him who bases his right to protection upon this doctrine rests the burden of showing to the satisfaction of a reasonable mind that he is such a purchaser. It will not do to say merely, I purchased without notice of any defect in or want of title of the vendor to the property sold and paid him for it. He must show how he paid the agreed price, that the amount paid was a fair cash value for the thing sold, that he did not have actual or

constructive notice of any defect in [***5] the title he bought, or of any adverse claim to it, and did not have immediate access to a source of knowledge which if pursued would have enabled him to ascertain the actual infirmity or lack of completeness in the title to the property. Without this showing he can not defend his claim as against the true owner. HN2[[↑]] The authorities agree upon the necessity of this proof to establish the *bona fides* of the transaction, if the purchaser would defeat recovery as against the rightful claimant. Gordon v. Rixey, 76 Va. 694; Hamilton v. Lyons, 6 Tex. Civ. App. 633, 25 S.W. 805; Meyer v. Safety Deposit Co., 230 Pa. 106, 79 A. 249; Bowman v. Griffith, 35 Neb. 361, 53 N.W. 140; Hayden v. Charter Oak Driving Park, 63 Conn. 142, 27 A. 232; 8 C. J. 1146. The proof must show that the acts relied upon to sustain the contention that the purchaser acted in good faith and paid a valuable consideration were such as will warrant the conclusion either that his vendor had an unimpeachable title to the subject matter of the transaction or had ample authority from the owner to make the sale, or that such [***6] acts as the vendee relies upon as indicative of the ownership of his vendor were such as to preclude the true owner. 1 Mechem on Sales, §§ 158, 159.

Tested by these principles, sustained by competent authority, are the facts proved sufficient to warrant the conviction that the defendant ought not to bear the burden of repayment to plaintiff in satisfaction of its unpaid claim for the property? In other words, did defendant or its agent have information [*480] of the invalidity of Norris' claim of title to the brick sufficient to excite an inquiry into the source from which that title was derived, or the means of knowing its probable defects, such as were calculated to awaken a suspicion of the existence of title in the plaintiff?

That upon which the defendant relies to show Norris did have such ownership as justified the conclusion that he was able to confer complete title were the copies of the bills of lading to which we have referred. These duplicates and the invoices, enclosed in a stamped envelope properly addressed, were by the plaintiff delivered to Goodman through the agency of the United States mail. And, as we have seen, they bore evidence that Goodman, not Norris, [***7] was the consignee, and the person plaintiff treated as the real purchaser, and to whom it looked for compensation until it directed Norris to deliver the shipments to the defendant. If these documents did not indeed establish between plaintiff and Goodman the relation of vendor and vendee, and render the latter liable for payment of the purchase price of the chattels, they nevertheless were such as to create

in the mind of a reasonable man a suspicion that Norris did not actually have the real title to the property. How Norris acquired possession of the bills of lading is not shown. He did so without fault or consent of the plaintiff. Defendant took the copies without endorsement by Goodman or Norris or any other person. Clearly, at the time of the delivery of the property to defendant, neither Norris nor Goodman had any title. Norris never acquired any; and if it can be said the consignment to Goodman, without a prior contract of purchase by him, was in legal effect a proposal by plaintiff to sell the material to him, his rejection of that proposal and plaintiff's acquiescence therein and direction to Norris as to the disposal of the brick negated the existence of title in Goodman [***8] at any time.

There is authority to the effect that [HN3](#)[[↑]] a transfereree of duplicate bills of lading takes the goods shipped, even against the consignor or owner, who retains the original bills, if the duplicates have been transferred with the intention of passing title. 4 Elliott on Contracts § 3163; [Bank v. Dearborn, 115 Mass. 219](#). The clause qualifying the application of the [*481] doctrine stated is significant. It in effect excludes the idea of conclusiveness upon the underlying data, and leaves open the door for the admission of proof to show the real character of the transaction. Goodman and Norris both evidently treated the title as if it had not passed from the plaintiff. The defendant, as its agent Hurst admits, knew that Goodman had declined to accept the brick. Norris of course knew it. He wired that fact to the plaintiff. Furthermore, the duplicate bills of lading bore on the face of each of them evidence sufficient to suggest that Goodman was the consignee, indeed the purchaser of the shipments; facts or *indicia* of facts of such force and effect as to put upon inquiry an ordinarily prudent business man who contemplated a purchase from Norris.

[***9] [HN4](#)[[↑]] Symbolical delivery of goods, by transfer of bills of lading, has no more efficacy than a manual delivery of the property itself. 4 Elliott on Contracts § 3163. Neither deprives the vendor of the right to rescind or assert his title. Delivery of the bills of lading, though not endorsed, passes title to the same extent and with like effect, and no more, as an actual delivery of the goods, on the theory that the bills represent the chattels for which they were given. [Smelting Co. v. Lead Works, 102 Mo. App. 158, 76 S.W. 668](#); [Chandler v. Sprague, 38 Am. Dec. 420](#); [Marion v. Wright, 46 Barb. 45](#). [**687] In his notes to [Bank v. Railroad Co.](#), 105 Am. St. 321, Freeman says: [HN5](#)[[↑]] "A bill of lading is strong proof of the intention of the

parties with respect to the property described in it, but not conclusive. If the bill shows that the consignment was made for the benefit of the consignor or his order, it is very strong proof of his intention to reserve the *jus disponendi*. And on the other hand if the bill of lading shows that the shipment is made for the benefit of the consignee, it is almost decisive [***10] of the consignor's intention to part with the ownership of the property". But in this connection we remark again that Goodman rejected the brick in controversy, that Norris informed plaintiff of such rejection, and that plaintiff directed him to deliver the brick to the defendant, thus clearly indicating Norris' recognition of the rights of the plaintiff and showing that he knew he had no authority to deal with the property [*482] as his own or in any manner prejudicial to plaintiff. Obviously, the principles of estoppel can not be invoked to defeat the plaintiff's claim. Delivery of the brick, with or without a transfer by Norris of the bills of lading, at the most was only *prima facie* evidence of title in him. And all the authorities agree that [HN6](#)[[↑]] one wholly without title can transfer none to a person claiming to be a bona fide purchaser from him. [Ullman v. Biddle, 53 W. Va. 415, 44 S.E. 280](#); 35 Cyc. 357. Norris did not even have the semblance of ownership. He sold to the defendant under a false pretense; a pretense the falsity of which, we think, defendant, by the exercise of reasonable diligence, could and ought to have discovered.

Judgment affirmed.

[***11] Affirmed.

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Shepard's®: Report Content

Appellate History: Requested

 **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®:  [MERCHANTS' TRUST CO. V. DAVIS](#) 49 Idaho 494,290 P. 383,1930 Ida. LEXIS 148: (Idaho June 23, 1930)

No subsequent appellate history

Appellate History (1)

1.  **Citation you Shepardized™**

[MERCHANTS' TRUST CO. V. DAVIS](#), 49 Idaho 494 

Court: Idaho | **Date:** June 23, 1930

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1. [Large v. Cafferty Realty](#), 123 Idaho 676 

LB Cited by: 123 Idaho 676 p.680; 851 P.2d 972 p.976

Discussion:    | **Court:** Idaho | **Date:** April 29, 1993

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2. [Haugh v. Smelick](#), 126 Idaho 481 

LB Cited by: 126 Idaho 481 p.483; 887 P.2d 26 p.28

Discussion:    | **Court:** Idaho | **Date:** January 28, 1993

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3. [Imig v. McDonald](#), 77 Idaho 314 

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Discussion:    | **Court:** Idaho | **Date:** December 20, 1955

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4. [Malcolm v. Hanmer](#), 64 Idaho 66 

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5. [Donaldson v. Henry](#), 63 Idaho 467 

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6. [State v. Snoderly](#), 61 Idaho 314 

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7. [Lott v. Taylor](#), 60 Idaho 263 

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8. [Thompson v. Walker](#), 56 Idaho 461 

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Discussion:  | **Court:** Idaho | **Date:** March 12, 1936

9. [Harris v. Chapman](#), 51 Idaho 283 

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** June 10, 2005

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12. [Sylvania Sav. Bank Co. v. Turner](#), 27 Mich. App. 640 

LB Cited by: 183 N.W.2d 894 p.897

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13. [Gilbertson v. Gilbertson](#), 452 N.W.2d 79 

LB Cited by: 452 N.W.2d 79 p.81

Discussion:  | **Court:** N.D. | **Date:** March 1, 1990 | **Headnotes:** HN2

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LB Cited by: 250 N.W. 842 p.844

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2. [Idaho Code sec. 45-912](#)

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3. [Idaho Code sec. 55-812](#)

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4. [RESTATEMENT OF MORTGAGES SYMPOSIUM: Third Party Defenses to Mortgages](#), 1998 BYU L. Rev. 1003

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6. [BENZ v. D.L. EVANS BANK](#), 2011 ID S. Ct. Briefs LEXIS 121

Content: Court Filings | **Date:** May 6, 2011

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1. [Oregon & W. Trust Inv. Co. v. Shaw](#), 5 Sawy. 336 

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First Ref:49 Idaho 494 at p.503

Discussion:  | Court: Cir. Ct. Dist. Or. | Date: December 6, 1878

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2. [Barr v. Foster](#), 25 Colo. 28 

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Discussion:  | Court: Colo. | Date: April 1, 1898

Idaho Supreme Court

3. [International Mortgage Bank v. Whitaker](#), 44 Idaho 178 

 Citing

First Ref:49 Idaho 494 at p.502

Discussion:  | Court: Idaho | Date: April 11, 1927

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4. [Kelly v. Leachman](#), 3 Idaho 629 

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First Ref:49 Idaho 494 at p.502

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5. [Westheimer v. Thompson](#), 3 Idaho 560 

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First Ref:49 Idaho 494 at p.503

Discussion:  | Court: Idaho | Date: January 30, 1893

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6. [In re Fisher's Estate](#), 47 Idaho 668 

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First Ref:49 Idaho 494 at p.504

Discussion:  | Court: Idaho | Date: May 25, 1929

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7. [McGrath v. West End Orchard & Land Co.](#), 43 Idaho 255 

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First Ref: 49 Idaho 494 at p.504

Discussion:  | Court: Idaho | Date: October 30, 1926

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8. [Gould v. Hill](#), 43 Idaho 93 

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First Ref: 49 Idaho 494 at p.504

Discussion:  | Court: Idaho | Date: September 23, 1926

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9. [Waters v. Waters](#), 20 Iowa 363 

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First Ref: 290 P. 383 at p.386

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10. [Curtis v. Moore](#), 152 N.Y. 159 

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11. [Purdy v. Huntington](#), 42 N.Y. 334 

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12. [Chesney v. Valley Live Stock Co.](#), 34 Wyo. 378 

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First Ref: 290 P. 383 at p.386

Discussion:  | Court: Wyo. | Date: March 16, 1926

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Merchants' Trust Co. v. Davis

Supreme Court of Idaho

June 23, 1930, Decided

No. 5466.

Reporter

49 Idaho 494 *; 290 P. 383 **; 1930 Ida. LEXIS 148 ***

MERCHANTS TRUST COMPANY, a Corporation, Respondent, v. JOSEPH GLEN DAVIS, Sometimes Known as JOSEPH G. DAVIS, etc., Defendant, and ALBERT BEUS and DORA BEUS, His Wife, and LARGILLIERE COMPANY, BANKERS, a Corporation, Appellants.

Prior History: [***1] APPEAL from the District Court of the Fifth Judicial District, for Caribou County. Hon. Ralph W. Adair, Judge.

Action to foreclose mortgage on real property. Judgment for plaintiff. Affirmed.

Disposition: Judgment and order affirmed. Costs to respondent.

Core Terms

Mortgage, first mortgage, quitclaim deed, receiver, recorded, assigned, third mortgage, mortgagee, premises, parties, foreclosed, mortgaged premises, second mortgage, instalments, decree, notice

Case Summary

Procedural Posture

Appellant purchasers sought review of a judgment of the District Court of the Fifth Judicial District, Caribou County (Idaho), which found in favor of respondent first mortgagee in the mortgagee's foreclosure action.

Overview

The property owners had executed three separate mortgages. The first mortgage was subsequently

assigned. The second mortgagee filed a foreclosure action and paid certain taxes, insurance, and interest on the first mortgage as permitted. The purchasers subsequently acquired the property from a receiver for the bank that had received a sheriff's deed to the property. The purchasers subsequently filed a quiet title action against the second mortgagee, who issued a quitclaim deed to the purchasers. The first mortgagee subsequently sought to foreclose on the property. The trial court entered a judgment in favor of the first mortgagee. On appeal, the court affirmed, concluding that even though the assignment of the first mortgage was recorded in the wrong county, the purchasers had constructive notice of the first mortgage, which was recorded, and no satisfaction appeared of record. Thus, the purchasers proceeded at their own peril on the assumption that title to the first mortgage was still in the original mortgagee, who had given a quitclaim deed, and their failure to inquire as to identity of the holder of the first mortgagee deprived them of bona fide purchaser protection.

Outcome

The court affirmed the judgment of the trial court in favor of the first mortgagee.

LexisNexis® Headnotes

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Real Property Law > Deeds > Types of

[Deeds > Quit Claim Deeds](#)[Real Property Law > Deeds > General Overview](#)[Real Property Law > Landlord & Tenant > Tenancies > Term Tenancies](#)[Real Property Law > Priorities & Recording > General Overview](#)[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[**HN1** \[L\] Types of Contracts, Lease Agreements](#)

Idaho Code § 5424 provides that every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof in good faith and for a valuable consideration, whose conveyance is first duly recorded.

[Real Property Law > Financing > Foreclosures > General Overview](#)

[Real Property Law > Deeds > Types of Deeds > General Overview](#)

[Real Property Law > Deeds > Types of Deeds > Quit Claim Deeds](#)

[Real Property Law > ... > Mortgages & Other Security Instruments > Satisfaction & Termination > General Overview](#)

[Real Property Law > ... > Mortgages & Other Security Instruments > Satisfaction & Termination > Release Payments](#)

[**HN2** \[L\] Financing, Foreclosures](#)

A quitclaim deed from the mortgagee to the mortgagor of mortgaged premises is prima facie a release and satisfaction of the mortgage lien, and is also prima facie a bar to the right to foreclose. But the court will look to the intent of the parties, and if the parties did not intend to release the mortgage, such intention will prevail.

[Real Property Law > ... > Mortgages & Other Security Instruments > Transfers > General](#)

[Overview](#)[Real Property Law > Financing > Mortgages & Other Security Instruments > Mortgage Formalities](#)[Real Property Law > ... > Mortgages & Other Security Instruments > Satisfaction & Termination > General Overview](#)[Real Property Law > ... > Mortgages & Other Security Instruments > Satisfaction & Termination > Release Payments](#)

[**HN3** \[L\] Mortgages & Other Security Instruments, Transfers](#)

Pursuant to Idaho Code §§ 6366, 6367, a mortgage lien on real estate may be released by three methods: (1) By an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage; (2) or it may be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative or assigns, acknowledged; and (3) by decree of a competent court. And where not so discharged, the debt is not extinguished.

Headnotes/Summary

Headnotes

ACTIONS--MORTGAGES--FORECLOSURE--
RELEASE--QUITCLAIM DEED--MERGER--
UNRECORDED ASSIGNMENT--PRIORITY OF LIENS.

1. Separate mortgages executed for principal, additional interest and commission did not constitute "single transaction" within law authorizing but one action for debt (C. S., sec. 6949).
2. Evidence established that assignment of note and mortgage was with intention to convey absolute title to mortgage and debt secured thereby.
3. Intention of parties that quitclaim deed was not to release mortgage theretofore assigned by grantor will prevail.
4. Quitclaim deed did not release first mortgage theretofore assigned by grantor as to owners of equity

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of redemption, though assignment did not appear of record (C. S., sec. 5424).

5. Debt evidenced by real estate mortgage is not extinguished without discharge of mortgage in accordance with statutes (C. S., secs. 6366, 6367).

6. Failure of subsequent mortgagee to make proper inquiry with respect to unreleased first mortgage deprived it of protection accorded *bona fide* purchasers under statute (C. S., secs. 5424, 6366, 6367).

7. Merger of lien of first mortgage with title depends on intention of parties to quitclaim deed or other extrinsic facts.

8. Quitclaim deed executed to subsequent purchaser by mortgagee theretofore assigning mortgage did not effect merger of mortgage with title.

9. Failure of decree of foreclosure, requiring sale of dwelling-house theretofore removed to describe land on which dwelling-house was situated, was not error.

10. Appellate court will not consider objection which is not argued or substantiated by authorities.

Counsel: R. J. Dygert, for Appellants.

There can be but one action for the recovery of any debt or the enforcement of any right secured by mortgage upon real estate or personal property. (C. S., sec. 6949; *Garrett v. Soucie*, 46 Idaho 289, 267 P. 1078; *Portland Cattle Loan Co. v. Biehl*, 42 Idaho 39, 245 P. 88.)

Priority of conveyance or mortgage or assignment depends upon recording statutes. (*Adams v. Satterberg*, 46 Idaho 271, 267 P. 445.)

Where the assignee of a mortgage holds by reason of an unrecorded assignment and the assignor thereafter collects money upon the debt secured by the mortgage, the assignor is the agent of the assignee in making such collections. (*Pennypacker v. Latimer*, 10 Idaho 618, 81 P. 55.)

Peterson, Baum & Clark, for Respondent.

A recorded unreleased mortgage is notice of its existence to subsequent purchasers and incumbrancers of the property even though the mortgage itself is held by reason of **[**2]** an unrecorded assignment. (*Curtis v. Moore*, 152 N.Y. 159, 57 Am. St. 506, 46 N.E. 168; *Purdy v. Huntington*, 42 N.Y. 334, 1 Am. Rep. 532.)

Judges: VARIAN, J. Givens, C. J., and Budge, Lee and McNaughton, JJ., concur.

Opinion by: VARIAN

Opinion

[*496] [384]** VARIAN, J.--Action to foreclose a mortgage on farm lands in Caribou county, Idaho. On November 23, 1918, Joseph Glen Davis and wife executed three mortgages to the North American Mortgage Company, of Leeuwarden, Holland, covering the east half of the northeast quarter of section 33, and the west half of the northwest quarter of section 34, township 8 south of range 42 E., B. M., in Bannock county, Idaho. The first mortgage (so designated in the instrument) was to secure the payment of \$ 2,000, payable ten years after date, with interest at six per cent per annum; the second, subject to said first mortgage, to secure the payment of \$ 400.88, payable in ten annual instalments, with interest at twelve per cent per annum after maturity. The agreement between the parties was that Davis should pay eight per cent on the principal of the \$ 2,000 borrowed, and the second note represents the additional two per cent on that sum. A third mortgage **[***3]** upon the same premises, reciting that it was given subject to the two mortgages just described, was for \$ 100.22, payable in ten annual instalments, and termed a commission mortgage, to secure the payment of the commission of the agents of the North American Mortgage Company, the Edgerton-Fabrick Company. The first mortgage was recorded December 9, 1918, and the second and third mortgages on December 28, 1918, all in Bannock county.

By act of the legislature, effective February 11, 1919, Caribou county was created from a portion of the territory of Bannock county (Sess. Laws 1919, chap. 5, p. 28), the mortgaged lands thereafter being in Caribou county. The **[*497]** record of all three mortgages was duly copied into the records of Caribou county.

Under date of October 1, 1919, the North American Mortgage Company duly assigned the first or \$ 2,000 debt and mortgage to the Merchants Trust & Savings Bank, a Minnesota corporation, which subsequently changed its name to Merchants Trust Company, which said assignment, through inadvertence and mistake, was recorded in Bannock county, where the assigned mortgage was originally recorded. The assignment was never recorded in Caribou county, **[***4]** where the mortgaged premises are now situate.

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Davis and wife having failed to pay the interest instalments of the first mortgage falling due in 1921 and 1922, and certain taxes for the years 1919, 1920, 1921 and 1922, the North American Mortgage Company, under the provisions of the second mortgage still owned by it, paid certain taxes, insurance, and two interest instalments on the first mortgage, as it was permitted to do under the terms of the second mortgage, which it foreclosed subject to the first mortgage, then owned by respondent, Merchants Trust Company. This foreclosure was not contested, and one Harry Horsley bid in the premises for the amount of the debt, including interest, moneys advanced, attorney's fees, etc., and assigned the certificate of sale to the First National Bank of Montpelier, a creditor of Davis, and sheriff's deed issued to it. Thereafter, said bank closed its doors and went into liquidation. On December 7, 1926, appellant Beus, defendant in the present action, entered into a contract with the receiver of said bank to purchase the mortgaged lands for the agreed consideration of \$ 3,500. Beus was to "assume all liens that may be against the property, together [**5] with the interest thereon figured to the date of delivery of the deed, the amount of the liens and interest not being known to the parties at this time, to be credited upon the purchase price."

Two hundred dollars, cash payment, was made on account at that time. Thereafter, the sale being confirmed by the federal judge, a receiver's deed to the premises issued to [*498] defendant Beus on paying the receiver in [**385] cash \$ 193.36, making a total of \$ 393.36, cash, paid for the property, the difference between that sum and the contract price of \$ 3,500 representing the liens against the property, including the first mortgage sought to be foreclosed here.

On March 14, 1927, defendant Beus commenced an action to quiet title, in the usual form, against the North American Mortgage Company only, and upon service of summons negotiations were entered into between the parties through counsel, and it was agreed that the defendant in the quieting title action would quitclaim to Beus all interest in the lands involved, provided it should be relieved from all liability for costs. Under date of April 2, 1927, said corporation quitclaimed unto Beus, his heirs and assigns, "all that certain [**6] lot, piece or parcel of land, situate, lying and being in County of Caribou," etc., particularly describing it and making no mention of the first or third mortgages. This quitclaim deed was recorded in Caribou county on April 4, 1927, and the action to quiet title dismissed. Beus and wife, being indebted to Largilliere Company, Bankers, of

Soda Springs, Idaho, evidenced by their promissory note for \$ 6,500, dated December 4, 1926, due one year after date, applied to the manager of that bank for a loan of \$ 500. As testified by the manager, Beus' affairs were involved, and in order to get additional security for the \$ 6,500 note, the bank agreed to advance him \$ 500 more, which it did on April 4, 1927, Beus and wife executing two mortgages on the land involved in the present action to Largilliere Company, Bankers, one to secure payment of their note for \$ 500, due seven months after that date; the other to secure the said note for \$ 6,500 falling due December 4, 1927. Both mortgages were recorded in Caribou county on April 4, 1927. In December, 1927, defendant Beus moved the bungalow dwelling-house from the mortgaged premises and placed it upon land owned by him about two miles distant. [***7] The court decreed the foreclosure and sale, denied any relief to either the Beuses or Largilliere Company, Bankers, and fixed the value of said dwelling at \$ 2,750; that the receiver [*499] theretofore appointed herein take the necessary steps to recover said dwelling-house, and restore it to said mortgaged premises, and that the same be sold by the sheriff with said premises. All defendants, except appellants Beus and wife and Largilliere Company, Bankers, a corporation, defaulted in the present action.

Appellants contend, in effect, that the mortgages given [**386] by Davis and wife to the North American Mortgage Company constitute a single transaction, and the three notes secured thereby evidence but a single debt, and that the provisions of C. S., sec. 6949, to the effect that "there can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate," etc., therefore apply. The facts do not sustain this contention. Davis and wife executed three separate notes and three separate mortgages to secure the same, each note and mortgage being a separate and distinct transaction, although executed at the same time. The evidence [**8] discloses that the first mortgage and note were assigned for value to respondent; that the second mortgage, securing the instalment note for two per cent of the principal, was duly foreclosed by the original mortgagee, Davis and wife and other proper parties made defendant not contesting the same. Appellants' title is grounded upon this foreclosure. The first mortgage, foreclosed in the instant suit, was a first lien on the premises described therein, and the payment by the North American Mortgage Company of defaulted interest for two years on the original first mortgage was justified because it was necessary in order to protect its second mortgage lien.

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We express no opinion as to the effect of the foreclosure of the second mortgage, subject to the lien of the first mortgage by one holding still a third mortgage. That question is not here. Agents for the record holder of the third mortgage testified that the North American Mortgage Company claimed no interest in the third mortgage; that it was the property of the agents who negotiated the loan; also, [*500] that it intended to waive any interest it had in the third mortgage by its quitclaim deed to Beus.

Appellants urge that [***9] the only evidence that the North American Mortgage Company intended to convey absolute title to the first mortgage and debt secured thereby to respondent was the evidence of the witness Fabrick, agent for the North American Mortgage Company, to the effect that his company had no interest in the note and mortgage, and that they were turned over to respondent, Merchants Trust Company. In addition is the formal written assignment, the execution of which was duly proven, and the further fact that interest had been paid to it both by the mortgagors and the assignor North American Mortgage Company. Respondent was also shown to be in possession of the said note and mortgage. The proof was sufficient:

The trial court found that Beus took his title from the receiver, Largilliere Company, Bankers, received the mortgages from Beus and wife, with knowledge of the outstanding first mortgage of plaintiff Merchants Trust Company. Appellants strenuously contend that the evidence does not sustain these findings. There is evidence that Beus had actual knowledge, prior to his purchasing the property from the receiver, that the plaintiff owned the first mortgage executed by Davis and wife to the North [*10] American Mortgage Company, notwithstanding the assignment did not appear of record in Caribou county. We do not deem it necessary to analyze the evidence, because of the conclusions reached as to the effect to be given the record, applicable to the facts here.

Both Beus and Largilliere Company, Bankers, admit they had examined the Caribou county records, which showed three mortgages to the North American Mortgage Company, executed by Davis and wife on November 23, 1918. Appellants' theory is apparently that the quitclaim deed prepared by their counsel and executed by the North American Mortgage Company is notice to the world of a release of all mortgages held by it, including the assigned first mortgage [*501] for \$ 2,000, since the assignment thereof does not appear of record in Caribou county.

C. S., sec. 5424, reads:

HN1 [↑] "Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof in good faith and for a valuable consideration, whose conveyance is first duly recorded."

HN2 [↑] "A quitclaim deed from the mortgagee to the mortgagor of mortgaged premises is [***11] *prima facie* a release and satisfaction of the mortgage lien, and is also *prima facie* a bar to the right to foreclose." (19 R. C. L., p. 454, sec. 237. See, also, *Waters v. Waters, 20 Iowa 363, 89 Am. Dec. 540*; 2 Jones on Mortgages, 8th ed., sec. 1091, p. 525.) But the court will look to the intent of the parties, and if the parties did not intend to release the mortgage, such intention will prevail. (*Chesney v. Valley Live Stock Co., 34 Wyo. 378, 44 A. L. R. 1255*, and note, *244 P. 216; Barr v. Foster, 25 Colo. 28, 52 P. 1101*; 5 Thompson on Real Property, sec. 4715a, p. 910.) In the instant case, it is clear there was no intention by the mortgagee to release the first mortgage. On the contrary, it claimed the quitclaim deed was given with intent to release any claim existing at that date in favor of the North American Mortgage Company against the mortgaged lands, for the purpose of avoiding costs in the action to quiet title brought against it by Beus, and had no reference to the first mortgage. The quitclaim deed, for this reason, did not release the first mortgage as to the owners of the equity of redemption, Beus [***12] and wife.

Our statute provides three methods by which **HN3** [↑] a mortgage lien on real estate may be released: (1) "By an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage," etc. (C. S., sec. 6366); (2) or it may "be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative [*502] or assigns, acknowledged," etc. (C. S., sec. 6367); (3) "by decree of a competent court." And where not so discharged, the debt is not extinguished. (*Kelly v. Leachman, 3 Idaho 629, 33 P. 44; International Mortgage Bank v. Whitaker, 44 Idaho 178, 255 P. 903*.)

As to constructive notice shown by the record, it appears that both Beus and Largilliere Company, Bankers, were informed by the record that the land was incumbered by a first mortgage to secure \$ 2,000,

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unreleased in any manner provided by statute, and apparently an outstanding lien on the premises with which they were dealing. This information charged appellants in law with the further notice that the first [***13] mortgage was such lien in the hands of anyone to whom it had been legally transferred; that "the record of such transfer was not necessary to its validity, nor as a protection against a purchaser of the property mortgaged, or any other person than a subsequent purchaser in good faith of the mortgage itself" or the note or debt secured thereby; "but, on the contrary, that a vendee of the premises took it subject to the lien of the mortgage, irrespective of the ownership thereof." That notice made it the duty of appellants, in the exercise of proper diligence, to inquire whether the North American Mortgage Company was still the owner and holder of the first mortgage, and their failure to make such inquiry deprives them of the protection accorded *bona fide* purchasers under C. S., sec. 5424. (*Purdy v. Huntington*, 42 N.Y. 334, 1 Am. Rep. 532; *Campbell v. Vedder*, 3 Keyes (42 N. Y.), 174, 1 Abb. Dec. 295; *Curtis v. Moore*, 152 N.Y. 159, 57 Am. St. 506, 46 N.E. 168; 5 Thompson on Real Property, sec. 4070, p. 73.) And while appellants were put upon inquiry, it was not enough for them to examine the record and see that no assignment of the [***14] first mortgage appeared thereon, but they should have required a satisfaction of the mortgage, evidenced in one of the ways prescribed by the statute; otherwise they proceeded at their peril in dealing with the mortgaged property on the assumption that the title to the first mortgage was [*503] still in the original mortgagee. (See *Curtis v. Moore, supra*.)

The record of the quitclaim deed to Beus did not import notice to Largilliere Company, Bankers, of the merger of the lien of the first mortgage with the title in Beus, because the fact of merger depends upon the intention of the parties to the quitclaim deed, or other extrinsic facts. (2 Jones on Mortgages, 8th ed., sec. 1080; *Westheimer v. Thompson*, 3 Idaho 560, 32 P. 205.) If it assumed from the record of said deed that the first mortgage to the grantor had become merged in the conveyance to Beus, after assignment of the first mortgage, it did so at its peril. [**387] (*Oregon & W. Trust Inv. Co. v. Shaw*, 5 Sawy. 336, 18 F. Cas. 766, No. 10,556.) Under the facts of this case there was no merger, because the ownership of the land and the first mortgage and debt thereby [***15] secured was not in the same person. Beus held the title to the land, but the quitclaim deed did not pass title to the said debt and mortgage then owned by respondent. (*Curtis v. Moore, supra*; *Purdy v. Huntington, supra*.)

It is finally contended that the court erred in decreeing a sale of the dwelling-house removed by Beus from the mortgaged lands and taken two miles away to a tract of land owned by him, because the decree fails to describe the lands upon which the dwelling-house is now situate. The decree provides that the receiver shall take the necessary steps to restore it to its original location on the mortgaged premises, and then the sheriff is to sell both the house and land. The sheriff is not required to sell the mortgaged property until after the receiver has, by an "appropriate proceeding," caused the house to be restored to its original location. The sheriff needs no description of the present location of the house; that is a matter for the receiver to determine, with the further aid of the court, if necessary.

Appellants also appeal from an order directing the receiver to pay out certain moneys on account of his fees, taxes, costs and attorney's [***16] fees. While this action is assigned as error appellants do not argue the point, or present [*504] any authorities to sustain their objection thereto. Under the practice, the objection will not be considered. (*Estate of Fisher*, 47 Idaho 668, 279 P. 291; *McGrath v. West End Orchard & Land Co.*, 43 Idaho 255, 251 P. 623; *Gould v. Hill*, 43 Idaho 93, 251 P. 167.)

Judgment and order affirmed. Costs to respondent.

Givens, C. J., and Budge, Lee and McNaughton, JJ., concur.

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Shepard's®: Report Content

Appellate History: Requested

▲ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [Moore v. De Bernardi](#) 47 Nev. 33,213 P. 1041, 1923 Nev. LEXIS 24: (Nev. April 7, 1923)

No negative [subsequent appellate history](#)

Appellate History (2)

1. **Citation you Shepardized™**

[Moore v. De Bernardi](#), 47 Nev. 33 ▲

Court: Nev. | **Date:** April 7, 1923

Subsequent

2. **Adhered to:**

[Moore v. De Bernardi](#), 47 Nev. 46 ▲

Court: Nev. | **Date:** December 1, 1923

Citing Decisions (15)

Nevada Supreme Court

1. [Berge v. Fredericks](#), 95 Nev. 183 

LB Cited by: 591 P.2d 246 p.247

Court: Nev. | **Date:** February 28, 1979

-
2. [Todkill v. Todkill](#), 88 Nev. 231 

LB Cited by: 88 Nev. 231 p.237

Court: Nev. | **Date:** April 7, 1972

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3. [Randono v. Turk](#), 86 Nev. 123 

LB Cited by: 466 P.2d 218 p.222; 86 Nev. 123 p.128

Discussion:  | **Court:** Nev. | **Date:** February 24, 1970

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4. [Gottwals v. Rencher](#), 60 Nev. 47 

B Explained by: 60 Nev. 47 p.54; 98 P.2d 481 p.485

Court: Nev. | **Date:** February 1, 1940

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5. [Butzbach v. Siri](#), 53 Nev. 453 

LB Cited by: 53 Nev. 453 p.461; 5 P.2d 533 p.535

Court: Nev. | **Date:** December 5, 1931

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6. [H. H. Springmeyer Land Dev. & Live Stock Co. v. Irrigation Dist.](#), 50 Nev. 80 

LB Cited by: 50 Nev. 80 p.90; 251 P. 351 p.354

Court: Nev. | **Date:** December 4, 1926

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LB Cited by:

Discussion:  | **Court:** Northern Dist. Ohio | **Date:** May 3, 2021 | **Headnotes:** HN2

9th Circuit - Court of Appeals

8. [England v. Doyle](#), 281 F.2d 304 

LB Cited by: 281 F.2d 304 p.309

Court: 9th Cir. Cal. | **Date:** August 11, 1960

9th Circuit - U.S. District Courts

9. [Heritage Bank of Nev. v. O'Neil](#), 2015 U.S. Dist. LEXIS 148113 

LB Cited by:

Discussion:  | **Court:** Dist. Nev. | **Date:** November 2, 2015

-
10. [Heritage Bank of Nev. v. O'Neil](#), 2015 U.S. Dist. LEXIS 106057 

LB Cited by:

Discussion:  | **Court:** Dist. Nev. | **Date:** August 10, 2015 | **Headnotes:: HN4**

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11. [In re Twin Lakes Village, Inc.](#), 2 B.R. 532 

LB Cited by: 2 B.R. 532 p.542

Court: Bankr. Dist. Nev. | **Date:** January 22, 1980

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12. [Braun v. Dallin](#), 68 Cal. App. 121 

LB Cited by: 228 P. 740 p.743

Court: Cal. App. | **Date:** July 9, 1924 | **Headnotes:: HN5**

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Discussion:  | **Court:** Del. Ch. | **Date:** May 10, 1929 | **Headnotes:: HN2**

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14. [Magin v. Bovaird](#), 1946 OK 351 

Y Distinguished by: 175 P.2d 333 p.334

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15. [Carpenter & Carpenter v. Kingham](#), 56 Wyo. 314 

LB Cited by: 109 P.2d 463 p.476

Discussion:  | **Court:** Wyo. | **Date:** January 21, 1941

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1. [NRS sec. 111.315](#)

Content: Statutes

Briefs

2. [UNITED STATES v. LOCKE](#), 1984 U.S. S. Ct. Briefs LEXIS 853

Content: Court Filings | **Date:** August 18, 1984

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3. [NATIONSTAR MORTG. LLC v. SATICOY BAY LLC SERIES 8920 EL DIABLO](#), 2018 U.S. 9th Cir. Briefs LEXIS 7185

Content: Court Filings | **Date:** September 17, 2018

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4. [SATICOY BAY LLC SERIES 4500 PAC. SUN v. LAKEVIEW LOAN SERVICING](#), 2018 NV S. Ct. Briefs LEXIS 4569

Content: Court Filings | **Date:** October 18, 2018

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5. [TRP FUND IV v. BANK OF NEW YORK MELLON](#), 2018 NV S. Ct. Briefs LEXIS 4735

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6. [U.S. BANK v. RESOURCES GROUP LLC](#), 2018 NV S. Ct. Briefs LEXIS 4619

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7. [FIRST MORTG. CORP. v. SATICOY BAY LLC SERIES 1828](#), 2017 NV S. Ct. Briefs LEXIS 2089

Content: Court Filings | **Date:** February 14, 2017

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8. [FIRST MORTG. CORP. v. SATICOY BAY LLC SERIES 1828 LA CALERA LLC](#), 2016 NV S. Ct. Briefs LEXIS 361

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9. [**Lish v. Eighth Judicial Dist. Court of Nevada**](#), 2011 NV S. Ct. Briefs LEXIS 200

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10. [**Karl v Hsbc Bank**](#), 2011 NV S. Ct. Briefs LEXIS 139

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Content: Court Filings | **Date:** March 30, 2020

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1. [Moseley v. Moseley](#), 86 Ala. 289 

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Discussion:  Court: Ala. | Date: December 1, 1888

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2. [Sandfoss v. Jones](#), 35 Cal. 481 

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3. [Millard v. Green](#), 94 Conn. 597 

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Mississippi Supreme Court

4. [Soggins v. Heard](#), 31 Miss. 426 

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Discussion:  Court: Miss. | Date: April 1, 1856

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5. [Dixon v. Miller](#), 43 Nev. 280 

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6. [Canda v. Totten](#), 157 N.Y. 281 

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LB Citing

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Discussion:  | **Court:** N.Y. | **Date:** May 23, 1876

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LB Citing

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9. [Cutler v. Babcock](#), 81 Wis. 195 

LB Citing

First Ref:213 P. 1041 at p.1044

Court: Wis. | **Date:** February 2, 1892

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⚠ Caution
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Moore v. De Bernardi

Supreme Court of Nevada

April 7, 1923, Decided

No. 2556

Reporter

47 Nev. 33 *; 213 P. 1041 **; 1923 Nev. LEXIS 24 ***

MOORE v. DE BERNARDI

Prior History: [**1] APPEAL from Second Judicial District Court, Washoe County; Edward F. Lunsford, Judge.

Action by Kate Moore against Rick De Bernardi, in which the Washoe County Bank was made a defendant. Decree for defendant De Bernardi, and plaintiff appeals. Affirmed. On rehearing, this opinion affirmed.

Disposition: Decree affirmed.

Core Terms

foreclosure, mortgage, promise, convey, cashier, statute of frauds, legal title, counterclaim, notice, constructive trust, purchase property, parol agreement, actual notice, carry out, cases, deed

Case Summary

Procedural Posture

Plaintiff brought suit against defendant to recover possession of land, after which defendant filed a counterclaim alleging that a bank had agreed to convey the land to him. The Second Judicial District Court, Washoe County (Nevada) held that a constructive trust had arisen in the land in favor of defendant, and ordered plaintiff and the bank, which defendant had interpleaded into the suit, to convey the land to defendant. Plaintiff appealed.

Overview

Defendant claimed that he and the bank, which did not

join in the appeal, had orally agreed that the bank would purchase the property at a sheriff's sale and then convey it to him. The court affirmed the trial court's decision, stating first that it would not disturb the trial court's findings that defendant had given plaintiff actual notice of the agreement between him and the bank. Thus, it held, plaintiff was not a purchaser in good faith without notice. It rejected plaintiff's argument that a constructive trust could not be imposed because the oral agreement was outside the statute of frauds, stating that the trial court's decision was warranted because defendant had an interest in the land before the agreement between him and the bank, which he failed to protect in reliance on the bank's promises. Thus, it held, the subsequent denial of the confidence he reposed in the bank was such a surprise and fraud as to operate to impose a constructive trust against the bank. Finally, it held that it was not necessary that an express fiduciary relation exist between the bank and defendant to create a constructive trust.

Outcome

In an action by plaintiff to recover possession of land, the court affirmed the trial court's decision finding that a constructive trust had arisen in the land in favor of defendant and ordering that plaintiff and a bank convey the land to defendant.

LexisNexis® Headnotes

Estate, Gift & Trust Law > ... > Nonprobate Transfers > Jointly Held Property > Bank Accounts

Civil Procedure > Appeals > Standards of Review > General Overview

Estate, Gift & Trust Law > ... > Nonprobate Transfers > Jointly Held Property > General Overview

[**HN1**](#) Trials, Bench Trials

In cases tried by the court without a jury, the same consideration is given the court's findings as to a verdict, and the same rules apply as to reversing them on appeal, on the ground that they are contrary to the evidence, as apply to a verdict. In such a case the rule is the same as that which governs the court in reviewing a judgment entered upon the verdict of a jury, which is that the jury must be deemed to have found to be true the evidence that is most favorable to the prevailing party.

Business & Corporate Law > Agency Relationships > Authority to Act

Legal Ethics > Client Relations > General Overview

[**HN2**](#) Agency Relationships, Authority to Act

An attorney's authority to bind his client extends only to such acts and agreements as are necessary for the due prosecution of the cause or business in connection with which he has been employed; he has no implied power to bind his client by an agreement collateral to and independent of the subject-matter of his employment.

Contracts Law > Remedies > Ratification

Real Property Law > Purchase & Sale > Contracts of Sale > General Overview

[**HN3**](#) Remedies, Ratification

A client is not bound by an unauthorized agreement of his attorney to convey land.

Contracts Law > Types of Contracts > Oral Agreements

Business & Corporate Compliance > Contracts > Types of Contracts > Oral Agreements

Contracts Law > ... > Affirmative Defenses > Fraud & Misrepresentation > General Overview

Contracts Law > Statute of Frauds > General Overview

[**HN4**](#) Types of Contracts, Oral Agreements

The mere refusal to perform a parol agreement, void under the statute of frauds, may be a moral wrong, but it is in no sense a fraud in law or in equity.

Estate, Gift & Trust Law > Trusts > Constructive Trusts

[**HN5**](#) Trusts, Constructive Trusts

Where one having an interest is induced to confide in the verbal promise of another that he will purchase for the benefit of the former at a sheriff's sale, and in pursuance of this allows him to become the holder of the legal title, a subsequent denial by the latter of the confidence is such a fraud as will convert the purchaser into a trustee ex maleficio.

Contracts Law > Contract Interpretation > Fiduciary Responsibilities

Estate, Gift & Trust Law > Trusts > Constructive Trusts

Governments > Fiduciaries

Estate, Gift & Trust Law > Trusts > General Overview

Real Property Law > Trusts > Constructive Trusts

Real Property Law > Trusts > Holding Trusts

[**HN6**](#) Contract Interpretation, Fiduciary Responsibilities

. It is not indispensable that the conventional relation of trustee and cestui que trust, or any express fiduciary relation, should exist between the original wrongdoer and the beneficial owner of the land to create a

constructive trust. They arise in *invitum* for the purpose of working out justice in the most efficient manner. It will not do to say that the party promising was moved merely by friendly or benevolent considerations, and may therefore, at his option, decline a compliance with his agreement. Such considerations constitute the foundation of almost every trust, and the trustee should be held to account as nearly as possible in the same spirit in which he originally contracted.

Headnotes/Summary

Headnotes

1. APPEAL AND ERROR--FINDING OF TRIAL COURT CONCLUSIVE ON APPELLATE COURT WHEN EVIDENCE IS CONFLICTING.

Where there is a substantial conflict in the evidence, the finding of the trial court is conclusive upon the appellate court in the absence of a showing that a wrong conclusion was reached.

2. APPEAL AND ERROR--WHERE FINDING ASSAILED AS BEING CONTRARY TO EVIDENCE, COURT DEEMED TO HAVE FOUND AS TRUE EVIDENCE FAVORABLE TO PREVAILING PARTY.

The rule which governs the appellate court in reversing a verdict alleged to be contrary to the evidence, that the jury must be deemed to have found to be true the evidence that is most favorable to the prevailing party, applies to findings by court.

3. ATTORNEY AND CLIENT--ATTORNEY'S AUTHORITY TO BIND CLIENT EXTENDS TO ACTS NECESSARY FOR PROSECUTION OF BUSINESS FOR WHICH EMPLOYED.

An attorney's authority to bind his client extends only to such acts and agreements as are necessary for the due prosecution of the business in connection with which he has been employed, and he has no implied power to bind his client by an agreement collateral to and independent of the subject-matter of his employment.

4. ATTORNEY AND CLIENT--CLIENT NOT BOUND BY UNAUTHORIZED AGREEMENT OF ATTORNEY TO CONVEY LAND.

A client is not bound by an unauthorized agreement of his attorney to convey land.

5. TRUSTS--EVIDENCE HELD TO ESTABLISH AGREEMENT WHEREBY BANK AGREED TO FORECLOSE PROPERTY FOR BENEFIT OF OCCUPANT.

Evidence *held* to show that defendant bank, through its cashier, made a parol agreement with defendant occupant of land whereby bank agreed to proceed with foreclosure of property for occupant's use and benefit, and convey the legal title to him for a consideration upon acquiring the legal title after period of redemption expired.

6. FRAUDS, STATUTE OF--REFUSAL TO PERFORM A VOID PAROL AGREEMENT IS NOT A FRAUD IN LAW OR IN EQUITY.

The mere refusal to perform a parol agreement, void under the statute, may be a moral wrong, but it is not a fraud in law or in equity.

7. FRAUDS, STATUTE OF--REFUSAL TO PERFORM PAROL AGREEMENT TO CONVEY LAND NOT, OF ITSELF, SUFFICIENT TO TAKE AGREEMENT OUT OF STATUTE.

A refusal of a bank to carry out its parol agreement to convey land to defendant for a consideration after the bank obtained sheriff's deed *held* not, of itself, a breach tainted with fraud to take the agreement out of the statute of frauds.

8. TRUSTS--TRUSTS EX MALEFICIO EXCEPTED FROM OPERATION OF STATUTE OF FRAUDS.

Trusts *ex maleficio* are excepted from the operation of the statute of frauds.

9. TRUSTS--VIOLATION OF PAROL AGREEMENT TO FORECLOSE PROPERTY FOR BENEFIT OF OCCUPANT HOLDING INTEREST IN LAND HELD TO CREATE TRUST EX MALEFICIO.

Where defendant occupant of land had an existing interest therein with the mortgagor, but, in reliance upon a parol agreement with the mortgagee bank that the latter would foreclose for defendant's use and benefit, and convey land to him upon acquiring title, if he would not become a bidder to protect his interest in the property, defendant refrained from protecting his interest so that he could acquire title to the land in its perfected state through the foreclosure proceeding, *held*, that the refusal of the bank to convey was such a fraud as

operated to convert the bank into a trustee ex maleficio.

10. TRUSTS--PURCHASER AT FORECLOSURE SALE TAKING TITLE FOR ANOTHER, BUT VIOLATING HIS TRUST, BECOMES TRUSTEE EX MALEFICIO.

Where one having an interest in land is induced to confide in the verbal promise of another that he will purchase for the benefit of the former at a sheriff's sale, and in pursuance of such promise allows him to become the holder of the legal title, a subsequent denial by the purchaser of the confidence is such a fraud as will convert the purchaser into a trustee ex maleficio.

11. TRUSTS--CONVENTIONAL RELATION OF TRUSTEE AND CESTUI QUE TRUST NEED NOT EXIST TO CREATE CONSTRUCTIVE TRUST.

To create a constructive trust it is not necessary that a conventional relation of trustee and cestui que trust, or that any express fiduciary relation should exist between original wrongdoer and the beneficial owner of land, since such relations arise in *invitum* for the purpose of working out justice in the most efficient manner.

12. TRUSTS--TRUST AGREEMENT MAY NOT BE AVOIDED BECAUSE PROMISING PARTY WAS MOVED BY BENEVOLENT CONSIDERATIONS ONLY.

A trust may not be avoided on the ground that the party promising was moved merely by benevolent considerations, since such considerations constitute the foundation of almost every trust, and a trustee should be held to account in the same spirit in which he originally contracted.

Counsel: Sardis Summerfield, for Appellant:

Specific performance to convey land made by attorneys of parties to action in which land is in dispute, will not be decreed in absence of specific authority in such attorneys to make contract. *Hagerman v. Bates, 38 P. 1100*. No such agreement is valid unless affirmed and ratified by the principals. *Bank v. McEwen, 76 N.E. 222*.

Ordinarily there is no implied power vested in attorney at law to bind his client by contract. *Haselton v. Florentine Co., 94 F. 701*; *Haynes v. Tacoma Co., 34 P. 922*.

A general retainer does not authorize attorney to enter into agreements regarding his client's property. *Hagerman v. Bates, supra; Scully v. Book, 28 P. 556*; 4 Cyc. 945-6; Weeks on Attorneys at Law, sec. 219.

Constructive trusts do not arise by agreement or from intention, but from operation of law. 39 Cyc. 169; *Bowler v. Curler, I***21 21 Nev. 161*; 28 R. C. L. 1232.

Though some decisions apparently hold to the contrary, it is the generally accepted rule that mere verbal agreement, by which one of the parties thereto promises to buy in at judicial sale, lands in which the other has interest and to hold same for latter's benefit, does not, in absence of other circumstances, create trust enforceable in equity, even though the agreement is carried out to extent that promisor acquires property at such sale. The agreement is within the statute of frauds. 26 R. C. L. 1244; *Strasner v. Carroll, 187 S.W. 1057*; *Minot v. Mitchell, 95 Am. Dec. 685*, and note.

Specific performance of contracts to sell land will not be enforced when defendant had no title to lands of which conveyance is sought to be compelled. *Kennedy v. Hazelton, 32 L. Ed. 576*; *Adair v. Adair (Or.), 29 P. 193*.

Specific performance will never be decreed where the party can otherwise be fully compensated. *Memphis v. Brown (U. S.), 22 L. Ed. 264*; *Texas Co. v. Central Co., 194 F. 1*.

A constructive trust always arises ex maleficio; it is constructed by law, and not by parties. If parties have attempted to construct it, the law will not construct [***3] one. Through failure to comply with the statute it becomes an invalid express trust. *Spaulding v. Collins (Wash.), 99 P. 306*.

Continued possession by grantor after full conveyance by him while in possession of property conveyed is not constructive notice. *Brophy M. Co. v. B. & D. M. Co., 15 Nev. 113*, which refused to follow *Pell v. McElroy, 36 Cal. 268*, but which was cited with approval in *McDonald v. Fox, 20 Nev. 368*; *Gruber v. Baker, 20 Nev. 462*.

Boyd & Curler, for Respondent:

The whole case involves itself around the separate defense and counterclaim of defendant, and the principles of equity upon which he believes he is entitled to judgment in his favor. The evidence clearly establishes a constructive trust in favor of respondent, by virtue of his agreement with the bank. It is evident from all the facts in this case that the fraud complained of--that is, the neglect and refusal of the bank to notify respondent of amount due and to give him the deed--immediately impressed the property with a constructive trust, and this trust followed property to vendee of bank, unless such vendee could show that she was a bona-

fide purchaser without notice. Such property is taken [***4] completely out of statute of frauds.

Courts of equity have exercised their powers to enforce contracts which in good faith ought to be complied with and will do this by impressing property with a trust for use and benefit of one who would be defrauded unless court of equity gave its aid in enforcing agreement. Pomeroy (2d ed.), sec. 1044.

Where a person acquired legal title to land by an intentionally false verbal promise and seeks to retain property as his own equity will not regard such person as holding property charged with a constructive trust, and will compel him to fulfil trust by conveying according to his agreement. *Isenberg v. Goldsmith, 113 P. 1127*; Pomeroy (2d ed.), 1005, and footnote; *Brown's Estate v. Stair, 136 P. 1003*.

Equity will not permit statute of frauds to be used as instrument of fraud. When person, through influence of confidential relation, acquires title to property, or obtains advantage which he cannot conscientiously retain, the court will grant relief. *Bowler v. Curler, 21 Nev. 158*; *Nehls v. Stock Farming Co., 43 Nev. 261*.

It is well established that the open, visible, notorious, and exclusive possession of land is either notice itself [***5] of rights of party in possession, or is sufficient to put person upon inquiry. Delvin on Deeds, secs. 760, 762, 764, 769.

The simple, independent fact of possession is sufficient to raise presumption of interest in occupant. He cannot be regarded as purchaser in good faith who negligently and wilfully closes his eyes to pertinent facts indicating adverse possession, when he could, with reasonable diligence, have informed himself of facts. *Pell v. McElroy, 36 Cal. 273; 75 Cal. 131; 82 Cal. 117*.

It is purchaser's duty to know who is in possession before making purchase; otherwise he could purposely avoid any inquiry and evade rule and its consequences entirely. *Scheerer v. Cuddy, 85 Cal. 273*. If he has notice of occupant's title before payment, he is not bona-fide purchaser. *Eversdon v. Mayhew, 65 Cal. 163*; and burden is upon such purchaser to show he had no notice. *Wilhoit v. Lyons, 98 Cal. 409; Beattie v. Crewdson, 124 Cal. 579*.

Judges: SANDERS, J.

Opinion by: SANDERS

Opinion

[*37] [**1042] By the Court, SANDERS, J.:

Kate Moore, a married woman, in her own right as owner, sued Rick De Bernardi to recover possession of a certain parcel of land in Washoe County, situate near the [***6] western limits of the city of Reno, which bears the name of "Rick's Resort" or "Roadhouse," and demanded in her complaint judgment for \$ 150 per month as rental from the 22d day of July, 1920, until possession be delivered. The defendant answered, and by way of [*38] counterclaim interpled the Washoe County Bank as a party defendant, and alleged facts to show that said bank and plaintiff hold the land in trust for his use and benefit.

Upon extended findings of facts following closely the averments of the counterclaim, which are too lengthy to be set out, the trial court concluded as a matter of law that the conveyance of the land by the Washoe County Bank to Kate Moore, on the 22d day of July, 1920, if permitted to stand, would operate as a fraud upon the rights of the defendant; that in virtue of an agreement, set up in the counterclaim, between the bank and the defendant, a constructive trust had arisen in defendant's favor in the land; and that plaintiff, Kate Moore, purchased the property from the bank with full knowledge of said agreement. Thereupon it was adjudged, ordered, and decreed that said parties convey to the defendant the land in controversy, free and clear [***7] from all incumbrances, upon condition that the defendant pay to the Washoe County Bank \$ 6,336.09, or deposit that amount of money into court for its use and benefit, and that the bank, on the payment of said sum, cancel of record a certain mortgage given it by Kate Moore and her husband, M. B. Moore, which bears date on the 22d day of July, 1920. The Washoe County Bank has not appealed, but Kate Moore, the plaintiff, appeals from said judgment and decree, and also from an order denying and overruling her motion for a new trial.

While numerous errors are assigned upon exceptions taken to rulings in the course of the trial with respect to the admission and rejection of evidence, the material assignments of error, reduced to precise terms, are: First, that the agreement set up in the counterclaim and purported to be established by the findings was, in fact, a mere parol agreement entered into by one of the firm of attorneys for the bank, who had charge of the bank's action brought against one Constance Parker and Rick

De Bernardi to foreclose a mortgage on the land, which had been given the bank by Constance Parker in her own name, in May, 1914, and that said [***39**] agreement was [*****8**] made and entered into by said bank's attorney without its authorization and ratification. Second, that, if said agreement was established by sufficient and legal evidence, it not being in writing, it was within the condemnation of the statute of frauds. Third, that the evidence is insufficient to support the finding that Kate Moore purchased the property in dispute with notice of the defendant's claim of right and interest in the property.

If there be merit to the last proposition, it is decisive of the appeal, because, if Kate Moore was a purchaser in good faith and without notice, she acquired by her deed a higher right, and took the property relieved of any trust that may have been created by the alleged agreement between her grantor and the defendant. The finding with respect to actual notice, and averred in the counterclaim, is, in substance, that on the 19th day of July, 1920, the defendant notified Kate Moore, by and through her husband, M. B. Moore, who acted as her agent, that the Washoe County Bank purchased the property for the defendant's use and benefit at a sheriff's sale thereof, and that the defendant would insist upon his rights under his contract, and at the same [***9**] time informed said agent of the terms and conditions of the agreement existing between the defendant and the bank, and that prior to July 22, 1920, plaintiff was fully aware of the fact that the bank had purchased the property at a sheriff's sale for the use and benefit of the defendant.

1, 2. The evidence in support of the finding is based solely on the testimony of James T. Boyd, an attorney of record in this case, the substance of which was that M. B. Moore visited his residence for the purpose of ascertaining from him what his client, Rick De Bernardi, intended doing about the property in dispute. The evidence opposed to his testimony in this particular is that of the witness M. B. Moore, who testified, in substance, that no such conversation was ever had at the time and place stated by Boyd, or at all. The testimony of these witnesses in all material respects is not only in sharp, but irreconcilable, conflict on the [***40**] material fact of notice. Hence, in order for the trial judge to have found that the witness Boyd, on the date mentioned, informed the witness Moore of the existence of the agreement in question, and of its terms and conditions, he must have acted [*****10**] upon the truth of the testimony of Boyd and rejected the testimony of Moore. There being, then, a substantial conflict in the

evidence, under the rule, the finding is conclusive upon this court. Dixon v. Miller, 43 Nev. 280, 184 P. 926, and cases cited.

It has been repeatedly held that, HN1[ in cases tried by the court without a jury, the same consideration is given the court's findings as to a verdict, and the same rules apply as to reversing them on appeal, on the ground that they are contrary to the evidence, as apply to a verdict. In such a case the rule is the same as that which governs the court in reviewing a judgment entered upon the verdict of a jury, which is that the jury must be deemed to have found to be true the evidence [****1043**] that is most favorable to the prevailing party. Canda v. Totten, 157 N.Y. 281, 51 N.E. 989. We, therefore, in the absence of anything to show that the court reached a wrong conclusion, decline to disturb the finding that Kate Moore was not a purchaser without notice of the defendant's claim to the property.

In this connection it is proper to state that we ignore the argument that Kate Moore had constructive notice of [*****11**] the defendant's right and claim to the property by reason of his long-continued occupancy and possession thereof, for the reason that it is not within the issue, which was that Kate Moore had actual notice of the agreement existing between the defendant and her grantor when she purchased the property and gave a mortgage back to the bank to secure the balance due on its purchase price. The relief granted defendant was upon the ground that a constructive trust was created by the agreement between the defendant and the bank, which the latter was bound to execute, of which agreement creating the trust Kate Moore had actual notice.

[***41**] It is next argued on behalf of Kate Moore, as the successor in interest of her grantor, the Washoe County Bank, that the agreement between said bank and the defendant, upon which the relief as prayed in the defendant's counterclaim was granted, is not established by sufficient or legal evidence and, in the next place, if said agreement was so established, it is not in writing, and therefore within the rule of the statute of frauds. We are of opinion that the agreement was established by sufficient and competent evidence, but the question of whether [*****12**] the conclusion of law that a constructive trust and arisen by virtue of the agreement which the Washoe County Bank was bound to execute is worthy of discussion.

3, 4. It requires no argument to convince us that HN2[ an attorney's authority to bind his client extends only to such acts and agreements as are necessary for

the due prosecution of the cause or business in connection with which he has been employed; he has no implied power to bind his client by an agreement collateral to and independent of the subject-matter of his employment. [HN3](#)[↑] A client is not bound by an unauthorized agreement of his attorney to convey land. Thornton on Attorneys at Law, sec. 202. But we do not understand the case or the finding of the trial judge to be that the agreement in question was not authorized and ratified by the bank, but, on the contrary, that it was so authorized. The finding is based solely upon the testimony of the defendant's attorney, Boyd, who testified, in substance, that, before the agreement was consummated by him with one of the firm of attorneys for the bank, he was first assured by the cashier of the bank, after stating to him his reasons for soliciting the agreement on behalf of [\[***13\]](#) his client, that any agreement entered into by the witness with the bank's attorneys would be entirely agreeable and satisfactory to the bank. It appears that at the time the proposition was made to the bank, which culminated in the agreement, the bank had commenced an action (in January, 1918) in the court below to foreclose a mortgage on the land in controversy, which had been given it in 1914 by one [\[*42\]](#) Constance Parker to secure the payment of her note to the bank for \$ 3,000, and De Bernardi was made a party defendant to the action. It is conceded, or must be conceded, that De Bernardi had an interest in the property which he had a right to protect and preserve from being completely extinguished by the foreclosure of the bank's mortgage. It appears that he was then in possession of the property, and had been in its continuous occupancy under a claim of right since 1906, and, in order to protect and preserve his interest from entire loss, and to obtain the advantage of having the legal title to the land conveyed to him through the foreclosure proceeding, upon the authority of the cashier of the bank, De Bernardi's attorney entered into an arrangement or agreement with R. [\[***14\]](#) M. Price, the attorney who had in charge the foreclosure proceeding, whereby it was agreed that the bank should and would proceed with the foreclosure of its mortgage for the defendant's use and benefit, and, upon acquiring legal title thereto through its foreclosure proceeding, convey the land to De Bernardi, and, in consideration for its promise to convey, De Bernardi agreed not to appear in the action and permit his default to be taken, and not to become a bidder at the sheriff's sale of the property, or take any other step, by action or otherwise, to protect his interest in the property. The foreclosure took place, and upon the expiration of the time for redemption the sheriff of Washoe County delivered to the bank a sheriff's deed to

the property. The bank thereafter refused to carry out its promise to convey the property to De Bernardi.

5. The cashier of the bank, as a witness in the case, testified, in substance, that he had no knowledge or recollection of having ever authorized the agreement, as testified to by the witness Boyd. There is no doubt that the witness may honestly have been of opinion that, if he had authorized the agreement, he would have recalled the fact, [\[***15\]](#) and would never have dealt with Kate Moore. But the cashier's nonrecollection, or the bank's repudiation of the agreement by its conveyance of the [\[*43\]](#) property to Kate Moore, does not justify the deduction that the agreement was not authorized by the bank's cashier. The cashier's failure to remember or recollect the fact does not amount to a contradiction of the positive testimony of the witness Boyd that the agreement was authorized by the cashier of the bank; neither does the conveyance [\[**1044\]](#) of the property amount to such a contradiction, because the repudiation of the agreement was but the conclusion of the officers of the bank that no such agreement had been authorized. There being, then, no substantial conflict in the evidence upon which the finding of the court is based, we decline to disturb the finding.

6. The agreement having been established, the inquiry arises: Does the agreement and circumstances of the case create a trust which a court of equity can enforce. In support of the affirmative, counsel for De Bernardi rest their case on the principle, which has become almost a maxim in equity, that the statute of frauds, intended as a protection against [\[***16\]](#) fraud, shall not, in equity, be perverted to its consummation. We are in accord with what is said in [Moseley v. Moseley, 86 Ala. 289, 5 So. 732](#), that this principle, which may now be regarded as a maxim, has been carried in many cases so far beyond the first intention as to amount to annihilation of the statute of frauds. It is certain that the principle has been overworked by the defendant in this case. [HN4](#)[↑] The mere refusal to perform a parol agreement, void under the statute of frauds, may be a moral wrong, but it is in no sense a fraud in law or in equity. [Wheeler v. Reynolds, 66 N.Y. 227](#).

7-9. In the present case no specific averment of fraud is alleged in the pleadings, but the court concludes fraud in law from its findings, manifestly upon the assumption that to permit the parties to hold the land in face of the agreement and the circumstances would be to support a breach of trust, and a fraud in law. If from this it is to be understood, as argued by the defendant, that the refusal of the bank to carry out its agreement constituted such a

fraud as calls for the [*44] intervention of a court of equity, we should be impelled to conclude that there [**17] is no such element in its breach as to take it without the rule of the statute of frauds. On examination, however, of the material findings, in connection with the evidence in the case, we are satisfied that the court's conclusion of law is warranted, not because the bank refused to carry out its parol agreement, but for the reason that it appears, as above stated, that the defendant had an existing interest in the land, which, in reliance on the promise contained in the agreement, he omitted to protect, and by its terms expressly precluded himself from protecting from entire loss by the foreclosure of the prior mortgage of the bank. In reliance on the agreement, he omitted and refrained from taking any other step to protect his interest, and, furthermore, by the bank's failure to carry out the agreement he lost the advantage of having the legal title transferred to him in its perfected state, which, apparently, was one of his motives in soliciting the agreement. We are of opinion that, the defendant having an interest in the land, the subsequent denial of the confidence reposed was such a surprise and fraud as operates to convert the bank into a trustee ex maleficio, which trusts are [**18] excepted from the operation of the statute of frauds. 3 Pomeroy, Eq. Jur. (4th ed.), sec. 1055, note 1.

10. The rule is established by a number of authorities that, HNG[↑] where one having an interest is induced to confide in the verbal promise of another that he will purchase for the benefit of the former at a sheriff's sale, and in pursuance of this allows him to become the holder of the legal title, a subsequent denial by the latter of the confidence is such a fraud as will convert the purchaser into a trustee ex maleficio. In the case of Chadwick v. Arnold, 34 Utah 48, 95 P. 527, the writer of the opinion industriously collates the numerous authorities in support of this proposition. In addition, we cite the cases supporting the text, 39 Cyc. 180. As remarked in Cutler v. Babcock, 81 Wis. 195, 51 N.W. 420, 29 Am. St. Rep. 882, the distinction upon which [*45] cases such as this have been made to turn is as between one having an interest in the premises to protect by the parol agreement and a mere stranger to the title and estate seeking to enforce such agreement. We readily concede that, if defendant had no interest in the property in controversy, [**19] no constructive trust was created by the agreement, and without that interest the agreement would clearly be within the rule of the statute. The defendant, however, having an interest, and in reliance upon the bank's parol agreement to purchase and convey to him the land on

receipt of the legal title, the refusal of the bank to carry out the agreement and the subsequent denial of the confidence reposed in it was such a fraud as to make the bank a trustee for the defendant.

It is manifest that M. B. Moore, as agent for his wife, before he negotiated with the bank for its purchase, had actual notice of the defendant's claim of interest in the property, but obviously was of the opinion that the defendant's interest had been completely extinguished by the foreclosure of the bank's mortgage and the sheriff's deed, and therefore her deed would operate as her protection from the claim of the defendant. But this position, unfortunately for Mrs. Moore, was overcome by the court's finding that her agent, prior to the date of the deed, had actual notice that her grantor had promised and agreed to convey the legal title to the land to the defendant. She was not, therefore, a purchaser in good [**20] faith without notice.

11. While it is not incumbent upon this court to answer argument, some of the contentions of counsel for Mrs. Moore deserve special mention. It is urged that no confidential relation existed between the bank and the defendant, and in the foreclosure of its [**1045] mortgage it did nothing more than what it had the right to do; that the bank's promise, at most, was but a gratuitous undertaking, without consideration, unenforceable, and binding on no one; that the inducement for the promise moved from the defendant to the bank, and not from the bank to the defendant, and no fraud or imposition was practiced upon the defendant.

[*46] HNG[↑] **12.** It is not indispensable that the conventional relation of trustee and cestui que trust, or any express fiduciary relation, should exist between the original wrongdoer and the beneficial owner of the land to create a constructive trust. They arise in *invitum* for the purpose of working out justice in the most efficient manner. Millard v. Green, 94 Conn. 597, 110 A. 177, 9 A. L. R. 1610. It will not do to say, as said in Sandfoss v. Jones, 35 Cal. 481, quoting from Soggins v. Heard, 31 Miss. 426, [**21] that the party promising was moved merely by friendly or benevolent considerations, and may therefore, at his option, decline a compliance with his agreement. Such considerations constitute the foundation of almost every trust, and the trustee should be held to account as nearly as possible in the same spirit in which he originally contracted.

For the reasons and upon the authorities hereinabove stated, we are of the opinion that the evidence is sufficient in this case to support the findings, and the

court's conclusions of law are warranted thereby.

The decree appealed from is therefore affirmed.

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Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [Davis v. Kleindienst](#) 64 Ariz. 251,169 P.2d 78,1946 Ariz. LEXIS 139: (Ariz. May 20, 1946)

No subsequent appellate history. [Prior history](#) available.

Appellate History (1)

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95. [KUHN v. SMALL](#), 2007 AZ Sup. Ct. Motions LEXIS 2584

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96. [KUHN v. SMALL](#), 2007 AZ Sup. Ct. Motions LEXIS 818

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97. [KUHN v. SMALL](#), 2007 AZ Sup. Ct. Motions LEXIS 2576

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98. [KUHN v. SMALL](#), 2007 AZ Sup. Ct. Motions LEXIS 808

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3. [Gingery v. Romeris](#), 24 Ariz. 267 

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4. [Northwestern Nat'l Ins. Co. v. Chambers](#), 24 Ariz. 86 

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5. [Phoenix Title & Trust Co. v. Old Dominion Co.](#), 31 Ariz. 324 

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6. [Stephens v. Thomasson](#), 63 Ariz. 187 

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7. [Hallenbeck v. Yuma County](#), 61 Ariz. 160 

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First Ref: 64 Ariz. 251 at p.260

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8. [Regan v. First Nat'l Bank](#), 55 Ariz. 320 

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9. [Glendale v. Coquat](#), 46 Ariz. 478 

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First Ref: 64 Ariz. 251 at p.260

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10. [J. H. Mulrein Plumbing Supply Co. v. Walsh](#), 26 Ariz. 152 

 **Citing**

First Ref: 64 Ariz. 251 at p.260

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11. [Sherin v. Brackett](#), 36 Minn. 152 

 **Citing**

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Discussion:  | **Court:** Minn. | **Date:** December 8, 1886

New Mexico Supreme Court

12. [Shephard v. Van Doren](#), 1936-NMSC-051 

 **Following**

First Ref: 169 P.2d 78 at p.83

Discussion:  | Court: N.M. | Date: August 11, 1936

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13. [Boughton v. Van Valkenburgh](#), 46 A.D. 352 

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First Ref: 169 P.2d 78 at p.83

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14. [Adams Oil & Gas Co. v. Hudson](#), 1915 OK 545 

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15. [Green v. Wahl](#), 1925 OK 1021 

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First Ref: 169 P.2d 78 at p.83

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16. [University of Richmond v. Stone](#), 148 Va. 686 

 Citing

First Ref: 169 P.2d 78 at p.83

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As of: October 24, 2024 11:37 AM Z

Davis v. Kleindienst

Supreme Court of Arizona

May 20, 1946

No. 4870

Reporter

64 Ariz. 251 *; 169 P.2d 78 **; 1946 Ariz. LEXIS 139 ***

DAVIS et al. v. KLEINDIENST

Prior History: [***1] Appeal from Superior Court, Navajo County; W. E. Ferguson, Judge.

See also, [165 P.2d 995](#).

Disposition: Judgment affirmed.

Core Terms

deed, notice, bona fide purchaser, purchaser, recital, acres, tract, reformation, plat, quitclaim deed, Vendor, valuable consideration, grantors, appears, parties, privity, records, corner

Case Summary

Procedural Posture

Defendant subsequent purchasers appealed the decision of the Superior Court, Navajo County (Arizona), which found in favor of plaintiff purchaser in the action to reform the deed and quiet title to the property. The government had instituted a condemnation action that covered the disputed property and attempted to settle with plaintiff.

Overview

After a series of conveyances from the original grantor, including the original warranty deed that contained an erroneous description of the property, the parties disputed title to the property. Shortly after the original grantor conveyed the land in controversy to defendant by quitclaim deed, the government instituted a condemnation action. Although defendant withdrew his

protest that might have interfered with plaintiff's settlement with the government, defendant refused to sign a disclaimer or quitclaim for the described area. In affirming the lower court's grant of plaintiff's request to reform the deed and quiet title, the court found that the uncontradicted evidence established that plaintiff's original purchase covered the ground in controversy and that the description in the deed was a mistake. The quitclaim deed to defendant recited a consideration of one dollar, which the court held would not be a valuable consideration within the law relating to bona fide purchasers. Defendant failed to raise in the trial court the issue of the grantor's lack of ownership of additional land contained in the deed.

Outcome

The court affirmed the decision that granted plaintiff's request to reform the deed and quiet title to the property.

LexisNexis® Headnotes

Civil Procedure > ... > Standards of Review > Substantial Evidence > General Overview

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

[HN1](#) **Standards of Review, Substantial Evidence**

The question as to whether a party is an innocent purchaser for value without notice is one of fact for the

trial court. If there is any substantial evidence which would support the trial court's finding that the party is not an innocent purchaser for value and without notice, the judgment must be sustained.

a consideration, within the meaning of that term as hereinafter defined. Therefore one who takes title as a mere volunteer is not entitled to protection as a bona fide purchaser for value, and this is true, although the prior conveyance was also voluntary.

[Evidence > Burdens of Proof > Clear & Convincing Proof](#)

[Real Property Law > Deeds > Validity Requirements > Enforceability](#)

[Real Property Law > Title Quality > Adverse Claim Actions > General Overview](#)

[**HN2** \[down\] Burden of Proof, Clear & Convincing Proof](#)

To warrant the reformation of an instrument, mere preponderance of the evidence is insufficient. The mistake urged as a ground for reformation must be established by evidence that is clear, convincing, and satisfactory.

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[**HN3** \[down\] Elements, Bona Fide Purchasers](#)

Where the controversial question is whether a party was an innocent purchaser for value and without notice, the question is to be determined under the ordinary rule, by a preponderance of the testimony.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Real Property Law > Deeds > Validity Requirements > Enforceability](#)

[Real Property Law > Deeds > Types of Deeds > Warranty Deeds](#)

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[**HN4** \[down\] Personal Property, Bona Fide Purchasers](#)

To constitute a grantee a bona fide purchaser as against outstanding equities or a prior conveyance, of which he had no notice, his deed must be supported by

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Real Property Law > Deeds > Types of Deeds > Quit Claim Deeds](#)

[Real Property Law > Deeds > Types of Deeds > General Overview](#)

[Real Property Law > Deeds > Types of Deeds > Warranty Deeds](#)

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[**HN5** \[down\] Personal Property, Bona Fide Purchasers](#)

The consideration of one dollar will not be a valuable consideration within the law relating to bona fide purchasers.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[Real Property Law > Title Quality > Adverse Claim Actions > Quiet Title Actions](#)

[**HN6** \[down\] Personal Property, Bona Fide Purchasers](#)

A person who fails to exercise due diligence to avail himself of information which is within his reach is not a bona fide purchaser. Thus, a purchaser who has brought to his attention circumstances which should have put him on inquiry which if pursued with due diligence would have led to knowledge of an adverse interest in the property, is not a bona fide purchaser.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

Real Property Law > Priorities &
Recording > Elements > Bona Fide Purchasers

Contracts Law > Breach > Breach of Contract
Actions > General Overview

HN7 Personal Property, Bona Fide Purchasers

Privity exists where successive relationship or ownership to the same property from a common source appears. One who is in privity, unless he be a bona fide purchaser for value without notice, takes the property subject to burdens existing against it and, in effect, stands in the shoes of his predecessor in title.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN8 Reviewability of Lower Court Decisions, Preservation for Review

A question or issue not raised in the trial court will not be considered on appeal.

Counsel: P. H. Brooks, of Winslow, for appellants.

C. D. McCauley, of Winslow, and Moeur & Moeur and Charles N. Walters, all of Phoenix, for appellee.

Judges: Morgan, Judge. Stanford, C. J., and LaPrade, J., concurring.

Opinion by: MORGAN

Opinion

[*253] [*79] Appellee, as plaintiff, instituted this action against appellants, defendants in the court below, for reformation of deed and to quiet title to a tract of ground in the city of Winslow. Defendants resisted the action on the ground that they were subsequent purchasers without notice and for a valuable consideration. They denied the allegations pertaining to plaintiff's right to quiet title. Defendant Edna Davis is a party by reason of her marital relationship to her husband. The parties will be designated as plaintiff and defendant. The facts proven at the trial may be stated as follows:

During the year 1924 plaintiff purchased from one John K. and Frances E. Kelley, through their attorney in fact

John L. Sweeney, a tract of ground containing approximately [*254] 15 acres. The deed contained the following [***2] description: "Beginning at the fence at the Northwest corner of the Bazell Motor Company Camp Grounds, Thence in a due Northerly direction to the North Line of the John K. Kelley property, thence Westerly along the John K. Kelley property line to the J. E. Kleindienst property line, thence in a South and slightly Easterly direction along the J. E. Kleindienst property line to a point just West of point of beginning, thence due East to point of beginning, being unplatte acreage and a portion of the South East Quarter of Section 24, Township 19 North of Range 15 East, G&SRM, Winslow, Navajo County, Arizona."

Through error, the first course or eastern boundary was described as running "in a due northerly direction". Actually this line should have been described as running north 27 degrees east approximately. The deed, on its face, contained only 5.7 acres of the westerly portion of the tract which plaintiff was purchasing. The error resulted from the fact that while the platted portion of Winslow and additions thereto, other than the Mahoney addition, disclose the streets as running north 27 degrees east, they are generally referred to as [**80] northerly and southerly. At the [***3] time of the purchase, a survey was made and an iron stake was placed in the ground at the northeast corner of the tract, establishing the eastern line as running from the point of beginning north 27 degrees east to the north line of the John K. Kelley property, and including approximately 15 acres.

No improvements were placed on the property nor was it enclosed. Taxes on the 15 acres were assessed to plaintiff and paid by him from and after the year 1925. The description in the assessor's office merely read "Unpl Hicks-W. Bazell C. G. 15 A," and later was carried as "15 A." In 1942, plaintiff hired an engineer who platted and subdivided the acreage. The iron pipe at the northeast corner was found and a cement block or marker placed at such corner. The plat so prepared was filed and accepted by the city council on June 2, 1942. It was not filed with the county recorder until February 24, 1944. It apparently was submitted to the county assessor who designated the same as platted land of the plaintiff's addition on the assessor's map. The time of this submission is not shown. At the date of the trial the cement block had been removed.

By quitclaim deed dated November 13, 1943, [***4] Frances E. Kelley quitclaimed to defendant "For and in consideration of the sum of One Dollar * * * All the

unplatted acreage in the south-east quarter of section twenty-four (24), township Nineteen (19) North of Range Fifteen (15) East, Gila and Salt River Meridian, Winslow, Navajo County, Arizona, * * *. By warranty deed April 6, 1945, the same grantor conveyed to defendant Ralph Davis by metes and bounds, for a recited consideration as follows: "For and in consideration [*255] of other valuable consideration and One Thousand Dollars" approximately 22 acres. This covered and included the 9.1 acres in controversy. The evidence also disclosed that the Kelleys, the original grantors, from and after 1924 continued to pay taxes on the land in controversy.

Shortly after defendant received the quitclaim deed above mentioned, the United States Government instituted a condemnation action in the Federal court for the purpose of procuring title to the land for a housing project. This action covered the disputed area as well as other lands of the parties in the area involved. The government tendered the price in court. To obtain release of the money being held, defendant on December [***5] 24, 1944, apparently at the request of plaintiff, wrote the following letter to Mr. Carson, the government attorney:

"Any protest that I have previously made and which interferes with the settlement between J. E. Kleindienst and the United States Government concerning project No. 2301 is hereby withdrawn.

"The property line as set forth on the map prepared by Yost and Gardner is acceptable by me and I agree that I have no claim to the property designated within the boundaries on the plat recorded in the County Assessors Office in Holbrook, Arizona."

Defendant, however, refused to sign a disclaimer or quitclaim for the described area, which was thereafter prepared by the government.

Before purchasing the land from Mrs. Kelley in 1943, defendant examined the records and plat in the assessor's office. His testimony is that from these records and from actual observation he had no notice of plaintiff's claim to the area in question.

It appears conclusively from the evidence that a mistake was made in drawing up the original warranty deed from the Kelleys to the plaintiff, and that it should have included the ground claimed by plaintiff in his complaint. It also appears that on or [***6] prior to December 24, 1944, the Yost and Gardner map mentioned in the letter of Ralph Davis to Mr. Carson described the eastern line

of the tract as claimed by plaintiff. It is also shown by the evidence that about the time (probably shortly after) Mr. Davis had procured the quitclaim deed, he was fully advised by Mr. Sweeney as to the ground which plaintiff had purchased in 1924.

The case was tried to the court without a jury. It found the issues in favor of plaintiff and directed reformation of the deed as prayed by plaintiff. From the [***81] judgment entered, defendant has brought this appeal.

Defendant supports his various assignments of error by the following propositions of law which for the sake of brevity we paraphrase:

- [*256] 1. Plaintiff's deed could not be corrected by including additional land which defendant had purchased for value and without knowledge of mistake;
- 2. Defendant was not a party to the original deed. His interest attached to the land long after the mistake was made and the deed recorded. Therefore, parol or extrinsic evidence is not admissible to change the description contained in the recorded instrument;
- 3. Plaintiff wholly failed to [***7] prove open and notorious possession for the statutory period.

The fourth assignment of error, which we think fails to raise questions that we can properly consider, will be referred to later.

Plaintiff concedes that defendant's first proposition correctly states the law, but takes the position that under the facts, the court properly found that defendant was not a purchaser for value and without knowledge of the mistake in the prior deed under which plaintiff claims the property.

Obviously, [HN1](#) the question as to whether defendant was an innocent purchaser for value without notice was, under the issues, one of fact for the trial court. If there is any substantial evidence which would support the trial court's finding that defendant was not an innocent purchaser for value and without notice, the judgment would have to be sustained. [Stewart v. Damron, Ariz., 160 P.2d 321; Atchison, T. P. & S. F. R. Co. v. Hicks, Ariz., 165 P.2d 167.](#)

It appears to be the rule that [HN2](#) to warrant the reformation of an instrument, mere preponderance of the evidence is insufficient. The mistake urged as a ground for reformation must be established by evidence that is clear, convincing and satisfactory. [Gingery I***81 v. Romeris, 24 Ariz. 267, 208 P. 1024; Northwestern](#)

[Nat. Ins. Co. v. Chambers, 24 Ariz. 86, 206 P. 1081.](#)

Inasmuch as both plaintiff and the attorney in fact for the sellers, the Kelleys, testified that plaintiff's original purchase covered the ground in controversy, and that the description in the deed was a mistake, and this was uncontradicted, there can be no question that a full compliance was made with the rule. The evidence was clear, convincing and satisfactory.

HN3 The controversial question in the case was whether defendant was an innocent purchaser for value and without notice. This question is to be determined under the ordinary rule -- by a preponderance of the testimony. 66 C.J. 1201, sec. 1065, Vendor and Purchaser. The evidence as to this need not be clear, convincing and satisfactory. If, therefore, there is any reasonable evidence to justify the court in finding that the defendant purchased with notice, or was not a purchaser for value, then the judgment must be sustained.

The testimony adduced by both of the parties, except as to matters upon which [*257] as we have already stated there seems to be no controversy, was somewhat meagre and left many matters in [***9] doubt which might have been shown by an examination of the witnesses. Defendant argues at considerable length that the evidence adduced on the part of the plaintiff was wholly insufficient to justify the court in finding that he was not a purchaser in good faith and for value and without notice. If the testimony in this case disclosed that in 1943, the defendant at the time he received the quitclaim deed paid a valuable consideration, this argument would at least require us to carefully examine all the evidence to determine whether the court's judgment could be justified. We have gone carefully into the evidence, and do not find any testimony as to the purchase price paid by defendant either at the time the quitclaim deed was given in 1943, or in 1945 at the time the warranty deed was given to him by Mrs. Kelley, except such as appears in the recitals in the instruments. Unless defendant was a bona fide purchaser, he stood in exactly the same situation as the original grantors of plaintiff. 66 C.J. 1104, sec. 923, Vendor and Purchaser: **HN4** [**82] "To constitute a grantee a bona fide purchaser as against outstanding equities or a prior conveyance, of which he had no notice, his [***10] deed must be supported by a consideration, within the meaning of that term as hereinafter defined. Therefore one who takes title as a mere volunteer is not entitled to protection as a bona fide purchaser for value, and this is true, although the prior conveyance was also voluntary."

This is also the effect of [Phoenix Title, etc., Co. v. Old Dominion Co., 31 Ariz. 324, 253 P. 435, 59 A.L.R. 625](#), in construing section 71-423, ACA 1939, relating to subsequent purchases without valuable consideration. 53 C.J. 980, sec. 125, Reformation of Instruments.

When plaintiff, therefore, adduced his proof showing a mistake, the burden was imposed upon the defendant to show that he was a bona fide purchaser for value and without notice. 66 C.J. 1197, sec. 1063, Vendor and Purchaser. In such case the recitals in the deeds as to consideration would be no evidence as to the consideration paid. 66 C.J. 1108, sec. 933; 1204, Sec. 1067, Id. Even if the recited considerations in the instruments are to be considered, this would scarcely be helpful to defendant. **HN5** The quitclaim deed recites a consideration of one dollar. This would not be a valuable consideration within the law relating to bona fide [***11] purchasers. The second or warranty deed received by defendant, which recites a consideration of \$ 1,000, was not executed or delivered until 1945 and long after, from all the evidence, defendant had full knowledge and notice of plaintiff's claim to the property.

We call attention to the case of [Adams Oil & Gas Co. v. Hudson, 55 Okl. 386, 155 P. 220, 222](#). In that case the defendant, a subsequent purchaser, claimed to be a bona fide purchaser. The deed recited [*258] a consideration of \$ 10,000. It offered no other evidence except the recital in the deed as to the consideration paid. The court held this to be insufficient. We quote from the opinion: "This being true, what constitutes a bona fide purchase? Three things must exist: (a) A purchase in good faith; (b) for value; and (c) without notice. Where a subsequent purchaser establishes a purchase for value, good faith and lack of notice are presumed, and the burden shifts to the party attacking the transfer to show bad faith and notice, actual or constructive. The recital in a deed that the consideration has been paid is *prima facie* evidence as between the parties and those claiming under them, but as to strangers and [***12] persons claiming in opposition the recital is no evidence as to the consideration paid. To them it is mere hearsay, and is no evidence of a purchase for value. (Citing cases). There is no proof in the record, as against the plaintiffs, even tending to show that the defendant company purchased for value. In the absence of such proof, good faith cannot be presumed. Indeed, the defendant company might be termed a bad-faith purchaser. At least it cannot be said to be a bona fide purchaser, and is therefore not entitled to the benefits thereof. The defendant company and its grantor, Adams, knew what

consideration, if any, actually passed for this property. Adams and the officers of the defendant company, and some of its directors, testified as witnesses for the defendant company, but it did not see proper to advise the court what consideration, if any was actually paid. If, as a matter of fact, any consideration was paid, the nature, amount of it, and the facts with reference thereto were within the breasts of Adams and the officers and directors of the defendant company. It was the company's duty to advise the court fully with reference to these matters. This it failed to do, [***13] and, in the absence of a showing that it is a purchaser for value, it has no right to invoke the aid of a court of equity. Its hands are not clean. A bona fide purchaser is favored by the courts, but until one brings himself within the rule of a bona fide purchaser a court of equity will not extend its aid. We therefore conclude that the defendant company was not a bona fide purchaser. * * *

Since the record fails to show that defendant was a purchaser for value, upon that ground alone the judgment of the court would have to be sustained. However, we have made an examination of the testimony pertaining to questions of [**83] notice. Taking all the facts and circumstances into consideration, it is our view that the court's finding that the defendant did have notice of plaintiff's claims would have to be sustained. The law seems to be settled that [HN6↑](#) a person who fails to exercise due diligence to avail himself of information which is within his reach is not a bona fide purchaser. [University of Richmond v. Stone, 148 Va. 686, 139 S.E. 257](#). Thus a purchaser who has brought to his attention circumstances which should have put him on inquiry which if pursued with due [*259] [***14] diligence would have led to knowledge of an adverse interest in the property, is not a bona fide purchaser. [Shephard v. Van Doren, 40 N.M. 380, 60 P.2d 635](#).

The evidence disclosed numerous acts of obvious ownership of the tract in question on the part of plaintiff. The platting and filing of the plat with the city council, the marking of the northeast corner of the tract with a cement block, the fact that the tract as purchased would square out plaintiff's original addition, the assessment of 15 acres out of the Hicks addition to the plaintiff, were all matters which at least were sufficient to put the defendant upon notice to make an inquiry. Any reasonable inquiry would have resulted in the disclosure that plaintiff claimed the tract in question.

What we have already said disposes in large part of the defendant's second proposition. As we have heretofore

stated, reformation may be had against the original vendor and those in privity with him. The defendant was in privity with the original vendors. He holds title from one of them. It is of course settled that privity exists between two successive holders when the latter takes under the earlier by grant. [Sherin v. Brackett, I***151 36 Minn. 152, 30 N.W. 551](#). It may be said that [HN7↑](#) privity exists where successive relationship or ownership to the same property from a common source appears. [Green v. Wahl, 117 Okl. 292, 246 P. 419](#). One who is in privity, unless he be a bona fide purchaser for value without notice, takes the property subject to burdens existing against it and, in effect, stands in the shoes of his predecessor in title. [Boughton v. Van Valkenburgh, 46 App.Div. 352, 61 N.Y.S. 574](#). The defendant was not a stranger, and was therefore subject to the same claims which might have been presented against the Kelleys.

We think it necessary to determine whether the proof of peaceable and adverse possession on the part of plaintiff was sufficient to justify the entry of the judgment. Apparently the judgment of the lower court was entered upon the theory that defendant was not a bona fide purchaser for value without notice, and therefore the deed could be reformed and judgment entered against him in the same manner as if the original vendors were the parties defendant. Under these circumstances, the question of whether plaintiff proved a case justifying a judgment under the ten-year statute of limitations would [***16] not be material. As between the plaintiff and defendant, the former would be entitled to a judgment of reformation and quieting title.

Defendant's fourth ground is that the court erred in correcting the mistake contained in the deed to include additional land because such additional land was never owned by the grantors who executed the deed. Apparently this proposition is predicated upon the testimony of the county treasurer at the trial, to the following effect: "I found in checking records that [*260] there was a deed from the Hicks estate to Frances E. Kelley in 1930, transferring twenty-two acres. That twenty-two acres has been carried right along." The case was tried upon the theory that John K. and Frances E. Kelley, as husband and wife, owned the property in 1924. No issue was made by the defendant that they were not the owners, nor was any issue made by the plaintiff that Frances E. Kelley succeeded to the rights of her husband John K. Kelley. For aught we know, the deed from the Hicks estate, mentioned in the Peterson testimony, may have been a formality to clear the title. In any event, no issue was made upon this

question before the trial court. We cannot now [***17] entertain it.

It is well settled that HN8 a question or issue not raised in the trial court will not be considered on appeal.

J. H. Mulrein **841 Plumbing Supply Co. v. Walsh, 26 Ariz. 152, 222 P. 1046; City of Glendale v. Coquat, 46 Ariz. 478, 52 P.2d 1178, 102 A.L.R. 837; Hallenbeck v. Yuma County, 61 Ariz. 160, 145 P.2d 837; Stephens v. Thomasson, Ariz., 160 P.2d 338. Since the deed mentioned by the treasurer was not put in evidence, nor any facts shown which would disclose that the Kelleys were not the owners of the property at the time of the original purchase by plaintiff from them, it is obvious that there were insufficient facts to determine the issue now made. The case does not come within the ruling of this court in Regan v. First Nat. Bank, 55 Ariz. 320, 101 P.2d 214.

While the record in many respects is not satisfactory, we cannot say that the lower court committed reversible error. The judgment is affirmed.

End of Document



Shepard's®: Report Content

Appellate History:Requested

 **Citing Decisions:**Narrowed By:

Other Citing Sources:Narrowed By:

Table Of Authorities:Narrowed By:Date:Jan 1 1658 to Oct 24 2024

Shepard's®: [Froman v. Madden](#) 13 Idaho 138,88 P. 894,1907 Ida. LEXIS 21: (Idaho February 11, 1907)

No negative [case history](#)

Appellate History (1)

Case History

1.  **Connected case at:**

[Madden v. Caldwell Land Co.](#), 16 Idaho 59 

Court: Idaho | **Date:** March 1, 1909

Citing Decisions (22)

Idaho Supreme Court

1. [Benz v. D.L. Evans Bank](#), 152 Idaho 215 

 **Followed by:** 152 Idaho 215 p.226; 268 P.3d 1167 p.1178

Discussion:  | **Court:** Idaho | **Date:** January 25, 2012

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2. [Villager Condominium Ass'n v. Idaho Power Co.](#), 121 Idaho 986 

 **Cited in Dissenting Opinion at:** 121 Idaho 986 p.990; 829 P.2d 1335 p.1339

Discussion:  | **Court:** Idaho | **Date:** March 24, 1992

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3. [Gillette v. Storm Circle Ranch](#), 101 Idaho 663

 **Cited by:**

Discussion:  | **Court:** Idaho | **Date:** August 12, 1980

-
4. [Gillette v. Storm Circle Ranch](#), 101 Idaho 663 

 **Cited in Dissenting Opinion at:** 101 Idaho 663 p.676; 619 P.2d 1116 p.1129

Court: Idaho | **Date:** 1980

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5. [Langroise v. Becker](#), 96 Idaho 218 

 **Cited by:** 96 Idaho 218 p.220; 526 P.2d 178 p.180

Discussion:  | **Court:** Idaho | **Date:** September 23, 1974

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6. [Joplin v. Kitchens](#), 87 Idaho 530 

 **Cited by:** 87 Idaho 530 p.535; 394 P.2d 313 p.315

Discussion:  | **Court:** Idaho | **Date:** July 28, 1964

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7. [Imig v. McDonald](#), 77 Idaho 314 

 **Cited by:** 77 Idaho 314 p.318; 291 P.2d 852 p.855

Discussion:  | **Court:** Idaho | **Date:** December 20, 1955

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8. [Stockmen's Supply Co. v. Jenne](#), 72 Idaho 57 

LB Cited by: 72 Idaho 57 p.65; 237 P.2d 613 p.618

Discussion:  | **Court:** Idaho | **Date:** November 13, 1951

-
9. [Petty v. Petty](#), 70 Idaho 473 

LB Cited by: 70 Idaho 473 p.479; 223 P.2d 158 p.161

Discussion:  | **Court:** Idaho | **Date:** September 29, 1950

-
10. [Snyder v. Blake](#), 69 Idaho 14 

LB Cited by: 69 Idaho 14 p.19; 202 P.2d 394 p.397

Discussion:  | **Court:** Idaho | **Date:** January 11, 1949

-
11. [Dowd v. Dowd](#), 62 Idaho 631 

B Cited in Dissenting Opinion at: 62 Idaho 631 p.644; 115 P.2d 409 p.415

Discussion:  | **Court:** Idaho | **Date:** June 26, 1941

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12. [Northwestern & Pac. Hypotheekbank v. Nord](#), 56 Idaho 86 

LB Cited by: 56 Idaho 86 p.92; 50 P.2d 4 p.6

Discussion:  | **Court:** Idaho | **Date:** October 9, 1935

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13. [Harris v. Reed](#), 21 Idaho 364 

G Followed by: 21 Idaho 364 p.371; 121 P. 780 p.782

Discussion:  | **Court:** Idaho | **Date:** February 15, 1912

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G Followed by: 17 Idaho 364 p.377; 106 P. 299 p.304

Discussion:  | **Court:** Idaho | **Date:** December 6, 1909

-
15. [Madden v. Caldwell Land Co.](#), 16 Idaho 59 

LB Cited by:

Discussion:  | **Court:** Idaho | **Date:** March 1, 1909

Idaho Court of Appeals

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16. [Sun Valley Land & Minerals v. Burt](#), 123 Idaho 862 

LB Cited by: 123 Idaho 862 p.867; 853 P.2d 607 p.612

Discussion:  | Court: Idaho Ct. App. | Date: May 26, 1993

Idaho District Court

17. [Insight Lic v. Summitt, Inc.](#), 2010 Ida. Dist. LEXIS 69

LB Cited by:

Court: Idaho Dist. Ct. | Date: August 2, 2010

-
18. [Insight LLC v. Summit Inc.](#), 2009 Ida. Dist. LEXIS 66

LB Cited by:

Discussion:  | Court: Idaho Dist. Ct. | Date: October 20, 2009

-
19. [Insight LLC v. Summit, Inc.](#), 2009 Ida. Dist. LEXIS 60

LB Cited by:

Discussion:  | Court: Idaho Dist. Ct. | Date: July 24, 2009

-
20. [Raynor v. Alexander](#), 2005 Ida. Dist. LEXIS 5

LB Cited by:

Discussion:  | Court: Idaho Dist. Ct. | Date: June 10, 2005

9th Circuit - Court of Appeals

21. [Munden v. Stewart Title Guar. Co.](#), 8 F.4th 1040 

LB Cited by: 8 F.4th 1040 p.1047

Discussion:  | Court: 9th Cir. Idaho | Date: August 13, 2021

9th Circuit - U.S. Bankruptcy Courts

22. [In re Lewis](#), 19 B.R. 548 

LB Cited by: 19 B.R. 548 p.550

Discussion:  | Court: Bankr. Dist. Idaho | Date: April 19, 1982

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1. [Idaho Code sec. 55-812](#)

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2. [21 Idaho L. Rev. 537](#)

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3. [ARAVE](#), 2008 U.S. Bankr. Ct. Briefs LEXIS 9

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4. [BRECKENRIDGE PROP. FUND 2016 v. WALLY ENTERPRISES](#), 2021 ID S. Ct. Briefs LEXIS 745

Content: Court Filings | **Date:** August 9, 2021

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5. [NAMPA HWY. DIST. NO. 1, body politic corporate of the State of Idaho v. KNIGHT](#), 2019 ID S. Ct. Briefs LEXIS 1685

Content: Court Filings | **Date:** October 21, 2019

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6. [TRUNNELL v. FERGEL](#), 2011 ID S. Ct. Briefs LEXIS 147

Content: Court Filings | **Date:** May 31, 2011

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7. [TRUNNELL](#), 2011 ID S. Ct. Briefs LEXIS 131

Content: Court Filings | **Date:** April 28, 2011

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8. [WEITZ v. GREEN](#), 2008 ID S. Ct. Briefs LEXIS 75

Content: Court Filings | **Date:** October 20, 2008

Motions

9. [WIEBE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 2788

Content: Court Filings | **Date:** September 1, 2006

-
10. [THOMASON](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6184

Content: Court Filings | **Date:** February 23, 2006

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1. [Foorman v. Wallace](#), 75 Cal. 552 ▲

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First Ref:88 P. 894 at p.895

Discussion:  | Court: Cal. | Date: April 20, 1888

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2. [Gassen v. Hendrick](#), 74 Cal. 444 ⓘ

LB Citing

First Ref:88 P. 894 at p.895

Discussion:  | Court: Cal. | Date: December 29, 1887

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3. [Page v. O'Brien](#), 36 Cal. 559 ⓘ

LB Citing

First Ref:88 P. 894 at p.895

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4. [Polack v. McGrath](#), 32 Cal. 15 ⓘ

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First Ref:88 P. 894 at p.895

Discussion:  | Court: Cal. | Date: 1867

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5. [Payne & Dewey v. Treadwell](#), 16 Cal. 220 ▲

LB Citing

First Ref:88 P. 894 at p.895

Discussion:  | Court: Cal. | Date: July 1, 1860

Idaho Supreme Court

-
6. [McMasters v. Torsen](#), 5 Idaho 536 ▲

Y Criticizing

First Ref: 13 Idaho 138 at p.143

Discussion:  | **Court:** Idaho | **Date:** November 26, 1897

-
7. [Eastwood v. Standard Mines & Milling Co.](#), 11 Idaho 195 

LB Citing

First Ref: 13 Idaho 138 at p.145

Discussion:  | **Court:** Idaho | **Date:** June 15, 1905

-
8. [Leland v. Isenbeck](#), 1 Idaho 469 

LB Citing

First Ref: 13 Idaho 138 at p.145

Discussion:  | **Court:** Idaho | **Date:** 1873

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Citation # 10 (as appears in page 3 of Document)
Froman v. Madden, 13 Idaho 138

QuoteCheck™ Report

13 Idaho 138

About your quote:

QuoteCheck could not find a match for your quote.

QuoteCheck™ Request: 13 Idaho 138

Your Quote:

Further, one who purchases property with sufficient knowledge to put him, or a reasonably prudent person, on inquiry is not a bona fide purchaser.

[13 Idaho 138](#)

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As of: October 24, 2024 11:37 AM Z

Froman v. Madden

Supreme Court of Idaho

February 11, 1907, Decided

No Number in Original

Reporter

13 Idaho 138 *; 88 P. 894 **; 1907 Ida. LEXIS 21 ***

I. S. FROMAN, Respondent, v. ADA F. MADDEN,
Appellant.

Prior History: [***1] APPEAL from the District Court of the Seventh Judicial District, for Canyon County. Hon. Frank J. Smith, Judge.

Action in ejectment. Judgment for the defendant. Plaintiff moved for a new trial and the motion was granted. Defendant appealed from the judgment and order granting a new trial. Affirmed.

Disposition: Judgment affirmed. Costs awarded in favor of the respondent.

Core Terms

deed, possessory right, conveyance, ejectment, purchaser, premises, recorded

Headnotes/Summary

Headnotes

VENDOR AND VENDEE--BONA FIDE PURCHASER--
VALUABLE CONSIDERATION--DEED FIRST
RECORDED--EJECTMENT--PROOFS NECESSARY--
ESTOPPEL.

1. One who purchases real estate without any knowledge or notice that the same has been previously conveyed to another party, and pays a valuable consideration therefor, and duly records his conveyance prior to the recording of the previously executed deed, takes a good title to the property so conveyed, and may

maintain ejectment against such prior purchaser who goes into possession subsequent to the plaintiff's purchase.

2. Under the provisions of section 3001 of the Revised Statutes, "every conveyance of real property other than a lease for a term not exceeding one year is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded."

3. One who has notice or knowledge of a previous sale of real property, or who has notice or knowledge of such facts and circumstances as would lead a reasonably prudent man to discover that a previous sale had been made, is not a purchaser in good faith within the meaning of section 3001, Revised Statutes.

4. A plaintiff in ejectment who successfully establishes his own title and possession of the premises by the defendant, and a withholding of the same from plaintiff, makes a sufficient case to entitle him to recover.

5. One cannot be precluded the right of recovery under the doctrine of estoppel who has committed no act nor has made any statement or representation that would mislead or deceive the adverse party, or cause him to part with his property or labor either to the prejudice of the one or the gain of the other.

Counsel: Griffiths & Griffiths and Rice & Thompson, for Appellant.

The plaintiff was obliged to allege and prove in this action for ejectment three things to entitle him to the

verdict and judgment: 1. The right of possession in plaintiff at the time the action was begun; 2. Prior possession in the plaintiff; 3. Ouster of plaintiff by defendant. ([McMasters v. Tersen, 5 Idaho 536, 51 P. 100](#); [Owen v. Fowler, 24 Cal. 193](#); [Owen v. Morton, 24 Cal. 373](#); 10 Am. & Eng. Ency. of Law, 2d ed., 494, and cases cited in note 7.)

One who enters into possession of real estate rightfully must have such possession changed by demand, notice or some act of the parties to make such possession wrongful before the action of ejectment can be maintained. ([McNally v. Connolly \(Cal.\), 9 P. 169](#); [Newell v. Woodruff, 30 Conn. 492](#); [Prentice v. Wilson, ***21 14 Ill. 91](#); Taylor v. McCracken, 2 Blackf. (Ind.) 260; Stackhouse v. Reynolds, 5 Blackf. (Ind.) 57; [Bool v. Mix, 17 Wend. 119, 31 Am. Dec. 285](#); [Chamberlain v. Donohue, 41 Vt. 306](#); Clark v. Davis, 22 Ky. Law Rep. 1231, [60 S.W. 396](#).)

The undisputed evidence and facts admitted show that plaintiff was never in possession, and was never ousted from possession by defendant. And the existence and proof of these facts are indispensable to plaintiff's right to recover in this case. ([McMasters v. Tersen, supra](#); [Watkins v. Winnings, 102 Ind. 330, 1 N.E. 638](#); [Zilmer v. Gerichten, 111 Cal. 73, 43 P. 408](#); [Chessier v. Harrelson, 119 Ala. 435, 24 South. 716](#); Watson v. Hue, 9 Pa. Dist. Ct. Rep. 519.)

The burden is on plaintiff to prove that he was an innocent purchaser for value and without notice of defendant's claim. The record is not sufficient. (2 Pomeroy's Equity Jurisprudence, 3d ed., sec. 759, and notes.)

H. E. Wallace and Stone & MacLane, for Respondent.

An examination of the evidence as disclosed by the transcript shows without any attempt at contradiction that plaintiff, when he purchased and paid for the lots in question, knew nothing of defendant's prior deed, and that [***3] there were no circumstances to put him on inquiry as to the same. The land was vacant and unoccupied. It had no improvements. Plaintiff did all that the law required of him when he searched the records and had an abstract of title prepared.

In order to create an equitable estoppel, there must be an admission, act or declaration intended to influence the conduct of another, and actually leading him into a line of conduct which would be prejudicial to his interests, unless the party estopped be cut off from the power of retraction. ([Leland v. Isenbeck, 1 Idaho 469](#).)

"It seems to be in harmony with the trend of authority to say that a person may rest upon the constructive notice which the record of title imparts, and that he is under no duty or obligation to give any other notice to anyone who assumes to deal with other parties in reference to such property. He may remain silent and passive." ([Eastwood v. Standard etc. Co., 11 Idaho 195, 81 P. 382](#).)

There is no evidence to show that plaintiff knew, before the construction of the fence by defendant, that defendant contemplated making such improvement. As to the house erected by defendant, it appears from her own testimony [***4] that she built the house after learning from plaintiff's brother that plaintiff would insist on his right to the land. In the face of this knowledge, defendant erected those improvements on account of which she claims an estoppel against plaintiff.

Plaintiff's right was fixed by the record of the deed in October. He then obtained the constructive possession of the land and held it until ousted by the act of defendant in entering on the same and building her fence. All that is necessary to constitute an ouster is that defendant wrongfully withhold possession from the plaintiff. (2 Bouvier's Law Dictionary, 561; [Rego v. Van Pelt, 65 Cal. 264, 3 P. 867](#).)

Proof of a paper title and a withholding of possession by defendant is sufficient to sustain an action of ejectment. It is only where plaintiff fails to prove title that he must show an actual prior possession. ([Miller v. Shackleford, 33 Ky. \(3 Dana\) 289](#); [Cornelius v. Ivens, 26 N.J.L. 376](#); [Jackson v. Crysler, 1 Johns. Cas. 125](#); [Polack v. McGrath, 32 Cal. 15](#); [Page v. O'Brien, 36 Cal. 559](#).)

Judges: AILSHIE, C. J. Sullivan, J., concurs.

Opinion by: AILSHIE

Opinion

[*141] [**894] AILSHIE, C. J.--This is an action in ejectment. The case [***5] was tried before the court with a jury and a verdict was returned in favor of the defendant, whereupon judgment was entered accordingly. Plaintiff moved for a new trial and the motion was allowed and a new trial granted. The defendant appealed from the order. The evidence in the case is very brief, and contains but slight, if any, material conflict. The essential and undisputed facts material to be considered in this case are as follows, as

disclosed by the record presented on this appeal:

The defendant, Ada F. Madden, purchased of the Caldwell Land Company, Ltd., a corporation, block 123 in the town of Caldwell, and paid the purchase price therefor in the sum of \$ 220, and received a deed dated August 1, 1904, which was acknowledged September 2d the same year. This deed was not filed for record with the recorder of Canyon county (the county in which the land was situated) until the tenth day of November following. In the latter part of September, 1904, I. S. Froman purchased from the same company this same tract of land and paid therefor the sum of \$ 200. He received a deed dated September 28th, which was acknowledged on the thirtieth day of September, and filed for record in the [***6] recorder's office on the eleventh day of October following.

At the time of these purchases by both the plaintiff and the defendant the land was vacant, uninclosed and unoccupied land, covered with greasewood and salt grass. Neither purchaser [**895] appears to have had anything more than [*142] a constructive possession of the property until the early part of November, at which time the defendant caused the block to be fenced at an expense of about \$ 25. In the following July she had a small house erected on the land at an expenditure of \$ 230. She was absent from the state of Idaho from about the 3d of September, 1904, until the tenth day of June following, and did not learn of the sale of the property to the plaintiff until sometime in December of 1904, or January, 1905. The plaintiff testifies that the first time he ever learned that defendant claimed any right or title to this property was about two months after he bought it. This evidence is not disputed, either directly or by any circumstances. At the time of the plaintiff's purchase and payment of the purchase price, defendant's deed was unrecorded and remained so for about forty days thereafter. So far as the evidence [***7] discloses, the plaintiff was clearly a purchaser "in good faith and for a valuable consideration," and his deed was placed of record prior to the recording of defendant's deed.

The facts of this case seem to bring it clearly within the provisions of section 3001 of the Revised Statutes, which is as follows: "Every conveyance of real property other than a lease for a term not exceeding one year is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded." The plaintiff testifies that he caused the company to furnish him an abstract of title, for which he paid the sum of \$ 10, and of course that abstract

failed to show the conveyance to defendant, for the reason that the same had never been recorded, and the plaintiff testifies that he had no knowledge whatever of the sale or conveyance to the defendant and did not have for some two months after his purchase. This constitutes him clearly a purchaser "in good faith and for a valuable consideration," and his conveyance having been first placed of record, gave him the title and a constructive possession with a [***8] right of immediate actual possession of the premises. ([Gassen v. Hendrick, 74 Cal. 444, 16 P. 242](#); [Foorman \[*143\], 75 Cal. 552, 17 P. 680](#).) Of course, if the defendant should be able to show that the plaintiff had actual knowledge of the sale and conveyance to her prior to his receiving a deed and parting with the purchase price, she would be entitled to recover in this action, or if she could show that he had knowledge of such facts and circumstances as would have led to the discovery of her purchase and conveyance by a reasonably prudent man, she would be entitled to recover, but in order to recover, she must show that he was not a purchaser in good faith within the meaning of the statute.

Counsel for appellant argue that since respondent saw fit to commence an action in ejectment to recover the possession of the premises, he must be held strictly to the rule applicable in such case, and that having never been in the actual possession of the land prior to the entry of the defendant, no ouster has ever taken place. In support of that contention, he relies on [McMasters v. Torsen, 5 Idaho 536, 51 P. 100](#), wherein this [***9] court said: "To maintain an action in ejectment it is essential that the appellant allege and prove three things: 1. The right of possession in the plaintiff; 2. Possession in the plaintiff; 3. Ouster of plaintiff by the defendant."

The proposition as stated in that case is perhaps rather uncertain and possibly misleading. We do not think, however, that it was the intention of the court to hold that a plaintiff, in order to maintain an action in ejectment, must have been actually upon the land prior to the entry and ouster by the defendant. It is true that at one time that was the rule, but the right of possession follows as a matter of law from seisin. One who establishes his title makes a case entitling him to possession. If any special or peculiar reasons exist why the right of possession in any particular instance should not follow the title, that fact should be shown in defense of the action. In the very instructive case of [Payne et al. v. Treadwell, 16 Cal. 220](#), Mr. Justice Field, in discussing the subject of ejectment, said: "If the defendant's holding rests upon any existing right, he

should be compelled [***144**] to show it affirmatively, in defense. The [*****10**] right of possession accompanies the ownership; the right of present possession is presumed as a matter of law It is by force of this presumption that the plaintiff can rest, in the first instance, his case at the trial upon proof of his seisin, and of the possession by the defendant. From these facts, when established, the law implies a right to the present possession in the plaintiff, and a holding adverse to that right in the defendant." In 10 Am. & Eng. Ency. of Law, 2d ed., at page 494, the author says: "The basis of an action of ejectment is the right to the possession and to the title, and a person bringing such action is required, in order to recover, to establish a right of possession." (Warvelle on Ejectment, secs. 219-221; Page v. O'Brien, 36 Cal. 559; Polack v. McGrath, 32 Cal. 15.)

An examination of the modern authorities will disclose the fact that right of possession in the plaintiff at the time of the commencement of the action and a withholding by the defendant at the same time is all that is necessary to be established in order to entitle the plaintiff to recover. This we take it, is all that is intended by the court [*****11**] in *McMasters v. Torsen*, although the principle is announced in a somewhat different form from that herein stated. In this case, the plaintiff on receiving his deed to the tract of land in dispute, and recording [****896**] the same prior to the record of defendant's deed, became entitled to immediate possession of the premises, and under the provisions of section 3001, *supra*, defendant's deed became immediately void as against plaintiff. From that time forth the defendant became a trespasser, and any further withholding of the premises from plaintiff's possession amounted to an ouster and gave the plaintiff his right of action for such withholding.

It has also been contended in this case that the plaintiff having permitted the defendant to make improvements upon the premises, is now estopped to assert title and right of possession in himself. So far as the record discloses, there is no element of estoppel in the case. The defendant testifies that she never spoke to or had any conversation with the [***145**] plaintiff prior to the commencement of this action. It is, therefore, clear that she was not deceived nor misled by anything he said. Neither is it shown that he performed [*****12**] any act or did anything that would mislead the defendant, or that was calculated to deceive her or cause her to part with her property or labor either to her prejudice or to his gain (Leland v. Isenbeck, 1 Idaho 469; Eastwood v. Standard M. & M. Co., 11 Idaho 195, 81 P. 382.)

Respondent complains of the hardship of this case for the reason, as counsel insists, that she will be obliged to lose her home and the improvements placed upon the land. If her deed had been recorded as provided by law, she would not have taken the risk of such loss. But we can see no reason why she should not receive full compensation for all of her improvements and expenditures, both in time and money; and, indeed, if the land company that undertook to sell and convey this land twice does not amply and fully compensate her, they should be dealt with under the criminal laws as provided by section 7097, Revised Statutes. It is clear to us that there has either been an offense committed by and on the part of this company as defined by the provisions of section 7097, or else they have been guilty of the grossest negligence; in either of which cases they should be made to respond [*****13**] in all damages sustained by the defendant. A corporation cannot escape liability by merely changing business agents between the times of two inconsistent transactions.

The judgment and order appealed from must be affirmed, and it is so ordered. Costs awarded in favor of the respondent.

Sullivan, J., concurs.

End of Document



Shepard's®: Report Content

A Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: [**A Mangum v. Stadel**](#) 76 Kan. 764, 92 P. 1093, 1907 Kan. LEXIS 322: (Kan. July 1, 1907)

No negative [case history](#)

Appellate History (1)

Case History

1. **B Same case at:**

[**Mangum v. Stadel**](#), 84 Kan. 668 [**A**](#)

Court: Kan. | **Date:** 1911

Citing Decisions (13)

Kansas Supreme Court

1. [Bowland v. McDowell](#), 132 Kan. 820 

LB Cited by: 132 Kan. 820 p.822; 297 P. 691 p.692

Discussion:     | **Court:** Kan. | **Date:** 1931

-
2. [Hayhurst v. Saile](#), 130 Kan. 844 

LB Cited by: 130 Kan. 844 p.847; 288 P. 539 p.540

Discussion:    | **Court:** Kan. | **Date:** 1930

-
3. [Shell v. Guthrie](#), 129 Kan. 632 

LB Cited by: 129 Kan. 632 p.635; 284 P. 420 p.421

Discussion:    | **Court:** Kan. | **Date:** 1930 | **Headnotes:** HN1

-
4. [Hayhurst v. Underwood](#), 126 Kan. 349 

LB Cited by: 126 Kan. 349 p.351; 267 P. 965 p.965

Discussion:    | **Court:** Kan. | **Date:** 1928

-
5. [Firstenberger v. McBee](#), 113 Kan. 110 

LB Cited by: 113 Kan. 110 p.112; 213 P. 813 p.814

Discussion:    | **Court:** Kan. | **Date:** 1923

-
6. [Mangum v. Stadel](#), 84 Kan. 668 

LB Cited by:

Discussion:    | **Court:** Kan. | **Date:** 1911

10th Circuit - Court of Appeals

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7. [Columbian Nat'l Life Ins. Co. v. Rodgers](#), 116 F.2d 705 

LB Cited by: 116 F.2d 705 p.707

Discussion:    | **Court:** 10th Cir. Kan. | **Date:** December 30, 1940

Idaho Supreme Court

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8. [Imig v. McDonald](#), 77 Idaho 314 

LB Cited by: 291 P.2d 852 p.855

Discussion:  | Court: Idaho | Date: December 20, 1955

New Mexico Supreme Court

9. [Shepard v. Van Doren](#), 1936-NMSC-051 

LB Cited by: 60 P.2d 635 p.640

Discussion:  | Court: N.M. | Date: August 11, 1936 | Headnotes: HN1

Oklahoma Supreme Court

10. [Shelp v. Lewis](#), 1940 OK 457 

LB Cited by:

Discussion:  | Court: Okla. | Date: November 12, 1940

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11. [Central Fire Ins. Co. v. Smith](#), 1940 OK 398 

LB Cited by: 107 P.2d 361 p.361

Court: Okla. | Date: October 1, 1940

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12. [Butler v. Corey](#), 1913 OK 91 

LB Cited by: 130 P. 137 p.137

Discussion:  | Court: Okla. | Date: February 11, 1913

South Dakota Supreme Court

13. [Winans v. Light](#), 52 S.D. 359 

LB Cited by: 217 N.W. 635 p.637

Discussion:  | Court: S.D. | Date: February 4, 1928

Other Citing Sources: (0)

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1. [Stadel v. Aikins](#), 65 Kan. 82 

G Following

First Ref: 76 Kan. 764 at p.765

Discussion:     | **Court:** Kan. | **Date:** 1902

-
2. [Scully v. Porter](#), 57 Kan. 322 

LB Citing

First Ref: 76 Kan. 764 at p.765

Discussion:     | **Court:** Kan. | **Date:** July 1, 1896

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Mangum v. Stadel

Supreme Court of Kansas

July, 1907, Decided ; December 7, 1907, Filed

No. 15,124.

Reporter

76 Kan. 764 *; 92 P. 1093 **; 1907 Kan. LEXIS 322 ***

ELIZABETH B. MANGUM v. HENRY STADEL.

Prior History: [***1] Error from Jackson district court; MARSHALL GEPHART, judge. Opinion filed December 7, 1907. Reversed.

Disposition: Judgement reversed.

Core Terms

notice, purchaser, corn, notice of lien, crop, tenant, lived, unpaid rent, landlord, leased, grown, farm, rent, relation of a landlord, bona fide purchaser, great many years, good faith, bad faith, demurrer, premises, implies, tending

Case Summary

Procedural Posture

Appellant lessor challenged a judgment by the Jackson district court (Kansas), which sustained the demurrer to the lessor's evidence and held that appellee purchaser was not liable to the lessor because he did not have notice of the lessor's lien on the corn purchased.

Overview

The lessor had a lien on corn grown on the leased premises to satisfy unpaid rent by the lessee. The purchaser bought the corn from the lessee and the lessor claimed that it was entitled to the value of the corn purchased to the extent of the rent due and unpaid. The trial court sustained the demurrer to the lessor's evidence and ruled that the purchaser was not liable because he did not have notice of the lien. The court

reversed on appeal. The court held that it was within the jury's province to determine whether the purchaser had notice. The court held that jury questions remained on whether the purchaser had good or bad faith and whether the purchaser had actual or constructive knowledge of the lien. The court held that there was a question as to whether the purchaser had notice of the lien or notice of facts which would naturally arouse suspicion and excite inquiry reasonably leading to a knowledge of the lien.

Outcome

The court reversed the trial court's judgment and remanded the case.

LexisNexis® Headnotes

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > ... > Lease Agreements > Commercial Leases > General Overview

[HN1](#) Personal Property, Bona Fide Purchasers

The statute gives the landlord a lien on the crops of his tenant for the payment of the rent. The lien may be enforced against the crop after it has passed into the

hands of a purchaser with notice of the lien, wherever it can be identified, by a proceeding against such purchaser to recover the value of the crop purchased to the extent of the unpaid rent and damages. To charge a purchaser with notice of a lien actual notice is not necessary. A person cannot be a bona fide purchaser who has brought to his attention facts which should have put him upon inquiry, an inquiry which if pursued with due diligence would have led to a knowledge of the lien. The statute gives a remedy against a purchaser with notice, implying that there is no remedy against one who purchases in good faith and without notice. While the statute gives a lien, bad faith in the purchaser cannot be presumed. The burden of showing that the purchase is made with notice of the lien is upon the plaintiff.

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

[HN4](#) Jury Trials, Province of Court & Jury

Where the testimony is sufficient to warrant the drawing of an inference upon the question of notice it belongs to the jury alone to draw that inference and to determine whether the purchaser is chargeable with notice.

Syllabus

SYLLABUS BY THE COURT.

1. LANDLORD'S LIEN--*Purchaser of Tenant's Crop with Notice--Burden of Proof.* In an action by a landlord to recover from a purchaser of a crop grown upon rented premises and subject to a lien the value of such crop to the extent of the unpaid rent the burden of showing that the purchase was made with notice of the lien rests upon the plaintiff.

2. LANDLORD'S LIEN--*Constructive Notice.* To charge a purchaser of a crop grown on rented land with notice of a landlord's lien actual knowledge of the lien is not necessary.

3. LANDLORD'S LIEN--*Facts that Naturally Excite Inquiry.* If the purchaser has knowledge of facts which naturally excite inquiry, and of one that reasonably leads to a knowledge of the lien, it is his duty to inquire; and testimony sufficient to require inquiry is testimony of notice.

4. LANDLORD'S LIEN--*Notice a Question for the Jury.* The testimony tending to show notice of the lien in the present case held to be sufficient to require the submission of the case to the jury.

Counsel: Case Broderick, [\[***2\]](#) DeVere Rafter, and John D. Myers, for plaintiff in error.

J. J. Schenck, and Charles Hayden, for defendant in error.

Judges: JOHNSTON, C. J.

Opinion by: JOHNSTON

Opinion

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

[*764] [\[**1094\]](#) The opinion of the court was delivered

by

JOHNSTON, C. J.: In January, 1904, Elizabeth B. Mangum leased her farm to M. C. Cooney for \$ 150 per year, taking his note for that amount, due the following December. Cooney raised a crop of corn on the farm and sold a portion of it to Henry Stadel for \$ 117.50. He paid \$ 35 on his note, leaving \$ 115 of the rent unpaid, which under the statute was a lien on the corn grown on the premises, including that sold to Stadel. [*765] This action was brought against Stadel to recover the value of the corn purchased to the extent of the rent due and unpaid. Testimony was introduced by plaintiff in an effort to show that Stadel had such notice of the lien as made him liable for the unpaid rent, but upon a demurrer to the evidence the court held that plaintiff's testimony did not tend to show notice of the lien, and the case was taken from the jury.

The question arises, Was there testimony tending to show that Stadel had notice of the lien? [HN1](#) [↑] The statute gives [***3] the landlord a lien on the crops of his tenant for the payment of the rent. The lien may be enforced against the crop after it has passed into the hands of a purchaser with notice of the lien, wherever it can be identified, by a proceeding against such purchaser to recover the value of the crop purchased to the extent of the unpaid rent and damages. To charge a purchaser with notice of a lien actual notice is not necessary. A person cannot be a *bona fide* purchaser who has brought to his attention facts which should have put him upon inquiry--an inquiry which if pursued with due diligence would have led to a knowledge of the lien. ([Scully v. Porter, 57 Kan. 322, 46 P. 313; Stadel v. Aikins, 65 Kan. 82, 68 P. 1088.](#)) Without doubt the plaintiff had a lien upon the corn sold Stadel, but it was one which was not enforceable against a *bona fide* purchaser. This follows from the fact that the statute gives a remedy against a purchaser with notice, implying that there is no remedy against one who purchases in good faith and without notice. The plaintiff's action is practically based upon a charge of bad faith in the purchaser; that is, of the purchase [***4] of the corn with notice of the plaintiff's lien. While the statute gives a lien, bad faith in the purchaser cannot be presumed. Stadel was not required to show his good faith, and the burden of showing that the purchase was made with notice of the lien was upon the plaintiff.

Did plaintiff offer testimony tending to show notice [*766] of the lien or notice of facts which would naturally arouse suspicion and excite inquiry reasonably leading to a knowledge of the lien? [HN2](#) [↑] Such a

notice is equivalent to actual knowledge. While plaintiff's testimony tending to prove notice was meager, it was sufficient to take the question to the jury. The testimony showed that the plaintiff and defendant had known each other well from childhood and had lived and owned land within three miles of each other for a great many years. The plaintiff's land was situated on the road leading from Stadel's land to Hoyt, the nearest market. Stadel had been on the plaintiff's farm, had purchased cattle there and assisted in driving them away. Living in the neighborhood a great many years, as he had, and transacting business with his neighbors, as he did, he was necessarily familiar with his surroundings. When [***5] called as a witness he stated that he had never seen Cooney until he came to sell him the corn, and did not know or inquire where he lived nor where the corn was grown. One of the witnesses, however, testified that when inquiry was made of Stadel about the purchase of the corn he answered that until Cooney came to his place to sell the corn he did not know him; that "that was the first time he ever had seen Mr. Cooney to know his name or where he lived." This testimony fairly implies that he then knew that Cooney lived on plaintiff's land, and this knowledge should have provoked inquiry as to whether the relation of landlord and tenant existed between plaintiff and Cooney and whether the rent had been paid.

[HN3](#) [↑] "When a person purchases grain from a tenant, either on or some distance from the leased premises, with knowledge of the relation of landlord and tenant, or of the facts which should have prompted inquiry as to the existence of a lien in favor of the landlord on crops grown on the leased land, he cannot escape liability to the landlord." ([Stadel v. Aikins, 65 Kan. 82, 85, 68 P. 1088.](#))

Enough was brought out in the testimony to give [*767] rise to the inference [***6] that the duty of inquiry was placed upon Stadel, and testimony sufficient to require inquiry is sufficient testimony of notice. [HN4](#) [↑] Where the testimony is sufficient to warrant the drawing of an inference upon the question of notice it belongs to the jury alone to draw that inference and to determine whether the purchaser is chargeable with notice.

The ruling of the court sustaining the demurrer to plaintiff's evidence is reversed and the cause remanded for a new trial.



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Shepard's®. [**A La Brie v. Cartwright**](#) 55 Tex. Civ. App. 144,118 S.W. 785,1909 Tex. App. LEXIS 303: (Tex. Civ. App. April 7, 1909)

No negative [case history](#)

Appellate History (1)

Case History

1. **B Same case at:**

[Cartwright v. La Brie](#), 144 S.W. 725 [**A**](#)

Court: Tex. Civ. App. | **Date:** January 27, 1912

Citing Decisions (16)

Texas Supreme Court

1. [Goldstein v. Union Nat'l Bank](#), 109 Tex. 555 

LB Cited by: 109 Tex. 555 p.567; 213 S.W. 584 p.590

Court: Tex. | **Date:** June 11, 1919 | **Headnotes:** HN2

Texas Court of Appeals

2. [Sanchez v. Montalvo](#), 2021 Tex. App. LEXIS 3530 

LB Cited by:

Court: Tex. App. Corpus Christi | **Date:** May 6, 2021

-
3. [Sanchez v. Montalvo](#), 2021 Tex. App. LEXIS 90 

LB Cited by:

Discussion:  | **Court:** Tex. App. Corpus Christi | **Date:** January 7, 2021

-
4. [Lawson v. Armstrong](#), 227 S.W. 687 

LB Cited by: 227 S.W. 687 p.691

Discussion:  | **Court:** Tex. App. | **Date:** January 12, 1921

Texas Court of Civil Appeals

-
5. [Luckel v. Barnsdall Oil Co.](#), 74 S.W.2d 127 

LB Cited by: 74 S.W.2d 127 p.130

Discussion:  | **Court:** Tex. Civ. App. | **Date:** June 14, 1934

-
6. [Dodd v. First State Bank & Trust Co.](#), 64 S.W.2d 1021 

LB Cited by: 64 S.W.2d 1021 p.1023

Discussion:  | **Court:** Tex. Civ. App. | **Date:** 1933

-
7. [Taylor v. Thompson](#), 39 S.W.2d 923 

LB Cited by: 39 S.W.2d 923 p.926

Discussion:  | **Court:** Tex. Civ. App. | **Date:** April 25, 1931 | **Headnotes:** HN2

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8. [Holmes v. Uvalde Nat'l Bank](#), 222 S.W. 640 

LB Cited by: 222 S.W. 640 p.642

Discussion:   | **Court:** Tex. Civ. App. | **Date:** May 12, 1920 | **Headnotes:** HN2

-
9. [Commercial Union Assurance Co. v. Winstead](#), 213 S.W. 955 

LB Cited by: 213 S.W. 955 p.957

Discussion:   | **Court:** Tex. Civ. App. | **Date:** June 9, 1919

-
10. [Hawkins v. First Nat'l Bank](#), 175 S.W. 163 

LB Cited by: 175 S.W. 163 p.166

Discussion:   | **Court:** Tex. Civ. App. | **Date:** March 6, 1915 | **Headnotes:** HN2

-
11. [Amarillo Nat'l Bank v. Harrell](#), 159 S.W. 858 

LB Cited by: 159 S.W. 858 p.862

Discussion:   | **Court:** Tex. Civ. App. | **Date:** June 28, 1913 | **Headnotes:** HN2

-
12. [Cartwright v. La Brie](#), 144 S.W. 725 

LB Cited by:

Discussion:   | **Court:** Tex. Civ. App. | **Date:** January 27, 1912

5th Circuit - Court of Appeals

13. [Abramson v. Boedeker](#), 379 F.2d 741 

LB Cited by: 379 F.2d 741 p.749

Discussion:   | **Court:** 5th Cir. Tex. | **Date:** June 23, 1967 | **Headnotes:** HN1

Florida Supreme Court

14. [Pierson v. Bill](#), 133 Fla. 81 

LB Cited by: 182 So. 631 p.636

Discussion:   | **Court:** Fla. | **Date:** July 6, 1938

Idaho Supreme Court

15. [Imig v. McDonald](#), 77 Idaho 314 

LB Cited by: 291 P.2d 852 p.855

Discussion:   | **Court:** Idaho | **Date:** December 20, 1955

New Mexico Supreme Court

16. [Shephard v. Van Doren](#), 1936-NMSC-051 

LB Cited by: 60 P.2d 635 p.640

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Content: Court Filings | **Date:** June 5, 2019

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1. [Allen v. Garrison](#), 92 Tex. 546 

 Citing

First Ref: 55 Tex. Civ. App. 144 at p.149

Discussion:  | Court: Tex. | Date: March 27, 1899

-
2. [Tex. Loan Agency v. Taylor](#), 88 Tex. 47 

 Citing

First Ref: 55 Tex. Civ. App. 144 at p.149

Discussion:  | Court: Tex. | Date: February 25, 1895

-
3. [Kauffman & Runge v. Robey](#), 60 Tex. 308 

 Citing

First Ref: 55 Tex. Civ. App. 144 at p.149

Discussion:  | Court: Tex. | Date: November 6, 1883

Texas Court of Civil Appeals

-
4. [Cooper v. Ford](#), 29 Tex. Civ. App. 253 

 Citing

First Ref: 55 Tex. Civ. App. 144 at p.149

Discussion:  | Court: Tex. Civ. App. Dallas | Date: March 15, 1902

-
5. [Harrington v. McFarland](#), 1 Tex. Civ. App. 289 

 Citing

First Ref: 55 Tex. Civ. App. 144 at p.149

Discussion:  | Court: Tex. Civ. App. Fort Worth | Date: November 1, 1892



A Neutral
As of: October 24, 2024 11:37 AM Z

La Brie v. Cartwright

Court of Civil Appeals of Texas

April 7, 1909, Decided

No Number in Original

Reporter

55 Tex. Civ. App. 144 *; 118 S.W. 785 **; 1909 Tex. App. LEXIS 303 ***

J. D. LaBrie et al. v. M. C. Cartwright.

Prior History: [***1] Appeal from the District Court of Sabine County. Tried below before Hon. W. B. Powell.

Disposition: Reversed and remanded.

Core Terms

deed, notice, heirs, prior deed, circumstances, diligence, sufficient to put, assigned error, prior claim, prudent man, good faith, purchaser, conveyed, bona fide purchaser, prior conveyance, actual notice, vendor

Case Summary

Procedural Posture

Plaintiff buyer and defendant seller both appealed a decision of the District Court of Sabine County (Texas), which entered a jury verdict in favor of defendant landowner as against the buyer and in favor of the buyer as against the seller. The suit was brought in trespass to try title to 600 acres of land.

Overview

The buyer claimed title to the land under a deed from a decedent's heirs to a principal. The landowner claimed under a deed from the decedent that, obviously, was executed before the decedent's death. The buyer sued the landowner to decide title, and also sued his seller on the seller's warranty. The jury found that the principal was not a bona fide purchaser for value without notice. Thus, the buyer's title was not good. Judgment was entered for the landowner, and for the buyer as against

his seller. The court reversed on appeal, holding that the jury instructions were incorrect. There was evidence that the principal's agent knew of the prior deed from the decedent. However, the agent was involved in the negotiations for his own purposes. Thus, there was no presumption that the principal knew of the prior deed, and the jury should not have been so instructed. A new trial was needed to see if the principal was a bona fide purchaser for value.

Outcome

The court reversed the judgment below, remanding for a new trial.

LexisNexis® Headnotes

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN1 **Personal Property, Bona Fide Purchasers**

A bona fide purchaser is one who has in good faith paid a valuable consideration without notice of the adverse rights of another. In other words, he must be a bona fide purchaser for value without notice.

Business & Corporate Law > ... > Duties & Liabilities > Knowledge & Notice > Agent

Knowledge

Evidence > Inferences & Presumptions > General Overview

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Duties & Liabilities > General Overview

Business & Corporate Law > ... > Duties & Liabilities > Knowledge & Notice > General Overview

HN2 Knowledge & Notice, Agent Knowledge

For the doctrine that a principal is chargeable with notice known to his agent is based, not only upon the fiction of identity, but also upon the fact that it is the duty of the agent to communicate his knowledge to his principal, and the presumption that he has performed his duty. No such presumption can arise, however, where the agent is dealing with the principal in his own interest, or where for any other reason his interest is adverse to his principal, so that it is to his own interest not to communicate the knowledge to his principal. In such a case the general rule, that notice to an agent is notice to his principal, does not apply.

Headnotes/Summary

Headnotes

Subsequent Purchaser -- Duty of Inquiry -- Notice -- Evidence.

If a subsequent purchaser of land has knowledge of any fact or circumstance sufficient to put a prudent man upon inquiry which, if prosecuted with ordinary diligence, would lead to actual notice of a prior deed to said land, he will be charged with the knowledge which might have been acquired by such diligence. The favorable opinion of an attorney upon the abstract of title will not relieve him of the consequences of his own knowledge.

Subsequent Purchaser.

The issue being whether or not a subsequent purchaser of land was a bona fide purchaser without notice, held,

that the fact that the person offering to sell him the land as agent of the vendors was to receive one-half of the purchase money for making the sale, and the further fact that said subsequent purchaser offered to buy the land from the prior purchaser after such purchaser's deed was put on record, were sufficient to require the court to submit to the jury the issue of bona fides on the part of the subsequent purchaser in making the purchase.

Subsequent Purchaser -- Synonymous Terms -- Charge.

While the expressions "prior claim" and "prior deed" are not necessarily synonymous, still, in an action of trespass to try title between a subsequent and prior purchaser of the land in controversy the use of the term "prior claim" instead of "prior deed" in the charge of the court was not reversible error when the only evidence of a prior claim on the part of the defendant was under and by virtue of a prior deed.

Principal and Agent -- Notice to Agent when not Notice to Principal.

The rule that the principal is chargeable with notice of all facts that come to the knowledge of his agent while acting within the scope of his agency, does not apply when the agent has a personal interest in the matter which would likely lead him to conceal his knowledge from his principal.

Counsel: Goodrich & Synnott, Woods & Kerr and S. M. Johnson, for appellants.

Greer, Minor & Miller, for appellee.

Judges: NEILL, Associate Justice.

Opinion by: NEILL

Opinion

[*144] [**785] NEILL, Associate Justice.--On June 30, 1905, J. D. LaBrie sued M. C. Cartwright and a number [**786] of other persons, as the heirs of Matthew and Amanda Cartwright, in trespass to try title to recover six hundred acres out of the northeast corner of the north half of the Isaac Powell league, situated in Sabine County, Texas. The plaintiff also made the Texas Loan Agency and W. A. Polley, under whom he claims by general warranty deeds, parties defendant and prayed

judgment against them on their warranties in the event of his failure to recover the land.

All the defendants who were sued for the land disclaimed any title or interest in it except the appellee, M. C. Cartwright, who answered by a plea of not guilty. The Texas Loan Agency answered plaintiff's [*145] petition by a general demurrer, and W. A. Polley, though cited, failed to answer at all.

The case was tried before a jury [***2] and the trial resulted in a judgment against the plaintiff for M. C. Cartwright, and in favor of the plaintiff against the Texas Loan Agency and W. A. Polley on their warranties. The plaintiff and the Texas Loan Agency have both appealed from the judgment.

As we shall reverse the judgment on account of an error in the charge, only so much of the evidence as may be necessary to expose the questions considered and to show the grounds upon which the judgment is reversed will be presented or discussed.

Isaac Powell, the original grantee, conveyed to John Cartwright and his son, Matthew Cartwright, the north half of the Isaac Powell league by deed dated July 4, 1838. The title of this part of the survey afterwards became vested in Robert G. Cartwright, another son of John Cartwright, and it is agreed by the parties to this action that he is the common source of title under which they both claim--the defendant, M. C. Cartwright, deraigning his title from a deed of R. G. Cartwright, and the plaintiff claiming his under a deed from R. G. Cartwright's heirs to H. G. Damon. The deed from R. G. Cartwright, through which defendant claims, conveyed the north half of the league to the first Matthew [*3] Cartwright. This deed was dated November 22, 1845, and filed for record May 12, 1846, and, the records having been destroyed in 1875, was again filed for record on July 12, 1889, at 2 o'clock p. m. All the other heirs of Matthew C. Cartwright, the first, and his wife, Amanda, conveyed seven hundred and ninety-four acres of the Isaac Powell league, including the six hundred acres in controversy, to Matthew C. Cartwright, who is the defendant in this suit, by their deed dated August 20, 1904, which was filed for record September 25, 1905. It is admitted that plaintiff was a purchaser for value. The only question is, Did H. G. Damon purchase for value in good faith and without notice or knowledge of the prior deed from Robert G. Cartwright to Matthew Cartwright. So much of the evidence bearing upon this question as is necessary to be considered will be stated in considering the assignments of error to which it is pertinent.

*Conclusions.--*1. The first assignment of the appellant LaBrie, which is adopted by his co-appellant, is:

"The court erred in charging the jury in the fourth paragraph of its charge, as follows: 'The evidence shows that said Damon paid a valuable consideration [***4] for said land. The issues, therefore, to be determined by you are: Did he pay said consideration in good faith without notice of the prior deed for said land from R. G. Cartwright to Matthew Cartwright? In order for said Damon to have been a purchaser in good faith, it was necessary for him to exercise reasonable diligence in making inquiry as to the title he was acquiring, that is, such diligence as an ordinarily prudent man would have exercised under the same circumstances, and if he had knowledge of facts that would have provoked inquiry on the part of an ordinarily prudent [*146] man, the law charged him with the duty of following up such inquiry with ordinary diligence, and with knowledge of all the facts which such an inquiry would have disclosed; and if he failed to do so, he was not a *bona fide* purchaser for value without notice, provided you further believe that had he made such inquiry, he would have been led to actual notice of facts which, if followed up, would have disclosed the existence of the prior deed from R. G. Cartwright to Matthew Cartwright,' first, because plaintiff established the fact beyond controversy that Damon had no actual knowledge of the prior [***5] deed from R. G. Cartwright to Matthew Cartwright; and, second, because plaintiff established the fact beyond controversy that H. G. Damon had no knowledge, actual or otherwise, of any fact or facts which would put him on inquiry and which would have led him to actual notice of the prior deed from R. G. Cartwright to Matthew Cartwright."

The error insisted upon by the proposition under the assignment is, as we construe it, that the paragraph of the charge embodied in the assignment submits an issue not raised by the evidence; and the grounds upon which the insistence is urged are (1) that Damon had an abstract of title to the land submitted to his attorney, Kirby, which showed that at the time he purchased and paid the consideration the record title was in his vendors; (2) and that the evidence shows that at the time of his purchase he (Damon) had no knowledge of the deed from Robert G. Cartwright to Matthew Cartwright executed November 22, 1845, nor of any fact which would have put him upon inquiry which would have led to the discovery of said deed. That, therefore, he was an innocent purchaser for value.

Damon having purchased subsequent to the date of the

deed from Robert G Cartwright [***6] to Matthew Cartwright, the burden was upon plaintiff to show that he (Damon) was a purchaser for value, without notice of such prior conveyance. Unless the evidence upon the [**787] issue was of such probative force that no fair-minded man could reach any other conclusion from it than that he was such purchaser, it was the duty of the trial court to submit it to the jury.

HN1[] A *bona fide* purchaser is one who has in good faith paid a valuable consideration without notice of the adverse rights of another. In other words, he must be a *bona fide* purchaser for value without notice. It may be conceded that the evidence conclusively shows that Damon did not have *actual notice* of the prior conveyance; but if he had knowledge of any fact or circumstances sufficient to put a prudent man upon inquiry which, if prosecuted with ordinary diligence, would lead to actual notice, he was charged with knowledge which might have been acquired by such diligence.

In view of this principle, can it be said from the evidence, as a matter of law, that Damon had no knowledge of any fact or circumstances which would put him on notice of the prior conveyance by Robt. G. Cartwright? If not, then it [***7] was a matter of fact for the jury and not the court to decide.

Laying aside for the present the question, to be considered under another assignment, whether S. M. Johnson in negotiating the sale was acting in the matter as Damon's agent, we will inquire whether [*147] there are any facts or circumstances shown by the evidence of which Damon had knowledge, which the jury might find were such as would have put a prudent man upon inquiry, which, if followed up with due diligence, would have led him to the knowledge of the fact of the prior conveyance under which the appellee claims the land in controversy. In pursuing this inquiry we will consider, *pro hac vice*, that Johnson was, as appellants claim, the agent of the heirs of Robt. G. Cartwright with a power of attorney from them to sell the land, and was acting only as their agent under the power of attorney in negotiating the sale to Damon.

It is undisputed that this power was coupled with an interest in the land, entitling Johnson to one-half of the proceeds of the sale. This fact was known to Damon, for when a deed was tendered him executed by Johnson as attorney in fact for the heirs, Damon refused to accept it, but demanded [***8] in lieu of it a deed from the heirs in person. He knew when the deed from the heirs, executed by them in person in accordance with his

demand, was tendered to and accepted by him, that Johnson was to receive one-half of the purchase money. Can it be said as a matter of law that this fact alone was not, in and of itself, sufficient to put a prudent man upon inquiry? We think not. It is a matter of common knowledge that men of common sense and ordinary business capacity, when they believe they have a good title to property, do not give away half of it or of the proceeds of its sale to another merely in consideration of his making a sale. If, then, with a knowledge of the fact that Johnson was to recover half of the proceeds of the sale, might not the jury have found from all the facts and circumstances shown by the evidence that prudence required Damon to make further inquiry as to his vendor's title to the land; and that, if he had prosecuted the inquiry with ordinary diligence, he would have found that the ancestor of his vendors had conveyed the land to Matthew C. Cartwright, under whom appellee claims, and that consequently they had no title to convey? We think such might have reasonably [***9] been their finding.

Damon, upon the supposition that Johnson was acting solely for himself and as agent for Robert G. Cartwright's heirs, must be regarded as dealing with him at arm's length. In such event, to his mind would naturally have been suggested this inquiry: "Why is it, if Robert G. Cartwright's heirs have title to this land, Johnson is to receive one-half of the proceeds of sale for inducing me to buy it? I must inquire of them the cause of this." Upon making such inquiry of them, can it be said, in view of their testimony, as a matter of law that he would not have obtained the information which their testimony shows: that, until Johnson came to them and asked them to make him the power of attorney, they had never claimed the land; had never paid taxes thereon; had always thought that Robert G. Cartwright had sold it; but that Johnson persuaded them to execute the power by representing that the record of deeds of the county where it lay showed that they owned the property, and that he ought to have a half interest in it for his services in finding the land for them? Following up this inquiry, he would probably have ascertained that the appellee and those under whom he claims [***10] had [*148] been assessing it as their property and paying taxes upon it from a date prior to Robert G. Cartwright's death; and by asking the appellee he would have found out that he was the owner of the land. When a fact is known sufficient to put a subsequent purchaser upon inquiry, he can not close his eyes to it and excuse himself from pursuing the inquiry by taking the opinion of an attorney upon an abstract of the record title. If this could be done, the rule that whatever is sufficient to put

a party upon inquiry, etc., is notice, would be rendered nugatory.

Again, the evidence shows that after the deed, dated November 22, 1845, of Robert G. Cartwright to Matthew Cartwright under which appellee claims, was re-recorded, Damon, notwithstanding he testified that he was a purchaser for value in good faith without notice of appellee's title, immediately offered to buy the land from the owner at \$ 2 per acre. Why did he do this, if he had purchased in good faith without notice of appellee's title? From this the jury may have reasonably reached the conclusion that he had notice of appellee's [**788] title when he bought from Robert G. Cartwright's heirs, else he would not [***11] have made the offer to purchase the land from the appellee. The jury did not have to believe Damon anyway; and the facts and circumstances surrounding the transaction are not such as bear convincing proof that he was a *bona fide* purchaser without notice.

2. The second assignment of error is:

"The court erred in its charge wherein it instructed the jury in words as follows: 'At the time Damon purchased said land from the heirs of R. G. Cartwright, the deed from R. G. Cartwright to Matthew Cartwright was not of record; hence, if Damon had notice of such deed, you are instructed that it must have been otherwise than by the record. This could have been given to Damon in either one of three ways: (1) By actual knowledge thereof prior to the payment of the purchase price by him for the land; (2) by knowledge of any fact or facts sufficient to put an ordinarily prudent man upon inquiry, which, if prosecuted with ordinary diligence, would have led to actual notice of the prior deed from R. G. Cartwright to Matthew Cartwright, prior to the payment by said Damon of the purchase price for said land under his said deed; (3) by the knowledge of Silas M. Johnson of the prior claim of Matthew [***12] Cartwright and those having his title to the land in controversy, provided you believe from the evidence that said S. M. Johnson was the agent of said H. G. Damon to make said purchase for him (Damon).' First, because defendant Cartwright failed to establish the fact that Silas M. Johnson was the agent of H. G. Damon in purchasing the land in controversy. Second, because Silas M. Johnson's knowledge, if any he had, of the prior claim of Matthew Cartwright or those having his title, was not notice to H. G. Damon, actual or otherwise, of the prior deed from R. G. Cartwright to Matthew Cartwright."

The first proposition advanced is: "Prior claim and prior deed are not synonymous terms, are not *idem sonans*,

and do not mean one and the same thing." That the terms are not *idem sonans* is self-evident; and that they are not necessarily synonymous, nor mean the same thing, is apparent. But when-all the evidence, as well as the [***149**] agreement of the parties, shows that appellee's "prior claim" is "under a prior deed," the terms, as used in the charge of the court, are practically synonymous and are of the same meaning, or rather, the term "prior claim" is necessarily referable [***13] to appellee's "prior deed," and can mean nothing else in this case.

The second proposition is: "If Silas M. Johnson was the agent of H. G. Damon in purchasing the land in controversy, then his knowledge of a prior claim or of the deed from Robt. G. Cartwright to Matthew Cartwright could not be imputed to Damon, since it was clearly shown by the evidence in the case beyond dispute or controversy that Johnson had a personal interest in the land sold to Damon, and any knowledge acquired by him of the deed from Robt. G. Cartwright to Matthew Cartwright would have advised him of an adverse title to the title which he and the heirs of Robt. G. Cartwright were offering for sale to Damon and, such being the case, it will be presumed that Johnson would not communicate any such knowledge to Damon, since it would be adverse and antagonistic to his own interest and the interest of the heirs of Robt. G. Cartwright, and the rule that the principal is chargeable with knowledge of all facts that come to the knowledge of his agent while acting within the scope of his agency, does not apply when the agent has a personal interest in the matter which would likely lead him to conceal his knowledge from [***14] his principal."

We can see no escape for appellee from this proposition. [HN2](#)[] For the doctrine that a principal is chargeable with notice known to his agent is based, not only upon the fiction of identity, but also upon the fact that it is the duty of the agent to communicate his knowledge to his principal, and the presumption that he has performed his duty. No such presumption can arise, however, where the agent is dealing with the principal in his own interest, or where for any other reason his interest is adverse to his principal, so that it is to his own interest not to communicate the knowledge to his principal. In such a case the general rule, that notice to an agent is notice to his principal, does not apply. ([Harrington v. McFarland, 1 Tex. Civ. App. 289, 21 S.W. 116](#); [Kaufman v. Robey, 60 Tex. 308](#); [Texas Loan Agency v. Taylor, 88 Tex. 47](#); [Allen v. Garrison, 92 Tex. 546](#); [Cooper v. Ford, 29 Tex. Civ. App. 253](#); Clark & Skyles on Agency, sec. 485; Mech. Ag., sec. 723.)

It is undisputed that Johnson had a half interest in the land and received such an interest in the proceeds of the sale of the same which he effected to Damon. Therefore, even if it should be conceded that he was Damon's [***15] agent in procuring his purchase of the land from the heirs of Robert G. Cartwright, his knowledge, if any he had, of the prior deed to Matthew Cartwright or the claim of appellee to the property or of any fact sufficient to put him on inquiry, could not, under the principle of law stated, be imputed to Damon. In this view it can make no difference upon whom was the burden of proving Johnson was Damon's agent in purchasing the land, for it relieves the case of such an issue by rendering it immaterial whether such agency existed, as in no event could Johnson's notice of the deed under which appellee claims be imputed to Damon.

[*150] 3. This also disposes of the third, seventh, eighth, ninth, tenth and eleventh assignments [**789] and all the propositions under them, in appellant's favor.

4. There being evidence, as we have held in considering the first assignment of error, tending to show that Damon had notice of the deed under which the appellee claims or at least of such facts and circumstances as would put him upon inquiry, and such deed being of record when LaBrie, as well as his vendor, Polley, bought the land, the plaintiff could only recover by proving that Damon was [***16] a *bona fide* purchaser without notice of such deed. Hence, the court did not err in refusing to instruct the jury to return a verdict for LaBrie. We, therefore, overrule the fourth assignment of error.

5. From what we have said in considering the first and fourth assignments of error, it follows that, had it not been for the error in the charge exposed by the second assignment of error, there would have been no error in the court's refusing to grant a new trial upon the ground that the verdict was contrary to the law and the evidence.

6. The evidence, the admission of which is complained of in the eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth assignments of error, was, we think, admissible, in connection with other facts and circumstances, as tending to show that Damon had notice of the prior conveyance under which appellee claims; and the principle that declarations of a vendor made after he has conveyed the property can not be introduced to disparage his title, has no application to any of the evidence referred to in these assignments.

On account of the errors indicated the judgment is reversed and the cause [***17] remanded.

Reversed and remanded.

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A Appellate History: Requested

Citing Decisions: Narrowed By:

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Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: [**A Salmon v. Norris**](#) 82 A.D. 362,81 N.Y.S. 892,1903 N.Y. App. Div. LEXIS 1167: (N.Y. App. Div. April 1, 1903)

No negative [case history](#)

Appellate History (1)

Case History

1. **B Same case at:**

[**Salmon v. Norris**](#), 95 A.D. 621 [**A**](#)

Court: N.Y. App. Div. | **Date:** June 1, 1904

Citing Decisions (7)

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1. [United States Mortg. & Trust Co. v. Eastern Iron Co.](#), 120 A.D. 679 

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3. [Salmon v. Norris](#), 95 A.D. 621 

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Discussion:  | **Court:** N.Y. App. Div. | **Date:** June 1, 1904

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4. [Maggio v. Acierno](#), 121 Misc. 30 

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5. [Imig v. McDonald](#), 77 Idaho 314 

LB Cited by: 291 P.2d 852 p.855

Discussion:  | **Court:** Idaho | **Date:** December 20, 1955

Indiana Court of Appeals

6. [Larrance v. Lewis](#), 51 Ind. App. 1 

LB Cited by: 98 N.E. 892 p.894

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7. [Pierce v. Westby State Bank](#), 218 Wis. 648 

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1. [In re New York Economical Printing Co.](#), 110 F. 514 

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First Ref: 82 A.D. 362 at p.364

Discussion:  | Court: 2d Cir. N.Y. | Date: August 22, 1901

New York Court of Appeals

2. [Karst v. Gane](#), 136 N.Y. 316 

 Citing

First Ref: 82 A.D. 362 at p.364

Discussion:  | Court: N.Y. | Date: January 17, 1893

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3. [Tremaine v. Mortimer](#), 128 N.Y. 1 

 Citing

First Ref: 82 A.D. 362 at p.364

Discussion:  | Court: N.Y. | Date: June 2, 1891

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4. [Stearns v. Gage](#), 79 N.Y. 102 

 Citing

First Ref: 82 A.D. 362 at p.365

Discussion:  | Court: N.Y. | Date: December 2, 1879

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5. [JEWETT v. PALMER & May](#), 7 Johns. Ch. 65 

 Citing

First Ref: 82 A.D. 362 at p.365

Discussion:  | Court: N.Y. | Date: February 8, 1823

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6. [Williamson v. Brown](#), 15 N.Y. 354 

 Citing

First Ref: 82 A.D. 362 at p.366

Discussion:  | **Court:** N.Y. | **Date:** June 1, 1857

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7. [**POWERS v. FREEMAN**](#), 2 Lans. 127 

LB Citing

First Ref: 82 A.D. 362 at p.365

Discussion:  | **Court:** N.Y. Sup. Ct. | **Date:** December 1, 1869

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8. [**SPICER v. WATERS**](#), 65 Barb. 227 

LB Citing

First Ref: 82 A.D. 362 at p.365

Discussion:  | **Court:** N.Y. Sup. Ct. | **Date:** January 2, 1866

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A Neutral
As of: October 24, 2024 11:37 AM Z

Salmon v. Norris

Supreme Court of New York, Appellate Division, Second Department

April, 1903, Decided

No Number in Original

Reporter

82 A.D. 362 *; 81 N.Y.S. 892 **; 1903 N.Y. App. Div. LEXIS 1167 ***

Hamilton H. Salmon and Richard A. H. Brandt,
Appellants, v. Charles J. Norris, Respondent, Impleaded
with Hyman Berman and Others.

Prior History: [***1] Appeal by the plaintiffs, Hamilton H. Salmon and another, from that portion of a judgment of the Supreme Court in part in favor of the plaintiffs and in part in favor of the defendant Charles J. Norris, bearing date the 14th day of March, 1902, and entered in the office of the clerk of the county of Kings, upon the decision of the court rendered after a trial at the Kings County Special Term, adjudging that as to the defendant Charles J. Norris the plaintiffs are not entitled to the injunction asked for and dismissing the complaint as to said defendant.

Disposition: Judgment reversed and new trial granted, costs to abide the final award of costs.

Core Terms

mortgage, notice, chattels, mortgagees, purchaser,
good faith, fraudulent, refiled

Case Summary

Procedural Posture

Plaintiff creditors appealed that portion of a judgment of the Supreme Court of Kings County (New York), rendered in favor of defendant, the debtors' assignee, which adjudged that, as to him, the creditors were not entitled to the injunction asked for and which dismissed the complaint as to the assignee.

Overview

The creditors contracted to sell the debtors lumber, and the debtors executed a chattel mortgage on the furniture and effects in their factory. The creditors searched for prior mortgages and found two on record, but no renewal of the first. The debtors informed them that the first was paid and that the second lacked consideration and invalid. The debtors assigned all three mortgages to the assignee, and the creditors sued him, claiming a lien on the chattels prior to the other mortgages. They claimed that the prior mortgages were fraudulent as against them and that they could sell the chattels free of all liens. The trial court dismissed the action. On appeal, the court reversed. The creditors were entitled to priority over the first mortgage because that mortgage was never refiled; thus, it had no force or operation as against them when they became creditors of the debtors in good faith. However, the second mortgage was entitled to priority over the creditors' mortgage. They were not subsequent creditors in good faith because the debtors' statement that the second mortgage was invalid should have put them on further inquiry, and they failed to make any further inquiry.

Outcome

The court reversed and ordered a new trial.

LexisNexis® Headnotes

[HN1](#)[] Nonmortgage Liens, Lien Priorities

Under 1901 N.Y. Laws ch. 219, [§ 95 of the Lien Law](#), a chattel mortgage not renewed within the year after its filing ceases to be valid and is of no force or operation whatever as against subsequent creditors or mortgagees in good faith, any more than if the mortgage never existed. The word "creditors" includes all creditors who are such while the goods are in possession of the mortgagors, irrespective of the time when they became such, that is, whether before or after the mortgage.

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[Real Property Law > ... > Liens > Nonmortgage Liens > Lien Priorities](#)

[HN2](#)[] Elements, Bona Fide Purchasers

It is not enough for the holder of an unrenewed mortgage to show that a subsequent purchaser of the chattels had notice of the mortgage, but he must also show that when the purchase was made after the expiration of the year the purchaser knew or had notice that the mortgage debt had not been paid.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers](#)

[Real Property Law > ... > Liens > Nonmortgage Liens > Lien Priorities](#)

[HN3](#)[] Personal Property, Bona Fide Purchasers

A bona fide purchaser is one who buys property of another without notice that some third party has a right to or interest in such property and pays a full price for the same at the time of such purchase or before he has notice of the claim or interest of such other in the property.

[Contracts Law > Personal Property > Bona Fide Purchasers](#)

[Real Property Law > Priorities &](#)

[Recording > Elements > Bona Fide Purchasers](#)

[Real Property Law > ... > Liens > Nonmortgage Liens > Lien Priorities](#)

[HN4](#)[] Personal Property, Bona Fide Purchasers

Where a purchaser has knowledge of any fact sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim, to be considered as a bona fide purchaser.

Headnotes/Summary

Headnotes

Chattel mortgage -- extent of its invalidity when not renewed -- who is a bona fide purchaser -- inquiry as to a prior chattel mortgage not refiled -- statement, where the year has not expired, that it was given to protect the mortgagor -- action in equity to determine questions as to priority.

Syllabus

A chattel mortgage, not renewed within a year after it is filed, ceases to be valid and is of no more force or operation, as against subsequent creditors or mortgagees, in good faith, than if it had never existed.

A *bona fide* purchaser [***2] is one who buys property of another, without notice that some third party has a right to or interest in such property, and pays a full price for the same at the time of such purchase or before he has notice of the claim or interest of such other in the property.

A chattel mortgagee who is informed by the mortgagor at the time he takes the mortgage that another chattel mortgage covering the same property, which had been filed more than a year previous and had not been refiled, had been paid, is not required to make further inquiries in regard to the truth of the mortgagor's statement.

If, at the time a chattel mortgage is executed, the mortgagor informs the mortgagee that a previous chattel mortgage, which had been filed and the time for refiling

which had not expired, had been made to protect the mortgagor, presumably against creditors, it is the duty of the mortgagee to make further inquiry, and, if he neglects to do so, he is not a subsequent creditor or mortgagee in good faith.

An action in equity may be brought to determine questions of priority between several chattel mortgages covering the same property.

Counsel: John B. Gleason [Charles J. McDermott with him on the **[***3]** brief], for the appellants.

Horace Graves, for the respondent.

Judges: Goodrich, P. J. Bartlett, Hirschberg, Jenks and Hooker, JJ., concurred.

Opinion by: GOODRICH

Opinion

[*363] Goodrich, P. J.:

[893]** This action is in equity; the complaint prays judgment that a chattel mortgage made to the plaintiffs No. 3 (below) is a lien on the chattels therein mentioned and is prior in lien to two chattel mortgages thereon, Nos. 1 and 2, assigned to the defendant Norris; that such mortgages are fraudulent as against the plaintiffs, and that they should be permitted to sell the chattels free from all liens. The court dismissed the complaint and the plaintiffs appeal.

The mortgages in question are as follows: No. 1, mortgage by Hyman Berman to T. B. Chapman, for \$ 400, dated November 25, 1899, filed November 27, 1899. No copy of this mortgage was ever refiled. No. 2, mortgage by Hyman Berman to Philip Rosenberg, **[*364]** for \$ 450, dated March 12, 1900, filed March 14, 1900. No copy of this mortgage was ever refiled. No. 3, mortgage by Hyman Berman and Vernon Hebner to the plaintiffs, dated January 30, 1901, filed January 31, 1901, to secure moneys due or to become due for sales of goods made or **[***4]** to be made. No. 4, mortgage by Hyman Berman, Pappy Y. Berman, Vernon Hebner and the American Bobbin Company to Charles J. Norris, for \$ 1,200, dated July 11, 1901, filed July 13, 1901.

In January, 1901, the plaintiffs contracted to sell the defendants Berman and Hebner lumber, part of which was delivered on January twenty-sixth and part in February and May. After the delivery of the first lot, the

plaintiffs refused to sell or deliver any more except for cash before delivery. Berman thereupon proposed to execute a chattel mortgage on the furniture and effects in the factory in which he was doing business with Hebner under the name of the American Bobbin Company. The plaintiffs caused search to be made for prior mortgages and found mortgages Nos. 1 and 2 on record, but no renewal of No. 1. They were informed by Berman that No. 1 was paid and that No 2. was without consideration and invalid. The court has found that thereupon mortgage No. 3 was executed for the purpose of securing money then due for goods sold and delivered by the plaintiffs to Berman and Hebner and for the purpose of obtaining forbearance from the plaintiffs and credit and as security for future sales; and that the **[***5]** plaintiffs sold and delivered to Berman and Hebner other lumber amounting with previous sales to \$ 987.14, upon which \$ 350 has been paid, leaving due \$ 637.14. On sufficient evidence the court has also found that on April 12, 1900, Chapman and Rosenberg respectively assigned their mortgages to the defendant Norris, who paid them the amount named in the mortgages.

There can be no question that by section 95 of the Lien Law (Laws of 1897, chap. 418, as amd. by Laws of 1901, chap. 219) **HN1** a chattel mortgage not renewed within the year after its filing ceases to be valid and is of no force or operation whatever as against subsequent creditors or mortgagees in good faith, any more than if the mortgage never existed. (Tremaine v. Mortimer, 128 N.Y. 1; Karst v. Gane, 136 N.Y. 316; Matter of New York Economical Printing Co., 110 F. 514.) In the Karst case it was held **[*365]** that the word "creditors" includes **[**894]** all creditors who are such while the goods are in possession of the mortgagors, irrespective of the time when they became such, that is, whether before or after the mortgage. The chattels remained in the possession of Berman and Hebner till September **[***6]** 13, 1901, when they were taken into possession by the defendant Norris for the purpose of foreclosing his two mortgages.

As mortgage No. 1 was never refiled, it had no force or operation as against the plaintiffs when, and provided, they became creditors or mortgagees in good faith of Berman and Hebner, in January, 1901. This brings us to the question whether or not they were creditors or mortgagees in good faith. When the plaintiffs became creditors in January, although mortgage No. 1 might have ceased to be valid as against them, they took no title to the chattels by reason of that fact, nor until the execution of their mortgage, No. 3. The court found that

they were informed by Berman and Hebner that the Chapman mortgage, No. 1, had been paid; that they relied thereon and forbore to enforce their previous claim and also sold Berman and Hebner other goods, the price of which was within the terms of and covered by their mortgage. The question arises, whether good faith required the plaintiffs to make further inquiries, as, for instance, of Norris. It was held in *Powers v. Freeman* (*2 Lans. 127*) that *HN2* it would not be enough for the holder of an unrenewed mortgage to show that [**7] a subsequent purchaser of the chattels had notice of the mortgage, but that he must also show that when the purchase was made after the expiration of the year the purchaser knew or had notice that the mortgage debt had not been paid.

HN3 A *bona fide* purchaser is one who buys property of another without notice that some third party has a right to or interest in such property and pays a full price for the same at the time of such purchase or before he has notice of the claim or interest of such other in the property. (*Spicer v. Waters, 65 Barb. 227;* *Jewett v. Palmer, 7 Johns. Ch. 65.*)

Stearns v. Gage (79 N.Y. 102) involved the question whether a purchaser of real estate, for a valuable consideration, was chargeable with constructive notice that the conveyance was made to him by his vendor with intent to defraud his creditors under 2 Revised Statutes (137, § 5), which provided that the statute as to fraudulent [***366**] conveyances "shall not be construed, in any manner, to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor." [**8] The court said (pp. 107, 108): "This plainly means that actual notice shall be given of the fraudulent intent or knowledge of circumstances which are equivalent to such notice. Circumstances to put the purchaser on inquiry where full value has been paid are not sufficient. If he knew of the fraud, that would be enough. * * * No authority has been cited which sustains the principle that a purchaser for a valuable consideration, without previous notice, is chargeable with constructive notice of the fraudulent intent of his grantor; and such a rule would carry the doctrine of constructive notice to an extent beyond any principle which has been sanctioned by the courts, and cannot be upheld."

[**895] Judge Selden said in *Williamson v. Brown (15 N.Y. 354, 358)*: "I can see no foundation in reason for a distinction between the evidence requisite to establish a want of good faith, in a case arising under the recording

act, and in any other case; and the authorities here referred to are sufficient to show that no such distinction is recognized, at the present day, by the courts." At page 362 he also said: "The true doctrine on this subject is, that *HN4* where a purchaser has knowledge of any fact [**9] sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim, to be considered as a *bona fide* purchaser."

We are thus compelled to decide whether actual notice of the existence of mortgage No. 1 compelled the plaintiffs to make other inquiries than they made. Berman told them the mortgage was paid. It may be said that naturally they would also make inquiries of the mortgagee. But the mortgagee, by his failure to refile his mortgage, had said in effect that it was paid, or at least that it was invalid as against subsequent creditors or mortgagees in good faith. We think the mortgagee and his assignee, the defendant Norris, are estopped to deny the invalidity of mortgage No. 1 as against the plaintiffs.

[*367] As to mortgage No. 2, the plaintiffs' rights are somewhat different. At the time of the plaintiffs' sale to Berman and Hebner and the execution of their mortgage, the time for refiling mortgage No. 2 had not expired. It was still a valid [**10] mortgage as against them, and continued to be such until the expiration of the year; that is, March 14, 1901. The court has found that the defendant Norris, on April 12, 1900, took an assignment of mortgage No. 2 from Rosenberg, the mortgagee, and paid him \$ 400 therefor. It is true that Berman informed the plaintiffs that this mortgage was made to protect him, presumably against creditors, but this was a statement of a fraudulent intent which ought to have put them on further inquiry, and their failure to make any further inquiry brings them within the principle laid down in the *Williamson* case, above cited. Our conclusion is that as to mortgage No. 2 the plaintiffs were not subsequent creditors or mortgagees in good faith.

The defense, that the plaintiffs may not resort to equity because they have certain actions at law, is not tenable. There were conflicting claims and questions of priority, and these can best be adjusted in equity.

The court found that at the time of the execution of the plaintiffs' mortgages the chattels were owned by one Pappy Y. Berman, who is not a party to this action, and

the plaintiffs have excepted to that finding. There is no evidence to support [***11] it except such as may be inferred from articles of partnership between her and the defendant Hebner, dated August 24, 1900, which were executed on her behalf by the defendant Berman, but that is not evidence of ownership, and it may be said that there is no statement therein that she was the owner, but only a clause, that she would, as her share of the [**896] proposed capital of the firm, furnish certain chattels which may or may not be those covered by any of the mortgages.

Our judgment is that the plaintiffs are entitled to priority over mortgage No. 1 to the extent of the sales actually made by them, but that mortgage No. 2 is entitled to priority over the plaintiffs' mortgage.

The judgment should be reversed and a new trial granted.

Bartlett, Hirschberg, Jenks and Hooker, JJ., concurred.

Judgment reversed and new trial granted, costs to abide the final award of costs.

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Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®:  [Shephard v. Van Doren](#) 1936-NMSC-051,40 N.M. 380,60 P.2d 635,1936 N.M. LEXIS 55: (N.M. August 11, 1936)

No subsequent appellate history

Appellate History (1)

1.  **Citation you Shepardized™**

[Shephard v. Van Doren](#), 1936-NMSC-051 

Court: N.M. | **Date:** August 11, 1936

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1. [South Second Livestock Auction v. Roberts](#), 1961-NMSC-130 A

LB Cited by: 69 N.M. 155 p.161; 364 P.2d 859 p.863

Discussion:  | **Court:** N.M. | **Date:** September 12, 1961 | **Headnotes:** HN5

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2. [Mosley v. Magnolia Petroleum Co.](#), 1941-NMSC-028 ▲

B Cited in Dissenting Opinion at: 45 N.M. 230 p.267; 114 P.2d 740 p.763

Discussion:  | **Court:** N.M. | **Date:** June 10, 1941

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3. [In re Marshall Engineering Co.](#), 213 F. Supp. 813 +

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5. [MacEwen v. Peterson](#), 102 Ariz. 209 +

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Discussion:  | **Court:** Ariz. | **Date:** May 10, 1967

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6. [Davis v. Kleindienst](#), 64 Ariz. 251 ▲

G Followed by: 169 P.2d 78 p.83

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8. [Imig v. McDonald](#), 77 Idaho 314 +

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9. [Pierce Township v. Ernie](#), 74 N.D. 16 

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1. [ARTICLE: BATTLE FOR THE BULGE: THE RECLAIMING SELLER VS. THE FLOATING LIEN CREDITOR](#), 2001 COLUM. BUS. L. REV. 509

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1. [R. P. Harris Motor Co. v. Bailey](#), 219 Ala. 8

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2. [Stickney v. Dunaway & Lambert](#), 169 Ala. 464

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3. [Kearby v. Western States Sec. Co.](#), 31 Ariz. 104

Citing

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4. [Glaspie v. Williams](#), 46 Ariz. 381

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5. [Shearer v. Housch](#), 32 Ga. App. 663

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Discussion:  | **Court:** Iowa | **Date:** June 1, 1922

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7. Becker v. Dalby, 86 N.W. 314

LB Citing

First Ref: 60 P.2d 635 at 638

Court: Iowa | **Date:** 1901

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Discussion:  | **Court:** Iowa | **Date:** October 1, 1921

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9. [Barrett v. Fisch](#), 76 Iowa 553 

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Court: Iowa | **Date:** 1889

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10. [Mangum v. Stadel](#), 76 Kan. 764 

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First Ref: 60 P.2d 635 at p.640

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11. [Wafer v. Harvey County Bank](#), 46 Kan. 597 

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Discussion:  | Court: Minn. | Date: February 2, 1899

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16. [First Nat'l Bank v. Gardner](#), 222 Mo. App. 858 

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Discussion:  | Court: Mo. Ct. App. | Date: April 30, 1928

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17. [Skarda v. First Mortgage Loan Co.](#), 1923-NMSC-043 

B Dissenting opinion citing

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Discussion:  | Court: N.M. | Date: April 13, 1923

18. [Hart v. Oliver Farm Equip. Sales Co.](#), 1933-NMSC-037 

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22. [Daily v. Fitzgerald](#), 1912-NMSC-017 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.390

Discussion:  Court: N.M. | Date: May 5, 1912

-
23. [James v. Board of Comm'rs](#), 24 N.M. 509 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.390

Court: N.M. | Date: August 27, 1918

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24. [Vorenberg v. Bosserman](#), 1913-NMSC-005 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.393

Discussion:  Court: N.M. | Date: January 14, 1913

25. [Roberts v. Lubin](#), 25 N.M. 658 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.395

Court: N.M. | Date: January 31, 1920

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26. [Bank of Commerce v. Duckworth](#), 1922-NMSC-007 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.396

Discussion:   | Court: N.M. | Date: January 6, 1922

-
27. [Smith & Ricker v. Hill Bros.](#), 1913-NMSC-004 

B Dissenting opinion citing

First Ref: 40 N.M. 380 at p.396

Discussion:   | Court: N.M. | Date: January 14, 1913

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28. [James v. Bd. of Comm'Rs](#), 1918-NMSC-106 

LB Citing

Discussion:   | Court: N.M. | Date: August 27, 1918

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29. [Roberts v. Lubin](#), 1920-NMSC-009 

LB Citing

Discussion:   | Court: N.M. | Date: January 31, 1920

New York Court of Appeals

-
30. [Williamson v. Brown](#), 15 N.Y. 354 

LB Citing

First Ref: 60 P.2d 635 at p.640

Discussion:   | Court: N.Y. | Date: June 1, 1857

-
31. [Mack v. Phelan](#), 92 N.Y. 20 

LB Citing

First Ref: 60 P.2d 635 at p.644

Discussion:  | **Court:** N.Y. | **Date:** March 27, 1883

North Carolina Supreme Court

32. [Turpin v. Cunningham](#), 127 N.C. 508 

 **Citing**

First Ref: 60 P.2d 635 at p.644

Court: N.C. | **Date:** December 22, 1900

North Dakota Supreme Court

33. [Harry E. McHugh, Inc. v. Haley](#), 61 N.D. 359 

 **Citing**

First Ref: 60 P.2d 635 at p.640

Discussion:  | **Court:** N.D. | **Date:** August 18, 1931

Tennessee Supreme Court

34. [Wilkins v. McCorkle](#), 112 Tenn. 688 

 **Citing**

First Ref: 60 P.2d 635 at p.640

Discussion:  | **Court:** Tenn. | **Date:** April 1, 1904

Texas Court of Civil Appeals

35. [McQueen v. Tenison](#), 177 S.W. 1053 

 **Citing**

First Ref: 60 P.2d 635 at p.638

Discussion:  | **Court:** Tex. Civ. App. | **Date:** June 12, 1915

-
36. [La Brie v. Cartwright](#), 55 Tex. Civ. App. 144 

 **Citing**

First Ref: 60 P.2d 635 at p.640

Discussion:  | **Court:** Tex. Civ. App. | **Date:** April 7, 1909

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37. [Harding v. Jesse Dennett, Inc.](#), 17 S.W.2d 862 

 **Citing**

First Ref: 60 P.2d 635 at p.643

Discussion:  | Court: Tex. Civ. App. | Date: May 1, 1929

Utah Supreme Court

38. [Harrison v. Auto Sec. Co.](#), 70 Utah 11 

 Citing

First Ref:60 P.2d 635 at p.638

Discussion:  | Court: Utah | Date: April 2, 1927

Virginia Supreme Court

39. [Mack International Motor Truck Corp. v. Jones & Combs](#), 153 Va. 183 

 Citing

First Ref:60 P.2d 635 at p.643

Discussion:  | Court: Va. | Date: September 19, 1929

Indian Territory

40. [Davis v. First Nat'l Bank](#), 6 Indian Terr. 124 

 Citing

First Ref:60 P.2d 635 at p.644

Court: Ind Terr. Ct. of App. | Date: October 27, 1905

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Shephard v. Van Doren

Supreme Court of New Mexico

August 11, 1936

No. 4068

Reporter

40 N.M. 380 *; 1936-NMSC-051 **; 60 P.2d 635 ***; 1936 N.M. LEXIS 55 ****

SHEPHARD v. VAN DOREN

Subsequent History: [****1] Rehearing Waived September 15, 1936.

Prior History: Appeal from District Court, Chaves County; Charles R. Brice, Judge pro tem.

Action by T. D. Shephard, doing business as Shephard Chevrolet Company, against Elwood Van Doren. From a judgment for plaintiff, defendant appeals.

Disposition: Reversed and remanded, with directions.

Core Terms

mortgage, engine, purchaser, numbers, chattel mortgage, mortgagee, conditional sales contract, trial court, innocent, mortgagor, appears, parties, marks, constructive notice, records, bought, actual knowledge, circumstances, ownership, estopped, estoppel, dealer, notice, pan, appellate court, good faith, identification, restoring, repaired, stranger

Case Summary

Procedural Posture

Defendant buyer appealed a judgment of the District Court, Chaves County (New Mexico), which was rendered in favor of plaintiff automobile dealer in the dealer's suit in replevin seeking the return of a car purchased by the buyer under the terms of a conditional sales contract executed by a previous buyer and filed with the county clerk.

Overview

The previous buyer defaulted on his contract to buy the car. He gave possession of the car to another who transported it to another town and changed the motor number. The original buyer then regained possession of the car and returned it to the dealer, who noted the new engine number on the conditional sales contract and redelivered the car to the original buyer. The original buyer then sold the car to another who sold it to defendant buyer. The automobile dealer brought a suit in replevin seeking the return of the car. The trial court rendered judgment in the dealer's favor and the buyer appealed. The court held that the dealer's act, after regaining possession of the automobile bearing a false engine number, in restoring the automobile still bearing the false and altered number to the original buyer, denied to any subsequent good-faith purchaser the intended means of connecting it with the conditional sales contract. The court reversed the judgment in favor of the dealer because the court held that the dealer was estopped from asserting his lien against the buyer under the circumstances.

Outcome

The court reversed the judgment and remanded the case to the trial court with instructions to enter judgment in favor of the buyer.

LexisNexis® Headnotes

of Sale > General Overview

[HN1](#) Purchase & Sale, Contracts of Sale

A description of mortgaged automobiles by the make and engine number completely and absolutely identifies them, since that is all that is necessary to impart constructive notice to subsequent purchasers.

Real Property Law > Purchase & Sale > Contracts of Sale > General Overview

[HN2](#) Purchase & Sale, Contracts of Sale

Where the descriptions of property given are intrinsically false and misleading, the mortgage given thereon is not valid.

Contracts Law > ... > Estoppel > Equitable Estoppel > General Overview

Real Property Law > Purchase & Sale > Contracts of Sale > General Overview

[HN3](#) Estoppel, Equitable Estoppel

It is only where some act of the mortgagee or conditional vendor aids in destroying the intended purpose of registration or recording acts, that the consequences of estoppel will attach.

Real Property Law > Purchase & Sale > Contracts of Sale > General Overview

[HN4](#) Purchase & Sale, Contracts of Sale

Even the theory of liability based on constructive notice fails if the descriptive and identifying marks on the property are changed.

Contracts Law > Personal Property > Bona Fide Purchasers

[HN5](#) Personal Property, Bona Fide Purchasers

Whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.

Contracts Law > ... > Estoppel > Equitable Estoppel > General Overview

Real Property Law > Purchase & Sale > Contracts of Sale > General Overview

[HN6](#) Estoppel, Equitable Estoppel

There can be no question that the rule of estoppel, in cases in which the one relying on the statute has himself afforded the opportunity to a dealer to sell the automobile in controversy in the regular course of trade, will better accord with fundamental ideas of justice.

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > Title Quality > Adverse Claim Actions > Quiet Title Actions

[HN7](#) Personal Property, Bona Fide Purchasers

A person cannot be a bona fide purchaser who has brought to his attention facts which should have put him on inquiry, an inquiry which, if pursued with due diligence, would have led to knowledge of a lien on or adverse interest in the property.

Counsel: J. C. Gilbert, of Roswell, for appellant.

H. C. Maynard, of Roswell, for appellee.

Judges: Sadler, Chief Justice. Bickley and Zinn, JJ., concur. Brice, J., did not sit in this case and does not participate in the decision. Hudspeth, Justice (dissenting).

Opinion by: SADLER

Opinion

[**1] [*381] [***636] This appeal is for review of a judgment in replevin. The plaintiff, who prevailed below, does business at Plainview, Tex., in the name of Shephard Chevrolet Company, conducting an automobile agency, selling new and used cars. He sold to one C. H. Little a certain used Chevrolet automobile, 1931 model, bearing engine number 2456779, under a conditional sales contract, duly filed with the county

clerk in Lamb county, Tex., county of the purchaser's residence, so as to constitute constructive notice of plaintiff's contract. Under the laws of the state of Texas, the conditional sales contract [****2] was the equivalent of a chattel mortgage in plaintiff's favor on the automobile in question.

[**2] Little, original purchaser, placed the automobile in possession of one Leo Parks, who transported same to Roswell and there had the motor number changed from 2456779 to 1392476. Parks subsequently pleaded guilty before the district court of Chaves county to a criminal offense involving this alteration of the engine numbers [*382] and received a sentence which was suspended. After this change in numbers, the car came again into possession of Little, who returned it to Texas. While there the plaintiff checked same and finding it to be the identical car theretofore sold Little, but with the motor number changed, made notation of the change in motor number on his (plaintiff's) copy of the conditional sales contract and redelivered same into Little's possession. Little returned it into Park's possession. The latter took the car to Roswell, where he sold it to one Carl Johnson, who in turn sold same to Elwood Van Doren, the defendant herein. Neither Johnson nor Van Doren had actual knowledge of plaintiff's lien at the time of their respective purchases.

[**3] Little having defaulted in meeting [****3] the payments due under his purchase contract, and the plaintiff's right to possession arising by its terms, he located the car with defendant and demanded its return to him. Possession being refused, he instituted this action in replevin. From a judgment in his favor, the defendant prosecutes this appeal.

[**4] While several points are presented and argued, only one of them need be considered, since it appears decisive. It is, in substance, that plaintiff's act, after regaining possession of the automobile bearing a false engine number, in restoring the automobile to the original purchaser still bearing such false and altered number, denied to any subsequent good-faith purchaser the intended means of connecting it with plaintiff's conditional sales contract; and that by reason thereof the plaintiff is estopped from asserting his lien against such a purchaser.

[**5] The trial court of its own motion made findings as follows:

"On the date of the purchase of said automobile by C. H. Little, the plaintiff gave to C. H. Little a bill of sale thereto and at the same time and a part of the same

transaction C. H. Little gave to the plaintiff the conditional sales contract heretofore mentioned which, [****4] under the laws of the State of Texas is a mortgage.

"That the said C. H. Little turned the said automobile over to one Leo Parks, who brought the same to Roswell, New Mexico, and while in Roswell, New Mexico, had the motor number to said car changed from 2456779 to 1392476.

"Thereafter, one Carl A. Johnson bought from Leo Parks the said automobile paying therefor a valuable consideration without actual knowledge of any interest of the plaintiff in and to said automobile.

"Thereafter the said Carl A. Johnson sold to the defendant the automobile in question and the defendant had no actual knowledge of any claim, right, title or interest of the plaintiff in and to said automobile. That both Carl A. Johnson and the defendant were purchasers in good faith believing the said Leo Parks was the owner of said car.

"That the conditional sales contract from the plaintiff to Little heretofore mentioned [***637] was duly filed for record in the chattel [*383] mortgage records of Lamb County, Texas, on the 21st day of June 1932.

"That under the laws of the State of Texas the filing of such conditional sales contract (or chattel mortgage as it is under the laws of the State of Texas) is constructive [****5] notice to all the world as to its contents."

[**6] The defendant requested, and the trial court made, the following findings touching the issue under discussion, to wit:

"That subsequent to the original sale of said automobile by plaintiff to C. H. Little, and prior to the purchase of said automobile by the defendant, the engine therein had been changed or the numbers on the engine therein had been changed from 2456779 to 1392476 of which fact plaintiff had full knowledge, and that plaintiff after such change in engine or numbers had been made, had said automobile in his or its possession and noted on the original conditional sales contract, which he had in his possession such change in numbers, and thereafter allowed said automobile to go out of his possession and back to the possession of said C. H. Little, and that at the time of the purchase of said automobile by the defendant there was no record in any county in the State of Texas that plaintiff had a conditional sales

contract with anyone on an automobile with an engine in the same numbered 1392476, and that defendant had no knowledge constructive or otherwise of such engine change or number changes.

"That at the time of the purchase [***6] by defendant of the automobile in question from Carl Johnson, the engine in said automobile was numbered 1392476, and that the plaintiff had knowledge that the engine in said car had such number, and that he had no conditional sales contract on record in the State of Texas with anyone upon an automobile bearing engine number 1392476."

[**7] The two findings just quoted stand before us unchallenged by any exception on plaintiff's part. Read in connection with other findings of the court, it must be taken as the fact that no substitution of the engine occurred, only the identifying numbers thereof being changed. Indeed, Parks, charged with having altered the motor numbers, pleaded guilty to having done so and received a suspended sentence therefor.

[**8] We have then this situation: The plaintiff, by instruments duly executed and filed for record in Lamb county, Tex., has a lien on a certain 1931 model Chevrolet automobile, bearing engine number 2456779. We may assume for purposes of our decision, as contended by the plaintiff and held by the trial court, that pursuant to the holding in Hart v. Oliver Farm Equipment Sales Company, 37 N.M. 267, 21 P.2d 96, on the facts here shown and under [***7] ordinary conditions, this lien would be recognized and enforced in New Mexico. Subsequent to reservation of the lien the automobile comes back into possession of the mortgagee bearing a false engine [*384] number. With knowledge that such is the case, the mortgagee, after noting the false number on his copy of the contract or mortgage, redelivers the car into original purchaser's possession, and thereafter it passes into the hands of one who pays value without actual knowledge of any claim, right, title, or interest of the plaintiff in and to said automobile.

[**9] Is the mortgagee under such conditions in position to assert the lien of his mortgage against said good-faith purchaser? We hold him estopped from doing so.

[**10] For purposes of identification in chattel mortgages and conditional sales contracts, the make, model, and engine number of automobiles are almost universally employed in describing the property mortgaged.

HN1 [↑] "A description of mortgaged automobiles by the make and engine number completely and absolutely identifies them, since that is all that is necessary to impart constructive notice to subsequent purchasers." 7 Blashfield's Cyclopedia of Automobile Law and Practice [***8] (Permanent Edition) § 4684, p. 314.

"It is common knowledge, and the uncontradicted evidence shows, and the jury would have been warranted in finding, that automobiles of various mechanical designs, made by numerous manufacturers under multiform trade-names, are constantly in the market for purchase and sale, and that cars of any one of the makers can be distinguished with reasonable certainty from other automobiles of the same class, only by the number by which each car is designated." Wise v. Kennedy, 248 Mass. 83, 142 N.E. 755, 756.

[**11] It is well settled that **HN2** [↑] "where the descriptions given are intrinsically false and [***638] misleading, the mortgage given thereon is not valid." 7 Blashfield Cyclopedia of Automobile Law and Practice (Permanent Edition) § 4684, p. 312; McQueen v. Tenison (Tex.Civ.App.) 177 S.W. 1053; First National Bank v. Gardner, 222 Mo. App. 858, 5 S.W.2d 1115; Shearer v. Housch, 32 Ga. App. 663, 124 S.E. 356; First Mortgage Loan Co. v. Durfee, 193 Iowa 1142, 188 N.W. 777; Becker v. Dalby (Iowa) 86 N.W. 314.

[**12] One of the chief objects of particularity in description is to enable a prospective purchaser or incumbrancer to identify the tendered property as that previously [***9] mortgaged. If this purpose is to be fully served, the description in the mortgage and that borne by the property should be found in continuous reconcilement throughout the life of the mortgage. To say the least, this purpose is wholly defeated if the identifying marks on the property are so altered or changed that a comparison of same with the description in the mortgage not only fails to establish it as the same property, but leads to the false conclusion that it is different property.

[**13] We are not to be understood as intimating that a mortgagee, as the price of preserving his lien, is an insurer of the continuing sameness of the description in the mortgage and that borne by the property. [*385] It would be a harsh rule which imposed any such duty, particularly where, as in most instances, he is not in possession of the property and changes or defacement of descriptive marks on the property most often would be made for the very and fraudulent purpose of defeating his lien. Where he is in no sense responsible

for the continued circulation in channels of trade or commerce of the property bearing false identification marks, his rights will be wholly unaffected by subsequent dealings [****10] in such property, no matter how good or strong the faith of him who deals in reliance upon the truth of false descriptive marks.

[**14] [HN3](#) It is only where some act of the mortgagee or conditional vendor, as in the instant case, aids in destroying the intended purpose of registration or recording acts, that the consequences of estoppel will attach. Let us apply this statement to the present facts. We assume that defendant, under doctrine of [Hart v. Oliver Farm Equipment Sales Company, supra](#), stood charged constructively with notice of plaintiff's lien upon the automobile in question. The harshness of this rule as operative against subsequent purchasers without actual knowledge is tempered by the *legal fiction* that knowledge of the prior mortgage is present in the purchaser's mind, and having this constructive notice, by mere comparison of descriptions he is in legal contemplation forewarned of danger in dealing with the property. But [HN4](#) even the theory of liability based on constructive notice fails if the descriptive and identifying marks on the property are changed.

[**15] And so, according defendant's mental processes to the theory of constructive notice, the comparison of descriptions presupposed [****11] by such theory, instead of warning that he is purchasing the mortgaged car, will prove quite satisfying that he is not.

[**16] Or, if we assume knowledge of facts sufficient to have prompted an inquiry of the recorder's office in Lamb county, Tex. (an assumption contradicted by the court's finding that defendant was a good-faith purchaser without knowledge "constructive or otherwise" of the change in engine numbers), the result does not vary. An actual search of the records there would have disclosed no lien on a 1931 model Chevrolet coupe with engine number 1392476, the false number borne by the engine in question at the time of defendant's purchase and which in good faith he relied upon as the true number.

[**17] Under authorities hereinabove cited, the use in the original contract of this false description of the mortgaged automobile would have rendered the mortgage invalid in its inception as against a subsequent purchaser in good faith. Does it operate less effectively to this end against such a purchaser where the mortgagee having possession of the automobile, with knowledge of the false and fraudulent change in engine number, and without removing the

false and restoring the true number, [****12] redelivers possession to the purchaser [*386] in whose hands it may become the subject of sale, barter or exchange? We hold it does not.

[**18] The defendant, citing [Harrison v. Auto Securities Co., 70 Utah 11, 257 P. 677, 679, 57 A.L.R. 388](#), relies upon the principle there applied in the following language in favor of an innocent purchaser of a mortgaged automobile, to wit: "The trial court was of the opinion that it appears from this record that one of two innocent [***639] parties must suffer from the wrongful act of a third person, and that the loss should fall upon the one who by his conduct created the circumstances which enabled the third party to perpetrate the wrong and cause the loss, and determined the case on that principle of law. The rights of the parties, in our judgment, could well be ruled upon this general principle of law, and, so ruled, would entitle plaintiff to recover."

[**19] This well-known rule is stated under the text treatment of the subject of Estoppel in 21 C.J. 1170, as follows: [HN5](#) "Whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it."

[**20] In the Harrison Case from Utah from which [****13] we have just quoted, the court was dealing with a question upon which there is some conflict of authority, viz., whether the purchaser of an automobile from the place of business of a retail automobile dealer where it is mingled with the stock for sale from the showroom of such dealer is constructively charged with notice of a prior recorded lien upon such automobile. Without indicating a preference for one or the other of these conflicting views, since no such case is before us, we may say that we consider the reasoning which Mr. Blashfield urges in support of an estoppel in favor of the innocent purchaser in such situation to apply with particular force in the case before us. He writes: "There is thus a conflict between decisions resting on the letter of the statute on the one hand and decisions resting largely upon considerations of substantial justice and public policy on the other. [HN6](#) There can be no question that the rule of estoppel, in cases in which the one relying on the statute has himself afforded the opportunity to a dealer to sell the automobile in controversy in the regular course of trade, will better accord with fundamental ideas of justice. The Gordian knot has been [****14] cut in some jurisdictions by holding that there can be no conditional sales of automobiles to dealers where they are to be resold." 7

Blashfield's Cyclopedia of Automobile Law & Practice (Permanent Edition) § 4595, p. 240.

[**21] These statements of principle control the rights of the parties in the case before us. Strictly speaking, it is difficult to think of plaintiff as wholly innocent. Not that he became particeps criminis to the unlawful act of changing the motor number. But rather because with knowledge that the unlawful act had been done, and with opportunity at hand to avoid its consequences by effacing the false and restoring the true [*387] number, he mistakenly and carelessly thought it best or was content himself to adopt the false number as a future means of identifying the mortgaged car. He thereby sent it out bearing known false insignia and is thus estopped to dispute the title of one purchasing in reliance upon the false as genuine.

[**22] As to degrees of innocence, the case is more like that of *Kearby v. Western States Securities Co., 31 Ariz. 104, 250 P. 766, 769*, where the court said: "The other proposition presented by appellant is, to our minds, also applicable. [****15] While it is true that the Securities Company and Kearby may both be regarded as innocent, *they are not equally so*, in view of the fact that the former, after becoming the owner of the car through the assignment, permitted a condition to exist that made it possible, if appellee's contention should prevail, for Baumgardner and the Motor Company to defraud appellant." (Italics ours.)

[**23] In reaching the conclusion we have, importance is attached to the fact of plaintiff's possession of the car after knowledge of the fraudulent change in numbers and his release of same to Little still bearing the false engine number. It is suggested that, contrary to the language of the trial court's finding, the plaintiff's possession of the car was nothing more than storage for a short period such as might have been had of any stranger's car, without the control carried by repossession of mortgaged property.

[**24] It may in fact have been so, but we are controlled by the finding actually made. Little did not testify and the plaintiff's testimony was equivocal. He stated, "The car was returned to us"; that he (Little) brought it to plaintiff's garage and "turned it over" to the plaintiff. On the other [****16] hand, he stated just following the testimony last quoted: "I never did take possession of it; he just brought it in there, said he had found his car and he had it back."

[**25] Plaintiff testified that the car was in Plainview about half a day when Little returned it, and that during

such period he and his employees removed various parts from the engine in the search for secret numbers carried by the car, which they discovered, thereby establishing it to be the [***640] same and not a substituted engine. Under the terms of the conditional sales contract, plaintiff was entitled to possession not only for default in making payments called for by the contract or removal of the property without seller's written consent from county of purchaser's residence, but also if "the seller deems the property in danger of misuse or confiscation."

[**26] In view of these considerations and the acts done in reference to the car while in his possession, it was for the trial court by its findings to characterize the nature of plaintiff's possession. Having found that after the fraudulent change in engine numbers and with knowledge thereof the plaintiff had the car in his possession and "thereafter allowed (italics [****17] ours) said automobile [*388] to go out of his possession and back to the possession of C. H. Little," we must give the word "possession" the meaning which the language of its context plainly implies.

[**27] Nor -- in view of the trial court's finding that defendant was a good-faith purchaser "believing the said Leo Parks was the owner of said car," without "actual knowledge of any claim, right, title, or interest of the plaintiff in and to said automobile," and "without knowledge constructive or otherwise of such engine change or number changes" -- are we permitted to inquire whether notwithstanding the change in numbers, there were other facts sufficient to excite inquiry which pursued would have disclosed knowledge of plaintiff's lien.

[**28] *HN7* A person cannot be a "bona fide purchaser" who has brought to his attention facts which should have put him on inquiry, an inquiry which, if pursued with due diligence, would have led to knowledge of a lien on or adverse interest in the property. *Wafer v. Harvey County Bank, 46 Kan. 597, 26 P. 1032; Mangum v. Stadel, 76 Kan. 764, 92 P. 1093; Manwaring v. O'Brien, 75 Minn. 542, 78 N.W. 1; Williamson v. Brown, 15 N.Y. 354, 362; LaBrie v. Cartwright, [****18] 55 Tex. Civ. App. 144, 118 S.W. 785; Harvey E. McHugh, Inc., v. Haley, 61 N.D. 359, 237 N.W. 835; Wilkins v. McCorkle, 112 Tenn. 688, 80 S.W. 834.*

[**29] It follows that the judgment of the trial court must be reversed, and the cause will be remanded, with a direction to the trial court to set aside the judgment heretofore entered and to render judgment in

defendant's favor upon the issues joined and for his costs. It is so ordered.

Dissent by: HUDSPETH

Dissent

HUDSPETH, Justice (dissenting).

[**30] The defendant in this case throughout the trial maintained that Leo Parks bought an engine numbered 1392476 from O. B. Thompson and had that placed in the Chevrolet car involved in this case. The counsel for the defendant-appellant, while Carl A. Johnson was on the stand, stated: (Tr. 117) "If the court please Mr. Johnson is the man who bought this car and sold it to Mr. Van Doren, and he is the man that will have to pay Mr. Van Doren for the value of it."

[**31] Johnson testified: "There wasn't any changed numbers on the car; here's the motor he bought and put in there," and that he knew Leo Parks, from whom he bought the car, had received a suspended sentence for changing numbers on an engine.

[**32] There appears in [****19] evidence an affidavit sworn to before Carl A. Johnson, notary public, as follows:

[*389] "Used Car Dealer Short Time Loans

"Established 18 years

"Carl Johnson

(Of Course)

"Roswell, New Mexico

"11-26-32

"To Whom it may Concern:

"This is to certify that on or about the 1st day of September I placed a Chevrolet motor bearing engine No. 1392476 in a Chevrolet coupe at the request of Mr. Leo Parks who presented to me a bill-of-sale for the above described car, signed by O. B. Thompson, a dealer in Junk parts in Roswell, New Mexico. This motor replaced engine No. 2456779.

"This affidavit is made for the purpose of assisting Mr. Parks in securing license for the above described car in the State of New Mexico for 1933.

"[Signed] A. E. Howard

"Subscribed and sworn to before me this 26th day of 1932.

"Carl A. Johnson

"(Notarial Seal) Notary Public.

"My commission expires July 22, 1933."

[**33] Thompson testified as follows:

"Q. This number is 1392476? A. Yes, sir, that is the motor I sold him.

"Q. Who did you get that motor from? A. I just couldn't say the man's name, but [***641] I got that from a man at Hobbs, and through the way I happened to buy the motor I didn't get [****20] to see the man when I got it, to get a bill of sale and the papers on it."

[**34] Leo Parks was also a witness for appellant. He admitted having served a term in the Colorado penitentiary. He had no bill of sale from Little, and his testimony as to the ownership follows:

"A. Well, sir, it was on August 18, '32, I came home and Charlie Little was there in the morning, and had give this car to my wife.

"The Court: Where was this?

"A. Clovis, New Mexico, sir, and he then gave me what papers he had on the car, the license receipts, brake receipts, light receipts, and said that later he would send me a bill of sale, just as soon as he went home and got it, and I told him I could not wait that long, because I was going on through to California, that I would come out there, after I got there he could write or send it down to me, or anyway at all.

"The Court: Send it where?

"A. To California. On the way down here I burned the engine out, and I came down here and I bought an engine from Mr. Thompson on North Main * * *."

[**35] Does the finding in the alternative that "the engine therein had been changed or that the number on the engine therein had been changed," under the facts and circumstances, [****21] meet the requirement of specifically calling to the attention of the trial court the claimed error? It has been held that a point not raised or insisted upon at the trial cannot be urged before us. [Chaves v. Myer, 13 N.M. 368, 85 P. 233, 6 I³901](#)

L.R.A.(N.S.) 793; James v. Board of County Commissioners, 24 N.M. 509, 174 P. 1001. In his brief in this court appellant repeatedly refers to the change of motors. There is no specific assignment of error based upon the change in the number of the motor.

[**36] It is also the rule here that "if there are doubts as to the meaning of any finding," that must be resolved in support of the judgment. Zack Metal Co. v. Torpedo Copper Co., 17 N.M. 137, 125 P. 625, Ann. Cas.1914D, 1183; Guaranty Banking Corp. v. Western I. & B. Co., 28 N.M. 19, 205 P. 728; James v. Anderson, 39 N.M. 535, 51 P.2d 601. The latest text on the subject appears in 3 Am.Jur. p. 463, as follows:

"Sec. 898. Inconsistent Findings. -- Where findings of fact are so inconsistent that it is impossible to harmonize them, it is the duty of the appellate court to accept those which are most favorable to the appellant. And where there are two possible constructions of a finding [****22] of fact made by the trial court, the appellate court will adopt the one which renders such finding consistent with the evidence and with the other findings, rather than one which makes it contrary to the evidence and to repeated concessions by both parties on the trial. In other words ambiguous findings will be given a construction which will support the judgment, rather than one which will require its reversal. It clearly will not, by construction, create an inconsistency where it is apparent that none was intended."

"Sec. 899. Findings Contrary to, or Inconsistent with, Evidence. -- The rule giving great weight in the appellate court to the finding of the trial court on a question of fact lays no restraint on the power of the former to ascertain, by full and careful investigation and analysis of the evidence, what the facts and circumstances are and whether the general finding is consistent therewith, or, in other words, whether there is any evidence to sustain the finding. The findings of the trial court will not ordinarily be disturbed, but the appellate court is not necessarily concluded thereby. Such findings have weight with the appellate court, but they are not controlling [****23] upon it unless they are supported by competent evidence. Findings not supported by any competent evidence or which disregard uncontested credible evidence, or which are contrary to a conclusion of law resulting from other facts found, cannot be sustained, and a judgment based thereon will be reversed. The question whether or not the facts found support the conclusions of law is one of law. If the finding is the result of bias or prejudice, mistake or misapprehension, or misconception of the legal effect of

the evidence, or if the evidence shows that the judgment is clearly wrong on the sole issue of fact, it will be set aside."

[**37] On the question of the character of the "possession," it may be well to note defendant's requested finding of fact No. 11, which was refused. It reads as follows: "11. The Court further finds as a fact that the plaintiff, T. C. Shephard, exercised his [*391] right to repossess himself of said car under the conditional sales contract recorded [***642] in the State of Texas, sometime in November 1932, by taking said car from the possession of the plaintiff's vendee, C. H. Little, and after inspecting said car and taking same apart to a certain extent, then [****24] redelivered said car back to said C. H. Little, and there was no evidence that said contract was in any way or manner renewed between plaintiff and said C. H. Little."

[**38] It appears to me that there is such doubt as to the meaning of the court as to the kind of possession referred to in the special finding that we should look to the testimony. Shephard, the appellee, testified:

"Q. Was the car ever returned to Plainview? A. Yes, sir, the car was returned to Plainview by Mr. Little. * * *

"Q. Now, this may be a little out of order, but when Mr. Little came to Texas, was the Department of Justice man after him? A. Yes, sir; when the car was stolen, as reported by Mr. Little, the insurance company immediately took it up with the underwriter's insurance, of which I think they have a bureau, theft bureau. They thought it was an attempt to defraud the insurance company, so the Department of Justice man located the car in Roswell, and he immediately made a trip to Olton and brought Mr. Little to Plainview, and they tried to satisfy themselves as to whether there was a chance to defraud the insurance company, or whether the facts actually happened as told by Mr. Little, and Mr. Little [****25] satisfied the Department of Justice men.

"Q. Who was present? A. Mr. Harder and myself and the Deputy Sheriff at Plainview.

"Q. Go ahead, what was done? A. The Department of Justice then told the Sheriff's Department there, and also Mr. Harder, the insurance man, that they could not find anything wrong, inasmuch as Mr. Little had made all of his payments to us on the car, and they did not see any attempt there to defraud the insurance company.

"Q. Now, Mr. Little at the time the car was reported stolen, had he made his payments? A. Yes, sir. * * *

"Q. Now, when Mr. Little brought it back over there -- Did he bring it back, Little? A. Yes, sir.

"Q. He brought it down to your garage and turned it over to you? A. Yes, sir.

"Q. And you took it yourself, took the car? A. I never did take possession of it; he just brought it in there, said he had found his car and he had it back. * * *

"Q. How long did Little have that car in Plainview when he came back there with it? A. I guess about half a day. On the Chevrolet car they have a secret number, they have a few -- several secret numbers; they have one under the motor -- we have to take the oil pan off -- and then they have [****26] identification number on the transmission; have one on the differential, and have body numbers and several different [*392] things that the cars can be identified; so we took the pan off the car to identify the automobile, knowing where this car number is. So the number on the outside was a very good job of changing numbers, but the numbers on the inside, inside of the pan, was a very poor job, and you could tell the original numbers on the car as it was at that time, and I reckon, unless it hasn't been changed, still shows. So we drop the oil pan on the car to further identify the motor and check with original motor that was on there, so whoever changed the numbers did a very poor job on what we call our secret number. On the outside number they made an error on changing the first number. The first number on the Chevrolet automobile, inasmuch as they run about a million a year, the number changed on the first number counted a year's difference in model, so when they changed this to a thirty-one model, they changed it back to a number that had already come out in thirty or thirty-one, so the man identified it as being a wrecked car he had repaired. The car was traded for [****27] in January by Mr. Collier and was held there until June before we sold it to Mr. Little, so we got pretty familiar with the automobile."

[**39] It seems clear to me that the appellee had possession of the car only in the sense that he had it in his garage and made the examination to determine whether or not it was the same automobile and engine on which he had a lien. Little, the owner, who was not in arrears in his payments, voluntarily brought the car to the garage. There must be a breach -- the mortgagee cannot take possession on a mere whim. There must be some reasonable violation, or probability of violation of the terms of the mortgage. Glaspie v. Williams (Ariz.) 46 Ariz. 381, 51 P.2d 254.

[**40] Apparently the majority rely upon the provision

in the mortgage that if "the seller deemed the property in danger of misuse or confiscation" as authority. I am [***643] unable to follow their reasoning. I do not understand what misuse the mortgagee had a right to anticipate nor by whom the car might be confiscated. No authority is cited, and I believe this is the first time that a court has held that such a provision authorized the mortgagee to take possession where the mortgagor was merely the victim of a criminal [****28] who had changed the numbers on an engine. Little was entitled to the possession, in my judgment, and the mortgagee had no right to the possession of the car nor did he owe a duty to "innocent purchasers."

[**41] It occurs to me that the majority, by the new doctrine announced in this case, have abandoned the public policy as to chattel mortgages, as indicated by both legislative enactment and judicial decision, heretofore prevailing in this state. The Legislature in 1925 enacted a law (chapter 25, Session Laws 1925) requiring that abstracts of chattel mortgages affecting motor vehicles be filed with the secretary of state, but four years later the law was repealed (Laws 1929, c. 83). Evidently the Legislature realized that, as a practical proposition, the recording of chattel mortgages [*393] afforded no protection to the purchaser of secondhand cars except those known locally, and deemed the county record sufficient.

[**42] The rule has heretofore been in this state that all of the description in chattel mortgages might be looked to to identify the property.

[**43] The late Mr. Justice Parker, referring to the description in a chattel mortgage, said: "Under the familiar general rule of construction, [****29] every word used by the parties to a contract must be given its full and fair meaning and operation." Vorenberg Co. v. Bosserman, 17 N.M. 433, 130 P. 438, 440. This mortgage or sales contract contained the car number as well as the engine number.

[**44] In Thompson v. King Motors, 19 La. App. 298, 140 So. 257, 259, the court said: "The evidence shows that no two cars have the same serial number or the same motor number, and either or both is sufficient to identify the car. We think the description in the judgment is sufficient to identify the car in third opponent's possession as the car upon which a lien is recognized."

[**45] Jones states the rule as to description of property in chattel mortgages as follows: "If a stranger

should be sent out to select property mortgaged, with no other means of identification than such as are afforded by the written description, and without being at liberty to supplement that information by such as can be gained in the mortgagor's neighborhood by inquiry of those who know what property the mortgagor was possessed of which would answer the description in the instrument when it was given, and by possessing himself of such other circumstances as persons usually [****30] avail themselves of in applying written descriptions to the things intended, it is much to be feared that the stranger would be so often at fault that chattel mortgages, if their validity depended upon his success in identifying the property, would seldom be of much value as securities. Written descriptions of property are to be interpreted in the light of the facts known to and in the minds of the parties at the time. They are not prepared for strangers, but for those they are to affect, -- parties and their privies. A subsequent purchaser or mortgagee is supposed to acquire a knowledge of all the facts so far as may be needful to his protection, and he purchases in view of that knowledge." 1 Jones on Chattel Mortgages (Bowers Ed.) p. 96. After stating that "a means of description frequently used is the giving of the make and engine number of the automobile; and if these be incorrectly given, strangers to the instrument are not affected by it," he says: "An automobile may, however, be sufficiently described in the mortgage aside from, or in addition to, the numbers given, as to render the instrument effective, when recorded, as constructive notice." Citing Iowa Sav. Bank v. Graham, [****31] 192 Iowa 96, 181 N.W. 771; Valley Securities Co. v. De Roussel, 16 La. App. 115, 133 So. 405; Harding v. Jesse Dennett, Inc. (Tex.Civ.App.) 17 S.W.2d 862; Mack International Motor Truck Corp. v. [*394] Jones & Combs, 153 Va. 183, 149 S.E. 544. 1 Jones on Chattel Mortgages (Bowers Ed.) p. 140.

[**46] In the annotation following Harris Motor Company v. Bailey, 219 Ala. 8, 121 So. 33, 63 A.L.R. 1453, a case involving a truck in which the motor had been changed, the following appears:

"As between mortgagees and purchasers, the rule, as stated by Judge Freeman in Barrett v. Fisch (1889) 76 Iowa 553, 41 N.W. 310, 14 Am.St.Rep. at page 242, is: 'The mortgage * * * must point out the subject matter of it, so that such persons (purchasers) by it, together with such inquiries as the instrument suggests, may be [***644] able to identify the property intended to be covered.' This statement of the rule accords with the doctrine long recognized in and enforced by this court.

"As to whether inquiry would have led to the discovery of the fact that the mule purchased from the mortgagor was the mule covered by the mortgage was a jury question. Stickney v. Dunaway [169 Ala. 464, 53 So. 770] supra.

"And [****32] a change of the color of a horse which was correctly described in a registered mortgage, when it was executed, as a bay horse, but which, from natural or unnatural causes, became a white and sorrel spotted horse, without any appearance of bay whatever, does not defeat the rights of the mortgagee as against a person who purchased the horse after his change of color, without actual notice of the mortgage. Turpin v. Cunningham (1900) 127 N.C. 508, 37 S.E. 453, 51 L.R.A. 800, 80 Am.St.Rep. 808."

[**47] Referring to the case of Mack v. Phelan (1883) 92 N.Y. 20, where the numbers on machinery were changed, the annotator states: "Another answer to the plea of want of notice, according to the court in Mack v. Phelan (N.Y.) supra, was that the purchaser purchased property of the same general description, aside from the numbers, as that contained in the mortgage. And knowing of the mortgage and of the attempt to renew it, he was put upon inquiry, which amounted to actual notice of the mortgage, unless he pursued the inquiry diligently, and was unable thereby to ascertain the existence of the lien. The court observed that the purchaser relied alone upon the statements of the mortgagor in respect [****33] to the lien, made no inquiry of the mortgagee, and did not go to the mills, where the mortgaged property was stated in the mortgage to be, to ascertain whether there were machines there corresponding to those described in the mortgage. Under the circumstances, the court was of the opinion that it would not be held, as a matter of law, that the purchaser used due diligence in prosecuting the inquiry to ascertain whether the property purchased was covered by the mortgage."

[**48] Under these authorities the description was sufficient after the visible number of the motor had been changed. In addition to the car number, this car was identified by the mechanic who repaired it before the sale to Little, and the original engine number [*395] on the inside of the pan could still be deciphered.

[**49] On the question of the purchaser in good faith and estoppel this court has spoken in Roberts v. Lubin, 25 N.M. 658, 187 P. 551, by Mr. Justice Raynolds, as follows:

"It does not appear that defendant knew of the

arrangement between plaintiff and Jones, but that he was a purchaser in good faith, acting upon the supposition that Jones owned the car in question; Jones stating to him, as he testified, [****34] that he was the owner. ***

"The appellant contends that the principle of caveat emptor applies to this case, and that the facts brought out on the trial do not work an estoppel as to him.

"As stated by the trial judge in his oral opinion, the evidence is uncertain and hazy, but he apparently did not base his judgment upon the fact that the plaintiff failed to make out a case as to his ownership of the car, but on the fact that he, plaintiff, had, by his action, clothed Jones with the indicia of ownership and that he was estopped by this action.

"It appears that the plaintiff took no affirmative steps which misled defendant, unless it can be said that his allowing Jones to have possession of the car for repair is one. Defendant did not know about the note by which, in the controversy between Jones and the plaintiff, Jones might have claimed to be the joint owner. The trial judge laid stress on the fact that the cars were not left in plaintiff's garage, but were turned over to Jones and taken by him to his ranch; that plaintiff had no bill of sale for them; and that the note, although it was never seen nor considered by the defendant, was nevertheless a joint note and made Jones [****35] a joint owner. Can it be said that as a matter of law the delivery of possession of an automobile to Jones, under the circumstances in this case, amounted to clothing him with the indicia of ownership and estopped the plaintiff? We think not.

"In our opinion Jones was a bailee for the purpose of repairing the cars, and the defendant purchased from him at his peril. As is said in an elaborate note, at page 761, [Davis v. First National Bank, 6 Indian Terr. 124, 89 S.W. 1015, 25 L.R.A.\(N.S.\) 760](#):

"Does the owner of a chattel run the risk of losing it by parting with possession? [***645] Has the mere holder of such property such ostensible ownership that third persons may deal safely with him on the strength of the apparent title? These questions in effect are answered in the affirmative in Davis v. First National Bank, but no shadow of support is to be found in other jurisdictions for the rule adopted by the Indian Territory court."

[**50] And by Mr. Justice Botts in [Skarda v. First Mortg. Loan Co. of Clovis et al., 28 N.M. 536, 214 P. 761, 763](#), as follows: "Defendants contend that plaintiff

permitted Lee to so deal with these sheep as to clothe Neel with the apparent right to deal with them as [***36] his own, and is now estopped [*396] to deny Neel's authority to execute the mortgages to defendants, under the doctrine that, where one of two innocent parties must suffer, the loss will fall upon the one whose negligence caused it. They rely on the case of [Smith & Ricker v. Hill Bros. et al., 17 N.M. 415, 134 P. 243](#). We are furnished by defendants with rather a meager discussion of the facts or evidence upon which they base this contention, but it would seem that the most that can be said is that there was a mortgage to plaintiff on record which had been executed by Neel as well as by Lee; that, while the mortgagors promised plaintiff, at the time of the execution of the mortgage, that they would put the paint brand mentioned in the mortgage on all the sheep, plaintiff did not follow them up and see that it was done; that Lee put the sheep in charge of Neel on the latter's ranch, while he went back to his home in Kansas and prepared to move to New Mexico; and that while the sheep were so in Neel's charge he employed and paid the help necessary to care for them. As to the proposition of the mortgage being signed by Neel as well as by Lee, *it would seem that, if defendants [****37] knew of such a mortgage on these sheep, prior in time to theirs, then their mortgages could not be otherwise than inferior to plaintiff's mortgage. If they did not know of such mortgage, they were in no wise misled by it.*" (Italics mine.)

[**51] The general rule seems to be that a description that is partially untrue does not render the mortgage void if the part which is correct does not apply to other like property. The serial number shown in this mortgage is on only one Chevrolet car.

[**52] Under these authorities, as stated by the court in [Bank of Commerce v. Duckworth, 27 N.M. 627, 204 P. 58, 59](#), "mere possession without other indicia of ownership does not give the possessor the right to convey any better title than he has." Moreover, the description in the mortgage after the change in the motor number was sufficient to give notice to purchasers from the mortgagor of what property was intended. The buyer of a car not locally known from an ex-convict has a poor case as against a bona fide owner or lien holder.

[**53] The opinion of the majority states: "Where he is in no sense responsible for the continued circulation in channels of trade or commerce of the property bearing false identification [****38] marks, his rights will be

wholly unaffected by subsequent dealings in such property, no matter how good or strong the faith of him who deals in reliance upon the truth of false descriptive marks." I will not gainsay that the traffic in so-called "hot" cars has attained such proportions that, if magnitude alone is the test, it may be designated as "trade or commerce"; but is not the man who "deals in reliance upon the truth of false descriptive marks" a mythical person? There are 26,000,000 motor vehicles in this country. A very considerable proportion of them are mortgaged, and it is inconceivable to me that as a practical matter the records of these chattel mortgages, whether [*397] bearing the original engine number or one substituted by the car thief, could affect the purchaser of a car unknown locally.

[**54] Is the appellant in the same status as a purchaser from the mortgagor? I think not. There is no finding that Little parted with the title. Johnson bought from Parks, who had possession, "believing that he was the owner of the car." Whether Parks was bailee or thief, Johnson, the real party in interest, acquired no better title than Parks had.

[**55] So far as appellant's title [****39] is concerned, he is in the same status as he would be in a contest with the owner of a car which had been stolen the second time, the engine number having been changed by the first thief, and the owner's bill of sale and the officially published New Mexico Automobile License Directory showing only the old engine number in the description of the owner's car.

[**56] Conceivably, John Doe of San Juan county might have his car stolen by an exconvict and driven in one night 500 miles towards the opposite corner of the state [***646] and sold to Richard Roe. On the trial, like the one at bar, the court might ask John Doe:

"Q. Did you have this car six hours after you recovered it before it was stolen the second time? A. I had it six months.

"Q. Why did you not restore the original engine number?
A. I have no skill in that art.

"Q. Why did you not have a neighbor do the work? A. Ours is a law-abiding community and I never heard of the number on a motor being changed in that vicinity.

"The Court: Well, you should have taken this car down to the penitentiary and asked the warden to let one of the inmates skilled in this art restore the original numbers on your car.

"A. But, your Honor, it is my car, [****40] the old numbers show inside the pan, and here is the workman who repaired it and recognizes his handiwork and the serial number is intact.

"The Court: It undoubtedly was your car but it is yours no longer. We must protect innocent purchasers."

[**57] The main if not the sole beneficiaries of this new policy will be car thieves and their confederates. I dissent.

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No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

[**Sewell v. Neilsen, Monroe, Inc.**](#), 109 Idaho 192 **I**

Court: Idaho Ct. App. | **Date:** August 29, 1985

Citing Decisions (54)

Idaho Supreme Court

1. [Farm Credit Bank v. Stevenson](#), 125 Idaho 270 

LB Cited by: 125 Idaho 270 p.273; 869 P.2d 1365 p.1368

Discussion:  | **Court:** Idaho | **Date:** February 24, 1994

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2. [Sutheimer v. Stoltenberg](#), 127 Idaho 81 

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3. [Ponderosa Paint Mfg. v. Yack](#), 125 Idaho 310 

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5. [Thornton v. Mary E. Pandrea](#), 2014 Ida. Dist. LEXIS 27

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6. [Clock v. Dart Club Mgmt.](#), 2012 Ida. Dist. LEXIS 46

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7. [Idaho Indep. Bank v. Mannix](#), 2012 Ida. Dist. LEXIS 52

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12. [Jackson v. Lakes Highway Dist.](#), 2011 Ida. Dist. LEXIS 62

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15. [Raabe v. Idaho](#), 2011 Ida. Dist. LEXIS 80

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19. [Mt. W. Bank v. Idaho Fence Co.](#), 2011 Ida. Dist. LEXIS 46

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24. [Malcolm v. Borden Ladner Gervais, LLP](#), 2010 Ida. Dist. LEXIS 21

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** November 10, 2010

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29. [Xpress Collectors Agency v. Gwin](#), 2010 Ida. Dist. LEXIS 70

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32. [Printz v. Caldwell](#), 2010 Ida. Dist. LEXIS 53

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40. [Jacklin Land Co. v. Blue Dog Rv](#), 2009 Ida. Dist. LEXIS 21

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** June 15, 2009 | **Headnotes::** HN2

41. [Frantz v. Witherspoon](#), 2009 Ida. Dist. LEXIS 33

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** June 8, 2009 | **Headnotes::** HN2

42. [Lobo Lodge v. Kootenai County](#), 2009 Ida. Dist. LEXIS 68

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Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** May 13, 2009 | **Headnotes:** HN2

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43. [Henley v. Rifkind](#), 2009 Ida. Dist. LEXIS 54

LB Cited by:

Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** April 28, 2009 | **Headnotes:** HN2

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44. [Miller v. Idaho State Patrol Police](#), 2009 Ida. Dist. LEXIS 56

LB Cited by:

Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** April 27, 2009 | **Headnotes:** HN2

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45. [Engle v. Bertacchini](#), 2009 Ida. Dist. LEXIS 1

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Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** March 16, 2009

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46. [Valenti v. Idaho](#), 2009 Ida. Dist. LEXIS 12

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Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** March 9, 2009

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47. [Groth v. Nationwide Assur. Co.](#), 2009 Ida. Dist. LEXIS 61

LB Cited by:

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48. [Farm Bureau Mut. Ins. Co. v. Jeffcoat](#), 2008 Ida. Dist. LEXIS 26

LB Cited by:

Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** September 22, 2008 | **Headnotes:** HN2

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49. [Ashtiani v. Kendall](#), 2008 Ida. Dist. LEXIS 30

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50. [McGee v. D & P N. Idaho Lands](#), 2008 Ida. Dist. LEXIS 23

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Discussion: ■■■■■ | **Court:** Idaho Dist. Ct. | **Date:** February 11, 2008 | **Headnotes:** HN2

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51. [**Mote v. Quizno's Franchising Llc**](#), 2007 Ida. Dist. LEXIS 15

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** January 9, 2007 | **Headnotes:** HN2

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52. [**Kolts v. McCormack Props. of Idaho**](#), 2002 Ida. Dist. LEXIS 8

LB Cited by:

Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** November 28, 2002 | **Headnotes:** HN2

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53. [**Jovanovich v. A Tract of Land Herein Known As Tract No. 3**](#), 2002 Ida. Dist. LEXIS 10

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Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** November 22, 2002 | **Headnotes:** HN2

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54. [**STATE OF IDAHO, ex rel BELTON J. PATTY, Director of the Department of Finance, Plaintiff, v. EDWARD BROWN SECURITIES, INC., a Utah corporation, EDWARD E. BROWN, ERNEST RAY LANOY, STANLEY A. JONES, PARRY P. WARREN, WAYNE S. CLEMETSON, CLINTON D. SHURTLEFF, RICHARD L. MORRIS, BRADLEY J. ALLRED, KELLY N. TRIMBLE, STANLEY T. BERG, MARGIE L. SCHOPPE, JAMES FLEMING ALLEN, DORVE DEMPSEY, HARVEY L. MURDOCK, and their agents and representatives, Defendants**](#), 1987 Id. Sec. LEXIS 54

LB Cited by:

Court: Idaho Department of Finance | **Date:** December 8, 1987

Other Citing Sources: (8)

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1. [Idaho Code sec. 9-1501](#)

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2. Opposing Party? s Failure to Establish Elements of Claims: Basis for Summary Judgment
1 Idaho Practice: Pre-Trial Civil Procedure @ 13.08

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3. [Termination of Mortgages.](#), 12 Thompson on Real Property, Thomas Editions @ 101.03

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4. [Creditor Protection Through Charging Orders](#), 39 University of Miami Law Center on Estate Planning
P 332

Content: Treatises

Briefs

5. [CHRIS DRAKOS & CHRIS DRAKOS ENTERPRISES v. GARRETT H. SANDOW & DOREA ENTERPRISES](#), 2019 ID S. Ct. Briefs LEXIS 1913

Content: Court Filings | **Date:** November 25, 2019

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6. [BERIAN](#), 2019 ID S. Ct. Briefs LEXIS 1608

Content: Court Filings | **Date:** October 15, 2019

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7. [BUKU PROPS. v. CLARK](#), 2011 ID S. Ct. Briefs LEXIS 358

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8. [Atkinson v. Laux](#), 2011 ID S. Ct. Briefs LEXIS 210

Content: Court Filings | **Date:** August 18, 2011

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1. [Texas & P. R. Co. v. Marlor](#), 123 U.S. 687 

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First Ref: 109 Idaho 192 at p.195

Discussion:  | Court: U.S. | Date: December 19, 1887

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2. [Nixon v. Heers](#), 413 F.2d 544 

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3. [White v. Eddy](#), 202 Ala. 672 

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First Ref: 706 P.2d 81 at p.84

Discussion:  | Court: Ala. | Date: April 17, 1919

Idaho Supreme Court

4. [Reis v. Cox](#), 104 Idaho 434 

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First Ref: 109 Idaho 192 at p.194

Discussion:  | Court: Idaho | Date: December 27, 1982

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5. [Riverside Dev. Co. v. Ritchie](#), 103 Idaho 515 

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First Ref: 109 Idaho 192 at p.194

Discussion:  | Court: Idaho | Date: August 31, 1982

Idaho Court of Appeals

6. [Blackmon v. Zufelt](#), 108 Idaho 469 

 Citing

First Ref: 109 Idaho 192 at p.194

Discussion:  | **Court:** Idaho Ct. App. | **Date:** April 23, 1985

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7. [IBM Corp. v. Lawhorn](#), 106 Idaho 194 

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First Ref: 109 Idaho 192 at p.194

Discussion:  | **Court:** Idaho Ct. App. | **Date:** February 29, 1984

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8. [Tranter v. Hibbard](#), 108 Ky. 265 

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First Ref: 706 P.2d 81 at p.84

Discussion:  | **Court:** Ky. | **Date:** March 29, 1900

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9. [Smith v. Toler](#), 19 LA. APP. 791 

 **LB Citing**

First Ref: 706 P.2d 81 at p.84

Court: La.App. | **Date:** November 18, 1931

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10. [Smith v. Toler](#), 19 LA. APP. 791 

 **LB Citing**

First Ref: 706 P.2d 81 at p.84

Discussion:  | **Court:** La.App. | **Date:** May 4, 1932

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11. [Programmed Properties Corp. v. McDaniel](#), 262 Ore. 25 

 **LB Citing**

First Ref: 706 P.2d 81 at p.84

Discussion:  | **Court:** Or. | **Date:** April 19, 1972

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12. [Meissner v. Ogden, L. & I. R.R.](#), 65 Utah 1 

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First Ref: 706 P.2d 81 at p.84

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 **Citing**

First Ref: 706 P.2d 81 at p.84

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Sewell v. Nielsen, Monroe, Inc.

Court of Appeals of Idaho

August 29, 1985

No. 15386

Reporter

109 Idaho 192 *; 706 P.2d 81 **; 1985 Ida. App. LEXIS 710 ***

Max F. (Rip) SEWELL dba Warm Springs Realty,
Plaintiff-Respondent, v. NEILSEN, MONROE, INC. an
Idaho corporation, Defendant-Appellant

Subsequent History: [**1] Rehearing Denied
October 9, 1985. Petition for Review Denied December
13, 1985.

Prior History: Appeal from the District Court of the Fifth
Judicial District of the State of Idaho, Blaine County.
Honorable Phillip M. Becker, District Judge.

Disposition: Summary judgment for promisee in action
to collect promissory note, vacated. Case remanded.

Core Terms

summary judgment, promissory note, district court,
satisfaction, charge an order, execution sale, material
fact, genuine, costs, moot

Case Summary

Procedural Posture

Defendant promisor sought review of an order of the
District Court of the Fifth Judicial District of the State of
Idaho, Blaine County, which granted summary judgment
in favor of plaintiff promisee in the promisee's action to
collect on a promissory note. The promisee filed a
motion to dismiss the appeal.

Overview

The promisor executed a promissory note for a real
estate commission owed to the promisee. The note
provided that two lots could be substituted for the

amount owed. The promisor claimed that he tendered
the lots but that they were refused by the promisee. The
promisee claimed that he was not required to accept the
lots after the note was due. The promisee argued that
the appeal was moot because a portion of the judgment
was paid and a charging order was secured. However,
the promisor was compelled to pay the judgment in
order to prevent his property from being sold at an
execution. Thus, the payment and entry of the charging
order was involuntary and the appeal was not moot. In
addition, the court found that, when construing the facts
in the light most favorable to the promisor, there existed
a genuine issue of material fact concerning the intent of
the parties in respect to the conveyance of lots in
satisfaction of the promissory note. Furthermore,
questions of timeliness of the tender and whether the
tender was conditional or varied from the understanding
of the parties could not be answered until a factual
determination was made regarding the parties true
agreement.

Outcome

The court denied the motion to dismiss, vacated the
order granting summary judgment, and remanded for
further proceedings.

LexisNexis® Headnotes

Civil Procedure > ... > Summary
Judgment > Appellate Review > General Overview
Constitutional Law > ... > Case or

[Controversy > Mootness > General Overview](#)[Civil](#)[Procedure > ... > Justiciability > Mootness > General Overview](#)[Civil Procedure > Judgments > Enforcement & Execution > General Overview](#)[Civil Procedure > Judgments > Enforcement & Execution > Writs of Execution](#)[Civil Procedure > Appeals > Appellate Jurisdiction > General Overview](#)

[HN1](#) [] Summary Judgment, Appellate Review

Where a party is compelled to pay a judgment in order to prevent his property from being sold at an execution sale, the payment is involuntary and does not render moot an appeal from the judgment.

[Civil Procedure > ... > Summary Judgment > Motions for Summary Judgment > General Overview](#)[Civil Procedure > Judgments > Summary Judgment > General Overview](#)[Civil Procedure > ... > Summary Judgment > Appellate Review > General Overview](#)[Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview](#)[Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview](#)[Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness](#)[Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes](#)[Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts](#)

[HN2](#) [] Summary Judgment, Motions for Summary Judgment

Summary judgment is appropriate where the pleadings, depositions and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [*Idaho R. Civ. P. 56\(c\)*](#). In ruling on a summary judgment motion, the facts are to be liberally construed in favor of the party opposing the motion, and that party is to be accorded the benefit of all favorable inferences which might reasonably be drawn from the evidence. If a genuine issue of material fact remains unresolved, or if the record contains conflicting inferences and if reasonable minds might reach different conclusions from the facts and inferences presented, then summary judgment should not be granted.

[Civil Procedure > Trials > Bench Trials](#)[Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview](#)[Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview](#)

[HN3](#) [] Trials, Bench Trials

If an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment. Rather, the judge is free to arrive at the most probable inferences to be drawn from uncontested evidentiary facts.

[Contracts Law > ... > Negotiable Instruments > Enforcement > Overdue Instruments](#)[Contracts Law > Types of Commercial Transactions > Negotiable Instruments > General Overview](#)

[HN4](#) [] Enforcement, Overdue Instruments

Promissory notes payable in specific articles of property vary in their terms but are generally construed as giving the promisor the option of paying in money or in the

specific articles mentioned, even though the promise is not expressly in the alternative. In all cases where the debtor has such option he can exercise that option up to the time when the note becomes due. After the note is overdue it can be paid only in money.

Business & Corporate
 Compliance > Contracts > Standards of
 Performance > Delivery & Tender
 Contracts Law > Standards of
 Performance > Delivery & Tender

Contracts Law > Types of Commercial
 Transactions > Negotiable Instruments > General
 Overview

HN5 Standards of Performance, Delivery & Tender

[Idaho Code § 9-1501](#) modifies the common law requirements for a valid tender by providing as follows: an offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

Counsel: Jeffrey A. Strother, Thomas C. Morris, of Moffatt, Thomas, Barrett & Blanton, Boise, for defendant-appellant.

E. Lee Schlender, Ketchum, for plaintiff-respondent.

Judges: Walters, Chief Judge. Swanstrom and Burnett, JJ., concur.

Opinion by: WALTERS

Opinion

[*193] [82]** This is an appeal from a summary judgment granted to the plaintiff, Max Sewell, in an action to collect on a promissory note. We are presented with three questions. First, should the appeal be dismissed for mootness because of partial satisfaction of the judgment through an execution sale and because the appellant agreed to entry of a charging order against a partnership interest held by the appellant, to secure the balance owed on the judgment? Second, was there any unresolved genuine issue of material fact which would preclude summary judgment?

Finally, did the district **[***2]** court err by awarding costs and attorney fees to the plaintiff? We hold the appeal is not mooted by the plaintiff's attempts to collect on the judgment; that summary judgment should not have been granted; and that the judgment, including the award of attorney fees and costs, must be set aside.

In 1978, the appellant, Neilsen-Monroe, Inc., acting through its president David Sellgren, executed a promissory note for a real estate commission owed to Max Sewell, doing business as Warm Springs Realty. The note was for \$ 75,000 with interest at ten percent per annum, and had a due date of September 12, 1983. The note also recited: "Two fully paid for lots may be substituted for the above amount." Sewell filed suit against Neilsen-Monroe, Inc. alleging Neilsen had failed to pay the note **[*194] [**83]** when it became due. Neilsen answered, alleging that conveyance of "two fully paid for lots" had been tendered to Sewell to pay the note and accrued interest, prior to the due date of the note. On Sewell's motion, summary judgment was entered against Neilsen for \$ 130,867.25, representing the principal and interest due on the note and an award of attorney fees and costs incurred **[***3]** by Sewell. Neilsen appeals.

We turn first to Sewell's motion to dismiss this appeal on grounds of mootness. While this appeal was pending, Sewell obtained \$ 50,000 toward satisfaction of the judgment through an execution sale of certain real property owned by Neilsen. Then, to prevent further executions, Neilsen agreed to the entry of a charging order to secure the balance of the judgment. The charging order was directed against an interest Neilsen has as a general partner in another, limited partnership business. Sewell argues that these events preclude Neilsen from contesting the validity of the summary judgment. In opposition, Neilsen contends the execution sale was not a voluntary partial satisfaction of the judgment on Neilsen's part and that Neilsen agreed to the charging order so as to prevent further executions and disruptions of its business. Neilsen cites our decision in [International Business Machines Corp. v. Lawhorn](#), 106 Idaho 194, 677 P.2d 507 (Ct.App.1984) for the proposition that **HN1** where a party is compelled to pay a judgment in order to prevent his property from being sold at an execution sale, the payment is involuntary and does not render moot an appeal **[***4]** from the judgment. Neilsen asserts, by analogy and parity of reasoning, that the execution sale and the entry of the charging order do not render its appeal from the summary judgment moot. We agree. We deny Sewell's motion to dismiss this appeal.

Sewell v. Neilsen, Monroe, Inc., 109 Idaho 192

We turn next to the primary issue on appeal, *viz.*, whether the district court erred by granting summary judgment in favor of Sewell. [HN2](#)¹ Summary judgment is appropriate where the pleadings, depositions and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [I.R.C.P. 56\(c\)](#). In ruling on a summary judgment motion, the facts are to be liberally construed in favor of the party opposing the motion, and that party is to be accorded the benefit of all favorable inferences which might reasonably be drawn from the evidence. [Reis v. Cox, 104 Idaho 434, 660 P.2d 46 \(1982\)](#). If a genuine issue of material fact remains unresolved, or if the record contains conflicting inferences and if reasonable minds might reach different conclusions from the facts and inferences presented, then summary judgment should not be [\[***5\]](#) granted. *Id.*¹

The ultimate issue presented to the district court, as framed by the pleadings of the parties, was whether Neilsen was obligated on the promissory note after its due date. Neilsen alleged that it had tendered performance of its obligation by offering to convey two lots to Sewell in satisfaction of the debt before the note's due date. In the summary judgment proceeding, Sewell disagreed with Neilsen's position. Sewell disputed that Neilsen had [\[***6\]](#) any option to substitute lots for cash payment on the note; that even if Neilsen had such an option, it was not timely exercised before the note came due; that the reference in the note to "two fully paid for lots" was vague and unenforceable and violated the statute of frauds; and that, in the manner Neilsen presented its tender, Neilsen's tender was conditional as an offer of a new contract.

Neilsen presented evidence to the court by way of affidavits. David Sellgren, the [\[*195\]](#) [\[**84\]](#) person

¹ A limited exception applies to cases governed by [Riverside Development Co. v. Ritchie, 103 Idaho 515, 650 P.2d 657 \(1982\)](#).

In *Ritchie* our Supreme Court held that [HN3](#)¹ if an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment. Rather, the judge is free to arrive at the most probable inferences to be drawn from uncontested evidentiary facts.

[Blackmon v. Zufelt, 108 Idaho 469, 470, 700 P.2d 91, 92 \(Ct.App.1985\)](#).

who had signed the note, essentially stated that the language concerning substitution of the two lots reflected an understanding and agreement reached between him and Max Sewell; that the language was placed on the note by either Sewell or an agent of Sewell; that Sellgren provided Sewell with a letter dated the same day as the note, more fully expressing their agreement concerning the two lots, indicating that two lots, fully paid for, having a combined retail value of \$ 75,000 plus interest at ten percent, would be conveyed to Warm Springs Realty; that "[i]t was always the understanding of Mr. Sewell and myself that the value of property in the Ketchum area could vary and that [\[***7\]](#) if the combined value of two lots made available to Warm Springs Realty was greater than the amount then due on the promissory [sic] note, this difference in amount would be paid by Warm Springs Realty."

Neilsen also submitted an affidavit by Craig Neilsen. Attached to this affidavit was a copy of a letter from Neilsen's counsel to Sewell's counsel, dated September 9, 1983, a few days before the maturity date of the note. The affidavit explained:

By this letter, I attempted to tender to Mr. Sewell in full satisfaction of the promissory note obligation to Warm Springs Realty, two lots listed for sale at \$ 75,000 each. The lots had been previously appraised by Robert Caliente for approximately \$ 90,000 each. I calculated the amount of principal and interest owed on the promissory note as of September 12, 1983, to be \$ 120,788.25. Because the value of the two lots was greater than the amount then due Warm Springs, I offered to convey the two lots to Mr. Sewell to be valued at \$ 150,000 total in return for a five-year note at 12% interest per annum for the difference between the amount owed on the note of \$ 120,788.25 and the listing price of \$ 150,000 which would total \$ 29,211.75. [\[***8\]](#) The first and only response which I received to this attempted tender of payment of the note was when the Complaint in the above-captioned act [sic] was served upon Neilsen-Monroe, Inc.

No other affidavits, nor any depositions or admissions, were filed with the district court. At the conclusion of arguments on the motion for summary judgment, the court simply ruled from the bench: "I think counsel's motion for summary judgment is well-taken, and it will be granted." A written order to the same effect was entered a few days later, as was a formal judgment in favor of Sewell.

Presumably, consistent with [I.R.C.P. 56\(c\)](#), the district

court concluded there was no unresolved genuine issue of material fact and that Sewell was entitled to judgment as a matter of law. However, construing the facts in the light most favorable to Neilsen, we believe there existed a genuine issue of material fact concerning the intent of the parties in respect to the conveyance of lots in satisfaction of the promissory note. It was error for the court to rule as a matter of law in favor of Sewell while that factual issue remained unresolved.

HN4[] Promissory notes payable in specific articles of property [***9] vary in their terms but are generally construed as giving the promisor the option of paying in money or in the specific articles mentioned, even though the promise is not expressly in the alternative. In all cases where the debtor has such option he can exercise that option up to the time when the note becomes due. After the note is overdue it can be paid only in money.
[Footnotes omitted.]

11 AM.JUR.2D, BILLS AND NOTES, § 978 at 1027 (1963). See also 10 C.J.S., BILLS AND NOTES, §§ 24 and 445 (1938); *Texas & Pac.Ry. Co. v. Marlor*, 123 U.S. 687, 8 S.Ct. 311, 31 L.Ed. 303 (1887); *Nixon v. Heers*, 413 F.2d 544 (9th Cir.1969); *White v. Eddy*, 81 So. 628 (Ala.1919); *Tranter v. Hibberd*, 56 S.W. 169 (Ky.App.1900); *Smith v. Toler*, 137 So. 620 (La.App.1931), amended on rehearing, 19 La.App. 791, 141 So. 429 (1932); *Programmed Properties Corp. v. McDaniel*, 262 Or. 25, 495 P.2d 1191 (1972); *Meissner v. Ogden, L & I. Ry. Co.*, 65 Utah 1, 233 P. 569 (1924); *Gregory v. Morrow*, 4 Wash.2d 144, 102 P.2d 699 (1940).

[*196] [**85] Neilsen's tender of performance by offering to convey the two lots, submitted by way of counsel's letter of September [***10] 9, 1983, comports with *I.C. § 9-1501*. **HN5**[] This statute modifies the common law requirements for a valid tender by providing as follows: "An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument or property." The letter represents an "offer in writing" to deliver deeds to the lots in question.

Of course, questions of timeliness of the tender and whether the tender was conditional or varied from the understanding of the parties cannot be answered until the factual determination is made regarding the true agreement of the parties. On remand these questions should be resolved. Because the summary judgment

must be vacated, the order of the district court awarding attorney fees and costs to Sewell must also be set aside.

Case remanded for further proceedings. No attorney fees on appeal; costs to appellant, Neilsen-Monroe, Inc.

End of Document



Shepard's®: Report Content

Appellate History: Requested

▲ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [**Ambrose by & Through Ambrose v. Buhl Joint Sch. Dist. #412**](#) 126 Idaho 581,887
P.2d 1088,1994 Ida. App. LEXIS 152: (Idaho Ct. App. December 8, 1994)

No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

[**Ambrose by & Through Ambrose v. Buhl Joint Sch. Dist. #412**](#), 126 Idaho 581 ▲

Court: Idaho Ct. App. | **Date:** December 8, 1994

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1. [Estate of Skvorak v. Sec. Union Title Ins. Co.](#), 140 Idaho 16 

LB Cited by: 140 Idaho 16 p.22; 89 P.3d 856 p.862

Discussion:  | **Court:** Idaho | **Date:** April 23, 2004

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2. [O'Guin v. Bingham County](#), 139 Idaho 9 

B Cited in Dissenting Opinion at: 139 Idaho 9 p.17; 72 P.3d 849 p.857

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Discussion:  | **Court:** Idaho | **Date:** June 18, 2003 | **Headnotes:** HN8, HN9

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3. [Jordan v. Beeks](#), 135 Idaho 586 

LB Cited by: 135 Idaho 586 p.592; 21 P.3d 908 p.914

Discussion:  | **Court:** Idaho | **Date:** March 29, 2001 | **Headnotes:** HN6

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4. [D.A.R., Inc. v. Sheffer](#), 134 Idaho 141 

LB Cited by: 134 Idaho 141 p.145; 997 P.2d 602 p.605

Discussion:  | **Court:** Idaho | **Date:** March 23, 2000 | **Headnotes:** HN5

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5. [Nelson by & through Nelson v. City of Rupert](#), 128 Idaho 199 

LB Cited by: 128 Idaho 199 p.202; 911 P.2d 1111 p.1114

Discussion:  | **Court:** Idaho | **Date:** February 15, 1996 | **Headnotes:** HN8, HN9

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6. [Peasley Transfer & Storage Co. v. Smith](#), 1997 Ida. App. LEXIS 110 

LB Cited by:

Discussion:  | **Court:** Idaho Ct. App. | **Date:** October 3, 1997

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7. [Peasley Transfer & Storage Co. v. Smith](#), 1997 Ida. App. LEXIS 94 

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8. [Abercrombie v. Coeur D'Alene Sch. Dist. No. 271](#), 2013 Ida. Dist. LEXIS 33 

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9. [Short v. United States](#), 2020 U.S. Dist. LEXIS 250974 

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Discussion:  | Court: Dist. Idaho | Date: February 12, 2020

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10. [Lucero v. Richardson & Richardson, Inc.](#), 2002-NMCA-013 

 Distinguished by: 2002-NMCA-013 p.23; 131 N.M. 522 p.529; 39 P.3d 739 p.746

Discussion:  | Court: N.M. Ct. App. | Date: December 13, 2001

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11. [Univ. of Tex. at Arlington v. Williams](#), 459 S.W.3d 48 

 Distinguished by: 459 S.W.3d 48 p.55

Discussion:  | Court: Tex. | Date: March 20, 2015

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12. [Home v. North Kitsap Sch. Dist.](#), 92 Wn. App. 709 

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2. [CASENOTE: SCHOOL DISTRICT PREMISES LIABILITY: PREMISES LIABILITY FOR SCHOOL DISTRICTS UNDER NEBRASKA'S NEW DUTY OF REASONABLE CARE, MCINTOSH V. OMAHA PUBLIC SCHOOLS](#), 30 Creighton L. Rev. 205

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3. [ARTICLE: LAWS GOVERNING RECREATIONAL ACCESS TO WATERS OF THE COLUMBIA BASIN: A SURVEY AND ANALYSIS*](#), 33 Envtl. L. 399

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4. [ARTICLE: THE HISTORY AND APPLICATION OF SUPPLEMENTAL CONTRACTS FOR COACHES- DOES DUE PROCESS EXIST IN THEIR GAME PLAN?](#), 41 Idaho L. Rev. 293

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5. [CASENOTE & COMMENT: TOUGH CHOICES REGARDING MUNICIPAL LIABILITY: THE APPLICATION OF THE IDAHO RECREATIONAL USE STATUTE TO PUBLIC LANDS -- AMBROSE v. BUHL JOINT SCHOOL DISTRICT NO. 412](#), 33 Idaho L. Rev. 185

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Ambrose by & ex rel. Ambrose v. Buhl Joint Sch. Dist. # 412

Court of Appeals of Idaho

December 8, 1994, Filed

Docket No. 20821, 1994 Opinion No. 133

Reporter

126 Idaho 581 *; 887 P.2d 1088 **; 1994 Ida. App. LEXIS 152 ***

JARED AMBROSE, a minor child, by and through F. DEAN AMBROSE and SUSAN AMBROSE, husband and wife, the natural parents of JARED AMBROSE; F. DEAN AMBROSE, individually; and SUSAN AMBROSE, individually, Plaintiff-Appellants, v. BUHL JOINT SCHOOL DISTRICT # 412, Defendant-Respondent.

Subsequent History: Released for Publication February 6, 1995. Review Denied February 6, 1995.

Prior History: [***1] Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Daniel B. Meehl, District Judge.

Disposition: Summary judgment in favor of defendant in action for personal injury to a child, affirmed.

Core Terms

attracted, doctrine of attractive nuisance, school district, backstop, attractive nuisance, summary judgment, landowner, recreational, premises, trespasser, baseball game, injuries, essential element

Case Summary

Procedural Posture

Plaintiffs, parents and child, sought review of a decision of the District Court of the Fifth Judicial District (Idaho), which rendered summary judgment in favor of defendant school district in plaintiff's action for damages arising from injuries sustained by the child while playing baseball on a playground owned by the school district.

Overview

The parents brought the child to the school district's playground to watch a baseball game. The child and some of his friends slipped off to an adjacent diamond for an informal game. The child was injured by a backstop that collapsed. The parents filed an action for damages and the school district claimed immunity under the Recreational Use Statute (Statute), [*Idaho. Code § 36-1604*](#). The parents argued that the school district was still liable under attractive nuisance doctrine, an exception to the Statute's immunity. The trial court rendered summary judgment in favor of the school district. The court affirmed the decision of the trial court and found that plaintiffs failed to establish that the child was attracted onto the school district's playground by the alleged attractive nuisance, an essential element of the attractive nuisance doctrine. The child was brought to the playground by his parents and was not enticed onto the playground by the defective backstop. Furthermore, the fact that the parents brought the child to the playground to watch a baseball game, made possible by the existence of backstops on the property, did not mean that the child was enticed by the backstops.

Outcome

The court affirmed the trial court's grant of summary judgment in favor of the school district in an action for damages by the parents and child for injuries sustained by the child on a playground owned by the school district.

LexisNexis® Headnotes

Torts > ... > General Premises
 Liability > Defenses > Recreational Use Statutes

Torts > Premises & Property Liability > General Premises Liability > General Overview

HN1 **Defenses, Recreational Use Statutes**

Idaho Code § 36-1604(a) provides that the purpose of § 3601604 is to encourage owners of land to make land and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

recreational vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites, when done without charge of the owner.

Torts > ... > Duties of Care > Duty On Premises > General Overview

Torts > Premises & Property Liability > General Premises Liability > General Overview

Torts > ... > General Premises Liability > Duties of Care > General Overview

Torts > ... > General Premises Liability > Defenses > Recreational Use Statutes

HN3 **Duties of Care, Duty On Premises**

Idaho Code § 36-1604(c) provides that an owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

Governments > Public Lands > General Overview

Real Property Law > Water Rights > Nonconsumptive Uses > Fishing

Real Property Law > Water Rights > Nonconsumptive Uses > General Overview

Real Property Law > Water Rights > Nonconsumptive Uses > Watercraft

Real Property Law > Water Rights > Nonconsumptive Uses > Watersports

Torts > Premises & Property Liability > General Premises Liability > General Overview

Transportation Law > Private Vehicles > Snowmobiles

HN2 **Governments, Public Lands**

Idaho Code § 36-1604(b) provides that as used in *§ 36-1604*: (1) "Land" means private or public land, roads, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty; (2) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; and (3) "Recreational Purposes" includes, but is not limited to, any of the following or any combination thereof: Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, nature study, water skiing, animal riding, motorcycling, snowmobiling,

Torts > ... > Duty > Affirmative Duty to Act > Failure to Act

Torts > Premises & Property Liability > General Premises Liability > General Overview

Torts > ... > General Premises Liability > Defenses > General Overview

Torts > ... > General Premises Liability > Defenses > Recreational Use Statutes

HN4 **Affirmative Duty to Act, Failure to Act**

Idaho Code § 36-1604(d) provides that an owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby: (1) Extend any assurance that the premises are safe for

any purpose; (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; and (3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such person.

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary

Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary

Judgment > Opposing Materials > General Overview

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > Materiality of Facts

Civil Procedure > ... > Summary

Judgment > Supporting Materials > Affidavits

HN5 Entitlement as Matter of Law, Appropriateness

Summary judgment is appropriate only when there are no genuine issues of material fact and the case can be decided as a matter of law. *[Idaho R. Civ. P. 56\(c\)](#)*. Where a jury has been requested, the nonmoving party is entitled to the benefit of reasonable inferences drawn from the evidentiary facts. The facts are drawn from a review of the record, consisting of the motions, pleadings, affidavits, depositions, and admissions on file. *[Idaho R. Civ. P. 56\(c\)](#)*. Controverted facts are viewed in favor of the party resisting the motion. The party opposing the motion may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party. *[Idaho R. Civ. P. 56\(e\)](#)*. Raising the slightest doubt as to the facts is insufficient. A genuine issue of material fact must be presented.

Civil Procedure > ... > Summary

Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > Genuine Disputes

HN6 Summary Judgment, Burdens of Proof

Summary judgment dismissing a claim is appropriate when the plaintiff fails to submit evidence to establish an essential element of the claim. In such a situation, there can be no genuine issue of material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

Real Property Law > Torts > Trespass to Real Property

Torts > ... > General Premises Liability > Duties of Care > General Overview

Torts > ... > General Premises Liability > Activities & Conditions > Injuries to Children

Torts > ... > Duty On Premises > Trespassers > General Overview

Torts > ... > Duty On Premises > Trespassers > Child Trespassers

Torts > ... > Types of Premises > Recreational Facilities > General Overview

Torts > ... > General Premises Liability > Defenses > Recreational Use Statutes

Torts > Premises & Property Liability > Trespass to Real Property > General Overview

HN7 Torts, Trespass to Real Property

The Idaho Supreme Court observed that a landowner owes a duty of care to a trespasser, and thus to a person using the land for recreational purposes, in two

circumstances. First, it is a landowner's duty to a trespasser to refrain from wilful or wanton acts which might cause injuries. Second, the landowner may be liable for injuries to a trespassing child under the attractive nuisance doctrine.

Real Property Law > Torts > Trespass to Real Property

Torts > ... > Duty On Premises > Trespassers > Child Trespassers

Torts > Premises & Property Liability > Trespass to Real Property > General Overview

HN8 Torts, Trespass to Real Property

To render the owner of land liable under the attractive nuisance doctrine, a structure or condition maintained or permitted on the property must be peculiarly or unusually attractive to children; the injured child must have been attracted by such condition or structure; the owner must know, or the facts be such as to charge him with knowledge, of the condition, and that children are likely to trespass and be injured; the structure or condition must be dangerous and of such a character that the danger is not apparent to immature minds.

Torts > ... > Duty On Premises > Trespassers > Child Trespassers

Torts > Premises & Property Liability > Trespass to Real Property > General Overview

HN9 Trespassers, Child Trespassers

The attractive nuisance doctrine under Idaho law applies only to children who were attracted onto a defendant's premises by the dangerous object or condition.

Counsel: Webb, Pedersen & Webb, Twin Falls, for appellants. Kenneth L. Pedersen argued.

Quane, Smith, Howard & Hull, Boise, for respondent. Brian D. Harper argued.

Judges: LANSING, Judge. Chief Judge WALTERS and Judge PERRY CONCUR.

Opinion by: LANSING

Opinion

[**1089] [*582] LANSING, Judge

This action arose from personal injuries sustained by plaintiff Jared Ambrose, a minor, while he was playing baseball on a playground owned by the defendant, Buhl Joint School District No. 412. The district court granted summary judgment dismissing the action on the ground that the school district was exempted from liability by Idaho's Recreational Use Statute, [I.C. § 36-1604](#). The district court also held that the attractive nuisance doctrine, under which a landowner may be liable for injuries sustained by a child playing on the landowner's premises notwithstanding [***2] the provisions of [I.C. § 36-1604](#), did not apply to the circumstances of Jared's injury. Appellants, Jared Ambrose and his parents, Dean and Susan Ambrose, argue on appeal that a prima facie showing of all elements of the attractive nuisance doctrine has [**1090] [*583] been presented and that the judgment therefore should be reversed. We hold that because the application of the attractive nuisance doctrine as adopted in Idaho is limited to those situations where the child is attracted onto the defendant's land by the instrumentality that causes the injury, and because such attraction onto the land did not occur in this case, the district court was correct in granting summary judgment in favor of the school district.

I

The school district owns a playground upon which are located several baseball diamonds with backstops. The school district allows "Pee Wee League" baseball games to be played on this field during the summer months while school is not in session. Jared Ambrose, then age eleven, went with his parents to watch one of these games. Jared met some of his friends at the game, and they decided to discontinue watching the game and instead play their own informal baseball game at an adjacent [***3] backstop on the same playground. The backstop was not permanently affixed to the ground. It had two "wing" panels that rotated forward and backward on hinges attached to a main, center panel. When correctly positioned, the two wings and the center panel form a "U" shape. At some time during this informal game, two of the children extended the wings outward until they were nearly in line with the center panel, thereby causing the backstop to become less stable. Jared was batting in front of the backstop when his brother, Kyle, climbed onto the top

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overhanging portion of the backstop, causing the backstop to topple forward onto Jared. Jared suffered a broken leg and other injuries.

Dean and Susan Ambrose brought this action against the school district on behalf of Jared and in their individual capacities. They alleged that the backstop was a dangerous structure constituting an attractive nuisance which caused Jared's injury, and that the school district was therefore liable.

The school district moved for summary judgment, asserting that it was exempt from liability by terms of I.C. § 36-1604.¹ The district court granted the motion.

¹ Portions of *Idaho Code § 36-1604* pertinent to this case state:

HN1[] Limitation of liability of landowner. -- (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

HN2[] (b) Definitions. As used in this section:

1. "Land" means private or public land, roads, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.
2. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
3. "Recreational Purposes" includes, but is not limited to, any of the following or any combination thereof: Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites, when done without charge of the owner.

HN3[] (c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other

The court held that although the attractive nuisance [***4] doctrine presents an exception to a landowner's [**1091] [*584] immunity from liability under I.C. § 36-1604, the Ambroses' evidence did not support the existence of all elements of the attractive nuisance doctrine with respect to Jared's injury. The Ambroses appeal from this ruling.

[***5] II

Our standard of review on appeal from a summary judgment was concisely stated in *Podolan v. Idaho Legal Aid Services, Inc., 123 Idaho 937, 941-42, 854 P.2d 280, 284-85 (Ct. App. 1993)*:

HN5[] Summary judgment is appropriate only when there are no genuine issues of material fact and the case can be decided as a matter of law. *I.R.C.P. 56(c); Moss v. Mid-American Fire and Marine Insurance Co., 103 Idaho 298, 302, 647 P.2d 754, 758 (1982); Whitlock v. Haney Seed Co., 110 Idaho 347-48, 715 P.2d 1017-18 (Ct. App. 1986)*. Where, as here, a jury has been requested, the nonmoving party is entitled to the benefit of reasonable inferences drawn from the evidentiary facts. *Anderson v. Ethington, 103 Idaho 658, 660, 651 P.2d 923, 925 (1982); Whitlock, supra*. The facts are drawn from a review of the record, consisting of the motions, pleadings, affidavits, depositions, and admissions on file. *I.R.C.P. 56(c); Moss, supra*. Controverted [***6] facts are viewed in favor of the party resisting the motion. *Whitlock, supra*.

basis for such liability.

HN4[] (d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.
 2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
 3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.
-

(f) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property. . . .

The party opposing the motion may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party. I.R.C.P. 56(e); Worthen v. State, 96 Idaho 175, 176, 525 P.2d 957, 958 (1974).

Raising the slightest doubt as to the facts is insufficient -- a genuine issue of material fact must be presented. LePelle v. Grefenson, 101 Idaho 422, 428, 614 P.2d 962, 968 (1980). . . .

HN6 [↑] Summary judgment dismissing a claim is appropriate when the plaintiff fails to submit evidence to establish an essential element of the claim. Badell v. Beeks, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) citing Celotex v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986); Garzee v. Barkley, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct. App. 1992). [***7] "In such a situation, there can be 'no genuine issue of material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.*

III

The purpose of the Recreational Use Statute upon which the school district relies, I.C. § 36-1604, is to "encourage owners of land to make land and water areas available to the public without charge for recreational purposes." I.C. § 36-1604(a); See also McGhee v. City of Glenns Ferry, 111 Idaho 921, 729 P.2d 396 (1986). The statute accomplishes this purpose by generally limiting the duty of care owed by the landowner to recreational users. Public entities are landowners under terms of the statute. ² I.C. § 36-

² The Ambroses asked this Court to hold that the statute does not apply to public lands like parks and playgrounds where the public has been expressly or impliedly invited onto the premises. However, the plain language of the statute is to the contrary. The act defines "land" to include "private or public land" and "private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty," I.C. § 36-1604(b)(1). In *McGhee* the Supreme Court held that this statute applies to public entities as landowners. See also Bauer v. Minidoka School District No. 331, 116 Idaho 586, 778 P.2d 336 (1989); Jacobsen v. City of Rathdrum, 115 Idaho 266, 766 P.2d 736 (1988); Corey v. State, 108 Idaho 921, 703 P.2d 685 (1985).

1604(b)(1),(2); McGhee, 111 Idaho at 922, 729 P.2d at 397. In the instant case, the school district as owner of the land upon which it allowed Pee Wee baseball games to be played during the summer months, enjoys the protections afforded by I.C. § 36-1604.

[***8] The statute does not, however, confer absolute immunity upon owners who gratuitously permit recreational use of their property. In Jacobsen v. City of Rathdrum, 115 Idaho 266, 270, 766 P.2d 736, 740 (1988), the Idaho Supreme Court concluded that the statute "was intended to insulate landowners only from liability predicated on a duty of care owed to an invitee or licensee." From this premise the Court further concluded [**1092] [*585] that "those who use an owner's land for recreational purposes are entitled to at least the same protection as trespassers are afforded." *Id.* **HN7** [↑] The Supreme Court observed that a landowner owes a duty of care to a trespasser, and thus to a person using the land for recreational purposes, in two circumstances. First, it is a landowner's duty to a trespasser "to refrain from wilful or wanton acts which might cause injuries." Jacobsen, 115 Idaho at 270, 766 P.2d at 740, quoting Huyck v. Hecla Mining Co., 101 Idaho 299, 301, 612 P.2d 142, 144 (1980). Second, the landowner may be liable for injuries to a trespassing child under the attractive [***9] nuisance doctrine. Jacobsen at 272-73, 766 P.2d at 742-43.

The Ambroses do not contend that the school district engaged in wilful or wanton conduct causing Jared's injury. Therefore, in order for Jared's claim to survive application of the Recreational Use Statute, the claim must fall within Idaho's attractive nuisance doctrine.

IV

The elements of an attractive nuisance claim are set forth in Bass v. Quinn-Robbins, Co., 70 Idaho 308, 312, 216 P.2d 944, 945 (1950):

HN8 [↑] To render the owner liable the structure or condition maintained or permitted on his property, must be peculiarly or unusually attractive to children; the injured child must have been attracted by such condition or structure; the owner must know, or the facts be such as to charge him with knowledge, of the condition, and that children are likely to trespass and be injured; the structure or condition must be dangerous and of such a character that the danger is not apparent to immature minds.

This four-part test remains the law in Idaho. Jacobsen, 115 Idaho at 272, 766 P.2d at 742; [***10] Hughes v. Union Pacific Railroad Co., 114 Idaho 466, 468-69, 757 P.2d 1185, 1187-88 (1988).

The threshold issue presented by this appeal is whether the second element of an attractive nuisance claim delineated in *Bass* -- that the injured child "must have been attracted by such condition or structure" -- requires that the child must have been attracted *onto the defendant's land* by the condition or structure causing the injury, as opposed to merely being attracted to the dangerous instrumentality once the child has entered upon the land. The Ambroses argue that the test simply requires that the child be attracted to the condition or structure even if the child was already on the land for other reasons. We conclude, however, that HN9[¹] the attractive nuisance doctrine under Idaho law applies only to children who were attracted onto the defendant's premises by the dangerous object or condition.

Our analysis begins with Bicandi v. Boise Payette Lumber Co., 55 Idaho 543, 551-52, 44 P.2d 1103, 1106 (1935), where the Idaho Supreme Court held that the attractive nuisance doctrine "has application [***11] only to cases where children have been injured while on premises where they would be trespassers except for an implied invitation by something thereon which has attracted them." This statement suggests that the hazardous condition must be the inducement for the child's entry onto the premises. More recently, in Hughes, 114 Idaho at 469, 757 P.2d at 1188, the Idaho Supreme Court held that Idaho Pattern Jury Instruction 310 is a proper statement of Idaho law on attractive nuisance. That instruction specifies that one of the elements to be proved by the plaintiff is that "the plaintiff was attracted onto the premises by such [condition] [structure]."³ [**1093] [*586] Moreover, in affirming a

³ The entire instruction states:

Plaintiff has the burden of proving each of the following propositions:

1. A [structure] [condition] existed on the [defendant's] premises which the defendant knew, or in the exercise of ordinary care should have known, involved a reasonably foreseeable risk of attraction of and harm to children;
2. The [structure] [condition] [maintained] [permitted] on the property was peculiarly or unusually attractive to children;
3. The [condition] [structure] was such that the danger was not apparent to immature minds;

judgment in favor of the defendant railroad, the Court stated that "there was absolutely no testimony that appellant Joe Hughes was in fact attracted to the railroad property by any condition thereon." Id. at 469, 757 P.2d at 1188.

[***12] Finally, any doubt that Idaho law requires attraction onto the land as an element of the attractive nuisance doctrine is dispelled by the *Jacobsen* decision. In that case a child allegedly sustained severe injuries after toppling from a bridge in a city park into a water-filled ditch. Our Supreme Court reiterated the attractive nuisance test drawn from *Bass* and affirmed summary judgment on an attractive nuisance claim because, "the affidavits do not raise genuine issues of material fact as to whether the child was attracted to the park by the bridge." Jacobsen, 115 Idaho at 272, 766 P.2d at 742. The Court noted that the evidence indicated that the child went to the park not because of any interest in the bridge, but because he had been there earlier with his family and friends, and because other children were there. *Id.* Hence, under Idaho law, the "attractive nuisance" must be the enticement that draws the child onto the defendant's premises. If the child enters the premises for other reasons, the doctrine does not apply.

V

The Ambroses next contend that even if attraction onto the land is an essential element of the attractive [***13] nuisance doctrine, that element is satisfied here because Jared was in fact attracted onto the school district's land by the presence of backstops. They postulate that Jared was attracted to watch a baseball game which was made possible by the existence of backstops on the property. Without the presence of backstops, they reason, no organized baseball game would have been played on the premises, and Jared would not have attended the game. We find this to be a strained rationale which would distort the attraction rule beyond recognition. The uncontested evidence,

4. The plaintiff was attracted onto the premises by such [condition] [structure];
5. The plaintiff was in the exercise of that degree of care which would be expected from an ordinary child of the same age, experience, knowledge, and discretion under similar circumstances;
6. The [structure] [condition] was a proximate cause of the injury to the plaintiff;
7. The nature and extent of the injuries, the elements of damage, and the amount thereof.

Ambrose by & ex rel. Ambrose v. Buhl Joint Sch. Dist. # 412, 126 Idaho 581

consisting of Jared's own deposition testimony, establishes that he was taken to the school district's property by his parents to watch an organized baseball game. There is no evidence from which it reasonably can be inferred that the presence of the backstops lured Jared onto the school district's property. Therefore, the attraction element of the attractive nuisance doctrine is not met.

VI

In the alternative to their arguments for application of the traditional attractive nuisance doctrine to the circumstances of Jared's injury, the Ambroses urge this Court to discard that doctrine and to adopt in its stead the theory [***14] of liability for injury to trespassing children described in the *RESTATEMENT (SECOND) OF TORTS* § 339 (1965). The Restatement formulation eliminates the requirement of enticement or attraction to the harmful condition.

Although the Restatement's approach has been adopted in many jurisdictions, see generally W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 59, at 401 & n.14 (5th ed. 1984), it has been expressly rejected by the Idaho Supreme Court. In *Hughes*, 114 Idaho at 469, 757 P.2d at 1188, the Court held that a jury instruction proffered by the plaintiff which was based upon *Restatement* § 339 did not express Idaho law. In rejecting the plaintiff's argument that *Restatement* § 339 was adopted as Idaho law in *Daniels v. Byington*, 109 Idaho 365, 707 P.2d 476 (Ct. App. 1985), the Supreme Court stated, "Restatement § 339 does not state the traditional attractive nuisance doctrine, and does not reflect the law of attractive nuisance in Idaho, as set out in the *Bass* case." *Hughes*, 114 Idaho at 469 n.2, 757 P.2d 1188 n.2. Later, in the [***15] *Jacobsen* case, Justice Bistline, dissenting, urged adoption of a formulation like that of *Restatement* § 339, *Jacobsen*, 115 Idaho at 278, 766 P.2d at 748, but the Supreme Court majority was again unpersuaded.

Because the argument advanced by the Ambroses for modification of the attractive [**1094] [*587] nuisance doctrine has been squarely considered and rejected by the Idaho Supreme Court, we need not consider it further here.

VII

As noted above, summary judgment dismissing a claim is proper when the plaintiff's evidence fails to establish the existence, or at least raise a factual issue as to the existence, of an essential element of the claim. *Badell*,

115 Idaho at 102, 765 P.2d at 127; Podolan, 123 Idaho at 941-42, 854 P.2d at 284-85. Here, no evidence was presented raising a factual issue as to the existence of an essential element of the Ambroses' claim -- that the child was attracted onto the defendant's property by the alleged attractive nuisance. Summary judgment was therefore proper.

Because the evidence was insufficient to support the attraction element, [***16] there is no need for consideration of the school district's arguments that other elements of an attractive nuisance claim were also absent.

The district court's order granting summary judgment in favor of the school district is affirmed. No attorney fees are awarded on appeal. Costs to respondent.

Chief Judge WALTERS and Judge PERRY CONCUR.

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Shepard's®: [**I** Wright v. Parish](#) 172 Idaho 218,531 P.3d 1115,2023 Ida. LEXIS 68,2023 WL 4003821: (Idaho June 15, 2023)

No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

[**I** Wright v. Parish](#), 172 Idaho 218

Court: Idaho | **Date:** June 15, 2023

Citing Decisions (0)

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LB Citing

First Ref:172 Idaho 218 at p.225

Discussion:  | **Court:** Idaho | **Date:** March 30, 2023

-
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LB Citing

First Ref:172 Idaho 218 at p.225

Discussion:  | **Court:** Idaho | **Date:** March 24, 2023

-
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LB Citing

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As of: October 24, 2024 11:37 AM Z

[Wright v. Parish](#)

Supreme Court of Idaho

June 15, 2023, Opinion Filed

Docket No. 49605

Reporter

172 Idaho 218 *; 531 P.3d 1115 **; 2023 Ida. LEXIS 68 ***; 2023 WL 4003821

JAY F. WRIGHT, Plaintiff-Appellant, v. KRISTIE A. PARISH, Defendant-Respondent.

question of ownership of the property, and thus the court never issued a final judgment.

Prior History: [***1] Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Dane H. Watkins, Jr., District Judge.

Disposition: The order of the district court is reversed.

Core Terms

Properties, magistrate's court, district court, parties, ownership interest, ownership, partition, issue preclusion, summary judgment, claim preclusion, fifty percent, res judicata, attorney's fees, separate property, final judgment, collateral estoppel, home equity loan, divorce proceeding, court's decision, totality of the circumstances, tenants-in-common, deed, community property, material fact, real property, contributions, decisions, litigated, equalize, divorce

Case Summary

Overview

HOLDINGS: [1]-The district court erred when it concluded a husband's attempt to prove he had a greater than fifty percent ownership interest in the subject properties was barred by issue preclusion because during the divorce proceedings, neither the husband nor the wife accepted the magistrate court's offer to resolve the ownership of the property; [2]-The district court also erred in finding claim preclusion barred the husband's claim because the parties never stipulated to the magistrate court's jurisdiction over the

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN1](#) Entitlement as Matter of Law, Appropriateness

In an appeal from an order of summary judgment, the Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. All disputed facts are to be construed liberally

in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which the Court exercises free review. Questions of law are reviewed *de novo*, and whether an action is barred by res judicata is a question of law.

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Judgments > Summary
 Judgment > Entitlement as Matter of Law

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Materiality of Facts

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Legal Entitlement

HN2 Entitlement as Matter of Law, Appropriateness

A grant of summary judgment requires there to be no genuine dispute of material fact and a showing that the moving party is entitled to judgment as a matter of law. *Idaho R. Civ. P. 56(a).*

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

HN3 Estoppel, Collateral Estoppel

Res judicata serves three purposes: First, it preserves the acceptability of judicial dispute resolution against the

corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results. Second, it serves the public interest in protecting the courts against the burdens of repetitious litigation; and third, it advances the private interest in repose from the harassment of repetitive claims. The doctrine of res judicata covers both claim preclusion (true res judicata) and issue preclusion (collateral estoppel). Claim preclusion exists to bar a subsequent action between the same parties upon the same claim or upon claims relating to the same cause of action which might have been made. Separately, issue preclusion bars additional litigation of an identical issue with the same party or its privy. Separate tests are used to determine whether claim preclusion or issue preclusion applies.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN4 Reviewability of Lower Court Decisions, Preservation for Review

A party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN5 Estoppel, Collateral Estoppel

Issue preclusion exists to prevent litigants from having to relitigate an identical issue in a subsequent action. For issue preclusion to bar additional litigation, the following elements must be present: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HN6 Estoppel, Collateral Estoppel

In order for issue preclusion to apply, a final judgment on the merits must have been rendered.

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

HN7 Preclusion of Judgments, Res Judicata

To succeed on a theory of claim preclusion, a party must show three elements—(1) same parties; (2) same claim; and (3) final judgment.

Civil Procedure > Appeals > Remands

HN8 Appeals, Remands

Where an appellate court reverses or vacates a judgment upon an issue properly raised, and remands for further proceedings, it may give guidance for other issues on remand.

Evidence > Inferences & Presumptions > Presumptions > Creation

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

HN9 Presumptions, Creation

A rebuttable presumption arises that ownership of tenants-in-common is equal when an instrument is silent as to the parties' respective interests in property. Accordingly, trial courts are obligated to examine the totality of the circumstances to determine the respective ownership interests of the parties.

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > ... > Property Distribution > Inferences & Presumptions > Community Property

HN10 Burdens of Proof, Preponderance of Evidence

The presumption of equal shares may be rebutted with a showing, by a preponderance of the evidence, that the parties intended to share unequally in the property. Trial courts should consider the totality of the circumstances to determine whether the presumption of equal shares has been overcome by a preponderance of the evidence. The party opposing equal ownership bears this burden.

Civil Procedure > ... > Voluntary Dismissals > Court Order > Dismissal With Prejudice

HN11 Court Order, Dismissal With Prejudice

The question of prejudice must be answered by reviewing the totality of the circumstances.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Real Property Law > Estates > Transfers > Partition Actions

Estate, Gift & Trust Law > ... > Probate > Probate Proceedings > Costs & Expenses

HN12 Basis of Recovery, Statutory Awards

Idaho Code Ann. § 6-545 authorizes an award of attorney fees in actions seeking a partition of real estate. *Section 6-545* permits recovery of the costs of partition, including reasonable attorney fees, incurred for the common benefit. However, if the attorney fees are incurred as part of an adversarial process, then attorney fees are not recoverable under the statute.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

Civil Procedure > Appeals > Costs & Attorney Fees

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN13 Basis of Recovery, Bad Faith Awards

In order to recover attorney fees on appeal pursuant to [Idaho Code Ann. § 12-121](#), the party seeking them must prevail.

Counsel: Banks Gaffney, PLLC, Idaho Falls, for Appellant, Jay Wright. Jeffrey W. Banks argued.

Olsen Taggart PLLC, Idaho Falls, for Respondent, Kristie Parish. Steven L. Taggart argued.

Judges: STEGNER, Justice. Chief Justice BEVAN, and Justices BRODY, MOELLER and ZAHN CONCUR.

Opinion by: STEGNER

Opinion

[**1118] [*221] STEGNER, Justice.

This case involves the applicability of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion). Jay Wright appeals the district court's grant of summary judgment to his ex-wife, Kristie Parish. Wright and Parish were married in 2002 and divorced in 2019. Before they were married, Wright and Parish, as single persons, purchased two adjacent parcels of real property in Island Park ("the Island Park Properties"), and their ownership of the property did not change following their marriage.

A magistrate court presided over their divorce proceedings and the distribution of their community property. The magistrate court classified as community property certain loan payments and improvements that had been made for the [**2] benefit of the Island Park Properties but specifically declined to divide the Island Park Properties because the court concluded the Island Park Properties were separate property and that it "lack[ed] authority to divide the property." The magistrate court concluded that Wright and Parish "apparently" owned the Island Park Properties as tenants-in-common, each with a fifty percent interest, though it never made a definitive ruling on each party's interest, concluding only that they were "joint owners[.]"

Roughly one year after the magistrate court entered its final judgment for the divorce, Wright filed a complaint in district court seeking a partition of the Island Park Properties and for Parish to deed the Island Park Properties to him, arguing in part that his ownership interest in the Island Park Properties exceeded the fifty percent determination that the magistrate court had ostensibly made. In response, Parish moved for

summary judgment, arguing that Wright's claim that he was entitled to a greater ownership interest in the Island Park Properties was precluded by the doctrines of *res judicata* and collateral estoppel. The district court granted Parish's motion for summary judgment [***3] after determining that the issues in Wright's complaint had already been litigated in the prior divorce proceedings. The district court found that Wright's argument that he had a greater ownership interest in the Island Park Properties was barred by *res judicata* (claim preclusion) and collateral estoppel (issue preclusion). As a result, the district court concluded that the proceeds from the sale of the Island Park Properties should be equally divided between Wright and Parish. Wright timely appealed.

I. FACTUAL AND PROCEDURAL BACKGROUND

Before they married, Wright and Parish purchased a home and land in Fremont County, Idaho, known as the Island Park Properties, for \$50,000. The division of the Island Park Properties was one of the disputes in the divorce proceedings before the magistrate court. It is the only issue in dispute in this appeal from the district court. During the divorce proceedings, the magistrate court was required to categorize the couple's property as either separate or community. In an effort to discharge its obligation, the magistrate court attempted to trace the individual contributions made by each party to the Island Park Properties. The magistrate court found [***4] that a settlement statement for the purchase of the properties "show[ed] a purchase price of \$50,000 with \$44,933.42 going to retire a mortgage loan that existed against the property." The parties disagreed as to the source of the \$50,000 used to purchase the Island Park Properties.

Wright argued that the funds were primarily from a home equity loan ("the Home Equity Loan"), which was secured by real property in Idaho Falls referred to as the Bergeson Property, and "show[ing] a principal amount credit limit of \$38,362." The Bergeson Property had previously been Wright's separate property, but in order to obtain the Home Equity Loan, for which both Wright and Parish would be liable, the lender required that both Wright and Parish be listed as owners of the Bergeson Property. As a result, Wright deeded the Bergeson Property from himself "to Jay F. Wright, a single man and Kristie Ann Parrish [sic], a single woman." By contrast, Parish argued before the magistrate court that the entire \$50,000 came "from funds she was entitled to receive from her mother's estate." Curiously, the

magistrate court determined that neither party could conclusively prove the source of [**1119] [*222] the \$50,000, yet it [***5] determined that at least a portion of the purchase price came from the joint Home Equity Loan.

Two years after they had taken out the Home Equity Loan, Wright and Parish refinanced the Home Equity Loan (this new loan was characterized by the magistrate court as the "2001 Loan"). The 2001 Loan was also secured by the Bergeson Property. The couple subsequently made joint payments on the 2001 Loan. In 2003 and again in 2010, they refinanced the Home Equity Loan and again secured the loans with the Bergeson Property. (These loans are referred to by the magistrate court as the "2003 Loan" and the "2010 Loan," respectively.) Since they never deeded the Island Park Properties to themselves as a marital community, the magistrate court determined that Wright and Parish "appear[ed]" to own the Island Park Properties as tenants-in-common.

In winding up the divorce, the magistrate court listed the assets and liabilities held by each party. The magistrate court entered findings of fact and conclusions of law tracing the contributions made to the community, including the purchase of the Island Park Properties and the payment of the loans, either from separate or community property. Next, in an apparent [***6] effort "to equalize the property and debt distribution[,]," the magistrate court determined that Parish needed to pay Wright \$20,826.25. The magistrate court ordered Parish to pay the \$20,826.25 to Wright "within 60 days of this order."¹

After finalizing the necessary division to complete the divorce, the magistrate court explained that it "lack[ed] authority to divide the property." It continued: "However, in the event the parties wish to divide the asset rather than continue as tenants-in-common the court would find that Petitioner [Wright] should be awarded the property subject to a payment to Respondent [Parish] of \$60,000." Later, the magistrate court ordered Parish

to pay Petitioner [Wright] \$20,826.25 to equalize the property and debt distribution. The court notes this division could be equalized by a different division of the joint savings account, but will not order that, rather leaving it to the discretion of the

Respondent [Parish] on the method of payment. The court directs the payment be made within 60 days of this order. This leaves the parties as joint owners of the Island Park property. *If the parties wish to consider the Island Park property, based on this court's findings [***7] Petitioner [Wright] would owe Respondent [Parish] \$39,173.75 to equalize the distribution.* If the parties wish for the court to review this matter, either may request an opportunity to submit legal authority and supplemental evidence including oral testimony.

(*Italics added.*) It is difficult (if not impossible) to divine what the magistrate court intended in the preceding quotation. Suffice to say, it is challenging to reconcile the magistrate court's comments.

Despite the seemingly conflicting language, the magistrate court found that the Island Park Properties were valued at \$120,000 (as suggested by Wright), the property was owned as tenants-in-common, and each party's interest was apparently equivalent to half that amount—\$60,000.

After the magistrate court issued its findings of fact and conclusions of law, Wright moved to amend the findings, arguing that his required contribution to the community should be reduced because a portion of his inheritance, his own separate property, had been used to pay the 2003 Loan. The magistrate court denied Wright's motion to amend, finding that the Bergeson Property, an asset of the community and not Wright's separate inheritance, was the security [***8] for the 2003 Loan.

Neither Wright nor Parish appealed the final judgment of the magistrate court. However, Wright later filed this partition action in district court, arguing that he had a greater than fifty percent ownership interest in the Island Park Properties. Parish moved for summary judgment, arguing that the parties had litigated the question of each other's ownership interests in the original divorce proceedings, and, as a result, Wright's claim [**1120] [*223] was barred by the doctrine of *res judicata* or collateral estoppel. The district court agreed with Parish's argument and granted Parish's motion for summary judgment, concluding that Wright's claim that he was entitled to greater than fifty percent of the Island Park Properties was barred by both *res judicata* and collateral estoppel because the magistrate court had already fully heard and decided the issue of the parties' ownership of the Island Park Properties. Wright's appeal followed.

¹ Both parties in their respective affidavits filed with the district court agree that Parish paid Wright this amount, and neither party has disputed this fact on appeal.

II. STANDARD OF REVIEW

HN1 In an appeal from an order of summary judgment, this Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. All disputed facts are to be construed liberally in favor [**9] of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review.

Ware v. City of Kendrick, 168 Idaho 795, 798, 487 P.3d 730, 733 (2021) (internal citations omitted). "Questions of law are reviewed *de novo*, and '[w]hether an action is barred by *res judicata* is a question of law.'" *Monitor Fin., L.C. v. Wildlife Ridge Estates, LLC, 164 Idaho 555, 559, 433 P.3d 183, 187 (2019)* (alteration in original) (internal citation omitted).

III. ANALYSIS

A. The district court erred in granting summary judgment to Parish because neither issue preclusion nor claim preclusion apply to Wright's partition action.

HN2 A grant of summary judgment requires there to be no genuine dispute of material fact and a showing that the moving party is entitled to judgment as a matter of law. *I.R.C.P. 56(a)*. The primary question before the district court was whether the magistrate court had properly determined that each party had an [**10] equal interest in the Island Park Properties, in which case Wright's claim that he was entitled to a greater interest would be precluded by an application of *res judicata*.

HN3 *Res judicata* serves three purposes:

First, it [preserves] the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice

litigated to inconsistent results. Second, it serves the public interest in protecting the courts against the burdens of repetitious litigation; and third, it advances the private interest in repose from the harassment of repetitive claims.

Hindmarsh v. Mock, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002) (internal quotation marks and citation omitted). "The doctrine of *res judicata* covers both claim preclusion (true *res judicata*) and issue preclusion (collateral estoppel)." *Ticor Title Co. v. Stanion, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007)* (citing *Hindmarsh, 138 Idaho at 94, 57 P.3d at 805*). Claim preclusion exists to "bar[] a subsequent action between the same parties upon the same claim or upon claims relating to the same cause of action . . . which might have been made." *Id.* (quoting *Hindmarsh, 138 Idaho at 94, 57 P.3d at 805*) (alteration in original). Separately, issue preclusion bars additional litigation of "an identical issue with the same party or its privy." *Id.* (internal citation omitted). "Separate tests are used to determine whether [**11] claim preclusion or issue preclusion applies." *Id.* Because the district court concluded that both issue preclusion (collateral estoppel) and claim preclusion (true *res judicata*) applied to Wright's claim, both will be analyzed in turn.

1. *The district court erred in concluding that Wright's claim was barred by the doctrine of issue preclusion (collateral estoppel).*

The district court concluded that Wright's claim to greater than fifty percent ownership of the Island Park Properties was barred by [**1121] [*224] issue preclusion, finding that all five elements were present. Specifically, the district court found that Wright already had an opportunity to litigate whether he was entitled to a greater than fifty percent ownership interest in the Island Park Properties.

As an initial point, Parish argues we should not reach this question because it was not preserved by Wright before the district court. Notwithstanding Parish's argument, we conclude that Wright's argument regarding ownership of the Island Park Properties was properly preserved for appeal. In Wright's response to Parish's motion for summary judgment filed in the district court, he argued that the magistrate court had not "decided the parties' [**12] ownership interest in their jointly owned, separate property." It appears from the record that Wright has argued all along that the magistrate court's decision was limited to ascertaining and dividing *community* property, not *separate* property. Accordingly, we will address the merits of Wright's

argument on this issue on appeal. [State v. Miramontes, 170 Idaho 920, 924-25, 517 P.3d 849, 853-54 \(2022\)](#) **HN4**[↑] (concluding that "a party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing").

In reaching the question of whether issue preclusion applies, we hold that the district court erred in determining that Wright's claim for a greater than fifty percent interest in the Island Park Properties is barred by the doctrine of issue preclusion. **HN5**[↑] Issue preclusion exists to prevent "litigants from having to relitigate an identical issue in a subsequent action." [Ticor Title Co., 144 Idaho at 124, 157 P.3d at 618](#) (internal citation omitted). For issue preclusion to bar additional litigation, the following elements must be present:

- (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case;
- (2) the issue decided in the prior litigation was identical to the **[***13]** issue presented in the present action;
- (3) the issue sought to be precluded was actually decided in the prior litigation;
- (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party
- (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Id. (internal citation omitted).

The district court concluded that each element of issue preclusion had been met, precluding further litigation of the question of Wright's and Parish's respective ownership interests in the Island Park Properties. We disagree with the district court's decision. **HN6**[↑] In order for issue preclusion to apply, a final judgment on the merits must have been rendered. [Rodriguez v. Dep't of Corr., 136 Idaho 90, 93, 29 P.3d 401, 404 \(2001\)](#). In the couple's divorce proceedings, the magistrate court specifically disclaimed any ability to issue a judgment resolving the parties' respective ownership of the Island Park Properties. While the magistrate court offered the parties the option of requesting that the court resolve the ownership of the property, neither Wright nor Parish ever accepted the magistrate court's offer. As a result, the magistrate court never **[***14]** rendered a judgment determining the respective ownership of Wright and Parish in the Island Park Properties. Due to the lack of a

judgment, issue preclusion does not bar Wright from bringing his suit to determine the respective ownership of the Island Park Properties. As a result, the district court erred when it concluded that Wright's attempt to prove that he has a greater than fifty percent ownership interest in the Island Park Properties was barred by the doctrine of issue preclusion.

2. The district court erred in concluding that Wright's claim was barred by the doctrine of claim preclusion (true res judicata).

The district court also concluded that Wright was not permitted to bring a claim that his ownership interest in the Island Park Properties exceeded fifty percent because it was barred by the doctrine of claim preclusion. The district court disagreed with Wright's argument that the magistrate court's previous decision was limited only to discussing the community property of the parties (and not the separate property of the **[**1122] [**225]** parties, which included the Island Park Properties). Instead, the district court found that the magistrate court "had the authority to determine each party's **[***15]** interest in jointly owned separate property." The district court determined that, since the magistrate court properly handled the tracing of separate and community contributions to the Island Park Properties, "Wright's claim to a greater ownership interest [was] barred by the doctrine of claim preclusion[.]"

HN7[↑] To succeed on a theory of claim preclusion, a party must show three elements—"(1) same parties; (2) same claim; and (3) final judgment." [Ticor Title Co., 144 Idaho at 124, 157 P.3d at 618](#). As was fatal to Parish's assertion of issue preclusion, the lack of a final judgment also precludes the application of claim preclusion. The district court treated the magistrate court's decision as a final judgment resolving the ownership interests in the Island Park Properties. However, the magistrate court's offer to resolve the ownership interest of the parties to the property in question was nothing more than an unaccepted offer to resolve the dispute. The magistrate court explained that, absent a stipulation by the parties, the court could not issue a judgment to resolve the parties' respective ownership of the Island Park Properties. The parties never stipulated to the magistrate court's jurisdiction over that question and accordingly **[***16]** the magistrate court never issued a final judgment regarding the Island Park Properties. Therefore, the district court erred when it concluded that the magistrate court's discussion of the Island Park Properties in the divorce proceedings amounted to a final judgment, barring

Wright's claim that he had a greater than fifty percent ownership interest in the Island Park Properties.²

3. On remand, the district court must consider whether Wright can produce evidence to overcome the rebuttable presumption of equal ownership of the Island Park Properties.

Because neither issue preclusion nor claim preclusion apply here, we now turn to the proper analysis regarding partition of the Island Park Properties and the parties' respective ownership interests because those issues will need to be resolved on remand. See *Urrutia v. Blaine County*, 134 Idaho 353, 359, 2 P.3d 738, 744 (2000) HN8[↑] ("Where an appellate court reverses or vacates a judgment upon an issue properly raised, and remands for further proceedings, it may give guidance for other issues on remand.") (internal citation and quotation marks omitted). The district court issued its memorandum decision in this case on September 24, 2020, and the parties finished their briefing for this appeal on August 17, ***17 2022. Neither the district court nor the parties had the benefit of our two recent decisions in *Nordgaarden v. Kiebert*, Idaho , 527 P.3d 486 (2023), and *Demoney-Hendrickson v. Larsen*, Idaho , 527 P.3d 520 (2023). Both cases are illuminating on the issue of partition.

In *Nordgaarden*, the question before this Court was what standard to employ when determining the physical partition of real property. *Idaho at , 527 P.3d at 489*. Three siblings owned an undivided, one-third interest in a lakefront piece of real property that contained only one home. *Id. at , 527 P.3d at 490*. After the house had fallen into disrepair, one sibling sought judicial partition of the property, "assert[ing] that the property could be physically partitioned without great prejudice[]," so partition by sale was unnecessary. *Id. at , 527 P.3d at 491*. The district court rejected that argument and concluded that partition by sale was necessary because physical partition would be too costly and there was no reasonable division of the property that would result in equal property values for the three siblings. *Id.* As a result, the parties would suffer great prejudice from physical partition of the property. *Id.* (Even though the property consisted of over three hundred feet of

frontage on Lake Pend Oreille, physical partition was not feasible given the unique characteristics of the parcel. *Id. at , 527 P.3d ***1231 at 490*.) This [**226] Court affirmed [***18] the district court's decision, concluding that a determination of great prejudice "must take into account the totality of the circumstances." *Id. at , 527 P.3d at 492* (bold lettering and underlining removed). Next, this Court concluded that the district court's factual findings regarding "the totality of circumstances" were supported by substantial and competent evidence. *Id. at , 527 P.3d at 495-99*. For that reason, the district court did not err when it ordered the property to be partitioned by sale. *Id. at , 527 P.3d at 498-99*.

Shortly after we released our opinion in *Nordgaarden*, we considered the narrower question of the methodology of determining respective interests in property. HN9[↑] In *Demoney-Hendrickson*, we concluded that a rebuttable presumption arises that ownership of tenants-in-common is equal "when an instrument is silent as to the parties' respective interests in property[.]" *Idaho at , 527 P.3d at 527*. Accordingly, trial courts are obligated to "examine the totality of the circumstances to determine the respective ownership interests of the parties." *Id. at , 527 P.3d at 528*. In *Demoney-Hendrickson*, an unmarried couple acquired an interest in real property when one party conveyed his own separate property to both parties as individual grantees. *Id. at , 527 P.3d at 522*. In the subsequent partition action, the district court relied exclusively upon the language of the ***19 deed when it concluded that each party "owned an undivided, one-half interest in the . . . Property[.]" *Id. at , 527 P.3d at 523*.

On appeal, this Court reversed the district court's grant of summary judgment, concluding that the district court erred when it relied exclusively on the language of the deed in determining that each party owned an equal interest in the property. *Id. at , 527 P.3d at 525*. HN10[↑] Instead, "[t]he presumption of equal shares may be rebutted with a showing, by a preponderance of the evidence, that the parties intended to share unequally in the property[.]" and the district court erred when it relied solely on the language of the deed. *Id. at , 527 P.3d at 528*. This Court concluded that "trial courts [should] consider the totality of the circumstances to determine whether the presumption of equal shares has been overcome by a preponderance of the evidence." *Id.* "The party opposing equal ownership bears this burden." *Id.*

²Because we conclude that Wright's current claim is not barred by claim preclusion due to the absence of a final judgment, we need not address the remaining elements of claim preclusion. See *Luce v. Marble*, 142 Idaho 264, 273, 127 P.3d 167, 176 (2005); *Ticor Title Co.*, 144 Idaho at 124, 157 P.3d at 618.

The present case is analogous to [Demoney-Hendrickson](#). Here, the district court erred when it failed to consider "the totality of the circumstances" before ruling in Parish's favor. The district court determined that the magistrate court's finding of fifty percent ownership had already been made. Further, the district court only considered the [***20] fact that there was a single house on the property when it concluded that the parties would be greatly prejudiced by partitioning the property in kind. It found the existence of a single house to be "sufficient[] [to] demonstrate[] the absence of a genuine issue of material fact on the question of prejudice if the Property is partitioned in kind." [HN11](#)¹¹ However, as we described in [Nordgaarden](#), the question of prejudice must also be answered by reviewing "the totality of the circumstances." [Idaho at , 527 P.3d at 494.](#)

Both Wright and Parish argued before the magistrate court how much of their separate funds had been used for the purchase of the Island Park Properties and the payment of the subsequent loans encumbering the Island Park Properties. However, neither party appears to have offered any evidence regarding their intended ownership interests of the Island Park Properties. The magistrate court did not find that either party had provided any evidence that the Island Park Properties had been conveyed "to the parties as married persons after the marriage[,]" yet it still concluded that "the parties apparently had the intent to jointly [equally] own the Island Park property." Wright argues that his separate property that secured [***21] the Home Equity Loan is evidence that the parties did not intend to equally own the property, yet the magistrate court's decision "contained zero discussion as to how these funds impacted the ownership interest of the parties[.]"

We agree with Wright. The magistrate court erred because it did not have the benefit of our decision in [Demoney-Hendrickson](#) in which we explained that the ownership [**1124] [*227] classification of joint tenancy is merely a rebuttable presumption that may be overcome. [Idaho at , 527 P.3d at 527.](#) In [Demoney-Hendrickson](#), the district court "treated the dispute [regarding the parties' contributions] as one applicable to a contribution claim, rather than a determination of the parties' respective ownership interests." [Id. at , 527 P.3d at 528.](#) We clarified that questions of contribution and questions of ownership interest are distinct, and the district court erred when it conflated the two. [Id. at , 527 P.3d at 528-29.](#) We further concluded that summary judgment was improper when one party "produced evidence suggesting he contributed all sums for improving the . . . Property, [while he] admit[ted] he

was unable to procure financing for the improvements . . . without a co-obligor on the construction loan." [Id. at , 527 P.3d at 529.](#)

Neither the magistrate court's nor the district court's decisions considered whether [***22] Wright or Parish intended for the Island Park Properties to be equally owned as tenants-in-common or whether they intended a different form of ownership—the decisions only considered the potential ownership interests considering the respective contributions of the parties. The magistrate court merely found that the parties owned the Island Park Properties "joint[ly]." It did not make an explicit finding of fifty percent ownership. Instead, the magistrate court's decision used unclear language (appearing to be advisory in nature), explaining that "[e]ach party would appear to have a \$60,000 interest" and "it appears that the real intent was too [sic] jointly own the Island Park [Properties]."¹² (Italics added.)

The magistrate court's decision added further confusion when it appeared to suggest an option for Wright to "buy out" Parish's interest in the Island Park Properties. First, the magistrate court ordered Parish to pay \$20,826.25. Then, it said that if the parties preferred to include the Island Park Properties in the divorce action, then Wright could pay Parish \$39,173.75 instead. It is hard to fathom what the magistrate court intended by suggesting that if Wright paid Parish \$39,173.75, [***23] the Island Park Properties would then be considered part of the community's property. One way to interpret the magistrate court's suggestion is to conclude that Wright had contributed \$20,826.25 more than Parish to the Island Park Properties. If that supposition is correct, in order to equalize the ownership of the parties, Parish's payment to Wright of \$20,826.25 presumably would have given the parties an equal ownership in the Island Park Properties. Conversely, if Wright had paid Parish \$39,173.75, he presumably would have owned the Island Park Properties free and clear; however, it is unclear what the magistrate court intended. The magistrate court never fully explained its reasoning, nor is it clear what was intended by suggesting the different alternatives. The district court erred when it concluded that this confusion was insufficient to present a genuine issue of material fact. Accordingly, we remand this issue to the district court to resolve in light of this Court's recent decisions in [Nordgaarden](#), [Idaho , 527 P.3d 486,](#) and [Demoney-Hendrickson, Idaho , 527 P.3d 520.](#)

B. Neither party is entitled to attorney fees on

appeal.

Both Wright and Parish seek attorney fees on appeal. Each will be dealt with in turn.

Wright requests attorney fees [**24] on appeal based on [Idaho Code section 6-545](#). [HN12](#) [Idaho Code section 6-545](#) authorizes an award of attorney fees in actions seeking a partition of real estate. In [Nordgaarden](#), we explained that [section 6-545](#) permits recovery of the costs of partition, including reasonable attorney fees, incurred "for the common benefit[.]" — [Idaho at , 527 P.3d at 500](#). However, if the attorney fees are incurred as part of an adversarial process, then attorney fees are not recoverable under the statute. *Id.*; see also [I.C. § 6-545](#) ("When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them."). Accordingly, Wright is not entitled to attorney fees under [Idaho Code section 6-545](#).

[**1125] [*228] At the same time, we conclude that because Wright has prevailed in this action he is entitled to his costs. I.A.R. 40.

Parish also seeks attorney fees on appeal. Parish argues that she is entitled to attorney fees and costs under [Idaho Code sections 6-545](#) and [12-121](#) because this is a partition action and because Wright's appeal was brought frivolously, unreasonably, and without foundation. For the same reasons why Wright is not entitled to recover attorney fees pursuant to [Idaho Code section 6-545](#), neither is Parish. [HN13](#) In order to recover attorney fees on appeal pursuant to [Idaho Code section 12-121](#), the party seeking them must prevail. See [**25] [Easterling v. HAL Pac. Props., L.P., 171 Idaho 500, 520, 522 P.3d 1258, 1278 \(2023\)](#). Parish has not prevailed. Consequently, we decline her request for attorney fees and costs.

IV. CONCLUSION

The district court erred in granting summary judgment to Parish regarding Wright's attempt to assert a greater than fifty percent ownership interest in the Island Park Properties. We remand the case to the district court to consider whether Wright can produce evidence to overcome the rebuttable presumption of equal ownership of the Island Park Properties pursuant to our decisions in [Demoney-Hendrickson](#), [Idaho at , 527 P.3d at 527](#), and [Nordgaarden](#), [Idaho at , 527 P.3d](#)

[at 494](#). We decline to award attorney fees to either party. Costs on appeal are awarded to Wright.

Chief Justice BEVAN, and Justices BRODY, MOELLER and ZAHN CONCUR.

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Court: Idaho Dist. Ct. | **Date:** May 20, 2014

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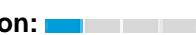
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As of: October 24, 2024 11:37 AM Z

Fannie Mae v. Ormesher

First Judicial District Court of Idaho, Kootenai County

May 20, 2014, Decided

Case No. CV 2013 8096

Reporter

2014 Ida. Dist. LEXIS 31 *

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff, vs. GORDON L. ORMESHER, JR., BILLIE JEAN ORMESHER, and John Does 1-10 as occupants of the Premises located at 202 East Foxborough Court, Hayden, ID 83835, Defendants.

Core Terms

Pleadings, Counterclaims, trust deed, motion to dismiss, motion for judgment, notice, good faith, Memorandum, foreclosure, disputed property, short sale, motion to consolidate, Grantee, affirmative defense, trustee sale, judicial notice, foreclosure sale, purchaser, Mortgage, eviction, recorded, genuine issue of material fact, credit bid, Ejectment, bid, summary judgment, fair dealing, offers, accord and satisfaction, promissory estoppel

Judges: [*1] John T. Mitchell, District Judge.

Opinion by: John T. Mitchell

Opinion

MEMORANDUM DECISION AND ORDER: 1) DENYING DEFENDANTS ORMESHERS' MOTION TO CONSOLIDATE; 2) DENYING PLAINTIFF FANNIE MAE'S MOTION FOR JUDGMENT ON THE PLEADINGS, AND 3) GRANTING IN PART AND DENYING IN PART PLAINTIFF FANNIE MAE'S MOTION TO DISMISS DEFENDANTS' AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

I. PROCEDURAL HISTORY AND FACTUAL

BACKGROUND.

This case is an action for ejectment following non-judicial foreclosure of real property. This matter is before the Court on plaintiff Federal National Mortgage Association's (Fannie Mae) Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaim, and defendants Ormesher's Motion to Consolidate. Oral argument on these motions was held May 5, 2014.

In this case, Kootenai County Case CV 2013 8096, filed on November 13, 2013, plaintiff Fannie Mae seeks to eject the defendants Gordon Ormesher Jr. and Billie Jean Ormesher from real property located in Kootenai County, Idaho. Post Foreclosure Eviction Complaint for Ejectment and Restitution of Property, p. 7 ¶ VIII. Several weeks before this instant case was filed, on September 27, 2013, Ormesher filed a Verified Complaint in Kootenai County Case [*2] CV 2013 6956, suing Fannie Mae, Citimortgage, Inc., and Northwest Trustee Services, Inc., in which Ormesher sought a temporary restraining order cancelling the trustee foreclosure sale scheduled on that same date, September 27, 2013. Verified Complaint, CV 2013 6956, p. 14, ¶ A. That Verified Complaint was filed by Ormesher at 9:58 a.m., two minutes before the foreclosure sale took place on September 27, 2013, at 10:00 a.m. Pacific Daylight Savings time at 451 Government Way, Coeur d'Alene Idaho, as originally scheduled. Affidavit of Robyn Shea, p. 3 ¶ 17. Not surprisingly, District Judge Lansing Haynes denied Ormesher's request for a temporary restraining order, writing:

DENIED — This file was presented to this Court at 11:20 a.m., when the foreclosure sale was scheduled for today at 10:00 a.m. Moreover, the facts alleged in the verified complaint, Petition and

Affidavit of Wesley Hoyt are insufficient to satisfy Rule 65(b) requirements for issuance of a Temporary Restraining Order.

Temporary Restraining Order, CV 2013 6956, p. 1.

On May 21, 2009, Ormeshers borrowed \$387,000.00 from Sydion Financial, LLC, for the purchase of real property located at 2025 East Foxborough Court, Hayden, **[*3]** Kootenai County, Idaho (disputed property). Affidavit of Jon Dobson, p. 2 ¶¶ 6-7. The promissory note was secured by a deed of trust that was recorded in Kootenai County on June 8, 2009, as Instrument No. 2215500000. *Id.*, p. 2 ¶ 7. The deed of trust was assigned to CITIMORTGAGE, Inc. (Citi), and recorded on November 28, 2012, under Kootenai County Instrument No. 2385657000. *Id.*, p. 2 ¶ 8.

On September 1, 2012, prior to the assignment to Citi, the Ormeshers notified Sydion Financial, LLC that Ormeshers were experiencing a financial hardship. *Id.*, p. 2 ¶ 9. "[U]nder the general guidelines to HAMP [(Fannie Mae's Home Affordable Mortgage Program) this] placed a duty on the lender [Sydion Financial, LLC] to initiate the process of evaluating the Borrowers for a loan modification to determine if they qualified for an affordable alternative to their Mortgage Loan." *Id.* Instead, the Ormeshers allege "Sydion assigned the Mortgage Loan to Citi as the Successor Lender which entity took over the management of the Deed of Trust effectively November 28, 2012." *Id.*, p. 2 ¶ 11.

On July 23, 2013, Citi entered into loan modification negotiations with the Ormeshers and scheduled the foreclosure date for August **[*4]** 30, 2013, "offering [the defendant] a trial loan modification for three months with payments to commence September 1, 2013." *Id.*, p. 3 ¶ 16. The Ormeshers determined that option would not work as the loan modification payment would have been impossible for them to meet. *Id.*, p. 3 ¶¶ 18-19. "[T]he Ormeshers then asked Fannie Mae to approve a HAFA Short Sale of the Subject Property and upon said request, Citi postponed the foreclosure sale date to September 27, 2013. [The defendants] election to proceed with a HAFA [Home Affordable Foreclosure Alternative] Short Sale as an affordable alternative was pursuant to Fannie Mae regulations and the property was then listed for sale with a relator on or about September 1, 2013." *Id.*, p. 3 ¶ 19; Affidavit of Robyn Shea, p. 1, ¶ 1. The property was listed for sale on September 3, 2013, and two (2) offers were received with a purchase price of \$175,000.00. Affidavit of Robyn Shea, p. 2 ¶ 3. The offers were conveyed to Citi and Fannie Mae. Affidavit of Jon Dobson, p. 3 ¶ 20. "Fannie

Mae approved the application for a HAFA Short Sale of the Subject Property in early September 2013 and assigned two real estate brokers to provide their evaluation of the **[*5]** market value thereof who were actively engaged in the act of determining the Broker's Price Option ("BPO") by September 27, 2013, the date of the next scheduled foreclosure sale." Affidavit of Robyn Shea, p. 2 ¶ 5. On September 9, 2013, the defendants sent HAFA Short Sale documentation to Citi per their request. Affidavit of Jon Dobson, p. 4 ¶ 22. "As of September 26, 2013, all documents paperwork and information required of the [defendants] to qualify them for a HAMP Short Sale [had] been submitted to Fannie Mae and Citi except the BPO." Affidavit of Robyn Shea, p. 2 ¶ 7. That same day "realtors from Spokane, Washington selected by Fannie Mae to provide a Broker's Price Opinion ("BPO") inspected the Subject Property and their written report to Fannie Mae was expected within a few days." *Id.*, p. 2 ¶ 8. A representative for the defendants contacted Citi in writing on September 23, 2013, requesting it "postpone the September 27, 2013 foreclosure sale so Fannie Mae would be able to obtain the BPO allowing it to make its final determination whether to accept the HAFA Short Sale offering price of \$175,000 currently pending to which Citi did not respond . . ." Affidavit of Jon Dobson, p. **[*6]** 4 ¶ 27.

The foreclosure sale took place on September 27, 2013, at 10:00 a.m. Pacific Daylight Savings time at 451 Government Way, Coeur d'Alene Idaho, as originally scheduled. Affidavit of Robyn Shea, p. 3 ¶ 17. According to Robyn Shea, a realtor with Beutler & Associates, Century 21 in Coeur d'Alene, Idaho, who was in attendance at the foreclosure sale auction on September 27, 2013, "no cash bids [were] made and the auctioneer announced that no credit bid had been presented to him." *Id.*, pp. 1, 3 ¶¶ 1, 17-18. Moreover, Shea further contends "[n]o one at the Event of September 27, 2013 offered to purchase the Subject Property on behalf of Citi by a credit bid or otherwise." *Id.*, p. 3 ¶ 20.

In its "Post Foreclosure Eviction Complaint for Ejectment and Restitution of Property", Fannie Mae pleads as follows:

On September 27, 2013, Northwest Trustee Services, Inc., pursuant to notice and [Idaho Code 45-1506](#) conducted a trustee's sale of the property located at 2025 East Foxborough Court, Hayden, Idaho 83835. Plaintiff was the successful bidder at said sale and a Trustee's Deed was issued to

plaintiff. A true and correct copy of the Trustee's Deed is attached hereto, and incorporated herein, as "Exhibit A."

Post [*7] Foreclosure Eviction Complaint for Ejectment and Restitution of Property, p. 6 ¶ VI. Paragraph "f" of the attached Trustee's Deed provides:

Trustee, on September 27, 2013, at the time and place of sale fixed by the Notice of Sale or by publically proclaimed postponement, sold the Property in one parcel at public auction to the beneficiary, the highest bidder, for the credit bid sum of \$397,686.71. The beneficiary then designated Grantee [First National Mortgage Association] to be the grantee under this Trustee's Deed, directing the Trustee to issue the Trustee's Deed to Grantee as grantee. . . .

Id., Exhibit A, p. 2 ¶ (f). On February 7, 2014, Fannie Mae filed the instant Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), seeking a writ of ejectment directing the Kootenai Sheriff to return possession of the disputed property to Fannie Mae and dismissing Ormeschers' counterclaims. That motion was accompanied by a "Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#)" and a "Request for Judicial Notice in Support of Plaintiff's Motion for Judgment on the Pleadings and Motion to Dismiss [*8] Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#)". This first request for judicial notice by Fannie Mae asked this Court to take judicial notice of a certified copy of the recorded Trustee's Deed dated October 2, 2013, and recorded on October 4, 2013, as instrument number 2431444000, in the official records of Kootenai County, Idaho. In its Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), Fannie Mae notes the following by way of footnote:

The Complaint in this matter contains an inaccurate factual recitation which states in paragraph VI that Plaintiff was the successful bidder when in fact, the beneficiary under the Deed of Trust was the successful bidder, who then designated the Plaintiff to be the Grantee under the Trustee's Deed and directed the Trustee to issue the Trustee's Deed in Plaintiff's name as Grantee. Idaho is a notice pleading state and paragraph VI of the Complaint specifically references, attaches and incorporates the Trustee's Deed which confirms in paragraph (f) that the beneficiary designated the Grantee, to be

the Grantee under the Trustee's Deed.

Memorandum in Support of Motion for Judgment on the Pleadings and [*9] Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), p. 3 n. 1. Even to the present date, Fannie Mae has not filed a motion to amend its Complaint. No affidavits have been submitted by Fannie Mae in support of its position that the beneficiary under the deed of trust was the successful bidder, which then designated Fannie Mae as the grantee under that deed of trust. The Ormeschers claim the trustee's sale held on September 27, 2013, was unlawful pursuant to [Idaho Code § 45-1506](#) and the Idaho Deed Trust Act, and as such, Fannie Mae is not entitled to possession of the disputed property. Answer and Counterclaim, pp. 1-3 ¶¶ I, VI, VII.

On April 17, 2014, Ormeschers filed an "Opposition to Motion for Judgment on the Pleadings and Opposition to Motion to Dismiss Counterclaims", and then on April 21, 2014, filed another memorandum entitled "Memorandum of Law in Support of Opposition to Motion for Judgment on the Pleadings and Opposition to Motion to Dismiss Counterclaims."

On May 1, 2014, four days before oral argument, Fannie Mae filed "Plaintiff's Reply in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#)." On that same date, Fannie Mae also filed two requests [*10] for judicial notice. In Fannie Mae's "Request for Judicial Notice Regarding Plaintiff's Reply in Support of its Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims", filed at 9:41 a.m., on that date, Fannie Mae asked this Court to take judicial notice of "...U.S. Treasury Department Supplemental Directive 09-09 Revised, dated March 26, 2010." In Fannie Mae's "Request for Judicial Notice Regarding Plaintiff's Reply in Support of its Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims", filed at 4:20 p.m., on that date, Fannie Mae asked this Court to take judicial notice of Fannie Mae's "servicing guidelines and eligibility requirements for HAMP" and "servicing guideline...that in order to be considered for HAFA, the borrower must first be evaluated and, thus, qualify for HAMP." All requests for judicial notice made by Fannie Mae are appropriate, Ormeschers have not objected to any of these requests; accordingly, all requests for judicial notice are granted.

On April 14, 2014, Ormeschers filed in this case (CV 2013 8096) "Motion to Consolidate Cases", seeking an order from this Court to consolidate this case (CV 2013 8096) with Kootenai County Case [*11] No. CV 2013

6956. On April 28, 2014, Fannie Mae filed "Plaintiff's Memorandum in Opposition to Motion to Consolidate." In the other case, CV 2013 6956, counsel for Ormeshers on April 18, 2014, filed a "Motion to Shorten Time on Motion to Consolidate" and "Notice of Hearing on Motion to Consolidate", but oddly, did not actually file a Motion to Consolidate in that case. On April 28, 2014, Northwest Trustee Services, Inc., defendant in CV 2013 6956, filed "Defendant Northwest Trustee Services, Inc.'s Memorandum in Opposition to Motion to Consolidate Cases".

II. STANDARD OF REVIEW.

A. Motion to Consolidate.

Idaho Rule of Civil Procedure 42(a) provides that when actions involving common questions of law or fact are pending before a court, the court "may" order the actions consolidated. As such, the motion is committed to the Court's discretion. Appellate review of that decision will thus be based on whether the trial court abused that discretion. [*Reuth v. State, 103 Idaho 744, 644 P.2d 1333 \(1982\)*](#).

B. Motion for Judgment on the Pleadings.

Idaho Rule of Civil Procedure 12(c) governs motions for judgment on the pleadings. It provides:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If on a motion for judgment on the pleadings, matters [*12] outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [*Rule 56*](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [*Rule 56*](#).

I.R.C.P. 12(c).

Similarly, in considering a motion to dismiss under [*Idaho Rule of Civil Procedure 12\(b\)*](#), the court may examine only those facts that appear in the complaint and any facts that are appropriate for the court to take judicial notice of. [*Hellickson v. Jenkins, 118 Idaho 273, 276, 796 P.2d 150, 153 \(Ct. App. 1990\)*](#). Where matters outside the pleadings are considered by the court, the

court must treat the motion to dismiss as a motion for summary judgment. See [*Masi v. Seale, 106 Idaho 561, 562, 682 P.2d 102, 103 \(1984\)*](#); [*Hellickson, 118 Idaho at 276, 796 P.2d at 153*](#). This is because the nature of a motion to dismiss changes when the Court considers matters that are outside the pleadings.

If, on a motion asserting a defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [*Rule 56*](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [*Rule 56*](#).

[*I.R.C.P. 12\(b\)\(6\)*\(2012\)](#). Affidavits are considered matters outside [*13] the pleadings. Similarly, taking judicial notice is considered to be outside the pleadings, as it is a substitute for taking evidence. [*Hellickson, 118 Idaho at 276, 796 P.2d at 153*](#). In this case, the plaintiff has requested the Court take judicial notice of the trustee's deed and the defendants have submitted affidavits in support of their position. As such, the Court considers matters outside the pleadings and treats this as a motion for summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." [*I.R.C.P. 56\(c\)*](#). Specifically, "[t]he trial court must examine the pleadings to determine what issues are raised in the case. The only issues considered on summary judgment are those raised by the pleadings." [*Esser Elec. v. Lost River Ballistics Technologies, Inc., 145 Idaho 912, 919, 188 P.3d 854, 861 \(2008\)*](#) (citing [*Vanvooren v. Astin, 141 Idaho 440, 111 P.3d 125 \(2005\)*](#); [*Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 92 P.3d 526 \(2004\)*](#); [*Beco Constr. Co. v. City of Idaho Falls, 124 Idaho 859, 865 P.2d 950 \(1993\)*](#); [*Gardner v. Evans, 110 Idaho 925, 719 P.2d 1185 \(1986\)*](#)).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. [*Yoakum v. Hartford Fire Ins. Co., 129 Idaho 171, 923 P.2d 416 \(1996\)*](#). "The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." [*Nelson v. Anderson Lumber Co., 140 Idaho 702, 707, 99 P.3d 1092, 1097 \(2004\)*](#) (citing [*Dunnick v. Elder, 126*](#)

[Idaho 308, 311, 882 P.2d 475, 478 \(Ct. App. 1994\).](#)

Liberal construction of the facts in favor of the non-moving party [*14] requires the court to draw all reasonable factual inferences in favor of the non-moving party. See *Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v. Cruz*, 108 Idaho 253, 255, 698 P.2d 315, 317 (1985). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party," to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2000). An adverse party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. *Id.*; see *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979). When the case will be tried before the court, rather than before a jury, the court "is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences." *Huskinson v. Nelson*, 152 Idaho 547, 550, 272 P.3d 519, 522 (2012) (citing *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007)).

III. ANALYSIS OF ORMESHERS' MOTION TO CONSOLIDATE.

The Court is convinced Ormeshers' Motion to Consolidate must be denied. As mentioned above, the temporary restraining order Ormeshers sought in CV 2013 6956 was denied on September 27, 2013, by District Judge Lansing Haynes. That case was filed by Ormeshers and named [*15] as defendants: Citimortgage, Inc.; Northwest Trustee Services, Inc.; Sydion Financial, LLC; and First American Title Company. Fannie Mae was not named at the time the suit was filed by Ormeshers.

Following the denial of Ormeshers request for a temporary restraining order, Ormeshers *did absolutely nothing in that case*, including effectuating service on any defendant. It wasn't until April 15, 2014, weeks after the time allowed for service on a party under *I.R.C.P. 4(a)(2)* had expired, when Ormeshers filed their

Amended Complaint in that case, now adding Fannie Mae as a party defendant.

In that case, Citi and Fannie Mae have filed a Motion to Dismiss which is scheduled to be heard on July 24, 2014. At best, Ormeshers' motion to consolidate is premature. At worst, Ormeshers' motion to consolidate is a nullity, given Ormeshers' failure to satisfy *I.R.C.P. 4(a)(2)*.

Fannie Mae argues the present case is the post-foreclosure eviction proceeding, and the other case concerns pre-foreclosure allegations. Plaintiff's Memorandum in Opposition to Motion to Consolidate, pp. 3-4. Fannie Mae also argues consolidation of the matters may delay the present eviction proceedings. *Id.*, pp. 4-5. Fannie Mae also argues Idaho law supports [*16] the finality of the Trustee's Deed, and the Trustee's Sale terminated all interest Ormeshers had in the property, so eviction of Ormeshers should proceed quickly. *Id.*, pp. 5-6. This Court finds the present case which is a post-foreclosure eviction proceeding has insufficient common issues of fact or law as compared to the pre-foreclosure allegations of the other case. Ormeshers' motion to consolidate must be denied.

IV. ANALYSIS OF FANNIE MAE'S MOTION FOR JUDGMENT ON THE PLEADINGS.

A. Fannie Mae is Not Entitled to the Relief Requested in its Complaint Based on the Language of the Complaint as Written and the Genuine Issue of Material Fact Regarding the Trustee's Sale.

"An action for 'ejectment requires proof of (1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession." *PHH Mortg. Services Corp. v. Perreira*, 146 Idaho 631, 637, 200 P.3d 1180, 1186 (2009) (citing *Ada County Hwy. Dist. V. Total Success Investments, LLC*, 145 Idaho 360, 369, 179 P.3d 323, 332 (2008)).

Fannie Mae claims it is the owner of record of the disputed property. Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to *I.R.C.P. 12(b)(6)* and *12(c)*, pp. 3-4. It maintains it obtained title to the disputed property as the grantee for the beneficiary of record to the Trustee's Deed, following a trustee's sale on September 27, [*17] 2013. *Id.*, p. 2. The Trustee's Deed was then recorded in the deed of records for Kootenai

County as Instrument No. 2431444000 on October 4, 2013. *Id.*, p. 7. Fannie Mae contends "[t]he issuance of the trustee's deed carries the *prima facie* showing of compliance by with Idaho's non-judicial foreclosure statutes. The statutory presumptions created under [Idaho Code § 45-1510](#) entitle Plaintiff to the relief sought as a matter of law." *Id.*

In turn, Ormeshers argue Fannie Mae's claim over the disputed property is based on an invalid Trustee's Deed, which at a minimum, creates a genuine issue of material fact. Opposition to Motion for Judgment on the Pleadings and Opposition to Motion to Dismiss Counterclaims, p. 3. Ormeshers maintain that under Idaho law, if Fannie Mae does not have a valid claim of ownership over the disputed property, Fannie Mae lacks standing, and the court must dismiss its Complaint. *Id.*, p. 4. Based on the Affidavit of Robyn Shea, who was present at the September 27, 2013, trustee's sale, Ormeshers maintain the Trustee's Deed was not given in exchange for a credit bid at that time. *Id.* Ormeshers claim no bids were presented to the auctioneer at that time. *Id.* Ormeshers assert the burden is on [*18] Fannie Mae under Idaho's Deed of Trust Act to demonstrate the Trustee's Deed was given in exchange for a credit bid at a properly noticed public auction in accordance with [Idaho Code § 45-1506](#). *Id.* A sale that occurred otherwise would violate Idaho's Deed of Trust Act and would invalidate the sale. *Id.*, pp.3-4. Moreover, Ormeshers contend that since the Complaint is defective, as admitted by Fannie Mae in footnote 1 of its Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), no judgment can be entered based on that pleading. *Id.*, p. 4.

In response, Fannie Mae maintains that "[d]espite the erroneous statement that Plaintiff was [the] successful bidder at the Trustee's Sale as Defendants set forth on page 4 of the complaint, the complaint clearly supports a cause of action for claim of ejectment and possession." Plaintiff's Reply in Support of Motion for Judgment on the Pleadings and Motion to Dismiss, p. 7. Fannie Mae claims that under [Idaho Rule of Civil Procedure 8\(a\)\(1\)](#), the Complaint as written provides a "short and plain statement of the claim showing that the pleader is entitled to relief" and further argues that "the specific incorporation of the Trustee's Deed into and attached [*19] to the complaint, overrides any technical mis-wording such that Defendant is on notice of the basis of Plaintiff's claim." *Id.*

[Idaho Rule of Civil Procedure 8](#) "requires a simple,

concise, and direct statement fairly apprising the defendant of the claim and the grounds upon which it rests." [Farrell v. Brown, 111 Idaho 1027, 1032, 729 P.2d 1090, 1095 \(Ct. App. 1986\)](#) (citing [Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 \(1957\)](#); 5 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: Civil § 1202 (1969)). "Notice must be clear, definite, explicit and unambiguous. A notice is not clear unless its meaning can be apprehended without explanation or argument. However, mere irregularities or immaterial defects do not nullify notice so long as they do not mislead." *Id.* (internal citations omitted). "Whether sufficient notice was given is a question of law where the determination turns on the construction of a written instrument. *Id.* (citing [New Pueblo Constructors, Inc. v. State, 144 Ariz. 113, 696 P.2d 203 \(1984\)](#), modified [144 Ariz. 95, 696 P.2d 185 \(1985\)](#); 58 AM.JUR.2d Notice § 33 (1971)). "The key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it. A cause of action not raised in a party's pleadings may not be considered on summary judgment nor may it be considered for the first time on appeal." [Brown v. City of Pocatello, 148 Idaho 802, 807, 229 P.3d 1164, 1169 \(2010\)](#) (internal citations and quotations omitted).

In this case the Complaint specifically provides as follows: [*20]

On September 27, 2013, Northwest Trustee Services, Inc., pursuant to notice and [Idaho Code 45-1506](#) conducted a trustee's sale of the property located at 2025 East Foxborough Court, Hayden, Idaho 83835. Plaintiff was the successful bidder at said sale and a Trustee's Deed was issued to plaintiff. A true and correct copy of the Trustee's Deed is attached hereto, and incorporated herein, as "Exhibit A."

Post Foreclosure Eviction Complaint for Ejectment and Restitution of Property, p. 6 ¶ VI. In its Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), Fannie Mae attempts to correct the misstatement in its pleading by adding a footnote that states:

The Complaint in this matter contains an inaccurate factual recitation which states in paragraph VI that Plaintiff was the successful bidder when in fact, the beneficiary under the Deed of Trust was the successful bidder, who then designated the Plaintiff

to be the Grantee under the Trustee's Deed and directed the Trustee to issue the Trustee's Deed in Plaintiff's name as Grantee. Idaho is a notice pleading state and paragraph VI of the Complaint specifically references, attaches and incorporates the [*21] Trustee's Deed which confirms in paragraph (f) that the beneficiary designated the Grantee, to be the Grantee under the Trustee's Deed.

Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to [I.R.C.P. 12\(b\)\(6\)](#) and [12\(c\)](#), p. 3 n. 1. By Fannie Mae's own admission, the pleadings in this case contain false statements of fact. Fannie Mae seeks a judgment on those pleadings. Fannie Mae has made no attempt to correct those pleadings, but rather simply mentions the error by way of footnote. "The only issues considered on summary judgment are those raised by the pleadings." [Esser Elec. v. Lost River Ballistics Technologies, Inc., 145 Idaho 912, 919, 188 P.3d 854, 861 \(2008\)](#) (citing [Vanvooren v. Astin, 141 Idaho 440, 111 P.3d 125 \(2005\)](#); [Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 92 P.3d 526 \(2004\)](#); [Beco Constr. Co. v. City of Idaho Falls, 124 Idaho 859, 865 P.2d 950 \(1993\)](#); [Gardner v. Evans, 110 Idaho 925, 719 P.2d 1185 \(1986\)](#)). The issue before this Court turns entirely on this point of fact. As Fannie Mae's Post Foreclosure Eviction Complaint for Ejectment and Restitution of Property is written, the Court simply cannot find in favor of Fannie Mae on this issue and grant the request it seeks in its motion for judgment on the pleadings. Fannie Mae seeks judgment on the pleadings and Fannie Mae's pleadings contain an important factual error which cannot be corrected by a footnote.

Even if the pleadings were factually accurate, a genuine issue of material fact exists about whether the trustee's sale of [*22] the disputed property was conducted pursuant to [I.C. § 45-1506](#), and whether Fannie Mae is a purchaser in good faith. Among other things, [I.C. § 45-1506](#) requires that "[t]he sale [] be held on the date and at the time and place designated in the notice of sale . . ." [I.C. § 45-1506\(8\)](#). "[T]he sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding notice of the sale." [Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 \(2009\)](#).

However, "any failure to comply with the provisions of [section 45-1506, Idaho Code](#), shall not affect the validity of a sale in favor of a purchaser in good faith for value at

or after such sale, or any successor in interest thereof." [I.C. § 45-1508. Idaho Code § 45-1510](#) further provides that

When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under [section 45-1506 \(7\), Idaho Code](#), shall be prima facie evidence in any court of the truth of the recitals and the affidavits. . . in favor of a purchaser in good faith for value or any successor in interest thereof.

[I.C. § 45-1510 \(1\)](#). "[S]tatus as a bona fide purchaser or a purchaser in good faith, at least in the context of a nonjudicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a potential defect of statutory notice [*23] provisions. [Federal Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 47, 137 P.3d 429, 434 \(2006\)](#).

Fannie Mae has failed to provide this Court with any evidence that the trustee's sale complied with [I.C. § 45-1506](#) or that it is a bona fide purchaser in good faith. The Ormeshers have filed an affidavit of Robyn Shea which states the foreclosure sale took place on September 27, 2013, at 10:00 a.m. Pacific Daylight Savings time at 451 Government Way, Coeur d'Alene Idaho, as originally scheduled. Affidavit of Robyn Shea, p. 3 ¶ 17. According to Robyn Shea, a realtor with Beutler & Associates, Century 21 in Coeur d'Alene, Idaho, who was in attendance at the foreclosure sale auction on September 27, 2013, "no cash bids [were] made and the auctioneer announced that no credit bid had been presented to him." *Id.* at pp. 1, 3 ¶¶ 1, 17-18. Moreover, Shea contends "[n]o one at the Event of September 27, 2013 offered to purchase the Subject Property on behalf of Citi by a credit bid or otherwise." *Id.* at p. 3 ¶ 20.

Fannie Mae contends Shea's assertions do not establish "that CitiMortgage, failed to proclaim an opening bid for the sale." Plaintiff's Reply In Support of Motion for Judgment on the Pleadings, p. 4. Fannie Mae argues the affidavits of Robyn Shea and Gordon Ormesher, "coupled with the recitations [*24] in the Trustee's Deed of a credit by the beneficiary, establish that: a trustee's sale took place regarding the Subject property on September 27, 2013; and, no bids were received at the sale after announcement of the opening bid." *Id.* Fannie Mae maintains that barring any issues surrounding the notice of the sale, the sale was final once the trustee accepted the bid as payment in full and

as the successor in interest, the plaintiff is entitled to the relief it requests. *Id.*

The burden is on Fannie Mae to establish that [I.C. § 45-1506](#) was complied with, and if it was not complied with, that Fannie Mae is a purchaser in good faith. The affidavit of Robyn Shea creates a genuine issue of material fact whether [I.C. § 45-1506](#) was complied with by the original grantor. Fannie Mae has failed to provide evidence that it is a purchaser in good faith who did not have notice of the potential defect with the grantor's compliance with [I.C. § 45-1506](#).

For the above stated reasons, the Court denies Fannie Mae's motion for judgment on the pleadings.

B. Ormeshers' Affirmative Defenses.

The Ormeshers' Answer and Counterclaim sets forth seven affirmative defenses: accord and satisfaction; wrongful foreclosure; breach of the covenant of good faith [*25] and fair dealings; promissory estoppel; illegality; lack of standing; and lack of jurisdiction. Answer and Counterclaim pp. 3-6 ¶¶ XII-XV. Fannie Mae maintains "all of [the affirmative defenses] take issue with the underlying foreclosure and all of [the affirmative defenses] fail to appreciate that the Trustee's Deed was only issued in the Plaintiff's name as Grantee at the specific instruction of the beneficiary, being the highest bidder at the sale." Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaim Pursuant to [I.R.C.P. 12\(b\)](#) and [12\(c\)](#), p. 8. As such, Fannie Mae was not involved in the foreclosure of the Deed of Trust, HAFA and/or HAMP discussions, short sale negotiations and, thus, Fannie Mae could not have violated the Idaho Uniform Commercial Code or the Idaho Deed of Trust Act. *Id.*

It does not appear that Ormeshers specifically respond to these arguments in either the Opposition to Motion for Judgment on the Pleadings and Opposition to Motion to Dismiss Counterclaim or the Memorandum of Law in Support of Opposition to Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaim. However, Ormeshers do note that the plaintiff, Federal National [*26] Mortgage Association, is also known as Fannie Mae, and the material fact improperly pled in the Complaint that the plaintiff seeks to correct by way of footnote in the memorandum submitted to this Court was relied upon by the defendants in submitting their Answer and Counterclaim. Opposition to Motion for Judgment on the Pleadings and Opposition to Motion to Dismiss Counterclaims, pp. 1, 4.

Each of Ormeshers' Affirmative Defenses are discussed in turn below.

1. Accord and Satisfaction.

"Accord and satisfaction is a method of discharging a contract or cause of action, [w]hereby the parties agree to give and accept something in settlement of the claim or demand of the one against the other, and perform such agreement, the 'accord' being the agreement and the 'satisfaction' its execution or performance." [Strother v. Strother, 136 Idaho 864, 867, 41 P.3d 750, 753 \(Ct. App. 2002\)](#) (quoting [Fairchild v. Mathews, 91 Idaho 1, 4, 415 P.2d 43, 46 \(1966\)](#)). See also [Holley v. Holley, 128 Idaho 503, 507, 915 P.2d 733, 737 \(Ct. App. 1996\)](#)).

"Since an accord and satisfaction is basically the substitution of one contract for another, the debtor must prove that the creditor 'definitely assented' to the new arrangement." [Beard v. George, 135 Idaho 685, 689, 23 P.3d 147, 151 \(2001\)](#) (citing [Nelson v. Armstrong, 99 Idaho 422, 582 P.2d 1100 \(1978\)](#)). "[T]here must be an offer in full satisfaction of the obligation, accompanied by such acts and declarations as amount to a condition that if it is accepted, it is to be in full satisfaction, and [*27] the condition must be such that the party to whom the offer is made is bound to understand that if he accepts it, he does so subject to the conditions imposed." [Nordling v. Whelchel Mines Co., 90 Idaho 213, 218, 409 P.2d 398, 401-02 \(1965\)](#) (quoting 1 Am.Jur.2d, Accord and Satisfaction, § 1, p. 301).

Fannie Mae denies ever contracting with the Ormeshers defendants regarding a Short Sale. Plaintiff's Reply in Support of Motion for Judgment on the Pleadings and Motion to Dismiss, p. 5. Fannie Mae contends the Ormeshers' mortgage was not eligible for HAMP/HAFA programs as their loan did not originate prior to January 1, 2009. [Id., pp. 5-6](#). But even if Ormeshers had such an agreement, Fannie Mae contends "...there is no private right of action available to the Defendant under the law to enforce HAMP/HAFA." [Id., p. 5](#). In its Answer and Counterclaim, in support of its affirmative defense for accord and satisfaction, Ormeshers allege, "Plaintiff should have supported the property being sold to one of said buyer bidders which would have resolved the debt and any deficiency in Defendants' favor." Answer and Counterclaim, p. 4. However, the Affidavit of Jon Dobson, submitted to this Court by the Ormeshers, attests that the foreclosure occurred before Fannie Mae had an opportunity to obtain [*28] the BPO reports. Affidavit of Jon Dobson, p. 4 ¶ 28. Moreover, the Affidavit of Robyn Shea further provides that "[o]n

September 26, 2013, all documents, paperwork and information required of the [defendants] **to qualify them for a HAMP Short Sale** [had] been submitted to Fannie Mae and Citi except the BPO." Affidavit of Robyn Shea, p. 2 ¶ 7 (emphasis added). That is evidence that the parties had not yet entered into an agreement. Fannie Mae had not yet agreed to accept the Ormeshers for a HAMP Short Sale and had not agreed to accept any offers for the purchase of the disputed property to satisfy the amount owing by the defendants on the then-existing mortgage. As such, the Court finds in favor of Fannie Mae on this issue. Ormeshers' affirmative defense of "accord and satisfaction" must be dismissed.

2. Wrongful Foreclosure.

In Ormeshers' Answer and Counterclaim, in support of its defense of wrongful foreclosure, Ormeshers allege, "Plaintiff did not own the promissory note by indorsement [sic] at the time of the Event of September 27, 2013 it calls a foreclosure and thus did not have the right to foreclosure which violates at the UCC Act of Idaho; did not hold an assignment of Deed of Trust [*29] that was recorded in the real estate records of Kootenai County, Idaho prior to giving notice of default of the loan which is in violation of I.C. § 45-1505(1); and otherwise did not give proper notifications of trustee's sale as provided by Idaho law." Answer and Counterclaim, p. 5.

It is undisputed by the parties that Fannie Mae was not the entity that foreclosed on the disputed property. Fannie Mae maintains this position throughout its submissions to the Court. See Memorandum in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to I.R.C.P. 12(b)(6) and 12(c); Plaintiff's reply in Support of Motion for Judgment on the Pleadings and Motion to Dismiss. It is also clear from the Affidavit of Robyn Shea, which was submitted to this Court on behalf of Ormeshers, that Ormeshers knew Citi initiated the foreclosure proceedings. Specifically she attests:

I asked Jon Dobson of the Boise, Idaho law firm of Brown & Patrick, who is the legal representative of the Homeowners in the HAFA Short Sale process to communicate with Citi and notify them that under Fannie Mae regulations that the Ormesher's [sic] wanted a 90 day postponement of the September 27, 2013 foreclosure and to inform them that [*30] they are required to postpone the foreclosure sale of the Subject Property until Fannie Mae has an

opportunity to complete its evaluation of the offers for sale

Affidavit of Robyn Shea, p. 3 ¶ 15. Clearly Citi was the party that foreclosed on the disputed property. While Ormeshers have made a motion to consolidate this case with CV-2013-6956, in which Citi is a party, at this time they are not a party to this lawsuit. As there is no dispute that Fannie Mae did not initiate the foreclosure proceedings, the Court dismisses Ormeshers' affirmative defense of "wrongful foreclosure."

3. Breach of Covenant of Good Faith and Fair Dealing.

In every contract there is an implied covenant of good faith and fair dealing, which requires the parties to perform, in good faith, the obligations *required by their agreement*. The implied covenant of good faith and fair dealing does not create independent obligations, it merely applies to contractual obligations. Thus, before a party can breach this covenant there must be a contract.

Silicon Int'l Ore, LLC v. Monsanto Co., 155 Idaho 538, 314 P.3d 593, 607 (2013) (internal citations omitted) (emphasis in original)). As stated above, Fannie Mae had not yet entered into a contract with the Ormeshers at the time the disputed property [*31] was foreclosed upon. Fannie Mae had not yet agreed to accept the Ormeshers for a HAMP Short Sale, and had not agreed to accept any offers for the purchase of the disputed property to satisfy the amount owing by the Ormeshers on the then existing mortgage. Without a contractual relationship, there can be no claim for a breach of good faith and fair dealing. As such, the Court dismisses Ormeshers' affirmative defense of "breach of covenant of good faith and fair dealing."

4. Promissory Estoppel.

"The doctrine of promissory estoppel can be invoked when '[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.'" Bank of Commerce v. Jefferson Enterprises, LLC, 154 Idaho 824, 835, 303 P.3d 183, 194 (2013) (citing Smith v. Boise Kenworth Sales, Inc., 102 Idaho 63, 67-68, 625

P.2d 417, 421–22 (1981) (quoting *Restatement (Second) of Contracts* § 90(1) (1973)). "To prevail on a promissory estoppel claim, a party must prove the existence of all four elements of promissory estoppel: (1) reliance upon a specific promise; (2) substantial economic loss to the promisee as a result of such reliance; (3) the loss to the promisee was or should have been foreseeable by the promisor; and (4) the promisee's reliance on the [*32] promise must have been reasonable." Zollinger v. Carroll, 137 Idaho 397, 399, 49 P.3d 402, 404 (2002) (citing Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank, N.A., 119 Idaho 171, 182, 804 P.2d 900, 911 (1991)).

There is no evidence before the Court that the Ormeshers were specifically promised they would be accepted for a HAMP Short Sale or that the pending offers for the purchase of the disputed property would have been accepted. Rather, the evidence demonstrates Fannie Mae had not yet agreed to accept the Ormeshers for a HAMP Short Sale and had not yet agreed to accept any offers for the purchase of the disputed property to satisfy the amount owing by the Ormeshers on the then existing mortgage as the BPO had not yet been provided to Fannie Mae at the time of the trustee's sale. Without a specific promise, there can be no claim for promissory estoppel. As such, the Court dismisses Ormeshers' affirmative defense of promissory estoppel.

5. Illegality, Lack of Standing and Lack of Jurisdiction.

In Ormeshers' Answer and Counterclaim, in support of its defense of illegality, Ormeshers allege "[t]he actions of the Plaintiffs were illegal and [it] should not be permitted to profit from them." Answer and Counterclaim, p. 6. It further alleges "[b]ecause Plaintiff does not have a legal or lawful interest in the Subject Property it has no standing to maintain this lawsuit [*33] for eviction . . . [and b]ecause Plaintiff does not have a legal or lawful interest in the Subject Property the Court has no jurisdiction to award Plaintiff the eviction relief sought . . ." *Id.*

As stated above, there is a genuine issue of material fact that I.C. § 45-1506 was complied with by the original grantor. Without Fannie Mae providing evidence that it is a purchaser in good faith who did not have notice of the potential defect with the grantor's compliance with *Idaho Code § 45-1506*, a genuine issue of material fact exists as to whether the Trustee's Deed

is valid. As such, the Court denies Fannie Mae's motion on these issues.

C. Ormeshers' Counterclaims.

Fannie Mae seeks dismissal of both of Ormeshers' counterclaims. In response, Ormeshers merely argue "[t]he basic facts surrounding these counterclaims have been proven by Affidavit..." Memorandum in Support of Opposition to Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaim, p. 9. Ormeshers do not direct the Court to specific facts or statements contained within the affidavits, nor do Ormeshers make specific arguments in response to Fannie Mae's claims.

Each of the Counterclaims are discussed in turn below.

1. Declaratory Judgment.

"Action for [*34] declaratory judgment may invoke either remedial or preventive relief, and may relate to a right that has been breached or is yet in dispute, or status that is undisturbed but endangered, but generally cannot be maintained unless involving some specific adversary question or contention based on existing state of facts." Wood v. Class A. Sch. Dist. No. 25, 78 Idaho 75, 78, 298 P.2d 383, 385 (1956) (citing State ex rel. Miller v. State Board of Education, 56 Idaho 210, syl. 5, 52 P.2d 141 (1935); Ayers v. General Hospital, 67 Idaho 430, 182 P.2d 958 (1947)). A "court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." I.C. § 10-1206. "This act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered." I.C. § 10-1212.

Ormeshers seek an order declaring the September 27, 2013, Trustee's Sale wrongful and the Trustee's Deed subsequently void to pass title. Answer and Counterclaim, p. 8 ¶ 10. Ormeshers base this request on the misstatement of fact by Fannie Mae in its Complaint that it submitted a credit bid, and alleges Fannie Mae was not entitled to make a credit bid. As Fannie Mae has mentioned by way of footnote in its Memorandum [*35] in Support of Motion for Judgment on the Pleadings and Motion to Dismiss Counterclaims Pursuant to I.R.C.P. 12(b)(6) and 12(c) that it did not make a credit bid, but was rather made the grantee of

the Trustee's Deed after a credit bid was submitted by the grantor, it is unnecessary for the Court to address whether Fannie Mae could have submitted a credit bid.

As stated above there is a genuine issue of material fact that I.C. § 45-1506 was complied with by the original grantor. Without Fannie Mae providing evidence that it is a purchaser in good faith who did not have notice of the potential defect with the grantor's compliance with I.C. § 45-1506, a genuine issue of material fact exists as to whether the Trustee's Deed is valid. Fannie Mae requests this Court dismiss the Ormeshers' request for declaratory judgment that the Trustee's Deed is void. Without more information, the Court is unable to do so at this time. As such, the Court must deny Fannie Mae's motion on this issue.

2. Breach of Contract, Specific Performance and Damages.

Ormeshers' second counterclaim is a restatement of its affirmative defense for breach of the implied covenant of good faith and fair dealings. Answer and Counterclaim, p. 8 ¶ 14. It alleges that the parties [*36] had an agreement to sell the disputed property via HAFA Short Sale. *Id.* at p. 8 ¶ 12. As stated above, based on the evidence submitted by the defendants, Fannie Mae had not yet agreed to accept the defendants for a HAMP Short Sale and had not agreed to accept any offers for the purchase of the disputed property to satisfy the amount owing by Ormeshers on the then-existing mortgage. The Affidavit of Jon Dobson, submitted to this Court by the Ormeshers, attests that the foreclosure occurred before Fannie Mae had an opportunity to obtain the BPO reports. Affidavit of Jon Dobson, p. 4 ¶ 28. Moreover, the Affidavit of Robyn Shea further provides that "[o]n September 26, 2013, all documents, paperwork and information required of the [defendants] to qualify them for a HAMP Short Sale [had] been submitted to Fannie Mae and Citi except the BPO." Affidavit of Robyn Shea, p. 2 ¶ 7 (emphasis added). Without a contractual relationship, there can be no claim for a breach of contract.

For the above stated reasons, the Court grants Fannie Mae's motion on this issue and dismisses Ormeshers' second counterclaim for Breach of Contract, Specific Performance and Damages.

V. CONCLUSION AND ORDER.

For the reasons [*37] stated above, the Court denies

Fannie Mae's motion for judgment on the pleadings and grants in part and denies in part Fannie Mae's motion to dismiss counterclaims.

IT IS HEREBY ORDERED Ormeshers' motion to consolidate is DENIED.

IT IS FURTHER ORDERED Fannie Mae's motion for judgment on the pleadings is DENIED.

IT IS FURTHER ORDERED Fannie Mae's motion to dismiss Ormeshers' affirmative defenses of: "accord and satisfaction"; "wrongful foreclosure"; "breach of the covenant of good faith and fair dealings"; "promissory estoppel" is GRANTED.

IT IS FURTHER ORDERED Fannie Mae's motion to dismiss Ormeshers' affirmative defense of: "illegality; lack of standing; and lack of jurisdiction" is DENIED.

IT IS FURTHER ORDERED Fannie Mae's motion to dismiss Ormeshers' counterclaim of "breach of the covenant of good faith and fair dealings" is GRANTED.

IT IS FURTHER ORDERED Fannie Mae's motion to dismiss Ormeshers' counterclaim of "declaratory judgment" is DENIED.

Entered this 20th day of May, 2014.

John T. Mitchell, District Judge

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Shepard's request: Idaho Code § 45-1506

The *Shepard's*® report for this citation is identical to citation #1

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Full text request: Idaho Code § 45-1506

The full text of this report is identical to citation #1

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Shepard's request: Idaho Code § 45-1508

The *Shepard's*® report for this citation is identical to citation #3

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Full text request: Idaho Code § 45-1508

The full text of this report is identical to citation #3

End of Document



Shepard's®: Report Content

Appellate History: Requested

◆ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: + [Pines Grazing Ass'n v. Flying Joseph Ranch, LLC](#) 151 Idaho 924,265 P.3d 1136,2011 Ida. LEXIS 157,2011-2 Trade Cas. (CCH) P77729: (Idaho November 23, 2011)

No negative [subsequent appellate history](#)

Appellate History (2)

1. **Citation you Shepardized™**

[Pines Grazing Ass'n v. Flying Joseph Ranch, LLC](#), 151 Idaho 924 +

Court: Idaho | **Date:** November 23, 2011

Subsequent

2. **Rehearing denied by:**

[Pines Grazing Ass'n v. Flying Joseph Ranch, LLC](#), 2012 Ida. LEXIS 21 A

Court: Idaho | **Date:** January 6, 2012

Citing Decisions (9)

Idaho Supreme Court

1. [Hobson Fabricating Corp. v. SE/Z Constr., LLC](#), 154 Idaho 45 

LB Cited by: 154 Idaho 45 p.53; 294 P.3d 171 p.179

Discussion:  | **Court:** Idaho | **Date:** December 19, 2012 | **Headnotes:** HN7

-
2. [O'Shea v. High Mark Dev., LLC](#), 153 Idaho 119 

LB Cited by: 153 Idaho 119 p.129; 280 P.3d 146 p.156

Discussion:  | **Court:** Idaho | **Date:** April 26, 2012 | **Headnotes:** HN8

Idaho Court of Appeals

3. [Mertens v. Estate of Mertens \(In re Estate of Mertens\)](#), 2012 Ida. App. Unpub. LEXIS 22 

LB Cited by:

Discussion:  | **Court:** Idaho Ct. App. | **Date:** January 17, 2012

Idaho District Court

4. [Alpha Holdings v. Chaney](#), 2013 Ida. Dist. LEXIS 45

LB Cited by:

Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** December 17, 2013 | **Headnotes:** HN7

-
5. [Gordon v. Fannie Mae](#), 2012 Ida. Dist. LEXIS 33

LB Cited by:

Discussion:  | **Court:** Idaho Dist. Ct. | **Date:** February 17, 2012 | **Headnotes:** HN10

2nd Circuit - U.S. District Courts

6. [Texas v. Penguin Group \(In re Elec. Books Antitrust Litig.\)](#), 2014 U.S. Dist. LEXIS 77431 

G Followed by:

Discussion:  | **Court:** Southern Dist. N.Y. | **Date:** June 5, 2014

9th Circuit - U.S. District Courts

7. [ID 02, LLC v. Blewett](#), 2017 U.S. Dist. LEXIS 230932

LB Cited by:

Court: Dist. Idaho | **Date:** January 26, 2017

-
8. [Rocky Mt. Med. Mgmt., LLC v. LHP Hosp. Group, Inc.](#), 2013 U.S. Dist. LEXIS 142909 

 **Followed by:**

Discussion:  | **Court:** Dist. Idaho | **Date:** September 30, 2013

9. [Zoellner v. St. Luke's Reg'l Med. Ctr.](#), 937 F. Supp. 2d 1261 

 **Followed by:** 937 F. Supp. 2d 1261 p.1266

Discussion:  | **Court:** Dist. Idaho | **Date:** March 31, 2013

Other Citing Sources: (10)

Annotated Statutes

1. [15 U.S.C. sec. 1](#)

Content: Statutes

-
2. [Idaho Code sec. 48-104](#)

Content: Statutes

Briefs

3. [TAYLOR v. TAYLOR](#), 2017 ID S. Ct. Briefs LEXIS 976

Content: Court Filings | **Date:** October 3, 2017

-
4. [CHARBONEAU v. STATE](#), 2016 ID S. Ct. Briefs LEXIS 312

Content: Court Filings | **Date:** July 27, 2016

-
5. [ULRICH v. BACH](#), 2012 ID S. Ct. Briefs LEXIS 578

Content: Court Filings | **Date:** July 30, 2012

-
6. [ULRICH v. BACH](#), 2012 ID S. Ct. Briefs LEXIS 354

Content: Court Filings | **Date:** July 30, 2012

-
7. [HOAGLAND v. ADA COUNTY](#), 2012 ID S. Ct. Briefs LEXIS 405

Content: Court Filings | **Date:** April 27, 2012

-
8. [EQUITIES v. v.](#), 2012 ID S. Ct. Briefs LEXIS 54

Content: Court Filings | **Date:** April 19, 2012

9. [**BABCOCK v. IDAHO BD. OF LAND COMM'RS**](#), 2012 ID S. Ct. Briefs LEXIS 4

Content: Court Filings | **Date:** March 7, 2012

10. [**WESTCO AGRONOMY CO. v. WOLLESEN**](#), 2015 IA S. Ct. Briefs LEXIS 27

Content: Court Filings | **Date:** December 10, 2015

Table Of Authorities (20)

U.S. Supreme Court

1. [Northern P. R. Co. v. United States](#), 356 U.S. 1 

 Citing

First Ref: 151 Idaho 924 at p.929

Discussion:  | Court: U.S. | Date: March 10, 1958

-
2. [Board of Trade v. United States](#), 246 U.S. 231 

 Citing

First Ref: 151 Idaho 924 at p.929

Discussion:  | Court: U.S. | Date: March 4, 1918

-
3. [Swift & Co. v. United States](#), 196 U.S. 375 

 Citing

First Ref: 151 Idaho 924 at p.929

Discussion:  | Court: U.S. | Date: January 30, 1905

3rd Circuit - U.S. District Courts

4. [United States v. Seville Industrial Machinery Corp.](#), 696 F. Supp. 986 

 Citing

First Ref: 151 Idaho 924 at p.929

Discussion:  | Court: Dist. N.J. | Date: January 20, 1988

4th Circuit - Court of Appeals

5. [United States v. Portsmouth Paving Corp.](#), 694 F.2d 312 

 Citing

First Ref: 151 Idaho 924 at p.929

Discussion:  | Court: 4th Cir. Va. | Date: November 8, 1982

9th Circuit - Court of Appeals

6. [Columbia River People's Util. Dist. v. Portland GE](#), 217 F.3d 1187 

 Citing

First Ref: 151 Idaho 924 at p.928

Discussion:  | **Court:** 9th Cir. Or. | **Date:** July 17, 2000

9th Circuit - U.S. District Courts

7. [Wanachek Mink Ranch v. Alaska Brokerage Int'l, Inc.](#), 2009 U.S. Dist. LEXIS 43816 

 **Citing**

First Ref: 151 Idaho 924 at p.928

Court: Western Dist. Wash. | **Date:** May 5, 2009

10th Circuit - Court of Appeals

8. [United States v. Reicher](#), 983 F.2d 168 

 **Citing**

First Ref: 151 Idaho 924 at p.929

Discussion:  | **Court:** 10th Cir. N.M. | **Date:** December 29, 1992

-
9. [United States v. Mobile Materials, Inc.](#), 881 F.2d 866 

 **Citing**

First Ref: 151 Idaho 924 at p.929

Discussion:  | **Court:** 10th Cir. Okla. | **Date:** July 28, 1989

10th Circuit - U.S. District Courts

10. [Love v. Basque Cartel](#), 873 F. Supp. 563 

 **Citing**

First Ref: 151 Idaho 924 at p.929

Discussion:  | **Court:** Dist. Wyo. | **Date:** January 12, 1995

Idaho Supreme Court

11. [Hammond v. Alexander](#), 31 Idaho 791 

 **Citing**

First Ref: 151 Idaho 924 at p.927

Discussion:  | **Court:** Idaho | **Date:** December 19, 1918

-
12. [Trees v. Kersey](#), 138 Idaho 3 

 **Following**

First Ref: 151 Idaho 924 at p.928

Discussion:  | Court: Idaho | Date: September 12, 2002

-
13. [Idaho Dairymen's Ass'n v. Gooding County](#), 148 Idaho 653 

 Citing

First Ref: 151 Idaho 924 at p.930

Discussion:  | Court: Idaho | Date: February 1, 2010

-
14. [Page v. Pasquali](#), 150 Idaho 150 

 Citing

First Ref: 151 Idaho 924 at p.931

Discussion:  | Court: Idaho | Date: December 23, 2010

-
15. [Vanderford Co. v. Knudson](#), 144 Idaho 547 

 Following

First Ref: 151 Idaho 924 at p.931

Discussion:  | Court: Idaho | Date: July 13, 2007

-
16. [Garner v. Bartschi](#), 139 Idaho 430 

 Citing

First Ref: 151 Idaho 924 at p.931

Discussion:  | Court: Idaho | Date: November 14, 2003

-
17. [Garrett Freightlines v. Bannock Paving Co.](#), 112 Idaho 722 

 Citing

First Ref: 151 Idaho 924 at p.931

Discussion:  | Court: Idaho | Date: April 8, 1987

-
18. [Taylor v. AIA Servs. Corp.](#), 151 Idaho 552 

 Citing

First Ref: 151 Idaho 924 at p.932

Discussion:  | Court: Idaho | Date: September 7, 2011

19. [Suitts v. Nix](#), 141 Idaho 706 

 Citing

First Ref: 151 Idaho 924 at p.932

Discussion:   | **Court:** Idaho | **Date:** June 15, 2005

South Carolina Supreme Court

20. [Herndon v. Gibson](#), 38 S.C. 357 

 Citing

First Ref: 151 Idaho 924 at p.928

Discussion:   | **Court:** S.C. | **Date:** February 23, 1893

End of Document



Citation # 23 (as appears in page 7 of Document)
Pines Grazing Ass'n v. Flying Joseph Ranch, LLC, 151 Idaho 924

QuoteCheck™ Report

151 Idaho 924

About your quote:

Your quote is different from the retrieved quote.

QuoteCheck™ Request: 151 Idaho 924

Your Quote:

Defendant Bass

[151 Idaho 924, 924]

Retrieved Quote: and Sale

[151 Idaho 924, 924]

Excerpt from document:

The issues raised on this appeal are: (1) whether the district court abused its discretion in determining that Respondent was the prevailing party for the purpose of awarding attorney fees below; (2) whether the jury verdict dismissing Appellant's counterclaim for breach of a grazing lease was not supported by the evidence; (3) whether the district court erred in declining to grant Appellant's motion for judgment notwithstanding the verdict (JNOV) either on the ground of mutual mistake or in light of a merger clause in a purchase and sale agreement; (4) whether the district court erred in denying Appellant's objection to a jury instruction on promissory estoppel; (5) whether the district court erred in denying Appellant's motion for JNOV on the grounds that the \$ 20,000.00 offered to refrain from bidding constituted an unauthorized brokerage commission; and (6) whether the district court erred in denying Appellant's motion to include its motion for summary judgment in the record.

The lawsuit underlying this appeal stems from a 2005 Real Estate Purchase and Sale Agreement (hereinafter the PSA) entered into between Pines Grazing Association (Pines Grazing) as seller and J.C. Investments as buyer of the nearly 4,000 acre Pines Ranch in the Pahsimeroi Valley for \$ 4 million. Joseph Clark owns Flying Joseph Ranch, LLC and J.C. Investments (collectively hereinafter Flying Joseph). Pines Grazing, now dissolved, was a ranching corporation, whose shareholders in early 2005 were Ben Yates, Judd Whitworth and Steve Bauchman. Mark Brown of Pioneer Associates acted as the agent for both parties and prepared the PSA. Yates signed the PSA on behalf of Pines Grazing, and Clark signed on behalf of J.C. Investments, with closing to be on April 29, 2005.

Prior to closing, the parties learned that approximately 80 acres of what Pines Grazing had previously believed to be a portion of the approximately 4,000 acre Pines Ranch was omitted from the ranch's legal description. Due to this, the parties entered into Addendum 1 to the PSA

to adjust the \$ 4 million purchase price to a purchase price of \$ 1,000 per acre with the acreage to be determined upon a later survey of the ranch. The following language was also included in Addendum 1: "Seller agrees to continue negotiation with the State of Idaho on the purchase of approximately 80 acres on the north end of the ranch. This land shall be part of the purchase and will be incorporated into the mortgage amount at the time of the purchase."

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As of: October 24, 2024 11:37 AM Z

Pines Grazing Ass'n v. Flying Joseph Ranch, LLC

Supreme Court of Idaho

November 23, 2011, Filed

Docket No. 37236, 2011 Opinion No. 120

Reporter

151 Idaho 924 *; 265 P.3d 1136 **; 2011 Ida. LEXIS 157 ***; 2011-2 Trade Cas. (CCH) P77,729

PINES GRAZING ASSOCIATION, INC., an Idaho corporation, Plaintiff/Cross-Defendant/Respondent, v. FLYING JOSEPH RANCH, LLC, an Idaho limited liability company; J.C. INVESTMENTS, a foreign corporation, Defendants/Cross-Claimants/Appellants.

Subsequent History: Rehearing denied by [Pines Grazing Ass'n v. Flying Joseph Ranch, LLC, 2012 Ida. LEXIS 21 \(Idaho, Jan. 6, 2012\)](#)

Prior History: [***1] Appeal from the District Court of the Seventh Judicial District, State of Idaho, Custer County. Hon. Joel E. Tingey, District Judge.

Disposition: Judgment from jury verdict upholding oral contract to not bid at auction reversed as it is an illegal contract. Attorney fees awarded in trial court vacated and remanded. Jury verdict holding there was no breach of grazing contract, affirmed. Attorney fees awarded to Pines Grazing on appeal.

Core Terms

Grazing, lease, bid, oral agreement, acres, district court, parties, attorney's fees, public auction, ranch, breached, lessee, argues, motion for jnov, unenforceable, commerce, jury's finding, jury verdict, Sherman Act, counterclaim, refrain, rigging, unreasonable restraint, competent evidence, prevailing party, costs

Case Summary

Procedural Posture

Appellant buyers sought review of a judgment from the

District Court of the Seventh Judicial District, Custer County (Idaho), which, in a jury trial, awarded damages to respondent seller for breach of an agreement not to bid and found that the seller did not breach a grazing lease.

Overview

When the parties entered into a contract for the sale of a ranch, they contemplated that some of the land would be leased back to the seller for grazing. After learning that a portion of the acreage used by the ranch belonged to the county, the seller attempted to purchase the county-owned land and resell it to the buyer. The parties then discovered that the county-owned land could be sold only at public auction. The buyer orally agreed to pay the seller not to bid. The seller refrained from bidding but did not receive the agreed payment. The court held that the agreement not to bid was unenforceable because it constituted illegal bid rigging under both [Idaho Code Ann. § 48-104](#) and § 1 of the Sherman Act, [15 U.S.C.S. § 1](#). Accordingly, damages could not be awarded for its breach. Substantial evidence supported a jury finding that the seller had not breached the grazing lease because the seller was not a party to that lease; rather, the lessees were two of the seller's shareholders as individuals. The seller was entitled under [Idaho Code Ann. § 12-120\(3\)](#) to attorney fees as the prevailing party with regard to the grazing lease issue, but not with regard to the agreement not to bid.

Outcome

The court overturned the jury verdict with regard to the award of damages for breach of the agreement not to bid, upheld the jury's finding that the seller did not

breach the grazing lease, vacated the award of attorney fees in the district court and remanded for a redetermination, and awarded attorney fees on appeal to the seller.

Antitrust & Trade Law > ... > Trade Practices & Unfair Competition > State Regulation > Scope

[HN4](#) [down] **Trade Practices & Unfair Competition, State Regulation**

See [*Idaho Code Ann. § 48-104.*](#)

LexisNexis® Headnotes

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

Contracts Law > Defenses > Illegal Bargains

[HN1](#) [down] **Reviewability of Lower Court Decisions, Preservation for Review**

Illegality can be raised at any stage in litigation, and a reviewing court has the duty to raise the issue of illegality *sua sponte*.

Antitrust & Trade Law > Sherman Act > Claims

[HN5](#) [down] **Sherman Act, Claims**

Generally, to establish a claim under [§ 1](#) of the Sherman Act, [15 U.S.C.S. § 1](#), a plaintiff must show (1) that there was a contract, combination or conspiracy among two or more entities (2) that unreasonably restrained trade and (3) that the restraint affected interstate commerce. The primary question as to whether there was a contract, combination or conspiracy, is whether the anticompetitive conduct stems from an agreement, tacit or express, as opposed to stemming from an independent decision. An agreement unreasonably restrains trade if the agreement has anticompetitive effects.

Contracts Law > Defenses > Illegal Bargains

Antitrust & Trade Law > ... > Price Fixing & Restraints of Trade > Per Se Rule & Rule of Reason > Per Se Violations

[HN2](#) [down] **Defenses, Illegal Bargains**

Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case. An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. The general rule is that a contract prohibited by law is illegal and unenforceable. A contract which is made for the purpose of furthering any matter or thing prohibited by statute is void. This rule applies on the ground of public policy to every contract which is founded on a transaction prohibited by statute. The case law suggests that where a statute intends to prohibit an act, it must be held that its violation is illegal, without regard to the reason of the inhibition or to the ignorance of the parties as to the prohibiting statute.

[HN6](#) [down] **Per Se Rule & Rule of Reason, Per Se Violations**

Despite the broad language in [15 U.S.C.S. § 1](#), the Sherman Act has been read ab initio to prohibit only those restraints on trade which are unreasonable. However, in addition to the reasonableness rule, the courts have identified certain conduct which because of its pernicious effect on competition and lack of any redeeming virtue is considered to be a per se violation of the Antitrust Act. Bid rigging is one such per se violation. Bid rigging is defined as any agreement between competitors pursuant to which contract offers are to be submitted to or withheld from a third party. The United States Supreme Court has deemed bid rigging activity as presumed to be an unreasonable restraint on trade and illegal because of its pernicious effect on competition and lack of any redeeming virtue. A simple agreement not to bid is itself a per se antitrust violation, even in the absence of prior price fixing.

Antitrust & Trade Law > Sherman Act > Scope > General Overview

[HN3](#) [down] **Sherman Act, Scope**

See [*15 U.S.C.S. § 1.*](#)

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

[HN7](#) **Reviewability of Lower Court Decisions, Preservation for Review**

A reviewing court will not address issues not raised in the lower court.

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

[HN8](#) **Substantial Evidence, Sufficiency of Evidence**

A reviewing court will not overturn a jury verdict if it is supported by substantial and competent evidence. A jury verdict must be upheld if there is evidence of sufficient quantity and probative value that reasonable minds could have reached a similar conclusion to that of the jury. When reviewing a jury verdict on appeal the evidence adduced at trial is construed in a light most favorable to the party who prevailed at trial.

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Contracts Law > Contract Interpretation > Intent

[HN9](#) **Standards of Review, Questions of Fact & Law**

Where a contract is ambiguous, the intent of the interpretation of the contract is a factual issue which focuses on the intent of the parties.

Contracts Law > Remedies > Equitable Relief > General Overview

[HN10](#) **Remedies, Equitable Relief**

The three elements of a claim for unjust enrichment are: (1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such

benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof.

Civil Procedure > Appeals > Costs & Attorney Fees

[HN11](#) **Appeals, Costs & Attorney Fees**

Attorney fees under [*Idaho Code Ann. § 12-120\(3\)*](#) are not appropriate when a commercial transaction is found to be illegal.

Counsel: Cynthia Jane Woolley, Ketchum, argued for appellant.

Thomsen Stephens Law Offices, Idaho Falls, for respondent. James D. Holman argued.

Judges: BURDICK, Chief Justice. Justices EISMANN, J. JONES, W. JONES and HORTON, CONCUR.

Opinion by: BURDICK

Opinion

[**1137] [*925] BURDICK, Chief Justice

The issues raised on this appeal are: (1) whether the district court abused its discretion in determining that Respondent was the prevailing party for the purpose of awarding attorney fees below; (2) whether the jury verdict dismissing Appellant's counterclaim for breach of a grazing lease was not supported by the evidence; (3) whether the district court erred in declining to grant Appellant's motion for judgment notwithstanding the verdict (JNOV) either on the ground of mutual mistake or in light of a merger clause in a purchase [***2] and sale agreement; (4) whether the district court erred in denying Appellant's objection to a jury instruction on promissory estoppel; (5) whether the district court erred in denying Appellant's motion for JNOV on the grounds that the \$ 20,000.00 offered to refrain from bidding constituted an unauthorized brokerage commission; and (6) whether the district court erred in denying Appellant's motion to include its motion for summary judgment in the record.

I. FACTUAL AND PROCEDURAL BACKGROUND

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The lawsuit underlying this appeal stems from a 2005 Real Estate Purchase and Sale Agreement (hereinafter the PSA) entered into between Pines Grazing Association [**1138] [*926] (Pines Grazing) as seller and J.C. Investments as buyer of the nearly 4,000 acre Pines Ranch in the Pahsimeroi Valley for \$ 4 million. Joseph Clark owns Flying Joseph Ranch, LLC and J.C. Investments (collectively hereinafter Flying Joseph). Pines Grazing, now dissolved, was a ranching corporation, whose shareholders in early 2005 were Ben Yates, Judd Whitworth and Steve Bauchman. Mark Brown of Pioneer Associates acted as the agent for both parties and prepared the PSA. Yates signed the PSA on behalf of Pines Grazing, and Clark signed on behalf [***3] of J.C. Investments, with closing to be on April 29, 2005.

Prior to closing, the parties learned that approximately 80 acres of what Pines Grazing had previously believed to be a portion of the approximately 4,000 acre Pines Ranch was omitted from the ranch's legal description. Due to this, the parties entered into Addendum 1 to the PSA to adjust the \$ 4 million purchase price to a purchase price of \$ 1,000 per acre with the acreage to be determined upon a later survey of the ranch. The following language was also included in Addendum 1: "Seller agrees to continue negotiation with the State of Idaho on the purchase of approximately 80 acres on the north end of the ranch. This land shall be part of the purchase and will be incorporated into the mortgage amount at the time of the purchase."

Pines Grazing retained attorney Fred Snook to assist with the acquisition of the 80 acres. Fred Snook determined that the 80 acres had been deeded to Lemhi County for failure to pay taxes in the early 1940s and that Lemhi County still owned the land. In light of this, the parties entered into Addendum 2 to the PSA on April 15, 2005, whereby they would proceed with the original closing on the ranch while [***4] giving Pines Grazing time to try to acquire the 80 acres from Lemhi County in order to sell the 80 acres to Flying Joseph for \$ 1,000 per acre along with the other ranch land.

On April 15, 2005, the sale of Pines Ranch closed. The parties learned that Lemhi County could not sell the 80 acres privately and could only sell the land at public auction. On June 7, 2005, Lemhi County issued an amended notice of sale, advertising that the 80 acres would be for sale at public auction on August 22, 2005. Pines Grazing sent Snook, Yates and Whitworth to the public auction to bid on the 80 acres for the purpose of completing the sale to Flying Joseph pursuant to the

PSA. Clark, who was recovering from surgery, sent Scott Karterman to the auction with a blank check to purchase the 80 acres on Flying Joseph's behalf.

Before the auction began, Karterman encountered Snook, Yates and Whitworth, all of whom were surprised to see the other and so they spoke with each other outside. Karterman informed Yates that he was bidding on the 80 acres on behalf of Flying Joseph for "as high as it takes to get this property"; Yates informed Karterman that Pines Grazing sought to buy the 80 acres and to resell it [***5] to Flying Joseph pursuant to the PSA. Karterman called Clark, who then spoke with Yates, and after further discussion, Clark agreed to pay Pines Grazing \$ 20,000 not to bid at the auction. Snook was present and knew of the discussions, and was present through the actual auction itself. Pines Grazing refrained from bidding, and Flying Joseph purchased the 80 acres for \$ 437.50 per acre.

On December 7, 2005, Clark faxed Yates a letter, which provided: "Enclosed please find an Agreement and Full Release of All Claims document for the purchase of the two (2) Lemhi County Parcels. Upon receipt of the signed document, we will issue a check in the amount of \$ 20,000 as agreed." Yates refused to sign the release, because he did not believe that signing the release was part of the oral agreement not to bid which Pines Grazing entered into at the public auction.

On April 16, 2007, Pines Grazing filed the complaint initiating this lawsuit for enforcement of the oral contract. On May 14, 2007, Pines Grazing filed an amended complaint. On August 17, 2007, Flying Joseph moved to dismiss pursuant to [I.R.C.P. 12\(b\)](#), and the district court denied the motion. On September 12, 2007, Pines Grazing submitted [***6] a second amended complaint.

In the second amended complaint, Pines Grazing alleged breach of contract and unjust [**1139] [*927] enrichment, arguing that Flying Joseph breached Addendum 2 to the PSA by purchasing the 80 acres at the public auction instead of allowing Pines Grazing to purchase the property and resell it to Flying Joseph. Pines Grazing also alleged that Flying Joseph breached the oral agreement entered into at the public auction by failing to pay Pines Grazing \$ 20,000 for refraining from bidding.

On October 3, 2007, Flying Joseph filed its answer and counterclaim. Flying Joseph admitted that pursuant to the PSA, Pines Grazing was to acquire the 80 acres from Lemhi County and that Flying Joseph was to pay \$ 1,000 per acre for the land. Flying Joseph also admitted

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that the parties entered into an oral agreement at the public auction whereby Pines Grazing would refrain from bidding. However, Flying Joseph denied any breach of contract and denied liability to Pines Grazing. According to Flying Joseph, it offered to pay Pines Grazing \$ 20,000 both not to bid and not to seek payment pursuant to the PSA for the 80 acres.

Flying Joseph's counterclaim alleged that Pines Grazing breached a grazing [***7] lease that the parties entered into on the day that the PSA closed. Addendum 1 to the PSA included the following provision: "Buyer agrees to lease a portion of the ranch back to seller for the grazing season 2005 and 2006. The buyer agrees to lease the grass at a rate [of] \$ 15/ pair, \$ 11/single. This lease to be negotiated prior to closing." On the day of closing of the PSA, a grazing lease was executed.

The case was tried to the jury on July 22, 23, and 24, 2009. The jury returned a special verdict, finding that Flying Joseph did not breach the PSA by purchasing the 80 acres at the public auction, but the jury found that Flying Joseph breached the oral agreement not to bid by failing to pay Pines Grazing the agreed upon \$ 20,000. The jury decided that Flying Joseph was not entitled to recover on its counterclaims concerning the grazing lease. The district court entered a judgment upon the verdict on July 27, 2009.

On August 10, 2009, Flying Joseph submitted its Motion for Judgment Notwithstanding the Verdict and for a New Trial (hereinafter "motion for JNOV"). In the motion for JNOV, Flying Joseph argued that: (1) the oral agreement not to bid violates the statute of frauds; (2) there [***8] was insufficient consideration to support the alleged oral agreement not to bid; (3) the oral agreement not to bid is illegal for stifling competition at a public auction; (4) the jury's verdict awarding \$ 20,000 to Pines Grazing constitutes an unauthorized brokerage commission under Idaho law; and (5) Lemhi County never agreed in writing that Pines Grazing should be paid a commission for its services. On October 29, 2009, the district court denied Flying Joseph's motion for JNOV and new trial.

Also on October 29, 2009, the district court issued its Memorandum Decision on Motion for Costs, Attorney Fees and Prejudgment Interest. Both parties sought an award of costs and attorney fees, and both parties objected to the other's requested costs and fees. The district court determined that Pines Grazing was the prevailing party and awarded \$ 2,362.40 in costs and \$ 23,500 in attorney fees to Pines Grazing. The district court also awarded Pines Grazing prejudgment interest

of \$ 9,409.31 on the \$ 20,000 awarded by the jury. The district court entered an amended judgment in favor of Pines Grazing in the total amount of \$ 55,271.71.

On [***9] October 10, 2009, Flying Joseph appealed from the amended judgment.

II. ANALYSIS

A. The oral agreement not to bid at the public auction is an illegal and unenforceable restraint on competition.

In its motion for JNOV, Flying Joseph argued that the oral agreement not to bid is illegal and unenforceable, citing *Hammond v. Alexander*, 31 Idaho 791, 177 P. 400 (1918), for the proposition that where prospective purchasers agree to stifle competition, the agreement is illegal and unenforceable. The district court declined to grant Flying Joseph's motion for JNOV on this ground.

This illegality issue was not raised on appeal; however, **HN1**[[↑]] illegality can be raised at any stage in litigation, and this Court has the duty to raise the issue of illegality *sua* [**1140] [*928] *sponte*. *Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002). As this Court set forth in *Trees*:

HN2[[↑]] Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case. An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. The general rule is that a contract prohibited by law is illegal and unenforceable.

[***10] A contract which is made for the purpose of furthering any matter or thing prohibited by statute is void. This rule applies on the ground of public policy to every contract which is founded on a transaction prohibited by statute. The Idaho Court of Appeals has suggested that where a statute intends to prohibit an act, it must be held that its violation is illegal, without regard to the reason of the inhibition or to the ignorance of the parties as to the prohibiting statute.

Id. (citations and quotations omitted).

The district court's analysis on illegality was limited to considering this Court's decision in *Hammond* and did not consider the federal or Idaho statutes which prohibit

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restraints on trade or commerce.¹ Under federal law, the Sherman Antitrust Act, [15 U.S.C. §§ 1 to 7](#) (the Sherman Act), prohibits unreasonable restraints on trade and commerce. [Section 1 of the Sherman Act](#) provides, in relevant part: [HN3](#) "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." Idaho law also prohibits unreasonable restraints

¹ At issue in *Hammond* was whether the State Board of Land Commissioners could void a sale of state land where many prospective purchasers of auction lands devised a scheme whereby they would bid at the auction based upon numbers they drew from a box, without regard to whether they wanted the particular land, and would refrain from bidding against each other. [31 Idaho at 794, 177 P. at 401](#). This Court cited [Herndon v. Gibson, 38 S.C. 357, 17 S.E. 145 \(S.C. 1893\)](#), which provides that "it is a principle ingrafted upon our laws that at public sales fair competition must exist". [Id. at 795, 177 P. at 401](#). This Court held that the State Board of Land Commissioners could void the sale and explained:

Competition is an element of each offer and bid, and while all agreements among prospective bidders do not operate to vitiate a sale, if the purpose in so agreeing is to stifle competition, and if it causes the property offered to be awarded to a bidder, or bidders, for less than would have otherwise been offered, the vendor may [\[**12\]](#) avoid sale.

Id. (citation omitted).

Turning to the case at hand, the district court determined that an agreement among prospective bidders is voidable but not void, and such an agreement is to be voided if both (1) the purpose of the agreement is to stifle competition and (2) the agreement causes the property offered to be awarded to a bidder for less than it would have been offered for. On the first element, the district court found: "While some limiting of competition may have been a by-product of the agreement, the evidence does not establish that the primary purpose of the agreement was to stifle competition." Rather, the district court found that the testimony showed that the purpose of Flying Joseph's offer "was to resolve all issues between the Parties regarding the prior land sale and the remaining 80 acres." On the second element, the district court found that the evidence failed to establish that the property was awarded to Flying Joseph for less than it otherwise would have offered, noting that the oral agreement did not preclude third parties from bidding, third parties did bid, at the time of the agreement there was no guarantee that Flying Joseph would be the successful bidder, [\[**13\]](#) and the parties testified that they thought the property would sell for less than it did (believing it would sell for \$ 300 to \$ 400 per acre; whereas it sold for \$ 437.50).

on trade or commerce. [Idaho Code § 48-104](#) [\[***11\]](#) provides: [HN4](#) "Unreasonable restraint of trade or commerce. A contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful."

[HN5](#) Generally, "to establish a claim under [§ 1](#) of the Sherman Act, the plaintiff must show (1) that there was a contract, combination or conspiracy among two or more entities (2) that unreasonably restrained trade and (3) that the restraint affected interstate commerce." [Wanachek Mink Ranch v. Alaska Brokerage Int'l, Inc., 2009 U.S. Dist. LEXIS 43816, 2009 WL 1342676, at *2 \(W.D.Wash., May 05, 2009\)](#) (citing [Columbia River People's Util. Dist. v. Portland GE, 217 F.3d 1187, 1189-90 \(9th Cir. 2000\)](#)). The primary question as to whether there was a contract, combination or conspiracy, is whether the anticompetitive conduct stems from an agreement, tacit or express, as opposed to stemming from an [\[**1141\] \[929\]](#) independent decision. *Id.* An agreement unreasonably restrains trade if the agreement has anti-competitive effects. [2009 U.S. Dist. LEXIS 43816, \[WL\] at *3](#).

The federal district court for the District of Wyoming succinctly set forth the law developed under [Section 1](#) of the Sherman Act specifically concerning bid rigging as follows:

[HN6](#) Despite this broad language [in [15 U.S.C. § 1](#)], the Sherman Act [\[***14\]](#) has been read *ab initio* to prohibit only those restraints on trade which are unreasonable. [U.S. v. Reicher, 983 F.2d 168, 170 \(10th Cir. 1992\)](#), cert. denied 511 U.S. 1071, 114 S. Ct. 1648, 128 L. Ed. 2d 367 (1994), citing [Board of Trade v. United States, 246 U.S. 231, 238, 38 S.Ct. 242, 243, 62 L.Ed. 683 \(1918\)](#). However, in addition to the reasonableness rule, the courts have identified certain conduct which because of its "pernicious effect on competition and lack of any redeeming virtue" is considered [to] be a *per se* violation of the Antitrust Act. [Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 5, 78 S.Ct. 514, 518, 2 L.Ed.2d 545 \(1958\)](#). Bid rigging is one such *per se* violation. [Reicher, 983 F.2d at 170](#).

Bid rigging is defined as "any agreement between competitors pursuant to which contract offers are to be submitted to or withheld from a third party...." [U.S. v. Mobile Materials, Inc., 881 F.2d 866, 869 \(10th Cir. 1989\)](#), cert. denied 493 U.S. 1043, 110 S. Ct. 837, 107 L. Ed. 2d 833 (1990).

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[Love v. Basque Cartel, 873 F.Supp. 563, 576 \(D.Wyo. 1995\).](#)

The United States Supreme Court has deemed bid rigging activity as presumed to be an unreasonable restraint on trade and illegal because of [***15] its 'pernicious effect on competition and lack of any redeeming virtue.' [N. Pac. Ry. Co. v. United States, 356 U.S. 1, 78 S.Ct. 514, 2 L.Ed.2d 545 \(1958\)](#). "[C]ourts have repeatedly held that a simple agreement not to bid is itself a per se antitrust violation, even in the absence of prior price fixing." [United States v. Seville Indus. Mach. Corp., 696 F. Supp. 986, 989 \(D.N.J. 1988\)](#). See [United States v. Portsmouth Paving, 694 F.2d 312, 325 \(4th Cir. 1982\)](#) ("[a]ny agreement between competitors pursuant to which contract offers are to be submitted to or withheld from a third party constitutes bid rigging per se violative of [15 U.S.C. § 1](#)"); [Swift & Co. v. United States, 196 U.S. 375, 400, 25 S.Ct. 276, 281, 49 L.Ed. 518 \(1905\)](#) ("[t]he defendants cannot be ordered to compete, but they properly can be forbidden to give directions or to make agreements not to compete").

Turning to the case at hand, while the parties dispute some of the details of the oral agreement not to bid, they agree that Pines Grazing promised to refrain from bidding at the public auction in exchange for Flying Joseph's promise to pay \$ 20,000 to Pines Grazing. The parties also agree that they entered into the agreement [***16] not to bid in order to prevent them from bidding against each other out of the concern that doing so would drive up the price of the 80 acres. We hold that the oral agreement not to bid constitutes illegal bid rigging under both [I.C. § 48-104](#) and [Section 1](#) of the Sherman Act. Accordingly, we refuse to enforce the oral agreement not to bid, and we overturn the jury verdict awarding Pines Grazing \$ 20,000 for Flying Joseph's breach of the agreement not to bid. This holding leaves the parties as they are with respect to the oral agreement not to bid.

In light of this holding, the following issues raised on appeal need not be addressed: (1) whether the district court erred in declining to grant Flying Joseph's motion for JNOV, because the agreement not to bid was unenforceable due to mutual mistake; (2) whether the district court erred in declining to grant Flying Joseph's motion for JNOV, because the oral agreement not to bid should not have been considered by the jury in light of the PSA's merger clause; (3) whether the district court erred in declining to grant Flying Joseph's motion for JNOV, because the \$ 20,000 jury verdict awarded for refraining from bidding constitutes an unauthorized

[***17] brokerage commission under Idaho law; (4) whether the district court erred in denying Flying Joseph's objection to Jury Instruction Number 40.1 on promissory estoppel concerning the enforceability of the oral agreement not to bid; and (5) whether the district court erred in denying Flying Joseph's motion to include in the record its motion for [**1142] [*930] summary judgment, which raised below the issues of mutual mistake and merger concerning the oral agreement not to bid.

B. Whether the jury's finding that Pines Grazing did not breach the grazing lease was supported by substantial and competent evidence.

One of Flying Joseph's counterclaims alleged that Pines Grazing materially breached the grazing lease by failing to perform all obligations of the lease "including but not limited to, repair maintenance in good working order of all wells, pivots, pumps and irrigation mainline." The jury found that there was no such breach of contract.

On appeal, Flying Joseph argues that the jury's verdict is not supported by substantial and competent evidence. Specifically, Flying Joseph argues that the facts at trial show that Pines Grazing was the lessee of the grazing lease and that Pines Grazing breached the [***18] grazing lease by failing to properly maintain the improvements and by subletting without written consent. If Pines Grazing was not the lessee of the grazing lease, then Flying Joseph argues that Pines Grazing breached the PSA by failing to enter into a grazing lease.

Pines Grazing argues that Flying Joseph raises the issue of mistake concerning the proper party to the grazing lease for the first time on appeal. Pines Grazing also argues that the grazing lease unambiguously names Yates and Whitworth, not Pines Grazing, as lessees. Furthermore, according to Pines Grazing, the PSA provision contemplating a grazing lease between Flying Joseph and Pines Grazing is an unenforceable agreement to agree. Pines Grazing next argues that even if Pines Grazing was the lessee under the grazing lease, the jury had sufficient evidence to find that the lessee properly maintained the leased premises, and as to the improper assignment of the lease, Pines Grazing argues that the remedy is limited to Flying Joseph's right to have the assignment voided, which it never did during the duration of the lease; whereas in its Reply Brief, Flying Joseph argues that it is entitled to damages in the amount by which [***19] Pines Grazing was unjustly enriched (allegedly over \$ 26,000).

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1. Whether Flying Joseph raises this issue for the first time on appeal.

HN7 [↑] "This court will not address issues not raised in the lower court." *Idaho Dairymen's Ass'n v. Gooding Cnty., 148 Idaho 653, 660, 227 P.3d 907, 914 (2010)*.

According to Pines Grazing, Flying Joseph never argued below that there was a mistake concerning the proper parties to the grazing lease and never asked that the grazing lease be reformed or rescinded. Flying Joseph argues that the issue concerning the proper lessee was raised at trial, because in closing arguments Flying Joseph's counsel explained that despite the language in the grazing lease, every witness except for Yates testified that they intended Pines Grazing to be the lessee.

Flying Joseph asserted a counterclaim alleging that Pines Grazing breached the grazing lease. During the trial, it became apparent that there was disagreement as to whether the lessee under the grazing lease was Pines Grazing or was Yates and Whitworth as individuals. Despite this dispute at trial, it does not appear that Flying Joseph argued below that if Pines Grazing was not the lessee under the grazing lease, then [***20] Pines Grazing breached the PSA by failing to enter into a grazing lease.² Therefore, to [**1143] [*931] the extent that Flying Joseph argues on appeal that Pines Grazing breached the PSA by failing to enter

² Also of note, there was no motion to amend the pleadings to conform them to the evidence pursuant to *I.R.C.P. 15(b)* filed at the end of the trial. *Rule 15(b)* states:

When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of [***21] the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

I.R.C.P. 15(b).

into a grazing lease, we decline to consider that issue, because there was no adverse ruling on this issue. *Garner v. Bartschi, 139 Idaho 430, 436, 80 P.3d 1031, 1037 (2003)*.

However, Flying Joseph did argue below that Pines Grazing was the lessee and breached the grazing lease, and the jury found that Flying Joseph was not entitled to recover for these alleged breaches of contract. Therefore, we must consider whether the jury's finding that Pines Grazing did not breach the grazing lease is supported by substantial and competent evidence.

2. Whether the evidence supports the jury's finding that Pines Grazing did not breach the Grazing Lease.

HN8 [↑] "This Court will not overturn a jury verdict if it is supported by substantial and competent evidence". *Vanderford Co. v. Knudson, 144 Idaho 547, 552, 165 P.3d 261, 266, (2007)*. "A jury verdict must be upheld if there is evidence of sufficient quantity and probative value that reasonable minds could have reached a similar conclusion to that of the jury." *Id.* "When reviewing a jury verdict on appeal the evidence [***22] adduced at trial is construed in a light most favorable to the party who prevailed at trial." *Garrett Freightlines v. Bannock Paving Co., 112 Idaho 722, 726, 735 P.2d 1033, 1037 (1987)*.

HN9 [↑] Where a contract is ambiguous, the intent of the interpretation of the contract is a factual issue which focuses on the intent of the parties. *Page v. Pasquali, 150 Idaho 150, 152, 244 P.3d 1236, 1238 (2010)*. While the grazing lease names Yates and Whitworth as the tenants, Yates (President of Pines Grazing), signed the grazing lease as "Ben Yates, President". Furthermore, the grazing lease was executed on the day of closing of the PSA, and Addendum 1 of the PSA included a provision whereby Flying Joseph agreed to lease a portion of the ranch back to Pines Grazing for the 2005 and 2006 grazing seasons. Clark testified that he overlooked the name of the lessee in the grazing lease and that he intended to lease the ranch to Pines Grazing. Yates first testified that he did not personally enter into the lease but that he "approved it"; however, he later testified that he signed the lease as a tenant. Pines Grazing paid the obligations and expenses associated with the grazing lease, Pines Grazing used [***23] its operating line of credit with Zions Bank for expenses for the grazing lease and Pines Grazing dissolved immediately after the end of the lease. We hold that there is substantial and competent evidence to support a jury finding that Pines Grazing was not the lessee and, therefore, could not breach the grazing

lease.

Flying Joseph asserts, however, that it is entitled to an award based on unjust enrichment equal to the amount of the sublease (\$ 26,250). [HN10](#)¹ The three elements of a claim for unjust enrichment are: "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." [Vanderford Co. v. Knudson, 144 Idaho 547, 558, 165 P.3d 261, 272 \(2007\)](#). Flying Joseph did not confer any benefit on Pines Grazing. The benefit to Pines Grazing was from Bauchman in the form of rent. Thus, we uphold the jury's finding that Flying Joseph is not entitled to recover for breaching the grazing lease.

C. Attorney fees.

1. Attorney fees on appeal.

Flying Joseph requests reasonable [\[**24\]](#) costs and attorney fees on appeal pursuant to the PSA, the grazing lease, [I.R.C.P. 54](#) and [56](#) and [I.C. §§ 12-120](#) and [12-121](#). Pines Grazing requests attorney fees on appeal pursuant to [I.C. § 12-120\(3\)](#), pursuant to which the prevailing party is allowed reasonable attorney fees in any civil action to recover on a commercial transaction.

[\[**1144\] \[*932\]](#) Because we hold that the oral agreement not to bid is illegal and unenforceable, neither party is entitled to attorney fees with respect to the issues related to the oral agreement not to bid. See [Trees, 138 Idaho at 12-13, 56 P.3d at 774-75 HN11](#)¹ (attorney fees under [I.C. § 12-120\(3\)](#) are not appropriate when the commercial transaction is found to be illegal). However, with respect to the grazing lease issue, we uphold the jury's finding that Pines Grazing did not breach the grazing lease, and thus, Pines Grazing is the prevailing party and entitled to attorney fees on appeal with respect to the grazing lease issue.

2. Attorney fees before the district court.

Appellants argue that the district court abused its discretion in awarding attorney fees to Pines Grazing pursuant to [I.C. 12-120\(3\)](#) because Pines Grazing was

not the prevailing party.³

In light of our holding that an oral agreement not to bid is illegal and unenforceable, and because attorney fees are not appropriate for issues related to an illegal contract, neither party is entitled to attorney fees below on any issue concerning the oral agreement not to bid at the public auction. See [Taylor v. AIA Services Corp., 151 Idaho 52, 55, 151 Idaho 552, 261 P.3d 829, 851 \(2011\)](#). The remaining issue is the issue of breach of the grazing lease. Pines Grazing prevailed on the grazing lease issue both below and on appeal and is, thus, entitled to such attorney fees below pursuant [\[***26\]](#) to [I.C. § 12-120\(3\)](#).

III. CONCLUSION

We refuse to enforce the oral agreement not to bid at the public auction, because it is an illegal contract in violation of the Sherman Act and [I.C. § 48-104](#). As such, the parties are left as they are with respect to the oral agreement not to bid, and neither party is entitled to attorney fees on appeal or in the district court with respect to all issues related to the oral agreement not to bid. We uphold the jury's finding that Pines Grazing did not breach the grazing lease. We remand to the district court for a determination of fees pursuant to the grazing lease pursuant to [I.C. § 12-120\(3\)](#). We award attorney fees to Pines Grazing for the appeal pursuant to [I.C. § 12-120\(3\)](#). Because we decline to enforce the oral agreement not to bid at the public auction, we need not reach the remaining issues raised by Flying Joseph on appeal.

Justices EISMANN, J. JONES, W. JONES and HORTON, **CONCUR**.

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³ Appellants also argue [\[***25\]](#) in their Reply Brief that the district court erred in awarding Plaintiff costs without engaging in a claim-by-claim cost analysis as it should have done pursuant to [I.R.C.P. 54\(d\)\(1\)\(B\)](#). However, Appellants' Opening Brief does not challenge the award of costs. "A reviewing court looks only to the initial brief on appeal for the issues presented because those are the arguments and authority to which the respondent has an opportunity to respond in the respondent's brief." [Sutts v. Nix, 141 Idaho 706, 708, 117 P.3d 120, 122 \(2005\)](#). Therefore, we decline to consider whether the district court erred in its award of costs.

Shepard's request: Idaho Code § 45-1508

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Full text request: Idaho Code § 45-1508

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 **Citing Decisions:** Narrowed By:

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Shepard's®:  [Petricevich v. Salmon River Canal Co.](#) 92 Idaho 865,452 P.2d 362,1969 Ida. LEXIS 239: (Idaho March 25, 1969)

No subsequent appellate history

Appellate History (1)

1.  **Citation you Shepardized™**

[Petricevich v. Salmon River Canal Co.](#), 92 Idaho 865 

Court: Idaho | **Date:** March 25, 1969

Citing Decisions (93)

Idaho Supreme Court

1. [Eagle Equity Fund, LLC v. TitleOne Corp.](#), 161 Idaho 355 

LB Cited by: 161 Idaho 355 p.360; 386 P.3d 496 p.501

Discussion:  | **Court:** Idaho | **Date:** November 25, 2016 | **Headnotes:** HN11

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2. [La Bella Vita, LLC v. Shuler](#), 158 Idaho 799 

LB Cited by: 158 Idaho 799 p.816; 353 P.3d 420 p.437

Discussion:  | **Court:** Idaho | **Date:** July 13, 2015

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3. [De Groot v. Standley Trenching, Inc.](#), 157 Idaho 557 

LB Cited by: 157 Idaho 557 p.564; 338 P.3d 536 p.543

Discussion:  | **Court:** Idaho | **Date:** March 28, 2014 | **Headnotes:** HN11

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4. [Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co.](#), 153 Idaho 716 

LB Cited by: 153 Idaho 716 p.721; 291 P.3d 399 p.404

Discussion:  | **Court:** Idaho | **Date:** November 14, 2012 | **Headnotes:** HN11

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5. [Gerdon v. Rydalch](#), 153 Idaho 237 

LB Cited by: 153 Idaho 237 p.241; 280 P.3d 740 p.744

Discussion:  | **Court:** Idaho | **Date:** July 2, 2012 | **Headnotes:** HN11

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6. [Fragnella v. Petrovich](#), 153 Idaho 266 

LB Cited by: 153 Idaho 266 p.271; 281 P.3d 103 p.108

Discussion:  | **Court:** Idaho | **Date:** June 21, 2012 | **Headnotes:** HN11

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7. [Stem v. Prouty](#), 152 Idaho 590 

LB Cited by: 152 Idaho 590 p.593; 272 P.3d 562 p.565

Discussion:  | **Court:** Idaho | **Date:** March 5, 2012 | **Headnotes:** HN11

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8. [Weisel v. Beaver Springs Owners Ass'n](#), 152 Idaho 519 

LB Cited by: 152 Idaho 519 p.525; 272 P.3d 491 p.497

Discussion:  | **Court:** Idaho | **Date:** March 1, 2012 | **Headnotes:** HN11

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9. [Montgomery v. Montgomery \(In re Estate of Montgomery\)](#), 147 Idaho 1 

LB Cited by: 147 Idaho 1 p.6; 205 P.3d 650 p.655

Discussion:  | **Court:** Idaho | **Date:** April 2, 2009 | **Headnotes:** HN4

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10. [Montgomery v. Montgomery \(In re Estate of Montgomery\)](#), 2009 Ida. LEXIS 33 

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LB Cited by: 145 Idaho 346 p.349; 179 P.3d 309 p.312

Discussion:  | **Court:** Idaho | **Date:** February 15, 2008 | **Headnotes:** HN3

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12. [Gem State Ins. Co. v. Hutchison](#), 145 Idaho 10 

LB Cited by: 145 Idaho 10 p.14; 175 P.3d 172 p.176

Discussion:  | **Court:** Idaho | **Date:** December 24, 2007 | **Headnotes:** HN4

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13. [Lane Ranch P'ship v. City of Sun Valley](#), 144 Idaho 584 

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Discussion:  | **Court:** Idaho | **Date:** May 23, 2007

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14. [P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust](#), 144 Idaho 233 

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Discussion:  | **Court:** Idaho | **Date:** May 1, 2007

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15. [Moreland v. Adams](#), 143 Idaho 687 

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Discussion:  | **Court:** Idaho | **Date:** January 26, 2007

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16. [Hudelson v. Delta Int'l Mach. Corp.](#), 142 Idaho 244 

LB Cited by: 142 Idaho 244 p.250; 127 P.3d 147 p.153

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17. [Thomas v. Medical Ctr. Physicians, P.A.](#), 138 Idaho 200 

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18. [Thomson v. City of Lewiston](#), 137 Idaho 473 

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21. [Baxter v. Craney](#), 135 Idaho 166 

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22. [Bromley v. Garey](#), 132 Idaho 807 

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23. [Bromley v. Garey](#), 1999 Ida. LEXIS 30 

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24. [Kolln v. St. Luke's Reg'l Med. Ctr.](#), 130 Idaho 323 

G Followed by: 130 Idaho 323 p.333; 940 P.2d 1142 p.1152

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25. [Yoakum v. Hartford Fire Ins. Co.](#), 129 Idaho 171 

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26. [Zimmerman v. Volkswagen of Am.](#), 128 Idaho 851 

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Discussion:  | Court: Idaho | Date: May 24, 1996 | Headnotes:: HN9

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27. [Harris v. Department of Health & Welfare](#), 123 Idaho 295 

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Discussion:  | Court: Idaho | Date: December 31, 1992 | Headnotes:: HN3

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28. East Lizard Butte Water Corp. v. Howell, Idaho Dkt. No. 19772

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29. Hecal Mining Co. v. Star-Morning Mining Co., Idaho Dkt. No. 19019

B Cited in Dissenting Opinion at: Idaho Dkt. No. 19019

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30. Wick v. Eismann, Idaho Dkt. No. 18821

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31. [Hecla Mining Co. v. Star-Morning Mining Co.](#), 122 Idaho 778 

B Cited in Dissenting Opinion at: 122 Idaho 778 p.792; 839 P.2d 1192 p.1206

Discussion:  | Court: Idaho | Date: August 31, 1992 | Headnotes:: HN3

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32. [Wick v. Eismann](#), 122 Idaho 698 

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33. [East Lizard Butte Water Corp. v. Howell](#), 122 Idaho 679 

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34. [Marty v. Idaho](#), Idaho Dkt. No. 19347

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35. [Marty v. State](#), 122 Idaho 766 

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36. [Fuller v. Studer](#), 122 Idaho 251 

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38. [McCoy v. Lyons](#), 120 Idaho 765 

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39. [G&M Farms v. Funk Irrigation Co.](#), 119 Idaho 514 

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40. [State v. Hedger](#), 115 Idaho 598 

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42. [Jones v. EG & G Idaho](#), 111 Idaho 591 

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49. [Fairchild v. Olsen](#), 96 Idaho 338 

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50. [Mann v. Safeway Stores](#), 95 Idaho 732 

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Discussion:  | Court: Idaho | Date: August 3, 1972 | Headnotes:: HN11

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54. [Johnson v. Gorton](#), 94 Idaho 595 

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60. [Stucki v. Loveland](#), 93 Idaho 253 

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61. [Johnson v. McPhee](#), 147 Idaho 455 

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Discussion:  | **Court:** Idaho Ct. App. | **Date:** April 8, 2009 | **Headnotes:** HN11

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62. [R Homes Corp. v. Herr](#), 142 Idaho 87 

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64. [Nanney v. Linella, Inc.](#), 130 Idaho 477 

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Discussion:  | **Court:** Idaho Ct. App. | **Date:** July 30, 1997 | **Headnotes:** HN4

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65. [Landvik v. Herbert \(In re Landvik\)](#), 130 Idaho 54 

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Discussion:  | **Court:** Idaho Ct. App. | **Date:** April 24, 1997 | **Headnotes:** HN11

66. Lamb v. Manweiler, Idaho Dkt. No. 21266

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76. [Arnold v. Diet Ctr.](#), 113 Idaho 581 

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79. [Daniels v. Byington](#), 109 Idaho 365 

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80. [M & H Rentals v. Sales](#), 108 Idaho 567 

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82. [Snake River Equip. Co. v. Christensen](#), 107 Idaho 541 

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89. [Am. Bank v. Brn Dev.](#), 2011 Ida. Dist. LEXIS 34

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6. [CHARLES DeGROOT & DeGROOT FARMS v. STANLEY TRENCHING, INC.](#), 2013 ID S. Ct. Briefs LEXIS 79

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16. [**A.F. v. Plaintiffs/Respondents, VALERIE LIETEAU, in her individual & official capacity as an
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20. [**MFG FIN. v. VIGOS**](#), 2017 ID S. Ct. Briefs LEXIS 201

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21. [**HENRIE v. CORPORATION**](#), 2016 ID S. Ct. Briefs LEXIS 439

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27. [**BURGHART v. TEREMA D. CARLIN & IDAHO COMM'N OF PARDONS & PAROLE**](#), 2013 ID S. Ct. Briefs LEXIS 152

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31. [**INTERMOUNTAIN REAL PROPS., LLC v. TAGGART**](#), 2012 ID S. Ct. Briefs LEXIS 343

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33. [**TAFT v. JUMBO FOODS, INC.**](#), 2012 ID S. Ct. Briefs LEXIS 240

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34. [**TAFT v. GUMMERSALL**](#), 2012 ID S. Ct. Briefs LEXIS 215

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35. [**HOPPER v. SWINNERTON**](#), 2012 ID S. Ct. Briefs LEXIS 544

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36. [**MAJOR v. SECURITY EQUIP. CORP.**](#), 2012 ID S. Ct. Briefs LEXIS 209

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37. [**THREE RIVERS TIMBER, INC. v. BENNETT FOREST INDUS.**](#), 2012 ID S. Ct. Briefs LEXIS 114

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39. [**MICKELSEN v. BROADWAY FORD, INC.**](#), 2011 ID S. Ct. Briefs LEXIS 231

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40. [**CAPSTAR RADIO OPERATING CO. v. LAWRENCE**](#), 2011 ID S. Ct. Briefs LEXIS 199

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LB Citing

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LB Citing

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Petricevich v. Salmon River Canal Co.

Supreme Court of Idaho

March 25, 1969

No. 10239

Reporter

92 Idaho 865 *; 452 P.2d 362 **; 1969 Ida. LEXIS 239 ***

Vasilija PETRICEVICH and Dusanka Petricevich, husband and wife, Plaintiffs-Appellants, v. SALMON RIVER CANAL COMPANY, Inc., an Idaho Corporation, Defendant-Respondent

Core Terms

fence, burned, habit, deposition, summary judgment motion, summary judgment, started, ditch, bull, genuine issue, railroad tie, highway, genuine, kindled, cases, material fact, inadmissible, street, fires, trial court, regularity, instances, pleadings, bottom, weeds

Case Summary

Procedural Posture

Appellant injured party challenged the judgment of the District Court (Idaho), which granted a summary judgment and denied recovery of the injured party's damages against respondent canal company.

Overview

The injured party sustained damages in an accident that occurred when their automobile struck a bull, which was the property of the animal owner. The bull was wandering on the highway, having escaped through a hole in the fence over a dry canal. The fence crossed an irrigation ditch where a railroad tie had been burned. The animal owner was dismissed as a party, leaving only the canal company as a potentially responsible party. The district court held that there was no evidence that the canal company set a fire to the railroad tie. In an affidavit in support of the canal company's motion for

summary judgment, the canal company unequivocally denied starting the fire. Thus, it was incumbent upon the injured party to prove that the canal company was responsible for the fire. The conflicting circumstantial evidence presented by the injured party was not sufficient to establish that there was no genuine issue of fact, required by *Idaho R. Civ. P. 56(c)*. The evidence that the canal company had burned other fences on other occasions was admissible as evidence of habit. The court held that the case failed in its entirety with the injured party's failure to establish the cause of the fire.

Outcome

The court affirmed the summary judgment in favor of the canal company.

LexisNexis® Headnotes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

[HN1](#) Summary Judgment, Entitlement as Matter of Law

If there is an issue, or if resolution of the controversy by the trial court depended upon the credibility of the witnesses or the weight to be given to their testimony, a summary judgment is improper.

[Civil Procedure > ... > Summary](#)

Judgment > Motions for Summary
 Judgment > General Overview

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Materiality of Facts

Civil Procedure > ... > Summary
 Judgment > Supporting Materials > General Overview

HN2 **Summary Judgment, Motions for Summary Judgment**

Upon a motion for summary judgment all affidavits, depositions and interrogatories are to be considered in conjunction with the pleadings. *[Idaho R. Civ. P. 56\(c\)](#)*. Such material can be used to pierce the formal allegations of the pleadings and to show that what appears on the face of the pleadings alone to be a genuine issue of fact is in reality not a genuine issue at all.

Civil Procedure > ... > Summary
 Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > Genuine Disputes

HN3 **Summary Judgment, Burdens of Proof**

The burden is at all times upon the moving party to prove the absence of a genuine issue of material fact. Additionally the court has consistently held that upon a motion for summary judgment all doubts are resolved against the moving party.

Civil Procedure > Trials > Evidence & Testimony > Depositions

Civil Procedure > ... > Summary
 Judgment > Motions for Summary

Judgment > General Overview

Civil Procedure > ... > Summary
 Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
 Judgment > Supporting Materials > General Overview

HN4 **Evidence & Testimony, Depositions**

[Idaho R. Civ. P. 56\(c\)](#) includes depositions within its enumeration of materials that may be considered on a motion for summary judgment to the end that deposition materials that are admissible in evidence -- i. e., the testimony is competent, relevant and material -- may be considered on a motion for summary judgment.

Evidence > Admissibility > Conduct
 Evidence > Habit & Routine Practices

HN5 **Conduct Evidence, Habit & Routine Practices**

Evidence of a habit is generally admissible, at least in the absence of eyewitnesses, to prove that a person acted in accordance with that habit on a particular occasion. The habit itself can be proved by specific instances of its occurrence. On the other hand, it is almost universally acknowledged that evidence of a person's character as a careful or negligent person offered to prove a tendency or predisposition for careful or negligent conduct is inadmissible to prove that he acted in accordance with his character on a given occasion.

Evidence > Admissibility > Conduct
 Evidence > Habit & Routine Practices

Torts > ... > Proof > Custom > General Overview

HN6 **Conduct Evidence, Habit & Routine Practices**

The line is close between particular instances to show habit or custom, and particular instances to show character for negligence which on an issue of conduct would not be allowed.

Evidence > Admissibility > Conduct
Evidence > Habit & Routine Practices

[HN7](#) **Conduct Evidence, Habit & Routine Practices**

There is, however, much room for difference of opinion in concrete cases, owing chiefly to the indefiniteness of the notion of habit or custom. If we conceive it as involving an invariable regularity of action, there can be no doubt that this fixed sequence of acts tends strongly to show the occurrence of a given instance. But in the ordinary affairs of life a habit or custom seldom has such an invariable regularity. Hence, it is easy to see why in a given instance something that may be loosely called habit or custom should be rejected, because it may not in fact have sufficient regularity to make it probable that it would be carried out in every instance or in most instances. Whether or not such sufficient regularity exists must depend largely on the circumstances of each case.

Evidence > Admissibility > Conduct
Evidence > Habit & Routine Practices

[HN8](#) **Conduct Evidence, Habit & Routine Practices**

Instances of prior conduct are admissible to establish the existence of a habit provided (a) that they should be numerous enough to base an inference of systematic conduct, and (b) that they should have occurred under substantially similar circumstances, so as to be naturally accountable for by a system only, and not as casual recurrences.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Genuine Disputes

Tax Law > Federal Tax Administration & Procedures > Summary Judgment > Standards for Summary Judgment

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of

Law > Materiality of Facts

[HN9](#) **Entitlement as Matter of Law, Genuine Disputes**

The rule, [Idaho R. Civ. P. 56\(c\)](#) itself, in permitting summary judgment where no genuine issue of any material fact appears, plainly requires more to forestall summary judgment than the raising of the slightest doubt as to the facts.

Civil Procedure > ... > Summary
Judgment > Supporting Materials > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > Trials > Judgment as Matter of Law > General Overview

[HN10](#) **Summary Judgment, Supporting Materials**

Summary judgment will be granted whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable men could not disagree as to the facts.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Genuine Disputes

[HN11](#) **Entitlement as Matter of Law, Appropriateness**

Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment. Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. A mere scintilla of evidence is

not enough to create an issue; there must be evidence on which a jury might rely. A popular formula is that summary judgment should be granted on the same kind of showing as would permit direction of a verdict were the case to be tried.

Counsel: [***1] Kramer, Plankey & Meehl, Twin Falls, for appellants.

Coughlan, Imhoff, Christensen & Lynch, Boise, for respondent.

Judges: McFadden, Chief Justice. McQuade and Donaldson, JJ., concur. Shepard and Spear, JJ., concur in the conclusion only.

Opinion by: McFADDEN

Opinion

[*866] [**363] This action was instituted by Mr. and Mrs. Petricevich, the plaintiffs-appellants, for damages sustained in an accident which occurred when their automobile in which they and their children were riding struck a bull, the property of Heber Loughmiller.

The facts involved in this appeal are as follows:

On August 9, 1964 the plaintiffs (appellants) and their three minor children were enroute to Yellowstone Park on a vacation trip from their home in Oakland, California. About 9:00 o'clock p. m. the appellants were a few miles west of Twin Falls and about 3 1/2 miles north of the village of Hollister in Twin Falls County when they collided with a bull wandering on U.S. Highway 93. The accident occurred in a herd district, within which, under [I.C. § 25-2405](#), cattle are required to be confined within a fenced enclosure. Although Mr. Heber Loughmiller, the owner of the bull, maintained a wire fence around [***2] the perimeter of his land, the bull had escaped from the pasture through a hole in the fence and reached the highway where the accident occurred.

In the vicinity of the accident, the defendant Salmon River Canal Company, respondent herein, as a part of its irrigation water delivery system, maintains a delivery ditch which crosses U.S. Highway 93 and farm lands owned by Loughmiller. The Loughmiller property is situated east of the highway, and is enclosed by a fence, one portion of which establishes the boundary between the highway and Loughmiller's property. The Loughmiller bull had been pastured within this enclosure

sometime prior to the accident.

Where the Loughmiller fence crosses respondent's ditch, east of the highway, the ditch is seven to eight feet in width, with the bottom of the ditch about four feet below the bottom of the fence. Mr. Loughmiller, as a part of the enclosure of his property, had installed a railroad tie eight to ten feet in width between two fence posts erected on the ditch bank. This railroad tie was 18 to 24 inches above the bottom of the canal and was attached to the bottom of the fence by anchor wires. This railroad tie was an affective barrier [***3] to the escape of cattle through the ditch and under the fence.

Mr. Loughmiller, by deposition, testified that the day following the accident, he inspected his fence and found it to be in good condition except at the point where it crossed the irrigation ditch. He observed that at this point the railroad tie had been burned, destroying it as a barrier to the escape of cattle. He also observed that weeds had been raked into a pile and burned immediately adjacent to the fence [*867] [**364] and that there were bull tracks in the bottom of the dry canal leading out toward the highway. He stated in his deposition and affidavit that in his opinion this was the only point at which the bull could have escaped from its pasture.

Initially the appellants brought this action only against Heber Loughmiller, alleging that he had negligently allowed his bull to roam at large upon the highway in a herd district. Later the respondent Salmon River Canal Company was also joined as a defendant. Prior to trial, however, the court granted a motion dismissing Loughmiller from the action, leaving the respondent Canal Company as the sole defendant.

The appellants' last amended complaint alleged [***4] that the Company negligently kindled the fire which consumed the railroad tie, allowing the bull to escape from its pasture. The complaint also alleged that regardless of whether the respondent was negligent in starting or controlling the fire, it was nevertheless negligent in neither repairing the fence nor warning Mr. Loughmiller of the damage prior to the accident. The respondent answered the complaint on April 5, 1967, denying that it started the fire and raising as an affirmative defense the statute of limitations ([I.C. § 5-219\(4\)](#)).

Following the taking of numerous interrogatories, depositions, and affidavits by both sides, on August 29, 1967 the respondent moved for summary judgment. The motion was supported by the affidavit of Mr. Clarence

Petricevich v. Salmon River Canal Co., 92 Idaho 865

Tanner, a company employee who was the ditch rider on the ditch in question, denying that the respondent started any fire. The appellants responded to the motion with the affidavit and deposition of Mr. Heber Loughmiller in which Mr. Loughmiller testified to the following: That the respondent is in charge of maintaining the canal, which job includes the burning of weeds; That on the day following the accident Mr. Loughmiller found that [***5] his fence had been burned at the point where it crossed the canal; That the resultant hole in the fence is the only spot at which the bull could have escaped; That he found a raked pile of leaves which had been burned next to the fence; That although he did not see the respondent burn any leaves during the summer, he did see respondent's employees burn weeds early in the spring; That in his opinion it is unlikely that the fire was started by lightning, tourists, or his own employees; and that on several other occasions the respondent had burned his fences and fences belonging to his neighbors.

On the basis of the affidavits, depositions, pleadings and interrogatories, the district court granted the respondent's motion for summary judgment. In its memorandum opinion the trial court stated:

"My opinion in this regard is based upon two apparent weaknesses in plaintiffs' case only one of which seems to be recognized by the plaintiffs. First, is there any showing, other than pure speculation or conjecture, that the Salmon River Canal Company set a fire that eventually reached and consumed the railroad tie? I do not believe that any reasonable person could reach such a conclusion [***6] based upon the foregoing facts. See *Gray v. Lonyear* [sic] (*N.M. 1967*) *78 N.M. 161* *429 P.2d 359* * * * But even if we concede that I am wrong and the plaintiffs are right in this regard, there is still the second weakness to overcome, namely what facts are presently before this Court from which we can reach the legal conclusion that the Salmon River Canal Company was negligent in kindling the fire in the first place or managing the fire after it was kindled?"

The appellants appealed from the summary judgment and order in respondents' favor and from the order denying their motion to reconsider, assigning as error the trial court's determination that there are no triable issues of fact in the case and that there is no evidence tending to establish that the respondent started the fire in question. The appellants contend that there is a genuine issue concerning [*868] [**365] whether the

respondent started the fire and that the summary judgment was therefore improper.

The appellants' claim is based upon their assertion that the respondent was responsible for the fire which destroyed Mr. Loughmiller's fence. In the absence of such a showing, as pointed out by the trial [***7] court, there is no basis upon which the respondent could be held liable to the appellants for the injuries they sustained. The first question to be considered here, then, is whether the district court erred in deciding that there was no genuine issue of material fact as to whether or not respondent was responsible for the fire.

HN1[[↑]] If there is such an issue, or if resolution of the controversy by the trial court depended upon the credibility of the witnesses or the weight to be given to their testimony, the summary judgment was improper. *Merrill v. Duffy Reed Constr. Co.*, *82 Idaho 410, 353 P.2d 657 (1960)*; *Steele v. Nagel*, *89 Idaho 522, 406 P.2d 805 (1965)*; *Anderson v. Smith Frozen Foods of Idaho, Inc.*, *83 Idaho 494, 365 P.2d 965 (1961)*; *In re Killgore's Estate*, *84 Idaho 226 370 P.2d 512 (1962)*.

The allegations of the complaint and the denials of the answer present a question of fact as to the cause of the fire. The appellants allege that the respondents started it, and the respondents deny it. But a trial court is not limited to a consideration of the pleadings in determining whether a genuine issue of material fact exists. **HN2**[[↑]] Upon a motion for summary judgment all affidavits, depositions [***8] and interrogatories are to be considered in conjunction with the pleadings. *I.R.C.P. 56(c)*. Such material can be used to pierce the formal allegations of the pleadings and to show that what appears on the face of the pleadings alone to be a genuine issue of fact is in reality not a genuine issue at all. 6 Moore's Federal Practice, § 56.15 [1. -- 02], p. 2291 (2d ed. 1966). See also *Tri-State Nat. Bank v. Western Gateway Storage Co.*, *92 Idaho 543, 447 P.2d 409 (1968)*; *Richard v. Credit Suisse*, *242 N.Y. 346, 152 N.E. 110, 45 A.L.R. 1041 (1926)*; 3 Barron & Holtzoff, Federal Practice and Procedure, § 1235.1, p. 153 (Rules ed. 1958); Wright, Federal Courts, § 99, p. 387 (1963).

HN3[[↑]] The burden is at all times upon the moving party to prove the absence of a genuine issue of material fact. *Christiansen v. Rumsey*, *91 Idaho 684, 429 P.2d 416 (1967)*. 6 Moore's Federal Practice, § 56.15 [3], pp. 2335-2336 (2d ed. 1966). Additionally this court has consistently held that upon a motion for summary judgment all doubts are resolved against the moving party. *Merrill v. Duffy Reed Constr. Co.*, *82*

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[Idaho 410, 353 P.2d 657 \(1960\); In re Killgore's Estate, 84 Idaho 226, 370 P.2d 512 \(1962\); \[***9\] Deshazer v. Tompkins, 89 Idaho 347, 404 P.2d 604 \(1965\); Otts v. Brough, 90 Idaho 124, 409 P.2d 95 \(1965\); Lundy v. Hazen, 90 Idaho 323, 411 P.2d 768 \(1966\).](#)

In the present case the respondent, by the affidavit of its employee Clarence Tanner, unequivocally denied starting the fire in question. Under such circumstances, it was incumbent upon the appellants to respond, in detail as specific as that of the moving party, setting forth facts contradicting the evidence contained in the moving party's affidavit. [I.R.C.P. 56\(e\)](#). The appellants responded with the affidavit and deposition of Mr. Loughmiller setting forth circumstantial evidence to refute Mr. Tanner's affidavit. Respondent contends that [I.R.C.P. 56\(e\)](#) requires a party opposing a motion for summary judgment to contradict the moving party's affidavits by affirmative, direct evidence and that therefore the supporting materials tendered by the appellants were insufficient to defeat the motion for summary judgment. It is settled, however, that facts can be proven by circumstantial, as well as by direct, evidence. [Dick v. Reese, 90 Idaho 447, 412 P.2d 815 \(1966\)](#). If the circumstantial evidence submitted by the appellants tends [***10] to prove that respondent was responsible for the fire, thus creating a genuine issue over the cause of [*869] [**366] the fire, it would be sufficient to defeat the motion for summary judgment.

The next question, then, is whether the respondent's evidence, in the face of this conflicting circumstantial evidence presented by the appellants, is sufficient to establish that there is no genuine issue of fact.

Upon a motion for summary judgment a court will consider only that material contained in affidavits or depositions which is based upon personal knowledge and which would be admissible at trial. [I.R.C.P. 56\(c\)](#); Moore states that

[HN4\[\]](#) "Rule 56(c) * * * includes depositions within its enumeration of materials that may be considered on a motion for summary judgment to the end that deposition materials that are admissible in evidence -- i. e., the testimony is competent, relevant and material -- may be considered on a motion for summary judgment." 6 Moore's Federal Practice, § 56.11 [4], p. 2191 (2d ed. 1966).

The question then arises whether the testimony contained in Loughmiller's deposition to the effect that the respondent has on several other occasions burned [***11] other fences is admissible evidence.

The admissibility of this evidence turns upon the distinction often drawn between evidence of habit and evidence of a person's character.

[HN5\[\]](#) Evidence of a habit is generally admissible, at least in the absence of eyewitnesses, to prove that a person acted in accordance with that habit on a particular occasion. [Hodges v. Hill, 175 Mo.App. 441, 161 S.W. 633 \(1913\); Howard v. Capital Transit Co., 97 F.Supp. 578 \(D.C. 1951\)](#); 2 Wigmore on Evidence, § 376, p. 306 (3d ed. 1940); Uniform Rules of Evidence, R. 49. The habit itself can be proved by specific instances of its occurrence. [Whittemore v. Lockheed Aircraft Corp., 65 Cal.App.2d 737, 151 P.2d 670 \(1944\); Reagan v. Manchester Street Ry. Co., 72 N.H. 298, 56 A. 314 \(1903\)](#); McCormick, Handbook of the Law of Evidence, Hornbook Series, § 162, p. 343 (1954); 2 Wigmore on Evidence, § 376, p. 306 (3rd ed. 1940). On the other hand, it is almost universally acknowledged that evidence of a person's character as a careful or negligent person offered to prove a tendency or predisposition for careful or negligent conduct is inadmissible to prove that he acted in accordance with his character on a given occasion. [***12] [Denbeigh v. Oregon-Washington R.R. & Navigation Co., 23 Idaho 663, 132 P. 112 \(1913\); Moritz v. Rivers, 175 Kan. 809, 267 P.2d 506 \(1954\); Nesbit v. Cumberland Contracting Co., 196 Md. 36, 75 A.2d 339, 20 A.L.R.2d 1212 \(1950\); Grenadier v. Surface Transp. Corp., 271 App.Div. 460, 66 N.Y.S.2d 130 \(1946\); Webb v. Van Noort, 239 Cal.App.2d 472, 48 Cal.Rptr. 823 \(1966\); Como v. Bastolla, 19 A.D.2d 531, 240 N.Y.S.2d 386 \(1963\); Knoepfle v. Suko, 108 N.W.2d 456 \(N.D. 1961\); Ryan v. International Harvester Co. of America, 204 Minn. 177, 283 N.W. 129 \(1938\)](#); 1 Wigmore on Evidence, § 65, pp. 481-483 (3d ed. 1940); McCormick, Handbook of the Law of Evidence, Hornbook Series, § 156, pp. 325-326 (1954). But as McCormick says,

"* * * [HN6\[\]](#) the line is close between particular instances to show habit or custom, and particular instances to show character for negligence which on an issue of conduct would not be allowed. (McCormick, Handbook of the Law of Evidence, Hornbook Series, § 162, p. 343 fn. (1954)).

Appellants point to the following testimony of Loughmiller:

"Q. Now you also indicated that this was pretty much of a general habit of the individuals who start these [***13] fires to burn fences. Is this right?

"A. It is a general practice of the crews of the Salmon River Canal Company to burn every fence

crossing they come to."

Appellants argue that this testimony sufficiently establishes that respondent engaged in a "habit" of burning down fences. However, the real question is whether the respondent's past conduct is a "habit" or is at most only an indication of a predisposition towards negligence? Wigmore states

[*870] [HN7](#) [*367] "There is, however, much room for difference of opinion in concrete cases, owing chiefly to the indefiniteness of the notion of habit or custom. If we conceive it as involving an invariable regularity of action, there can be no doubt that this fixed sequence of acts tends strongly to show the occurrence of a given instance. But in the ordinary affairs of life a habit or custom seldom has such an invariable regularity. Hence, it is easy to see why in a given instance something that may be loosely called habit or custom should be rejected, because it may not in fact have sufficient regularity to make it probable that it would be carried out in every instance or in most instances. Whether or [*14] not such sufficient regularity exists must depend largely on the circumstances of each case." Wigmore on Evidence, § 92, p. 520 (3d ed. 1940).

Wigmore also states that [HN8](#) instances of prior conduct are admissible to establish the existence of a habit provided

"* * * (a) that they should be numerous enough to base an inference of systematic conduct, and (b) that they should have occurred under substantially similar circumstances, so as to be naturally accountable for by a system only, and not as casual recurrences." (Wigmore on Evidence, Vol. 2, § 376, p. 305 (3d ed. 1940)).

This court has previously considered the admissibility of past acts as evidence that a similar act occurred on a given occasion and has held such evidence inadmissible. In [Denbeigh v. Oregon-Washington R. R. & Navigation Co.](#), 23 Idaho 663, 132 P. 112 (1913), this court held that evidence of an engineer's reputation as a careful and prudent engineer was inadmissible to prove that he acted in accordance with that reputation at the time of the accident. Even more directly in point is [Rumpel v. Oregon Short Line Ry. Co.](#), 4 Idaho 13, 35 P. 700, 22 L.R.A. 725 (1894), in which the plaintiff sought [*15] to introduce evidence that the railroad company had on several occasions blocked a city street with its cars. This evidence was offered to prove that the street was blocked at the time of the accident. This

court, however, rejected the evidence, holding that

"Proof that the railroad company had blockaded the streets of Nampa at any other time than the time when the accident occurred does not prove, nor tend to prove, that the street was blockaded at the time the accident occurred, * * *. Neither habit of railroad company in blockading the streets of Nampa, nor habit of people in creeping under cars so blockading streets, can have anything to do with the case at bar." [4 Idaho at 26-27, 35 P. at 703](#).

In the present case there is no indication of how many times the respondent allegedly burned down Mr. Loughmiller's fences. Neither is there any showing of similar circumstances so as to give a basis for an inference that the burned fences are a regular response to a given situation. It is our opinion that the evidence of past fires is at best only evidence of a predisposition toward negligence and as such would be inadmissible at trial. This conclusion is in accord [*16] with the great weight of authority in cases surprisingly similar to the case at bar. In [Brownhill v. Kivlin](#), 317 Mass. 168, 57 N.E.2d 539 (1944), the plaintiff sought to introduce evidence that the defendant had caused three prior fires by careless smoking as evidence of the cause of a particular fire. Relying upon a great many Massachusetts cases the court held the evidence inadmissible. See also [Robbins v. Alexander](#), 219 N.C. 475, 14 S.E.2d 425 (1941); [Lefcourt v. Jenkinson](#), 258 App.Div. 1080, 18 N.Y.S.2d 160 (1940); [Louisville & Nashville R. R. Co. v. Howe](#), 243 S.W.2d 905 (Ky.App. 1951); [Washita Valley Grain Co. v. McElroy](#), 262 P.2d 133 (Okl. 1953); [Jackson v. Chesapeake & O. Ry. Co.](#), 179 Va. 642, 20 S.E.2d 489 (1942).

It should be noted that there are a few Idaho decisions holding evidence of prior fires admissible. See [Osburn v. Oregon](#) [*871] [*368] [R. R. & Navigation Co.](#), 15 Idaho 478, 98 P. 627, 19 L.R.A.,N.S., 742 (1908); [Fodey v. Northern Pacific Ry. Co.](#), 21 Idaho 713, 123 P. 835 (1912); [Allen-Wright Furniture Co. v. Hines](#), 34 Idaho 90, 200 P. 889 (1921). Nothing in these cases, however, is inconsistent with our decision in the present case. It should be noted [*17] that each of these cases involved a fire started by sparks from a railroad locomotive. There has developed in the law a line of authority in virtually every jurisdiction holding that evidence of prior fires kindled by locomotives is admissible, under certain circumstances, to prove, not that the locomotive did in fact start a particular fire, but to prove that the locomotive was capable of starting it and that it was not impossible for the fire to originate

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from this source. See the discussion of this line of authority in 2 Wigmore on Evidence, §§ 452-456, pp. 454-456 (3d ed. 1940), and cases cited therein.

In this case both parties submitted material by way of affidavits, depositions, interrogatories and requests for admissions. These materials were submitted in support of the respective parties' positions on respondent's motion for summary judgment. Under this state of the record the next question for consideration is whether at the time of ruling on respondent's motion for summary judgment the trial court had before it any admissible evidence creating a genuine issue of material fact. Some courts have held that a party opposing summary judgment need only present sufficient [***18] evidence to create "the slightest doubt" as to the facts to defeat the motion for summary judgment. See [Doebler Metal Furniture Co. v. United States, 149 F.2d 130 \(2d Cir. 1945\)](#); [Peckham v. Ronrico Corp., 171 F.2d 653 \(1st Cir. 1948\)](#); [Armco Steel Corp. v. Realty Investment Co., 273 F.2d 483 \(8th Cir. 1960\)](#). But as Professor Wright says,

"Such statements are a rather misleading gloss on a rule which speaks in terms of 'genuine issue as to any material fact,' and would, if taken literally, mean that there could hardly ever be a summary judgment, for at least a slight doubt can be developed as to practically all things human." (Wright, Federal Courts, § 99, p. 387 (1963)).

This court has recently rejected the "slightest doubt" test in [Tri-State Nat. Bank v. Western Gateway Storage Co., 92 Idaho 543, 447 P.2d 409 \(1968\)](#), stating:

"* * * [HN9](#)[] the rule ([I.R.C.P. 56\(c\)](#)) itself, in permitting summary judgment where 'no genuine issue of any material fact' appears, plainly requires more to forestall summary judgment than the raising of the 'slightest doubt' as to the facts." [447 P.2d at 412](#).

In our opinion the better rule is that [HN10](#)[] summary judgment will be granted [***19] whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable men could not disagree as to the facts. [Gifford v. Travelers Protective Ass'n of America, 153 F.2d 209 \(9th Cir. 1946\)](#); [Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967 \(1944\)](#). [Christianson v. Gaines, 85 U.S.App.D.C. 15, 174 F.2d 534 \(1949\)](#); [Miller v. Hoffman, 1 F.R.D. 290 \(D.N.J. 1940\)](#); 6 Moore's Federal Practice, § 56.11 [3], p. 2171 (2d ed. 1966). 3 Barron & Holtzoff, Federal Practice and Procedure, § 1234, p.

133 (Rules ed. 1958), citing cases, states that

[HN11](#)[] "Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment. Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. A mere scintilla of evidence is not enough to create an issue; there must be evidence on which a jury might rely. A popular formula is that summary judgment should be granted on the same kind of showing as would [***20] permit direction of a verdict were the case to be tried." (Emphasis added.) (at pp. 132-133)

Eliminating from consideration the inadmissible evidence contained in the affidavit [*872] [**369] and deposition of Mr. Loughmiller as to prior fires caused by respondent, there is nothing in the record to create a "genuine" issue as to the responsibility of respondent for the fire which destroyed the railroad tie. In the affidavit of Mr. Charles Tanner it is affirmatively denied that respondent kindled the fire. At best appellant has established that the railroad tie was burned; that a pile of raked burned leaves was found next to it; that respondent maintains the ditch and occasionally burns weeds along it; that respondent had burned weeds in the area a few months earlier, and that it was "unlikely" that the fire was kindled by lightning, tourists, or employees of Mr. Loughmiller. This, however, is insufficient to create a "genuine" issue. It is difficult to believe that reasonable men could reach different conclusions on the basis of this evidence. [Gray v. E. J. Longyear Co., 78 N.M. 161, 429 P.2d 359 \(1967\)](#).

Inasmuch as the appellants have failed to establish that the [***21] respondent kindled the fire which destroyed the railroad tie, it is unnecessary to consider appellants' arguments that the respondent was negligent in starting or controlling the fire or in failing to repair the fence or to warn Mr. Loughmiller of the damage. The appellants' case fails in its entirety with the appellants' failure to establish the cause of the fire.

The summary judgment is affirmed. Costs to respondent.

McQUADE and DONALDSON, JJ., concur.

SHEPARD and SPEAR, JJ., concur in the conclusion only.

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Shepard's request: Idaho Code § 45-1508

The *Shepard's*® report for this citation is identical to citation #3

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Full text request: Idaho Code § 45-1508

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Shepard's®: Report Content

History:Requested

I Citing Decisions:Narrowed By:

I Other Citing Sources:Narrowed By:

Shepard's®: I Comprehensive Report for [Idaho Code sec. 45-1504](#)

[Subsection reports by specific court citation](#)

History (1)

1. 1957, ch. 181, § 4, p. 345; am. 1969, ch. 155, § 1, p. 482; am. 1983, ch. 190, § 2, p. 514; am. 2005, ch. 236, § 3, p. 717.

Citing Decisions (19)

Idaho Supreme Court

1. [Gordon v. United States Bank Nat'l Ass'n](#), 166 Idaho 105 

LB Cited by: 166 Idaho 105 p.118; 455 P.3d 374 p.387

Court: Idaho | **Date:** December 18, 2019

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2. [Edwards v. Mortgage Elec. Registration Sys.](#), 154 Idaho 511 

LB Cited by: 154 Idaho 511 p.517; 300 P.3d 43 p.49

Court: Idaho | **Date:** April 25, 2013

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3. [Trotter v. Bank of N.Y. Mellon](#), 152 Idaho 842 

LB Cited by: 152 Idaho 842 p.845; 275 P.3d 857 p.860

Court: Idaho | **Date:** March 23, 2012

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4. [Trotter v. Bank of N.Y. Mellon](#), 2012 Ida. LEXIS 33 

LB Cited by: 2012 Ida. LEXIS 33

Court: Idaho | **Date:** January 25, 2012

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5. [Frontier Fed. Sav. & Loan Ass'n v. Douglass](#), 123 Idaho 808 

LB Cited by: 123 Idaho 808 p.810, p.813; 853 P.2d 553 p.555, p.557

Court: Idaho | **Date:** June 18, 1993

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6. [Frontier Fed. Sav. & Loan Ass'n v. Douglass](#), 123 Idaho 808 

LB Cited by:

Court: Idaho | **Date:** April 23, 1993

Idaho Court of Appeals

7. [State v. Parker](#), 2009 Ida. App. Unpub. LEXIS 167

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8. [440 v. Riverbank](#), 2014 Ida. Dist. LEXIS 37

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Court: Idaho Dist. Ct. | **Date:** October 16, 2014

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9. [Mortensen v. Ace Mortg. Funding](#), 2012 Ida. Dist. LEXIS 62

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Court: Idaho Dist. Ct. | **Date:** March 23, 2012

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Court: Idaho Dist. Ct. | **Date:** October 7, 2011

9th Circuit - U.S. District Courts

11. [Anderson v. Northwest Tr. Servs.](#), 2016 U.S. Dist. LEXIS 126798 

LB Cited by: 2016 U.S. Dist. LEXIS 126798

Court: Dist. Idaho | **Date:** September 15, 2016

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12. [Rheinschild Family Trust v. Rankin](#), 2016 U.S. Dist. LEXIS 38917 

LB Cited by: 2016 U.S. Dist. LEXIS 38917

Court: Dist. Idaho | **Date:** March 24, 2016

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LB Cited by: 2015 U.S. Dist. LEXIS 153989

Court: Dist. Idaho | **Date:** November 12, 2015

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14. [Van Kirk v. Bank of Am. Corp.](#), 2012 U.S. Dist. LEXIS 143289 

LB Cited by: 2012 U.S. Dist. LEXIS 143289

Court: Dist. Idaho | **Date:** October 1, 2012

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15. [Stolz v. OneWest Bank](#), 2012 U.S. Dist. LEXIS 45016 

LB Cited by: 2012 U.S. Dist. LEXIS 45016

Court: Dist. Or. | **Date:** March 30, 2012

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16. [Stolz v. OneWest Bank](#), 2012 U.S. Dist. LEXIS 8141 

LB Cited by: 2012 U.S. Dist. LEXIS 8141

Court: Dist. Or. | **Date:** January 13, 2012

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17. [Russell v. Onewest Bank FSB](#), 2011 U.S. Dist. LEXIS 121836 

LB Cited by: 2011 U.S. Dist. LEXIS 121836

Court: Dist. Idaho | **Date:** October 20, 2011

9th Circuit - U.S. Bankruptcy Courts

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18. [Weig v. Stanley \(In re Sleestak, LLC\)](#), 2023 Bankr. LEXIS 1837 

LB Cited by: 2023 Bankr. LEXIS 1837

Court: Bankr. Dist. Idaho | **Date:** July 24, 2023

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19. [In re Jensen-Edwards](#), 535 B.R. 336 

LB Cited by: 535 B.R. 336 p.341

Court: Bankr. Dist. Idaho | **Date:** August 13, 2015

Other Citing Sources: (6)

Annotated Statutes

1. [Idaho Code sec. 30-934](#)

Content: Statutes

Briefs

2. [VERMONT TROTTER v. BANK OF NEW YORK MELLON](#), 2011 ID S. Ct. Briefs LEXIS 18

Content: Court Filings | **Date:** January 4, 2011

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3. [PETERSON v. KITSAP COMMUNITY FED. CREDIT UNION](#), 2011 WA App. Ct. Briefs LEXIS 907

Content: Court Filings | **Date:** July 1, 2011

Motions

4. [GILBERT v. BANK OF AMERICA N.A.](#), 2011 U.S. Dist. Ct. Motions LEXIS 19686

Content: Court Filings | **Date:** July 29, 2011

-
5. [GILBERT v. BANK OF AMERICA, N.A.](#), 2011 U.S. Dist. Ct. Motions LEXIS 19684

Content: Court Filings | **Date:** July 5, 2011

Pleadings

6. [Russel v Onewest Bank FSB](#), 2011 U.S. Dist. Ct. Pleadings LEXIS 2677

Content: Court Filings | **Date:** May 17, 2011

[Idaho Code § 45-1504](#)

Statutes current through all legislation from the 2024 Regular Session.

[Idaho Code](#) > [Title 45 Liens, Mortgages and Pledges \(Chs. 1 — 19\)](#) > [Chapter 15 Trust Deeds \(§§ 45-1501 — 45-1515\)](#)

45-1504. Trustee of trust deed — Who may serve — Successors.

(1) The trustee of a trust deed under this act shall be:

- (a)** Any member of the Idaho state bar;
- (b)** Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;
- (c)** An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or
- (d)** A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

History

1957, ch. 181, § 4, p. 345; am. 1969, ch. 155, § 1, p. 482; am. 1983, ch. 190, § 2, p. 514; [am. 2005, ch. 236, § 3](#), p. 717.

Annotations

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the introductory paragraph in subsection (1) refers to S.L. 1957, Chapter 181, which is compiled as [§§ 45-901](#), [45-902](#), [45-904](#), [45-905](#), [45-907](#), [45-908](#), [45-1003](#), [45-1502](#) to [45-1506](#), and [45-1507](#) to [45-1515](#).

Effective Dates.

Section 2 of S.L. 1969, ch. 155 declared an emergency. Approved March 14, 1969.

JUDICIAL DECISIONS

Successor Trustee.

Deed of trust beneficiary's appointment of a trustee the day before the deed of trust was assigned to it was valid; under subsection (2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment. [Russell v. Onewest Bank FSB, No. 1:11-cv-00222-BLW, 2011 U.S. Dist. LEXIS 121836 \(D. Idaho Oct. 20, 2011\).](#)

Cited in:

Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 (1993); [Edwards v. Mortgage Elec. Registration Sys., 154 Idaho 511, 300 P.3d 43, 2013 Ida. LEXIS 135 \(2013\).](#)

Shepard's request: Idaho Code § 45-1504

The *Shepard's*® report for this citation is identical to citation #27

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Full text request: Idaho Code § 45-1504

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Appellate History: Requested

▲ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [The Hirondelle](#) 21 F. Supp. 223, 1937 U.S. Dist. LEXIS 1356, 1937 A.M.C. 1597: (D. Ala. November 13, 1937)

No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

[The Hirondelle](#), 21 F. Supp. 223 ▲

Court: D. Ala. | **Date:** November 13, 1937

Citing Decisions (10)

1st Circuit - U.S. District Courts

1. [Payne v. SS Tropic Breeze](#), 274 F. Supp. 324 
 **Distinguished by:** 274 F. Supp. 324 p.332
Discussion:  | Court: Dist. P.R. | Date: September 28, 1967

2. [United States v. F/V Sylvester F. Whalen](#), 217 F. Supp. 916 
 **Distinguished by:** 217 F. Supp. 916 p.917
Discussion:  | Court: Dist. Maine | Date: June 18, 1963

2nd Circuit - U.S. District Courts

3. [United States v. F/V Golden Dawn](#), 222 F. Supp. 186 
 **Explained by:** 222 F. Supp. 186 p.190
Discussion:  | Court: Eastern Dist. N.Y. | Date: September 30, 1963

4. [First Suffolk Nat'l Bank v. The Air Brant](#), 125 F. Supp. 709 
 **Cited by:** 125 F. Supp. 709 p.710
Discussion:  | Court: Dist. N.Y. | Date: November 7, 1954

4th Circuit - Court of Appeals

5. [Moore v. Martin Marine Transp. Co.](#), 177 F.2d 561 
 **Cited by:** 177 F.2d 561 p.563
Court: 4th Cir. Va. | Date: November 3, 1949

4th Circuit - U.S. Bankruptcy Courts

6. [In re Carman](#), 399 B.R. 599 
 **Distinguished by:** 399 B.R. 599 p.605
Discussion:  | Court: Bankr. Dist. Md. | Date: January 7, 2009

6th Circuit - U.S. District Courts

7. [First Nat'l Bank & Trust Co. v. Oil Screw Olive L. Moore](#), 379 F. Supp. 1382 
 **Cited by:** 379 F. Supp. 1382 p.1389
Discussion:  | Court: Western Dist. Mich. | Date: November 14, 1973

11th Circuit - U.S. District Courts

8. [Motor-Services Hugo Stamp v. M/V Regal Empress](#), 2003 U.S. Dist. LEXIS 28903 

 Distinguished by:

Discussion:  | Court: Middle Dist. Fla. | Date: May 20, 2003

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9.

 [1964 A.M.C. 691](#)

 Explained by: 1964 A.M.C. 691 p.697

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3. [ARTICLE: Ship Mortgages](#), 47 Tul. L. Rev. 608

Content: Law Reviews | **Date:** April 1, 1973

-
4. [NOTE: LEASED EQUIPMENT ON BOARD VESSELS AND PREFERRED MARITIME WAGE LIENS: KESSELRING v. F/T ARCTIC HERO](#), 19 Tul. Mar. L. J. 199

Content: Law Reviews | **Date:** 1994

Treatise Citations

5. [1 Benedict on Admiralty @ 167](#)

Content: Treatises

-
6. [2 Benedict on Admiralty @ 32](#)

Content: Treatises

Table Of Authorities (6)

U.S. Supreme Court

1. [The John G. Stevens](#), 170 U.S. 113 

 Citing

First Ref: 21 F. Supp. 223 at p.225

Discussion:  | Court: U.S. | Date: April 18, 1898

1st Circuit - U.S. District Courts

2. [The Showboat](#), 47 F.2d 286 

 Citing

First Ref: 21 F. Supp. 223 at p.226

Discussion:  | Court: D. Mass. | Date: November 26, 1930

5th Circuit - Court of Appeals

3. [Learned v. Brown](#), 94 F. 876 

 Following

First Ref: 21 F. Supp. 223 at p.226

Discussion:  | Court: 5th Cir. La. | Date: May 31, 1899

5th Circuit - U.S. District Courts

4. [The Augusta](#), 15 F.2d 727 

 Explaining

First Ref: 21 F. Supp. 223 at p.225

Discussion:  | Court: Dist La. | Date: September 7, 1920

-
5. [The Katherine](#), 15 F.2d 387 

 Citing

First Ref: 21 F. Supp. 223 at p.225

Discussion:  | Court: Dist La. | Date: May 7, 1926

U.S. Circuit Court of Appeals

6. [The Mildred](#), 43 F. 393 

 Following

First Ref: 21 F. Supp. 223 at p.225

Discussion:   | **Court:** Cir. Ct. Dist. Mich. | **Date:** July 23, 1890

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⚠ Caution
As of: October 24, 2024 11:37 AM Z

The Hirondelle

District Court, S.D. Alabama

November 13, 1937

No. 2313

Reporter

21 F. Supp. 223 *; 1937 U.S. Dist. LEXIS 1356 **; 1937 AMC 1597

THE HIRONDELLE

Core Terms

ship, radio, station, vessel, installed, apparatus, steamship, telegraph, outfit, Navigation, aboard, marine, public service, shipowners, alarm

Opinion by: **[**1]** ERVIN

Opinion

[*223] ERVIN, District Judge.

The steamship Hirondelle was libeled and ordered sold; the Radiomarine Corporation of America intervened and moved that the radio outfit and the automatic alarm equipment on board the ship be set apart to it and not sold with the ship.

The above motion or petition coming on to be heard, there appeared all of the parties in interest, through their proctors of record, and the court, having heard the testimony offered in support of said motion or petition, finds the facts as follows:

The Radiomarine Corporation of America is a corporation organized under the laws of the state of Delaware, and on the 1st day of July 1937, and for a long time prior thereto, said corporation was engaged in the marine communications business which said business it operated as common **[*224]** carrier subject to regulation by, and in fact regulated by, the Federal Communications Commission. In the conduct of said radio marine communications business, it had acquired

and owned 14 coastal radio stations and equipment located on the Pacific and Atlantic Coasts, the Gulf of Mexico, and the Great Lakes; which said coastal stations were, and are, so equipped **[**2]** as to be able to send and receive messages to and from ships hundreds of miles distant from such stations. In addition, said corporation operated 13 service stations in or near the principal ports of the United States for the purpose of maintaining ship radio telegraph apparatus, which said stations were in charge of highly skilled radio service men, capable of installing and maintaining such apparatus. Said corporation also operates, and at the time above referred to, operated as a part of its said public service business approximately 1,000 radio telegraph stations on board ships. These stations were likewise operated as common carrier and public service stations licensed and regulated by the Federal Communications Commission, and as part of their service were required to act, and did act, as relay stations for vessels of every type and of every nation forwarding messages requested to be relayed.

That the principal business of the Radiomarine Corporation of America was the conduct of such common carrier communications system, but that the Radiomarine Corporation, as a part of its business, also manufactured or acquired marine radio equipment of the kind involved in this suit; **[**3]** that in some instances such equipment was sold to shipowners and operated by Radiomarine Corporation of America as a public service station aboard ship under agreement with the respective shipowners, but that in many cases, such equipment is not bought by the shipowners because of the comparatively high cost of such equipment coupled with such rapid development of the art of radio communications as to render such equipment in danger

of becoming obsolete at any time, but is installed under contracts similar to those involved in this suit, which are hereinafter referred to.

That where the equipment is not bought by the steamship owners, an agreement or arrangement is entered into between the steamship owners and the Radiomarine Corporation of America, whereby the shipowners, in order to obtain the radio telegraph service, enter into an agreement by which the Radiomarine Corporation undertakes to install marine radio equipment on board the vessel and to operate the same as a public service ship station, and in order to obtain this service, the steamship owners agree, among other things, to pay monthly charges on account of the operation of the ship station and the maintenance of the [**4] commercial radio telegraph service, and on account of the furnishing and maintaining of the apparatus, but said shipowners are entitled to receive a proportion of the tolls received from the operation of said ship stations.

That the equipment installed by the Radiomarine Corporation under such conditions is by express agreement of the parties, to be and remain the property of the Radiomarine Corporation of America, and is to be used by it as the equipment of the radio ship station which it agreed to operate aboard ship.

That the marine Radio equipment installed aboard the Steamship Hirondelle, namely, 1 ET-8006 transmitter; 1 ET-8003 emergency transmitter; and 1 AR-8503 receiver, was installed by Radiomarine Corporation of America under a written contract with the Rhode Island Navigation Company, owner of steamship Hirondelle, dated July 1, 1937, in and by the terms of which it was agreed that said apparatus would be installed by Radiomarine Corporation of America on the ship for use in a ship station to be licensed, operated, and maintained aboard ship by Radiomarine Corporation of America as a commercial radio telegraph service for use by the general public for a term of three [**5] years from the date thereof, and unless terminated by sixty days' notice in writing to continue thereafter for yearly periods.

That it was provided in and by the terms of said contract that the apparatus furnished by the Radiomarine Corporation of America, under said agreement, should at all times be the property of, and the legal title thereto should remain in, the Radiomarine Corporation of America, and that no title thereto, or interest therein, should pass to the ship company, namely, the Rhode Island Navigation Company by virtue of the agreement,

and that it was further provided, in and by the terms of said agreement, that at the termination of [*225] the agreement the apparatus furnished by the Radiomarine Corporation of America, pursuant thereto, should be dismantled by the Radiomarine Corporation of America and returned by, and at the expense of, the ship company to the Radiomarine Corporation of America at its nearest service station in the United States in good condition, reasonable wear and tear excepted.

That in order to obtain the benefit of the service of said commercial ship radio station aboard the said steamship Hirondelle, the Rhode Island Navigation Company [**6] agreed to pay the cost and expense of installing said apparatus aboard the vessel, and agreed to provide such suitable space as was necessary for the ship station provided for in the agreement, and to furnish and pay for the erection of masts and mast fittings, blocks and halyards, and generally to pay all other expenses in connection with the installation of the apparatus, and it further agreed to pay the wages of the licensed radio operators necessary for the operation of such ship station, and also agreed to pay certain fixed annual charges on account of the maintenance of said apparatus and on account of the operation of the ship station and the maintenance of the said commercial radio telegraph service.

That the automatic alarm equipment, viz., 1 A R 8600 auto alarm, was installed on said vessel under agreement between the Radiomarine Corporation of America and the Rhode Island Navigation Company, owner of the steamship Hirondelle, under a contract of the same date, viz., July 1, 1937, as a part of the ship radio station, and that the contract in regard to its ownership and removal contained substantially the same provisions as were contained in the contract for installation [**7] of the radio telegraph equipment.

That the equipment installed by the Radiomarine Corporation of America on the steamship Hirondelle, including the automatic alarm equipment, which was a device used to automatically notify certain officers of the ship and the officer in charge of the radio telegraph operators on board the ship of distress calls from other ships, was installed as equipment for the operation of a ship radio telegraph station aboard the steamship Hirondelle, and that it was agreed between the steamship owner and the Radiomarine Corporation of America that said station should be operated by said Radiomarine Corporation of America, and said equipment used as a part thereof, in the conduct of the primary business of the Radiomarine Corporation of

America; namely, the operation of a public service marine communications system.

In The Augusta (D.C.) 15 F.(2d) 727, the same question was presented as here, and the court says:

"[1] In a suit for damages resulting from a collision the ship is considered as the offending thing, the actual wrongdoer, and the lien for damages arising from the collision is superior to all other pre-existing liens, those for supplies, repairs, **[**8]** bottomry bonds, etc., with the possible exception of sailors' wages, although there are cases subordinating this lien also. The John G. Stevens, 170 U.S. 113, 18 S.Ct. 544, 42 L.Ed. 969.

"[2] A ship is considered as consisting of the hull and engines, tackle, apparel, and furniture of all kinds. Benedict's Admiralty, par. 157. This, of course, is elemental, and requires no citation of authority. It is contended on behalf of the Radio Corporation that the wireless is not a necessary part of the equipment of a vessel, or at least was not such a necessary part of the Augusta, as there is no law of the United States requiring its installation.

"[3] It seems to me that the wireless, being on the ship, formed part of her equipment, regardless of who the actual owner might be. In these days wireless telegraph apparatus is part of the usual equipment of all steamers of any considerable size. If it was not considered necessary, it would not have been on the Augusta."

It is manifest that Judge Foster had in mind only the priority of conflicting liens, and the rules there to be applied, and not a case where the apparatus was put on the ship to be used in a special or separate **[**9]** business from that of the operation of the ship, and the title was reserved in the operator of such business.

He does not mention this question, but relies on the Stevens Case, 170 U.S. 113, 18 S.Ct. 544, 42 L.Ed. 969, which was one of priority of liens. He assumes that as the wireless was on the ship it formed a part of her equipment and became subject to her liabilities. In the instant case, that is the point in dispute.

The Augusta was followed by The Katherine (D.C.) 15 F.(2d) 387.

In The Mildred (C.C.) 43 F. 393, 395. Judge Brown had before him a case where **[*226]** the owner of a fire pump and hose leased the same to the owner of The Mildred at a fixed sum per year, to be used on such tug, that such pump was bolted to the hull, and was also

connected to the boiler by pipes. He says:

"In the case under consideration, the proof is clear that the fire-pump and hose belonged to the petitioner, and had been leased to the owner of the vessel at a certain fixed sum per year. Now, while it is quite true that if an entire vessel be leased to a charterer, debts contracted by him for supplies furnished to such vessel would constitute a lien, I am not prepared to say that **[**10]** this rule would apply to property hired by him, not for the general outfit of the vessel as a vessel, but as an outfit for a special business or object. I am rather inclined to think that the commonlaw doctrine in relation to fixtures would be applicable to a case of this kind, and that, unless there was an intention on the part of the owner of the outfit that it should become a part of the permanent appurtenances of the vessel, he would be entitled to reclaim it. * * *

"It seems to me that it would be throwing a needless obstacle in the way of maritime commerce to hold that a master could not hire, nor an owner lend, personal property for the use of a vessel except at the risk of its becoming a part of such vessel, and liable for its debts. In the salvage business, particularly, it is the constant practice of the owners of steam-tugs to hire a wrecking outfit for the rescue of vessels in distress, but it has never been supposed that such outfit was subject to the lien of the sailors for their wages, of the material-men for their coal and provisions, or of the owner of the salved vessel for the non-performance of its contract on the part of the tugs, whether such third parties **[**11]** knew that such outfit did not belong to the tug or not. In such case the question is not determined by their belief, but by the fact."

In The Mildred Case, the pump and hose were to be used by The Mildred in its fire fighting, but not in its navigating; here, the radio outfit was to be used by the radio company in the conduct of its business.

The Mildred was followed by Judge Bledsoe in the Southern Division of California, in the Steam Yacht Frontiersman, March 23, 1925, in an opinion not published, where the facts were similar to the instant case, where he released a Marconi outfit from seizure.

In Learned v. Brown, 94 F. 876, 884 (C.C.A.) where a piano was placed on a boat under a verbal arrangement as an advertisement and not sold to the boat, but to be removed at the pleasure of the owner, Judge Pardee, speaking for the court says: "From these facts, it is clear that the Medine Music Company never parted with its ownership of the piano, and the owners of the boat

never bought the same. The mortgage never covered the piano, as it never formed a part of the property of the boat, nor constituted any necessary part of her tackle, apparel, or furniture."

This case was followed [**12] by *The Showboat (D.C.)*
47 F.(2d) 286, 287:

"But the furnishings which were put on board merely for use in the restaurant and dance hall did not become such a part of the vessel that the title of the conditional vendor is postponed to that of the lienors."

"If the apparatus is on board for a special purpose and not as a part of the general equipment, it is not liable although the lien claimant is ignorant of its special ownership." 38 Corpus Juris, § 20, page 1204.

I think The Mildred and Learned v. Brown lay down the rule that controls the instant case. The radio business, while conducted on the Hirondelle, was entirely separate and apart from the navigation of that ship, and while it was of value to the ship, it was not the business of the ship any more than a barber shop, operated on a large passenger ship under a lease of space from the ship, would be a part of the navigation of the ship, though it would be of value to such ship to have it on board.

Considering the almost universal use of the radio on steamships, the question is of great importance and much would depend on whether the outfit was bought and operated by the ship, or as an independent business by the radio [**13] company.

An order will therefore be entered releasing the radio and alarm equipment from the seizure and sale, and ordering the same to be delivered to the Radiomarine Corporation of America.

Shepard's request: Idaho Code § 45-1508

The *Shepard's*® report for this citation is identical to citation #3

End of Document

Full text request: Idaho Code § 45-1508

The full text of this report is identical to citation #3

End of Document



Shepard's®: Report Content

History:Requested

I Citing Decisions:Narrowed By:

I Other Citing Sources:Narrowed By:

Shepard's®: I Comprehensive Report for [Idaho Code sec. 45-1510](#)

[Subsection reports by specific court citation](#)

History (1)

1. 1957, ch. 181, § 10, p. 345; am. 1990, ch. 401, § 4, p. 1122; am. 2010, ch. 249, § 1, p. 639; am. 2013, ch. 174, § 1, p. 403.

Citing Decisions (9)

Idaho Supreme Court

1. [Kempton-Baughman v. Wells Fargo Bank, N.A.](#), 162 Idaho 174 

LB Cited by: 162 Idaho 174 p.182; 395 P.3d 393 p.401

Court: Idaho | **Date:** May 26, 2017

-
2. [Fannie Mae v. Hafer](#), 158 Idaho 694 

LB Cited by: 158 Idaho 694 p.698, p.706; 351 P.3d 622 p.626, p.634

Court: Idaho | **Date:** June 22, 2015

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3. [Fed. Home Loan Mortg. Corp. v. Appel](#), 143 Idaho 42 

LB Cited by: 143 Idaho 42 p.44; 137 P.3d 429 p.431

Court: Idaho | **Date:** May 25, 2006

-
4. [Roos v. Belcher](#), 79 Idaho 473 

LB Cited by: 79 Idaho 473 p.474; 321 P.2d 210 p.210

Court: Idaho | **Date:** January 29, 1958

Idaho District Court

-
5. [Fannie Mae v. Noordam](#), 2014 Ida. Dist. LEXIS 15

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** September 19, 2014

-
6. [Ormesher v. Citimortgage, Inc.](#), 2014 Ida. Dist. LEXIS 42

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** July 30, 2014

-
7. [Fannie Mae v. Ormesher](#), 2014 Ida. Dist. LEXIS 31

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** May 20, 2014

-
8. [Mt. W. Bank v. Tate](#), 2012 Ida. Dist. LEXIS 44

LB Cited by:

Court: Idaho Dist. Ct. | **Date:** September 4, 2012

9th Circuit - U.S. Bankruptcy Courts

9. [Thorian v. Baro Enters., LLC \(In re Thorian\)](#), 387 B.R. 50 

LB Cited by: 387 B.R. 50 p.62

Court: Bankr. Dist. Idaho | **Date:** March 21, 2008

Other Citing Sources: (14)

Annotated Statutes

1. [Idaho Code sec. 45-1505](#)

Content: Statutes

-
2. [Idaho Code sec. 45-1506](#)

Content: Statutes

-
3. [Idaho Code sec. 45-1508](#)

Content: Statutes

Law Reviews and Periodicals

4. [ARTICLE: REFORMING FORECLOSURE: THE UNIFORM NONJUDICIAL FORECLOSURE ACT](#), 53 Duke L.J. 1399

Content: Law Reviews | **Date:** March 1, 2004

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5. [ARTICLE: A Proposal for a National Mortgage Registry: MERS Done Right](#), 78 Mo. L. Rev. 1

Content: Law Reviews | **Date:** 2013

Briefs

6. [BAUGHMAN v. MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.](#), 2016 ID S. Ct. Briefs LEXIS 538

Content: Court Filings | **Date:** August 29, 2016

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7. [KEMPTON-BAUGHMAN v. WELLS FARGO BANK, N.A.](#), 2016 ID S. Ct. Briefs LEXIS 539

Content: Court Filings | **Date:** June 22, 2016

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8. [FEDERAL HOME LOAN MORTG. CORP. v. BUTCHER](#), 2014 ID S. Ct. Briefs LEXIS 111

Content: Court Filings | **Date:** March 19, 2014

-
9. [**FEDERAL HOME LOAN MORTG. CORP. v. BUTCHER**](#), 2014 ID S. Ct. Briefs LEXIS 112

Content: Court Filings | **Date:** February 20, 2014

-
10. [**MOUNTAIN WEST BANK v. TATE**](#), 2013 ID S. Ct. Briefs LEXIS 176

Content: Court Filings | **Date:** June 6, 2013

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11. [**Federal Nat'l Mortg. Assoc v. Allen**](#), 2011 ID S. Ct. Briefs LEXIS 311

Content: Court Filings | **Date:** October 7, 2011

-
12. [**Fannie Mae v. ALLEN**](#), 2011 ID S. Ct. Briefs LEXIS 310

Content: Court Filings | **Date:** September 16, 2011

-
13. [**SPENCER v. JAMESON**](#), 2008 ID S. Ct. Briefs LEXIS 61

Content: Court Filings | **Date:** February 6, 2008

Motions

-
14. [**WIEBE**](#), 2006 U.S. Bankr. Ct. Motions LEXIS 2788

Content: Court Filings | **Date:** September 1, 2006



Idaho Code § 45-1510

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds (§§ 45-1501 — 45-1515)

45-1510. Trustee's deed — Recording — Effect.

- (1) When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under [section 45-1506\(7\), Idaho Code](#), shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof. For purposes of this section, the trustee's deed shall be deemed effective as of the date and time on which the sale was held if such deed is recorded within fifteen (15) days after the date of sale or the first business day following the fifteenth day if the county recorder of the county in which the property is located is closed on the fifteenth day.
- (2) Where a trustee's sale held pursuant to [section 45-1506, Idaho Code](#), is invalid by reason of automatic stay provisions of the U.S. bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his/its successor in interest, may record a notice of rescission. The notice of rescission shall accurately identify the deed of trust, the recording instrument numbers used by the county recorder or the book and pages at which the trustee's deed and deed of trust are recorded, the names of all grantors, trustees and beneficiaries, the location of the property subject to the deed of trust and the reason for rescission. Such notice of rescission shall be in substantially the following form:

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day with respect to the following:

1. THAT is the duly appointed Trustee under the certain Deed of Trust dated and recorded as instrument number in book page, wherein and are named as Trustees, is named as Trustee, is named as Beneficiary;
2. THAT is the Beneficiary of record under said Deed of Trust;
3. THAT THE DEED OF TRUST encumbers real property located in the County of, State of Idaho, described as follows:

Property Description

Jeremy Bass

4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded as instrument number in book, page, in the office of the Recorder of County, State of Idaho;

5. THAT THE TRUSTEE has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale that was conducted in error due to a failure to communicate timely, notice of conditions that would have warranted a cancellation of the foreclosure that did occur on;

6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to return the priority and existence of all title and lienholders to the status quo ante as existed prior to the Trustee's sale.

NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PERSONS THAT THE TRUSTEE'S DEED UPON SALE DATED AND RECORDED AS INSTRUMENT NUMBER IN THE COUNTY OF, STATE OF IDAHO, FROM (TRUSTEE) TO (GRANTEE) IS HEREBY RESCINDED, AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF TRUST DATED RECORDED AS INSTRUMENT NUMBER IN BOOK, PAGE, IS IN FULL FORCE AND EFFECT.

.....
Authorized Signatory
Acknowledgment

History

1957, ch. 181, § 10, p. 345; [am. 1990, ch. 401, § 4](#), p. 1122; [am. 2010, ch. 249, § 1](#), p. 639; [am. 2013, ch. 174, § 1](#), p. 403.

Annotations

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 249, added the subsection (1) designation and therein added the last sentence; and added subsection (2).

The 2013 amendment, by ch. 174, substituted "prior to the trustee's sale" for "prior to the recordation of the trustee's deed upon sale" at the end of the first sentence in subsection (2).

Legislative Intent.

Section 5 of [S.L. 1990, ch. 401](#) read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

"a. The sentence added to subsection (3) of [section 45-1505, Idaho Code](#);

"b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of [section 45-1506, Idaho Code](#);

"c. The changes reflected in Section 4 [[§ 45-1510](#)] of this act; and

"d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Federal References.

The U.S. bankruptcy code, referred to in the introductory paragraph in subsection (2), is codified as [11 U.S.C.S. § 101](#) et seq.

JUDICIAL DECISIONS

Fictitious Grantee.

In order that an instrument may be operative as a deed conveying title to, or interest or estate in, land, the grantee named in the deed must be a person, natural or artificial, in existence at the time of conveyance and capable of taking title. A deed to a fictitious grantee, or which names as grantee a person who has no existence, is inoperative and void. [Kempton-Baughman v. Wells Fargo Bank, N.A., 162 Idaho 174, 395 P.3d 393, 2017 Ida. LEXIS 145 \(2017\)](#).

Good Faith Requirement.

Although a credit bid used by a purchaser at a trustee's sale was the equivalent of a cash sale, the sale was void because the trustee failed to comply with notice provisions of [§ 45-1506A](#). If the deed transferee knew of the deficiencies, it would not be entitled to bona fide purchaser protections set forth in this section. [Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82 \(2006\)](#).

Cited in:

[Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 \(1958\)](#).



Shepard's®: Report Content

Appellate History: Requested

▲ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [Fed. Home Loan Mortg. Corp. v. Appel](#) 143 Idaho 42,137 P.3d 429,2006 Ida. LEXIS 82: (Idaho May 25, 2006)

No subsequent appellate history

Appellate History (1)

1. **Citation you Shepardized™**

[Fed. Home Loan Mortg. Corp. v. Appel](#), 143 Idaho 42 ▲

Court: Idaho | **Date:** May 25, 2006

Citing Decisions (20)

Idaho Supreme Court

1. [Breckenridge Prop. Fund 2016, LLC v. Wally Enter.](#), 170 Idaho 649

Cited by: 170 Idaho 649 p.658; 516 P.3d 73 p.82

Discussion: | **Court:** Idaho | **Date:** August 22, 2022 | **Headnotes:** HN7

-
2. [AgStar Fin. Servs. v. Northwest Sand & Gravel, Inc.](#), 168 Idaho 358

Cited by: 168 Idaho 358 p.362; 483 P.3d 415 p.419

Discussion: | **Court:** Idaho | **Date:** March 22, 2021

-
3. [Gordon v. United States Bank Nat'l Ass'n](#), 166 Idaho 105

Cited by: 166 Idaho 105 p.117; 455 P.3d 374 p.386

Discussion: | **Court:** Idaho | **Date:** December 18, 2019

-
4. [AgStar Fin. Servs., ACA v. Northwest Sand & Gravel, Inc.](#), 161 Idaho 801

Cited in Dissenting Opinion at: 161 Idaho 801 p.817; 391 P.3d 1271 p.1287

Discussion: | **Court:** Idaho | **Date:** February 24, 2017

-
5. [Int'l Real Estate Solutions, Inc. v. Arave](#), 157 Idaho 816

Cited by: 340 P.3d 465 p.469; 157 Idaho 816 p.820

Discussion: | **Court:** Idaho | **Date:** December 30, 2014

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6. [Trotter v. Bank of N.Y. Mellon](#), 152 Idaho 842

Cited by: 152 Idaho 842 p.846; 275 P.3d 857 p.861

Discussion: | **Court:** Idaho | **Date:** March 23, 2012

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7. [Trotter v. Bank of N.Y. Mellon](#), 2012 Ida. LEXIS 33

Cited by:

Discussion: | **Court:** Idaho | **Date:** January 25, 2012

-
8. [Spencer v. Jameson](#), 147 Idaho 497

Y Distinguished by: 147 Idaho 497 p.504; 211 P.3d 106 p.113

B Cited in Concurring Opinion at: 147 Idaho 497 p.508; 211 P.3d 106 p.117

LB Cited by: 147 Idaho 497 p.503; 211 P.3d 106 p.112

Discussion: [redacted] | Court: Idaho | Date: June 16, 2009 | Headnotes:: HN1

Idaho District Court

9. [440 v. Riverbank](#), 2014 Ida. Dist. LEXIS 34

LB Cited by:

Discussion: [redacted] | Court: Idaho Dist. Ct. | Date: November 19, 2014 | Headnotes:: HN6

10. [440 v. Riverbank](#), 2014 Ida. Dist. LEXIS 37

LB Cited by:

Discussion: [redacted] | Court: Idaho Dist. Ct. | Date: October 16, 2014 | Headnotes:: HN10

11. [Fannie Mae v. Ormesher](#), 2014 Ida. Dist. LEXIS 31

LB Cited by:

Discussion: [redacted] | Court: Idaho Dist. Ct. | Date: May 20, 2014 | Headnotes:: HN10

2nd Circuit - U.S. District Courts

12. [Rountree v. US Bank NA](#), 2017 U.S. Dist. LEXIS 307

LB Cited by:

Court: Southern Dist. N.Y. | Date: January 3, 2017 | Headnotes:: HN7

5th Circuit - U.S. District Courts

13. [R&L Inv. Prop., LLC v. Green](#), 2014 U.S. Dist. LEXIS 62806

LB Cited by:

Discussion: [redacted] | Court: Northern Dist. Tex. | Date: May 6, 2014 | Headnotes:: HN1

9th Circuit - U.S. District Courts

14. [Mussell v. Mortgage Elec. Registration Sys.](#), 2014 U.S. Dist. LEXIS 143599

G Followed by:

Discussion: [redacted] | Court: Dist. Idaho | Date: May 14, 2014

15. [Sykes v. Mortg. Elec. Registration Sys.](#), 2012 U.S. Dist. LEXIS 35335

G Followed by:

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Fed. Home Loan Mortg. Corp. v. Appel

Supreme Court of Idaho

May 25, 2006, Filed

Docket No. 31760, 2006 Opinion No. 61

Reporter

143 Idaho 42 *; 137 P.3d 429 **; 2006 Ida. LEXIS 82 ***

FEDERAL HOME LOAN MORTGAGE CORPORATION, Plaintiff-Respondent, v. GARY R. APPEL and LINDA L. APPEL, husband and wife, and all other residents designated as JOHN DOES I-X, Defendants-Appellants.

Subsequent History: Released for Publication June 16, 2006.

Prior History: [***1] Appeal from the District Court of the First Judicial District of the State of Idaho, for the County of Benewah. Hon. Fred M. Gibler, District Judge.

Disposition: The district court's order is affirmed in part and vacated in part and the case is remanded.

Core Terms

rescheduled, notice, bid, credit bid, purchaser, complied, district court, trustee sale, summary judgment, trust deed, postponed, scheduled, announce, lifted, statutory requirements, requirement of notice, foreclosure sale, provisions, proceedings, bidder, holder

Case Summary

Procedural Posture

Appellant borrowers sought review of an order from the District Court of the First Judicial District of the State of Idaho, for the County of Benewah, which entered judgment in favor of respondent transferee of a purchaser in an ejectment action brought by the purchaser following a trustee's sale, which the borrowers' claimed was invalid for failure to comply with

the notice provisions set forth in [Idaho Code Ann. § 45-1506A](#).

Overview

The day before the scheduled date of the trustee's sale, the borrowers filed for bankruptcy. With the automatic stay in place, the trustee twice rescheduled the sale under the provisions of [Idaho Code Ann. § 45-1506B](#), but the borrowers received no notice. When the stay was lifted, the sale took place, the deed was transferred, and the transferee was substituted in the ejectment action. In reversing, in part, the judgment entered in favor of the transferee and in vacating the sale, the court first found that a credit bid used by the purchaser was not, as asserted, improper. Instead, the court held that, where the holder of the deed of trust note was the bidder at a trustee's sale, crediting the bid against the note was the equivalent of a cash sale. The court, however, found that the trustee did not comply with [§ 45-1506A](#), noting that compliance with [Idaho Code Ann. § 45-1506B](#) was immaterial because the borrowers had no notice of the first rescheduled sale date after the stay went into effect. Finally, the court concluded that remand was required to determine if the transferee knew of the deficiency or could claim the bona fide purchaser protection of [Idaho Code Ann. § 45-1510](#).

Outcome

The court affirmed the district court's order insofar as it held that the credit bid submitted by the purchaser complied with statutory requirements, vacated the order insofar as the trustee's sale was void for failure to comply with statutory notice provisions, and remanded the case for a determination of whether the transferee was a bona fide purchaser and for further proceedings

consistent with the court's opinion.

See [Idaho Code Ann. § 45-1506B\(1\)](#).

LexisNexis® Headnotes

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN1](#) [down] **Foreclosures, Private Power of Sale Foreclosure**

Where the holder of the deed of trust note is the bidder at a trustee's sale, crediting the bid against the note is the equivalent of a cash sale. This rule is compatible with [Idaho Code Ann. § 45-1506](#).

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN2](#) [down] **Foreclosures, Private Power of Sale Foreclosure**

See [Idaho Code Ann. § 45-1506\(8\)](#).

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Liens

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN3](#) [down] **Scope of Stay, Liens**

See [Idaho Code Ann. § 45-1506A\(1\)](#).

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Liens

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN4](#) [down] **Scope of Stay, Liens**

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Liens

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN5](#) [down] **Scope of Stay, Liens**

See [Idaho Code Ann. § 45-1506B\(3\)](#).

Bankruptcy Law > ... > Automatic Stay > Scope of Stay > Liens

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN6](#) [down] **Scope of Stay, Liens**

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to [Idaho Code Ann. § 45-1506\(8\)](#). If a stay is in effect on the date of a scheduled sale, postponement proceeds according to [Idaho Code Ann. § 45-1506A](#). And if a stay has been lifted before the scheduled sale date, then postponement proceeds according to [Idaho Code Ann. § 45-1506B](#).

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

[HN7](#) [down] **Foreclosures, Private Power of Sale Foreclosure**

The procedures to foreclose on trust deeds outside of the judicial process provide the express-lane alternative to foreclosure in the judicial system and strip borrowers of protections embedded in a judicial foreclosure. Thus, strict compliance with notice provisions is required.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

HN8 Elements, Bona Fide Purchasers

See [Idaho Code Ann. § 45-1508](#).

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN9 Elements, Bona Fide Purchasers

[Idaho Code Ann. § 45-1510](#) provides that, when the trustee's deed is recorded properly, the recitals in the deed and the affidavits required in [Idaho Code Ann. § 45-1506\(7\)](#) are conclusive in favor of a purchaser in good faith for value.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property
Law > Financing > Foreclosures > Private Power of Sale Foreclosure

HN10 Elements, Bona Fide Purchasers

Status as a bona fide purchaser or a purchaser in good faith, at least in the context of a nonjudicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a potential defect of statutory notice provisions.

Real Property
Law > Financing > Foreclosures > Private Power of Sale Foreclosure

HN11 Foreclosures, Private Power of Sale Foreclosure

Unlike sales postponed under [Idaho Code Ann. §§ 45-1506](#) or [45-1506A](#), which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under [Idaho Code Ann. § 45-1506B](#) is simply rescheduled at the original sale and no further notice of any kind is necessary. Thus, a bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to [§ 45-1506B\(3\)](#) has no reason to inquire whether the trustee is following the

proper postponement statute and thus may have no knowledge that the actual notice provisions were not complied with.

Counsel: Starr Kelso Law Office, Chtd., Coeur d'Alene, for appellants. Starr Kelso argued.

Ringert Clark, Chtd., Boise, for respondent. Laura E. Burri argued.

Judges: JONES, Justice. Chief Justice SCHROEDER and Justices EISMAN and BURDICK and Judge REINHARDT, III, PRO TEM CONCUR.

Opinion by: JONES

Opinion

[430] [*43] JONES, Justice**

At issue in this appeal is the validity and finality of a trustee's sale of appellants' real property. The successful bidder at the sale, a company called Mortgage Electronic Registration Systems, Inc. (MERS), filed a complaint for ejectment against the appellants. MERS deeded the property to Federal Home Loan Mortgage Co. (Fed Home), which was substituted as plaintiff. The district court entered summary judgment in Fed Home's favor and ordered the appellants off the property. They appealed. We vacate the order in part and remand for further proceedings.

I.

The property from which MERS sought to eject the appellants is [***2] located in St. Maries. In 2001, the appellants borrowed nearly \$ 200,000 from Greenpoint Mortgage Funding, Inc. They gave Greenpoint a promissory note, as well as a deed of trust against the property to secure payment of the note. The deed of trust listed Greenpoint as the lender and MERS as the beneficiary. The appellants fell behind on their payments and foreclosure proceedings were initiated. The sale was scheduled to take place in St. Maries on June 26, 2003.

The day before the scheduled date of the trustee's sale, the appellants filed a Chapter 7 bankruptcy. With the automatic [§ 362](#) stay in place, the property could not be sold. So, on June 25, 2003, the trustee faxed the title company a letter requesting that the foreclosure sale be rescheduled for July 24, 2003. According to the trustee,

Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42

the rescheduled sale date was announced at the time and place of the original sale. It is unclear whether notice of this rescheduling was provided to the appellants either in writing or by [**431] [*44] publication or posting, but the appellants deny having ever received notice of the rescheduling. July 24 came and went, and the stay remained in effect. On that date, the trustee sent the title company a [***3] fax requesting that the sale be postponed until August 22, 2003. The trustee asserts that the rescheduled date was announced at the time and place of the initial rescheduled sale. Again, the record does not disclose whether notice was provided to the appellants, but they deny having received notice of this second rescheduling. On August 8, 2003, and upon the parties' stipulation, the bankruptcy court vacated the automatic stay and allowed Greenpoint, or its successors or assigns, to foreclose on the property. Neither the stipulation nor the bankruptcy court's order lifting the stay identifies a date on which the sale was to occur.

With the stay lifted, the trustee's sale was held on August 22 and MERS was the successful bidder. MERS's bid was a credit bid. In the sense it is used in this case, a credit bid means that the holder of the note bids up to the amount of money due it by the debtor, thereby extinguishing the debtor's debt to the extent of the bid.

Very shortly after the sale, MERS deeded the property to Fed Home, which was unsuccessful in its non-judicial attempts to eject the appellants and possess the property. MERS filed an ejectment action and the district court subsequently [***4] granted its motion to amend its complaint and substitute Fed Home as the real party in interest. Fed Home then moved for summary judgment. The appellants defended the motion, claiming that the credit bid was not proper under Idaho's statutes governing property purchases at a trustee's sale. They also contended that the sale suffered fatally from procedural deficiencies, specifically that the notice provisions set forth in [I.C. § 45-1506A](#) were not met. After a hearing the district court issued an order granting Fed Home's motion and ordering the appellants off the property.

II.

We are concerned in this appeal with three issues: (1) whether a credit bid like the one used here satisfies the requirements of [I.C. § 45-1506\(9\)](#); (2) whether the trustee's sale in this case complied with the notice requirements set forth in Title 45, Chapter 15 of the

Idaho Code; and (3) whether, even if the trustee's sale did not comply with the aforesaid notice requirements, Fed Home is entitled to the conclusive effect of a sale and recording of the trustee's deed as a good faith purchaser for value under [I.C. §§ 45-1508](#) [***5] and [45-1510](#). As the district court disposed of this case on summary judgment, it is according to that standard of review, set forth in [Idaho R. Civ. P. 56\(c\)](#), that we will proceed.

A.

The appellants argue first that a credit bid does not satisfy the statutory requirements for purchasing property at a trustee's sale. They say that nowhere in our statutes can the phrase "credit bid" be found. They point out that [I.C. § 45-1506\(9\)](#) speaks to paying "purchase money" and calls for the purchaser to "pay the price bid." They assert that cash is required for a valid bid and that the bid in this case fails the statutory requirements. The appellants are wrong.

The district court ruled that the credit bid satisfied the statutory requirements for purchasing property at a trustee's sale. The court noted that the issue had not been decided in Idaho, but observed that courts in several jurisdictions, interpreting statutes that required bids for cash, had nevertheless held that credit bids satisfied the statutory requirements. For instance, in [Rocky Mountain Bank v. Stuart](#), 280 Mont. 74, 928 P.2d 243 (Mont. 1996), the defendant executed [***6] a trust indenture on his residential property to secure payment of an obligation to the plaintiff bank. [928 P.2d at 245](#). After the defendant defaulted, the bank commenced nonjudicial foreclosure proceedings under Montana's statutes. *Id.* The bank was the only bidder at the sale and it purchased the property with a credit bid. *Id.* The defendant refused to vacate the property and suit for possession was commenced. *Id.* The defendant claimed that the credit bid was not a cash sale, which was required by statute. *Id.* The trial court did not buy this theory and, on appeal, neither [**432] [*45] did the supreme court. The supreme court noted that a credit bid was not a credit sale, the difference being that in the latter the bidder would be permitted to pay at a later time, as would be the case "if the bid were in the form of a note or other instrument pursuant to which either a lump sum payment or payment by installments over time would be made in the future." [Id. at 247](#). But the bank was simply bidding the amount due it, and the court held that the bank's application of its bid to the outstanding debt constituted payment of the price bid in cash. *Id.*

[***7] The district court also cited *Surety Sav. & Loan Ass'n v. Nat'l Automobile & Cas. Ins. Co.*, 8 Cal. App. 3d 752, 87 Cal.Rptr. 572 (Cal. Ct. App. 1970), wherein the

Court of Appeals of California held that the difference between the creditor-plaintiff bringing cash for the full price to the sale and simply making a credit bid was merely one of form, and *McClure v. Casa Claire Apartments, Ltd.*, 560 S.W.2d 457 (Tex. Ct. App. 1997), in which the Court of Appeals for Texas held that "[c]rediting the bid against the note has been found to be equivalent to a cash sale." *560 S.W.2d at 461*. The appellants contend that these cases are "clearly a distinct minority," but they have provided no authorities to the contrary.

The principle articulated in the above-cited cases is compatible with *I.C. § 45-1506* and, indeed, it makes a good deal of practical sense. There is no reason why the holder of the deed of trust note should not be able to purchase the property at a trustee sale by bidding in all or part of the amount owing pursuant to the note. After all, the holder of the note is the party to be benefited by the sale. [***8] It makes no sense to require the note holder to bring cash to the sale in order to pay himself. His bid, if successful, immediately reduces or eliminates the debtor's obligation. We hold that **HN1** where the holder of the deed of trust note is the bidder, crediting the bid against the note is the equivalent of a cash sale. The district court properly held that the credit bid here complied with the statutory requirements.

B.

The appellants next contend that notice of the rescheduled sale was not given as required by *I.C. § 45-1506A*. Fed Home responds that all of the requirements of *I.C. § 45-1506B* were complied with by the time the appellants filed for bankruptcy, and therefore no further notice was required after the first rescheduling. See *I.C. § 45-1506B(3)*. But the appellants argue that once their bankruptcy was filed and the original June sale could not occur, *I.C. § 45-1506A*, not *I.C. § 45-1506B*, was the statute with which MERS had to comply.

So which is it? Generally speaking, a foreclosure sale may be postponed in one of [***9] three ways. First, *I.C. § 45-1506(8)* provides:

HN2 The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in *section 45-1506A, Idaho Code*, unless the sale is postponed as provided in this subsection or as

provided in *section 45-1506B, Idaho Code*, respecting the effect of an intervening stay or injunctive relief order.

Section 45-1506A(1) provides:

HN3 In the event a sale *cannot be held at the time scheduled* by reason of automatic stay provisions of the U.S. bankruptcy code (*11 U.S.C. 362*), or a stay order issued by any court of competent jurisdiction, then the sale may be rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided in this section.

(Emphasis added.) The notice requirements in *I.C. § 45-1506A* are much like those in *I.C. § 45-1506*, requiring service of notice and publication. See *I.C. § 45-1506A(2)-(4)*.

Section 45-1506B(1) [***10] applies when a stay has been lifted prior to the date of a scheduled sale:

HN4 If a stay as set out in *subsection (1) of section 45-1506A, Idaho Code*, which would otherwise have stopped a foreclosure sale *is terminated or lifted prior to the date of sale*, then any person having a right to reinstate the deed of trust pursuant to *subsection (12) of section 45-1506, Idaho Code* [*46], [**433] may request the trustee to postpone the sale for a period of time which shall allow at least one hundred fifteen (115) days to elapse from the recording of the notice of default to the rescheduled date of sale exclusive of the period of time during which such stay was in effect.

(Emphasis added.) The notice requirements in this section are substantially less burdensome. *Subsection (3)* of this statute provides:

HN5 If the foreclosure has proceeded in compliance with all requirements of *subsections (2) through and including (6), of section 45-1506, Idaho Code*, prior to the intervention of the stay, then at the time appointed for the original sale, the trustee shall announce the date and time of the rescheduled sale [***11] to be conducted at the place originally scheduled and no further or additional notice of any kind shall be required.

So, **HN6** if no bankruptcy is ever filed and no stay intervenes, postponement proceeds according to *§ 45-1506(8)*; if a stay is in effect on the date of a scheduled

sale, postponement proceeds according to [§ 45-1506A](#); and if a stay has been lifted before the scheduled sale date, then postponement proceeds according to [§ 45-1506B](#). In this case, the stay was in effect on the date of the original June sale and was not lifted until August 8 - after the rescheduled sale and before the actual sale.

Accordingly, to reschedule the first sale, rather than simply announcing the new date and time of the sale on the date of the original sale as the trustee did and as [I.C. § 45-1506B](#) would allow if the stay were lifted prior to the date of sale, the trustee was required to follow the notice provisions in [§ 45-1506A](#). The appellants did not show up to hear the rescheduling announcements and, in affidavits opposing Fed Home's motion for summary judgment, the appellants denied having personal knowledge of the sale being rescheduled to July 24 or August 22. [\[***12\]](#)¹ And why would they have shown up at the time and place of the initially scheduled sale to hear a rescheduling announcement when they knew the sale was stayed by the bankruptcy filing? Not having any reason to be at the first rescheduling, they would have had no reason to know of the second sale date or of the second rescheduling.

[\[***13\]](#) The district court ruled that "the more specific provisions of [I.C. § 45-1506B\(3\)](#) apply, allowing the trustee to simply announce the date and time of resale without further notice if the requirements of [sections 45-1506\(2\) through 45-1506\(6\)](#) have already taken place."

² In light of our above discussion, this was incorrect.

¹ No argument was made that the appellants had actual notice of the July or August sales. Both the August 8 stipulation to remove the stay and the order removing the stay contemplated foreclosure proceedings would go forward but neither identified a date on which the property would be sold. Even if the appellants did have notice of the sale, it may not have made a difference. We are dealing here with nonjudicial trust deed foreclosure. [HN7](#)¹ The procedures to foreclose on trust deeds outside of the judicial process provide the express-lane alternative to foreclosure in the judicial system and strip borrowers of protections embedded in a judicial foreclosure. As our Court of Appeals has correctly observed, strict compliance with the notice provisions is required. See [Security Pacific Finance Corp. v. Bishop](#), 109 Idaho 25, 28, 704 P.2d 357, 360 (1985) (quoting [Patton v. First Fed. Sav. & Loan Ass'n of Phoenix](#), 118 Ariz. 473, 578 P.2d 152, 156 (Ariz. 1978)).

² The court noted that the trustee had complied with [§ 45-1506\(2\) through \(6\)](#). This does not seem to be disputed. The court apparently viewed [§ 45-1506B\(3\)](#) as a stand-alone provision. It noted that a "person having a right to reinstate the

Fed Home argued it complied with [§ 45-1506B](#), but did not show it complied with [§ 45-1506A](#). Thus it is unclear (and doubtful) that [§ 45-1506A](#) was complied with. Because the district court applied the incorrect standard (i.e., ruling [§ 45-1506B](#), not [§ 45-1506A](#), applied), summary judgment on this issue was improper.

[***14] C.

Fed Home argues, however, that "[i]rregardless" of whether the proper statutory [\[**434\] \[*47\]](#) notice requirements were complied with, the sale is final under [I.C. §§ 45-1508](#) and [45-1510](#). It is "too late," Fed Home says, for the appellants to object to the sale; the appellants should have objected before the foreclosure sale occurred. [Idaho Code § 45-1508](#) provides: [HN8](#)¹ "[a]ny failure to comply with the provisions of [section 45-1506](#), [Idaho Code](#), shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof." [Section 45-1510](#) [HN9](#)¹ provides that when the trustee's deed is recorded properly, the recitals in the deed and the affidavits required in [§ 45-1506\(7\)](#) are conclusive in favor of a purchaser in good faith for value. Fed Home contends it is a purchaser in good faith and thus gained the rights conferred in [§§ 45-1508](#) and [45-1510](#). This argument flows, however, from Fed Home's assertion that it complied with [§ 45-1506B](#) - recall, the company does not assert that it complied with [§ 45-1506A](#). By arguing that [\[**15\]](#) [§ 45-1506B](#) was complied with, Fed Home seems to tacitly admit it knew that the requirements in [§ 45-1506A](#) were not. While the issue was raised in the parties' memoranda on summary judgment, the district court's written decision does not address this issue.

Though this Court has not ruled on such a question, [HN10](#)¹ status as a bona fide purchaser or a purchaser in good faith, at least in the context of a nonjudicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a potential defect of statutory notice provisions. See [Rosenberg v. Smidt](#), 727 P.2d 778, 784 (Alaska 1987) (under Alaska statute, purchasers at nonjudicial foreclosure sale could not claim bona-fide purchaser status where they were on inquiry notice because deed did not recite specifics of trustee's compliance with statutory notice requirements); see also Grant S. Nelson and Dale A.

deed of trust pursuant to [subsection \(12\) of section 45-1506](#), [Idaho Code](#), may request the trustee to postpone the sale for a period of time, "[I.C. § 45-1506B\(1\)](#), but that no such person had done so. Therefore, the court skipped to [subsection \(3\)](#) and determined that it had been complied with.

Whitman, *Real Estate Finance Law*, § 7.20 at 671 (West 2002) (bona fide purchaser status may be available to purchaser unrelated to mortgage where purchaser has no actual knowledge of defects, is not on reasonable notice from the instruments that defects have occurred, and the defects are [***16] not such that a person attending the sale exercising reasonable care would be aware of the defect); *Shearer v. Allied Live Oak Bank*, 758 S.W.2d 940 (Tex. Ct. App. 1988); *Little v. CFS Service Corp.*, 188 Cal. App. 3d 1354, 233 Cal.Rptr. 923 (Cal. Ct. App. 1987).³ If MERS knew the § 45-1506A requirements were not complied with, it had actual knowledge that such requirements were not met and it cannot claim to be a good faith purchaser for value. If that is the case, then Fed Home cannot benefit from the shelter rule and may not be entitled to the protections bestowed by §§ 45-1508 or 45-1510. The district court did not address this issue, so further fact-finding is necessary and summary judgment was improper. We see no merit in Fed Home's argument that the appellants, who were entitled to receive notice of a sale, yet did not and were not otherwise aware of the sale, should have contested the lack of notice before the sale.

[***17] III.

The district court's order is affirmed insofar as it holds

³The subsections relating to sale postponement in *sections 45-1506* and *45-1506A* contain mechanisms to ensure the notice requirements are complied with. For example, *§ 45-1506(7)* requires that an affidavit of mailing notice of sale and an affidavit of posting and publication of notice of sale, as required in *§ 45-1506(6)*, must be recorded in the mortgage records of the county or counties in which the property sits. In the event that a sale is postponed because a stay prohibits the sale, *§ 45-1506A(4)* requires the trustee to make an affidavit stating he or she has complied with *subsections (2)* and *(3)* of *§ 45-1506A*, to make this affidavit available for inspection at the time of the rescheduled sale, and to attach or incorporate the affidavit to the trustee's deed. But *§ 45-1506B* allows the possibility that an unwitting buyer who is present at a scheduled sale may be told, erroneously, that the postponed sale is being rescheduled pursuant to that section. *HN11*[↑] Unlike sales postponed under *§§ 45-1506* or *45-1506A*, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under *§ 45-1506B* is simply rescheduled at the original sale and no further notice of any kind is necessary. Thus, a bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to *§ 45-1506B(3)* has no reason to inquire whether the trustee is following the proper postponement statute and thus may have no knowledge that the actual notice provisions were not complied with.

the credit bid submitted by [**435] MERS [*48] was compliant with statutory requirements but is vacated in all other respects and the case is remanded for proceedings consistent with our opinion. Costs are awarded to the appellants.

Chief Justice SCHROEDER and Justices EISMANN and BURDICK and Judge REINHARDT, III, PRO TEM CONCUR.

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Shepard's request: Idaho Code § 45-1506

The *Shepard's*® report for this citation is identical to citation #1

End of Document

Full text request: Idaho Code § 45-1506

The full text of this report is identical to citation #1

End of Document



Shepard's®: Report Content

Appellate History: Requested

▲ **Citing Decisions:** Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ▲ [State v. Townsend](#) 124 Idaho 881,865 P.2d 972,1993 Ida. LEXIS 199: (Idaho December 28, 1993)

No subsequent appellate history. [Prior history](#) available.

Appellate History (1)

1.

📍 **Citation you Shepardized™**

Opinion withdrawn by and

Substituted opinion at and

On rehearing at:

[State v. Townsend](#), 124 Idaho 881 ▲

Court: Idaho | **Date:** December 28, 1993

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Idaho Supreme Court

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Discussion:  | **Court:** Idaho | **Date:** March 17, 2010

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Y Distinguished by: 129 Idaho 899 p.902; 935 P.2d 162 p.165

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5. [State v. Raudebaugh](#), 124 Idaho 758 

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Discussion:  | **Court:** Idaho | **Date:** September 8, 1993

Idaho Court of Appeals

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G Followed by: 163 Idaho 262 p.264; 409 P.3d 842 p.844

LB Cited by: 163 Idaho 262 p.263; 409 P.3d 842 p.843

Discussion:  | **Court:** Idaho Ct. App. | **Date:** December 14, 2017 | **Headnotes::** HN4

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7. [State v. Nuse](#), 2017 Ida. App. LEXIS 84 

B Explained by:

Discussion:  | **Court:** Idaho Ct. App. | **Date:** October 25, 2017 | **Headnotes::** HN4

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LB Cited by:

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LB Cited by: 1996 Ida. App. LEXIS 138

Court: Idaho Ct. App. | **Date:** November 8, 1996

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B Cited in Concurring Opinion at: 186 Ariz. 437 p.440; 924 P.2d 441 p.444

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16. [In re B.L.](#), 239 Cal. App. 4th 1491 

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State v. Townsend

Supreme Court of Idaho

December 28, 1993 ; December 28, 1993, Filed

No. 18866, 1993 Opinion No. 139

Reporter

124 Idaho 881 *; 865 P.2d 972 **; 1993 Ida. LEXIS 199 ***

STATE of Idaho, Plaintiff-Respondent v. Lonnie L.
TOWNSEND, Defendant-Appellant

Subsequent History: Released for Publication January 19, 1994.

Prior History: Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Honorable Ron Schilling, District Judge. Appeal from sentencing order withholding judgment of conviction for aggravated battery.

This Opinion Substituted by the Court for Withdrawn Opinion of December 2, 1992, Reported at: [1992 Ida. LEXIS 174](#).

Disposition: Vacated and remanded.

Core Terms

aggravated battery, deadly weapon, battery, assault, trial court, lesser included offense, aggravated assault, pickup, simple assault, new trial, instrumentality, use of a deadly weapon, instruct a jury, tire iron, truck, instructions, violence, jury's verdict, murder, felony, vacate

Case Summary

Procedural Posture

Appellant sought review of the decision of the District Court of the Second Judicial District (Idaho), which sentenced him pursuant to his conviction for felony aggravated battery and misdemeanor assault. The district court denied appellant's motion for a new trial

and in effect granted his motion for acquittal on the simple assault conviction.

Overview

Appellant drove his pick-up truck into his wife's car, smashed her car window with a tire iron, and attacked her. He was convicted of aggravated battery on the first count and simple assault on the second count. The court vacated his conviction and remanded the matter for a new trial. The court found that the jury verdict was not inconsistent because the jury could have found that the tire iron was the instrumentality of the assault and either his vehicle or his hands were the instrumentality of the battery. The court concluded that the evidence was sufficient to support the jury's verdict of aggravated battery based upon appellant's use of his vehicle to strike the car which his wife was driving. The court held that the district court erred in permitting the jury to consider appellant's hands as deadly weapons in his attack upon his wife and vacated appellant's conviction. The court concluded that because the verdict did not specify whether the battery was committed by the use of appellant's hands or his vehicle, the cause had to be remanded for a new trial. The jury instructions as to the lesser included offenses were proper.

Outcome

The court vacated appellant's aggravated battery conviction and remanded for a new trial.

LexisNexis® Headnotes

Criminal Law & Procedure > Trials > Verdicts > Inconsistent Verdicts

[**HN1**](#) Verdicts, Inconsistent Verdicts

Inconsistent verdicts, in and of themselves, do not warrant reversal of a conviction.

Civil Procedure > ... > Jury Trials > Jury Instructions > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > General Overview

[**HN2**](#) Jury Trials, Jury Instructions

Battery consists of the: (a) willful and unlawful use of force or violence upon the person of another; or (b) actual, intentional and unlawful touching or striking of a person against the will of the other; or (c) unlawfully and intentionally causing bodily harm to an individual.

Civil Procedure > ... > Jury Trials > Jury Instructions > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > General Overview

[**HN3**](#) Jury Trials, Jury Instructions

Assault includes a threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Simple Offenses > General Overview

[**HN4**](#) Simple Offenses, Elements

Idaho Code § 18-903 defines battery as any: (a) willful and unlawful use of force or violence upon the person of another; or (b) actual, intentional and unlawful touching or striking of another person against the will of the other. However, the willful use of force or the intentional striking of another person which is made criminal by the statute may be committed indirectly through an intervening agency which the defendant set in motion. Likewise, it need not be committed directly against the victim; it may be committed against anything intimately connected with the person of the victim. Under this view, the use of a motor vehicle to intentionally strike another occupied motor vehicle may constitute battery.

Criminal Law & Procedure > ... > Possession of Weapons > Unregistered Firearm > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

Criminal Law & Procedure > ... > Use of Weapons > Simple Use > General Overview

Criminal Law & Procedure > ... > Use of Weapons > Simple Use > Elements

[**HN5**](#) Unregistered Firearm, Elements

In general, an instrumentality may be a deadly weapon if it is capable of being used in a deadly manner, and the evidence indicates that its possessor intended on that occasion to use it as a weapon. Although this suggests that the decision as to what constitutes a deadly weapon is a fact-sensitive determination, it is implicit within the definition that some instrumentality, apart from the human body, must be involved.

Criminal Law & Procedure > ... > Use of Weapons > Simple Use > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Aggravated Offenses > General Overview

Criminal Law & Procedure > ... > Assault & Battery > Aggravated Offenses > Elements

Criminal Law & Procedure > ... > Assault & Battery > Aggravated Offenses > Penalties

HN6 Simple Use, Elements

Hands, or other body parts or appendages, may not, by themselves, constitute deadly weapons under the aggravated assault and aggravated battery statutes.

Criminal Law & Procedure > Trials > Verdicts > Inconsistent Verdicts

HN7 Verdicts, Inconsistent Verdicts

When a general verdict of guilt possibly rests upon an illegal ground the correct remedy is to vacate the conviction and remand for a new trial.

Counsel: Clark & Feeney, Lewiston, for defendant-appellant. Paul Thomas Clark, argued.

Larry EchoHawk, Atty. Gen., and Douglas A. Werth, Deputy Atty. Gen., argued, Boise, for plaintiff-respondent.

Judges: Silak, Justice. McDevitt, C.J., Bistline and Johnson, JJ., and Michaud, J. Pro Tem., concur.

Opinion by: SILAK

Opinion

[*883] [**974] 1992 OPINION NO. 137, FILED DECEMBER 2, 1992, IS HEREBY WITHDRAWN AND THIS OPINION IS SUBSTITUTED THEREFOR

ON REHEARING

Lonnie L. Townsend appeals from the district court's sentencing order entered after a jury found him guilty of

felony aggravated battery and misdemeanor assault. On appeal, Townsend asserts that his aggravated battery conviction was invalid because the jury's verdict was inconsistent and not supported by substantial evidence. Townsend also contends that the district court improperly allowed the jury to consider his hands deadly weapons for the purpose of enhancing the battery charge to aggravated battery. Finally, Townsend challenges the trial court's failure to instruct the jury on all lesser included offenses. For the reasons stated below, we vacate and remand for a new trial.

I.

BACKGROUND AND PRIOR PROCEEDINGS.

On November 15, 1989, Lonnie L. Townsend physically attacked his wife. The attack began as Townsend followed his wife in his pickup truck while she was driving on a public street in her own car. Townsend's wife testified, and several bystanders confirmed, that she was driving at a speed of thirty to thirty-five miles per hour when Townsend pulled along side her car, looked at her, and then intentionally drove his truck into her car, forcing her off the road.

After both vehicles came to a complete stop, Townsend jumped out of the truck and yelled that he was going to kill her. When he approached her car he struck the driver's side window with an object alleged to be a tire iron or crow bar. Before Townsend's wife could escape, Townsend entered the vehicle, held her down on the car seat, again threatened to kill her, and began striking her in the face with his fists. He then choked her until she was unconscious. A subsequent blow to the eye revived her.

A bystander pulled Townsend away from his wife and out of the car. However, the bystander let Townsend loose again and he renewed his attack on his wife. He forced her down on the ground, sat on her abdomen, and pinned her arms and hands with his legs and knees. He then began to violently strike her face and head with his closed fists. A bystander again pulled Townsend off his wife and she escaped into a neighboring home.

Townsend was charged with aggravated battery and aggravated assault. I.C. §§ 18-907 & 18-905. Count I of the information alleged that Townsend's attack on his wife constituted aggravated battery, as opposed to simple battery, because in committing the battery he

used a deadly weapon in the form of "a Ford Pick-up, and/or [the] defendant's hands." Count II alleged that Townsend committed aggravated assault, as opposed to simple or misdemeanor assault, in that a deadly weapon, in the form of a pick-up, tire iron, or the defendant's hands, was used in the assault.¹

[***4] The case proceeded to trial. At the close of the State's case, counsel for Townsend moved to dismiss the information or for a [*884] [**975] directed verdict. In support of his motion, Townsend's attorney argued that one vehicle striking another, without direct contact with the victim, does not constitute battery or assault. It was further argued that Townsend's hands did not constitute "deadly weapons" under the statute. The trial court rejected these arguments and permitted the case to go to the jury.

The trial court instructed the jury that it could find Townsend guilty of lesser included offenses if they did not find Townsend guilty of the charged crimes. The jury was instructed that the lesser offenses included in aggravated battery are simple assault, simple battery and aggravated assault. The jury was also instructed that the lesser offense included in aggravated assault is simple assault. The trial court instructed the jury as to the elements of each charged crime as well as each lesser included offense. With respect to Count I, the jury found Townsend guilty of aggravated battery. With respect to Count II, the jury found Townsend guilty of simple assault.

Townsend moved for a new trial [***5] or for an acquittal. The motion for new trial was denied. The trial court also denied the motion for acquittal as to the aggravated battery conviction but, in effect, granted the acquittal motion as to the simple assault conviction. The court then entered its sentencing order, which granted the defendant a withheld judgment on the aggravated battery conviction, and dismissed the assault count. This appeal followed.

II. ANALYSIS

A. THE JURY VERDICT WAS NOT INCONSISTENT.

¹ The state amended its information once before trial and a second time, after presenting its evidence to the jury. However, the amendments to the information are not material to this appeal.

Townsend first argues that the jury rendered inconsistent verdicts in finding him guilty of aggravated battery as to Count I, but finding him guilty of only simple assault as to Count II. The predicate for Townsend's argument is that aggravated assault, simple assault, and simple battery are all lesser included offenses of aggravated battery. Under the Court's instructions, the jury was required to find the defendant not guilty of aggravated assault as to Count II before considering the lesser included offense of simple assault. Townsend argues that the finding of not guilty of aggravated assault as to Count II, is inconsistent with the verdict of guilty on the aggravated battery charge set forth in Count I. Such a [***6] logical inconsistency, it is argued, requires a reversal of the conviction entered pursuant to the jury's verdict.

Townsend concedes that the U.S. Supreme Court has held [HN1](#) that inconsistent verdicts, in and of themselves, do not warrant reversal of a conviction. [*Dunn v. United States*, 284 U.S. 390, 52 S.Ct. 189, 76 L.Ed. 356 \(1932\)](#); [*United States v. Powell*, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 \(1984\)](#). While the rule stated in the *Dunn* decision has been subject to criticism, this Court has found it unnecessary to consider its vitality under Idaho law, because it has not been presented with a case in which the jury returned truly inconsistent verdicts. See [*State v. Garcia*, 102 Idaho 378, 630 P.2d 665 \(1981\)](#). Today, we again conclude that the verdict rendered in this case is capable of reconciliation, and decline Townsend's invitation to consider whether the *Dunn* decision has application in the Idaho courts.

The two counts contained in the information alleged separate offenses perpetrated with different instrumentalities. Count I charged Townsend with aggravated battery [***7] committed through the use of a deadly weapon in the form of "a Ford Pick-up, and/or [the] defendant's hands." Count II alleged that Townsend committed aggravated assault through the use of a deadly weapon in the form of a pick-up, a tire iron, or the defendant's hands. Were the instrumentalities in the different counts the same, there would be some basis for Townsend's argument that the verdicts were inconsistent. However, it seems apparent that the jury focused on the tire iron as the instrumentality of assault and on Townsend's vehicle or his hands as the instrumentality of battery. This much is clear from a review of the evidence at trial and its interplay with the court's instructions.

Three separate instrumentalities were used by

Townsend in attacking his wife. The evidence at trial supports the conclusion that Townsend intentionally drove his pickup into [*885] [*976] his wife's vehicle, jostling her around inside the car, and forcing her off the road. Townsend then approached his wife's car, verbally threatening her, and striking the car with a tire iron or crow bar. Thereafter, Townsend attacked her with his hands, choking her to a point of unconsciousness and striking her face and head [***8] while her arms were pinned behind her.

The jury could reasonably conclude that Townsend's use of his truck and his hands constituted a use of force or violence upon his wife's person or an intentional striking of his wife against her will. Either conclusion would justify a finding of battery under the trial court's instructions.² As will be discussed hereinafter, the jury could also have concluded that the manner in which Townsend used his truck to attack his wife constituted the use of a deadly weapon which would support a finding of aggravated battery.

The trial court also instructed the jury that [HN3](#) assault includes a threat by word or act to do violence to the person of another, [***9] coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Under this instruction, the jury could reasonably conclude that Townsend's verbal threats, accompanied by his use of a tire iron or crow bar to strike his wife's vehicle, constituted an assault. Likewise, the jury could reasonably conclude that Townsend's use of the tire iron or crow bar was such that it could not be considered a deadly weapon.

Thus, given that the distinct counts involved different instrumentalities, and that the evidence suggests a basis for a conclusion that the defendant committed aggravated battery with his hands or his motor vehicle, while committing only simple assault through verbal threats accompanied by his menacing use of a tire iron, the jury's verdicts are reconcilable. We therefore affirm the district court's denial of Townsend's motion for a

² The jury was properly instructed that [HN2](#) battery consisted of the:

- (a) willful and unlawful use of force or violence upon the person of another; or
- (b) actual, intentional and unlawful touching or striking of a person against the will of the other; or
- (c) unlawfully and intentionally causing bodily harm to an individual.

new trial or acquittal based upon a claim of inconsistent verdicts.

B. THE EVIDENCE WAS SUFFICIENT TO SUPPORT A FINDING OF AGGRAVATED BATTERY BASED ON TOWNSEND'S USE OF A MOTOR VEHICLE.

Townsend contends that the evidence at trial was insufficient to support a verdict that he used his pickup truck to perpetrate a battery upon his wife. The basis for his argument, is that his vehicle did not strike his wife directly, but only struck the vehicle which she was driving. Without direct contact with the victim, it is argued, there can be no battery. We find Townsend's arguments unpersuasive.

[HN4](#) [Idaho Code § 18-903](#) defines battery as any:

- (a) Willful and unlawful use of force or violence upon the person of another; or
- (b) Actual, intentional and unlawful touching or striking of another person against the will of the other.

However, the willful use of force or the intentional striking of another person which is made criminal by the statute may be committed indirectly through an intervening agency which the defendant set in motion. Likewise, it need not be committed directly against the victim; it may be committed against anything intimately connected with the person of the victim. LaFave & Scott, *Handbook on Criminal Law*, § 81 at 604 (1972); 6 Am.Jur.2d, *Assault and Battery*, § 5 at 10 (1963); 6A C.J.S., *Assault and Battery*, § 70 at 440 (1975);

[Malczewski v. State, 444 So.2d 1096 \(Fla.Dist.Ct.App.1984\)](#) 1 (stabbing money bag held by victim); [Stokes v. State, 233 Ind. 10, 115 N.E.2d 442 \(1953\)](#) (bullet perforating victim's tie and creasing victim's shirt). Under this view, the use of a motor vehicle to intentionally strike another occupied motor vehicle may constitute battery. [Huffman v. State, 200 Tenn. 487, 292 S.W.2d 738 \(1956\)](#). See generally, [Carson v. Nationwide Mut. Ins. Co., 14 O.O.2d 137, 1*8861](#) [*977] 169 N.E.2d 506 (1960); [Martin v. State, 98 Ga.App. 136, 105 S.E.2d 250 \(1958\)](#); [State v. Sudderth, 184 N.C. 753, 114 S.E. 828 \(1922\)](#).

Townsend further argues that the type of indirect contact involved in the facts of this case can only constitute a battery if there is some type of physical injury to the victim. However, such an argument disregards the statutory language which only requires a "willful and unlawful use of force or violence" or an

"actual, intentional and unlawful touching or striking of another person." Nothing in the statute requires physical injury. Indeed, we have little difficulty in concluding that intentionally striking a car with a pickup truck, when both 2 vehicles are being operated at 35 miles per hour, would generate whatever physical disturbance may be implicitly required by the statute. Accordingly, we find that the evidence was sufficient to support the jury's verdict of aggravated battery based upon Townsend's use of his pickup truck to strike the car which his wife was driving.

C. THE TRIAL COURT ERRED IN PERMITTING THE JURY TO CONSIDER TOWNSEND'S HANDS DEADLY WEAPONS.

Townsend next contends that his hands could not be considered deadly weapons. The Information charged Townsend with aggravated battery committed through the use of a deadly weapon in the form of "a Ford Pickup, and/or [the] defendant's hands . . ." The trial court instructed the jury as to the charges contained in the Information, and indicated that Townsend could only be convicted of aggravated battery if he committed a battery through the use of a deadly weapon or instrument. The Court then provided the jury with the following definition of a deadly weapon:

YOU ARE INSTRUCTED THAT a deadly weapon is one likely to produce death or great bodily injury. If it appears that the instrumentality is capable of being used in a deadly or a dangerous manner, 3 and it may be fairly inferred from the evidence that its possessor intended on a particular occasion to use it as a weapon should the circumstances require, its character as a dangerous or a deadly weapon may be thus established, at least for the purposes of that occasion.

Thus, the jury was permitted to consider whether Townsend's hands were used as deadly weapons in his attack upon his wife. Townsend contends that hands can never be considered deadly weapons, and that the trial court erred in submitting that question to the jury. Although this Court has recently concluded that a boot can be a deadly weapon under [I.C. § 18-905](#), [State v. Huston, 121 Idaho 738, 828 P.2d 301 \(1992\)](#), we have never been called upon to consider whether a body part, by itself, may constitute a "deadly weapon" under the statute. [HN5↑](#) In general, an instrumentality may be a deadly weapon if it is capable of being used in a deadly manner, and the evidence indicates that its possessor

intended on that occasion to use it as a weapon.³ See [Huston, 121 Idaho at 740-41, 828 P.2d at 303-04](#); [State v. Missenberger, 86 Idaho 321, 386 P.2d 559 \(1963\)](#).⁴ Although this suggests that the decision as to what constitutes a deadly weapon is a fact-sensitive determination, it is implicit within the definition that some instrumentality, apart from the human body, must be involved.

If one's hands can be considered a deadly weapon, every battery involving the use of one's hands could be charged, prosecuted and submitted to the jury as aggravated battery, and every assault involving the threatened use of one's hands could be charged, prosecuted, and submitted to the jury as aggravated assault. This would blur the statutory distinction between simple misdemeanor assault or battery and aggravated felony assault or battery, and thereby do violence to the legislative intent in providing enhanced punishment for the use of a deadly weapon in the commission of an assault or battery. We therefore conclude [HN6↑](#) that hands, or other body parts or appendages, may not, 5 by themselves, constitute deadly weapons under the [\[*887\]](#) [\[**978\]](#) aggravated assault and aggravated battery statutes. Accordingly, we conclude that the trial court erred in permitting the jury to consider whether the manner in which Townsend used his hands to attack his wife constituted the use of a deadly weapon.

D. THE COURT'S HOLDING REQUIRES THAT THE CASE BE REMANDED FOR A NEW TRIAL.

The jury was instructed that it could convict Townsend of aggravated battery under [I.C. § 18-905](#) if it found that Townsend's use of either his vehicle or his hands during the battery constituted use of a deadly weapon as proscribed by the statute. We have decided that the instruction that the jury could find Townsend guilty of aggravated battery by considering his hands deadly weapons was legally incorrect because hands do not constitute deadly weapons under the statute. The jury verdict did not specify whether the jury found that the aggravated battery was committed with Townsend's vehicle, his hands, or both. Thus, we are unable to discern whether the jury based its verdict on a valid or an invalid legal theory. We must now consider what disposition is appropriate in view of our holding that while one of the 6 theories of criminal liability given to

³ This definition provided the basis for the court's instruction to the jury concerning the definition of "dangerous weapon."

the jury (use of the pickup as a deadly weapon) was legally valid, the other theory by which the jury was instructed it could find Townsend guilty of aggravated battery (use of his hands as deadly weapons) was legally invalid under the statute.

The decision of the United States Supreme Court in *Yates v. United States*, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356 (1957), provides guidance on this issue. In *Yates*, the defendants were convicted of conspiracy to violate the Smith Act, 18 U.S.C. § 2325, by advocating the overthrow of the government by force and violence, and by organizing the Communist Party to advocate the violent overthrow of the government. *Id. at 300*, 77 S.Ct. at 1067. The Supreme Court ruled the organizing charge was barred by the statute of limitations, *id. at 312*, 77 S.Ct. at 1073, and rejected the government's argument that the conspiracy conviction could be affirmed based on the first allegation of advocacy. *Id. at 311*, 77 S.Ct. at 1073. The Yates Court observed that the jury was required to find an overt act in furtherance of the conspiracy, 7 and there was "no way of knowing whether the overt act found by the jury was one which it believed to be in furtherance of the 'advocacy' rather than the 'organizing' objective of the alleged conspiracy." *Id. at 311-12*, 77 S.Ct. at 1073. As to the remedy for the defective verdict, the Court stated:

the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not another, and it is impossible to tell which ground the jury selected.

Id. at 312, 77 S.Ct. at 1073. In so holding, the *Yates* Court relied on *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931), which holds that where a provision of the Constitution prohibits criminal conviction on a particular ground, the constitutional guarantee of due process is violated by a general verdict that may have been based upon an unconstitutional ground. *Id. at 368*, 51 S.Ct. at 535. *Yates* did not, however, involve conviction upon an unconstitutional ground, but rather upon an illegal ground.

In *Griffin v. United States*, U.S. , 112 S.Ct. 466, 116 L.Ed.2d 371 (1991), 8 the Supreme Court limited its holding in *Yates* to situations in which one of the possible bases of conviction was *legally* insufficient -- as was the case in *Yates* -- as opposed to *factually* insufficient. *Griffin* did not, however, overrule *Yates*, specifically noting that "[o]ur continued adherence to the holding of *Yates* is not at issue in this case." *U.S. at*

[112 S.Ct. at 472](#). Thus, the *Yates* rule, that [HN7](#) when a general verdict of guilt possibly rests upon an illegal ground the correct remedy is to vacate the conviction and remand for a new trial, remains valid. See, e.g., [United States v. Self](#), 2 F.3d 1071, 1092 (10th Cir.1993).

This Court in *State v. Pratt*, Nos. 18424 & 19736 Idaho , P.2d (Id. S.Ct. July 27, 1993), applied the same approach as did the *Yates* Court. In *Pratt*, the jury was instructed it could find Pratt guilty of attempted first degree murder if it found: (1) that Pratt attempted to kill a law enforcement officer, or (2) that the attempted murder [\[*888\]](#) occurred during the commission [\[**979\]](#) of certain felonies. The jury convicted Pratt of attempted first degree murder. On appeal this Court held that attempted 9 felony murder is not a legally valid criminal offense. The Court further held that because it was unable to discern whether the jury's verdict finding Pratt guilty of attempted first degree murder was based on the valid theory that the attempt was against a law enforcement officer, or the invalid theory that the attempt occurred during the commission of certain felonies, the jury's verdict of conviction regarding attempted first degree murder must be vacated.

As in *Yates* and *Pratt, supra*, this case involves a conviction possibly based upon a charge legally insufficient. It is impossible to determine from this record whether Townsend was convicted under the legally insufficient charge of using his hands as a deadly weapon, or under the theory of use of the vehicle as a deadly weapon. Accordingly, the conviction and sentence must be vacated and the case remanded for a new trial.

E. THE JURY WAS PROPERLY INSTRUCTED AS TO LESSER INCLUDED OFFENSES.

Although our decision today requires that the case be remanded for a new trial, we will address Townsend's contentions concerning the court's instructions on lesser included offenses, so as to provide the trial court with guidance 0 on this issue. Townsend argues that the trial court should have instructed the jury that all lesser included offenses, such as assault, aggravated assault, and simple battery, are elements of the greater offense of aggravated battery and, therefore, must necessarily be found to have been committed by Townsend in the commission of aggravated battery. From our review of the record, we find no shortcoming in the trial court's instructions.

The trial court instructed the jury that aggravated assault, battery, and assault are lesser included offenses of the aggravated battery charge stated in Count I of the Information. Similarly, the trial court instructed the jury that simple assault is a lesser included offense of the aggravated assault charge stated in Count II. The jury was also instructed as to the elements of each greater offense and each lesser included offense. Finally, the jury was instructed that if it unanimously found that Townsend was not guilty of aggravated battery or aggravated assault, it must then determine if he was guilty or not guilty of any of the lesser offenses included in each. As such, the trial court complied with the mandate of [I.C. § 19-2132\(c\)](#), which requires 1 that the jury be instructed that it may only consider lesser included offenses if it has concluded that the defendant is not guilty of the greater offense. We conclude that the jury was properly instructed, and that the instructions requested by Townsend were adequately covered by other instructions given by the Court. [State v. Johns, 112 Idaho 873, 736 P.2d 1327 \(1987\)](#). Accordingly, we find no error in the court's instructions concerning lesser included offenses.

Townsend has raised additional issues on appeal. The issues raised do not merit further discussion or are resolved by our decision. For the reasons stated in this decision, we vacate the defendant's conviction and remand the case to the district court for a new trial.

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[Subsection reports by specific court citation](#)

History (1)

1. R.S., § 2998; reen. R.C. & C.L., § 3157; C.S., § 5421; I.C.A., § 54-809.

Citing Decisions (7)

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1. [Adams v. Anderson](#), 142 Idaho 208 

LB Cited by: 142 Idaho 208 p.211; 127 P.3d 111 p.114

Court: Idaho | **Date:** December 20, 2005

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2. [West Wood Invs. v. Acord](#), 141 Idaho 75 

B Cited in Dissenting Opinion at: 141 Idaho 75 p.91; 106 P.3d 401 p.417

Court: Idaho | **Date:** January 28, 2005

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3. [Miller v. Simonson](#), 140 Idaho 287 

B Cited in Concurring Opinion at: 140 Idaho 287 p.291; 92 P.3d 537 p.541

LB Cited by: 140 Idaho 287 p.289; 92 P.3d 537 p.539

Court: Idaho | **Date:** June 24, 2004

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4. [Credit Bureau v. Idaho First Nat'l Bank](#), 117 Idaho 29 

LB Cited by: 117 Idaho 29 p.32; 784 P.2d 885 p.888

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Idaho Court of Appeals

5. [Miller v. Simonson](#), 2004 Ida. App. LEXIS 52 

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6. [Deckys v. BAC Home Loans Servicing LP](#), 2013 U.S. Dist. LEXIS 86586 

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Court: Dist. Idaho | **Date:** April 17, 2013

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7. [O'Banion v. Select Portfolio Servs.](#), 2012 U.S. Dist. LEXIS 135813 

LB Cited by: 2012 U.S. Dist. LEXIS 135813

Court: Dist. Idaho | **Date:** August 22, 2012

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Content: Court Filings | **Date:** October 8, 2020

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2. TCR v. v.
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Content: Court Filings | **Date:** July 11, 2024

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3. [TCR v. v.](#), 2022 ID S. Ct. Briefs LEXIS 866

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4. [FIRST SEC. CORP. v. BELLE RANCH](#), 2019 ID S. Ct. Briefs LEXIS 555

Content: Court Filings | **Date:** May 25, 2019

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6. [IDADIV CREDIT UNION v. LAND DEV.](#), 2010 ID S. Ct. Briefs LEXIS 337

Content: Court Filings | **Date:** December 10, 2010

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7. [Bagley v. Thomason](#), 2009 ID S. Ct. Briefs LEXIS 264

Content: Court Filings | **Date:** October 21, 2009



Idaho Code § 55-809

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 55 Property in General (Chs. 1 — 32) > Chapter 8 Recording Transfers (§§ 55-801 — 55-820)

55-809. When deemed recorded.

An instrument is deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the recorder's office with the proper officer for record.

History

R.S., § 2998; reen. R.C. & C.L., § 3157; C.S., § 5421; I.C.A., § 54-809.

Annotations

JUDICIAL DECISIONS

Improperly Recorded Instruments.

If a party submits an instrument governing real property to be recorded but the recording official fails to properly record it, subsequent purchasers of that real property are still on notice of the instrument. [Miller v. Simonson, No. 28537, 2004 Ida. App. LEXIS 52 \(May 28, 2004\)](#), aff'd, [140 Idaho 287, 92 P.3d 537, 2004 Ida. LEXIS 109 \(2004\)](#).

Subsequent purchaser must bear the risk of improperly recorded instruments when the recording party has fully satisfied the requirements of the Idaho recording statute. [Miller v. Simonson, No. 28537, 2004 Ida. App. LEXIS 52 \(May 28, 2004\)](#), aff'd, [140 Idaho 287, 92 P.3d 537, 2004 Ida. LEXIS 109 \(2004\)](#).

Neglect of Officers.

Paper is recorded when deposited with proper custodian and fee tendered. Failure of officer to place thereon proper filing marks does not destroy filing. [O'Conner v. Board of County Comm'r's, 17 Idaho 346, 105 P. 560, 1909 Ida. LEXIS 104 \(1909\)](#).

Duties of a recording officer do not impose any further recording requirements; therefore, a purchaser of land had constructive notice of covenants, conditions, and restrictions imposed upon subdivided land, despite the fact that a recording official improperly recorded the document under the incorrect name. [Miller v. Simonson, 140 Idaho 287, 92 P.3d 537, 2004 Ida. LEXIS 109 \(2004\)](#).

Cited in:

[Adams v. Anderson, 142 Idaho 208, 127 P.3d 111, 2005 Ida. LEXIS 179 \(2005\).](#)

Idaho Code
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 **Pending Legislation**

Subsection reports by specific court citation

History (1)

1. Nov. 6, 1978, P. L. 95-598, Title I, § 101, 92 Stat. 2605; July 10, 1984, P. L. 98-353, Title III, Subtitle A, § 311(a), Subtitle H, § 474, 98 Stat. 355, 381; Oct. 27, 1986, P.L. 99-554, Title II, Subtitle A, § 217, 100 Stat. 3100; April 20, 2005, P. L. 109-8, Title I, § 102(c), Title II, Subtitle B, § 219(a), Title IV, Subtitle B, § 446(b), Title XI, § 1105(a), 119 Stat. 32, 55, 118, 192; May 7, 2009, P. L. 111-16, § 2(7), 123 Stat. 1607; Dec. 22, 2010, P. L. 111-327, § 2(a)(24), 124 Stat. 3560.

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1. [Taggart v. Lorenzen](#), 587 U.S. 554 

LB Cited by: 587 U.S. 554 p.557; 139 S. Ct. 1795 p.1800; 204 L. Ed. 2d 129 p.133
Court: U.S. | **Date:** June 3, 2019

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2. [Midland Funding, LLC v. Johnson](#), 581 U.S. 224 

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3. [Harris v. Viegelnahn](#), 575 U.S. 510 

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Court: U.S. | **Date:** May 18, 2015

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4. [Law v. Siegel](#), 571 U.S. 415 

LB Cited by: 571 U.S. 415 p.417; 134 S. Ct. 1188 p.1192; 188 L. Ed. 2d 146 p.150
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5. [Ransom v. FIA Card Servs., N.A.](#), 562 U.S. 61 

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Court: U.S. | **Date:** January 11, 2011

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200. [In re Convenient Foods](#), 197 B.R. 6 

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Court: Eastern Dist. N.Y. | **Date:** July 20, 2022

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Court: Bankr Western Dist. N. Y. | **Date:** July 16, 2014

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LB Cited by: 512 B.R. 421 p.427

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420. [In re Mannone](#), 512 B.R. 148 

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Court: Bankr Eastern Dist. N. Y. | **Date:** May 20, 2014

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423. [In re Lettieri](#), 506 B.R. 208 

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Court: Bankr Eastern Dist. N. Y. | **Date:** December 4, 2013

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426. [In re Dunne](#), 2013 Bankr. LEXIS 2897 

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430. [In re Persaud](#), 486 B.R. 251 

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LB Cited by: 486 B.R. 251 p.253, p.254, p.255, p.256, p.261

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Court: Bankr Eastern Dist. N. Y. | **Date:** July 19, 1994

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Court: Bankr Northern Dist. N. Y. | **Date:** February 4, 1994

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Court: Bankr Southern Dist. N.Y. | **Date:** February 6, 1992

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Court: Bankr Eastern Dist. N. Y. | **Date:** June 19, 1991

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561. [In re Our Distribution Co.](#), 110 B.R. 658 

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562. [In re Lundborg](#), 110 B.R. 106 

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563. [In re Sal Caruso Cheese, Inc.](#), 107 B.R. 808 

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564. [In re Ahead By a Length, Inc.](#), 100 B.R. 157 

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565. [In re Dombroff](#), 1989 Bankr. LEXIS 723

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Court: Bankr Eastern Dist. N. Y. | **Date:** December 22, 1988

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LB Cited by: 91 B.R. 213 p.218

Court: Bankr Eastern Dist. N. Y. | **Date:** September 29, 1988

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568. [In re McCorhill Pub., Inc.](#), 89 B.R. 393 

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LB Cited by: 84 B.R. 356 p.360

Court: Bankr Southern Dist. N.Y. | **Date:** April 4, 1988

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572. [In re Sasson Jeans, Inc.](#), 83 B.R. 206 

LB Cited by: 83 B.R. 206 p.209

Court: Bankr Southern Dist. N.Y. | **Date:** January 11, 1988

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573. [In re Fill](#), 82 B.R. 200 

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Court: Bankr Northern Dist. N. Y. | **Date:** February 24, 1987

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581. [In re SPORTS INFORMATION DATA BASE, INC.](#), 1986 Bankr. LEXIS 6968

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Court: Bankr Eastern Dist. N. Y. | **Date:** October 22, 1985

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583. [In re Columbia Ribbon & Carbon Mfg. Co.](#), 54 B.R. 714 

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LB Cited by: 37 B.R. 527 p.530

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592. [In re Black & Geddes, Inc.](#), 30 B.R. 389 

LB Cited by: 30 B.R. 389 p.391

Court: Bankr Southern Dist. N.Y. | **Date:** June 9, 1983

593. [In re C.H. Stuart, Inc.](#), 28 B.R. 360 

LB Cited by: 28 B.R. 360 p.361

Court: Bankr Western Dist. N. Y. | **Date:** March 30, 1983

594. [In re 3868-70 White Plains Rd., Inc.](#), 28 B.R. 515 

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595. [In re Colin](#), 27 B.R. 87 

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597. [In re Bofill](#), 25 B.R. 550 

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598. [In re Overmyer](#), 26 B.R. 755 

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601. [In re Feiss](#), 15 B.R. 825 

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603. [In re B.D. International Discount Corp.](#), 13 B.R. 635 

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604. [In re O.P.M. Leasing Services, Inc.](#), 13 B.R. 54 

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605. [In re Fabric Stylesetters, Inc.](#), 8 B.R. 872 

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606. [In re Lucasa International, Ltd.](#), 6 B.R. 717 

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608. [In re Hecker](#), 2022 U.S. App. LEXIS 19847 

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Court: 3d Cir. N.J. | **Date:** July 19, 2022

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609. [In re 38-36 Greenville Ave LLC](#), 2022 U.S. App. LEXIS 10468 

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610. [Pursuit Capital Mgmt. Fund I, L.P. v. Burtch \(In re Pursuit Capital Mgmt., LLC\)](#), 874 F.3d 124 

LB Cited by: 874 F.3d 124 p.137

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611. [Phoenician Mediterranean Villa, LLC v. Swope \(In re J & S Props., LLC\)](#), 872 F.3d 138 

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612. [In re Messina](#), 687 F.3d 74 

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614. [In re Federal-Mogul Global](#), 684 F.3d 355 

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617. [**Kimmelman v. Port Auth. of N.Y. & N.J. \(In re Kiwi Int'l Air Lines, Inc.\)**](#), 344 F.3d 311 

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618. [**United States v. Thayer**](#), 201 F.3d 214 

LB Cited by: 201 F.3d 214 p.218

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619. [**Staiano v. Cain \(In re Lan Assocs. XI, L.P.\)**](#), 192 F.3d 109 

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620. [**Integrated Solutions v. Service Support Specialties**](#), 124 F.3d 487 

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621. [**Myers v. Martin \(In re Martin\)**](#), 91 F.3d 389 

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622. [**Hutchins v. IRS**](#), 67 F.3d 40 

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624. [In re Quanta Resources Corp.](#), 739 F.2d 912 

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LB Cited by: 658 B.R. 104 p.109

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626. [In re Xuehai Li](#), 654 B.R. 25 

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627. [In re 388 Route 22 Readington Holdings, LLC](#), 2023 U.S. Dist. LEXIS 117641 

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628. [Seitz v. Rothermel](#), 638 B.R. 846 

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629. [In re 388 Route 22 Readington Holdings, LLC](#), 2021 U.S. Dist. LEXIS 245102 

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630. [In re Suboxone \(Buprenorphine Hydrochloride & Naloxone\) Antitrust Litig.](#), 2021 U.S. Dist. LEXIS 11005 

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631. [Reinert v. Vara](#), 620 B.R. 536 

LB Cited by: 620 B.R. 536 p.539

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633. [Recovery Fund II United States LLC v. Rabobank](#), 2020 U.S. Dist. LEXIS 17395 

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Court: Dist. Del. | **Date:** January 31, 2020

634. [Toyota Motor Credit Corp. v. Dunn \(In re Dunn\)](#), 589 B.R. 253 

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635. [Smith v. Manasquan Bank](#), 2018 U.S. Dist. LEXIS 78057 

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636. [In re Prosser](#), 2017 U.S. Dist. LEXIS 49054 

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LB Cited by: 2017 U.S. Dist. LEXIS 14210

Court: Dist. N.J. | **Date:** February 1, 2017

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LB Cited by: 2016 U.S. Dist. LEXIS 174817

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639. [In re Pursuit Capital Mgmt.](#), 2016 U.S. Dist. LEXIS 130980 

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640. [Phoenician Mediterranean Villa, LLC v. Swope](#), 554 B.R. 747 

LB Cited by: 554 B.R. 747 p.752

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641. [In re Watson](#), 2016 U.S. Dist. LEXIS 77684 

LB Cited by: 2016 U.S. Dist. LEXIS 77684

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642. [Walsh v. Dively](#), 551 B.R. 570 

LB Cited by: 551 B.R. 570 p.572

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643. [Chamberlain v. Stanziale \(In re Chamberlain\)](#), 545 B.R. 827 

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644. [Evans v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 14785 

LB Cited by: 2016 U.S. Dist. LEXIS 14785

Court: Eastern Dist. Pa. | **Date:** February 5, 2016

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645. [Young v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 14029 

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647. [Oliveira v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 12618 

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648. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 185405 

LB Cited by: 2016 U.S. Dist. LEXIS 185405

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649. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 11272 

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Court: Eastern Dist. Pa. | **Date:** January 29, 2016

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650. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 11262 

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651. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 10594 

LB Cited by: 2016 U.S. Dist. LEXIS 10594

Court: Eastern Dist. Pa. | **Date:** January 29, 2016

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652. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 10593 

LB Cited by: 2016 U.S. Dist. LEXIS 10593

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653. [Bartel v. A-C Prod. Liab. Trust](#), 2016 U.S. Dist. LEXIS 8047 

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LB Cited by: 2016 U.S. Dist. LEXIS 8048

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LB Cited by: 543 B.R. 743 p.754

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656. [Bartel v. A-C Liab. Trust](#), 543 B.R. 727 

LB Cited by: 543 B.R. 727 p.738

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657. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 153944 

LB Cited by: 2015 U.S. Dist. LEXIS 153944

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658. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 150167 

LB Cited by: 2015 U.S. Dist. LEXIS 150167

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659. [Bartel v. Foster Wheeler Co.](#), 2015 U.S. Dist. LEXIS 150164 

LB Cited by: 2015 U.S. Dist. LEXIS 150164

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660. [Martin v. American Export Isbrandtsen](#), 2015 U.S. Dist. LEXIS 147991 

LB Cited by: 2015 U.S. Dist. LEXIS 147991

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661. [Riddick v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 147985 

LB Cited by: 2015 U.S. Dist. LEXIS 147985

Court: Eastern Dist. Pa. | **Date:** October 28, 2015

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662. [Preyer v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 147980 

LB Cited by: 2015 U.S. Dist. LEXIS 147980

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663. [Bartel v. Foster Wheeler Co.](#), 2015 U.S. Dist. LEXIS 147979 

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664. [Nelson v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 148365 

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665. [Day v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 147982 

LB Cited by: 2015 U.S. Dist. LEXIS 147982

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666. [Jacobs v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 147975 

LB Cited by: 2015 U.S. Dist. LEXIS 147975

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667. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 144079 

LB Cited by: 2015 U.S. Dist. LEXIS 144079

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668. [Pike v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 142202 

LB Cited by: 2015 U.S. Dist. LEXIS 142202

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669. [Miller v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 142206 

LB Cited by: 2015 U.S. Dist. LEXIS 142206

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670. [Williamson v. A-C Liab. Trust](#), 2015 U.S. Dist. LEXIS 142195 

LB Cited by: 2015 U.S. Dist. LEXIS 142195

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671. [Brooks v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 142196 

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Court: Eastern Dist. Pa. | **Date:** October 15, 2015

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672. [Jones v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 142193 

LB Cited by: 2015 U.S. Dist. LEXIS 142193

Court: Eastern Dist. Pa. | **Date:** October 15, 2015

673. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 142201 

LB Cited by: 2015 U.S. Dist. LEXIS 142201

Court: Eastern Dist. Pa. | **Date:** October 14, 2015

674. [Saucier v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 140563 

LB Cited by: 2015 U.S. Dist. LEXIS 140563

Court: Eastern Dist. Pa. | **Date:** October 9, 2015

675. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 140560 

LB Cited by: 2015 U.S. Dist. LEXIS 140560

Court: Eastern Dist. Pa. | **Date:** October 9, 2015

676. [Stein v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135945 

LB Cited by: 2015 U.S. Dist. LEXIS 135945

Court: Eastern Dist. Pa. | **Date:** October 5, 2015

677. [Gillain v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135955 

LB Cited by: 2015 U.S. Dist. LEXIS 135955

Court: Eastern Dist. Pa. | **Date:** October 1, 2015

678. [Rydberg v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135954 

LB Cited by: 2015 U.S. Dist. LEXIS 135954

Court: Eastern Dist. Pa. | **Date:** September 29, 2015

679. [Bartel v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135949 

LB Cited by: 2015 U.S. Dist. LEXIS 135949

Court: Eastern Dist. Pa. | **Date:** September 29, 2015

680. [Grant v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135939 

LB Cited by: 2015 U.S. Dist. LEXIS 135939

Court: Eastern Dist. Pa. | **Date:** September 29, 2015

681. [Nelson v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135934 

LB Cited by: 2015 U.S. Dist. LEXIS 135934
Court: Eastern Dist. Pa. | **Date:** September 29, 2015

682. [Figueroa v. A-C Prod. Liab. Trust](#), 542 B.R. 333 

LB Cited by: 542 B.R. 333 p.345
Court: Eastern Dist. Pa. | **Date:** September 28, 2015

683. [Gaito v. A-C Liab. Trust](#), 542 B.R. 155 

LB Cited by: 542 B.R. 155 p.176
Court: Eastern Dist. Pa. | **Date:** September 28, 2015

684. [Hadsock v. Amerada Hess Corp.](#), 2015 U.S. Dist. LEXIS 135956 

LB Cited by: 2015 U.S. Dist. LEXIS 135956
Court: Eastern Dist. Pa. | **Date:** September 28, 2015

685. [Tesser v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135926 

LB Cited by: 2015 U.S. Dist. LEXIS 135926
Court: Eastern Dist. Pa. | **Date:** September 28, 2015

686. [Jacobs v. A-C Prod. Liab. Trust](#), 2015 U.S. Dist. LEXIS 135922 

LB Cited by: 2015 U.S. Dist. LEXIS 135922
Court: Eastern Dist. Pa. | **Date:** September 28, 2015

687. [Martelli v. Colts Neck Golf & Country Club](#), 2015 U.S. Dist. LEXIS 112034 

LB Cited by: 2015 U.S. Dist. LEXIS 112034
Court: Dist. N.J. | **Date:** August 24, 2015

688. [Bartel v. Charles Kurz & Co.](#), 110 F. Supp. 3d 579 

LB Cited by: 110 F. Supp. 3d 579 p.590
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689. [Urmann v. Walsh](#), 523 B.R. 472 

LB Cited by: 523 B.R. 472 p.482

Court: Western Dist. Pa. | **Date:** October 24, 2014

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690. [In re Cordova](#), 500 B.R. 701 

LB Cited by: 500 B.R. 701 p.705

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691. [Aaroma Holdings, LLC v. Diacetyl Plaintiffs \(In re Emoral, Inc.\)](#), 2013 U.S. Dist. LEXIS 190921 

LB Cited by: 2013 U.S. Dist. LEXIS 190921

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693. [In re W.R. Grace & Co.](#), 475 B.R. 34 

LB Cited by: 475 B.R. 34 p.150

Court: Dist. Del. | **Date:** June 11, 2012

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694. [In re W.R. Grace & Co.](#), 468 B.R. 81 

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LB Cited by: 2011 U.S. Dist. LEXIS 46004

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696. [DeHart v. Michael](#), 446 B.R. 665 

LB Cited by: 446 B.R. 665 p.668

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701. [In re Boyce](#), 2006 U.S. Dist. LEXIS 78680 

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702. [In re Kaiser Aluminum Corp.](#), 343 B.R. 88 

LB Cited by: 343 B.R. 88 p.95

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703. [In re Alexander](#), 2006 U.S. Dist. LEXIS 16564 

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704. [Law Debenture Trust Co. v. Kaiser Aluminum Corp. \(In re Kaiser Aluminum Corp.\)](#), 339 B.R. 91 

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705. [Official Comm. of Unsecured Creditors v. Fleet Retail Fin. Group \(In re Hechinger Inv. Co. of Del., Inc.\)](#), 285 B.R. 601 

LB Cited by: 285 B.R. 601 p.610, p.611

Court: Dist. Del. | **Date:** October 31, 2002

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Court: Bankr. Eastern Dist. Pa. | **Date:** November 2, 2023

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LB Cited by: 2023 Bankr. LEXIS 2304

Court: Bankr. Middle Dist. Pa. | **Date:** September 19, 2023

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LB Cited by: 2023 Bankr. LEXIS 1326

Court: Bankr. Dist. N.J. | **Date:** May 18, 2023

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LB Cited by: 2023 Bankr. LEXIS 1215

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734. [**In re Napier-Lopez**](#), 2023 Bankr. LEXIS 1203 

LB Cited by: 2023 Bankr. LEXIS 1203

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LB Cited by: 2023 Bankr. LEXIS 399

Court: Bankr. Dist. Del. | **Date:** February 16, 2023

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Court: Bankr. Dist. Del. | **Date:** February 16, 2023

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- LB Cited by:** 642 B.R. 504 p.668
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- LB Cited by:** 641 B.R. 576 p.578
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741. [In re Creda Software, Inc.](#), 2022 Bankr. LEXIS 1480 
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Court: Bankr. Dist. Del. | **Date:** May 25, 2022
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Court: Bankr. Dist. N.J. | **Date:** December 8, 2021
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744. [In re Williams](#), 2021 Bankr. LEXIS 1293 
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762. [In re 40 Lakeview Drive, LLC](#), 2017 Bankr. LEXIS 2326 

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Court: Bankr. Dist. N.J. | **Date:** June 15, 2017

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Court: Bankr. Dist. N.J. | **Date:** February 7, 2014

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784. [Carr v. JP Morgan Chase Bank, N.A. \(In re New Century TRS Holdings, Inc.\)](#), 505 B.R. 431 

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786. [In re Scimeca Found., Inc.](#), 497 B.R. 753 

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787. [Burtch v. Opus, L.L.C. \(In re Opus East, L.L.C.\)](#), 2013 Bankr. LEXIS 3150 

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788. [In re New Century TRS Holdings, Inc.](#), 2013 Bankr. LEXIS 2781 

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789. [In re Curry](#), 493 B.R. 447 

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Court: Bankr. Dist. N.J. | **Date:** May 21, 2013

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LB Cited by: 2012 Bankr. LEXIS 4870

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1014 [In re Eberhardt](#), 2021 Bankr. LEXIS 2588 

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1196 [Mitchell v. Greenberg \(In re Creative Entm't, Inc.\)](#), 2003 Bankr. LEXIS 2468 

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1209 [In re Merry-Go-Round Enters.](#), 244 B.R. 327 

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1211 [Mayer v. United States \(In re Reasonover\)](#), 236 B.R. 219 

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1245 [Nexpoint Advisors, L.P. v. Highland Capital Mgmt., L.P. \(In re Highland Capital Mgmt., L.P.\)](#), 48 F.4th 419 

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LB Cited by: 2022 U.S. App. LEXIS 23237

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1320 [In re Archer](#), 2024 Bankr. LEXIS 1449 

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Court: Bankr. Southern Dist. Tex. | **Date:** April 30, 2024

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LB Cited by: 2024 Bankr. LEXIS 259

Court: Bankr. Western Dist. Tex. | **Date:** February 1, 2024

1324 [In re Kalera, Inc.](#), 2023 Bankr. LEXIS 3079 

LB Cited by: 2023 Bankr. LEXIS 3079

Court: Bankr. Southern Dist. Tex. | **Date:** November 30, 2023

1325 [In re Okorie](#), 2023 Bankr. LEXIS 2708 

LB Cited by: 2023 Bankr. LEXIS 2708

Court: Bankr. Southern Dist. Miss. | **Date:** November 6, 2023

1326 [In re Coleman](#), 655 B.R. 441 

LB Cited by: 655 B.R. 441 p.448

Court: Bankr. Northern Dist. Miss. | **Date:** September 28, 2023

1327 [In re M.A.R. Designs & Constr., Inc.](#), 653 B.R. 843 

LB Cited by: 653 B.R. 843 p.872

Court: Bankr. Southern Dist. Tex. | **Date:** September 22, 2023

1328 [In re Fantaci](#), 2023 Bankr. LEXIS 2310 

LB Cited by: 2023 Bankr. LEXIS 2310

Court: Bankr. Eastern Dist. La. | **Date:** September 20, 2023

1329 [Doctors Hosp. at Renaissance, Ltd v. Sanchez \(In re Sanchez\)](#), 652 B.R. 60 

LB Cited by: 652 B.R. 60 p.69

Court: Bankr. Western Dist. Tex. | **Date:** May 31, 2023

1330 [In re Perez](#), 648 B.R. 833 

LB Cited by: 648 B.R. 833 p.838

Court: Bankr. Western Dist. Tex. | **Date:** January 25, 2023

1331 [In re Sylvester](#), 2022 Bankr. LEXIS 1743 

LB Cited by: 2022 Bankr. LEXIS 1743

Court: Bankr. Eastern Dist. La. | **Date:** June 21, 2022

1332 [In re Ozcelebi](#), 639 B.R. 365 

LB Cited by: 639 B.R. 365 p.391

Court: Bankr. Southern Dist. Tex. | **Date:** April 1, 2022

1333 [In re Baker Sales, Inc.](#), 2022 Bankr. LEXIS 306 

LB Cited by: 2022 Bankr. LEXIS 306

Court: Bankr. Eastern Dist. La. | **Date:** February 7, 2022

1334 [In re Marioneaux](#), 2022 Bankr. LEXIS 178 

LB Cited by: 2022 Bankr. LEXIS 178

Court: Bankr. Western Dist. La. | **Date:** January 24, 2022

1335 [In re Heisler](#), 2021 Bankr. LEXIS 3055 

LB Cited by: 2021 Bankr. LEXIS 3055

Court: Bankr. Eastern Dist. La. | **Date:** November 4, 2021

1336 [McCollum v. Donald Norris & Assocs., PLLC \(In re McCollum\)](#), 2021 Bankr. LEXIS 2883 

LB Cited by: 2021 Bankr. LEXIS 2883

Court: Bankr. Northern Dist. Miss. | **Date:** October 19, 2021

1337 [In re Gutierrez](#), 633 B.R. 768 

B Interpreted or construed by: 633 B.R. 768 p.785

B Not applicable in: 633 B.R. 768 p.785

LB Cited by: 633 B.R. 768 p.789

Court: Bankr. Southern Dist. Tex. | **Date:** October 8, 2021

1338 [In re Fieldwood Energy LLC](#), 2021 Bankr. LEXIS 1829 

LB Cited by: 2021 Bankr. LEXIS 1829

Court: Bankr. Southern Dist. Tex. | **Date:** June 25, 2021

1339 [Lowe v. Phillips \(In re Champion Printing & Copying, LLC\)](#), 2021 Bankr. LEXIS 1561 

LB Cited by: 2021 Bankr. LEXIS 1561

Court: Bankr. Western Dist. Tex. | **Date:** June 9, 2021

1340 [In re Heritage Real Estate Inv., Inc.](#), 2021 Bankr. LEXIS 1279 

LB Cited by: 2021 Bankr. LEXIS 1279

Court: Bankr. Southern Dist. Miss. | **Date:** May 12, 2021

1341 [In re Mohiuddin](#), 627 B.R. 875 

LB Cited by: 627 B.R. 875 p.881

Court: Bankr. Southern Dist. Tex. | **Date:** May 7, 2021

1342 [Mims v. Matrix Trust Co. \(In re Vantage Benefits Adm'rs\)](#), 2021 Bankr. LEXIS 1195 

B **Interpreted or construed by:** 2021 Bankr. LEXIS 1195

Court: Bankr. Northern Dist. Tex. | **Date:** May 5, 2021

1343 [In re Heritage Real Estate Inv.](#), 2021 Bankr. LEXIS 1124 

LB **Cited by:** 2021 Bankr. LEXIS 1124

Court: Bankr. Southern Dist. Miss. | **Date:** April 27, 2021

1344 [In re Sylvester](#), 2021 Bankr. LEXIS 938 

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Court: Bankr. Eastern Dist. La. | **Date:** April 8, 2021

1345 [In re Heritage Real Estate Inv.](#), 2021 Bankr. LEXIS 593 

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Court: Bankr. Southern Dist. Miss. | **Date:** March 12, 2021

1346 [In re SSA Retail Mgmt. LLC](#), 2021 Bankr. LEXIS 554 

LB **Cited by:** 2021 Bankr. LEXIS 554

Court: Bankr. Northern Dist. Tex. | **Date:** February 26, 2021

1347 [Heritage Real Estate Inv., Inc. v. Edwards \(In re Heritage Real Estate Inv., Inc.\)](#), 2021 Bankr. LEXIS 290 

LB **Cited by:** 2021 Bankr. LEXIS 290

Court: Bankr. Southern Dist. Miss. | **Date:** February 4, 2021

1348 [Heritage Real Estate Inv., Inc. v. Edwards \(In re Heritage Real Estate Inv., Inc.\)](#), 2021 Bankr. LEXIS 278 

LB **Cited by:** 2021 Bankr. LEXIS 278

Court: Bankr. Southern Dist. Miss. | **Date:** February 4, 2021

1349 [Foster v. Holder \(In re Foster\)](#), 2020 Bankr. LEXIS 3045 

LB Cited by: 2020 Bankr. LEXIS 3045
Court: Bankr. Northern Dist. Tex. | **Date:** October 30, 2020

1350 [In re Jenkins](#), 2020 Bankr. LEXIS 2991 

LB Cited by: 2020 Bankr. LEXIS 2991
Court: Bankr. Northern Dist. Miss. | **Date:** October 22, 2020

1351 [Foster v. Holder \(In re Foster\)](#), 2020 Bankr. LEXIS 2877 

LB Cited by: 2020 Bankr. LEXIS 2877
Court: Bankr. Northern Dist. Tex. | **Date:** October 15, 2020

1352 N.D. v. Corbett, 2020 Bankr. LEXIS 2473

LB Cited by:
Court: Bankr. Northern Dist. Ala. | **Date:** September 21, 2020

1353 [In re Heritage Real Estate Inv.](#), 2020 Bankr. LEXIS 3656 

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Court: Bankr. Southern Dist. Miss. | **Date:** September 9, 2020

1354 [In re Dickerson](#), 2020 Bankr. LEXIS 2347 

LB Cited by: 2020 Bankr. LEXIS 2347
Court: Bankr. Middle Dist. La. | **Date:** September 1, 2020

1355 [Viegelahn v. Ruben's Auto Sales \(In re Daniel\)](#), 619 B.R. 635 

LB Cited by: 619 B.R. 635 p.642
Court: Bankr. Western Dist. Tex. | **Date:** August 5, 2020

1356 [Mansfield Oil Co. v. Capitala Fin. Corp. \(In re On-Site Fuel Serv.\)](#), 2020 Bankr. LEXIS 1258 

LB Cited by: 2020 Bankr. LEXIS 1258
Court: Bankr. Southern Dist. Miss. | **Date:** May 8, 2020

1357 [In re Jackson](#), 2020 Bankr. LEXIS 2207 

LB Cited by: 2020 Bankr. LEXIS 2207
Court: Bankr. Northern Dist. Tex. | **Date:** May 4, 2020

1358 [Barkley v. Santander Consumer USA Inc. \(In re Martin\)](#), 617 B.R. 866 

LB Cited by: 617 B.R. 866 p.877
Court: Bankr. Southern Dist. Miss. | **Date:** March 30, 2020

1359 [Murphy Oil USA, Inc. v. Lymon \(In re Lymon\)](#), 2020 Bankr. LEXIS 111 

LB Cited by: 2020 Bankr. LEXIS 111
Court: Bankr. Eastern Dist. La. | **Date:** January 15, 2020

1360 [In re Baribeau](#), 603 B.R. 797 

LB Cited by: 603 B.R. 797 p.801
Court: Bankr. Western Dist. Tex. | **Date:** August 20, 2019

1361 [In re Grigsby](#), 2019 Bankr. LEXIS 817 

LB Cited by: 2019 Bankr. LEXIS 817
Court: Bankr. Western Dist. La. | **Date:** March 13, 2019

1362 [In re Long](#), 2019 Bankr. LEXIS 736 

LB Cited by: 2019 Bankr. LEXIS 736
Court: Bankr. Eastern Dist. Tex. | **Date:** March 7, 2019

1363 [Smith v. Wilburn \(In re Delta Invs. & Dev.\)](#), 2019 Bankr. LEXIS 58 

LB Cited by: 2019 Bankr. LEXIS 58
Court: Bankr. Southern Dist. Miss. | **Date:** January 8, 2019

1364 [In re Black Elk Energy Offshore Operations, LLC](#), 2018 Bankr. LEXIS 3683 

LB Cited by: 2018 Bankr. LEXIS 3683

Court: Bankr. Southern Dist. Tex. | **Date:** November 21, 2018

1365 [In re 18 Audubon Place, LLC](#), 2018 Bankr. LEXIS 3331 

LB Cited by: 2018 Bankr. LEXIS 3331

Court: Bankr. Eastern Dist. La. | **Date:** October 30, 2018

1366 [In re Weathers](#), 2018 Bankr. LEXIS 4333 

LB Cited by: 2018 Bankr. LEXIS 4333

Court: Bankr. Eastern Dist. Tex. | **Date:** July 3, 2018

1367 [Martinec v. Smith \(In re IFS Fin. Corp.\)](#), 2018 Bankr. LEXIS 1941 

LB Cited by: 2018 Bankr. LEXIS 1941

Court: Bankr. Southern Dist. Tex. | **Date:** June 24, 2018

1368 [Segner v. Admiral Ins. Co. \(In re Palmaز Sci., Inc.\)](#), 2018 Bankr. LEXIS 1659 

LB Cited by: 2018 Bankr. LEXIS 1659

Court: Bankr. Western Dist. Tex. | **Date:** June 4, 2018

1369 [In re Lincoln](#), 2018 Bankr. LEXIS 1473 

LB Cited by: 2018 Bankr. LEXIS 1473

Court: Bankr. Eastern Dist. La. | **Date:** May 18, 2018

1370 [Johnson v. Edwards Family P'ship, LP \(In re Cmtv. Home Fin. Servs.\)](#), 583 B.R. 1 

LB Cited by: 2018 Bankr. LEXIS 577

Court: Bankr. Southern Dist. Miss. | **Date:** February 27, 2018

1371 [In re Odam](#), 2018 Bankr. LEXIS 503 

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Court: Bankr. Northern Dist. Tex. | **Date:** February 22, 2018

1372 [In re Hydroscience Techs., Inc.](#), 2018 Bankr. LEXIS 370 

LB Cited by:

Court: Bankr. Northern Dist. Tex. | **Date:** January 31, 2018

1373 [Martinec v. Smith \(In re IFS Fin. Corp.\)](#), 580 B.R. 483 

LB Cited by: 580 B.R. 483 p.487

Court: Bankr. Southern Dist. Tex. | **Date:** November 9, 2017

1374 [Tow v. Park Lake Cmtys., LP \(In re Royce Homes, LP\)](#), 578 B.R. 748 

LB Cited by: 578 B.R. 748 p.759, p.763

Court: Bankr. Southern Dist. Tex. | **Date:** November 2, 2017

1375 [In re DeRosa-Grund](#), 567 B.R. 773 

G Followed by: 567 B.R. 773 p.788

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1376 [In re Gonzales](#), 570 B.R. 788 

LB Cited by: 570 B.R. 788 p.796

Court: Bankr. Southern Dist. Tex. | **Date:** May 17, 2017

1377 [In re Forest Park Med. Ctr. at Fort Worth, LLC](#), 2017 Bankr. LEXIS 1235 

LB Cited by:

Court: Bankr. Northern Dist. Tex. | **Date:** May 4, 2017

1378 [In re Cmty. Home Fin. Servs.](#), 2017 Bankr. LEXIS 1191 

LB Cited by: 2017 Bankr. LEXIS 1191

Court: Bankr. Southern Dist. Miss. | **Date:** May 1, 2017

1379 [In re Cmtys. Home Fin. Servs.](#), 2017 Bankr. LEXIS 1187 

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Court: Bankr. Southern Dist. Miss. | **Date:** May 1, 2017

1380 [In re Velazquez](#), 570 B.R. 251 

LB Cited by: 570 B.R. 251 p.264

Court: Bankr. Southern Dist. Tex. | **Date:** April 17, 2017

1381 [Baron v. Sherman \(In re Ondova Ltd. Co.\)](#), 2017 Bankr. LEXIS 325 

LB Cited by: 2017 Bankr. LEXIS 325

Court: Bankr. Northern Dist. Tex. | **Date:** February 1, 2017

1382 [Henley v. Malouf \(In re Roberts\)](#), 556 B.R. 266 

LB Cited by: 556 B.R. 266 p.277

Court: Bankr. Southern Dist. Miss. | **Date:** August 22, 2016

1383 [Robinson v. JH Portfolio Debt Equities, LLC \(In re Robinson\)](#), 554 B.R. 800 

LB Cited by: 554 B.R. 800 p.814, p.816

Court: Bankr. Western Dist. La. | **Date:** July 28, 2016

1384 [Villarreal v. N.Y. Marine & Gen. Ins. Co. \(In re OGA Charters, LLC\)](#), 554 B.R. 415 

LB Cited by: 554 B.R. 415 p.426

Court: Bankr. Southern Dist. Tex. | **Date:** July 27, 2016

1385 [In re McCarthy](#), 554 B.R. 388 

LB Cited by: 554 B.R. 388 p.394

Court: Bankr. Western Dist. Tex. | **Date:** July 21, 2016

1386 [In re Crawford](#), 2016 Bankr. LEXIS 2695 

LB Cited by: 2016 Bankr. LEXIS 2695

Court: Bankr. Western Dist. Tex. | **Date:** July 21, 2016

1387 [In re McCollom Interests, LLC](#), 551 B.R. 292 

LB Cited by: 551 B.R. 292 p.300

Court: Bankr. Southern Dist. Tex. | **Date:** June 10, 2016

1388 [In re Adilace Holdings, Inc.](#), 548 B.R. 458 

LB Cited by: 548 B.R. 458 p.461

Court: Bankr. Western Dist. Tex. | **Date:** March 28, 2016

1389 [In re King](#), 546 B.R. 682 

LB Cited by: 546 B.R. 682 p.686, p.694, p.695, p.698, p.732

Court: Bankr. Southern Dist. Tex. | **Date:** March 18, 2016

1390 [In re Clean Fuel Techs. II, LLC](#), 544 B.R. 591 

LB Cited by: 544 B.R. 591 p.606

Court: Bankr. Western Dist. Tex. | **Date:** February 4, 2016

1391 [Leonard v. Wells Fargo Home Mortg. Co. \(In re Leonard\)](#), 2015 Bankr. LEXIS 3686 

LB Cited by: 2015 Bankr. LEXIS 3686

Court: Bankr. Northern Dist. Miss. | **Date:** October 29, 2015

1392 [In re Cmty. Home Fin. Servs.](#), 2015 Bankr. LEXIS 3670 

LB Cited by: 2015 Bankr. LEXIS 3670

Court: Bankr. Southern Dist. Miss. | **Date:** October 27, 2015

1393 [Blalock v. Miss. Dep't of Rev. \(In re Blalock\)](#), 537 B.R. 284 

LB Cited by: 537 B.R. 284 p.293

Court: Bankr. Southern Dist. Miss. | **Date:** September 14, 2015

1394 [In re Howard](#), 533 B.R. 532 

LB Cited by: 533 B.R. 532 p.544

Court: Bankr. Southern Dist. Miss. | **Date:** July 23, 2015

1395 [Trevino v. HSBC Mortg. Servs. \(In re Trevino\)](#), 535 B.R. 110 

LB Cited by: 535 B.R. 110 p.138

Court: Bankr. Southern Dist. Tex. | **Date:** June 19, 2015

1396 [Trevino v. HSBC Mortg. Servs. \(In re Trevino\)](#), 533 B.R. 176 

LB Cited by: 533 B.R. 176 p.204

Court: Bankr. Southern Dist. Tex. | **Date:** June 19, 2015

1397 [First Bank v. Adams \(In re Adams\)](#), 2015 Bankr. LEXIS 1415 

LB Cited by: 2015 Bankr. LEXIS 1415

Court: Bankr. Southern Dist. Miss. | **Date:** April 22, 2015

1398 [In re Lee](#), 2015 Bankr. LEXIS 757 

LB Cited by: 2015 Bankr. LEXIS 757

Court: Bankr. Southern Dist. Tex. | **Date:** March 11, 2015

1399 [In re Vuong](#), 525 B.R. 61 

LB Cited by: 525 B.R. 61 p.65

Court: Bankr. Southern Dist. Tex. | **Date:** February 4, 2015

1400 [In re LTHM Houston - Operations, LLC](#), 2014 Bankr. LEXIS 4894 

LB Cited by: 2014 Bankr. LEXIS 4894

Court: Bankr. Southern Dist. Tex. | **Date:** December 2, 2014

1401 [In re Wilson](#), 2014 Bankr. LEXIS 3151 

LB Cited by: 2014 Bankr. LEXIS 3151

Court: Bankr. Northern Dist. Tex. | **Date:** July 24, 2014

1402 [Cage v. Smith \(In re Smith\)](#), 521 B.R. 767 

LB Cited by: 521 B.R. 767 p.776

Court: Bankr. Southern Dist. Tex. | **Date:** June 10, 2014

1403 [In re Edwards](#), 510 B.R. 554 

LB Cited by: 510 B.R. 554 p.558

Court: Bankr. Southern Dist. Tex. | **Date:** April 9, 2014

1404 [In re Aycock](#), 2014 Bankr. LEXIS 1051 

LB Cited by: 2014 Bankr. LEXIS 1051

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1405 [In re Reeves](#), 509 B.R. 35 

LB Cited by: 509 B.R. 35 p.46, p.55, p.62, p.77

Court: Bankr. Southern Dist. Tex. | **Date:** January 29, 2014

1406 [In re J. Co. Med. Mgmt.](#), 2013 Bankr. LEXIS 5572 

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Court: Bankr. Middle Dist. La. | **Date:** November 6, 2013

1407 [In re Robinson](#), 2013 Bankr. LEXIS 4268 

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Court: Bankr. Southern Dist. Miss. | **Date:** October 9, 2013

1408 [In re Bergenholtz](#), 2013 Bankr. LEXIS 2769 

LB Cited by: 2013 Bankr. LEXIS 2769

Court: Bankr. Eastern Dist. Tex. | **Date:** July 10, 2013

1409 [Henderson v. Legal Helpers Debt Resolution, L.L.L \(In re Huffman\)](#), 2013 Bankr. LEXIS 2381 

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1410 [Henderson v. Legal helpers Debt Resolution, L.L.C. \(In re Huffman\)](#), 486 B.R. 343 

LB Cited by: 486 B.R. 343 p.354

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1411 [In re Tex. Wyo. Drilling, Inc.](#), 486 B.R. 746 

LB Cited by: 486 B.R. 746 p.750

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1412 [In re City of Angel, LLC](#), 2012 Bankr. LEXIS 5864 

LB Cited by: 2012 Bankr. LEXIS 5864

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1413 [Hymond](#), 2012 Bankr. LEXIS 5861 

LB Cited by: 2012 Bankr. LEXIS 5861

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1414 [In re Bechuck](#), 472 B.R. 371 

LB Cited by: 472 B.R. 371 p.375

Court: Bankr. Southern Dist. Tex. | **Date:** April 4, 2012

1415 [Willson v. Vanderlick \(In re Cent. La. Grain Coop., Inc.\)](#), 467 B.R. 390 

LB Cited by: 467 B.R. 390 p.397

Court: Bankr. Western Dist. La. | **Date:** January 31, 2012

1416 [Lowe v. Kaspar-Wells \(In re Wells\)](#), 448 B.R. 909 

LB Cited by: 448 B.R. 909 p.911

Court: Bankr. Western Dist. Tex. | **Date:** February 10, 2011

1417 [Airport Blvd. Apts. Ltd. v. NE 40 Partners, L.P. \(In re NE 40 Partners, L.P.\)](#), 440 B.R. 124 

LB Cited by: 440 B.R. 124 p.129

Court: Bankr. Southern Dist. Tex. | **Date:** November 12, 2010

1418 [In re Lyons](#), 439 B.R. 401 

LB Cited by: 439 B.R. 401 p.405

Court: Bankr. Southern Dist. Tex. | **Date:** November 4, 2010

1419 [United States v. Liberty Mut. Sur. \(In re Schooler\)](#), 449 B.R. 502 

LB Cited by: 449 B.R. 502 p.512, p.521

Court: Bankr. Northern Dist. Tex. | **Date:** September 30, 2010

1420 [In re Jack Kline Co.](#), 440 B.R. 712 

LB Cited by: 440 B.R. 712 p.738

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1421 [In re McCombs](#), 436 B.R. 421 

LB Cited by: 436 B.R. 421 p.433

Court: Bankr. Southern Dist. Tex. | **Date:** August 17, 2010

1422 [Chizk v. Ramon \(In re Ramon\)](#), 433 B.R. 571 

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1424 [In re Ezzell](#), 438 B.R. 108 

LB Cited by: 438 B.R. 108 p.121

Court: Bankr. Southern Dist. Tex. | **Date:** March 9, 2010

1425 [Kollmeyer v. Aetna Life Ins. Co. \(In re Heritage Southwest Med. Group, P.A.\)](#), 423 B.R. 809 

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Court: Bankr. Northern Dist. Tex. | **Date:** February 9, 2010

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1427 [In re Royce Homes, LP](#), 2009 Bankr. LEXIS 2986 

LB Cited by: 2009 Bankr. LEXIS 2986

Court: Bankr. Southern Dist. Tex. | **Date:** September 22, 2009

1428 [West v. Hsu \(In re Advanced Modular Power Sys.\)](#), 413 B.R. 643 

LB Cited by: 413 B.R. 643 p.668

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1429 [In re Jolly Props.](#), 2009 Bankr. LEXIS 2162 

LB Cited by: 2009 Bankr. LEXIS 2162

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1430 [In re Curry](#), 409 B.R. 831 

LB Cited by: 409 B.R. 831 p.837

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1431 [In re Red River Energy, Inc.](#), 409 B.R. 163 

LB Cited by: 409 B.R. 163 p.181

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1432 [Reed v. Cooper \(In re Cooper\)](#), 405 B.R. 801 

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Court: Bankr. Southern Dist. Tex. | **Date:** April 16, 2008

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1440 [In re Buffington](#), 2007 Bankr. LEXIS 4152 

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1441 [In re Morgan](#), 2007 Bankr. LEXIS 3090 

LB Cited by:

Court: Bankr. Northern Dist. Tex. | **Date:** September 6, 2007

1442 [In re Brook Mays Music Co.](#), 2007 Bankr. LEXIS 2902 

LB Cited by:

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1443 [In re Cadwallder](#), 2007 Bankr. LEXIS 2260 

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1444 [In re Williams](#), 2007 Bankr. LEXIS 4694 

LB Cited by: 2007 Bankr. LEXIS 4694

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1445 [In re Sissom](#), 366 B.R. 677 

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1448 [Rugbusters, Inc. v. Savage \(In re Savage\)](#), 2007 Bankr. LEXIS 1351 

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1450 [In re Singletary](#), 354 B.R. 455 

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1451 [In re Oliver](#), 350 B.R. 294 

LB Cited by: 350 B.R. 294 p.296

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1452 [In re Miller](#), 347 B.R. 48 

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1454 [In re Bio-Med Servs. Corp.](#), 2005 Bankr. LEXIS 1425 

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1455 [In re Watson](#), 2004 Bankr. LEXIS 2318 

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1601 [Farinash v. Henry \(In re River City Resort, Inc.\)](#), 2024 Bankr. LEXIS 530 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** March 5, 2024

1602 [In re Marcucci](#), 655 B.R. 712 

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1608 [Anderson v. United States \(In re Anderson\)](#), 650 B.R. 510 

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1615 [In re Skandis](#), 2022 Bankr. LEXIS 1928 

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1616 [In re Adams](#), 641 B.R. 147 

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1617 [In re Moore](#), 2022 Bankr. LEXIS 223 

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1618 [Miller v. Sullivan \(In re Wylie\)](#), 635 B.R. 479 

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1622 [In re Main St. Tours, Inc.](#), 2021 Bankr. LEXIS 1581 

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1627 [Sweet v. Duggan \(In re Wyman\)](#), 2021 Bankr. LEXIS 621 

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1631 [In re Arnoff](#), 2020 Bankr. LEXIS 3630 

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1651 [In re Saba](#), 2019 Bankr. LEXIS 905 

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1652 [In re Boone](#), 2018 Bankr. LEXIS 3429 

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1653 [In re Bush](#), 593 B.R. 600 

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1654 [In re Mercury Data Sys.](#), 2018 Bankr. LEXIS 3067 

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1661 [In re Ward](#), 2017 Bankr. LEXIS 4149 

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1662 [In re Webster](#), 2017 Bankr. LEXIS 4100 

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1664 [In re Arndt](#), 2017 Bankr. LEXIS 3834 

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1665 [In re Dinoto](#), 576 B.R. 835 

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1667 [In re Lundy](#), 2017 Bankr. LEXIS 3317 

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1668 [In re Hodges](#), 2017 Bankr. LEXIS 4624 

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1669 [In re Afshari](#), 2017 Bankr. LEXIS 4593 

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Court: 6th Circuit Bankr. Appellate Panel | **Date:** March 9, 2017

1674 [In re Reed](#), 2017 Bankr. LEXIS 4695 

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Court: Bankr. Eastern Dist. Mich. | **Date:** March 1, 2017

1675 [In re Felix](#), 562 B.R. 700 

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Court: Bankr. Southern Dist. Ohio | **Date:** January 23, 2017

1676 [In re Villarreal](#), 563 B.R. 264 

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1679 [In re Cibella](#), 560 B.R. 494 

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Court: Bankr. Western Dist. Tenn. | **Date:** March 9, 2016

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1687 [In re Morgan](#), 2015 Bankr. LEXIS 3940 

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Court: Bankr. Western Dist. Mich. | **Date:** November 16, 2015

1688 [McDermott v. Davis \(In re Davis\)](#), 538 B.R. 368 

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Court: Bankr. Southern Dist. Ohio | **Date:** September 30, 2015

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Court: Bankr. Eastern Dist. Mich. | **Date:** September 25, 2015

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1692 [In re Walker](#), 2015 Bankr. LEXIS 3073 

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1693 [In re Purdy](#), 2015 Bankr. LEXIS 2938 

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1694 [In re Licking River Mining, LLC](#), 535 B.R. 731 

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Court: Bankr. Eastern Dist. Mich. | **Date:** July 31, 2015

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Court: Bankr. Northern Dist. Ohio | **Date:** July 28, 2015

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1698 [In re Huepenbecker](#), 546 B.R. 381 

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1699 [Perkins v. LVNV Funding, LLC \(In re Perkins\)](#), 533 B.R. 242 

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Court: Bankr. Western Dist. Mich. | **Date:** July 8, 2015

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Court: 6th Circuit Bankr. Appellate Panel | **Date:** June 22, 2015

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1704 [In re Brown](#), 2015 Bankr. LEXIS 1026 

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Court: Bankr. Eastern Dist. Mich. | **Date:** April 1, 2015

1705 [In re Emmerson](#), 2015 Bankr. LEXIS 1112 

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Court: Bankr. Western Dist. Mich. | **Date:** March 27, 2015

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Court: Bankr. Middle Dist. Tenn. | **Date:** February 26, 2015

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Court: Bankr. Southern Dist. Ohio | **Date:** February 5, 2015

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LB Cited by: 2015 Bankr. LEXIS 50

Court: Bankr. Northern Dist. Ohio | **Date:** January 7, 2015

1709 [In re Alexander](#), 2014 Bankr. LEXIS 4479 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** October 21, 2014

1710 [In re Way](#), 2014 Bankr. LEXIS 3985 

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1711 [In re Cade](#), 552 B.R. 800 

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1712 [In re Wade](#), 2014 Bankr. LEXIS 5366 A

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1713 [Kohut v. Lenaway \(In re Lennys Copy Ctr. & More LLC\)](#), 515 B.R. 562 ♦

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Court: Bankr. Western Dist. Tenn. | **Date:** July 3, 2014

1715 [Still v. Bowers \(In re McKenzie\)](#), 510 B.R. 573 A

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Court: Bankr. Eastern Dist. Tenn. | **Date:** May 16, 2014

1716 [Wilhoite v. Lemah \(In re Wilhoite\)](#), 2014 Bankr. LEXIS 2153 ▲

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Court: Bankr. Middle Dist. Tenn. | **Date:** May 14, 2014

1717 [In re Stahl](#), 2014 Bankr. LEXIS 1327 A

LB Cited by: 2014 Bankr. LEXIS 1327

Court: Bankr. Northern Dist. Ohio | **Date:** April 2, 2014

1718 [In re Brown](#), 2014 Bankr. LEXIS 1018 A

LB Cited by: 2014 Bankr. LEXIS 1018

Court: 6th Circuit Bankr. Appellate Panel | **Date:** March 17, 2014

1719 [TTOD Liquidation, Inc. v. Jin Lim \(In re Dott Acquisition, LLC\)](#), 520 B.R. 588 A

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Court: Bankr. Eastern Dist. Mich. | **Date:** February 11, 2014

1721 [In re Seven Counties Servs., Inc.](#), 2014 Bankr. LEXIS 80 

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Court: Bankr. Western Dist. Ky. | **Date:** January 9, 2014

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LB Cited by: 2013 Bankr. LEXIS 3352

Court: Bankr. Northern Dist. Ohio | **Date:** August 16, 2013

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LB Cited by: 2013 Bankr. LEXIS 5744

Court: Bankr. Western Dist. Tenn. | **Date:** August 13, 2013

1725 [In re Hodges](#), 2013 Bankr. LEXIS 1672 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** April 24, 2013

1726 [In re Schmakel](#), 2013 Bankr. LEXIS 611 

LB Cited by: 2013 Bankr. LEXIS 611

Court: Bankr. Northern Dist. Ohio | **Date:** February 14, 2013

1727 [Hagemeyer v. Peachy Adventures, LLC \(In re Neal\)](#), 2013 Bankr. LEXIS 5738 A

LB Cited by: 2013 Bankr. LEXIS 5738

Court: Bankr. Western Dist. Tenn. | **Date:** February 4, 2013

1728 [In re McInerney](#), 490 B.R. 540 +

LB Cited by: 490 B.R. 540 p.548

Court: Bankr. Eastern Dist. Mich. | **Date:** January 30, 2013

1729 [In re TIC Memphis RI 13, LLC](#), 2013 Bankr. LEXIS 2942 A

LB Cited by: 2013 Bankr. LEXIS 2942

Court: Bankr. Western Dist. Tenn. | **Date:** January 10, 2013

1730 [In re DeGroot](#), 484 B.R. 311 ▲

LB Cited by: 484 B.R. 311 p.315, p.317

Court: 6th Circuit Bankr. Appellate Panel | **Date:** December 27, 2012

1731 [In re Miller](#), 2012 Bankr. LEXIS 5907 A

LB Cited by: 2012 Bankr. LEXIS 5907

Court: 6th Circuit Bankr. Appellate Panel | **Date:** December 27, 2012

1732 [Johnston v. City of Middletown \(In re Johnston\)](#), 484 B.R. 698 ▲

LB Cited by: 484 B.R. 698 p.720

Court: Bankr. Southern Dist. Ohio | **Date:** December 21, 2012

1733 [Lunan v. Jones \(In re Lunan\)](#), 489 B.R. 711 ▲

LB Cited by: 489 B.R. 711 p.724

Court: Bankr. Eastern Dist. Tenn. | **Date:** November 21, 2012

1734 [United States v. Robinson \(In re Robinson\)](#), 483 B.R. 147

LB Cited by: 483 B.R. 147 p.154

Court: Bankr. Western Dist. Tenn. | **Date:** November 21, 2012

1735 [Waldschmidt v. Bank of Am., N.A. \(In re Wheeler\)](#), 2012 Bankr. LEXIS 5048 

LB Cited by: 2012 Bankr. LEXIS 5048

Court: Bankr. Middle Dist. Tenn. | **Date:** October 26, 2012

1736 [Layne v. Nolan \(In re Layne\)](#), 2012 Bankr. LEXIS 4978 

LB Cited by: 2012 Bankr. LEXIS 4978

Court: Bankr. Middle Dist. Tenn. | **Date:** October 22, 2012

1737 [In re Racsko](#), 2012 Bankr. LEXIS 3494 

LB Cited by: 2012 Bankr. LEXIS 3494

Court: Bankr. Eastern Dist. Tenn. | **Date:** July 30, 2012

1738 [In re Cassetto](#), 475 B.R. 874 

LB Cited by: 475 B.R. 874 p.878

Court: Bankr. Northern Dist. Ohio | **Date:** July 25, 2012

1739 [In re McFadden](#), 477 B.R. 686 

LB Cited by: 477 B.R. 686 p.693

Court: Bankr. Northern Dist. Ohio | **Date:** July 19, 2012

1740 [In re Trailer Source, Inc.](#), 474 B.R. 846 

LB Cited by: 474 B.R. 846 p.853

Court: Bankr. Middle Dist. Tenn. | **Date:** July 3, 2012

1741 [Church J.V. v. Blasingame \(In re Blasingame\)](#), 472 B.R. 754 

LB Cited by: 472 B.R. 754 p.758

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1742 [In re Liber](#), 2012 Bankr. LEXIS 2244 

LB Cited by: 2012 Bankr. LEXIS 2244

Court: Bankr. Northern Dist. Ohio | **Date:** May 18, 2012

1743 [Bowers v. Banks \(In re McKenzie\)](#), 473 B.R. 274 

LB Cited by: 473 B.R. 274 p.283

Court: Bankr. Eastern Dist. Tenn. | **Date:** May 14, 2012

1744 [Grant, Konvalinka & Harrison, P.C. v. Banks \(In re McKenzie\)](#), 472 B.R. 455 

LB Cited by: 472 B.R. 455 p.467, p.469

Court: Bankr. Eastern Dist. Tenn. | **Date:** March 30, 2012

1745 [Grant, Konvalinka & Harrison, P.C. v. Still \(In re McKenzie\)](#), 471 B.R. 884 

LB Cited by: 471 B.R. 884 p.900, p.901

Court: Bankr. Eastern Dist. Tenn. | **Date:** March 30, 2012

1746 [In re St. Vincent](#), 2012 Bankr. LEXIS 1412 

LB Cited by: 2012 Bankr. LEXIS 1412

Court: Bankr. Western Dist. Mich. | **Date:** March 12, 2012

1747 [In re Channakhon](#), 465 B.R. 132 

B Interpreted or construed by: 465 B.R. 132 p.138

Court: Bankr. Southern Dist. Ohio | **Date:** February 24, 2012

1748 [Smoky Mt. Title, Inc. v. Tenn. State Bank \(In re Thomas Homes, LLC\)](#), 2012 Bankr. LEXIS 154 

LB Cited by: 2012 Bankr. LEXIS 154

Court: Bankr. Eastern Dist. Tenn. | **Date:** January 17, 2012

1749 [In re Wolf](#), 2012 Bankr. LEXIS 114 

LB Cited by: 2012 Bankr. LEXIS 114
Court: Bankr. Eastern Dist. Ky. | **Date:** January 6, 2012

1750 [In re Hyneman](#), 2011 Bankr. LEXIS 5025 

LB Cited by: 2011 Bankr. LEXIS 5025
Court: Bankr. Western Dist. Tenn. | **Date:** December 16, 2011

1751 [Mounts v. Blake \(In re Blake\)](#), 2011 Bankr. LEXIS 4956 

LB Cited by: 2011 Bankr. LEXIS 4956
Court: Bankr. Northern Dist. Ohio | **Date:** December 15, 2011

1752 [In re McLean Wine Co.](#), 463 B.R. 838 

LB Cited by: 463 B.R. 838 p.848
Court: Bankr. Eastern Dist. Mich. | **Date:** December 14, 2011

1753 [Khan v. Regions Bank \(In re Khan\)](#), 2011 Bankr. LEXIS 4946 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** December 13, 2011

1754 [In re Rice](#), 462 B.R. 651 

LB Cited by: 462 B.R. 651 p.656
Court: 6th Circuit Bankr. Appellate Panel | **Date:** December 5, 2011

1755 [In re Mobley](#), 2011 Bankr. LEXIS 4565 

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Court: Bankr. Eastern Dist. Mich. | **Date:** December 1, 2011

1756 [In re DeGroot](#), 460 B.R. 159 

LB Cited by: 460 B.R. 159 p.164, p.170
Court: Bankr. Western Dist. Mich. | **Date:** November 23, 2011

1757 [In re Fletcher](#), 463 B.R. 9 

LB Cited by: 463 B.R. 9 p.10
Court: Bankr. Eastern Dist. Ky. | **Date:** November 10, 2011

1758 [In re Felgner](#), 2011 Bankr. LEXIS 4118 

LB Cited by: 2011 Bankr. LEXIS 4118
Court: Bankr. Northern Dist. Ohio | **Date:** October 24, 2011

1759 [In re Kuhns](#), 2011 Bankr. LEXIS 3900 

LB Cited by: 2011 Bankr. LEXIS 3900
Court: Bankr. Northern Dist. Ohio | **Date:** October 7, 2011

1760 [Grant, Konvalinka & Harrison, P.C. v. Leroy \(In re McKenzie\)](#), 2011 Bankr. LEXIS 5600 

LB Cited by: 2011 Bankr. LEXIS 5600
Court: Bankr. Eastern Dist. Tenn. | **Date:** September 30, 2011

1761 [In re Hufford](#), 460 B.R. 172 

LB Cited by: 460 B.R. 172 p.175
Court: Bankr. Northern Dist. Ohio | **Date:** September 29, 2011

1762 [Khan v. Regions Bank \(In re Khan\)](#), 2011 Bankr. LEXIS 3786 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** September 29, 2011

1763 [Meoli v. Huntington Nat'l Bank \(In re Teleservices Group, Inc.\)](#), 456 B.R. 318 

LB Cited by: 456 B.R. 318 p.333
Court: Bankr. Western Dist. Mich. | **Date:** August 17, 2011

1764 [In re Alexander](#), 456 B.R. 298 

LB Cited by: 456 B.R. 298 p.301

Court: Bankr. Western Dist. Ky. | **Date:** August 17, 2011

1765 [Konvalinka & Harrison, P.C. v. Banks \(In re McKenzie\)](#), 2011 Bankr. LEXIS 3115 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** August 12, 2011

1766 [In re McKenzie](#), 2011 Bankr. LEXIS 3026 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** August 5, 2011

1767 [In re Smithey](#), 2011 Bankr. LEXIS 2869 

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Court: Bankr. Northern Dist. Ohio | **Date:** July 25, 2011

1768 [In re McKenzie](#), 2011 Bankr. LEXIS 2830 

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Court: Bankr. Eastern Dist. Tenn. | **Date:** July 21, 2011

1769 [In re Zingale](#), 451 B.R. 412 

LB Cited by: 451 B.R. 412 p.418

Court: 6th Circuit Bankr. Appellate Panel | **Date:** June 15, 2011

1770 [In re McKenzie](#), 453 B.R. 737 

LB Cited by: 453 B.R. 737 p.741

Court: Bankr. Eastern Dist. Tenn. | **Date:** April 21, 2011

1771 [Slone v. Vallo \(In re Starr\)](#), 2011 Bankr. LEXIS 947 

LB Cited by: 2011 Bankr. LEXIS 947

Court: Bankr. Southern Dist. Ohio | **Date:** March 24, 2011

1772 [Newton v. Bank of Am. \(In re Greene\)](#), 2011 Bankr. LEXIS 908 

LB Cited by: 2011 Bankr. LEXIS 908

Court: Bankr. Eastern Dist. Tenn. | **Date:** March 11, 2011

1773 [S lone v. Lorenz \(In re Lorenz\)](#), 2011 Bankr. LEXIS 738 

LB Cited by: 2011 Bankr. LEXIS 738

Court: Bankr. Southern Dist. Ohio | **Date:** March 8, 2011

1774 [In re Ladd](#), 448 B.R. 207 

LB Cited by: 448 B.R. 207 p.209

Court: Bankr. Northern Dist. Ohio | **Date:** January 27, 2011

1775 [In re Streeter](#), 2011 Bankr. LEXIS 87

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1776 [Leicht v. Anspach \(In re Anspach\)](#), 475 B.R. 612 

LB Cited by: 475 B.R. 612 p.614

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1778 [In re Wengerd](#), 2010 Bankr. LEXIS 3643 

LB Cited by: 2010 Bankr. LEXIS 3643

Court: Bankr. Northern Dist. Ohio | **Date:** October 14, 2010

1779 [In re Spring Creek Air Park, Inc.](#), 2010 Bankr. LEXIS 3330 A

LB Cited by: 2010 Bankr. LEXIS 3330

Court: Bankr. Western Dist. Ky. | **Date:** October 7, 2010

1780 [In re Pioch](#), 2010 Bankr. LEXIS 2952 +

LB Cited by: 2010 Bankr. LEXIS 2952

Court: Bankr. Eastern Dist. Mich. | **Date:** September 1, 2010

1781 [In re Hibbard](#), 2010 Bankr. LEXIS 2467 ▲

LB Cited by: 2010 Bankr. LEXIS 2467

Court: Bankr. Southern Dist. Ohio | **Date:** August 18, 2010

1782 [Simon v. Amir \(In re Amir\)](#), 436 B.R. 1 ▲

LB Cited by: 436 B.R. 1 p.10, p.12

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1783 [Triple Diamond Plastics, Inc. v. SPG Holding LLC \(In re Triple Diamond Plastics, Inc.\)](#), 2010 Bankr. LEXIS 6559 A

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Court: Bankr. Northern Dist. Ohio | **Date:** August 4, 2010

1784 [In re Reiman](#), 431 B.R. 901 +

LB Cited by: 431 B.R. 901 p.911

Court: Bankr. Eastern Dist. Mich. | **Date:** July 16, 2010

1785 [In re Sarnovsky](#), 436 B.R. 461 +

LB Cited by: 436 B.R. 461 p.462, p.463

Court: Bankr. Northern Dist. Ohio | **Date:** July 6, 2010

1786 [Limor v. First Nat'l Bank \(In re Cumberland Molded Prods., LLC\)](#), 431 B.R. 718 

LB Cited by: 431 B.R. 718 p.722, p.724

Court: 6th Circuit Bankr. Appellate Panel | **Date:** June 23, 2010

1787 [In re Driesenga](#), 2010 Bankr. LEXIS 1766 

LB Cited by: 2010 Bankr. LEXIS 1766

Court: Bankr. Western Dist. Mich. | **Date:** May 24, 2010

1788 [In re Jacob](#), 447 B.R. 535 

B Not applicable in: 447 B.R. 535 p.541

Court: Bankr. Northern Dist. Ohio | **Date:** March 19, 2010

1789 [In re Mohr](#), 425 B.R. 457 

LB Cited by: 425 B.R. 457 p.462

Court: Bankr. Southern Dist. Ohio | **Date:** March 15, 2010

1790 [In re Kudela](#), 427 B.R. 643 

LB Cited by: 427 B.R. 643 p.645

Court: Bankr. Northern Dist. Ohio | **Date:** March 8, 2010

1791 [In re Fleming](#), 424 B.R. 795 

LB Cited by: 424 B.R. 795 p.806

Court: Bankr. Western Dist. Mich. | **Date:** February 19, 2010

1792 [In re Neal](#), 424 B.R. 235 

LB Cited by: 424 B.R. 235 p.236, p.237

Court: Bankr. Eastern Dist. Mich. | **Date:** February 8, 2010

1793 [Fitzpatrick v. Fredenberg \(In re Wilson\)](#), 2010 Bankr. LEXIS 42 

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1794 [Allard v. Coenen \(In re Trans-Industries, Inc.\)](#), 419 B.R. 21 

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1795 [Harker v. Wells Fargo Bank, NA \(In re Krause\)](#), 414 B.R. 243 

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1796 [In re Johnson](#), 409 B.R. 459 

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1797 [Yoppolo v. Missler \(In re Missler\)](#), 418 B.R. 259 

LB Cited by: 418 B.R. 259 p.262

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1798 [Doucet v. Drycock Coal Com. \(In re Oakley\)](#), 2009 Bankr. LEXIS 1344 

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1799 [In re Klostermeier](#), 2009 Bankr. LEXIS 1736 

LB Cited by: 2009 Bankr. LEXIS 1736

Court: Bankr. Northern Dist. Ohio | **Date:** May 29, 2009

1800 [In re Molina](#), 2009 Bankr. LEXIS 1509 

LB Cited by: 2009 Bankr. LEXIS 1509

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1801 [In re Erickson](#), 406 B.R. 522 

LB Cited by: 406 B.R. 522 p.533

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1802 [In re Luke](#), 2009 Bankr. LEXIS 1967 

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Court: Bankr. Northern Dist. Ohio | **Date:** April 27, 2009

1803 [In re Ruhl](#), 2009 Bankr. LEXIS 1755 

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Court: Bankr. Northern Dist. Ohio | **Date:** April 27, 2009

1804 [In re Westerfield](#), 403 B.R. 545 

LB Cited by: 403 B.R. 545 p.548

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1805 [In re Likes](#), 406 B.R. 749 

LB Cited by: 406 B.R. 749 p.752

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1806 [Steed v. Parrott Marine Sys. \(In re Dj Weaver Dev. Co., LLC\)](#), 2008 Bankr. LEXIS 4063 

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1807 [In re Cincom iOutsource, Inc.](#), 398 B.R. 223 

LB Cited by: 398 B.R. 223 p.226

Court: Bankr. Southern Dist. Ohio | **Date:** October 31, 2008

1808 [In re Engman](#), 395 B.R. 610 

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1809 [Ziegler v. Schwenker \(In re Ziegler\)](#), 396 B.R. 1 

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Court: Bankr. Northern Dist. Ohio | **Date:** October 2, 2008

1810 [French v. Chase \(In re Adams\)](#), 2008 Bankr. LEXIS 4952 

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1811 [Bash v. Cunningham \(In re Cunningham\)](#), 2008 Bankr. LEXIS 4125 

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LB Cited by: 391 B.R. 783 p.790

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1814 [Clippard v. Russell \(In re Russell\)](#), 392 B.R. 315 

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1816 [In re Triplett](#), 2008 Bankr. LEXIS 1628 

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1817 [In re Engman](#), 389 B.R. 36 

LB Cited by: 389 B.R. 36 p.41

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Court: Bankr. Eastern Dist. Mich. | **Date:** April 9, 2008

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LB Cited by: 383 B.R. 660 p.665

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1820 [Old Trail Ltd., Inc. v. Graham \(In re Weldon Stump & Co.\)](#), 383 B.R. 435 

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LB Cited by: 379 B.R. 728 p.732

Court: Bankr. Northern Dist. Ohio | **Date:** December 13, 2007

1822 [In re Applegate](#), 2007 Bankr. LEXIS 4184 

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1823 [Helbling v. Josselson \(In re Almasri\)](#), 378 B.R. 550 

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1828 [In re Thompson](#), 2007 Bankr. LEXIS 1799 

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1831 [In re dePellegrini](#), 365 B.R. 830 

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1832 [In re Harris](#), 2007 Bankr. LEXIS 1377

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1833 [In re Richendollar](#), 2007 Bankr. LEXIS 1188 

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1834 [In re Opra](#), 365 B.R. 728 

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1835 [In re Ragle](#), 2007 Bankr. LEXIS 874 

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1836 [In re Haar](#), 360 B.R. 759 

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1837 [In re Sorrell](#), 359 B.R. 167 

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Court: Bankr. Northern Dist. Ohio | **Date:** December 11, 2006

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1841 [In re Parsons](#), 2006 Bankr. LEXIS 2951 

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Court: Bankr. Northern Dist. Ohio | **Date:** October 24, 2006

1842 [In re Van Stelle](#), 354 B.R. 157 

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Court: Bankr. Western Dist. Mich. | **Date:** October 4, 2006

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1845 [In re Guzior](#), 347 B.R. 237 

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LB Cited by: 2006 Bankr. LEXIS 1720 p.11

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1847 [In re St. Joseph Cleaners, Inc.](#), 346 B.R. 430 

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1848 [In re Williams](#), 345 B.R. 853 

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1851 [In re Toland](#), 346 B.R. 444 

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1853 [In re Nat'l Staffing Servs., LLC](#), 338 B.R. 31 

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1854 [Burns v. Shelton \(In re Shelton\)](#), 331 B.R. 700 

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1856 [In re Burkett](#), 329 B.R. 820 

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Court: Bankr. Southern Dist. Ohio | **Date:** September 15, 2005

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Court: 6th Circuit Bankr. Appellate Panel | **Date:** September 6, 2005

1859 [In re Raynard](#), 327 B.R. 623 

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Court: Bankr. Western Dist. Mich. | **Date:** July 15, 2005

1860 [Limor v. Buerger \(In re Del-Met Corp.\)](#), 322 B.R. 781 

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2149 [In re Wagner](#), 530 B.R. 695 

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LB Cited by: 513 B.R. 540 p.544

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2159 [In re Bone](#), 2014 Bankr. LEXIS 3022 

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2160 [In re Kohler](#), 2014 Bankr. LEXIS 3540 

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2161 [In re Oliver](#), 511 B.R. 556 

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2162 [In re Chi. Constr. Specialties, Inc.](#), 510 B.R. 205 

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2163 [In re Ellis](#), 2014 Bankr. LEXIS 1952 

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2165 [In re Zarco](#), 507 B.R. 247 

LB Cited by: 507 B.R. 247 p.250

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2166 [In re Jones](#), 505 B.R. 229 

LB Cited by: 505 B.R. 229 p.231

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2167 [In re Stone](#), 504 B.R. 908 

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2171 [In re Williams](#), 2013 Bankr. LEXIS 1610 

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LB Cited by: 479 B.R. 809 p.818, p.819, p.825

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2174 [Homann v. Perry \(In re Stout\)](#), 2012 Bankr. LEXIS 5548 

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2177 [In re Fredman](#), 471 B.R. 540 

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2181 [In re Wise](#), 2011 Bankr. LEXIS 2079 

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2182 [In re Stewart](#), 452 B.R. 726 

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2183 [In re McCue](#), 2011 Bankr. LEXIS 136

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2184 [In re Lewis](#), 2010 Bankr. LEXIS 4674 

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2185 [Carbone v. Beltran \(In re Beltran\)](#), 2010 Bankr. LEXIS 2548 

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2187 [Rice v. Sasse \(In re Sasse\)](#), 438 B.R. 631 

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2192 [In re Wirth](#), 431 B.R. 209 

LB Cited by: 431 B.R. 209 p.214

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2193 [In re Brace](#), 430 B.R. 513 

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2194 [In re J & R Trucking, Inc.](#), 431 B.R. 818 

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2202 [Bradley v. Grant \(In re GS Consulting Servs.\)](#), 2009 Bankr. LEXIS 4234 

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2217 [In re Vandeventer](#), 368 B.R. 50 

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2219 [In re Randle](#), 358 B.R. 360 

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2231 [In re Consol. Indus. Corp.](#), 330 B.R. 712 

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2311 [Laughlin v. United States IRS](#), 912 F.2d 197 

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2312 [In re Schauer](#), 835 F.2d 1222 

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2343 [In re DynoTec, Indus.](#), 2024 Bankr. LEXIS 850 

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2350 [In re McQuillen Place Co.](#), 2021 Bankr. LEXIS 802 

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2351 [In re Stewart](#), 2020 Bankr. LEXIS 2066 

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2352 [Belew v. Rucker \(In re Belew\)](#), 608 B.R. 206 

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2358 [In re Coleman](#), 2018 Bankr. LEXIS 4104 A

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2359 [In re Curran](#), 2018 Bankr. LEXIS 2288 +

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Court: Bankr. Eastern Dist. Mo. | **Date:** April 20, 2016

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2378 [In re Negus-Sons, Inc.](#), 2013 Bankr. LEXIS 3640 

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2382 [In re Hildreth](#), 2012 Bankr. LEXIS 4627 

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2383 [In re Corn Advantage Coop.](#), 2012 Bankr. LEXIS 4280 

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Court: Bankr. Dist. Minn. | **Date:** June 15, 2012

2385 [In re Steen](#), 2012 Bankr. LEXIS 1656 

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Court: Bankr. Dist. S.D. | **Date:** April 13, 2012

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2389 [In re Parsons](#), 437 B.R. 854 

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2391 [In re Wait](#), 2010 Bankr. LEXIS 3639 

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2394 [In re Willis](#), 408 B.R. 803 

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2395 [In re Foldenauer](#), 403 B.R. 801 

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Court: Southern Dist. Cal. | **Date:** June 10, 2024

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Court: Central Dist. Cal. | **Date:** June 15, 2022

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Court: Eastern Dist. Cal. | **Date:** March 28, 2013

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2626 [Eddleman v. Thomas](#), 2007 U.S. Dist. LEXIS 81185 

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LB Cited by: 2024 Bankr. LEXIS 2386

Court: Bankr. Dist. Mont. | **Date:** September 30, 2024

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LB Cited by: 2024 Bankr. LEXIS 1511

Court: 9th Circuit Bankr. Appellate Panel | **Date:** June 26, 2024

2649 [In re Vistam, Inc.](#), 2024 Bankr. LEXIS 1071 A

LB Cited by: 2024 Bankr. LEXIS 1071

Court: Bankr. Central Dist. Cal. | **Date:** May 7, 2024

2650 [In re Gonzalez](#), 2024 Bankr. LEXIS 1039 A

B Interpreted or construed by: 2024 Bankr. LEXIS 1039

Court: Bankr. Central Dist. Cal. | **Date:** May 1, 2024

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Court: Bankr. Central Dist. Cal. | **Date:** May 1, 2024

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Court: Bankr. Central Dist. Cal. | **Date:** April 22, 2024

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LB Cited by: 2024 Bankr. LEXIS 798

Court: 9th Circuit Bankr. Appellate Panel | **Date:** March 27, 2024

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LB Cited by: 2024 Bankr. LEXIS 588

Court: Bankr. Dist. Nev. | **Date:** February 26, 2024

2655 [In re Zamora](#), 2024 Bankr. LEXIS 47 

LB Cited by: 2024 Bankr. LEXIS 47

Court: Bankr. Eastern Dist. Cal. | **Date:** January 9, 2024

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LB Cited by: 2023 Bankr. LEXIS 2969

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 19, 2023

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LB Cited by: 2023 Bankr. LEXIS 2968

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 19, 2023

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LB Cited by: 2023 Bankr. LEXIS 2967

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 19, 2023

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LB Cited by: 2023 Bankr. LEXIS 2966

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 19, 2023

2660 [In re McKenna](#), 2023 Bankr. LEXIS 2958 

LB Cited by: 2023 Bankr. LEXIS 2958

Court: Bankr. Dist. Ariz. | **Date:** December 15, 2023

2661 [Ene v. Klump \(In re Ene\)](#), 2023 Bankr. LEXIS 2810 

LB Cited by: 2023 Bankr. LEXIS 2810

Court: 9th Circuit Bankr. Appellate Panel | **Date:** November 27, 2023

2662 [In re Boteilho Haw. Enters.](#), 2023 Bankr. LEXIS 2736 

LB Cited by: 2023 Bankr. LEXIS 2736

Court: Bankr. Dist. Haw. | **Date:** November 8, 2023

2663 [In re Zaman](#), 2024 Bankr. LEXIS 1221

LB Cited by:

Court: Bankr. Dist. Nev. | **Date:** October 25, 2023

2664 [In re Boteilho Haw. Enters.](#), 2023 Bankr. LEXIS 2604 

LB Cited by: 2023 Bankr. LEXIS 2604

Court: Bankr. Dist. Haw. | **Date:** October 24, 2023

2665 [In re T1 Payments, LLC](#), 2023 Bankr. LEXIS 2558 

LB Cited by: 2023 Bankr. LEXIS 2558

Court: Bankr. Dist. Nev. | **Date:** October 5, 2023

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LB Cited by: 2023 Bankr. LEXIS 2189

Court: 9th Circuit Bankr. Appellate Panel | **Date:** September 7, 2023

2667 [Farina v. Hoskins \(In re Farina\)](#), 2023 Bankr. LEXIS 2029 

LB Cited by: 2023 Bankr. LEXIS 2029

Court: 9th Circuit Bankr. Appellate Panel | **Date:** August 18, 2023

2668 [Aarons v. Patch of Land Lending, LLC \(In re Aarons\)](#), 2023 Bankr. LEXIS 1517 

LB Cited by: 2023 Bankr. LEXIS 1517

Court: 9th Circuit Bankr. Appellate Panel | **Date:** June 8, 2023

2669 [Avery v. Gonzalez \(In re Gonzalez\)](#), 2023 Bankr. LEXIS 1395 

LB Cited by: 2023 Bankr. LEXIS 1395

Court: Bankr. Central Dist. Cal. | **Date:** May 26, 2023

2670 [In re Ramsey](#), 2023 Bankr. LEXIS 3076 

LB Cited by:

Court: Bankr. Dist. Nev. | **Date:** February 15, 2023

2671 [In re Ramsey](#), 2023 Bankr. LEXIS 3075 

LB Cited by:

Court: Bankr. Dist. Nev. | **Date:** February 15, 2023

2672 [Rainsdon v. Grant \(In re Fasano\)](#), 648 B.R. 253 

LB Cited by: 648 B.R. 253 p.257

Court: Bankr. Dist. Idaho | **Date:** January 10, 2023

2673 [In re Las Vegas Land Partners](#), 2022 Bankr. LEXIS 3676 

LB Cited by: 2022 Bankr. LEXIS 3676

Court: Bankr. Dist. Nev. | **Date:** November 15, 2022

2674 [Richards v. Marshack \(In re Richards\)](#), 2022 Bankr. LEXIS 3156 

LB Cited by: 2022 Bankr. LEXIS 3156

Court: 9th Circuit Bankr. Appellate Panel | **Date:** November 7, 2022

2675 [Van Damme v. Wells Fargo Bank, N.A. \(In re Van Damme\)](#), 651 B.R. 791 

LB Cited by: 651 B.R. 791 p.800

Court: Bankr. Dist. Nev. | **Date:** August 18, 2022

2676 [In re Baroni](#), 643 B.R. 253 

LB Cited by: 643 B.R. 253 p.284, p.288

Court: Bankr. Central Dist. Cal. | **Date:** August 9, 2022

2677 [In re Pearlstein](#), 2022 Bankr. LEXIS 1370 

B Interpreted or construed by: 2022 Bankr. LEXIS 1370

Court: Bankr. Dist. Or. | **Date:** May 11, 2022

2678 [In re Campbell Wings, Inc.](#), 639 B.R. 559 

LB Cited by: 639 B.R. 559 p.567

Court: Bankr. Eastern Dist. Cal. | **Date:** March 29, 2022

2679 [In re Mitchell](#), 638 B.R. 455 

LB Cited by: 638 B.R. 455 p.460

Court: Bankr. Dist. Idaho | **Date:** March 4, 2022

2680 [Leslie v. Ace Gallery N.Y. Corp. \(In re Art & Architecture Books of the 21st Century\)](#), 2022 Bankr. LEXIS 401 

LB Cited by: 2022 Bankr. LEXIS 401

Court: Bankr. Central Dist. Cal. | **Date:** February 16, 2022

2681 [LVNV Funding, LLC v. Andrade-Garcia \(In re Andrade-Garcia\)](#), 635 B.R. 509 

LB Cited by: 635 B.R. 509 p.512

Court: 9th Circuit Bankr. Appellate Panel | **Date:** January 11, 2022

2682 [In re Sonoma W. Med. Ctr., Inc.](#), 2021 Bankr. LEXIS 2932 

LB Cited by: 2021 Bankr. LEXIS 2932

Court: Bankr. Northern Dist. Cal. | **Date:** October 22, 2021

2683 [In re George Walton's Gold & Diamond Co.](#), 632 B.R. 693 

LB Cited by: 632 B.R. 693 p.696

Court: Bankr. Dist. Alaska | **Date:** October 20, 2021

2684 [In re Giga Watt Inc.](#), 2021 Bankr. LEXIS 2636 

LB Cited by: 2021 Bankr. LEXIS 2636

Court: Bankr. Eastern Dist. Wash. | **Date:** September 26, 2021

2685 [In re Ayers Bath \(U.S.A.\), Co.](#), 2021 Bankr. LEXIS 2628 

LB Cited by: 2021 Bankr. LEXIS 2628

Court: Bankr. Central Dist. Cal. | **Date:** September 22, 2021

2686 [CapCall, LLC v. Foster \(In re Shoot the Moon, LLC\)](#), 635 B.R. 797 

LB Cited by: 635 B.R. 797 p.829

Court: Bankr. Dist. Mont. | **Date:** September 10, 2021

2687 [In re Machevsky](#), 637 B.R. 510 

LB Cited by: 637 B.R. 510 p.523

Court: Bankr. Central Dist. Cal. | **Date:** August 23, 2021

2688 [Szanto v. Amborn \(In re Szanto\)](#), 2021 Bankr. LEXIS 2110 

LB Cited by: 2021 Bankr. LEXIS 2110

Court: 9th Circuit Bankr. Appellate Panel | **Date:** August 5, 2021

2689 [In re Lucky Dragon Hotel & Casino, LLC](#), 2021 Bankr. LEXIS 2145 

LB Cited by: 2021 Bankr. LEXIS 2145

Court: Bankr. Dist. Nev. | **Date:** July 30, 2021

2690 [In re Greenfield](#), 2021 Bankr. LEXIS 1845 

LB Cited by: 2021 Bankr. LEXIS 1845

Court: Bankr. Dist. Idaho | **Date:** July 13, 2021

2691 [In re Hunanyan](#), 631 B.R. 904 

B Interpreted or construed by: 631 B.R. 904 p.910

Court: Bankr. Central Dist. Cal. | **Date:** June 10, 2021

2692 [In re Guevarra](#), 2021 Bankr. LEXIS 1543 

LB Cited by: 2021 Bankr. LEXIS 1543

Court: Bankr. Eastern Dist. Cal. | **Date:** June 7, 2021

2693 [In re Aquino](#), 630 B.R. 499 

LB Cited by: 630 B.R. 499 p.503, p.532

Court: Bankr. Dist. Nev. | **Date:** May 25, 2021

2694 [In re Szanto](#), 2021 Bankr. LEXIS 1236 

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Court: Bankr. Dist. Or. | **Date:** May 7, 2021

2695 [Gonzalez v. Avery \(In re Gonzalez\)](#), 2021 Bankr. LEXIS 1704

LB Cited by: 2021 Bankr. LEXIS 1704

Court: Bankr. Central Dist. Cal. | **Date:** March 4, 2021

2696 [Husted v. Taggart \(In re ECS Ref., Inc.\)](#), 625 B.R. 425 

LB Cited by: 625 B.R. 425 p.447

Court: Bankr. Eastern Dist. Cal. | **Date:** December 15, 2020

2697 [O'Rourke v. 2017 Mark Lamb Trust \(In re Bramlett\)](#), 2020 Bankr. LEXIS 3291 

LB Cited by: 2020 Bankr. LEXIS 3291

Court: Bankr. Eastern Dist. Wash. | **Date:** November 20, 2020

2698 [In re Chambers](#), 2020 Bankr. LEXIS 3611 

LB Cited by: 2020 Bankr. LEXIS 3611

Court: Bankr. Dist. Nev. | **Date:** November 16, 2020

2699 [In re Miller](#), 2020 Bankr. LEXIS 3265 

LB Cited by: 2020 Bankr. LEXIS 3265

Court: Bankr. Eastern Dist. Cal. | **Date:** November 16, 2020

2700 [Sheng v. Nims \(In re Sheng\)](#), 2020 Bankr. LEXIS 3155 

LB Cited by: 2020 Bankr. LEXIS 3155

Court: 9th Circuit Bankr. Appellate Panel | **Date:** November 5, 2020

2701 [In re Giga Watt, Inc.](#), 2020 Bankr. LEXIS 2963 

LB Cited by: 2020 Bankr. LEXIS 2963

Court: Bankr. Eastern Dist. Wash. | **Date:** October 20, 2020

2702 [In re Patel](#), 621 B.R. 245 

LB Cited by: 621 B.R. 245 p.254

Court: Bankr. Eastern Dist. Cal. | **Date:** October 15, 2020

2703 [In re Hartland MMI, LLC](#), 2020 Bankr. LEXIS 2263 

LB Cited by: 2020 Bankr. LEXIS 2263

Court: Bankr. Dist. Nev. | **Date:** August 20, 2020

2704 [In re Zamora](#), 2020 Bankr. LEXIS 1963 

LB Cited by: 2020 Bankr. LEXIS 1963

Court: Bankr. Eastern Dist. Wash. | **Date:** July 27, 2020

2705 [In re Elite Auto Dealer, Inc.](#), 2020 Bankr. LEXIS 2007 A

LB Cited by: 2020 Bankr. LEXIS 2007

Court: Bankr. Dist. Nev. | **Date:** July 8, 2020

2706 [In re Ninety-Five/Two Fifteen Ctr. Part II, LLC](#), 2020 Bankr. LEXIS 1701 A

LB Cited by: 2020 Bankr. LEXIS 1701

Court: Bankr. Dist. Nev. | **Date:** June 16, 2020

2707 [In re Thu Thi Dao](#), 616 B.R. 103 +

LB Cited by: 616 B.R. 103 p.106, p.114

Court: Bankr. Eastern Dist. Cal. | **Date:** May 11, 2020

2708 [Amborn v. Dowell](#), 2020 Bankr. LEXIS 761 A

LB Cited by: 2020 Bankr. LEXIS 761

Court: Bankr. Dist. Or. | **Date:** March 20, 2020

2709 [Flemino v. Vulcan Recoveries, LLC \(In re Flemino\)](#), 2020 Bankr. LEXIS 977 A

LB Cited by: 2020 Bankr. LEXIS 977

Court: Bankr. Dist. Nev. | **Date:** March 11, 2020

2710 [Jue v. Liu \(In re Liu\)](#), 611 B.R. 864 +

LB Cited by: 611 B.R. 864 p.879

Court: 9th Circuit Bankr. Appellate Panel | **Date:** February 11, 2020

2711 [Albert-Sheridan v. Ford Motor Credit Co. LLC \(In re Albert-Sheridan\)](#), 2019 Bankr. LEXIS 3938 A

LB Cited by: 2019 Bankr. LEXIS 3938

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 18, 2019

2712 [Wilkins v. Law Offices of Wesley H. Avery, APC \(In re Wilkins\)](#), 2019 Bankr. LEXIS 3941 A

LB Cited by: 2019 Bankr. LEXIS 3941

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 17, 2019

2713 [In re Art & Architecture Books of the 21st Century](#), 2019 Bankr. LEXIS 3736 A

LB Cited by: 2019 Bankr. LEXIS 3736

Court: Bankr. Central Dist. Cal. | **Date:** December 6, 2019

2714 [In re Sheng](#), 2019 Bankr. LEXIS 3496 A

LB Cited by: 2019 Bankr. LEXIS 3496

Court: Bankr. Eastern Dist. Cal. | **Date:** November 8, 2019

2715 [Kosmala v. Baek \(In re Halvorson\)](#), 607 B.R. 680 A

LB Cited by: 607 B.R. 680 p.685

Court: Bankr. Central Dist. Cal. | **Date:** October 31, 2019

2716 [In re Gonzalez](#), 2019 Bankr. LEXIS 2684 A

LB Cited by: 2019 Bankr. LEXIS 2684

Court: Bankr. Central Dist. Cal. | **Date:** August 23, 2019

2717 [Avery v. Gonzalez \(In re Gonzalez\)](#), 2019 Bankr. LEXIS 2683 A

LB Cited by: 2019 Bankr. LEXIS 2683

Court: Bankr. Central Dist. Cal. | **Date:** August 23, 2019

2718 [In re Safyari](#), 2019 Bankr. LEXIS 4038 A

LB Cited by: 2019 Bankr. LEXIS 4038

Court: Bankr. Central Dist. Cal. | **Date:** July 30, 2019

2719 [Shoemaker v. United States Tr. for Region 16 \(In re Shoemaker\)](#), 2019 Bankr. LEXIS 1966 A

LB Cited by: 2019 Bankr. LEXIS 1966

Court: 9th Circuit Bankr. Appellate Panel | **Date:** July 1, 2019

2720 [In re Pena](#), 600 B.R. 415 

LB Cited by: 600 B.R. 415 p.420

Court: 9th Circuit Bankr. Appellate Panel | **Date:** May 21, 2019

2721 [In re Vill. Concepts, Inc.](#), 2019 Bankr. LEXIS 1538 

LB Cited by: 2019 Bankr. LEXIS 1538

Court: Bankr. Eastern Dist. Cal. | **Date:** May 17, 2019

2722 [In re Cwnevada LLC](#), 602 B.R. 717 

LB Cited by: 602 B.R. 717 p.735

Court: Bankr. Dist. Nev. | **Date:** May 15, 2019

2723 [In re Gonzalez](#), 2019 Bankr. LEXIS 1031 

LB Cited by: 2019 Bankr. LEXIS 1031

Court: Bankr. Central Dist. Cal. | **Date:** March 29, 2019

2724 [In re Gonzalez](#), 620 B.R. 296 

LB Cited by: 620 B.R. 296 p.303, p.327, p.331, p.332

Court: Bankr. Central Dist. Cal. | **Date:** March 27, 2019

2725 [Resler v. Helton \(In re Resler\)](#), 2019 Bankr. LEXIS 879 

LB Cited by: 2019 Bankr. LEXIS 879

Court: Bankr. Dist. Idaho | **Date:** March 21, 2019

2726 [In re Rosenblum](#), 2019 Bankr. LEXIS 1159 

LB Cited by: 2019 Bankr. LEXIS 1159

Court: Bankr. Dist. Nev. | **Date:** March 15, 2019

2727 [Madatian v. Goldman \(In re Madatian\)](#), 2019 Bankr. LEXIS 372 

LB Cited by: 2019 Bankr. LEXIS 372

Court: 9th Circuit Bankr. Appellate Panel | **Date:** February 11, 2019

2728 [In re Hartland MMI, LLC](#), 2018 Bankr. LEXIS 3866 

LB Cited by: 2018 Bankr. LEXIS 3866

Court: Bankr. Dist. Nev. | **Date:** December 10, 2018

2729 [In re Levine](#), 2018 Bankr. LEXIS 3544 

LB Cited by: 2018 Bankr. LEXIS 3544

Court: Bankr. Central Dist. Cal. | **Date:** November 7, 2018

2730 [Delannoy v. Woodlawn Colonial, L.P. \(In re Delannoy\)](#), 2018 Bankr. LEXIS 2641 

LB Cited by: 2018 Bankr. LEXIS 2641

Court: 9th Circuit Bankr. Appellate Panel | **Date:** August 31, 2018

2731 [In re Reichard](#), 2018 Bankr. LEXIS 2046 

LB Cited by: 2018 Bankr. LEXIS 2046

Court: Bankr. Dist. Ariz. | **Date:** July 5, 2018

2732 [In re Art & Architecture Books of the 21st Century](#), 2018 Bankr. LEXIS 1796 

LB Cited by: 2018 Bankr. LEXIS 1796

Court: Bankr. Central Dist. Cal. | **Date:** June 18, 2018

2733 [Rigby v. Mastro \(In re Mastro\)](#), 585 B.R. 587 

LB Cited by: 585 B.R. 587 p.595, p.596

Court: 9th Circuit Bankr. Appellate Panel | **Date:** June 5, 2018

2734 [In re Cresta Tech. Corp.](#), 2018 Bankr. LEXIS 1569 

LB Cited by: 2018 Bankr. LEXIS 1569

Court: Bankr. Northern Dist. Cal. | **Date:** May 29, 2018

2735 [In re Beird](#), 2018 Bankr. LEXIS 1300 

LB Cited by: 2018 Bankr. LEXIS 1300

Court: Bankr. Western Dist. Wash. | **Date:** May 2, 2018

2736 [In re Fite, LLC](#), 2018 Bankr. LEXIS 1327 

LB Cited by:

Court: Bankr. Dist. Or. | **Date:** April 30, 2018

2737 [In re Rodenbough](#), 2018 Bankr. LEXIS 3192 

LB Cited by: 2018 Bankr. LEXIS 3192

Court: Bankr. Dist. Idaho | **Date:** April 19, 2018

2738 [In re Draft Bars LLC](#), 2018 Bankr. LEXIS 1606 

LB Cited by: 2018 Bankr. LEXIS 1606

Court: Bankr. Dist. Nev. | **Date:** March 29, 2018

2739 [McClenny v. McClenny \(In re McClenny\)](#), 2018 Bankr. LEXIS 736 

LB Cited by: 2018 Bankr. LEXIS 736

Court: 9th Circuit Bankr. Appellate Panel | **Date:** March 6, 2018

2740 [Stinchfield v. Specialized Loan Serv. \(In re Stinchfield\)](#), 2018 Bankr. LEXIS 735 

LB Cited by: 2018 Bankr. LEXIS 735

Court: 9th Circuit Bankr. Appellate Panel | **Date:** February 22, 2018

2741 [McGranahan v. Kinerson \(In re Kinerson\)](#), 2017 Bankr. LEXIS 4136 

LB Cited by: 2017 Bankr. LEXIS 4136

Court: Bankr. Eastern Dist. Cal. | **Date:** December 4, 2017

2742 [In re Sinclair v. Sinclair](#), 2017 Bankr. LEXIS 4074 

LB Cited by: 2017 Bankr. LEXIS 4074

Court: Bankr. Eastern Dist. Cal. | **Date:** November 29, 2017

2743 [Pons v. Herrera \(In re Herrera\)](#), 2017 Bankr. LEXIS 4060 

LB Cited by: 2017 Bankr. LEXIS 4060

Court: Bankr. Southern Dist. Cal. | **Date:** November 13, 2017

2744 [Womack v. Schneider \(In re Schneider\)](#), 2017 Bankr. LEXIS 3869 

LB Cited by: 2017 Bankr. LEXIS 3869

Court: Bankr. Dist. Mont. | **Date:** November 7, 2017

2745 [In re Munce](#), 2017 Bankr. LEXIS 3516 

LB Cited by: 2017 Bankr. LEXIS 3516

Court: Bankr. Western Dist. Wash. | **Date:** October 11, 2017

2746 [In re CFB Liquidating Corp.](#), 576 B.R. 610 

LB Cited by: 576 B.R. 610 p.627

Court: Bankr. Northern Dist. Cal. | **Date:** August 24, 2017

2747 [Hujazi v. Schoenmann \(In re Hujazi\)](#), 2017 Bankr. LEXIS 1929 

LB Cited by: 2017 Bankr. LEXIS 1929

Court: 9th Circuit Bankr. Appellate Panel | **Date:** July 12, 2017

2748 [In re Gonzalez](#), 2017 Bankr. LEXIS 1772 

LB Cited by: 2017 Bankr. LEXIS 1772

Court: Bankr. Central Dist. Cal. | **Date:** June 27, 2017

2749 [Bank of America, N.A. v. Torkan \(In re Yona\)](#), 2017 Bankr. LEXIS 1569 

LB Cited by: 2017 Bankr. LEXIS 1569

Court: Bankr. Central Dist. Cal. | **Date:** June 8, 2017

2750 [Cieciorka v. Parker \(In re Leonis\)](#), 2017 Bankr. LEXIS 1542 

LB Cited by: 2017 Bankr. LEXIS 1542

Court: 9th Circuit Bankr. Appellate Panel | **Date:** June 8, 2017

2751 [In re Selander](#), 2017 Bankr. LEXIS 806 

LB Cited by: 2017 Bankr. LEXIS 806

Court: Bankr. Western Dist. Wash. | **Date:** March 24, 2017

2752 [Dye v. Taxe \(In re Kellogg-Taxe\)](#), 2017 Bankr. LEXIS 644 

LB Cited by: 2017 Bankr. LEXIS 644

Court: Bankr. Central Dist. Cal. | **Date:** March 10, 2017

2753 [Filer v. Can-American, Inc. \(In re Hartner\)](#), 2017 Bankr. LEXIS 553 

LB Cited by: 2017 Bankr. LEXIS 553

Court: Bankr. Dist. Or. | **Date:** February 27, 2017

2754 [In re Sinclair](#), 563 B.R. 554 

LB Cited by: 563 B.R. 554 p.574

Court: Bankr. Eastern Dist. Cal. | **Date:** February 14, 2017

2755 [In re Shay](#), 2017 Bankr. LEXIS 119 

LB Cited by: 2017 Bankr. LEXIS 119

Court: Bankr. Central Dist. Cal. | **Date:** January 13, 2017

2756 [In re Sinclair](#), 2017 Bankr. LEXIS 76 

LB Cited by: 2017 Bankr. LEXIS 76

Court: Bankr. Eastern Dist. Cal. | **Date:** January 9, 2017

2757 [Sharp v. Evanston Ins. \(In re C.M. Meiers Co.\)](#), 2016 Bankr. LEXIS 4611 

LB Cited by:

Court: Bankr. Central Dist. Cal. | **Date:** December 20, 2016

2758 [In re Sann](#), 2016 Bankr. LEXIS 4330 

LB Cited by: 2016 Bankr. LEXIS 4330

Court: Bankr. Dist. Mont. | **Date:** December 15, 2016

2759 [In re Weilert](#), 2016 Bankr. LEXIS 4235 

LB Cited by: 2016 Bankr. LEXIS 4235

Court: Bankr. Eastern Dist. Cal. | **Date:** December 8, 2016

2760 [Keystone Mine Co. v. Gorski \(In re Keystone Mine Mgmt. II\)](#), 2016 Bankr. LEXIS 4244 

LB Cited by: 2016 Bankr. LEXIS 4244

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 2, 2016

2761 [In re Ryan](#), 560 B.R. 339 

LB Cited by: 560 B.R. 339 p.350

Court: Bankr. Dist. Haw. | **Date:** October 19, 2016

2762 [Samson v. Franz \(In re Franz\)](#), 2016 Bankr. LEXIS 3747 

LB Cited by: 2016 Bankr. LEXIS 3747

Court: Bankr. Dist. Mont. | **Date:** October 17, 2016

2763 [In re Cherrett](#), 2016 Bankr. LEXIS 4719 

LB Cited by: 2016 Bankr. LEXIS 4719

Court: Bankr. Central Dist. Cal. | **Date:** October 6, 2016

2764 [In re Horowitz](#), 2016 Bankr. LEXIS 3404 A

LB Cited by: 2016 Bankr. LEXIS 3404

Court: Bankr. Dist. Haw. | **Date:** September 16, 2016

2765 [In re Wait](#), 2016 Bankr. LEXIS 3143 A

LB Cited by:

Court: Bankr. Dist. Or. | **Date:** August 24, 2016

2766 [Brandon v. Sherwood \(In re Sann\)](#), 555 B.R. 721 +

LB Cited by: 555 B.R. 721 p.732

Court: Bankr. Dist. Mont. | **Date:** August 15, 2016

2767 [In re Morales-Bolanos](#), 2016 Bankr. LEXIS 2941 I

LB Cited by: 2016 Bankr. LEXIS 2941

Court: Bankr. Central Dist. Cal. | **Date:** August 10, 2016

2768 [Bencomo v. Avery \(In re Bencomo\)](#), 2016 Bankr. LEXIS 2901 A

LB Cited by: 2016 Bankr. LEXIS 2901

Court: 9th Circuit Bankr. Appellate Panel | **Date:** August 8, 2016

2769 [In re Seriosa](#), 2016 Bankr. LEXIS 2336 A

LB Cited by: 2016 Bankr. LEXIS 2336

Court: Bankr. Central Dist. Cal. | **Date:** June 20, 2016

2770 [Lafountaine v. Grobstein \(In re Lafountaine\)](#), 2016 Bankr. LEXIS 2218 A

LB Cited by: 2016 Bankr. LEXIS 2218

Court: 9th Circuit Bankr. Appellate Panel | **Date:** June 7, 2016

2771 [In re Hunt](#), 2016 Bankr. LEXIS 1993 A

LB Cited by: 2016 Bankr. LEXIS 1993

Court: Bankr. Central Dist. Cal. | **Date:** May 12, 2016

2772 [Yan Sui v. Marshack \(In re Yan Sui\)](#), 2016 Bankr. LEXIS 1164 

LB Cited by: 2016 Bankr. LEXIS 1164

Court: 9th Circuit Bankr. Appellate Panel | **Date:** April 11, 2016

2773 [Gill v. Nexgen Energy Holdings PCC Ltd. \(In re Taheripour\)](#), 2016 Bankr. LEXIS 1004 

LB Cited by: 2016 Bankr. LEXIS 1004

Court: Bankr. Central Dist. Cal. | **Date:** March 30, 2016

2774 [Diamond v. Sloan \(In re Sloan\)](#), 2016 Bankr. LEXIS 1003 

LB Cited by: 2016 Bankr. LEXIS 1003

Court: Bankr. Central Dist. Cal. | **Date:** March 30, 2016

2775 [In re McConkey](#), 2016 Bankr. LEXIS 954 

LB Cited by: 2016 Bankr. LEXIS 954

Court: Bankr. Dist. Mont. | **Date:** March 28, 2016

2776 [Wisdom v. Gugino \(In re Wisdom\)](#), 2016 Bankr. LEXIS 800 

LB Cited by: 2016 Bankr. LEXIS 800

Court: Bankr. Dist. Idaho | **Date:** March 15, 2016

2777 [U.S. Trustee v. Shoemaker \(In re Shoemaker\)](#), 2016 Bankr. LEXIS 664 

LB Cited by: 2016 Bankr. LEXIS 664

Court: Bankr. Central Dist. Cal. | **Date:** March 3, 2016

2778 [Brandon v. Sherwood \(In re Sann\)](#), 546 B.R. 850 

LB Cited by: 546 B.R. 850 p.856

Court: Bankr. Dist. Mont. | **Date:** February 26, 2016

2779 [Brandon v. Sherwood \(In re Sann\)](#), 546 B.R. 840 

LB Cited by: 546 B.R. 840 p.849

Court: Bankr. Dist. Mont. | **Date:** February 26, 2016

2780 [In re Sann](#), 2016 Bankr. LEXIS 417 

LB Cited by: 2016 Bankr. LEXIS 417

Court: Bankr. Dist. Mont. | **Date:** February 10, 2016

2781 [Shalaby v. Mansdorf \(In re Nakhuda\)](#), 544 B.R. 886 

LB Cited by: 544 B.R. 886 p.897

Court: 9th Circuit Bankr. Appellate Panel | **Date:** February 4, 2016

2782 [In re Leonis](#), 2016 Bankr. LEXIS 287 

LB Cited by: 2016 Bankr. LEXIS 287

Court: Bankr. Eastern Dist. Cal. | **Date:** January 28, 2016

2783 [In re Tydingco](#), 2016 Bankr. LEXIS 286 

LB Cited by: 2016 Bankr. LEXIS 286

Court: Bankr. Dist. Guam | **Date:** January 27, 2016

2784 [Adinolfi v. Meyer \(In re Adinolfi\)](#), 543 B.R. 612 

LB Cited by: 543 B.R. 612 p.622

Court: 9th Circuit Bankr. Appellate Panel | **Date:** January 19, 2016

2785 [United States Tr. v. Franz \(In re Franz\)](#), 540 B.R. 765 

LB Cited by: 540 B.R. 765 p.779

Court: Bankr. Dist. Mont. | **Date:** November 5, 2015

2786 [In re Pettit Oil Co.](#), 2015 Bankr. LEXIS 3577 

LB Cited by: 2015 Bankr. LEXIS 3577

Court: Bankr. Western Dist. Wash. | **Date:** October 22, 2015

2787 [In re Carefree Willows, LLC](#), 2015 Bankr. LEXIS 4576 

LB Cited by: 2015 Bankr. LEXIS 4576

Court: Bankr. Dist. Nev. | **Date:** October 5, 2015

2788 [In re Keystone Mine Mgmt. II](#), 2015 Bankr. LEXIS 3240 

LB Cited by: 2015 Bankr. LEXIS 3240

Court: Bankr. Eastern Dist. Cal. | **Date:** September 23, 2015

2789 [In re Bollinger](#), 2015 Bankr. LEXIS 4572 

LB Cited by: 2015 Bankr. LEXIS 4572

Court: Bankr. Dist. Nev. | **Date:** June 29, 2015

2790 [In re Snyder-Myrstol](#), 530 B.R. 850 

LB Cited by: 530 B.R. 850 p.853

Court: Bankr. Dist. Mont. | **Date:** May 18, 2015

2791 [In re Geisenheimer](#), 530 B.R. 747 

LB Cited by: 530 B.R. 747 p.749

Court: Bankr. Eastern Dist. Cal. | **Date:** May 5, 2015

2792 [In re Lua](#), 529 B.R. 766 

LB Cited by: 529 B.R. 766 p.777

Court: Bankr. Central Dist. Cal. | **Date:** May 1, 2015

2793 [In re Nakhuda](#), 2015 Bankr. LEXIS 1439 

LB Cited by: 2015 Bankr. LEXIS 1439

Court: Bankr. Northern Dist. Cal. | **Date:** April 27, 2015

2794 [Gorski v. Keystone Mining Co. \(Keystone Mine Mgmt. II\)](#), 2015 Bankr. LEXIS 1414 

LB Cited by: 2015 Bankr. LEXIS 1414

Court: Bankr. Eastern Dist. Cal. | **Date:** April 22, 2015

2795 [Sharp v. Essex Ins. Co. \(In re C.M. Meiers Co.\)](#), 527 B.R. 388 

LB Cited by: 527 B.R. 388 p.404

Court: Bankr. Central Dist. Cal. | **Date:** March 20, 2015

2796 [In re Bailey](#), 2015 Bankr. LEXIS 4575 

LB Cited by: 2015 Bankr. LEXIS 4575

Court: Bankr. Dist. Nev. | **Date:** February 27, 2015

2797 [In re Frantz](#), 534 B.R. 378 

LB Cited by: 534 B.R. 378 p.384, p.390

Court: Bankr. Dist. Idaho | **Date:** February 24, 2015

2798 [In re EndoBiologics, Inc.](#), 2015 Bankr. LEXIS 557 

LB Cited by: 2015 Bankr. LEXIS 557

Court: Bankr. Dist. Mont. | **Date:** February 24, 2015

2799 [In re Johnson](#), 2015 Bankr. LEXIS 52 

LB Cited by: 2015 Bankr. LEXIS 52

Court: Bankr. Central Dist. Cal. | **Date:** January 7, 2015

2800 [Starky v. Birdsell \(In re Starky\)](#), 522 B.R. 220 

LB Cited by: 522 B.R. 220 p.226, p.227

Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 8, 2014

2801 [TMC Aerospace, Inc. v. Joseph \(In re Ice Mgmt. Sys.\)](#), 2014 Bankr. LEXIS 4947 

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 8, 2014

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2804 [In re Harwood](#), 519 B.R. 535 

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2805 [Tangwall v. Wacker \(In re Tangwall\)](#), 2014 Bankr. LEXIS 4720 

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Court: Bankr. Dist. Alaska | **Date:** November 4, 2014

2806 [In re Parrott Broad.Ltd. P'ship.](#), 518 B.R. 602 

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Court: Bankr. Dist. Idaho | **Date:** September 30, 2014

2807 [In re McGuire](#), 2014 Bankr. LEXIS 3816 

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2808 [Galloway v. Ford \(In re Galloway\)](#), 2014 Bankr. LEXIS 3626 

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2809 [In re Smith](#), 515 B.R. 755 

LB Cited by: 515 B.R. 755 p.764
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2810 [In re KVN Corp.](#), 514 B.R. 1 

B Interpreted or construed by: 514 B.R. 1 p.7
LB Cited by: 514 B.R. 1 p.5
Court: 9th Circuit Bankr. Appellate Panel | **Date:** July 29, 2014

2811 [In re KVN Corp.](#), 2014 Bankr. LEXIS 3029 

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2812 [In re Gutierrez](#), 2014 Bankr. LEXIS 2637 

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Court: Bankr. Eastern Dist. Cal. | **Date:** June 12, 2014

2813 [In re Bodeker](#), 2014 Bankr. LEXIS 2563 

LB Cited by: 2014 Bankr. LEXIS 2563
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2814 [Kvassay v. Kvassay \(In re Kvassay\)](#), 2014 Bankr. LEXIS 2376 

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** May 30, 2014

2815 [In re Kaur](#), 510 B.R. 281 

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2816 [In re Mortg. Store](#), 509 B.R. 292 

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2817 [In re Hartley](#), 2014 Bankr. LEXIS 1215 

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2818 [Phoenix, LLC v. Alameda Liquidating Trust \(In re Alameda Invs., LLC\)](#), 2014 Bankr. LEXIS 851 

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2819 [In re Gayler](#), 2014 Bankr. LEXIS 5459 

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2820 [In re Mi Jung Hong](#), 2014 Bankr. LEXIS 485 

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Court: Bankr. Central Dist. Cal. | **Date:** February 5, 2014

2821 [In re Gutierrez](#), 2014 Bankr. LEXIS 427 

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Court: Bankr. Eastern Dist. Cal. | **Date:** January 29, 2014

2822 [In re O'Reilly & Collins](#), 2013 Bankr. LEXIS 5442 

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Court: Bankr. Northern Dist. Cal. | **Date:** December 30, 2013

2823 [Gottlieb v. Bossio & Assocs. A Prof'l Law Corp. \(In re Labib\)](#), 2013 Bankr. LEXIS 4661 

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2824 [In re Parrott Broad. Ltd. P'ship](#), 2013 Bankr. LEXIS 4328 

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2826 [In re Hummer Transp., Inc.](#), 2013 Bankr. LEXIS 5587 

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2827 [Gugino v. Wallace \(In re Wallace\)](#), 2013 Bankr. LEXIS 3450 

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2828 [Reno Snax Sales, LLC v. Heritage Bank of Nev. \(In re Reno Snax Sales, LLC\)](#), 2013 Bankr. LEXIS 4621 

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** July 31, 2013

2829 [In re Ray](#), 2013 Bankr. LEXIS 2510 

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2830 [In re Saviers](#), 2013 Bankr. LEXIS 2467 

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Court: Bankr. Dist. Idaho | **Date:** June 11, 2013

2831 [In re Bodeker](#), 2013 Bankr. LEXIS 2336 

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2832 [Seymour v. Bank of Am., N.A. \(In re Seymour\)](#), 2013 Bankr. LEXIS 4656 

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** April 23, 2013

2833 [In re Dube](#), 2013 Bankr. LEXIS 1696 

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2834 [Sanders v. United States Trustee \(In re Sanders\)](#), 2013 Bankr. LEXIS 4681 

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** April 11, 2013

2835 [In re Bunn-Rodemann](#), 491 B.R. 132 

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2837 [In re Suttice](#), 487 B.R. 245 

LB Cited by: 487 B.R. 245 p.248

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2838 [In re Kohlruss](#), 2013 Bankr. LEXIS 2 A

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Court: Bankr. Dist. Mont. | **Date:** January 2, 2013

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LB Cited by: 484 B.R. 182 p.188

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2840 [Collect Access LLC v. Hernandez \(In re Hernandez\)](#), 483 B.R. 713 ♦

LB Cited by: 483 B.R. 713 p.725

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2841 [Alden v. Wolkowitz \(In re Tina Chi Houn\)](#), 2012 Bankr. LEXIS 5666 ♦

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Court: 9th Circuit Bankr. Appellate Panel | **Date:** December 6, 2012

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2844 [In re Slates](#), 2012 Bankr. LEXIS 5159 ▲

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2845 [Samson v. Rocky Mt. Rec. Cmtys., LLC \(In re Rocky Mt. Rec. Cmtys., LLC\)](#), 2012 Bankr. LEXIS 4979

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2846 [In re Fowler](#), 493 B.R. 148 

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2847 [In re Wisdom](#), 478 B.R. 394 

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2848 [Ng v. Farmer](#), 477 B.R. 118 

LB Cited by: 477 B.R. 118 p.132

Court: 9th Circuit Bankr. Appellate Panel | **Date:** September 7, 2012

2849 [Castillo v. Aker \(In re Castillo\)](#), 2012 Bankr. LEXIS 3907 

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2850 [Hopkins v. Asset Acceptance LLC \(In re Salgado-Nava\)](#), 473 B.R. 911 

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2852 [In re Martech United States, Inc.](#), 2012 Bankr. LEXIS 3129 

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2853 [In re Mohsen](#), 473 B.R. 779 

LB Cited by: 473 B.R. 779 p.798

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2854 [Akers v. Mattei \(In re Dugger\)](#), 2012 Bankr. LEXIS 2633 

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2855 [In re Morris](#), 2012 Bankr. LEXIS 2889 

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2856 [Magana-Lopez v. JPMorgan Chase Bank \(In re Magana-Lopez\)](#), 2012 Bankr. LEXIS 1689 

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2857 [Auyeung v. Christensen \(In re Auyeung\)](#), 2012 Bankr. LEXIS 6126 

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Court: Bankr. Eastern Dist. Cal. | **Date:** April 11, 2012

2858 [Paulson v. Arbaugh \(In re Paulson\)](#), 2012 Bankr. LEXIS 1609 

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2859 [Siegel v. FDIC \(In re IndyMac Bancorp Inc.\)](#), 2012 Bankr. LEXIS 1462 

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2860 [In re Freeman](#), 2012 Bankr. LEXIS 6106 

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2861 [In re DDJ, Inc.](#), 2012 Bankr. LEXIS 6114 

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2862 [Macklin v. Deutsche Bank Nat'l Trust Co. \(In re Macklin\)](#), 2012 Bankr. LEXIS 6136 

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Court: Bankr. Eastern Dist. Cal. | **Date:** February 16, 2012

2863 [Lopez v. JPMorgan Chase Bank, N.A. \(In re Lopez\)](#), 2012 Bankr. LEXIS 678 

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2864 [Dockery v. Busuego \(In re Christensen\)](#), 2012 Bankr. LEXIS 667 

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2865 [Pulliam v. Jensen \(In re Pulliam\)](#), 2012 Bankr. LEXIS 366 

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2866 [Hopkins v. Idaho State Univ. Credit Union \(In re Herter\)](#), 464 B.R. 22 

LB Cited by: 464 B.R. 22 p.28, p.29

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2867 [In re Ng](#), 2011 Bankr. LEXIS 4723 

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2868 [United States Trustee v. Tamm \(In re Hokulani Square, Inc.\)](#), 460 B.R. 763 

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2869 [Diaz v. Wash. Mut. Bank \(In re Diaz\)](#), 2011 Bankr. LEXIS 4342 

LB Cited by: 2011 Bankr. LEXIS 4342

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2870 [In re Werry](#), 2011 Bankr. LEXIS 3292 

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2871 [Gibson v. Speier \(In re Gibson\)](#), 2011 Bankr. LEXIS 4341 

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2872 [In re Radical Bunny, LLC](#), 459 B.R. 434 

LB Cited by: 459 B.R. 434 p.443

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2873 [In re Wilson](#), 2011 Bankr. LEXIS 2419 

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2874 [Hopkins v. Idaho State Univ. Credit Union \(In re Herter\)](#), 456 B.R. 455 

LB Cited by: 456 B.R. 455 p.471, p.472

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2876 [In re Bomarito](#), 448 B.R. 242 

LB Cited by: 448 B.R. 242 p.244, p.245

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2877 [Stasz v. Gonzalez \(In re Stasz\)](#), 2011 Bankr. LEXIS 1786 

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LB Cited by: 454 B.R. 782 p.786, p.787

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2879 [In re Borrow](#)s, 2011 Bankr. LEXIS 750 

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Court: Bankr. Western Dist. Wash. | **Date:** February 18, 2011

2880 [Lei v. Yan \(In re Yan\)](#), 2011 Bankr. LEXIS 711 

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2884 [In re B&B Autotransfusion Servs.](#), 443 B.R. 543 

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2885 [In re Ellis](#), 2011 Bankr. LEXIS 89 

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2886 [In re Lighthouse Lodge, LLC](#), 2010 Bankr. LEXIS 4574 

LB Cited by: 2010 Bankr. LEXIS 4574

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2887 [In re Dennis](#), 2010 Bankr. LEXIS 4165 

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2888 [Walsh v. Diamond \(In re Century City Doctors Hosp., LLC\)](#), 2010 Bankr. LEXIS 5048 

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2891 [In re Sanchez](#), 2010 Bankr. LEXIS 6483

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2892 [In re Owen-Moore](#), 435 B.R. 685 

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Court: Bankr. Eastern Dist. Cal. | **Date:** January 20, 2010

2896 [In re Michael](#), 423 B.R. 323 

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2899 [In re Bourguignon](#), 416 B.R. 745 

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2900 [In re Stokes](#), 2009 Bankr. LEXIS 3030 

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2907 [In re Loader](#), 406 B.R. 72 

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2908 [In re Duncan](#), 406 B.R. 904 

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2909 [In re Applegate](#), 2009 Bankr. LEXIS 5653 

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2912 [Crum v. Tomlinson \(In re Hettick\)](#), 413 B.R. 733 

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2913 [Ware v. Bank of Am.](#), 2009 Bankr. LEXIS 847 

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2915 [In re Park](#), 2009 Bankr. LEXIS 223 

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2916 [In re Midgley](#), 413 B.R. 820 

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2917 [3dfx Interactive v. nVidia Corp. \(In re 3dfx Interactive\)](#), 2009 Bankr. LEXIS 120 

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2919 [In re Aloha Airlines, Inc.](#), 2008 Bankr. LEXIS 3972 

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2920 [In re Squaglia](#), 2008 Bankr. LEXIS 2390 

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2921 [In re White](#), 2008 Bankr. LEXIS 4388 

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2922 [In re Smith](#), 2008 Bankr. LEXIS 4202 

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3079 [In re Continental Nut Co.](#), 44 B.R. 48 

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3082 [In re Swift Aire Lines, Inc.](#), 30 B.R. 490 

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3086 [In re Hall](#), 15 B.R. 913 

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3106 [Interwest Business Equip. v. United States Trustee \(In re Interwest Business Equip.\)](#), 23 F.3d 311 

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LB Cited by: 2023 U.S. Dist. LEXIS 142666
Court: Dist. Colo. | **Date:** August 15, 2023

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LB Cited by: 2023 U.S. Dist. LEXIS 182432
Court: Eastern Dist. Okla. | **Date:** July 28, 2023

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3113 [Billingsley v. Avaya, Inc.](#), 2020 U.S. Dist. LEXIS 231266

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Court: Western Dist. Okla. | **Date:** December 9, 2020

3114 [Goodwill v. Foreclosure Comm'r](#), 2019 U.S. Dist. LEXIS 89775 A

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Court: Dist. Utah | **Date:** May 28, 2019

3115 [In re Rich Global LLC](#), 2018 U.S. Dist. LEXIS 250245 A

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3116 [Cohen v. Chernushin \(In re: Chernushin\)](#), 584 B.R. 567 +

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3121 [Gonzales v. Wagner \(In re Vaughan\)](#), 2013 U.S. Dist. LEXIS 79811 

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3124 [Turner v. Close \(In re Close\)](#), 384 B.R. 856 

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3125 [Lacy v. Stinky Love, Inc. \(In re Lacy\)](#), 304 B.R. 439 

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3127 [In re Hoffmeister](#), 191 B.R. 875 

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3131 [In re Winslow](#), 121 B.R. 598 

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3133 [Albrecht v. Robison](#), 36 B.R. 913 

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3134 [In re RICHTRON FIN. CORP.](#), 1981 U.S. Dist. LEXIS 18198

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3136 [In re Huyck](#), 2024 Bankr. LEXIS 794 

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Court: Bankr. Dist. N.M. | **Date:** May 19, 2023

3141 [In re 1 Big Red](#), 2023 Bankr. LEXIS 413 

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3142 [In re GandyDancer, LLC](#), 2022 Bankr. LEXIS 3085 

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Court: Bankr. Dist. N.M. | **Date:** October 31, 2022

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Court: Bankr. Dist. Colo. | **Date:** June 17, 2022

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Court: Bankr. Dist. Colo. | **Date:** January 28, 2022

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3150 [In re Dekeyzer](#), 2021 Bankr. LEXIS 956 

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Court: Bankr. Dist. N.M. | **Date:** April 9, 2021

3151 [In re Abernathy](#), 2021 Bankr. LEXIS 709 

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3156 [In re Styerwalt](#), 610 B.R. 356 

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3157 [In re Kyu Dong Park](#), 2019 Bankr. LEXIS 3181 

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3158 [In re Morreale](#), 2019 Bankr. LEXIS 2071 

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3159 [In re Jackson](#), 2019 Bankr. LEXIS 1464 

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3161 [In re Petersen](#), 597 B.R. 434 

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3166 [In re Blair Oil Invs., LLC](#), 588 B.R. 579 

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Court: Bankr. Dist. Utah | **Date:** May 9, 2018

3168 [In re Abengoa Bioenergy Biomass of Kan., LLC](#), 2018 Bankr. LEXIS 1361 

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3169 [In re Abengoa Bioenergy Biomass of Kan., LLC](#), 2018 Bankr. LEXIS 937 

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3170 [In re DVR, LLC](#), 582 B.R. 507 

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Court: Bankr. Dist. Utah | **Date:** February 28, 2018

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3181 [In re Petersen](#), 561 B.R. 788 

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3183 [In re Robinson](#), 560 B.R. 352 

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3184 [In re Waring](#), 555 B.R. 754 

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3185 [In re Moreno](#), 554 B.R. 504 

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Court: 10th Circuit Bankr. Appellate Panel | **Date:** March 25, 2016

3188 [In re Robertson](#), 2016 Bankr. LEXIS 931 

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Court: Bankr. Dist. Utah | **Date:** March 24, 2016

3189 [In re Marcott](#), 545 B.R. 668 

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3190 [In re Palmer](#), 542 B.R. 289 

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3191 [In re Burgher](#), 539 B.R. 868 

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3193 [In re McCutchen](#), 536 B.R. 930 

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3197 [In re Moreale](#), 2015 Bankr. LEXIS 2195 

LB Cited by: 2015 Bankr. LEXIS 2195

Court: Bankr. Dist. Colo. | **Date:** May 28, 2015

3198 [In re Matthews](#), 2015 Bankr. LEXIS 1384 

LB Cited by: 2015 Bankr. LEXIS 1384

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3199 [In re Picacho Hills Util. Co.](#), 2015 Bankr. LEXIS 371 

LB Cited by: 2015 Bankr. LEXIS 371

Court: Bankr. Dist. N.M. | **Date:** February 5, 2015

3200 [In re Lane](#), 2015 Bankr. LEXIS 135 

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3203 [In re Rich](#), 510 B.R. 366 

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3205 [In re First State Bancorporation](#), 2014 Bankr. LEXIS 1138 

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3206 [In re Akbarian](#), 2013 Bankr. LEXIS 5358 

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Court: Northern Dist. Ga. | **Date:** August 2, 2023

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Court: Middle Dist. Fla. | **Date:** July 21, 2020

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Court: Northern Dist. Fla. | **Date:** July 2, 2018

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Court: Northern Dist. Ala. | **Date:** March 21, 2018

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3379 [In re Milberg](#), 655 B.R. 825 

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3382 [In re Malin](#), 652 B.R. 828 

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Court: Bankr. Northern Dist. Ga. | **Date:** June 29, 2023

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3385 [In re Modi](#), 2023 Bankr. LEXIS 1505 

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3386 [In re Modi](#), 2023 Bankr. LEXIS 1324 

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3388 [Bogdan](#), 2023 Bankr. LEXIS 1005 

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3389 [In re Bogdan](#), 2023 Bankr. LEXIS 982 

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3394 [In re Haney](#), 2022 Bankr. LEXIS 2238 A

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3395 [In re No Rust Rebar, Inc.](#), 641 B.R. 412 A

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Court: Bankr. Northern Dist. Ga. | **Date:** April 22, 2022

3397 [In re Procom Am., LLC](#), 638 B.R. 634 ▲

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3399 [In re McLemore](#), 2022 Bankr. LEXIS 308 ●

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3403 [In re Romagnoli](#), 631 B.R. 807 

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3404 [In re Bryant](#), 630 B.R. 671 

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3408 [In re Stanford](#), 2021 Bankr. LEXIS 598 

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3409 [In re Nilhan Developers, LLC](#), 2021 Bankr. LEXIS 266 A

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Court: Bankr. Northern Dist. Ga. | **Date:** February 4, 2021

3410 [In re McConnell](#), 2021 Bankr. LEXIS 163

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Court: Bankr. Northern Dist. Ga. | **Date:** January 4, 2021

3411 [In re Morris](#), 2020 Bankr. LEXIS 3197 A

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616 B.R. 833

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Court: Bankr. Middle Dist. Fla. | **Date:** March 27, 2020

3415 [In re Yormak](#), 2019 Bankr. LEXIS 4084 A

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Court: Bankr. Northern Dist. Ga. | **Date:** November 13, 2019

3417 [In re Dycus](#), 2019 Bankr. LEXIS 4085 I

LB Cited by: 2019 Bankr. LEXIS 4085

Court: Bankr. Middle Dist. Fla. | **Date:** October 22, 2019

3418 [In re Fundamental Long Term Care, Inc.](#), 2019 Bankr. LEXIS 2409 A

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Court: Bankr. Middle Dist. Fla. | **Date:** August 2, 2019

3419 [In re Landry](#), 2019 Bankr. LEXIS 1757 A

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Court: Bankr. Northern Dist. Ga. | **Date:** May 31, 2019

3420 [In re Rusak](#), 2019 Bankr. LEXIS 2704 A

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Court: Bankr. Middle Dist. Fla. | **Date:** May 22, 2019

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Court: Bankr. Northern Dist. Ga. | **Date:** May 3, 2019

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Court: Bankr. Southern Dist. Ga. | **Date:** March 30, 2019

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Court: Bankr. Southern Dist. Ga. | **Date:** March 28, 2019

3424 [In re Gonzalez](#), 2019 Bankr. LEXIS 675 

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Court: Bankr. Middle Dist. Fla. | **Date:** March 5, 2019

3425 [In re Stroud](#), 2018 Bankr. LEXIS 2136 

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Court: Bankr. Northern Dist. Ga. | **Date:** July 19, 2018

3426 [In re Breland](#), 2018 Bankr. LEXIS 2031 

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Court: Bankr. Southern Dist. Ala. | **Date:** July 5, 2018

3427 [In re Parmley](#), 585 B.R. 920 

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3428 [In re McKeever](#), 588 B.R. 649 

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Court: Bankr. Northern Dist. Ga. | **Date:** May 1, 2018

3429 [In re Demicher](#), 2018 Bankr. LEXIS 4307 

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Court: Bankr. Middle Dist. Fla. | **Date:** April 3, 2018

3430 [In re Climate Control Mech. Servs.](#), 585 B.R. 192 

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3432 [In re Hooks](#), 577 B.R. 415 

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Court: Bankr. Middle Dist. Ala. | **Date:** October 30, 2017

3433 [In re Ocean 4660 LLC](#), 569 B.R. 850 

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Court: Bankr. Middle Dist. Fla. | **Date:** May 3, 2016

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Court: Bankr. Northern Dist. Ga. | **Date:** April 8, 2016

3440 [In re Elkouby](#), 561 B.R. 551 

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Court: Bankr. Southern Dist. Fla. | **Date:** February 29, 2016

3441 [Wilkins v. AmeriCorp, Inc. \(In re Allegro Law LLC\)](#), 545 B.R. 675 

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Court: Bankr. Middle Dist. Ala. | **Date:** February 16, 2016

3442 [In re Brooks](#), 2016 Bankr. LEXIS 99 

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3443 [In re Smith](#), 538 B.R. 867 

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3444 [In re Mohr](#), 538 B.R. 882 

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3446 [In re Didelis](#), 2015 Bankr. LEXIS 213 

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Court: Bankr. Middle Dist. Fla. | **Date:** January 15, 2015

3447 [In re Davis](#), 2014 Bankr. LEXIS 5266 

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3450 [In re Summerville](#), 515 B.R. 651 

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Court: Bankr. Middle Dist. Fla. | **Date:** December 12, 2013

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Court: Bankr. Southern Dist. Ga. | **Date:** September 9, 2013

3457 [In re Valone](#), 500 B.R. 645

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Court: Bankr. Middle Dist. Fla. | **Date:** September 4, 2013

3458 [In re Bryan](#), 2013 Bankr. LEXIS 3650 +

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Court: Bankr. Middle Dist. Ala. | **Date:** September 3, 2013

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3462 [In re Behn](#), 2013 Bankr. LEXIS 5820 

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Court: Bankr. Middle Dist. Fla. | **Date:** April 17, 2013

3463 [In re Jones](#), 2013 Bankr. LEXIS 1589 

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3464 [In re Davis](#), 489 B.R. 478 

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3466 [In re Cecil](#), 488 B.R. 200 

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3467 [In re Thadikamalla v. Thadikamalla](#), 488 B.R. 791 

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3470 [In re C.D. Jones & Co.](#), 482 B.R. 449 

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Court: Bankr. Northern Dist. Fla. | **Date:** November 5, 2012

3471 [In re Daniel](#), 2012 Bankr. LEXIS 4763 

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Court: Bankr. Middle Dist. Ala. | **Date:** October 11, 2012

3472 [In re Fundamental Long Term Care, Inc.](#), 2012 Bankr. LEXIS 4843 

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1153 [**CROWN PAPER LIQUIDATING TRUST v. PRICEWATERHOUSECOOPERS**](#), 2007 U.S. S. Ct. Briefs LEXIS 1163

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1154 [**CONWAY v. WILSON**](#), 2007 U.S. S. Ct. Briefs LEXIS 719

Content: Court Filings | **Date:** January 3, 2007

1155 [**CROWN PAPER LIQUIDATING TRUST v. PRICEWATERHOUSECOOPERS**](#), 2006 U.S. S. Ct. Briefs LEXIS 2962

Content: Court Filings | **Date:** December 19, 2006

1156 [**TRAVELERS CAS. & SUR. CO. OF AMERICA v. PACIFIC GAS & ELEC. CO.**](#), 2006 U.S. S. Ct. Briefs LEXIS 1197

Content: Court Filings | **Date:** November 20, 2006

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- 1157 [**MARRAMA v. CITIZENS BANK OF MASS.**](#), 2006 U.S. S. Ct. Briefs LEXIS 952

Content: Court Filings | **Date:** September 29, 2006

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- 1158 [**MARRAMA v. CITIZENS BANK OF MASSACHUSETTS**](#), 2006 U.S. S. Ct. Briefs LEXIS 960

Content: Court Filings | **Date:** September 29, 2006

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- 1159 [**MARRAMA v. CITIZENS BANK OF MASSACHUSETTS**](#), 2006 U.S. S. Ct. Briefs LEXIS 961

Content: Court Filings | **Date:** September 29, 2006

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- 1160 [**MARRAMA v. CITIZENS BANK OF MASSACHUSETTS**](#), 2006 U.S. S. Ct. Briefs LEXIS 953

Content: Court Filings | **Date:** September 25, 2006

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- 1161 [**LOG FURNITURE, INC. v. CALL**](#), 2006 U.S. S. Ct. Briefs LEXIS 2627

Content: Court Filings | **Date:** September 5, 2006

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- 1162 [**MARRAMA v. CITIZENS BANK OF MASS.**](#), 2006 U.S. S. Ct. Briefs LEXIS 659

Content: Court Filings | **Date:** August 7, 2006

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- 1163 [**MARRAMA v. CITIZENS BANK OF MASSACHUSETTS**](#), 2006 U.S. S. Ct. Briefs LEXIS 720

Content: Court Filings | **Date:** August 7, 2006

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- 1164 [**DILLARD'S, INC. v. AZPB LIMITED PARTNERSHIP**](#), 2006 U.S. S. Ct. Briefs LEXIS 1804

Content: Court Filings | **Date:** May 5, 2006

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- 1165 [**BURLINGTON NORTHERN SANTA FE RY. CO. v. WHITE**](#), 2006 U.S. S. Ct. Briefs LEXIS 355

Content: Court Filings | **Date:** March 15, 2006

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- 1166 [**HOWARD DELIVERY SERV. v. ZURICH AMERICAN INS. CO.**](#), 2006 U.S. S. Ct. Briefs LEXIS 142

Content: Court Filings | **Date:** January 26, 2006

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- 1167 [**HOWARD DELIVERY SERV. v. ZURICH AMERICAN INS. CO.**](#), 2005 U.S. S. Ct. Briefs LEXIS 951

Content: Court Filings | **Date:** December 22, 2005

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- 1168 [**STEWART TITLE GUAR. CO. v. LOGAN**](#), 2005 U.S. S. Ct. Briefs LEXIS 1603

Content: Court Filings | **Date:** October 31, 2005

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- 1169 [**RING v. RAMEKER**](#), 2005 U.S. S. Ct. Briefs LEXIS 1496

Content: Court Filings | **Date:** October 17, 2005

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- 1170 [**CENTRAL VIRGINIA COMMUNITY COLLEGE v. KATZ**](#), 2005 U.S. S. Ct. Briefs LEXIS 559

Content: Court Filings | **Date:** August 22, 2005

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- 1171 [**IVEY v. GREAT-WEST LIFE & ANNUITY INS. CO.**](#), 2005 U.S. S. Ct. Briefs LEXIS 1784

Content: Court Filings | **Date:** July 18, 2005

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- 1172 [**RICHARD GERALD ROUSEY & ROUSEY v. JACOWAY**](#), 2004 U.S. S. Ct. Briefs LEXIS 688

Content: Court Filings | **Date:** October 22, 2004

1173 [LAMIE v. UNITED STATES](#), 2003 U.S. S. Ct. Briefs LEXIS 655

Content: Court Filings | **Date:** August 6, 2003

1174 [LAMIE v. UNITED STATES](#), 2003 U.S. S. Ct. Briefs LEXIS 1246

Content: Court Filings | **Date:** February 7, 2003

1175 [Stoecker v. ILLINOIS](#), 2000 U.S. S. Ct. Briefs LEXIS 249

Content: Court Filings | **Date:** April 7, 2000

1176 [Stoecker v. ILLINOIS](#), 2000 U.S. S. Ct. Briefs LEXIS 210

Content: Court Filings | **Date:** March 22, 2000

1177 [STOECKER v. STATE DEP'T OF REVENUE](#), 2000 U.S. S. Ct. Briefs LEXIS 211

Content: Court Filings | **Date:** March 22, 2000

1178 [GRIMMETT v. BROWN](#), 1996 U.S. S. Ct. Briefs LEXIS 679

Content: Court Filings | **Date:** November 18, 1996

1179 [TAYLOR v. FREELAND & KRONZ](#), 1992 U.S. S. Ct. Briefs LEXIS 182

Content: Court Filings | **Date:** February 12, 1992

1180 [DEWSNUP v. TIMM](#), 1991 U.S. S. Ct. Briefs LEXIS 241

Content: Court Filings | **Date:** April 26, 1991

1181 [Toibb v. Radloff](#), 1991 U.S. S. Ct. Briefs LEXIS 892

Content: Court Filings | **Date:** March 4, 1991

1182 [ASTROLINE COMMUNS. CO. v. SHURBERG BROADCASTING OF HARTFORD, INC.](#), 1989 U.S. S. Ct. Briefs LEXIS 337

Content: Court Filings | **Date:** December 5, 1989

1183 [CALIFORNIA STATE BD. OF EQUALIZATION v. SIERRA SUMMIT, INC.](#), 1989 U.S. S. Ct. Briefs LEXIS 1366

Content: Court Filings | **Date:** March 1, 1989

1184 [CALIFORNIA STATE BD. OF EQUALIZATION v. SIERRA SUMMIT, INC.](#), 1989 U.S. S. Ct. Briefs LEXIS 1365

Content: Court Filings | **Date:** February 23, 1989

1185 [CALIFORNIA STATE BD. OF EQUALIZATION v. SIERRA SUMMIT, INC.](#), 1989 U.S. S. Ct. Briefs LEXIS 1361

Content: Court Filings | **Date:** January 26, 1989

1186 [FSLIC v. TICKTIN](#), 1988 U.S. S. Ct. Briefs LEXIS 723

Content: Court Filings | **Date:** November 17, 1988

1187 [MIDLANTIC NAT'L BANK v. NEW JERSEY DEP'T OF ENVTL. PROTECTION](#), 1985 U.S. S. Ct. Briefs LEXIS 990

Content: Court Filings | **Date:** June 7, 1985

1188 [CFTC v. WEINTRAUB](#), 1985 U.S. S. Ct. Briefs LEXIS 1469

Content: Court Filings | **Date:** February 25, 1985

1189 [CFTC v. WEINTRAUB](#), 1984 U.S. S. Ct. Briefs LEXIS 1445

Content: Court Filings | **Date:** August 16, 1984

1190 [UNITED STATES v. MILLER](#), 2024 U.S. S. Ct. Briefs LEXIS 3330

Content: Court Filings | **Date:** September 26, 2024

1191 [UNITED STATES v. MILLER](#), 2024 U.S. S. Ct. Briefs LEXIS 3318

Content: Court Filings | **Date:** September 26, 2024

1192 [UNITED STATES v. MILLER](#), 2024 U.S. S. Ct. Briefs LEXIS 3240

Content: Court Filings | **Date:** September 19, 2024

1193 [UNITED STATES v. MILLER](#), 2024 U.S. S. Ct. Briefs LEXIS 1804

Content: Court Filings | **Date:** May 13, 2024

1194 [WARFIELD v. UNITED STATES](#), 2024 U.S. S. Ct. Briefs LEXIS 1074

Content: Court Filings | **Date:** March 18, 2024

1195 [MCCALLISTER v. STEEDMAN](#), 2023 U.S. S. Ct. Briefs LEXIS 4181

Content: Court Filings | **Date:** December 27, 2023

1196 [MCCALLISTER v. STEEDMAN](#), 2023 U.S. S. Ct. Briefs LEXIS 3630

Content: Court Filings | **Date:** November 21, 2023

1197 [GOODMAN v. DOLL](#), 2023 U.S. S. Ct. Briefs LEXIS 3060

Content: Court Filings | **Date:** October 10, 2023

1198 [HARRINGTON v. PURDUE](#), 2023 U.S. S. Ct. Briefs LEXIS 2917

Content: Court Filings | **Date:** September 27, 2023

1199 [GOODMAN v. DOLL](#), 2023 U.S. S. Ct. Briefs LEXIS 2617

Content: Court Filings | **Date:** September 5, 2023

1200 [DU FLAMBEAU v. COUGHLIN](#), 2023 U.S. S. Ct. Briefs LEXIS 1099

Content: Court Filings | **Date:** March 31, 2023

1201 [WELLS v. MCCALLISTER](#), 2023 U.S. S. Ct. Briefs LEXIS 1218

Content: Court Filings | **Date:** March 29, 2023

1202 [NEXPOINT ADVISORS, L.P. v. HIGHLAND CAPITAL MGMT., L.P.](#), 2023 U.S. S. Ct. Briefs LEXIS 553

Content: Court Filings | **Date:** February 21, 2023

1203 [MOAC MALL HOLDINGS LLC v. TRANSFORM HOLDCO LLC](#), 2022 U.S. S. Ct. Briefs LEXIS 3418

Content: Court Filings | **Date:** October 19, 2022

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- 1204 [**CITY OF CHICAGO v. MANCE**](#), 2022 U.S. S. Ct. Briefs LEXIS 3069

Content: Court Filings | **Date:** September 19, 2022

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- 1205 [**SIEGEL v. FITZGERALD**](#), 2022 U.S. S. Ct. Briefs LEXIS 648

Content: Court Filings | **Date:** February 28, 2022

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- 1206 [**VASQUEZ v. WILMINGTON SAV. FUND SOC'Y**](#), 2021 U.S. S. Ct. Briefs LEXIS 1984

Content: Court Filings | **Date:** July 29, 2021

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- 1207 [**REICHARD v. BROWN**](#), 2021 U.S. S. Ct. Briefs LEXIS 646

Content: Court Filings | **Date:** March 10, 2021

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- 1208 [**Agha-Khan v. Pacific Community Mortg. In.**](#), 2021 U.S. S. Ct. Briefs LEXIS 5061

Content: Court Filings | **Date:** February 18, 2021

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- 1209 [**REICHARD v. BROWN**](#), 2021 U.S. S. Ct. Briefs LEXIS 241

Content: Court Filings | **Date:** February 2, 2021

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- 1210 [**NATHANIEL RICHARD HULL v. ROCKWELL**](#), 2021 U.S. S. Ct. Briefs LEXIS 226

Content: Court Filings | **Date:** February 2, 2021

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- 1211 [**KEACH v. NEW BRUNSWICK SOUTHERN RY. CO.**](#), 2020 U.S. S. Ct. Briefs LEXIS 3948

Content: Court Filings | **Date:** September 4, 2020

1212 [BLODGETT v. UNITED STATES](#), 2020 U.S. S. Ct. Briefs LEXIS 6376

Content: Court Filings | **Date:** July 20, 2020

1213 [DEUTSCHE BANK TRUST CO. AMERICAS v. ROBERT R. MCCORMICK FOUND.](#), 2020 U.S. S. Ct. Briefs LEXIS 6522

Content: Court Filings | **Date:** July 6, 2020

1214 [HSBC HOLDINGS PLC v. PICARD](#), 2020 U.S. S. Ct. Briefs LEXIS 4219

Content: Court Filings | **Date:** May 12, 2020

1215 [CITY OF CHICAGO v. FULTON](#), 2020 U.S. S. Ct. Briefs LEXIS 6266

Content: Court Filings | **Date:** March 11, 2020

1216 [PHAN v. TRUONG](#), 2019 U.S. S. Ct. Briefs LEXIS 8115

Content: Court Filings | **Date:** December 26, 2019

1217 [Shay v. Siegel](#), 2019 U.S. S. Ct. Briefs LEXIS 8262

Content: Court Filings | **Date:** November 26, 2019

1218 [LATITUDE SOLUTIONS, INC.](#), 2019 U.S. S. Ct. Briefs LEXIS 4736

Content: Court Filings | **Date:** September 10, 2019

1219 [DAVIS v. TYSON PREPARED FOODS, INC.](#), 2019 U.S. S. Ct. Briefs LEXIS 194

Content: Court Filings | **Date:** January 14, 2019

1220 [JUNK](#), 2018 U.S. S. Ct. Briefs LEXIS 575

Content: Court Filings | **Date:** February 9, 2018

1221 [JUNK](#), 2018 U.S. S. Ct. Briefs LEXIS 462

Content: Court Filings | **Date:** January 31, 2018

1222 [SUI](#), 2017 U.S. S. Ct. Briefs LEXIS 4915

Content: Court Filings | **Date:** November 14, 2017

1223 [NELSON v. MIDLAND CREDIT MGMT.](#), 2016 U.S. S. Ct. Briefs LEXIS 4567

Content: Court Filings | **Date:** December 12, 2016

1224 [MARSHALL v. HONEYWELL TECH. SYS.](#), 2016 U.S. S. Ct. Briefs LEXIS 3825

Content: Court Filings | **Date:** October 11, 2016

1225 [OWENS v. LVNV FUNDING](#), 2016 U.S. S. Ct. Briefs LEXIS 3426

Content: Court Filings | **Date:** September 20, 2016

1226 [MIDLAND FUNDING v. JOHNSON](#), 2016 U.S. S. Ct. Briefs LEXIS 3343

Content: Court Filings | **Date:** September 14, 2016

1227 [**BANK OF AM. v. BELLO**](#), 2014 U.S. S. Ct. Briefs LEXIS 3903

Content: Court Filings | **Date:** November 7, 2014

1228 [**NATIONAL HERITAGE FOUND., INC. v. HIGHBOURNE FOUND.**](#), 2014 U.S. S. Ct. Briefs LEXIS 3745

Content: Court Filings | **Date:** October 23, 2014

1229 [**BANK OF AMERICA, N.A. v. TOLEDO-CARDONA**](#), 2014 U.S. S. Ct. Briefs LEXIS 3684

Content: Court Filings | **Date:** October 21, 2014

1230 [**BANK OF AMERICA, N.A. v. CAULKETT**](#), 2014 U.S. S. Ct. Briefs LEXIS 3678

Content: Court Filings | **Date:** October 21, 2014

1231 [**DEGIACOMO v. TRAVERSE**](#), 2014 U.S. S. Ct. Briefs LEXIS 3280

Content: Court Filings | **Date:** September 16, 2014

1232 [**BANK OF AM., N.A. v. BELLO**](#), 2014 U.S. S. Ct. Briefs LEXIS 2987

Content: Court Filings | **Date:** August 27, 2014

1233 [**BANK OF AMERICA, N.A. v. TOLEDO-CARDONA**](#), 2014 U.S. S. Ct. Briefs LEXIS 2763

Content: Court Filings | **Date:** August 13, 2014

1234 [**DIACETYL v. AAROMA HOLDINGS**](#), 2014 U.S. S. Ct. Briefs LEXIS 2585

Content: Court Filings | **Date:** July 18, 2014

1235 [**BANK OF AMERICA, N.A. v. CAULKETT**](#), 2014 U.S. S. Ct. Briefs LEXIS 1997

Content: Court Filings | **Date:** May 23, 2014

1236 [**GARMONG v. CHAPTER 7**](#), 2014 U.S. S. Ct. Briefs LEXIS 1993

Content: Court Filings | **Date:** May 21, 2014

1237 [**SEARS v. BADAMI**](#), 2014 U.S. S. Ct. Briefs LEXIS 1491

Content: Court Filings | **Date:** April 9, 2014

1238 [**STAKER v. WELLS FARGO BANK, N.A.**](#), 2014 U.S. S. Ct. Briefs LEXIS 993

Content: Court Filings | **Date:** March 7, 2014

1239 [**WELLNESS INT'L NETWORK v. SHARIF**](#), 2014 U.S. S. Ct. Briefs LEXIS 445

Content: Court Filings | **Date:** February 5, 2014

1240 [**EXECUTIVE BENS. INS. AGENCY v. ARKISON**](#), 2013 U.S. S. Ct. Briefs LEXIS 4616

Content: Court Filings | **Date:** November 15, 2013

1241 [**Noblit**](#), 2013 U.S. S. Ct. Briefs LEXIS 3489

Content: Court Filings | **Date:** August 22, 2013

1242 [**Sieber \(SIEBER v. WASHINGTON POST CO.\)**](#), 2012 U.S. S. Ct. Briefs LEXIS 2975

Content: Court Filings | **Date:** July 17, 2012

1243 [**TILL v. SCS CREDIT CORP.**](#), 2003 U.S. S. Ct. Briefs LEXIS 844

Content: Court Filings | **Date:** October 24, 2003

1244 [**HARTFORD UNDERWRITERS INS. CO. v. UNION PLANTERS BANK, N.A.**](#), 2000 U.S. S. Ct. Briefs LEXIS 46

Content: Court Filings | **Date:** January 26, 2000

1245 [**HOOK**](#), 1996 U.S. S. Ct. Briefs LEXIS 918

Content: Court Filings | **Date:** November 18, 1996

1246 [**KAUBLE**](#), 1996 U.S. S. Ct. Briefs LEXIS 980

Content: Court Filings | **Date:** October 30, 1996

1247 [**THINGS REMEMBERED, INC. v. PETRARCA**](#), 1995 U.S. S. Ct. Briefs LEXIS 384

Content: Court Filings | **Date:** June 14, 1995

1248 [**CAROLINA MOTOR EXPRESS, INC.**](#), 1992 U.S. S. Ct. Briefs LEXIS 662

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1249 [**CAROLINA MOTOR EXPRESS, INC.**](#), 1992 U.S. S. Ct. Briefs LEXIS 661

Content: Court Filings | **Date:** September 2, 1992

1250 [**HOLYWELL CORP. v. SMITH**](#), 1991 U.S. S. Ct. Briefs LEXIS 473

Content: Court Filings | **Date:** October 16, 1991

1251 [HOLYWELL CORP. v. SMITH](#), 1991 U.S. S. Ct. Briefs LEXIS 471

Content: Court Filings | **Date:** September 16, 1991

1252 [HOLYWELL CORP. v. SMITH](#), 1991 U.S. S. Ct. Briefs LEXIS 451

Content: Court Filings | **Date:** July 29, 1991

1253 [DEWSNUP v. TIMM](#), 1991 U.S. S. Ct. Briefs LEXIS 240

Content: Court Filings | **Date:** June 12, 1991

1254 [Toibb v. Radloff](#), 1991 U.S. S. Ct. Briefs LEXIS 890

Content: Court Filings | **Date:** March 4, 1991

1255 [Toibb v. Radloff](#), 1991 U.S. S. Ct. Briefs LEXIS 888

Content: Court Filings | **Date:** March 4, 1991

1256 [MAISLIN INDUS. v. PRIMARY STEEL, INC.](#), 1990 U.S. S. Ct. Briefs LEXIS 979

Content: Court Filings | **Date:** March 2, 1990

1257 [GRANFINANCIERA v. NORDBERG](#), 1988 U.S. S. Ct. Briefs LEXIS 322

Content: Court Filings | **Date:** November 3, 1988

- 1258 [**MIDLANTIC NAT'L BANK v. NEW JERSEY DEP'T OF ENVIRONMENTAL PROTECTION**](#), 1985 U.S. S. Ct. Briefs LEXIS 988

Content: Court Filings | **Date:** June 7, 1985

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- 1259 [**MIDLANTIC NAT'L BANK v. NEW JERSEY DEP'T OF ENVTL. PROTECTION**](#), 1985 U.S. S. Ct. Briefs LEXIS 986

Content: Court Filings | **Date:** April 4, 1985

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- 1260 [**O'NEILL v. CITY OF NEW YORK & NEW YORK**](#), 1985 U.S. S. Ct. Briefs LEXIS 985

Content: Court Filings | **Date:** April 4, 1985

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- 1261 [**CFTC v. WEINTRAUB**](#), 1984 U.S. S. Ct. Briefs LEXIS 1446

Content: Court Filings | **Date:** December 13, 1984

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- 1262 [**MIDLANTIC NAT'L BANK v. NEW JERSEY DEP'T OF ENVTL. PROTECTION**](#), 1984 U.S. S. Ct. Briefs LEXIS 653

Content: Court Filings | **Date:** November 14, 1984

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- 1263 [**O'NEILL v. CITY OF NEW YORK & NEW YORK**](#), 1984 U.S. S. Ct. Briefs LEXIS 652

Content: Court Filings | **Date:** November 14, 1984

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- 1264 [**CFTC v. WEINTRAUB**](#), 1984 U.S. S. Ct. Briefs LEXIS 1447

Content: Court Filings | **Date:** September 18, 1984

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- 1265 [**FELDMAN**](#), 2021 U.S. 1st Cir. Briefs LEXIS 4279

Content: Court Filings | **Date:** July 2, 2021

1266 [FELDMAN](#), 2021 U.S. 1st Cir. Briefs LEXIS 909

Content: Court Filings | **Date:** July 2, 2021

1267 [TRAVERSE](#), 2021 U.S. 1st Cir. Briefs LEXIS 1405

Content: Court Filings | **Date:** May 31, 2021

1268 [Martel](#), 2021 U.S. 1st Cir. Briefs LEXIS 3215

Content: Court Filings | **Date:** May 30, 2021

1269 [BISHAY v. COMMISSIONER OF INTERNAL REVENUE](#), 2021 U.S. 1st Cir. Briefs LEXIS 4781

Content: Court Filings | **Date:** May 29, 2021

1270 [DE JESUS GONZALEZ](#), 2021 U.S. 1st Cir. Briefs LEXIS 4500

Content: Court Filings | **Date:** May 29, 2021

1271 [MARTEL](#), 2021 U.S. 1st Cir. Briefs LEXIS 3037

Content: Court Filings | **Date:** May 29, 2021

1272 [WOLVERINE, PROCTOR & SCHWARTZ](#), 2021 U.S. 1st Cir. Briefs LEXIS 2971

Content: Court Filings | **Date:** May 29, 2021

1273 [MAMMOLA v. DWYER](#), 2021 U.S. 1st Cir. Briefs LEXIS 2796

Content: Court Filings | **Date:** May 29, 2021

1274 [SMITH](#), 2021 U.S. 1st Cir. Briefs LEXIS 1617

Content: Court Filings | **Date:** May 29, 2021

1275 [HAHNFELDT v. MURPHY](#), 2021 U.S. 1st Cir. Briefs LEXIS 929

Content: Court Filings | **Date:** May 29, 2021

1276 [ROCKWELL](#), 2021 U.S. 1st Cir. Briefs LEXIS 889

Content: Court Filings | **Date:** May 29, 2021

1277 [MAMMOLA v. DWYER](#), 2021 U.S. 1st Cir. Briefs LEXIS 303

Content: Court Filings | **Date:** May 29, 2021

1278 [HAHNFELDT v. MURPHY](#), 2021 U.S. 1st Cir. Briefs LEXIS 4259

Content: Court Filings | **Date:** May 28, 2021

1279 [ZIZZA](#), 2021 U.S. 1st Cir. Briefs LEXIS 3727

Content: Court Filings | **Date:** May 28, 2021

1280 [ROCKWELL](#), 2021 U.S. 1st Cir. Briefs LEXIS 3590

Content: Court Filings | **Date:** May 28, 2021

1281 [MARTEL](#), 2021 U.S. 1st Cir. Briefs LEXIS 37

Content: Court Filings | **Date:** April 4, 2021

1282 [HOOVER v. HARRINGTON](#), 2014 U.S. 1st Cir. Briefs LEXIS 318

Content: Court Filings | **Date:** September 12, 2014

1283 [Sears Holdings Corp.](#), 2024 U.S. 2nd Cir. Briefs LEXIS 2036

Content: Court Filings | **Date:** October 15, 2024

1284 [Sears Holdings Corp.](#), 2024 U.S. 2nd Cir. Briefs LEXIS 2026

Content: Court Filings | **Date:** October 11, 2024

1285 [Kossoff PLLC](#), 2022 U.S. 2nd Cir. Briefs LEXIS 534

Content: Court Filings | **Date:** July 14, 2022

1286 [Soussis v. Macco](#), 2022 U.S. 2nd Cir. Briefs LEXIS 2397

Content: Court Filings | **Date:** July 12, 2022

1287 [Lynch](#), 2021 U.S. 2nd Cir. Briefs LEXIS 3383

Content: Court Filings | **Date:** August 16, 2021

1288 [Lynch](#), 2021 U.S. 2nd Cir. Briefs LEXIS 3774

Content: Court Filings | **Date:** July 26, 2021

1289 [JONES](#), 2021 U.S. 2nd Cir. Briefs LEXIS 621

Content: Court Filings | **Date:** May 31, 2021

1290 [Giddens v. Lehman Bros.](#), 2021 U.S. 2nd Cir. Briefs LEXIS 2172

Content: Court Filings | **Date:** April 27, 2021

1291 [Giddens v. Lehman Bros.](#), 2021 U.S. 2nd Cir. Briefs LEXIS 2207

Content: Court Filings | **Date:** February 4, 2021

1292 [Bronx Miracle Gospel Tabernacle Word of Faith Ministries](#), 2020 U.S. 2nd Cir. Briefs LEXIS 331

Content: Court Filings | **Date:** September 30, 2020

1293 [LYNCH v. BARNARD](#), 2020 U.S. 2nd Cir. Briefs LEXIS 2206

Content: Court Filings | **Date:** August 10, 2020

1294 [Inves](#), 2020 U.S. 2nd Cir. Briefs LEXIS 5538

Content: Court Filings | **Date:** August 6, 2020

1295 [Jones](#), 2019 U.S. 2nd Cir. Briefs LEXIS 3697

Content: Court Filings | **Date:** March 26, 2019

1296 [JONES](#), 2019 U.S. 2nd Cir. Briefs LEXIS 2584

Content: Court Filings | **Date:** March 25, 2019

1297 [LEHMAN BROS. HOLDINGS](#), 2018 U.S. 2nd Cir. Briefs LEXIS 1741

Content: Court Filings | **Date:** December 26, 2018

1298 [LEHMAN BROS. HOLDINGS v. BRANCH BANKING & TRUST CO.](#), 2018 U.S. 2nd Cir. Briefs LEXIS 645

Content: Court Filings | **Date:** July 26, 2018

1299 [MURRAY](#), 2017 U.S. 2nd Cir. Briefs LEXIS 3001

Content: Court Filings | **Date:** April 28, 2017

1300 [SPV OSUS LTD. v. UBS AG](#), 2017 U.S. 2nd Cir. Briefs LEXIS 1034

Content: Court Filings | **Date:** January 6, 2017

1301 [SPV OSUS LTD. v. UBS AG](#), 2017 U.S. 2nd Cir. Briefs LEXIS 44

Content: Court Filings | **Date:** January 6, 2017

1302 [FAIRFIELD SENTRY LTD.](#), 2017 U.S. 2nd Cir. Briefs LEXIS 3850

Content: Court Filings | **Date:** January 5, 2017

1303 [HSBC Bank USA](#), 2016 U.S. 2nd Cir. Briefs LEXIS 7316

Content: Court Filings | **Date:** November 10, 2016

1304 [YAGMAN](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3774

Content: Court Filings | **Date:** July 19, 2016

1305 [**SPV OSUS LTD. v. UBS AG**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3156

Content: Court Filings | **Date:** June 24, 2016

1306 [**DRAKE**](#), 2015 U.S. 2nd Cir. Briefs LEXIS 2112

Content: Court Filings | **Date:** June 17, 2015

1307 [**KHAN**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 2593

Content: Court Filings | **Date:** November 10, 2014

1308 [**Khan.**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 2266

Content: Court Filings | **Date:** October 27, 2014

1309 [**ROBERT PLAN CORP.**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 467

Content: Court Filings | **Date:** October 20, 2014

1310 [**ROBERT PLAN CORP.**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 465

Content: Court Filings | **Date:** October 7, 2014

1311 [**Osborne**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 3743

Content: Court Filings | **Date:** August 6, 2014

1312 [**OSBORNE**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 389

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1313 [ROBERT PLAN CORP.](#), 2014 U.S. 2nd Cir. Briefs LEXIS 468

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1314 [Osborne](#), 2014 U.S. 2nd Cir. Briefs LEXIS 4967

Content: Court Filings | **Date:** June 2, 2014

1315 [FAIRFIELD SENTRY LTD.](#), 2014 U.S. 2nd Cir. Briefs LEXIS 2087

Content: Court Filings | **Date:** February 28, 2014

1316 [FAIRFIELD SENTRY LTD.](#), 2014 U.S. 2nd Cir. Briefs LEXIS 2592

Content: Court Filings | **Date:** February 14, 2014

1317 [OSBORNE](#), 2013 U.S. 2nd Cir. Briefs LEXIS 1448

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1318 [WHYTE v. BARCLAYS BANK PLC](#), 2013 U.S. 2nd Cir. Briefs LEXIS 62

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1319 [Santiago-Monteverde](#), 2013 U.S. 2nd Cir. Briefs LEXIS 5481

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1320 [Santiago-Monteverde](#), 2013 U.S. 2nd Cir. Briefs LEXIS 2055

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1321 [**MF Global Holdings**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 4857

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1322 [**MF Global Holdings v. Giddens**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 1374

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1323 [**CHRISTINE FALLS CORP. v. U.S. BANK NAT'L ASS'N**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 2978

Content: Court Filings | **Date:** November 27, 2012

1324 [**FEDERAL HOUS. FIN. AGENCY v. UBS AMERICAS INC.**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 84

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1325 [**GERON v. SEYFARTH SHAW LLP**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 2049

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1326 [**SANTIAGO-MONTEVERDE**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 1862

Content: Court Filings | **Date:** October 12, 2012

1327 [**UNITED STATES v. MOSKOWITZ**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 387

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1328 [**FEDERAL HOUS. FIN. AGENCY v. UBS AMERICAS INC.**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 1527

Content: Court Filings | **Date:** August 14, 2012

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- 1329 [**CHRISTINE FALLS CORP. v. U.S. BANK NAT'L ASS'N**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 1817

Content: Court Filings | **Date:** February 27, 2012

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- 1330 [**GUCCI v. SINATRA**](#), 2006 U.S. 2nd Cir. Briefs LEXIS 132

Content: Court Filings | **Date:** May 3, 2006

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- 1331 [**MUSSO v. OSTASHKO**](#), 2006 U.S. 2nd Cir. Briefs LEXIS 142

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- 1332 [**Diocese of Camden**](#), 2024 U.S. 3rd Cir. Briefs LEXIS 651

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- 1333 [**KIEL**](#), 2021 U.S. 3rd Cir. Briefs LEXIS 4027

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- 1334 [**J & S PROPS.**](#), 2021 U.S. 3rd Cir. Briefs LEXIS 3577

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- 1335 [**J & S Props. LLC**](#), 2021 U.S. 3rd Cir. Briefs LEXIS 2824

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1336 [ALSTON](#), 2021 U.S. 3rd Cir. Briefs LEXIS 2098

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1337 [HIPPLE v. SCIX](#), 2021 U.S. 3rd Cir. Briefs LEXIS 1844

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1338 [JO](#), 2021 U.S. 3rd Cir. Briefs LEXIS 921

Content: Court Filings | **Date:** May 31, 2021

1339 [FOREVER GREEN ATH. FIELDS, INC.](#), 2021 U.S. 3rd Cir. Briefs LEXIS 644

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1340 [SCHEPIS v. BURTCH](#), 2017 U.S. 3rd Cir. Briefs LEXIS 736

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1341 [MERRITT v. CHESHIRE LAND PRESERVATION FUND](#), 2017 U.S. 3rd Cir. Briefs LEXIS 103

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1342 [SCHEPIS v. BURTCH](#), 2016 U.S. 3rd Cir. Briefs LEXIS 478

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1343 [SCHEPIS v. BURTCH](#), 2016 U.S. 3rd Cir. Briefs LEXIS 278

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1344 [**TORRES v. CAVALRY SPV**](#), 2016 U.S. 3rd Cir. Briefs LEXIS 63

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1345 [**Torres v. Cavalry SPV**](#), 2015 U.S. 3rd Cir. Briefs LEXIS 361

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1346 [**NEW CENTURY TRS HOLDINGS**](#), 2013 U.S. 3rd Cir. Briefs LEXIS 968

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1347 [**EMORAL, INC.**](#), 2012 U.S. 3rd Cir. Briefs LEXIS 91

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1348 [**MERRILL LYNCH BUS. FIN. SERVS. v. JPMORGAN CHASE BANK, N.A.**](#), 2011 U.S. 3rd Cir. Briefs LEXIS 246

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1349 [**BUCCOLO**](#), 2009 U.S. 3rd Cir. Briefs LEXIS 342

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1350 [**NADEJDA REILLY**](#), 2007 U.S. 3rd Cir. Briefs LEXIS 923

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1351 [**NADEJDA REILLY, Appellee, WILLIAM G. SCHWAB**](#), 2007 U.S. 3rd Cir. Briefs LEXIS 922

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1352 [NADEJDA REILLY](#), 2007 U.S. 3rd Cir. Briefs LEXIS 925

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1353 [Ramkrishna S. Tare v. Marks](#), 2006 U.S. 3rd Cir. Briefs LEXIS 1948

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1354 [Wiggins](#), 2006 U.S. 3rd Cir. Briefs LEXIS 1736

Content: Court Filings | **Date:** September 18, 2006

1355 [UDELL v. U.S.](#), 2005 U.S. 3rd Cir. Briefs LEXIS 308

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1356 [AMERICAN PAD & PAPER CO., et al.](#), 2005 U.S. 3rd Cir. Briefs LEXIS 1109

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1357 [Secivanovic](#), 2005 U.S. 3rd Cir. Briefs LEXIS 371

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1358 [GALTIERI](#), 2005 U.S. 3rd Cir. Briefs LEXIS 132

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1359 [POURBABAI v. GUZINSKI](#), 2020 U.S. 4th Cir. Briefs LEXIS 1558

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1360 [POURBABAI](#), 2019 U.S. 4th Cir. Briefs LEXIS 3383

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1361 [POURBABAI v. GUZINSKI](#), 2019 U.S. 4th Cir. Briefs LEXIS 1497

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1362 [MARTINEAU v. WIER](#), 2019 U.S. 4th Cir. Briefs LEXIS 1045

Content: Court Filings | **Date:** February 5, 2019

1363 [MARTINEAU v. WIER](#), 2018 U.S. 4th Cir. Briefs LEXIS 839

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1364 [RICHARDSON](#), 2018 U.S. 4th Cir. Briefs LEXIS 1700

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1365 [RAHMI](#), 2018 U.S. 4th Cir. Briefs LEXIS 1364

Content: Court Filings | **Date:** March 20, 2018

1366 [SMITH-SCOTT](#), 2018 U.S. 4th Cir. Briefs LEXIS 1302

Content: Court Filings | **Date:** February 28, 2018

1367 [VIRGINIA v. BESKIN](#), 2017 U.S. 4th Cir. Briefs LEXIS 357

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1368 [KATZ](#), 2017 U.S. 4th Cir. Briefs LEXIS 3061

Content: Court Filings | **Date:** October 18, 2017

1369 [BELLINGER v. BUCKLEY](#), 2017 U.S. 4th Cir. Briefs LEXIS 1471

Content: Court Filings | **Date:** September 28, 2017

1370 [Palwinder Singh US Dist. Court Case No. I:17-cv-00266 TSE/IVISN, BK No. 16-1Q804-KHK](#), 2017 U.S. 4th Cir. Briefs LEXIS 3288

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1371 [17-1981 In re Singh](#), 2017 U.S. 4th Cir. Briefs LEXIS 3218

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1372 [SHEEHAN v. ASH](#), 2017 U.S. 4th Cir. Briefs LEXIS 1698

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1373 [SOPKIN v. MENDELSON](#), 2017 U.S. 4th Cir. Briefs LEXIS 1714

Content: Court Filings | **Date:** May 16, 2017

1374 [SOPKIN v. JILL C. MENDELSON, Ex'r of Estate of Richard S. Mendelson](#), 2017 U.S. 4th Cir. Briefs LEXIS 1157

Content: Court Filings | **Date:** May 16, 2017

1375 [SOPKIN v. MENDELSON](#), 2017 U.S. 4th Cir. Briefs LEXIS 1101

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1376 [BROWN v. GORMAN](#), 2016 U.S. 4th Cir. Briefs LEXIS 1759

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1377 [LYNCH v. JACKSON](#), 2016 U.S. 4th Cir. Briefs LEXIS 1410

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1378 [LVNV FUNDING v. DERRICK](#), 2016 U.S. 4th Cir. Briefs LEXIS 1747

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1379 [SMITH-SCOTT v. GEORGE LIEBMANN HOWARD BANK U. S. BANK](#), 2016 U.S. 4th Cir. Briefs LEXIS 1913

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1380 [LABGOLD](#), 2015 U.S. 4th Cir. Briefs LEXIS 958

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1381 [DUBOIS](#), 2015 U.S. 4th Cir. Briefs LEXIS 928

Content: Court Filings | **Date:** August 21, 2015

1382 [DUBOIS](#), 2015 U.S. 4th Cir. Briefs LEXIS 926

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1383 [**DUBOIS v. ATLAS ACQUISITIONS LLC**](#), 2015 U.S. 4th Cir. Briefs LEXIS 700

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1384 [**NAKELL v. BARTH**](#), 2015 U.S. 4th Cir. Briefs LEXIS 1051

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1385 [**ANDERSON**](#), 2015 U.S. 4th Cir. Briefs LEXIS 461

Content: Court Filings | **Date:** July 31, 2015

1386 [**BIRD v. DRISCOLL**](#), 2015 U.S. 4th Cir. Briefs LEXIS 388

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1387 [**SYDNOR v. LAKEFRONT INVESTORS**](#), 2014 U.S. 4th Cir. Briefs LEXIS 1030

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1388 [**RAJA v. MERSCORP, INC.**](#), 2014 U.S. 4th Cir. Briefs LEXIS 906

Content: Court Filings | **Date:** July 17, 2014

1389 [**ROWE**](#), 2013 U.S. 4th Cir. Briefs LEXIS 1164

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1390 [**ROWE**](#), 2013 U.S. 4th Cir. Briefs LEXIS 1203

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- 1391 [National Heritage Found. v. Behrmann](#), 2013 U.S. 4th Cir. Briefs LEXIS 3019

Content: Court Filings | **Date:** May 9, 2013

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- 1392 [ROWE](#), 2013 U.S. 4th Cir. Briefs LEXIS 2259

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- 1393 [CARROLL v. LOGAN](#), 2013 U.S. 4th Cir. Briefs LEXIS 1827

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- 1394 [REEVES v. CALLAWAY](#), 2012 U.S. 4th Cir. Briefs LEXIS 2383

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- 1395 [REEVES v. CALLAWAY](#), 2012 U.S. 4th Cir. Briefs LEXIS 1850

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- 1396 [SIEBER](#), 2012 U.S. 4th Cir. Briefs LEXIS 3527

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- 1397 [SIEBER](#), 2012 U.S. 4th Cir. Briefs LEXIS 2784

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- 1398 [YELVERTON v. YELVERTON FARMS, LTD.](#), 2012 U.S. 4th Cir. Briefs LEXIS 3250

Content: Court Filings | **Date:** August 17, 2012

1399 [**MARYLAND PROP. ASSOCs.**](#), 2008 U.S. 4th Cir. Briefs LEXIS 435

Content: Court Filings | **Date:** May 15, 2008

1400 [**FRENCH**](#), 2005 U.S. 4th Cir. Briefs LEXIS 147

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1401 [**Simon v. Harrison**](#), 2024 U.S. 5th Cir. Briefs LEXIS 736

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1402 [**NexPoint v. Highland Capital Mgmt**](#), 2021 U.S. 5th Cir. Briefs LEXIS 2933

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1403 [**Foster v. Holder**](#), 2021 U.S. 5th Cir. Briefs LEXIS 1196

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1404 [**HAWK**](#), 2021 U.S. 5th Cir. Briefs LEXIS 466

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1405 [**KIPP FLORES ARCHITECTS v. MID-CONTINENT CAS. CO.**](#), 2016 U.S. 5th Cir. Briefs LEXIS 325

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1406 [**KIPP FLORES ARCHITECTS v. MID-CONTINENT CAS. CO.**](#), 2016 U.S. 5th Cir. Briefs LEXIS 545

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1407 [Foster v. Holder](#), 2015 U.S. 5th Cir. Briefs LEXIS 786

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1408 [IFS Fin. Corp. v. Robbins](#), 2015 U.S. 5th Cir. Briefs LEXIS 1323

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1409 [BUESCHER](#), 2014 U.S. 5th Cir. Briefs LEXIS 1360

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1410 [HARRIS](#), 2013 U.S. 5th Cir. Briefs LEXIS 2322

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1411 [Liberty Mut. Ins. Co. v. USA](#), 2013 U.S. 5th Cir. Briefs LEXIS 1879

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1412 [UNITED STATES ex rel. SPICER v. WESTBROOK](#), 2013 U.S. 5th Cir. Briefs LEXIS 2041

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1413 [FLUGENCE](#), 2013 U.S. 5th Cir. Briefs LEXIS 1900

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1414 [Liberty Mut. Ins. Co. v. USA](#), 2012 U.S. 5th Cir. Briefs LEXIS 2281

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1415 [SCHOOLER v. UNITED STATES](#), 2012 U.S. 5th Cir. Briefs LEXIS 403

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1416 [Bloch v. Floyd](#), 2009 U.S. 5th Cir. Briefs LEXIS 2184

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1417 [RX.COM v. MEDCO HEALTH SOL.](#), 2008 U.S. 5th Cir. Briefs LEXIS 419

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1418 [BAUM v. First Coleman Nat'l Bank](#), 2006 U.S. 5th Cir. Briefs LEXIS 415

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1419 [STANLEY v. TRINCHARD](#), 2006 U.S. 5th Cir. Briefs LEXIS 1019

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1420 [MG&ED](#), 2005 U.S. 5th Cir. Briefs LEXIS 260

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1421 [CORTEZ](#), 2005 U.S. 5th Cir. Briefs LEXIS 469

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1422 [Coastal Plains, Inc. v. Mims](#), 2005 U.S. 5th Cir. Briefs LEXIS 175

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1423 [MG & ED](#), 2005 U.S. 5th Cir. Briefs LEXIS 259

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1424 [DOW AGROSCIENCES v. BATES](#), 2004 U.S. 5th Cir. Briefs LEXIS 5

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1425 [DOW AGROSCIENCES v. BATES](#), 2004 U.S. 5th Cir. Briefs LEXIS 8

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1426 [TEIXEIRA](#), 2020 U.S. 6th Cir. Briefs LEXIS 120

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1427 [WOODBERRY](#), 2020 U.S. 6th Cir. Briefs LEXIS 1062

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1428 [FARRIER v. LEICHT](#), 2020 U.S. 6th Cir. Briefs LEXIS 597

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1429 [COSLOW](#), 2019 U.S. 6th Cir. Briefs LEXIS 1548

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1430 [KOLESTAR v. ALLSTATE INS. CO.](#), 2019 U.S. 6th Cir. Briefs LEXIS 1054

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1431 [BELL](#), 2019 U.S. 6th Cir. Briefs LEXIS 402

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1432 [WHITE](#), 2019 U.S. 6th Cir. Briefs LEXIS 471

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1433 [WHITE](#), 2019 U.S. 6th Cir. Briefs LEXIS 416

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1434 [Capital Contr. Co.](#), 2018 U.S. 6th Cir. Briefs LEXIS 1285

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1435 [Perez](#), 2018 U.S. 6th Cir. Briefs LEXIS 382

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1436 [In v. Corcoran](#), 2018 U.S. 6th Cir. Briefs LEXIS 1476

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1437 [MASCO CORP. v. DEF](#), 2017 U.S. 6th Cir. Briefs LEXIS 1604

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1438 [HARDESTY v. HABER](#), 2017 U.S. 6th Cir. Briefs LEXIS 1550

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1439 [BURKE](#), 2016 U.S. 6th Cir. Briefs LEXIS 1257

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1440 [WHITE v. DANIEL M. McDERMOTT](#), 2016 U.S. 6th Cir. Briefs LEXIS 1489

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1441 [WHITE](#), 2016 U.S. 6th Cir. Briefs LEXIS 1290

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1442 [Granader](#), 2016 U.S. 6th Cir. Briefs LEXIS 1535

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1443 [MONSON-HOLLEY v. CORCORAN](#), 2016 U.S. 6th Cir. Briefs LEXIS 321

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1444 [Junk](#), 2015 U.S. 6th Cir. Briefs LEXIS 1235

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1445 [JUNK v. CITIMORTGAGE, INC.](#), 2015 U.S. 6th Cir. Briefs LEXIS 567

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1446 [ENERGY CONVERSION DEVICES, INC.](#), 2015 U.S. 6th Cir. Briefs LEXIS 1133

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1447 [NOBLIT](#), 2013 U.S. 6th Cir. Briefs LEXIS 2122

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1448 [DAVID W. NOBLIT, Administrator ad litem for the estate of STEVE A. MCKENZIE v. LEROY](#), 2013 U.S. 6th Cir. Briefs LEXIS 2047

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1449 [BALDRIDGE](#), 2013 U.S. 6th Cir. Briefs LEXIS 1828

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1450 [MAMMOUTH FIELD SERVS.](#), 2013 U.S. 6th Cir. Briefs LEXIS 2125

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1451 [KHAN v. REGIONS BANK](#), 2012 U.S. 6th Cir. Briefs LEXIS 2044

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1452 [Lunan](#), 2012 U.S. 6th Cir. Briefs LEXIS 1850

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1453 [GRANT v. LEROY](#), 2012 U.S. 6th Cir. Briefs LEXIS 1962

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1454 [MCKENZIE](#), 2012 U.S. 6th Cir. Briefs LEXIS 1928

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1455 [LUNAN v. JONES](#), 2012 U.S. 6th Cir. Briefs LEXIS 1804

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1456 [Lunan](#), 2012 U.S. 6th Cir. Briefs LEXIS 1872

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1457 [SOLUTION](#), 2010 U.S. 6th Cir. Briefs LEXIS 52

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1458 [THOMAS](#), 2008 U.S. 6th Cir. Briefs LEXIS 193

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1459 [LIBERTE CAPITAL GROUP v. CAPWILL](#), 2006 U.S. 6th Cir. Briefs LEXIS 264

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1460 [LIBERTE CAPITAL GROUP LLC v. CAPWILL](#), 2006 U.S. 6th Cir. Briefs LEXIS 254

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1461 [VELTRI METAL PRODS., INC.](#), 2005 U.S. 6th Cir. Briefs LEXIS 346

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1462 [CONWAY v. U.S. TRUSTEE FOR REGION 8](#), 2005 U.S. 6th Cir. Briefs LEXIS 286

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1463 [KLOIAN](#), 2005 U.S. 6th Cir. Briefs LEXIS 399

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1464 [KLOIAN](#), 2005 U.S. 6th Cir. Briefs LEXIS 269

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1465 [DOW CORNING CORP.](#), 2003 U.S. 6th Cir. Briefs LEXIS 4

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1466 [ARCHDIOCESE OF MILWAUKEE](#), 2021 U.S. 7th Cir. Briefs LEXIS 6411

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1467 [Smith](#), 2021 U.S. 7th Cir. Briefs LEXIS 2460

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1468 [MOORE](#), 2021 U.S. 7th Cir. Briefs LEXIS 1892

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- 1469 [**MUSKEGAN HOTELS, LLC, M.D. 1 LLC, MD GLOBAL LLC, GLOBAL DEV. INC. & MICHAEL I. MERCHANT as Indep. Administrator of the Estate of Hasan Gulamabbas Merchant v. PATEL**](#), 2021 U.S. 7th Cir. Briefs LEXIS 1653

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- 1470 [**ARCHDIOCESE OF MILWAUKEE**](#), 2021 U.S. 7th Cir. Briefs LEXIS 4763

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- 1471 [**MCGARRY & MCGARRY v. BANKRUPTCY MGMT. SOLUTIONS**](#), 2021 U.S. 7th Cir. Briefs LEXIS 4274

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- 1472 [**CAUDILL SEED & WAREHOUSE CO. v. MMR FARMS LLC**](#), 2021 U.S. 7th Cir. Briefs LEXIS 1244

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- 1473 [**Palomar v. First American Bank**](#), 2021 U.S. 7th Cir. Briefs LEXIS 317

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- 1474 [**Bush v. United States**](#), 2020 U.S. 7th Cir. Briefs LEXIS 1051

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- 1475 [**Steenes**](#), 2018 U.S. 7th Cir. Briefs LEXIS 454

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- 1476 [**MOORE**](#), 2018 U.S. 7th Cir. Briefs LEXIS 692

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1477 [BARGO v. PORTER COUNTY](#), 2018 U.S. 7th Cir. Briefs LEXIS 1185

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1478 [WELLNESS INT'L NETWORK v. SHARIF](#), 2017 U.S. 7th Cir. Briefs LEXIS 968

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1479 [CAUDILL SEED & WAREHOUSE CO. v. MMR FARMS LLC](#), 2017 U.S. 7th Cir. Briefs LEXIS 1240

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1480 [Owens v. LVNV Funding](#), 2016 U.S. 7th Cir. Briefs LEXIS 1007

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1481 [Owens v. LVNV Funding](#), 2016 U.S. 7th Cir. Briefs LEXIS 531

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1482 [OWENS v. LVNV FUNDING](#), 2016 U.S. 7th Cir. Briefs LEXIS 447

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1483 [OWENS v. LVNV FUNDING](#), 2015 U.S. 7th Cir. Briefs LEXIS 2462

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1484 [OWENS v. LVNV FUNDING](#), 2015 U.S. 7th Cir. Briefs LEXIS 2058

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1485 [OWENS v. LVNV FUNDING](#), 2015 U.S. 7th Cir. Briefs LEXIS 707

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1486 [KDC FOODS, INC. v. GRAY](#), 2014 U.S. 7th Cir. Briefs LEXIS 1757

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1487 [KDC FOODS, INC. v. GRAY](#), 2014 U.S. 7th Cir. Briefs LEXIS 95

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1488 [WELLNESS INT'L NETWORK v. SHARIF](#), 2013 U.S. 7th Cir. Briefs LEXIS 2421

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1489 [Palomar v. First American Bank](#), 2012 U.S. 7th Cir. Briefs LEXIS 1366

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1490 [ALTHEIMER & GRAY](#), 2010 U.S. 7th Cir. Briefs LEXIS 8

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1491 [MILLER v. ASBACH](#), 2007 U.S. 7th Cir. Briefs LEXIS 294

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1492 [**BLACK v. BARNES**](#), 2005 U.S. 7th Cir. Briefs LEXIS 664

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1493 [**BLACK v. BARNES**](#), 2005 U.S. 7th Cir. Briefs LEXIS 661

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1494 [**DECHERT v. THE CADLE CO.**](#), 2003 U.S. 7th Cir. Briefs LEXIS 417

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1495 [**DECHERT v. THE CADLE CO.**](#), 2003 U.S. 7th Cir. Briefs LEXIS 418

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1496 [**Kelley v. BMO Harris Bank N.A.**](#), 2023 U.S. 8th Cir. Briefs LEXIS 1987

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1497 [**Levitt v. Jacoway**](#), 2021 U.S. 8th Cir. Briefs LEXIS 7208

Content: Court Filings | **Date:** September 13, 2021

1498 [**LEVITT**](#), 2021 U.S. 8th Cir. Briefs LEXIS 3509

Content: Court Filings | **Date:** July 26, 2021

1499 [**PILLAR CAPITAL HOLDINGS v. WILLIAMS**](#), 2021 U.S. 8th Cir. Briefs LEXIS 6309

Content: Court Filings | **Date:** May 29, 2021

1500 [Genmar Holdings](#), 2021 U.S. 8th Cir. Briefs LEXIS 4864

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1501 [NELSON v. MIDLAND CREDIT MGMT.](#), 2021 U.S. 8th Cir. Briefs LEXIS 1737

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1502 [SEARS v. SEARS](#), 2021 U.S. 8th Cir. Briefs LEXIS 435

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1503 [Levitt v. Jacoway](#), 2021 U.S. 8th Cir. Briefs LEXIS 7447

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1504 [OAKLEY GRAIN, INC. v. RICE](#), 2020 U.S. 8th Cir. Briefs LEXIS 493

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1505 [Dowden v. Cornerstone Nat'l Ins.](#), 2020 U.S. 8th Cir. Briefs LEXIS 1761

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1506 [DOWDEN v. CORNERSTONE NAT'L INS. CO.](#), 2020 U.S. 8th Cir. Briefs LEXIS 271

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1507 [Curran v. Moon](#), 2018 U.S. 8th Cir. Briefs LEXIS 1734

Content: Court Filings | **Date:** December 20, 2018

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- 1508 [**NELSON v. MIDLAND CREDIT MGMT.**](#), 2016 U.S. 8th Cir. Briefs LEXIS 184

Content: Court Filings | **Date:** August 8, 2016

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- 1509 [**JONES v. BOB EVANS FARMS, INC.**](#), 2015 U.S. 8th Cir. Briefs LEXIS 158

Content: Court Filings | **Date:** August 10, 2015

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- 1510 [**Pillar Capital Holdings v. Williams**](#), 2012 U.S. 8th Cir. Briefs LEXIS 3182

Content: Court Filings | **Date:** June 22, 2012

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- 1511 [**Pillar Capital Holdings v. Williams**](#), 2012 U.S. 8th Cir. Briefs LEXIS 3091

Content: Court Filings | **Date:** June 22, 2012

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- 1512 [**SEARS v. BADAMI**](#), 2011 U.S. 8th Cir. Briefs LEXIS 1773

Content: Court Filings | **Date:** August 24, 2011

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- 1513 [**U.S. Bank Nat'l Ass'n v. Federal Ins. Co.**](#), 2011 U.S. 8th Cir. Briefs LEXIS 4011

Content: Court Filings | **Date:** March 4, 2011

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- 1514 [**U.S. BANK NAT'L ASS'N v. FEDERAL INS. CO.**](#), 2011 U.S. 8th Cir. Briefs LEXIS 318

Content: Court Filings | **Date:** March 4, 2011

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- 1515 [**Genmar Holdings v. Genmar Holdings**](#), 2011 U.S. 8th Cir. Briefs LEXIS 85

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1516 [**PEEPLES v. CRST VAN EXPEDITED**](#), 2010 U.S. 8th Cir. Briefs LEXIS 995

Content: Court Filings | **Date:** August 31, 2010

1517 [**United States v. Ritchie Special Credit**](#), 2009 U.S. 8th Cir. Briefs LEXIS 1008

Content: Court Filings | **Date:** December 22, 2009

1518 [**T.G. Morgan, Inc.**](#), 2009 U.S. 8th Cir. Briefs LEXIS 137

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1519 [**FLORENCE v. STOEBNER**](#), 2009 U.S. 8th Cir. Briefs LEXIS 136

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1520 [**UNITED STATES v. SCHILKE**](#), 2009 U.S. 8th Cir. Briefs LEXIS 125

Content: Court Filings | **Date:** January 26, 2009

1521 [**ANDERS v. IRS**](#), 2008 U.S. 8th Cir. Briefs LEXIS 38

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1522 [**RACING SERVS., INC. v. STATE OF NORTH DAKOTA**](#), 2007 U.S. 8th Cir. Briefs LEXIS 11

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1523 [**BROWN v. PYATT**](#), 2007 U.S. 8th Cir. Briefs LEXIS 23

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1524 [**PYATT v. BROWN**](#), 2006 U.S. 8th Cir. Briefs LEXIS 365

Content: Court Filings | **Date:** November 22, 2006

1525 [**MORATZKA v. MORRIS & MORRIS**](#), 2006 U.S. 8th Cir. Briefs LEXIS 557

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1526 [**MORATZKA v. MORRIS & MORRIS**](#), 2006 U.S. 8th Cir. Briefs LEXIS 556

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1527 [**MORATZKA v. MORRIS & MORRIS**](#), 2005 U.S. 8th Cir. Briefs LEXIS 658

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1528 [**UNITED STATES v. GURLEY**](#), 2005 U.S. 8th Cir. Briefs LEXIS 293

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1529 [**United States v. Gurley**](#), 2005 U.S. 8th Cir. Briefs LEXIS 700

Content: Court Filings | **Date:** February 14, 2005

1530 [**Nelson**](#), 2003 U.S. 8th Cir. Briefs LEXIS 137

Content: Court Filings | **Date:** March 7, 2003

1531 [Anoruo v. Wilmington Sav. Fund Soc'y](#), 2024 U.S. 9th Cir. Briefs LEXIS 3780

Content: Court Filings | **Date:** July 16, 2024

1532 [Phillips v. Goldman](#), 2024 U.S. 9th Cir. Briefs LEXIS 2858

Content: Court Filings | **Date:** May 22, 2024

1533 [Whose Dog R U Productions](#), 2024 U.S. 9th Cir. Briefs LEXIS 2083

Content: Court Filings | **Date:** April 8, 2024

1534 [Billing Assocs. Northwest LLC v. Addison Data Servs. LLC](#), 2024 U.S. 9th Cir. Briefs LEXIS 2100

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1535 [Billing Assocs. Northwest LLC v. Addison Data Servs. LLC](#), 2024 U.S. 9th Cir. Briefs LEXIS 1948

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1536 [Swartz v. United States Dist. Court](#), 2024 U.S. 9th Cir. Briefs LEXIS 1503

Content: Court Filings | **Date:** March 7, 2024

1537 [Coeptis Equity Fund LLC](#), 2023 U.S. 9th Cir. Briefs LEXIS 13089

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1538 [Clichici v. Walmart, Inc.](#), 2023 U.S. 9th Cir. Briefs LEXIS 12499

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1539 [Silva](#), 2021 U.S. 9th Cir. Briefs LEXIS 12743

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1540 [Hollister](#), 2021 U.S. 9th Cir. Briefs LEXIS 11911

Content: Court Filings | **Date:** May 4, 2021

1541 [Vallejo v. Dockery](#), 2021 U.S. 9th Cir. Briefs LEXIS 3477

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1542 [Stevens](#), 2021 U.S. 9th Cir. Briefs LEXIS 8064

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1543 [KUITY CORP. v. GLADSTONE](#), 2020 U.S. 9th Cir. Briefs LEXIS 1174

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1544 [Albert](#), 2020 U.S. 9th Cir. Briefs LEXIS 19474

Content: Court Filings | **Date:** August 19, 2020

1545 [Reichard v. Brown](#), 2020 U.S. 9th Cir. Briefs LEXIS 19412

Content: Court Filings | **Date:** August 12, 2020

1546 [ISOM](#), 2020 U.S. 9th Cir. Briefs LEXIS 733

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1547 [Reichard v. Brown](#), 2020 U.S. 9th Cir. Briefs LEXIS 805

Content: Court Filings | **Date:** April 14, 2020

1548 [JESSLYN RENEE ANDERSON Bankr](#), 2020 U.S. 9th Cir. Briefs LEXIS 1389

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1549 [Albert](#), 2020 U.S. 9th Cir. Briefs LEXIS 8128

Content: Court Filings | **Date:** January 22, 2020

1550 [ALBERT](#), 2020 U.S. 9th Cir. Briefs LEXIS 1678

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1551 [ALBERT](#), 2020 U.S. 9th Cir. Briefs LEXIS 1665

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1552 [KLIMENKO v. GONZALEZ](#), 2019 U.S. 9th Cir. Briefs LEXIS 1717

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1553 [Elliott v. Pacific Western Bank](#), 2019 U.S. 9th Cir. Briefs LEXIS 16743

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1554 [SCHRUPP v. WELLS FARGO BANK, N.A.](#), 2019 U.S. 9th Cir. Briefs LEXIS 4832

Content: Court Filings | **Date:** March 20, 2019

1555 [HARKEY v. GROBSTEIN](#), 2019 U.S. 9th Cir. Briefs LEXIS 5262

Content: Court Filings | **Date:** January 15, 2019

1556 [FEE v. WASHINGTON MUT. BANK, F.A.](#), 2018 U.S. 9th Cir. Briefs LEXIS 6623

Content: Court Filings | **Date:** August 17, 2018

1557 [Silverman](#), 2018 U.S. 9th Cir. Briefs LEXIS 11290

Content: Court Filings | **Date:** June 6, 2018

1558 [PATTERSON v. LECT PORTFOLIO SERVICING](#), 2018 U.S. 9th Cir. Briefs LEXIS 5677

Content: Court Filings | **Date:** May 23, 2018

1559 [Garvin v. Cook Invs. NW](#), 2018 U.S. 9th Cir. Briefs LEXIS 10647

Content: Court Filings | **Date:** May 17, 2018

1560 [CONSOLIDATED NEVADA CORP.](#), 2018 U.S. 9th Cir. Briefs LEXIS 7003

Content: Court Filings | **Date:** April 30, 2018

1561 [MORABITO](#), 2018 U.S. 9th Cir. Briefs LEXIS 7000

Content: Court Filings | **Date:** April 30, 2018

1562 [Fee v. Washington Mut. Bank, F.A.](#), 2018 U.S. 9th Cir. Briefs LEXIS 12650

Content: Court Filings | **Date:** April 16, 2018

1563 [KEYSTONE MINE MGMT. II](#), 2018 U.S. 9th Cir. Briefs LEXIS 7285

Content: Court Filings | **Date:** April 12, 2018

1564 [ESTERLINA VINEYARDS & WINERY](#), 2018 U.S. 9th Cir. Briefs LEXIS 4242

Content: Court Filings | **Date:** March 29, 2018

1565 [Stokes](#), 2018 U.S. 9th Cir. Briefs LEXIS 19251

Content: Court Filings | **Date:** March 15, 2018

1566 [KENNY G ENTERPRISES](#), 2018 U.S. 9th Cir. Briefs LEXIS 6367

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1567 [Shoemaker](#), 2018 U.S. 9th Cir. Briefs LEXIS 4456

Content: Court Filings | **Date:** February 13, 2018

1568 [Patterson v. Select Portfolio Servicing](#), 2018 U.S. 9th Cir. Briefs LEXIS 13310

Content: Court Filings | **Date:** February 2, 2018

1569 [MORALEZ v. PERDUE](#), 2018 U.S. 9th Cir. Briefs LEXIS 5463

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1570 [MORALEZ v. PERDUE](#), 2018 U.S. 9th Cir. Briefs LEXIS 3591

Content: Court Filings | **Date:** January 25, 2018

1571 [KENNY G ENTERPRISES](#), 2018 U.S. 9th Cir. Briefs LEXIS 2800

Content: Court Filings | **Date:** January 8, 2018

1572 [SUI](#), 2018 U.S. 9th Cir. Briefs LEXIS 3869

Content: Court Filings | **Date:** 2018

1573 [YAGMAN v. KITTAY](#), 2017 U.S. 9th Cir. Briefs LEXIS 7392

Content: Court Filings | **Date:** December 18, 2017

1574 [SABA v. HOULE](#), 2017 U.S. 9th Cir. Briefs LEXIS 6121

Content: Court Filings | **Date:** December 5, 2017

1575 [Rose v. Reaves](#), 2017 U.S. 9th Cir. Briefs LEXIS 19307

Content: Court Filings | **Date:** October 10, 2017

1576 [Rose v. Reaves](#), 2017 U.S. 9th Cir. Briefs LEXIS 19168

Content: Court Filings | **Date:** October 10, 2017

1577 [BARONI v. WELLS FARGO BANK, N.A.](#), 2017 U.S. 9th Cir. Briefs LEXIS 8313

Content: Court Filings | **Date:** September 13, 2017

1578 [**BRONSON v. THOMPSON**](#), 2017 U.S. 9th Cir. Briefs LEXIS 8678

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1579 [**MARIA VISTA ESTATES v. MI NIPOMO**](#), 2017 U.S. 9th Cir. Briefs LEXIS 6886

Content: Court Filings | **Date:** March 28, 2017

1580 [**Hunt**](#), 2017 U.S. 9th Cir. Briefs LEXIS 19153

Content: Court Filings | **Date:** March 9, 2017

1581 [**KENNY G ENTERPRISES**](#), 2017 U.S. 9th Cir. Briefs LEXIS 4840

Content: Court Filings | **Date:** March 1, 2017

1582 [**HARKEY v. GROBSTEIN**](#), 2017 U.S. 9th Cir. Briefs LEXIS 8362

Content: Court Filings | **Date:** January 4, 2017

1583 [**BRONSON v. THOMPSON**](#), 2016 U.S. 9th Cir. Briefs LEXIS 6129

Content: Court Filings | **Date:** December 16, 2016

1584 [**LUA v. MILLER**](#), 2016 U.S. 9th Cir. Briefs LEXIS 7724

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1585 [**Arce v. LVNV Funding**](#), 2016 U.S. 9th Cir. Briefs LEXIS 17925

Content: Court Filings | **Date:** October 6, 2016

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- 1586 [**APPELLANT, Marshall v. APPELLEE: DAVID SKELTON as US Trustee, Holder & Bearer of Entity: Agent Marshall who was created per The Almighty God The God acknowledged by all Fifty States & The King James' Bible Entity MARSHALL CASEY PFEIFFER Status: Created per US Constitution Article. I. Sec. 8, C1 4. Naturalization & US Charter Article. IV. Section. 3. Clause 2. other US Property. US Congress Creation per U.S.C. § 1401a citizen Belonging to The United States. Entity's Civ. Existence Evidenced per: State of South Carolina Birth License # 139 71 016162, Fed. AGENCY ACCOUNT # XXX-XX-XXXX-XXXX5581, Fed. Passport # 01677231**](#), 2016 U.S. 9th Cir.

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Content: Court Filings | **Date:** September 2, 2016

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- 1587 [**LUA**](#), 2016 U.S. 9th Cir. Briefs LEXIS 2418

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- 1588 [**Maria Vista Estates**](#), 2016 U.S. 9th Cir. Briefs LEXIS 16755

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- 1589 [**Benham**](#), 2016 U.S. 9th Cir. Briefs LEXIS 16441

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- 1590 [**LUA v. MILLER**](#), 2016 U.S. 9th Cir. Briefs LEXIS 432

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- 1591 [**MILBY**](#), 2016 U.S. 9th Cir. Briefs LEXIS 6516

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- 1592 [**Fiber-Tech Mfg.**](#), 2016 U.S. 9th Cir. Briefs LEXIS 12765

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1593 [Fiber-Tech Mfg.](#), 2016 U.S. 9th Cir. Briefs LEXIS 12725

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1594 [UNITED STATES v. ZINNEL](#), 2016 U.S. 9th Cir. Briefs LEXIS 468

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1595 [LEE](#), 2016 U.S. 9th Cir. Briefs LEXIS 5738

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1596 [WORLD BOTANICAL GARDENS, INC.](#), 2015 U.S. 9th Cir. Briefs LEXIS 1202

Content: Court Filings | **Date:** December 16, 2015

1597 [Lua](#), 2015 U.S. 9th Cir. Briefs LEXIS 5764

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1598 [Consumer Fin. Protection v. Law](#), 2015 U.S. 9th Cir. Briefs LEXIS 15958

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1599 [Agha-Khan v. United States](#), 2015 U.S. 9th Cir. Briefs LEXIS 7967

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1600 [AGHA-KHAN v. United States](#), 2015 U.S. 9th Cir. Briefs LEXIS 670

Content: Court Filings | **Date:** June 24, 2015

1601 [KOOSHIAN v. CALVERT](#), 2015 U.S. 9th Cir. Briefs LEXIS 1429

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1602 [Benham](#), 2014 U.S. 9th Cir. Briefs LEXIS 8089

Content: Court Filings | **Date:** October 24, 2014

1603 [Benham](#), 2014 U.S. 9th Cir. Briefs LEXIS 6746

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1604 [BRONSON v. DALE D. ULRICH Chptr. 7](#), 2014 U.S. 9th Cir. Briefs LEXIS 3252

Content: Court Filings | **Date:** July 24, 2014

1605 [Benham](#), 2013 U.S. 9th Cir. Briefs LEXIS 12831

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1606 [GLADSTONE v. U.S. BANCORP](#), 2013 U.S. 9th Cir. Briefs LEXIS 1812

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1607 [PREVITI v. NATIONAL UNION FIRE INS. CO.](#), 2013 U.S. 9th Cir. Briefs LEXIS 4041

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1608 [WESTON RANCH DEV.](#), 2013 U.S. 9th Cir. Briefs LEXIS 5625

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1609 [WISDOM](#), 2013 U.S. 9th Cir. Briefs LEXIS 3166

Content: Court Filings | **Date:** May 10, 2013

1610 [Kelley](#), 2013 U.S. 9th Cir. Briefs LEXIS 3606

Content: Court Filings | **Date:** April 17, 2013

1611 [Plant Insulation Co.](#), 2013 U.S. 9th Cir. Briefs LEXIS 11178

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1612 [Plant Insulation Co.](#), 2013 U.S. 9th Cir. Briefs LEXIS 11063

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1613 [FRB, Inc.](#), 2012 U.S. 9th Cir. Briefs LEXIS 11494

Content: Court Filings | **Date:** December 10, 2012

1614 [BENHAM v. HAGEN](#), 2012 U.S. 9th Cir. Briefs LEXIS 4464

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1615 [Obsidian Fin. Group v. Cox](#), 2012 U.S. 9th Cir. Briefs LEXIS 11624

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1616 [**GROSS v. COMMISSIONER OF INTERNAL REVENUE**](#), 2012 U.S. 9th Cir. Briefs LEXIS 6218

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1617 [**Obsidian Fin. Group v. Cox**](#), 2012 U.S. 9th Cir. Briefs LEXIS 9739

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1618 [**EXEC. BENEFITS INS. AGENCY v. ARKISON \(In re BELLINGHAM INS. AGENCY, INC.\)**](#), 2012 U.S.
9th Cir. Briefs LEXIS 2016

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1619 [**Law**](#), 2010 U.S. 9th Cir. Briefs LEXIS 8459

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1620 [**Hall v. USA**](#), 2009 U.S. 9th Cir. Briefs LEXIS 5158

Content: Court Filings | **Date:** March 11, 2009

1621 [**Hall v. USA**](#), 2009 U.S. 9th Cir. Briefs LEXIS 11058

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1622 [**Knowl v. Knowl**](#), 2008 U.S. 9th Cir. Briefs LEXIS 4109

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1623 [**Knowl v. Knowl**](#), 2008 U.S. 9th Cir. Briefs LEXIS 3929

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1624 [Knowl v. Knowl](#), 2008 U.S. 9th Cir. Briefs LEXIS 4205

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1625 [Knowl v. Knowl](#), 2008 U.S. 9th Cir. Briefs LEXIS 4116

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1626 [SPIRTOS](#), 2008 U.S. 9th Cir. Briefs LEXIS 386

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1627 [RANSOM](#), 2008 U.S. 9th Cir. Briefs LEXIS 814

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1628 [THELMA v. SPIRTOS & SPIRTOS v. NEILSON](#), 2007 U.S. 9th Cir. Briefs LEXIS 1464

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1629 [BLAUSEY v. KISTLER](#), 2007 U.S. 9th Cir. Briefs LEXIS 1810

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1630 [SPIRTOS](#), 2007 U.S. 9th Cir. Briefs LEXIS 1432

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1631 [FORTAN TRUST v. NVIDIA CORP.](#), 2007 U.S. 9th Cir. Briefs LEXIS 1324

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- 1632 [Weinstein, Eisen & Weiss, LLP David A. Gill, Chptr. 11 Trustee for the estate of Commons](#), 2007 U.S. 9th Cir. Briefs LEXIS 1505

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- 1633 [COOPER COMMONS LLC](#), 2006 U.S. 9th Cir. Briefs LEXIS 1133

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- 1634 [CRAIG L. TIPPETT & CHRISTINE L. TIPPETT](#), 2006 U.S. 9th Cir. Briefs LEXIS 790

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- 1635 [KEENAN](#), 2005 U.S. 9th Cir. Briefs LEXIS 473

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- 1636 [WIERSMA](#), 2005 U.S. 9th Cir. Briefs LEXIS 331

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- 1637 [GENERAL TEAMSTERS, WAREHOUSEMEN & HELPERS UNION LOCAL 890](#), 2000 U.S. 9th Cir. Briefs LEXIS 242

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- 1638 [RICH DAD OPERATING CO. v. LEARNING ANNEX, LLC, LEARNING ANNEX HOLDINGS](#), 2021 U.S. 10th Cir. Briefs LEXIS 4422

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- 1639 [RINDLESBACH](#), 2021 U.S. 10th Cir. Briefs LEXIS 3883

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1640 [CHERNUSHIN](#), 2021 U.S. 10th Cir. Briefs LEXIS 3353

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1641 [STAKER](#), 2021 U.S. 10th Cir. Briefs LEXIS 3098

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1642 [JENNINGS](#), 2021 U.S. 10th Cir. Briefs LEXIS 2997

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1643 [CONNOLLY v. OFFICE](#), 2021 U.S. 10th Cir. Briefs LEXIS 2844

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1644 [PODDAR](#), 2021 U.S. 10th Cir. Briefs LEXIS 2619

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1645 [HALL v. HARRIS](#), 2021 U.S. 10th Cir. Briefs LEXIS 1682

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1646 [LAVENHAR v. FIRST AMERICAN TITLE INS. CO.](#), 2021 U.S. 10th Cir. Briefs LEXIS 3716

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1647 [ROBERT & LISA RAEI](#), 2021 U.S. 10th Cir. Briefs LEXIS 2626

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1648 [BEDARD v. NATIONAL CAS. CO.](#), 2018 U.S. 10th Cir. Briefs LEXIS 387

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1649 [LANKFORD v. JUDITH A. WAGNER, Chptr. 11 Trustee of the Bankruptcy Estate of the Vaughan Co. Realtors, ARLAND & ASSOCS.](#), 2018 U.S. 10th Cir. Briefs LEXIS 66

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1650 [CRAIG](#), 2016 U.S. 10th Cir. Briefs LEXIS 82

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1651 [Bryan v. Clark](#), 2016 U.S. 10th Cir. Briefs LEXIS 837

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1652 [WILLIAMSON v. MURRAY](#), 2012 U.S. 10th Cir. Briefs LEXIS 159

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1653 [SHAUNA v. ROCKETT](#), 2007 U.S. 10th Cir. Briefs LEXIS 82

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1654 [KREUTZER](#), 2006 U.S. 10th Cir. Briefs LEXIS 587

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1655 [KREUTZER](#), 2006 U.S. 10th Cir. Briefs LEXIS 586

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1656 [KREUTZER](#), 2006 U.S. 10th Cir. Briefs LEXIS 585

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1657 [MYERS](#), 2006 U.S. 10th Cir. Briefs LEXIS 26

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1658 [MERSMANN](#), 2005 U.S. 10th Cir. Briefs LEXIS 445

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1659 [SLATER v. U.S. STEEL CORP.](#), 2021 U.S. 11th Cir. Briefs LEXIS 11326

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1660 [INGRAM v. AAA COOPER TRANSP., INC.](#), 2021 U.S. 11th Cir. Briefs LEXIS 11298

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1661 [LYNCH v. DEUTSCHE BANK NAT'L TRUST CO.](#), 2021 U.S. 11th Cir. Briefs LEXIS 14292

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1662 [BROCK v., DEFENDANTS RESURGENT CAPITAL SERVS., LP](#), 2021 U.S. 11th Cir. Briefs LEXIS 12185

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1663 [**DUNN v. ADVANCED MED. SPECIALTIES**](#), 2021 U.S. 11th Cir. Briefs LEXIS 12142

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1664 [**CASTELLANOS v. MIDLAND FUNDING**](#), 2021 U.S. 11th Cir. Briefs LEXIS 11220

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1665 [**Carolyn T. McAfee, Ex'r of Estate of James T. McAfee v. Gordon**](#), 2021 U.S. 11th Cir. Briefs LEXIS 10980

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1666 [**FRANK v. YIP**](#), 2021 U.S. 11th Cir. Briefs LEXIS 10883

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1667 [**BELINDA BROWN BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9901

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1668 [**TONI RENEE HAMILTON-PRESHA BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9894

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1669 [**EDELMIRO TOLEDO-CARDONA BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9891

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1670 [**TRINA RENEE BANKS BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9871

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1671 [**NIEVES E. COLON BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9842

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1672 [**SOLER-SOMOHANO**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9803

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1673 [**RANDALL MADDEN & BARBARA MADDEN BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9747

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1674 [**RINGGO NEIL BUENASEDA BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9724

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1675 [**DAYO BELLO BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9673

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1676 [**RUSSELL C. RAYONI & JAMI B. RAYONI BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9619

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1677 [**FRANK v. YIP**](#), 2021 U.S. 11th Cir. Briefs LEXIS 5800

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1678 [**SESSION**](#), 2021 U.S. 11th Cir. Briefs LEXIS 4280

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1679 [CABOT](#), 2021 U.S. 11th Cir. Briefs LEXIS 3143

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1680 [BARNETTE v. FEDERAL EXPRESS CORP.](#), 2021 U.S. 11th Cir. Briefs LEXIS 862

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1681 [SESSION](#), 2021 U.S. 11th Cir. Briefs LEXIS 748

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1682 [NEIDICH v. SALAS](#), 2021 U.S. 11th Cir. Briefs LEXIS 625

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1683 [KULAKOWSKI](#), 2021 U.S. 11th Cir. Briefs LEXIS 15048

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1684 [FINANCIAL INDUS. ASS'N v. SEC](#), 2021 U.S. 11th Cir. Briefs LEXIS 13865

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1686 [**DUNN v. ADVANCED MED. SPECIALTIES**](#), 2021 U.S. 11th Cir. Briefs LEXIS 12160

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1687 [**BRINDA J. BRASWELL BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9899

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1688 [**BETTY JEAN BOYKINS BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9845

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1689 [**CHRISTOPHER JEFFERS BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9826

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1690 [**YVONNE ROBERTS WAITS BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9793

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1691 [**ILYA BELOTSERKOVSKY BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9779

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1692 [**ALEXIS LOPEZ BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9728

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1693 [**PAMELA FAE PEELE BANK OF AMERICA, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9646

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1694 [**HERENDEEN v. CADLEROCK JOINT VENTURE, L.P.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 9013

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1695 [**FAILLA v. CITIBANK, N.A.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 8894

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1696 [**THOMPSON v. MCDERMOTT**](#), 2021 U.S. 11th Cir. Briefs LEXIS 6351

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1697 [**ULLRICH v. OSBORNE**](#), 2021 U.S. 11th Cir. Briefs LEXIS 3402

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1698 [**Samuel L. Daniels & Better Quality Homes, Inc.**](#), 2021 U.S. 11th Cir. Briefs LEXIS 2989

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1699 [**THOMPSON v. MCDERMOTT**](#), 2021 U.S. 11th Cir. Briefs LEXIS 2451

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1700 [**VALONE v. WAAGE**](#), 2021 U.S. 11th Cir. Briefs LEXIS 1332

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1701 [**SARDINA**](#), 2021 U.S. 11th Cir. Briefs LEXIS 13800

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- 1702 [**PENSION BEN. GUAR. CORP. v. 50509 MARINE**](#), 2020 U.S. 11th Cir. Briefs LEXIS 772

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- 1703 [**STATE FARM FLORIDA INS. CO. v. CARAPELLA**](#), 2020 U.S. 11th Cir. Briefs LEXIS 828

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- 1704 [**Salon Adrian, Inc. v. Yormak**](#), 2020 U.S. 11th Cir. Briefs LEXIS 2135

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- 1705 [**SOLER-SOMOHANO**](#), 2020 U.S. 11th Cir. Briefs LEXIS 247

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- 1706 [**MEDLEY v. DISH NETWORK**](#), 2019 U.S. 11th Cir. Briefs LEXIS 761

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- 1707 [**PALM BEACH FIN.**](#), 2018 U.S. 11th Cir. Briefs LEXIS 816

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- 1708 [**WILBER**](#), 2018 U.S. 11th Cir. Briefs LEXIS 559

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- 1709 [**YOUNG v. KAPLIA**](#), 2017 U.S. 11th Cir. Briefs LEXIS 2233

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- 1710 [**SLATER v. UNITED STATES STEEL CORP.**](#), 2017 U.S. 11th Cir. Briefs LEXIS 883

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- 1711 [**Carolyn T. McAfee, Ex'r of Estate of James T. McAfee v. Gordon**](#), 2016 U.S. 11th Cir. Briefs LEXIS 577

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- 1712 [**JOHNSON v. MIDLAND FUNDING**](#), 2016 U.S. 11th Cir. Briefs LEXIS 1233

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- 1713 [**JOHNSON v. MIDLAND FUNDING**](#), 2016 U.S. 11th Cir. Briefs LEXIS 739

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- 1714 [**POLLITZER v. GEBHARDT**](#), 2016 U.S. 11th Cir. Briefs LEXIS 1624

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- 1715 [**POTTER**](#), 2016 U.S. 11th Cir. Briefs LEXIS 1600

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- 1716 [**FAILLA v. CITIBANK, N.A.**](#), 2016 U.S. 11th Cir. Briefs LEXIS 1636

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- 1717 [**ULLRICH v. WELT**](#), 2016 U.S. 11th Cir. Briefs LEXIS 316

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1718 [JOHNSON v. MIDLAND FUNDING](#), 2015 U.S. 11th Cir. Briefs LEXIS 180

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1719 [TUCKER](#), 2015 U.S. 11th Cir. Briefs LEXIS 556

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1720 [CORRECTIONS CORP. OF AMERICA v. SCHARRER](#), 2015 U.S. 11th Cir. Briefs LEXIS 553

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1721 [VALONE](#), 2014 U.S. 11th Cir. Briefs LEXIS 1975

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1722 [BANK OF NEW YORK MELLON v. LANG](#), 2014 U.S. 11th Cir. Briefs LEXIS 2222

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1723 [DAYO BELLO BANK OF AMERICA, N.A.](#), 2014 U.S. 11th Cir. Briefs LEXIS 1900

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1724 [TRINA RENEE BANKS BANK OF AMERICA, N.A.](#), 2014 U.S. 11th Cir. Briefs LEXIS 1892

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1725 [**BANK OF AMERICA, N.A. v. CAULKETT \(In re CAULKETT\)**](#), 2014 U.S. 11th Cir. Briefs LEXIS 153

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1726 [**EPIC AVIATION v. PHILLIPS**](#), 2013 U.S. 11th Cir. Briefs LEXIS 2551

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1727 [**United Joint Venture, L.P. v. Noble**](#), 2013 U.S. 11th Cir. Briefs LEXIS 3125

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1728 [**SOUTH MIAMI HOLDINGS v. FDIC**](#), 2013 U.S. 11th Cir. Briefs LEXIS 3107

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1729 [**LAURENT v. SELECT PORTFOLIO SERVICING**](#), 2006 U.S. 11th Cir. Briefs LEXIS 279

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1730 [**WELT v. M.J.O. HOLDING CORP. & BALISTRERI REALTY, INC.**](#), 2006 U.S. 11th Cir. Briefs LEXIS 1015

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1731 [**WELT v. M.J.O. HOLDING CORP. & BALISTRERI REALTY, INC.**](#), 2006 U.S. 11th Cir. Briefs LEXIS 1014

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1732 [**WESTWOOD COMMUNITY TWO ASS'N, INC.**](#), 2005 U.S. 11th Cir. Briefs LEXIS 120

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1733 [**DZIKOWSKI & WALSH v. BARBEE**](#), 2005 U.S. 11th Cir. Briefs LEXIS 119

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1734 [**SOUTHEAST BANKING CORP. v. BASSETT**](#), 1998 U.S. 11th Cir. Briefs LEXIS 1

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1735 [**United States ex rel. Yelverton v. his**](#), 2021 U.S. D.C. Cir. Briefs LEXIS 4156

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1736 [**HOPE 7 MONROE ST.**](#), 2021 U.S. D.C. Cir. Briefs LEXIS 1731

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1737 [**US AIRLINE PILOTS ASS'N v. PENSION BEN. GUAR. CORP.**](#), 2021 U.S. D.C. Cir. Briefs LEXIS 1047

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1738 [**HOPE 7 MONROE ST.**](#), 2021 U.S. D.C. Cir. Briefs LEXIS 169

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1739 [**US AIRLINE PILOTS ASS'N v. PENSION BEN. GUAR. CORP.**](#), 2021 U.S. D.C. Cir. Briefs LEXIS 1990

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1740 [**LEWIS v. PENSION BEN. GUAR. CORP.**](#), 2018 U.S. D.C. Cir. Briefs LEXIS 321

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1741 [United States ex rel. Yelverton v. his](#), 2015 U.S. D.C. Cir. Briefs LEXIS 1365

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1742 [US AIRLINE PILOTS ASS'N v. PENSION BEN. GUAR. CORP.](#), 2015 U.S. D.C. Cir. Briefs LEXIS 341

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1743 [HENDERSON v. SHINSEKI](#), 2009 U.S. Fed. Cir. Briefs LEXIS 1620

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1744 [Newport Inv. Group](#), 2024 U.S. Dist. Ct. Briefs LEXIS 14775

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1745 Us
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1746 [Taj Graphics Enterprises](#), 2023 U.S. Dist. Ct. Briefs LEXIS 19644

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1747 [Unknown v. Unknown](#), 2023 U.S. Dist. Ct. Briefs LEXIS 20067

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1748 [Burnett](#), 2023 U.S. Dist. Ct. Briefs LEXIS 26279

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1749 [Kivity](#), 2023 U.S. Dist. Ct. Briefs LEXIS 22714

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1750 [Purdy](#), 2023 U.S. Dist. Ct. Briefs LEXIS 26206

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1751 [Sugar](#), 2023 U.S. Dist. Ct. Briefs LEXIS 26212

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1752 [Taj Graphics Enterprises](#), 2023 U.S. Dist. Ct. Briefs LEXIS 19650

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1753 [Logan](#), 2022 U.S. Dist. Ct. Briefs LEXIS 24356

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1754 [Lopez](#), 2022 U.S. Dist. Ct. Briefs LEXIS 24216

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1755 [Johnson](#), 2022 U.S. Dist. Ct. Briefs LEXIS 21672

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1756 [JENKINS](#), 2021 U.S. Dist. Ct. Briefs LEXIS 5040

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1757 [CHAMBERLAIN](#), 2021 U.S. Dist. Ct. Briefs LEXIS 1675

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1758 [Sroka](#), 2021 U.S. Dist. Ct. Briefs LEXIS 2

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1759 [Baumgart](#), 2021 U.S. Dist. Ct. Briefs LEXIS 23774

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1760 [FRAZIER v. WIRUM](#), 2021 U.S. Dist. Ct. Briefs LEXIS 1720

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1761 [GIDEON](#), 2021 U.S. Dist. Ct. Briefs LEXIS 1075

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1762 [Doll](#), 2021 U.S. Dist. Ct. Briefs LEXIS 22690

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1763 [Doll](#), 2021 U.S. Dist. Ct. Briefs LEXIS 22691

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1764 [FRANCE](#), 2021 U.S. Dist. Ct. Briefs LEXIS 2414

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1765 [VAN DOUG WALKER](#), 2021 U.S. Dist. Ct. Briefs LEXIS 478

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1766 [McConnell](#), 2021 U.S. Dist. Ct. Briefs LEXIS 5435

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1767 [FETNER v. MCCARTHY](#), 2021 U.S. Dist. Ct. Briefs LEXIS 4773

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1768 [France](#), 2021 U.S. Dist. Ct. Briefs LEXIS 24020

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1769 [Mccarthy](#), 2021 U.S. Dist. Ct. Briefs LEXIS 22974

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1770 [FETNER](#), 2021 U.S. Dist. Ct. Briefs LEXIS 5191

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1771 [Speer 14-21007](#), 2021 U.S. Dist. Ct. Briefs LEXIS 5270

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1772 [PARADISE UNIFIED SCH. DIST. v. FIRE](#), 2020 U.S. Dist. Ct. Briefs LEXIS 4793

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1773 [PG&E Corp. v. PG&E Corp.](#), 2020 U.S. Dist. Ct. Briefs LEXIS 4864

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1774 [Carranza Alpha Visions Learning Academy, Inc.](#), 2020 U.S. Dist. Ct. Briefs LEXIS 19658

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1775 [SKEFOS](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6272

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1776 [Meehean](#), 2020 U.S. Dist. Ct. Briefs LEXIS 15649

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1777 [Meehean](#), 2020 U.S. Dist. Ct. Briefs LEXIS 5419

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1778 [Perry](#), 2020 U.S. Dist. Ct. Briefs LEXIS 4895

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1779 [PARISI](#), 2020 U.S. Dist. Ct. Briefs LEXIS 4898

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1780 [REINERT v. VARA](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6278

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1781 [RODRIGUEZ v. MUKAMAL](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6205

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1782 [ANTUNEZ](#), 2020 U.S. Dist. Ct. Briefs LEXIS 133

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1783 [Reinert v. Reinert](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6383

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1784 [Kramer](#), 2020 U.S. Dist. Ct. Briefs LEXIS 15650

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1785 [38-36 Greenville Ave. L.L.C.](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6215

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1786 [STATE FARM INS. CO. v. CARAPELLA](#), 2020 U.S. Dist. Ct. Briefs LEXIS 5

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1787 [Nelson, Inc.](#), 2020 U.S. Dist. Ct. Briefs LEXIS 19649

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1788 [NELSON, INC.](#), 2020 U.S. Dist. Ct. Briefs LEXIS 6044

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1789 [MANN REALTY ASSOCS.](#), 2019 U.S. Dist. Ct. Briefs LEXIS 141

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1790 [Hamon](#), 2019 U.S. Dist. Ct. Briefs LEXIS 16087

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1791 [Kowalski v. United States](#), 2018 U.S. Dist. Ct. Briefs LEXIS 16274

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1792 [HARMAN](#), 2018 U.S. Dist. Ct. Briefs LEXIS 2726

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1793 [STROUD](#), 2018 U.S. Dist. Ct. Briefs LEXIS 2302

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1794 [UNITED STATES v. GARLOCK](#), 2018 U.S. Dist. Ct. Briefs LEXIS 4804

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1795 [TERRACE MORTG. CO.](#), 2018 U.S. Dist. Ct. Briefs LEXIS 2115

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1796 [PRYOR v. UNITED STATES](#), 2018 U.S. Dist. Ct. Briefs LEXIS 2513

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1797 [Peak Hotels & Resorts Group](#), 2018 U.S. Dist. Ct. Briefs LEXIS 23453

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1798 [Operating Engineers' Local 324 Pension Fund Bourdow Contr.](#), 2018 U.S. Dist. Ct. Briefs LEXIS 18491

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1799 [Leibowitz](#), 2017 U.S. Dist. Ct. Briefs LEXIS 13935

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1800 [United States](#), 2017 U.S. Dist. Ct. Briefs LEXIS 20789

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1801 [Jenkins Select Portfolio Servicing](#), 2017 U.S. Dist. Ct. Briefs LEXIS 13767

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1802 [Ellswick](#), 2017 U.S. Dist. Ct. Briefs LEXIS 3024

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1803 [Shoemaker](#), 2017 U.S. Dist. Ct. Briefs LEXIS 2974

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1804 [Sterling](#), 2017 U.S. Dist. Ct. Briefs LEXIS 2059

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1805 [LEVINE](#), 2017 U.S. Dist. Ct. Briefs LEXIS 2049

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1806 [CLARK](#), 2017 U.S. Dist. Ct. Briefs LEXIS 2073

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1807 [MOORE](#), 2017 U.S. Dist. Ct. Briefs LEXIS 3034

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1808 [ROUSSOS v. EHRENBERG](#), 2017 U.S. Dist. Ct. Briefs LEXIS 2169

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1809 [TAC FIN.](#), 2017 U.S. Dist. Ct. Briefs LEXIS 1763

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1810 [330 South Wells Llc](#), 2017 U.S. Dist. Ct. Briefs LEXIS 13739

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1811 [United States](#), 2016 U.S. Dist. Ct. Briefs LEXIS 13406

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1812 [Palmer](#), 2016 U.S. Dist. Ct. Briefs LEXIS 16039

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1813 [Elkins v. United States](#), 2016 U.S. Dist. Ct. Briefs LEXIS 13595

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1814 [Elkins v. United States](#), 2016 U.S. Dist. Ct. Briefs LEXIS 13585

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1815 [New Prods. Corp.](#), 2016 U.S. Dist. Ct. Briefs LEXIS 15402

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1816 [Washington v. South Carolina Community Bank](#), 2016 U.S. Dist. Ct. Briefs LEXIS 13930

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1817 William
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1818 [HOY v. ATKESON](#), 2016 U.S. Dist. Ct. Briefs LEXIS 167

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1819 [Bush](#), 2016 U.S. Dist. Ct. Briefs LEXIS 14769

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1820 [Sutherland](#), 2016 U.S. Dist. Ct. Briefs LEXIS 15733

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1821 [Burke](#), 2016 U.S. Dist. Ct. Briefs LEXIS 14289

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1822 [PURSUIT CAPITAL MGMT.](#), 2015 U.S. Dist. Ct. Briefs LEXIS 49

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1823 [USA v. Kang](#), 2015 U.S. Dist. Ct. Briefs LEXIS 12874

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1824 [Dolan](#), 2015 U.S. Dist. Ct. Briefs LEXIS 53

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1825 [Yelverton](#), 2015 U.S. Dist. Ct. Briefs LEXIS 11498

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1826 [Robbins](#), 2015 U.S. Dist. Ct. Briefs LEXIS 13064

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1827 [China Med. Techs.](#), 2015 U.S. Dist. Ct. Briefs LEXIS 16038

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1828 [Miller Parking Co.](#), 2015 U.S. Dist. Ct. Briefs LEXIS 11833

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1829 [Weidenbenner](#), 2015 U.S. Dist. Ct. Briefs LEXIS 1501

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1830 [Griswold](#), 2014 U.S. Dist. Ct. Briefs LEXIS 26337

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1831 [JOHNSSON v. STEEGE](#), 2014 U.S. Dist. Ct. Briefs LEXIS 2101

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1832 [Crocker](#), 2014 U.S. Dist. Ct. Briefs LEXIS 30435

Content: Court Filings | **Date:** June 5, 2014

1833 [BONGIOVANNI v. GRUBIN](#), 2014 U.S. Dist. Ct. Briefs LEXIS 15820

Content: Court Filings | **Date:** May 9, 2014

1834 [Crocker](#), 2014 U.S. Dist. Ct. Briefs LEXIS 30395

Content: Court Filings | **Date:** May 7, 2014

1835 [UNITED STATES v. BUJAK](#), 2014 U.S. Dist. Ct. Briefs LEXIS 11298

Content: Court Filings | **Date:** April 29, 2014

1836 [DURAN v. LURIA](#), 2013 U.S. Dist. Ct. Briefs LEXIS 28244

Content: Court Filings | **Date:** December 27, 2013

1837 [Ryan](#), 2013 U.S. Dist. Ct. Briefs LEXIS 38473

Content: Court Filings | **Date:** August 12, 2013

1838 [de LANGIS](#), 2013 U.S. Dist. Ct. Briefs LEXIS 28251

Content: Court Filings | **Date:** July 29, 2013

1839 [GLOBAL NAPS, INC. v. VERIZON NEW ENGLAND INC.](#), 2013 U.S. Dist. Ct. Briefs LEXIS 3720

Content: Court Filings | **Date:** June 25, 2013

1840 [SZULIK v. TAGLIAFERRI](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15695

Content: Court Filings | **Date:** November 29, 2012

1841 [SZULIK v. TAGLIAFERRI](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15694

Content: Court Filings | **Date:** November 13, 2012

1842 [SCHARRER v. FUNDAMENTAL ADMIN. SERVS.](#), 2012 U.S. Dist. Ct. Briefs LEXIS 558

Content: Court Filings | **Date:** October 31, 2012

1843 [Lujano Cicero](#), 2012 U.S. Dist. Ct. Briefs LEXIS 25174

Content: Court Filings | **Date:** September 28, 2012

1844 [Grant](#), 2012 U.S. Dist. Ct. Briefs LEXIS 26151

Content: Court Filings | **Date:** August 1, 2012

1845 [Grant](#), 2012 U.S. Dist. Ct. Briefs LEXIS 28122

Content: Court Filings | **Date:** June 5, 2012

1846 [Veluchamy](#), 2012 U.S. Dist. Ct. Briefs LEXIS 25139

Content: Court Filings | **Date:** May 24, 2012

1847 [Khan v. Regions Bank](#), 2012 U.S. Dist. Ct. Briefs LEXIS 27985

Content: Court Filings | **Date:** February 17, 2012

1848 [Strawbridge](#), 2012 U.S. Dist. Ct. Briefs LEXIS 29237

Content: Court Filings | **Date:** January 31, 2012

1849 [W. R. GRACE & CO.](#), 2011 U.S. Dist. Ct. Briefs LEXIS 67

Content: Court Filings | **Date:** May 25, 2011

1850 [W. R. GRACE & CO.](#), 2011 U.S. Dist. Ct. Briefs LEXIS 65

Content: Court Filings | **Date:** May 25, 2011

1851 [BAC HOME LOANS SERVICING, L.P. v. GARGULA](#), 2011 U.S. Dist. Ct. Briefs LEXIS 50

Content: Court Filings | **Date:** April 25, 2011

1852 [Maunakea v Hu](#), 2011 U.S. Dist. Ct. Briefs LEXIS 99

Content: Court Filings | **Date:** March 2, 2011

1853 [Marine Risks Inc. v Pilipiak](#), 2011 U.S. Dist. Ct. Briefs LEXIS 154

Content: Court Filings | **Date:** February 23, 2011

1854 [KP FASHION CO.](#), 2010 U.S. Dist. Ct. Briefs LEXIS 694

Content: Court Filings | **Date:** December 20, 2010

1855 [DENNIS v. BANK UNITED](#), 2010 U.S. Dist. Ct. Briefs LEXIS 670

Content: Court Filings | **Date:** November 26, 2010

1856 [DENNIS v. BANK UNITED](#), 2010 U.S. Dist. Ct. Briefs LEXIS 667

Content: Court Filings | **Date:** November 26, 2010

1857 [SHELDON H. CLOOBECK](#), 2010 U.S. Dist. Ct. Briefs LEXIS 533

Content: Court Filings | **Date:** October 8, 2010

1858 [MALLORY](#), 2010 U.S. Dist. Ct. Briefs LEXIS 341

Content: Court Filings | **Date:** September 2, 2010

1859 [THOMPSON](#), 2010 U.S. Dist. Ct. Briefs LEXIS 206

Content: Court Filings | **Date:** July 9, 2010

1860 [BRIAN RICHARD BRUBAKER & CYNTHIA ANN BRUBAKER](#), 2010 U.S. Dist. Ct. Briefs LEXIS 287

Content: Court Filings | **Date:** July 6, 2010

1861 [BRIAN RICHARD BRUBAKER & CYNTHIA ANN BRUBAKER](#), 2010 U.S. Dist. Ct. Briefs LEXIS 288

Content: Court Filings | **Date:** June 23, 2010

1862 [THOMPSON](#), 2010 U.S. Dist. Ct. Briefs LEXIS 207

Content: Court Filings | **Date:** June 17, 2010

1863 [WILLIAMS](#), 2010 U.S. Dist. Ct. Briefs LEXIS 167

Content: Court Filings | **Date:** June 11, 2010

1864 [SIMMONDS](#), 2010 U.S. Dist. Ct. Briefs LEXIS 110

Content: Court Filings | **Date:** April 8, 2010

1865 [BRESNICK](#), 2010 U.S. Dist. Ct. Briefs LEXIS 132

Content: Court Filings | **Date:** March 22, 2010

1866 [BRESNICK](#), 2010 U.S. Dist. Ct. Briefs LEXIS 133

Content: Court Filings | **Date:** March 9, 2010

1867 [NATIONAL RECOVERY SERV. v. JOHNSON](#), 2010 U.S. Dist. Ct. Briefs LEXIS 197

Content: Court Filings | **Date:** February 8, 2010

1868 [ADAMS v. GIORDANO](#), 2010 U.S. Dist. Ct. Briefs LEXIS 49

Content: Court Filings | **Date:** February 1, 2010

1869 [NIR YACOVI](#), 2010 U.S. Dist. Ct. Briefs LEXIS 48

Content: Court Filings | **Date:** January 26, 2010

1870 [HARKER v. COUNTRYWIDE HOME LOANS, INC.](#), 2010 U.S. Dist. Ct. Briefs LEXIS 495

Content: Court Filings | **Date:** January 13, 2010

1871 [Countrywide Home Loans, Inc. v. Harker](#), 2009 U.S. Dist. Ct. Briefs LEXIS 10071

Content: Court Filings | **Date:** December 28, 2009

1872 [HARKER v. COUNTRYWIDE HOME LOANS, INC.](#), 2009 U.S. Dist. Ct. Briefs LEXIS 974

Content: Court Filings | **Date:** December 28, 2009

1873 [SK Foods](#), 2009 U.S. Dist. Ct. Briefs LEXIS 892

Content: Court Filings | **Date:** December 28, 2009

1874 [United States v. Martin](#), 2009 U.S. Dist. Ct. Briefs LEXIS 11178

Content: Court Filings | **Date:** December 4, 2009

1875 [MARTIN](#), 2009 U.S. Dist. Ct. Briefs LEXIS 734

Content: Court Filings | **Date:** December 4, 2009

1876 [SK Foods](#), 2009 U.S. Dist. Ct. Briefs LEXIS 893

Content: Court Filings | **Date:** December 3, 2009

1877 [HARKER v. COUNTRYWIDE HOME LOANS, INC.](#), 2009 U.S. Dist. Ct. Briefs LEXIS 973

Content: Court Filings | **Date:** November 30, 2009

1878 [McDow v. Harvey](#), 2009 U.S. Dist. Ct. Briefs LEXIS 11449

Content: Court Filings | **Date:** November 20, 2009

1879 [HARVEY](#), 2009 U.S. Dist. Ct. Briefs LEXIS 838

Content: Court Filings | **Date:** November 20, 2009

1880 [First Community Bank v. EM Williams & Sons](#), 2009 U.S. Dist. Ct. Briefs LEXIS 9660

Content: Court Filings | **Date:** September 25, 2009

1881 [EDWARDS](#), 2009 U.S. Dist. Ct. Briefs LEXIS 498

Content: Court Filings | **Date:** July 17, 2009

1882 [SMITH](#), 2009 U.S. Dist. Ct. Briefs LEXIS 739

Content: Court Filings | **Date:** April 23, 2009

1883 [CONTINENTAL COIN CORP.](#), 2009 U.S. Dist. Ct. Briefs LEXIS 478

Content: Court Filings | **Date:** March 30, 2009

1884 [CONTINENTAL COIN CORP.](#), 2009 U.S. Dist. Ct. Briefs LEXIS 477

Content: Court Filings | **Date:** March 16, 2009

1885 [CONTINENTAL COIN CORP.](#), 2009 U.S. Dist. Ct. Briefs LEXIS 479

Content: Court Filings | **Date:** February 12, 2009

1886 [JIM L. SHETAKIS DISTRIB. CO.](#), 2008 U.S. Dist. Ct. Briefs LEXIS 894

Content: Court Filings | **Date:** November 24, 2008

1887 [JIM L. SHETAKIS DISTRIB. CO.](#), 2008 U.S. Dist. Ct. Briefs LEXIS 892

Content: Court Filings | **Date:** October 31, 2008

1888 [MONTGOMERY WARD](#), 2008 U.S. Dist. Ct. Briefs LEXIS 922

Content: Court Filings | **Date:** October 6, 2008

1889 [ADAMS](#), 2008 U.S. Dist. Ct. Briefs LEXIS 810

Content: Court Filings | **Date:** September 30, 2008

1890 [SMITH](#), 2008 U.S. Dist. Ct. Briefs LEXIS 791

Content: Court Filings | **Date:** September 18, 2008

1891 [MASON](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1047

Content: Court Filings | **Date:** September 5, 2008

1892 [QUIGLEY](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1076

Content: Court Filings | **Date:** August 26, 2008

1893 [SUTER](#), 2008 U.S. Dist. Ct. Briefs LEXIS 474

Content: Court Filings | **Date:** August 21, 2008

1894 [FEARING](#), 2008 U.S. Dist. Ct. Briefs LEXIS 969

Content: Court Filings | **Date:** August 18, 2008

1895 [BOYD v. ENGMAN](#), 2008 U.S. Dist. Ct. Briefs LEXIS 891

Content: Court Filings | **Date:** July 30, 2008

1896 [BOYD v. ENGMAN](#), 2008 U.S. Dist. Ct. Briefs LEXIS 890

Content: Court Filings | **Date:** July 30, 2008

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- 1897 [**BOYD v. ENGMAN**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 889

Content: Court Filings | **Date:** July 16, 2008

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- 1898 [**FEDERAL-MOGUL GLOBAL INC. v. FEDERAL-MOGUL GLOBAL INC.**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 901

Content: Court Filings | **Date:** July 3, 2008

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- 1899 [**FEDERAL-MOGUL GLOBAL INC. v. FEDERAL-MOGUL GLOBAL INC.**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 897

Content: Court Filings | **Date:** June 18, 2008

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- 1900 [**BOSSART v. HAVIS**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 92

Content: Court Filings | **Date:** March 14, 2008

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- 1901 [**TATE v. BOLEN**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 610

Content: Court Filings | **Date:** February 29, 2008

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- 1902 [**GLOBAL INDUS. TECHS. v. GLOBAL INDUS. TECHS.**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 853

Content: Court Filings | **Date:** February 14, 2008

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- 1903 [**WILLIAMSON v. SHERLOCK**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 348

Content: Court Filings | **Date:** February 14, 2008

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- 1904 [**DURAND v. NEIL H. ACKERMAN**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 376

Content: Court Filings | **Date:** January 14, 2008

1905 [THOMAS](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1301

Content: Court Filings | **Date:** December 17, 2007

1906 [SINGH](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1637

Content: Court Filings | **Date:** December 11, 2007

1907 [CINGULAR v. RICHARD MCCORMICK](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1843

Content: Court Filings | **Date:** December 7, 2007

1908 [ARMSTRONG](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1861

Content: Court Filings | **Date:** November 19, 2007

1909 [TEKNEK, LLC](#), 2007 U.S. Dist. Ct. Briefs LEXIS 922

Content: Court Filings | **Date:** November 5, 2007

1910 [BUCCOLO](#), 2007 U.S. Dist. Ct. Briefs LEXIS 761

Content: Court Filings | **Date:** October 5, 2007

1911 [CLIPPARD v. CROCKER](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1440

Content: Court Filings | **Date:** September 25, 2007

1912 [HARWELL](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1234

Content: Court Filings | **Date:** September 10, 2007

1913 [KREISLER](#), 2007 U.S. Dist. Ct. Briefs LEXIS 775

Content: Court Filings | **Date:** August 29, 2007

1914 [THE CADLE v. DIANE G. REED](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1707

Content: Court Filings | **Date:** August 28, 2007

1915 [HARWELL](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1233

Content: Court Filings | **Date:** August 7, 2007

1916 [JEOFFREY v. GANZ](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1905

Content: Court Filings | **Date:** August 1, 2007

1917 [KEENAN](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1200

Content: Court Filings | **Date:** July 25, 2007

1918 [ARTHUR W. WHITMAN](#), 2007 U.S. Dist. Ct. Briefs LEXIS 289

Content: Court Filings | **Date:** July 2, 2007

1919 [RIVERA](#), 2007 U.S. Dist. Ct. Briefs LEXIS 689

Content: Court Filings | **Date:** June 21, 2007

1920 [CLOSE](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1218

Content: Court Filings | **Date:** June 15, 2007

1921 [CLOSE](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1216

Content: Court Filings | **Date:** June 5, 2007

1922 [BARRY v. SOMMERS](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1364

Content: Court Filings | **Date:** May 31, 2007

1923 [CLOSE](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1217

Content: Court Filings | **Date:** May 21, 2007

1924 [RAGLE](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1298

Content: Court Filings | **Date:** May 15, 2007

1925 [THE LAW FIRM OF FRANK R. BAYGER, P.C., CHPTR. 7](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1457

Content: Court Filings | **Date:** May 14, 2007

1926 [MEADE v. McVAY](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1744

Content: Court Filings | **Date:** May 7, 2007

1927 [HAKE](#), 2007 U.S. Dist. Ct. Briefs LEXIS 439

Content: Court Filings | **Date:** April 27, 2007

1928 [**RANDALL J. HAKE AND MARY ANN HAKE**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 380

Content: Court Filings | **Date:** April 27, 2007

1929 [**SAWDY**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1414

Content: Court Filings | **Date:** April 18, 2007

1930 [**LENTON v. UNITED STATE**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 2184

Content: Court Filings | **Date:** March 28, 2007

1931 [**THE CADLE v. DIANE G. REED**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1709

Content: Court Filings | **Date:** March 19, 2007

1932 [**RANDLE v. NEARY**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 367

Content: Court Filings | **Date:** March 15, 2007

1933 [**THE CADLE v. DIANE G. REED, CHPTR. 7 TRUSTEE**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1708

Content: Court Filings | **Date:** February 26, 2007

1934 [**DEGROOF**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1794

Content: Court Filings | **Date:** February 23, 2007

1935 [**OUTBOARD MARINE CORP.**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 160

Content: Court Filings | **Date:** February 22, 2007

1936 [**PC LIQUIDATION CORP.**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 1495

Content: Court Filings | **Date:** February 9, 2007

1937 [**DAWNA ROCHELLE BIGGS**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 518

Content: Court Filings | **Date:** February 8, 2007

1938 [**JANET FARRIOR VON GAL v. BB&T CORP., a NORTH CAROLINA CORP. & BRANCH BANKING & TRUST CO. OF VIRGINIA**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 343

Content: Court Filings | **Date:** February 2, 2007

1939 [**NEGOSH v. ACKERMAN**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 438

Content: Court Filings | **Date:** January 31, 2007

1940 [**GEORGE K. BOYER; REPUBLIC CREDIT CORPORATION I v. GEORGE K. BOYER**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 372

Content: Court Filings | **Date:** January 30, 2007

1941 [**Robert K. Alber, eToys Shareholder, Pro Se v. Morris, Nichols, Arsh & Tunnell**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 60

Content: Court Filings | **Date:** January 23, 2007

1942 [**OTERO**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 569

Content: Court Filings | **Date:** January 18, 2007

1943 [**JANET FARRIOR VON GAL v. BB&T CORP.**](#), 2007 U.S. Dist. Ct. Briefs LEXIS 342

Content: Court Filings | **Date:** January 11, 2007

1944 [ARTHUR W. WHITMAN](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2332

Content: Court Filings | **Date:** November 30, 2006

1945 [HALKAS a/k/a CALDERON v. GRIGSBY](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1584

Content: Court Filings | **Date:** November 20, 2006

1946 [Wolff v. United States](#), 2006 U.S. Dist. Ct. Briefs LEXIS 11850

Content: Court Filings | **Date:** November 3, 2006

1947 [FIRSTPAY, INC.](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2571

Content: Court Filings | **Date:** November 3, 2006

1948 [BENN](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1506

Content: Court Filings | **Date:** October 25, 2006

1949 [WOODARD v. TACO](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1200

Content: Court Filings | **Date:** October 24, 2006

1950 [GRESHAM](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1781

Content: Court Filings | **Date:** September 15, 2006

1951 [HOME NETWORK](#), 2006 U.S. Dist. Ct. Briefs LEXIS 3440

Content: Court Filings | **Date:** September 7, 2006

1952 [MORRIS v. RODRIGUEZ](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1906

Content: Court Filings | **Date:** August 29, 2006

1953 [SECIVANOVIC](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1287

Content: Court Filings | **Date:** August 10, 2006

1954 [HAUF](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1742

Content: Court Filings | **Date:** August 4, 2006

1955 [TRI STATE ETHANOL CO., L.L.C.](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2593

Content: Court Filings | **Date:** July 20, 2006

1956 [MONIQUE D. MEZA; SARA L. KISTLER v. MONIQUE D. MEZA](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2283

Content: Court Filings | **Date:** July 14, 2006

1957 [ALABAMA DEP'T OF HUMAN RESOURCES v. BOLER](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2970

Content: Court Filings | **Date:** July 5, 2006

1958 [ALABAMA DEP'T OF HUMAN RESOURCES v. BROWN](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2965

Content: Court Filings | **Date:** July 5, 2006

1959 [ROBERT S. PATRICK & EILEEN PATRICK](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1879

Content: Court Filings | **Date:** June 19, 2006

1960 [ROBERT S. PATRICK & EILEEN PATRICK](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1883

Content: Court Filings | **Date:** May 16, 2006

1961 [GT AUTOMATION, INC.](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2467

Content: Court Filings | **Date:** May 15, 2006

1962 [DUDLEY](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1463

Content: Court Filings | **Date:** May 1, 2006

1963 [KAISER ALUMINUM CORP.](#), 2006 U.S. Dist. Ct. Briefs LEXIS 222

Content: Court Filings | **Date:** May 1, 2006

1964 [KAISER ALUMINUM CORP.](#), 2006 U.S. Dist. Ct. Briefs LEXIS 221

Content: Court Filings | **Date:** May 1, 2006

1965 [HAWORTH](#), 2006 U.S. Dist. Ct. Briefs LEXIS 3016

Content: Court Filings | **Date:** April 26, 2006

1966 [HERRANS v. MENDER](#), 2006 U.S. Dist. Ct. Briefs LEXIS 1764

Content: Court Filings | **Date:** April 24, 2006

1967 [**GIANT EAGLE, INC. v. PHAR-MOR, INC.**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 477

Content: Court Filings | **Date:** April 19, 2006

1968 [**JOHN BRIAN HAWORTH**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 3015

Content: Court Filings | **Date:** April 18, 2006

1969 [**QUARLES**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2589

Content: Court Filings | **Date:** April 17, 2006

1970 [**QUARLES**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2588

Content: Court Filings | **Date:** April 11, 2006

1971 [**DIEFFENBACH v. JOHN BRIAN HAWORTH JEAN HAWORTH BARBARA KATZ UNITED STATES TRUSTEE**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 3013

Content: Court Filings | **Date:** April 4, 2006

1972 [**QUARLES**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2587

Content: Court Filings | **Date:** April 3, 2006

1973 [**QUARLES**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 2586

Content: Court Filings | **Date:** March 21, 2006

1974 [**NADER MODANLO v. AHAN**](#), 2006 U.S. Dist. Ct. Briefs LEXIS 187

Content: Court Filings | **Date:** March 17, 2006

1975 [Griffin](#), 2006 U.S. Dist. Ct. Briefs LEXIS 165

Content: Court Filings | **Date:** February 22, 2006

1976 [DERIVIUM v. DEIRDRE A. MARTINI UNITED STATES](#), 2006 U.S. Dist. Ct. Briefs LEXIS 282

Content: Court Filings | **Date:** February 17, 2006

1977 [JIMMY GIDDENS v. REBECCA KREUTZER & MICHAEL KREUTZER, & MARY MAY](#), 2006 U.S. Dist. Ct. Briefs LEXIS 610

Content: Court Filings | **Date:** January 30, 2006

1978 [JIMMY GIDDENS v. REBECCA KREUTZER & MICHAEL KREUTZER, & MARY MAY](#), 2006 U.S. Dist. Ct. Briefs LEXIS 301

Content: Court Filings | **Date:** January 30, 2006

1979 [KREUTZER v. KREUTZER](#), 2006 U.S. Dist. Ct. Briefs LEXIS 609

Content: Court Filings | **Date:** January 23, 2006

1980 [KREUTZER](#), 2006 U.S. Dist. Ct. Briefs LEXIS 300

Content: Court Filings | **Date:** January 23, 2006

1981 [LEWIS](#), 2006 U.S. Dist. Ct. Briefs LEXIS 497

Content: Court Filings | **Date:** January 13, 2006

1982 [PIER](#), 2006 U.S. Dist. Ct. Briefs LEXIS 306

Content: Court Filings | **Date:** January 13, 2006

1983 [BOYCE](#), 2005 U.S. Dist. Ct. Briefs LEXIS 1369

Content: Court Filings | **Date:** July 12, 2005

1984 [KAISER ALUMINUM CORP.](#), 2005 U.S. Dist. Ct. Briefs LEXIS 941

Content: Court Filings | **Date:** June 2, 2005

1985 [KAISER ALUMINUM CORP.](#), 2005 U.S. Dist. Ct. Briefs LEXIS 776

Content: Court Filings | **Date:** June 2, 2005

1986 [HOME EQUITY ACCESS v. SOMMERS](#), 2005 U.S. Dist. Ct. Briefs LEXIS 762

Content: Court Filings | **Date:** May 16, 2005

1987 [SCOTT CABLE COMMUNS., INC.](#), 2005 U.S. Dist. Ct. Briefs LEXIS 1752

Content: Court Filings | **Date:** April 7, 2005

1988 [WHEELER v. MILBANK](#), 2005 U.S. Dist. Ct. Briefs LEXIS 1874

Content: Court Filings | **Date:** February 24, 2005

1989 [Enron Corp](#), 2004 U.S. Dist. Ct. Briefs LEXIS 4333

Content: Court Filings | **Date:** December 27, 2004

1990 [GRAND ST. REALTY](#), 2004 U.S. Dist. Ct. Briefs LEXIS 753

Content: Court Filings | **Date:** December 17, 2004

1991 [FREELAND v. ENODIS CORP.](#), 2004 U.S. Dist. Ct. Briefs LEXIS 638

Content: Court Filings | **Date:** October 25, 2004

1992 [Boyce](#), 2004 U.S. Dist. Ct. Briefs LEXIS 636

Content: Court Filings | **Date:** June 15, 2004

1993 [SHERMAN v. SHERMAN](#), 2004 U.S. Dist. Ct. Briefs LEXIS 1055

Content: Court Filings | **Date:** April 27, 2004

1994 [Sears v Sears](#), 2011 U.S. Bankr. Ct. Briefs LEXIS 49

Content: Court Filings | **Date:** August 23, 2011

1995 [CHAPMAN](#), 2010 U.S. Bankr. Ct. Briefs LEXIS 22

Content: Court Filings | **Date:** October 15, 2010

1996 [CRUSE](#), 2010 U.S. Bankr. Ct. Briefs LEXIS 20

Content: Court Filings | **Date:** August 13, 2010

1997 [SANDRA MARCIANO](#), 2007 U.S. Bankr. Ct. Briefs LEXIS 126

Content: Court Filings | **Date:** May 30, 2007

1998 [KRICK](#), 2007 U.S. Bankr. Ct. Briefs LEXIS 239

Content: Court Filings | **Date:** May 4, 2007

1999 [EDGEWATER MED. CTR.](#), 2007 U.S. Bankr. Ct. Briefs LEXIS 175

Content: Court Filings | **Date:** March 27, 2007

2000 [JOHN S. STEWART, JR.](#), 2007 U.S. Bankr. Ct. Briefs LEXIS 104

Content: Court Filings | **Date:** January 17, 2007

2001 [HAMILTON v. NORTH CAROLINA STATE EDUC. ASSISTANCE AUTH. \(In re HAMILTON\)](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 532

Content: Court Filings | **Date:** December 11, 2006

2002 [DAVID E HAMILTON v. NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 463

Content: Court Filings | **Date:** December 11, 2006

2003 [LEBOVITZ v. HAGEMEYER \(In re LEBOVITZ\)](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 364

Content: Court Filings | **Date:** November 9, 2006

2004 [LEBOVITZ v. HAGEMEYER \(In re LEBOVITZ\)](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 363

Content: Court Filings | **Date:** October 31, 2006

2005 [Jayo](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 81

Content: Court Filings | **Date:** June 22, 2006

2006 [VIGIL SR.](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 8

Content: Court Filings | **Date:** March 24, 2006

2007 [Pyatt v. BROWN](#), 2006 U.S. Bankr. Ct. Briefs LEXIS 181

Content: Court Filings | **Date:** February 21, 2006

2008 [CONSOLIDATED INDUS. CORP.](#), 2003 U.S. Bankr. Ct. Briefs LEXIS 50

Content: Court Filings | **Date:** December 8, 2003

2009 [ACE TITLE LOAN, INC. v. CRUMP](#), 2006 AL S. Ct. Briefs LEXIS 314

Content: Court Filings | **Date:** January 5, 2006

2010 [WAGNER v. KEY BANK OF ALASKA](#), 1992 AK S. Ct. Briefs LEXIS 1

Content: Court Filings | **Date:** February 20, 1992

2011 [WAGNER v. KEY BANK OF ALASKA](#), 1991 AK S. Ct. Briefs LEXIS 4

Content: Court Filings | **Date:** July 15, 1991

2012 [ACOSTA v. PHOENIX INDEM. INS. CO.](#), 2006 AZ App. Ct. Briefs LEXIS 146

Content: Court Filings | **Date:** July 27, 2006

2013 [BARNES v. WEBB](#), 2016 AR App. Ct. Briefs LEXIS 1139

Content: Court Filings | **Date:** June 3, 2016

2014 [**IVES TRANSP., INC. v. IVES**](#), 2013 AR App. Ct. Briefs LEXIS 195

Content: Court Filings | **Date:** September 11, 2013

2015 [**COOPER v. COOPER CLINIC, P.A.**](#), 2008 AR App. Ct. Briefs LEXIS 976

Content: Court Filings | **Date:** March 19, 2008

2016 [**BRACE v. STEVENSPEIER**](#), 2019 CA S. Ct. Briefs LEXIS 1551

Content: Court Filings | **Date:** May 2, 2019

2017 [**MASSIMO v. SUPERIOR COURT OF CALIFORNIA FOR SAN FRANCISCO**](#), 2010 CA S. Ct. Briefs LEXIS 1049

Content: Court Filings | **Date:** March 4, 2010

2018 [**FU v. KAMAN LIU**](#), 2023 CA App. Ct. Briefs LEXIS 2786

Content: Court Filings | **Date:** June 27, 2023

2019 [**KUMCHAI MIYAHARA v. WELLS FARGO BANK, N.A.**](#), 2023 CA App. Ct. Briefs LEXIS 1218

Content: Court Filings | **Date:** January 19, 2023

2020 [**AXIS ENTERTAINMENT, INC. v. YARI**](#), 2022 CA App. Ct. Briefs LEXIS 7557

Content: Court Filings | **Date:** December 8, 2022

2021 [**MARTIN v. GLADSTONE**](#), 2022 CA App. Ct. Briefs LEXIS 7511

Content: Court Filings | **Date:** December 7, 2022

2022 [**Stevens v. Ocwen Loan Servicing**](#), 2022 CA App. Ct. Briefs LEXIS 1169

Content: Court Filings | **Date:** February 28, 2022

2023 [**OREN v. SILVERLAKE PARK**](#), 2022 CA App. Ct. Briefs LEXIS 1390

Content: Court Filings | **Date:** February 23, 2022

2024 [**AKHLAGHPOUR v. ORANTES**](#), 2022 CA App. Ct. Briefs LEXIS 1426

Content: Court Filings | **Date:** February 22, 2022

2025 [**WORLD BOTANICAL GARDENS, INC. v. WAGNER**](#), 2021 CA App. Ct. Briefs LEXIS 7907

Content: Court Filings | **Date:** December 17, 2021

2026 [**WORLD BOTANICAL GARDENS, INC. v. WAGNER**](#), 2021 CA App. Ct. Briefs LEXIS 7468

Content: Court Filings | **Date:** November 30, 2021

2027 [**v. Respondent Glusker**](#), 2021 CA App. Ct. Briefs LEXIS 7349

Content: Court Filings | **Date:** November 22, 2021

2028 [**PDTW v. SCHNIDER**](#), 2021 CA App. Ct. Briefs LEXIS 6171

Content: Court Filings | **Date:** October 20, 2021

2029 [**QIU YUE JIANG v. TOM**](#), 2021 CA App. Ct. Briefs LEXIS 5420

Content: Court Filings | **Date:** August 20, 2021

2030 [ORLEMAN v. CHIASSON](#), 2021 CA App. Ct. Briefs LEXIS 4867

Content: Court Filings | **Date:** August 5, 2021

2031 [v. Respondents David Schnider, Nolan Heimann, Andrew Apfelberg, Greenberg Glusker, KF Professional Group, Inc., Norman Ko, & Joseph Foster](#), 2021 CA App. Ct. Briefs LEXIS 4018

Content: Court Filings | **Date:** July 7, 2021

2032 [AGUINA v. CHOONG DAE KANG](#), 2021 CA App. Ct. Briefs LEXIS 1495

Content: Court Filings | **Date:** March 4, 2021

2033 [v. Respondents Kring & Chung, Kenneth Chung, Allyson Thompson, Laura Hess, & Laura Booth](#), 2021 CA App. Ct. Briefs LEXIS 962

Content: Court Filings | **Date:** February 23, 2021

2034 [Baaj v. Kurd-Misto](#), 2021 CA App. Ct. Briefs LEXIS 602

Content: Court Filings | **Date:** February 8, 2021

2035 [PDTW v. KRING & CHUNG](#), 2021 CA App. Ct. Briefs LEXIS 452

Content: Court Filings | **Date:** February 3, 2021

2036 [v. Respondents Kring & Chung, Kenneth Chung, Allyson Thompson, Laura Hess, & Laura Booth](#), 2020 CA App. Ct. Briefs LEXIS 6871

Content: Court Filings | **Date:** November 23, 2020

2037 [SMITH v. HUNT & HENRIQUES, INC.](#), 2020 CA App. Ct. Briefs LEXIS 2524

Content: Court Filings | **Date:** May 22, 2020

2038 [DENT MART INT'L, INC. v. EUN HEE DENTAL LAB., INC.](#), 2020 CA App. Ct. Briefs LEXIS 1531

Content: Court Filings | **Date:** March 6, 2020

2039 [Walther v. Hujazi](#), 2020 CA App. Ct. Briefs LEXIS 934

Content: Court Filings | **Date:** February 11, 2020

2040 [Levinson v. Kharazi](#), 2019 CA App. Ct. Briefs LEXIS 7040

Content: Court Filings | **Date:** October 11, 2019

2041 [Levinson v. Kharazi](#), 2019 CA App. Ct. Briefs LEXIS 6877

Content: Court Filings | **Date:** October 11, 2019

2042 [PATTERSON v. SELECT PORTFOLIO SERVICING](#), 2019 CA App. Ct. Briefs LEXIS 5803

Content: Court Filings | **Date:** September 23, 2019

2043 [GILLIAM v. MILLER](#), 2019 CA App. Ct. Briefs LEXIS 1747

Content: Court Filings | **Date:** March 12, 2019

2044 [Hill v. Law Office of Beatrice L. Snider](#), 2018 CA App. Ct. Briefs LEXIS 8926

Content: Court Filings | **Date:** December 18, 2018

2045 [**HILL v. LAW OFFICES OF BEATRICE L. SNIDER**](#), 2018 CA App. Ct. Briefs LEXIS 7941

Content: Court Filings | **Date:** November 16, 2018

2046 [**EGBE v. U.S. BANK NAT'L ASS'N**](#), 2018 CA App. Ct. Briefs LEXIS 1162

Content: Court Filings | **Date:** January 12, 2018

2047 [**PADILLA v. JAKUBAITIS**](#), 2017 CA App. Ct. Briefs LEXIS 1955

Content: Court Filings | **Date:** May 24, 2017

2048 [**KENNEDY v. WEEKS ST. LLC**](#), 2017 CA App. Ct. Briefs LEXIS 405

Content: Court Filings | **Date:** March 23, 2017

2049 [**RABOBANK v. SCHNEIDEREIT**](#), 2016 CA App. Ct. Briefs LEXIS 2600

Content: Court Filings | **Date:** September 9, 2016

2050 [**RABOBANK v. SCHNEIDEREIT**](#), 2016 CA App. Ct. Briefs LEXIS 4923

Content: Court Filings | **Date:** August 31, 2016

2051 [**DEBILIO**](#), 2016 CA App. Ct. Briefs LEXIS 5558

Content: Court Filings | **Date:** August 11, 2016

2052 [**Moore v. Holbrook**](#), 2016 CA App. Ct. Briefs LEXIS 2089

Content: Court Filings | **Date:** July 20, 2016

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- 2053 [**PIANA v. SELECT PORTFOLIO SERVICING**](#), 2015 CA App. Ct. Briefs LEXIS 1919

Content: Court Filings | **Date:** December 17, 2015

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- 2054 [**PIANA v. SELECT PORTFOLIO SERVICING**](#), 2015 CA App. Ct. Briefs LEXIS 6710

Content: Court Filings | **Date:** December 16, 2015

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- 2055 [**RIGGS v. WELLS FARGO BANK, N.A.**](#), 2015 CA App. Ct. Briefs LEXIS 3323

Content: Court Filings | **Date:** September 14, 2015

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- 2056 [**MEISTER v. MENSINGER**](#), 2012 CA App. Ct. Briefs LEXIS 4322

Content: Court Filings | **Date:** August 15, 2012

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- 2057 [**MAXIMUM ENG'G, INC. v. SUPERIOR COURT OF CALIFORNIA FOR LOS ANGELES**](#), 2012 CA App. Ct. Briefs LEXIS 2911

Content: Court Filings | **Date:** June 29, 2012

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- 2058 [**CONSUMERINFO v. MAGNET MEDIA**](#), 2009 CA App. Ct. Briefs LEXIS 3816

Content: Court Filings | **Date:** August 7, 2009

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- 2059 [**WASHINGTON MUT. BANK, FA v. BLECHMAN**](#), 2007 CA App. Ct. Briefs LEXIS 4779

Content: Court Filings | **Date:** June 20, 2007

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- 2060 [**SARCHET**](#), 2007 CA App. Ct. Briefs LEXIS 92

Content: Court Filings | **Date:** January 3, 2007

2061 [**TALLEY v. MILLER & SCHROEDER**](#), 2006 CA App. Ct. Briefs LEXIS 5646

Content: Court Filings | **Date:** November 6, 2006

2062 [**Beaty**](#), 2015 CO S. Ct. Briefs LEXIS 686

Content: Court Filings | **Date:** November 20, 2015

2063 [**Heimann**](#), 2015 CO S. Ct. Briefs LEXIS 705

Content: Court Filings | **Date:** April 13, 2015

2064 [**Plaintiff - Appellant: GALLUS v. Defendants - Appellees: CONOCO/PHILLIPS CO., GEORGE G. VAUGHT, JR. & PAUL L. McCULLISS**](#), 2020 CO App. Ct. Briefs LEXIS 1447

Content: Court Filings | **Date:** November 16, 2020

2065 [**STEWART v. HOWARD UNIV.**](#), 2023 D.C. App. Ct. Briefs LEXIS 75

Content: Court Filings | **Date:** July 10, 2023

2066 [**KLAUDER v. ECHO/RT HOLDINGS**](#), 2016 DE S. Ct. Briefs LEXIS 687

Content: Court Filings | **Date:** June 16, 2016

2067 [**SANTER v. SILICON VALLEY INNOVATION CO.**](#), 2015 DE S. Ct. Briefs LEXIS 73

Content: Court Filings | **Date:** November 25, 2015

2068 [**OSBORNE v. DUMOULIN**](#), 2009 FL S.Ct. Briefs LEXIS 507

Content: Court Filings | **Date:** July 9, 2009

2069 [OSBORNE v. DUMOULIN](#), 2009 FL S.Ct. Briefs LEXIS 464

Content: Court Filings | **Date:** June 4, 2009

2070 [CERTAIN UNDERWRITERS AT LLOYD'S v. RIGBY](#), 2006 FL S.Ct. Briefs LEXIS 140

Content: Court Filings | **Date:** February 3, 2006

2071 [NEIGHBORHOOD RESTAURANT v. HENKEL](#), 2023 FL App. Ct. Briefs LEXIS 2114

Content: Court Filings | **Date:** April 26, 2023

2072 [WELLS FARGO BANK v. MEININGER](#), 2022 FL App. Ct. Briefs LEXIS 1128

Content: Court Filings | **Date:** April 29, 2022

2073 [DEUTSCHE BANK TRUST CO. v. MEININGER](#), 2022 FL App. Ct. Briefs LEXIS 1193

Content: Court Filings | **Date:** April 7, 2022

2074 [SWZ FIN. II v. MILLER COFFEY TATE LLP](#), 2020 FL App. Ct. Briefs LEXIS 12689

Content: Court Filings | **Date:** October 26, 2020

2075 [REGIONS BANK v. CHARTER HC TAMPA GUNN](#), 2020 FL App. Ct. Briefs LEXIS 12241

Content: Court Filings | **Date:** September 28, 2020

2076 [REGIONS BANK v. CHARTER HC GUNN](#), 2020 FL App. Ct. Briefs LEXIS 11822

Content: Court Filings | **Date:** July 28, 2020

2077 [CRD2, INC. v. MORTGAGE](#), 2018 FL App. Ct. Briefs LEXIS 21930

Content: Court Filings | **Date:** July 5, 2018

2078 [YOUNG v. CHURCH OF THE OPEN DOOR UNITED CHURCH OF CHRIST](#), 2017 FL App. Ct. Briefs LEXIS 21328

Content: Court Filings | **Date:** July 14, 2017

2079 [YOUNG v. CHURCH OF THE OPEN DOOR](#), 2017 FL App. Ct. Briefs LEXIS 4976

Content: Court Filings | **Date:** July 14, 2017

2080 [HERENDEEN v. MANDELBAUM](#), 2017 FL App. Ct. Briefs LEXIS 2019

Content: Court Filings | **Date:** January 27, 2017

2081 [ONE SOUTH OCEAN DRIVE 2000, LTD. v. WELT](#), 2015 FL App. Ct. Briefs LEXIS 1752

Content: Court Filings | **Date:** February 27, 2015

2082 [Rigby v. Underwriters at Lloyd's, London](#), 2005 FL App. Ct. Briefs LEXIS 296

Content: Court Filings | **Date:** March 25, 2005

2083 [RIGBY v. UNDERWRITERS AT LLOYD'S, LONDON](#), 2004 FL App. Ct. Briefs LEXIS 117

Content: Court Filings | **Date:** November 17, 2004

- 2084 [**JD DESIGN GROUP v. GRAHAM**](#), 2007 GA S. Ct. Briefs LEXIS 57

Content: Court Filings | **Date:** March 16, 2007

- 2085 [**TRIMAX FIN. SERVS. v. AR FIN. SERVS.**](#), 2024 GA App. Ct. Briefs LEXIS 951

Content: Court Filings | **Date:** May 15, 2024

- 2086 [**TRIMAX FIN. SERVS. v. AR FIN. SERVS., INC. ADIL MERCHANT, & ZEENAT A. MERCHANT**](#), 2024 GA App. Ct. Briefs LEXIS 235

Content: Court Filings | **Date:** February 16, 2024

- 2087 [**WAGNER v. WORLD BOTANICAL GARDENS, INC.**](#), 2018 HI App. Ct. Briefs LEXIS 1818

Content: Court Filings | **Date:** December 26, 2018

- 2088 [**LEE v. CHUCK CHOI, CHOI & ITO**](#), 2023 HI Cir. Ct. Briefs LEXIS 88

Content: Court Filings | **Date:** May 12, 2023

- 2089 [**FARMS v. ISOM**](#), 2020 ID S. Ct. Briefs LEXIS 3647

Content: Court Filings | **Date:** December 17, 2020

- 2090 [**DUNIVER v. CLARK MATERIAL HANDLING CO.**](#), 2022 IL S. Ct. Briefs LEXIS 214

Content: Court Filings | **Date:** June 8, 2022

- 2091 [**DOTLICH v. HESTER**](#), 2016 IN S. Ct. Briefs LEXIS 61

Content: Court Filings | **Date:** February 22, 2016

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- 2092 [Ocwen Loan Servicing v. Chambliss](#), 2020 IN App. Ct. Briefs LEXIS 3092

Content: Court Filings | **Date:** September 18, 2020

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- 2093 [DOTLICH v. HESTER](#), 2015 IN App. Ct. Briefs LEXIS 375

Content: Court Filings | **Date:** August 4, 2015

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- 2094 [MORGAN COUNTY HOSP. v. UPHAM](#), 2008 IN App. Ct. Briefs LEXIS 175

Content: Court Filings | **Date:** January 14, 2008

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- 2095 [1312 Gateshead LLC v. Rosen](#), 2020 MD Sp. App. Ct. Briefs LEXIS 1392

Content: Court Filings | **Date:** October 2, 2020

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- 2096 [FISCHER v. SCHLOSSBERG](#), 2011 MD Sp. App. Ct. Briefs LEXIS 1521

Content: Court Filings | **Date:** May 2, 2011

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- 2097 [LEGENDARY PROPS. v. FIDELITY & DEPOSIT CO. OF MARYLAND](#), 2011 MD Sp. App. Ct. Briefs LEXIS 373

Content: Court Filings | **Date:** January 7, 2011

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- 2098 [FISCHER v. FISCHER](#), 2010 MD Sp. App. Ct. Briefs LEXIS 739

Content: Court Filings | **Date:** November 9, 2010

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- 2099 [PRIME RATE PREMIUM FIN. CORP. v. MARYLAND INS. ADMIN.](#), 2009 MD Sp. App. Ct. Briefs LEXIS 253

Content: Court Filings | **Date:** June 29, 2009

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- 2100 [**GOODWILL ENTERPRISES v. KAVANAGH**](#), 2018 MA App. Ct. Briefs LEXIS 658

Content: Court Filings | **Date:** October 1, 2018

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- 2101 [**GOODWILL ENTERPRISES v. KAVANAGH**](#), 2018 MA App. Ct. Briefs LEXIS 657

Content: Court Filings | **Date:** June 15, 2018

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- 2102 [**GILBERT v. DEUTSCHE BANK NAT'L TRUST CO.**](#), 2016 MA App. Ct. Briefs LEXIS 779

Content: Court Filings | **Date:** September 12, 2016

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- 2103 [**Christians v. Thornton**](#), 2006 MN App. Ct. Briefs LEXIS 266

Content: Court Filings | **Date:** September 5, 2006

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- 2104 [**JONES v. ALCORN STATE UNIV.**](#), 2021 MS S. Ct. Briefs LEXIS 389

Content: Court Filings | **Date:** May 4, 2021

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- 2105 [**SAUNDERS v. NCAA**](#), 2021 MS S. Ct. Briefs LEXIS 567

Content: Court Filings | **Date:** March 16, 2021

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- 2106 [**MEADOWFRESH SOLUTIONS USA v. MAPLE GROVE FARMS**](#), 2019 MO S. Ct. Briefs LEXIS 85

Content: Court Filings | **Date:** February 25, 2019

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- 2107 [**B.Y.O.B., Inc. v. MONTANA**](#), 2021 MT S. Ct. Briefs LEXIS 54

Content: Court Filings | **Date:** March 15, 2021

2108 [YAMEK v. GAMECO LLC](#), 2023 NV S. Ct. Briefs LEXIS 204

Content: Court Filings | **Date:** February 13, 2023

2109 [YAMEK v. GAMECO LLC](#), 2023 NV S. Ct. Briefs LEXIS 210

Content: Court Filings | **Date:** January 13, 2023

2110 [YAMEK v. GAMECO LLC](#), 2022 NV S. Ct. Briefs LEXIS 844

Content: Court Filings | **Date:** November 14, 2022

2111 [MEHROPORE v. EIGHT JUDICIAL DIST. COURT OF NEVADA IN & FOR CLARK THE HONORABLE SUSAN SCANN](#), 2014 NV S. Ct. Briefs LEXIS 490

Content: Court Filings | **Date:** November 25, 2014

2112 [Nicke v. Schwartzapfel](#), 2017 NY App. Ct. Briefs LEXIS 300

Content: Court Filings | **Date:** October 23, 2017

2113 [In re SANTIAGO-MONTEVERDE](#), 2014 NY App. Ct. Briefs LEXIS 314

Content: Court Filings | **Date:** September 16, 2014

2114 [In re Santiago-Monteverde](#), 2014 NY App. Ct. Briefs LEXIS 316

Content: Court Filings | **Date:** September 2, 2014

2115 [In re SANTIAGO-MONTEVERDE](#), 2014 NY App. Ct. Briefs LEXIS 317

Content: Court Filings | **Date:** August 29, 2014

2116 [In re SANTIAGO-MONTEVERDE](#), 2014 NY App. Ct. Briefs LEXIS 143

Content: Court Filings | **Date:** August 27, 2014

2117 [Niche](#), 2017 NY App. Div. Briefs LEXIS 71

Content: Court Filings | **Date:** January 13, 2017

2118 [GREENSHIELDS, INC. v. TRAVELERS PROP. CAS. CO. OF AMERICA](#), 2015 NC App. Ct. Briefs LEXIS 1310

Content: Court Filings | **Date:** July 8, 2015

2119 [Ward](#), 2016 ND S. Ct. Briefs LEXIS 470

Content: Court Filings | **Date:** February 1, 2016

2120 [Kost v. Kraft](#), 2010 ND S. Ct. Briefs LEXIS 182

Content: Court Filings | **Date:** September 27, 2010

2121 [PNH, INC. v. ALFA LAVAL FLOW, INC.](#), 2011 OH S. Ct. Briefs LEXIS 178

Content: Court Filings | **Date:** February 8, 2011

2122 [BANK OF NEW YORK MELLON v. RHIEL](#), 2017 OH S. Ct. Briefs LEXIS 2211

Content: Court Filings | **Date:** November 20, 2017

2123 [**BOARD OF EDUC. OF WARRENSVILLE HTS. CITY SCH. DIST. v. CUYAHOGA COUNTY BD. OF REVISION**](#), 2014 OH S. Ct. Briefs LEXIS 875

Content: Court Filings | **Date:** October 20, 2014

2124 [**PNH, INC. v. ALFA LAVAL FLOW, INC.**](#), 2011 OH S. Ct. Briefs LEXIS 276

Content: Court Filings | **Date:** February 25, 2011

2125 [**RIVERA v. CROSBY**](#), 2010 OH App. Ct. Briefs LEXIS 821

Content: Court Filings | **Date:** October 4, 2010

2126 [**GREER-BURGER v. TEMESI**](#), 2006 OH App. Ct. Briefs LEXIS 82

Content: Court Filings | **Date:** January 20, 2006

2127 [**WARE v. BANK OF AMERICA CORP.**](#), 2013 OR App. Ct. Briefs LEXIS 161

Content: Court Filings | **Date:** April 22, 2013

2128 [**MORRISON INFORMATICS, INC. v. MEMBERS 1ST FED. CREDIT UNION, MARK ZAMPELLI & SCOTT DOUGLASS APPEAL OF: MBRS. 1ST FED. CREDIT UNION**](#), 2015 PA S. Ct. Briefs LEXIS 156

Content: Court Filings | **Date:** June 12, 2015

2129 [**MORRISON INFORMATICS, INC. v. MEMBERS 1ST FED. CREDIT UNION, MARK ZAMPELLI, & SCOTT DOUGLASS, Appeal of: Mbrs. 1st Fed. Credit Union**](#), 2015 PA S. Ct. Briefs LEXIS 161

Content: Court Filings | **Date:** May 26, 2015

2130 [**MORRISON INFORMATICS, INC. v. MEMBERS 1ST FED. CREDIT UNION, MARK ZAMPELLI & SCOTT DOUGLASS, APPEAL OF: MBRS. 1ST FED. CREDIT UNION**](#), 2015 PA S. Ct. Briefs LEXIS 162

Content: Court Filings | **Date:** April 20, 2015

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- 2131 [JOSEPH A. BEZJAK and MILDRED P. BEZJAK, his wife, and CARL F. BEZJAK and LARA BEZJAK, his wife, Appellants, v. INNIE DIAMOND, her heirs and assigns, PEARL STRONKO and JOSEPH J. STRONKO, JR., their heirs and assigns, STELLA TOMASIK, her heirs and assigns, WILLIAM B. DIAMOND and SANTINA DIAMOND, their heirs and assigns, RUDOLPH DIAMOND, his heirs and assigns, EVELYN DIAMOND, also known as SISTER MARY KAREN DIAMOND, EMET DIAMOND, JR., his heirs and assigns, LOTTIE DEL SIGNORE, her heirs and assigns, and ADELE SIBA, her heirs and assigns, and the NILAN CONNELLSVILLE COAL AND COKE COMPANY, its successors and assigns, Appellees.](#), 2015 PA Sup. Ct. Briefs LEXIS 727

Content: Court Filings | **Date:** August 17, 2015

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- 2132 [Paula S Shilling, Appellee vs Timothy M Shilling, Appellant](#), 2018 PA Sup. Ct. Briefs LEXIS 6354

Content: Court Filings | **Date:** December 19, 2018

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- 2133 [MORRISON INFORMATICS, INC. v. MEMBERS 1ST FED. CREDIT UNION, MARK ZAMPELLI, SCOTT DOUGLASS](#), 2014 PA Sup. Ct. Briefs LEXIS 2473

Content: Court Filings | **Date:** March 31, 2014

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- 2134 [MORRISON INFORMATICS, INC. v. MEMBERS 1ST FED. CREDIT UNION, MARK ZAMPELLI, & SCOTT DOUGLASS](#), 2014 PA Sup. Ct. Briefs LEXIS 2472

Content: Court Filings | **Date:** February 28, 2014

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- 2135 [DEN DEE RESTAURANTS, INC. v. PENNSYLVANIA LIQUOR CONTROL BD.](#), 2015 PA C.P. Ct. Briefs LEXIS 798

Content: Court Filings | **Date:** February 16, 2015

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- 2136 [DEN DEE RESTAURANTS, INC. v. PENNSYLVANIA LIQUOR CONTROL BD.](#), 2015 PA C.P. Ct. Briefs LEXIS 9801

Content: Court Filings | **Date:** February 15, 2015

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- 2137 [SunTrust Mortg., Inc. v. Lanier](#), 2016 SC App. Ct. Briefs LEXIS 810

Content: Court Filings | **Date:** September 14, 2016

2138 [Norman v. Ann Crouch & Omni Capital Corp.](#), 2015 TX S. Ct. Briefs LEXIS 699

Content: Court Filings | **Date:** June 3, 2015

2139 [WELLS v. MSW 1221](#), 2024 TX App. Ct. Briefs LEXIS 1420

Content: Court Filings | **Date:** March 18, 2024

2140 [BURCH v. NATIONSTAR MORTG. HOLDINGS](#), 2021 TX App. Ct. Briefs LEXIS 106

Content: Court Filings | **Date:** July 26, 2021

2141 [FOSTER v. Foster](#), 2021 TX App. Ct. Briefs LEXIS 368

Content: Court Filings | **Date:** March 5, 2021

2142 [FOSTER v. FOSTER](#), 2021 TX App. Ct. Briefs LEXIS 508

Content: Court Filings | **Date:** March 1, 2021

2143 [FOSTER v. Foster](#), 2021 TX App. Ct. Briefs LEXIS 613

Content: Court Filings | **Date:** January 20, 2021

2144 [BBVA COMPASS & SAM MEADE v. BAGWELL](#), 2019 TX App. Ct. Briefs LEXIS 11426

Content: Court Filings | **Date:** June 6, 2019

2145 [HACHAR v. KHALEDI](#), 2019 TX App. Ct. Briefs LEXIS 13511

Content: Court Filings | **Date:** April 25, 2019

2146 [COLLINS v. ZOLNIER](#), 2018 TX App. Ct. Briefs LEXIS 731

Content: Court Filings | **Date:** May 17, 2018

2147 [McKINNON v. GURLEY](#), 2017 TX App. Ct. Briefs LEXIS 1919

Content: Court Filings | **Date:** August 30, 2017

2148 [KAHN v. HELVETIA ASSET RECOVERY, INC.](#), 2015 TX App. Ct. Briefs LEXIS 15739

Content: Court Filings | **Date:** March 17, 2015

2149 [UNIT 82 JOINT VENTURE v. ROBB EVANS & ASSOCS.](#), 2014 TX App. Ct. Briefs LEXIS 471

Content: Court Filings | **Date:** January 15, 2014

2150 [FLORES v. DEUTSCHE BANK NAT'L TRUST CO.](#), 2012 TX App. Ct. Briefs LEXIS 1572

Content: Court Filings | **Date:** September 4, 2012

2151 [ESSE v. EMPIRE ENERGY III, LTD.](#), 2009 TX App. Ct. Briefs LEXIS 734

Content: Court Filings | **Date:** March 4, 2009

2152 [UNIT 82 JOINT VENTURE v. INTERNATIONAL COMMER. BANK OF CHINA](#), 2008 TX App. Ct. Briefs LEXIS 3034

Content: Court Filings | **Date:** September 29, 2008

2153 [ORLOB v. WASATCH MED. MGMT.](#), 2004 UT App. Ct. Briefs LEXIS 19

Content: Court Filings | **Date:** September 13, 2004

2154 [NAIR v. SYMMES](#), 2018 WA App. Ct. Briefs LEXIS 6416

Content: Court Filings | **Date:** April 3, 2018

2155 [ARP v. RILEY](#), 2018 WA App. Ct. Briefs LEXIS 5233

Content: Court Filings | **Date:** February 13, 2018

2156 [ARP v. RILEY](#), 2017 WA App. Ct. Briefs LEXIS 6834

Content: Court Filings | **Date:** December 21, 2017

2157 [PACIFIC COAST CONSTR. v. company v.](#), 2017 WA App. Ct. Briefs LEXIS 5894

Content: Court Filings | **Date:** December 9, 2017

2158 [RUNNING MC RANCH](#), 2017 WA App. Ct. Briefs LEXIS 86

Content: Court Filings | **Date:** April 21, 2017

2159 [HUSTED v. MELCHER MFG.](#), 2014 WA App. Ct. Briefs LEXIS 1979

Content: Court Filings | **Date:** October 29, 2014

2160 [Casanova v. Polsky](#), 2022 WI S. Ct. Briefs LEXIS 80

Content: Court Filings | **Date:** January 26, 2022

2161 [Ellison v. Hawthorne](#), 2012 U.S. Dist. Ct. Motions LEXIS 28099

Content: Court Filings | **Date:** December 8, 2013

Motions

2162 [Gonzalez](#), 2018 U.S. Bankr. Ct. Briefs LEXIS 83

Content: Court Filings | **Date:** March 6, 2018

2163 [Gonzalez](#), 2018 U.S. Bankr. Ct. Briefs LEXIS 81

Content: Court Filings | **Date:** January 9, 2018

2164 [Gonzalez](#), 2017 U.S. Bankr. Ct. Briefs LEXIS 86

Content: Court Filings | **Date:** December 22, 2017

2165 [Carrington](#), 2024 U.S. 2nd Cir. Motions LEXIS 64

Content: Court Filings | **Date:** January 22, 2024

2166 [Lynch](#), 2018 U.S. 2nd Cir. Motions LEXIS 608

Content: Court Filings | **Date:** July 20, 2018

2167 [Theлен LLP](#), 2012 U.S. 2nd Cir. Motions LEXIS 509

Content: Court Filings | **Date:** September 24, 2012

2168 [USA v. \\$66,369 in U.S. currency](#), 2020 U.S. 6th Cir. Motions LEXIS 8

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2169 [**Swartz v. United States Dist. Court**](#), 2024 U.S. 9th Cir. Motions LEXIS 389

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2170 [**Halloum**](#), 2018 U.S. 9th Cir. Motions LEXIS 122

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2171 [**USA v. Zinnel**](#), 2014 U.S. 9th Cir. Motions LEXIS 544

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2172 [**LENG v. BOEING EMPLS. CREDIT UNION**](#), 2011 U.S. Dist. Ct. Motions LEXIS 314

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2173 [**LENG v. BOEING EMPLS. CREDIT UNION**](#), 2011 U.S. Dist. Ct. Motions LEXIS 312

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2174 [**MEYER v. YOUNG CONAWAY STARGATT & TAYLOR LLP**](#), 2011 U.S. Dist. Ct. Motions LEXIS 711

Content: Court Filings | **Date:** January 10, 2011

2175 [**WILSON v. TUCKER**](#), 2010 U.S. Dist. Ct. Motions LEXIS 40576

Content: Court Filings | **Date:** December 7, 2010

2176 [**Christensen v. Chevy Chase Bank FSB**](#), 2010 U.S. Dist. Ct. Motions LEXIS 56301

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- 2177 [Christensen v. Chevy Chase Bank FSB](#), 2010 U.S. Dist. Ct. Motions LEXIS 56299

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- 2178 [Christensen v. Chevy Chase Bank FSB](#), 2010 U.S. Dist. Ct. Motions LEXIS 56298

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- 2179 [VAN UPP v. BRADLOW](#), 2010 U.S. Dist. Ct. Motions LEXIS 52156

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- 2180 [SCHMIDT v. BASSETT FURNITURE INDUS.](#), 2010 U.S. Dist. Ct. Motions LEXIS 61027

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- 2181 [PETERSON v. MCGLADREY & PULLEN](#), 2010 U.S. Dist. Ct. Motions LEXIS 39178

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- 2182 [UNITED STATES v. DeKELLIS](#), 2010 U.S. Dist. Ct. Motions LEXIS 11109

Content: Court Filings | **Date:** August 5, 2010

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- 2183 [GRAY v. PREFERRED BANK](#), 2010 U.S. Dist. Ct. Motions LEXIS 10951

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- 2184 [U.S. BANK NAT'L ASS'N v. FEDERAL INS. CO.](#), 2010 U.S. Dist. Ct. Motions LEXIS 38360

Content: Court Filings | **Date:** May 3, 2010

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- 2185 [**OSTERLICH v. SAND CANYON CORP.**](#), 2010 U.S. Dist. Ct. Motions LEXIS 11914

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- 2186 [**BENNETT v. ROARK CAP. GRP.**](#), 2010 U.S. Dist. Ct. Motions LEXIS 13937

Content: Court Filings | **Date:** January 25, 2010

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- 2187 [**BROOKFIELD ASSET MGMT. v. AIG FIN. PRODS. CORP.**](#), 2009 U.S. Dist. Ct. Motions LEXIS 89646

Content: Court Filings | **Date:** December 17, 2009

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- 2188 [**In re The Bankruptcy**](#), 2009 U.S. Dist. Ct. Motions LEXIS 74205

Content: Court Filings | **Date:** November 23, 2009

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- 2189 [**CALLOWAY v. CASH AMERICA NET OF CALIFORNIA**](#), 2009 U.S. Dist. Ct. Motions LEXIS 49937

Content: Court Filings | **Date:** October 19, 2009

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- 2190 [**In re FORT DEFIANCE HOUS. CORP.**](#), 2009 U.S. Dist. Ct. Motions LEXIS 42555

Content: Court Filings | **Date:** September 29, 2009

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- 2191 [**SUMNER ANESTHESIA ASSOCS. v. HUBBELL**](#), 2009 U.S. Dist. Ct. Motions LEXIS 42941

Content: Court Filings | **Date:** August 26, 2009

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- 2192 [**WILLIAMS v. HANJE**](#), 2009 U.S. Dist. Ct. Motions LEXIS 21941

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- 2193 [In re INTEGRITY BANCSHARES](#), 2009 U.S. Dist. Ct. Motions LEXIS 70033

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- 2194 [In re INTEGRITY BANCSHARES](#), 2009 U.S. Dist. Ct. Motions LEXIS 70034

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- 2195 [In re INTEGRITY BANCSHARES](#), 2009 U.S. Dist. Ct. Motions LEXIS 69409

Content: Court Filings | **Date:** July 28, 2009

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- 2196 [In re INTEGRITY BANCSHARES](#), 2009 U.S. Dist. Ct. Motions LEXIS 69410

Content: Court Filings | **Date:** July 28, 2009

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- 2197 [GREDE v. BANK OF NEW YORK MELLON](#), 2009 U.S. Dist. Ct. Motions LEXIS 17107

Content: Court Filings | **Date:** May 22, 2009

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- 2198 [Buffets, Inc. v. Buffet, Inc. v.](#), 2009 U.S. Dist. Ct. Motions LEXIS 28121

Content: Court Filings | **Date:** May 18, 2009

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- 2199 [Buffets, Inc. v. Buffet, Inc. v.](#), 2009 U.S. Dist. Ct. Motions LEXIS 28125

Content: Court Filings | **Date:** May 18, 2009

2200 [PELLET v. PELLET](#), 2009 U.S. Dist. Ct. Motions LEXIS 34618

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2201 [In re MELCHER](#), 2009 U.S. Dist. Ct. Motions LEXIS 17864

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2202 [PELLET v. PELLET](#), 2009 U.S. Dist. Ct. Motions LEXIS 34616

Content: Court Filings | **Date:** May 7, 2009

2203 [In re INTEGRITY BANCSHARES](#), 2009 U.S. Dist. Ct. Motions LEXIS 26482

Content: Court Filings | **Date:** April 29, 2009

2204 [SAYLAVEE v. HOCKLER](#), 2009 U.S. Dist. Ct. Motions LEXIS 7523

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2205 [LOGAN v. WILKINS](#), 2009 U.S. Dist. Ct. Motions LEXIS 23587

Content: Court Filings | **Date:** March 30, 2009

2206 [LOGAN v. WILKINS](#), 2009 U.S. Dist. Ct. Motions LEXIS 23588

Content: Court Filings | **Date:** March 20, 2009

2207 [AHCOM, LTD. v. SMEDING](#), 2009 U.S. Dist. Ct. Motions LEXIS 3622

Content: Court Filings | **Date:** March 20, 2009

2208 [AMSTER v. JENKINS](#), 2009 U.S. Dist. Ct. Motions LEXIS 19317

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2209 [BAGWELL v. PORTFOLIO RECOVERY ASSOCs.](#), 2009 U.S. Dist. Ct. Motions LEXIS 15526

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2210 [LISIECKI v. BANK OF AMERICA, N.A.](#), 2009 U.S. Dist. Ct. Motions LEXIS 5701

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2211 [In re STEFFEN](#), 2009 U.S. Dist. Ct. Motions LEXIS 12140

Content: Court Filings | **Date:** February 23, 2009

2212 [EEOC v. CRST VAN EXPEDITED, INC.](#), 2009 U.S. Dist. Ct. Motions LEXIS 6435

Content: Court Filings | **Date:** February 13, 2009

2213 [KANE v. NATIONAL UNION FIRE INS. CO.](#), 2009 U.S. Dist. Ct. Motions LEXIS 20347

Content: Court Filings | **Date:** January 27, 2009

2214 [In re WILLIS](#), 2008 U.S. Dist. Ct. Motions LEXIS 74259

Content: Court Filings | **Date:** December 23, 2008

2215 [Locapo v. Brian W. Colsia, MAK Invs.](#), 2008 U.S. Dist. Ct. Motions LEXIS 66916

Content: Court Filings | **Date:** November 5, 2008

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- 2216 [JOHN C. FLOOD OF VIRGINIA, INC. v. JOHN C. FLOOD, INC.](#), 2008 U.S. Dist. Ct. Motions LEXIS 100935

Content: Court Filings | **Date:** October 10, 2008

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- 2217 [JOHNSON v. JP MORGAN CHASE BANK](#), 2008 U.S. Dist. Ct. Motions LEXIS 25810

Content: Court Filings | **Date:** September 1, 2008

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- 2218 [WIGGINS v. CITIZENS GAS & COKE UTIL.](#), 2008 U.S. Dist. Ct. Motions LEXIS 23978

Content: Court Filings | **Date:** July 9, 2008

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- 2219 [In re JARMAN](#), 2008 U.S. Dist. Ct. Motions LEXIS 60654

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- 2220 [In re Rodriguez](#), 2008 U.S. Dist. Ct. Motions LEXIS 33572

Content: Court Filings | **Date:** June 17, 2008

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- 2221 [Warfield v. Advnt Biotechnologies](#), 2008 U.S. Dist. Ct. Motions LEXIS 16901

Content: Court Filings | **Date:** May 23, 2008

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- 2222 [In re JARMAN](#), 2008 U.S. Dist. Ct. Motions LEXIS 60652

Content: Court Filings | **Date:** May 21, 2008

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- 2223 [CLARENCE CARGO v. KANSAS CITY SOUTHERN RY. CO.](#), 2008 U.S. Dist. Ct. Motions LEXIS 74500

Content: Court Filings | **Date:** May 21, 2008

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- 2224 [**CLARENCE CARGO v. KANSAS CITY SOUTHERN RY. CO.**](#), 2008 U.S. Dist. Ct. Motions LEXIS 74503

Content: Court Filings | **Date:** May 21, 2008

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- 2225 [**RODRIGUEZ v. MUSTANG MFG. CO.**](#), 2008 U.S. Dist. Ct. Motions LEXIS 17385

Content: Court Filings | **Date:** May 12, 2008

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- 2226 [**MCLEMORE v. REGIONS BANK**](#), 2008 U.S. Dist. Ct. Motions LEXIS 102202

Content: Court Filings | **Date:** May 5, 2008

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- 2227 [**MORRIS v. INSTITUTE FOR ORTHOPAEDIC SURGERY**](#), 2008 U.S. Dist. Ct. Motions LEXIS 19240

Content: Court Filings | **Date:** April 24, 2008

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- 2228 [**MORRIS v. INSTITUTE FOR ORTHOPAEDIC SURGERY**](#), 2008 U.S. Dist. Ct. Motions LEXIS 19238

Content: Court Filings | **Date:** April 17, 2008

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- 2229 [**In re Morris**](#), 2008 U.S. Dist. Ct. Motions LEXIS 19239

Content: Court Filings | **Date:** April 17, 2008

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- 2230 [**Amboy Bancorporation v. Jenkens & Gilchrist**](#), 2008 U.S. Dist. Ct. Motions LEXIS 28094

Content: Court Filings | **Date:** March 20, 2008

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- 2231 [**Amboy Bancorporation v. Jenkens & Gilchrist**](#), 2008 U.S. Dist. Ct. Motions LEXIS 25375

Content: Court Filings | **Date:** March 20, 2008

2232 [SHARP v. HAMILTON](#), 2008 U.S. Dist. Ct. Motions LEXIS 36238

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2233 [STANLEY v. TRINCHARD](#), 2008 U.S. Dist. Ct. Motions LEXIS 8198

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2234 [STANLEY v. TRINCHARD](#), 2008 U.S. Dist. Ct. Motions LEXIS 8394

Content: Court Filings | **Date:** March 12, 2008

2235 [In re EMERGYSTAT OF SULLIGENT, INC.](#), 2008 U.S. Dist. Ct. Motions LEXIS 289

Content: Court Filings | **Date:** February 12, 2008

2236 [In re Ragle](#), 2007 U.S. Dist. Ct. Motions LEXIS 78422

Content: Court Filings | **Date:** December 12, 2007

2237 [In re WINROCK GRASS FARMS, INC.](#), 2007 U.S. Dist. Ct. Motions LEXIS 43481

Content: Court Filings | **Date:** November 28, 2007

2238 [Strand v. Loveridge](#), 2007 U.S. Dist. Ct. Motions LEXIS 55779

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2239 [DEPAOLA v. NISSAN NORTH AMERICA, INC.](#), 2007 U.S. Dist. Ct. Motions LEXIS 82190

Content: Court Filings | **Date:** August 30, 2007

2240 [In re Equator Corp.](#), 2007 U.S. Dist. Ct. Motions LEXIS 14584

Content: Court Filings | **Date:** August 2, 2007

2241 [MUKAMAL v. BAKES](#), 2007 U.S. Dist. Ct. Motions LEXIS 40710

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2242 [EDDLEMAN v. THOMAS](#), 2007 U.S. Dist. Ct. Motions LEXIS 21777

Content: Court Filings | **Date:** May 7, 2007

2243 [FLORES v. DDJ](#), 2007 U.S. Dist. Ct. Motions LEXIS 4509

Content: Court Filings | **Date:** April 16, 2007

2244 [ORTIZ-ROMANY v. UNITED STATES](#), 2007 U.S. Dist. Ct. Motions LEXIS 7949

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2245 [EDDLEMAN v. THOMAS](#), 2007 U.S. Dist. Ct. Motions LEXIS 21773

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2246 [In re ONEIDA LTD.](#), 2007 U.S. Dist. Ct. Motions LEXIS 9174

Content: Court Filings | **Date:** March 30, 2007

2247 [**SCHULTZ v. UNITED STATES**](#), 2007 U.S. Dist. Ct. Motions LEXIS 91395

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2248 [**In re NORTHWESTERN CORP.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 21007

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2249 [**SHERONDA v. ARKANSAS BLUE CROSS & BLUE SHIELD**](#), 2007 U.S. Dist. Ct. Motions LEXIS 5653

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2250 [**WARD v. INVISTA S.A.R.L.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 61864

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2251 [**WARD v. INVISTA S.A.R.L.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 67104

Content: Court Filings | **Date:** February 26, 2007

2252 [**In re PIVINSKY**](#), 2007 U.S. Dist. Ct. Motions LEXIS 21004

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2253 [**McCARTY v. CORPORATION**](#), 2007 U.S. Dist. Ct. Motions LEXIS 3081

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2254 [**ORTIZ - ROMANY v. UNITED STATES**](#), 2007 U.S. Dist. Ct. Motions LEXIS 7946

Content: Court Filings | **Date:** January 29, 2007

2255 [In re QUARLES](#), 2006 U.S. Dist. Ct. Motions LEXIS 51674

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2256 [In re M & S GRADING, INC.](#), 2006 U.S. Dist. Ct. Motions LEXIS 43236

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2257 [In re QUARLES](#), 2006 U.S. Dist. Ct. Motions LEXIS 51673

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2258 [In re NORTHWESTERN CORP.](#), 2006 U.S. Dist. Ct. Motions LEXIS 57331

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2259 [In re PAC ONE, INC.](#), 2006 U.S. Dist. Ct. Motions LEXIS 47708

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2260 [FEDERAL INS. CO. v. D'ANIELLO](#), 2006 U.S. Dist. Ct. Motions LEXIS 30085

Content: Court Filings | **Date:** September 13, 2006

2261 [PAULSEN v. CNF, INC.](#), 2006 U.S. Dist. Ct. Motions LEXIS 114755

Content: Court Filings | **Date:** August 29, 2006

2262 [In re GOLDBLATT'S BARGAIN STORES, INC. v. GREAT AMERICAN GROUP, INC.](#), 2006 U.S. Dist. Ct. Motions LEXIS 44335

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- 2263 [**GRAVES v. BGSA**](#), 2006 U.S. Dist. Ct. Motions LEXIS 40715

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- 2264 [**LASALA & ZEIDMAN v. UBS AG**](#), 2006 U.S. Dist. Ct. Motions LEXIS 51064

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- 2265 [**SHERLOCK v. HERDELIN**](#), 2006 U.S. Dist. Ct. Motions LEXIS 69183

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- 2266 [**In re RALPH T. BYRD v. TIMOTHY P. BRANNIGAN**](#), 2006 U.S. Dist. Ct. Motions LEXIS 39552

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- 2267 [**ESTATE OF AXELROD v. FLANNERY**](#), 2006 U.S. Dist. Ct. Motions LEXIS 40062

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- 2268 [**CONNECTICUT BAR ASS'N v. UNITED STATES**](#), 2006 U.S. Dist. Ct. Motions LEXIS 74070

Content: Court Filings | **Date:** May 11, 2006

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- 2269 [**INDUSTRIAL FUEL CO. v. INVISTA S.A.R.L.**](#), 2006 U.S. Dist. Ct. Motions LEXIS 75076

Content: Court Filings | **Date:** April 24, 2006

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- 2270 [**GUARANTY RESIDENTIAL LENDING, INC. v. HOMESTEAD MORTG. CO.**](#), 2006 U.S. Dist. Ct. Motions

LEXIS 36632

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2271 [**GUARANTY RESIDENTIAL LENDING, INC. v. HOMESTEAD MORTG. CO.**](#), 2006 U.S. Dist. Ct. Motions
LEXIS 38095

Content: Court Filings | **Date:** February 10, 2006

2272 [**GUARANTY RESIDENTIAL LENDING, INC. v. HOMESTEAD MORTG. CO.**](#), 2006 U.S. Dist. Ct. Motions
LEXIS 38096

Content: Court Filings | **Date:** January 6, 2006

2273 [**GUARANTY RESIDENTIAL LENDING, INC. v. HOMESTEAD MORTG. CO.**](#), 2005 U.S. Dist. Ct. Motions
LEXIS 32885

Content: Court Filings | **Date:** December 9, 2005

2274 [**FLOYD v. HEFNER**](#), 2005 U.S. Dist. Ct. Motions LEXIS 31906

Content: Court Filings | **Date:** October 21, 2005

2275 [**INDIGO MOON PRODUCTIONS v. HASBRO, INC.**](#), 2005 U.S. Dist. Ct. Motions LEXIS 49020

Content: Court Filings | **Date:** August 12, 2005

2276 [**STRONG v. HOTEL EMPLES. RESTAURANT EMPLOYEESLOCAL 74**](#), 2005 U.S. Dist. Ct. Motions
LEXIS 30128

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2277 [**MARTIN v. U.S. BANK**](#), 2005 U.S. Dist. Ct. Motions LEXIS 70760

Content: Court Filings | **Date:** May 3, 2005

2278 [BOIVIN v. US AIRWAYS, INC.](#), 2004 U.S. Dist. Ct. Motions LEXIS 28190

Content: Court Filings | **Date:** April 30, 2004

2279 [BOIVIN v. US AIRWAYS, INC.](#), 2004 U.S. Dist. Ct. Motions LEXIS 28189

Content: Court Filings | **Date:** April 9, 2004

2280 [BOIVIN v. US AIRWAYS, INC.](#), 2004 U.S. Dist. Ct. Motions LEXIS 28188

Content: Court Filings | **Date:** March 10, 2004

2281 [Amron Stubhub Holdings](#), 2024 U.S. Dist. Ct. Motions LEXIS 219994

Content: Court Filings | **Date:** October 21, 2024

2282 [Kapila](#), 2024 U.S. Dist. Ct. Motions LEXIS 194463

Content: Court Filings | **Date:** September 24, 2024

2283 [United States v. Wellford](#), 2024 U.S. Dist. Ct. Motions LEXIS 171977

Content: Court Filings | **Date:** August 27, 2024

2284 [Wibracht](#), 2024 U.S. Dist. Ct. Motions LEXIS 216001

Content: Court Filings | **Date:** June 17, 2024

2285 Davis
2024 U.S. Dist. Ct. Motions LEXIS 135921

Content: Court Filings | **Date:** June 5, 2024

2286 [Thomas Newport Beach Auto. Group](#), 2024 U.S. Dist. Ct. Motions LEXIS 110799

Content: Court Filings | **Date:** May 29, 2024

2287 [Turkey Antitrust Litig.](#), 2024 U.S. Dist. Ct. Motions LEXIS 93623

Content: Court Filings | **Date:** May 13, 2024

2288 [Scapa](#), 2024 U.S. Dist. Ct. Motions LEXIS 192331

Content: Court Filings | **Date:** May 10, 2024

2289 [Thomas Newport Beach Auto. Group](#), 2024 U.S. Dist. Ct. Motions LEXIS 110897

Content: Court Filings | **Date:** May 10, 2024

2290 [Poppi34florida](#), 2024 U.S. Dist. Ct. Motions LEXIS 73463

Content: Court Filings | **Date:** March 19, 2024

2291 [Jagow](#), 2024 U.S. Dist. Ct. Motions LEXIS 47707

Content: Court Filings | **Date:** March 15, 2024

2292 [Kane](#), 2024 U.S. Dist. Ct. Motions LEXIS 38917

Content: Court Filings | **Date:** March 1, 2024

2293 [Connolly](#), 2023 U.S. Dist. Ct. Motions LEXIS 270960

Content: Court Filings | **Date:** December 7, 2023

2294 [Atlanta Rotomolding Inc.](#), 2023 U.S. Dist. Ct. Motions LEXIS 345370

Content: Court Filings | **Date:** August 31, 2023

2295 [Wibracht](#), 2023 U.S. Dist. Ct. Motions LEXIS 336378

Content: Court Filings | **Date:** June 10, 2023

2296 [Heinrich U.S. Bankruptcy Court Northern Dist. Of Ohio](#), 2022 U.S. Dist. Ct. Motions LEXIS 549334

Content: Court Filings | **Date:** March 3, 2023

2297 [Harris v. Anthem Cos.](#), 2022 U.S. Dist. Ct. Motions LEXIS 392937

Content: Court Filings | **Date:** November 8, 2022

2298 [United States v. Lavigne](#), 2022 U.S. Dist. Ct. Motions LEXIS 563827

Content: Court Filings | **Date:** September 21, 2022

2299 [Us](#), 2022 U.S. Dist. Ct. Motions LEXIS 224240

Content: Court Filings | **Date:** June 16, 2022

2300 [Pllc](#), 2021 U.S. Dist. Ct. Motions LEXIS 676863

Content: Court Filings | **Date:** December 1, 2021

2301 [ShenZhen JingPinCheng Elec. Tech. Co. v. Blisslights](#), 2021 U.S. Dist. Ct. Motions LEXIS 216851

Content: Court Filings | **Date:** August 25, 2021

2302 [LANGE v. ADAMS](#), 2021 U.S. Dist. Ct. Motions LEXIS 42600

Content: Court Filings | **Date:** August 20, 2021

2303 [Laura Experian Information Solutions, Inc.](#), 2021 U.S. Dist. Ct. Motions LEXIS 286199

Content: Court Filings | **Date:** August 6, 2021

2304 [JAMES v. PATON](#), 2021 U.S. Dist. Ct. Motions LEXIS 113887

Content: Court Filings | **Date:** July 28, 2021

2305 [UD DISSOLUTION LIQUIDATING TRUST v. SPHERE 3D CORP.](#), 2021 U.S. Dist. Ct. Motions LEXIS 178978

Content: Court Filings | **Date:** July 17, 2021

2306 [Us](#), 2015 U.S. Dist. Ct. Motions LEXIS 158644

Content: Court Filings | **Date:** July 9, 2021

2307 [COYLE v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 93886

Content: Court Filings | **Date:** June 16, 2021

2308 [HICKS v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 93858

Content: Court Filings | **Date:** June 16, 2021

2309 [PANDYA v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 93564

Content: Court Filings | **Date:** June 16, 2021

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- 2310 [CRISTOBAL v. EQUIFAX, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 93153

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- 2311 [RECKELHOFF v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 92997

Content: Court Filings | **Date:** June 16, 2021

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- 2312 [CRUZ v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 92474

Content: Court Filings | **Date:** June 16, 2021

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- 2313 [Brown v. RGS Fin.](#), 2021 U.S. Dist. Ct. Motions LEXIS 92197

Content: Court Filings | **Date:** June 16, 2021

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- 2314 [TORION v. EQUIFAX, INC.](#), 2021 U.S. Dist. Ct. Motions LEXIS 150096

Content: Court Filings | **Date:** June 13, 2021

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- 2315 [MORGAN v. KEIL](#), 2021 U.S. Dist. Ct. Motions LEXIS 70628

Content: Court Filings | **Date:** June 10, 2021

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- 2316 [NOWAKOWSKI v. BANK OF AMERICA, N.A.](#), 2021 U.S. Dist. Ct. Motions LEXIS 50087

Content: Court Filings | **Date:** May 14, 2021

2317 [GENIUS FUND I ABC v. SHINDER](#), 2021 U.S. Dist. Ct. Motions LEXIS 4334

Content: Court Filings | **Date:** May 11, 2021

2318 [Avery v. Archival Magazine](#), 2021 U.S. Dist. Ct. Motions LEXIS 158013

Content: Court Filings | **Date:** February 5, 2021

2319 [RITCHIE CAPITAL MGMT. v. JPMORGAN CHASE & CO.](#), 2021 U.S. Dist. Ct. Motions LEXIS 159304

Content: Court Filings | **Date:** January 5, 2021

2320 [Kaiser Gypsum Co.](#), 2020 U.S. Dist. Ct. Motions LEXIS 714097

Content: Court Filings | **Date:** December 4, 2020

2321 [Kulik](#), 2020 U.S. Dist. Ct. Motions LEXIS 715308

Content: Court Filings | **Date:** November 4, 2020

2322 [Beckemeyer](#), 2020 U.S. Dist. Ct. Motions LEXIS 715024

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2323 [Mcclatchery](#), 2020 U.S. Dist. Ct. Motions LEXIS 714990

Content: Court Filings | **Date:** November 4, 2020

2324 [Crow](#), 2020 U.S. Dist. Ct. Motions LEXIS 714908

Content: Court Filings | **Date:** November 4, 2020

2325 [**REGMA NACHAEL HOWELL FOSTER**](#), 2020 U.S. Dist. Ct. Motions LEXIS 6749

Content: Court Filings | **Date:** October 29, 2020

2326 [**Bankruptcy**](#), 2020 U.S. Dist. Ct. Motions LEXIS 715599

Content: Court Filings | **Date:** October 16, 2020

2327 [**Curran**](#), 2020 U.S. Dist. Ct. Motions LEXIS 657084

Content: Court Filings | **Date:** July 20, 2020

2328 [**Ch Liquidation Ass'n**](#), 2020 U.S. Dist. Ct. Motions LEXIS 680633

Content: Court Filings | **Date:** July 16, 2020

2329 [**LOCKETT v. EXPERIAN INFORMATION SOLUTIONS, INC.**](#), 2020 U.S. Dist. Ct. Motions LEXIS 534875

Content: Court Filings | **Date:** June 9, 2020

2330 [**TURNER v. EXPERIAN INFORMATION SOLUTIONS, INC.**](#), 2020 U.S. Dist. Ct. Motions LEXIS 534678

Content: Court Filings | **Date:** June 1, 2020

2331 [**Diocese of Rochester v. U.S. SBA**](#), 2020 U.S. Dist. Ct. Motions LEXIS 122714

Content: Court Filings | **Date:** May 11, 2020

2332 [**Zetia Ezetimibe Antitrust Litig.**](#), 2020 U.S. Dist. Ct. Motions LEXIS 674736

Content: Court Filings | **Date:** April 17, 2020

2333 [VARA](#), 2020 U.S. Dist. Ct. Motions LEXIS 90186

Content: Court Filings | **Date:** March 13, 2020

2334 [BERMAN v. LABONTE](#), 2020 U.S. Dist. Ct. Motions LEXIS 532006

Content: Court Filings | **Date:** February 28, 2020

2335 [HILL v. RESURGENT CAPITAL SERVS., L.P.](#), 2020 U.S. Dist. Ct. Motions LEXIS 532343

Content: Court Filings | **Date:** January 28, 2020

2336 [Woodberry](#), 2019 U.S. Dist. Ct. Motions LEXIS 523089

Content: Court Filings | **Date:** December 3, 2019

2337 [DOUGLAS v. HAWLEY](#), 2019 U.S. Dist. Ct. Motions LEXIS 349372

Content: Court Filings | **Date:** November 15, 2019

2338 [PECHULIS v. PIPELINE HEALTH SYS. LLC](#), 2019 U.S. Dist. Ct. Motions LEXIS 58530

Content: Court Filings | **Date:** November 8, 2019

2339 [, NELSON, INC.](#), 2019 U.S. Dist. Ct. Motions LEXIS 422400

Content: Court Filings | **Date:** October 29, 2019

2340 [Us](#), 2019 U.S. Dist. Ct. Motions LEXIS 579572

Content: Court Filings | **Date:** October 21, 2019

2341 [Leicht](#), 2019 U.S. Dist. Ct. Motions LEXIS 548026

Content: Court Filings | **Date:** August 26, 2019

2342 [Kolesar Allstate Ins. Co.](#), 2019 U.S. Dist. Ct. Motions LEXIS 31227

Content: Court Filings | **Date:** June 24, 2019

2343 [Losch Experian Information Solutions, Inc.](#), 2019 U.S. Dist. Ct. Motions LEXIS 529523

Content: Court Filings | **Date:** June 20, 2019

2344 [V. Bayview Loan Servicing](#), 2019 U.S. Dist. Ct. Motions LEXIS 22605

Content: Court Filings | **Date:** May 10, 2019

2345 [Oak Point](#), 2019 U.S. Dist. Ct. Motions LEXIS 518486

Content: Court Filings | **Date:** April 22, 2019

2346 [Morris v. Midland Funding](#), 2019 U.S. Dist. Ct. Motions LEXIS 418783

Content: Court Filings | **Date:** March 21, 2019

2347 [Kurgan Select Portfolio Servicing](#), 2019 U.S. Dist. Ct. Motions LEXIS 539086

Content: Court Filings | **Date:** March 1, 2019

2348 [United States v. Henderson](#), 2019 U.S. Dist. Ct. Motions LEXIS 543052

Content: Court Filings | **Date:** January 28, 2019

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- 2349 [R.M.S. v. The Wrecked & Abandoned Vessel](#), 2018 U.S. Dist. Ct. Motions LEXIS 691828

Content: Court Filings | **Date:** November 26, 2018

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- 2350 [Izzo Golf Inc. v. King Par Corp.](#), 2018 U.S. Dist. Ct. Motions LEXIS 177546

Content: Court Filings | **Date:** November 21, 2018

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- 2351 [Calderon v. Bank of New York Mellon](#), 2018 U.S. Dist. Ct. Motions LEXIS 78142

Content: Court Filings | **Date:** November 14, 2018

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- 2352 [Stasinopoulos L.M. Sandler & Sons](#), 2018 U.S. Dist. Ct. Motions LEXIS 730410

Content: Court Filings | **Date:** October 29, 2018

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- 2353 [TRANSFIRST GROUP v. MAGLIARDITI](#), 2018 U.S. Dist. Ct. Motions LEXIS 240660

Content: Court Filings | **Date:** October 18, 2018

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- 2354 [Advocate Capital, Inc. v. Layfield](#), 2018 U.S. Dist. Ct. Motions LEXIS 97024

Content: Court Filings | **Date:** October 1, 2018

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- 2355 [AKERS](#), 2018 U.S. Dist. Ct. Motions LEXIS 49197

Content: Court Filings | **Date:** September 14, 2018

2356 [Elliott v. Pacific Western Bank](#), 2018 U.S. Dist. Ct. Motions LEXIS 33672

Content: Court Filings | **Date:** August 23, 2018

2357 [WADSWORTH v. SLIPPER](#), 2018 U.S. Dist. Ct. Motions LEXIS 128479

Content: Court Filings | **Date:** August 1, 2018

2358 [PS Johnson Wadsworth v. Slipper](#), 2018 U.S. Dist. Ct. Motions LEXIS 170165

Content: Court Filings | **Date:** July 10, 2018

2359 [United States v. Currency \\$66,369](#), 2018 U.S. Dist. Ct. Motions LEXIS 674918

Content: Court Filings | **Date:** June 29, 2018

2360 [ZETIA EZETIMIBE ANTITRUST LITIG. This document relates to: Direct Purchaser Actions](#), 2018 U.S. Dist. Ct. Motions LEXIS 581334

Content: Court Filings | **Date:** June 15, 2018

2361 [ER](#), 2018 U.S. Dist. Ct. Motions LEXIS 239116

Content: Court Filings | **Date:** May 1, 2018

2362 [CH LIQUIDATION ASS'N v. GENESIS HEALTHCARE SYS.](#), 2018 U.S. Dist. Ct. Motions LEXIS 252419

Content: Court Filings | **Date:** April 3, 2018

2363 [CH LIQUIDATION ASS'N v. GENESIS HEALTHCARE SYS.](#), 2018 U.S. Dist. Ct. Motions LEXIS 252400

Content: Court Filings | **Date:** April 3, 2018

2364 [**AKERS v. BEAL BANK**](#), 2018 U.S. Dist. Ct. Motions LEXIS 145884

Content: Court Filings | **Date:** March 2, 2018

2365 [**Great American Ins. Co. Nelson**](#), 2018 U.S. Dist. Ct. Motions LEXIS 735490

Content: Court Filings | **Date:** February 18, 2018

2366 [**AKERS v. 1368 H ST. LLC**](#), 2017 U.S. Dist. Ct. Motions LEXIS 92625

Content: Court Filings | **Date:** December 29, 2017

2367 [**AKERS v. 1368 H ST.**](#), 2017 U.S. Dist. Ct. Motions LEXIS 37931

Content: Court Filings | **Date:** December 29, 2017

2368 [**AKERS v. BEAL BANK**](#), 2017 U.S. Dist. Ct. Motions LEXIS 32457

Content: Court Filings | **Date:** December 29, 2017

2369 [**EVANS v. ZB, N.A.**](#), 2017 U.S. Dist. Ct. Motions LEXIS 92220

Content: Court Filings | **Date:** November 16, 2017

2370 [**Mcgarry & Mcgarry**](#), 2017 U.S. Dist. Ct. Motions LEXIS 555499

Content: Court Filings | **Date:** October 10, 2017

2371 [**Virani**](#), 2017 U.S. Dist. Ct. Motions LEXIS 513195

Content: Court Filings | **Date:** August 30, 2017

2372 [Melcher](#), 2017 U.S. Dist. Ct. Motions LEXIS 53283

Content: Court Filings | **Date:** June 9, 2017

2373 [Nowakowski Bank Of America, N.A.](#), 2017 U.S. Dist. Ct. Motions LEXIS 557861

Content: Court Filings | **Date:** April 17, 2017

2374 [Saidu City Colleges Of Chicago](#), 2017 U.S. Dist. Ct. Motions LEXIS 551099

Content: Court Filings | **Date:** April 10, 2017

2375 [Baron](#), 2017 U.S. Dist. Ct. Motions LEXIS 637820

Content: Court Filings | **Date:** March 29, 2017

2376 [RECKELHOFF v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2017 U.S. Dist. Ct. Motions LEXIS 483374

Content: Court Filings | **Date:** January 9, 2017

2377 [HUNT v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2017 U.S. Dist. Ct. Motions LEXIS 483373

Content: Court Filings | **Date:** January 9, 2017

2378 [BURROWS v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2017 U.S. Dist. Ct. Motions LEXIS 483372

Content: Court Filings | **Date:** January 9, 2017

2379 [BASCONCELLO v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2017 U.S. Dist. Ct. Motions LEXIS 483371

Content: Court Filings | **Date:** January 9, 2017

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- 2380 [**PORRAS v. EXPERIAN INFORMATION SOLUTIONS, INC.**](#), 2017 U.S. Dist. Ct. Motions LEXIS 483370

Content: Court Filings | **Date:** January 9, 2017

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- 2381 [**INTUNIV ANTITRUST LITIG. This Document Relates to: Direct Purchaser Actions**](#), 2016 U.S. Dist. Ct. Motions LEXIS 341173

Content: Court Filings | **Date:** December 30, 2016

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- 2382 [**INTUNIV ANTITRUST LITIG. This Document Relates to: Direct Purchaser Actions**](#), 2016 U.S. Dist. Ct. Motions LEXIS 341152

Content: Court Filings | **Date:** December 30, 2016

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- 2383 [**INTUNIV ANTITRUST LITIG. This Document Relates to: Direct Purchaser Actions**](#), 2016 U.S. Dist. Ct. Motions LEXIS 30184

Content: Court Filings | **Date:** December 30, 2016

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- 2384 [**INTUNIV ANTITRUST LITIG. This Document Relates to: Direct Purchaser Actions**](#), 2016 U.S. Dist. Ct. Motions LEXIS 30174

Content: Court Filings | **Date:** December 30, 2016

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- 2385 [**Katz**](#), 2016 U.S. Dist. Ct. Motions LEXIS 428588

Content: Court Filings | **Date:** December 15, 2016

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- 2386 [**Katz**](#), 2016 U.S. Dist. Ct. Motions LEXIS 428591

Content: Court Filings | **Date:** December 7, 2016

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- 2387 [**TROUT v. EXPERIAN INFORMATION SOLUTIONS, INC.**](#), 2016 U.S. Dist. Ct. Motions LEXIS 22951

Content: Court Filings | **Date:** December 1, 2016

2388 [MAMISAY v. EXPERIAN INFORMATION SOLUTIONS, INC.](#), 2016 U.S. Dist. Ct. Motions LEXIS 22928

Content: Court Filings | **Date:** December 1, 2016

2389 [Katz](#), 2016 U.S. Dist. Ct. Motions LEXIS 426997

Content: Court Filings | **Date:** November 17, 2016

2390 [UNITED STATES v. ONE 2009 MASERATI GRANTURISMO, ONE 2010 ROSSO CORSA FERRARI, & ONE 2005 PORSCHE BOXTER SAAD SAID](#), 2016 U.S. Dist. Ct. Motions LEXIS 6119

Content: Court Filings | **Date:** October 14, 2016

2391 Bell Mark Dietz & Co.
2016 U.S. Dist. Ct. Motions LEXIS 468218

Content: Court Filings | **Date:** October 7, 2016

2392 [Mosley-Ridley](#), 2016 U.S. Dist. Ct. Motions LEXIS 485680

Content: Court Filings | **Date:** September 20, 2016

2393 [Hofmann](#), 2016 U.S. Dist. Ct. Motions LEXIS 452993

Content: Court Filings | **Date:** August 25, 2016

2394 [Liebmann](#), 2016 U.S. Dist. Ct. Motions LEXIS 428031

Content: Court Filings | **Date:** August 4, 2016

2395 [Liebmann](#), 2016 U.S. Dist. Ct. Motions LEXIS 425255

Content: Court Filings | **Date:** August 4, 2016

2396 [Martin v. United States](#), 2016 U.S. Dist. Ct. Motions LEXIS 483538

Content: Court Filings | **Date:** June 20, 2016

2397 [Smith-Scott Howard Bank](#), 2016 U.S. Dist. Ct. Motions LEXIS 428077

Content: Court Filings | **Date:** May 18, 2016

2398 [RISEMAN v. UNITED STATES](#), 2016 U.S. Dist. Ct. Motions LEXIS 9847

Content: Court Filings | **Date:** February 18, 2016

2399 [United States](#), 2016 U.S. Dist. Ct. Motions LEXIS 425781

Content: Court Filings | **Date:** January 29, 2016

2400 [Liebmann](#), 2016 U.S. Dist. Ct. Motions LEXIS 425303

Content: Court Filings | **Date:** January 19, 2016

2401 [Lankford](#), 2016 U.S. Dist. Ct. Motions LEXIS 469155

Content: Court Filings | **Date:** January 6, 2016

2402 [United States SEC](#), 2015 U.S. Dist. Ct. Motions LEXIS 362947

Content: Court Filings | **Date:** November 20, 2015

2403 [Mccloskey](#), 2015 U.S. Dist. Ct. Motions LEXIS 386281

Content: Court Filings | **Date:** October 20, 2015

2404 [FDIC](#), 2015 U.S. Dist. Ct. Motions LEXIS 426926

Content: Court Filings | **Date:** October 16, 2015

2405 [Keil](#), 2015 U.S. Dist. Ct. Motions LEXIS 382630

Content: Court Filings | **Date:** September 24, 2015

2406 [Auge Stryker Corp.](#), 2015 U.S. Dist. Ct. Motions LEXIS 430553

Content: Court Filings | **Date:** September 10, 2015

2407 [Mayer](#), 2015 U.S. Dist. Ct. Motions LEXIS 243746

Content: Court Filings | **Date:** August 7, 2015

2408 [Brock Resurgent Capital Servs.](#), 2015 U.S. Dist. Ct. Motions LEXIS 412914

Content: Court Filings | **Date:** July 31, 2015

2409 [Smith-Scott U.S. Bank Nat'l Ass'n](#), 2015 U.S. Dist. Ct. Motions LEXIS 391716

Content: Court Filings | **Date:** July 20, 2015

2410 [United States v. Graves](#), 2015 U.S. Dist. Ct. Motions LEXIS 442340

Content: Court Filings | **Date:** July 1, 2015

2411 [Brock Resurgent Capital Servs.](#), 2015 U.S. Dist. Ct. Motions LEXIS 412908

Content: Court Filings | **Date:** June 16, 2015

2412 [AL-RAYES v. WILLINGHAM](#), 2015 U.S. Dist. Ct. Motions LEXIS 1369

Content: Court Filings | **Date:** June 15, 2015

2413 [Beck](#), 2015 U.S. Dist. Ct. Motions LEXIS 442107

Content: Court Filings | **Date:** May 1, 2015

2414 [Aichinger](#), 2015 U.S. Dist. Ct. Motions LEXIS 383243

Content: Court Filings | **Date:** March 5, 2015

2415 [Lim](#), 2014 U.S. Dist. Ct. Motions LEXIS 392069

Content: Court Filings | **Date:** December 1, 2014

2416 [EEOC Lehi Roller Mills](#), 2014 U.S. Dist. Ct. Motions LEXIS 426495

Content: Court Filings | **Date:** November 14, 2014

2417 [Mccloskey](#), 2014 U.S. Dist. Ct. Motions LEXIS 396445

Content: Court Filings | **Date:** October 15, 2014

2418 [Colucci Tyson Foods, Inc.](#), 2014 U.S. Dist. Ct. Motions LEXIS 349698

Content: Court Filings | **Date:** October 14, 2014

2419 [Beattie](#), 2014 U.S. Dist. Ct. Motions LEXIS 417476

Content: Court Filings | **Date:** September 15, 2014

2420 [O'Hara Nika Techs.](#), 2014 U.S. Dist. Ct. Motions LEXIS 401584

Content: Court Filings | **Date:** August 7, 2014

2421 [SEC](#), 2014 U.S. Dist. Ct. Motions LEXIS 424162

Content: Court Filings | **Date:** July 2, 2014

2422 [O'Hara Nika Techs.](#), 2014 U.S. Dist. Ct. Motions LEXIS 400756

Content: Court Filings | **Date:** June 18, 2014

2423 [United States SEC Church Extension Of The Church Of God, Inc.](#), 2014 U.S. Dist. Ct. Motions LEXIS 427478

Content: Court Filings | **Date:** June 4, 2014

2424 [Thomas v. Indiana Oxygen Co.](#), 2014 U.S. Dist. Ct. Motions LEXIS 261305

Content: Court Filings | **Date:** May 15, 2014

2425 [Ross](#), 2014 U.S. Dist. Ct. Motions LEXIS 421485

Content: Court Filings | **Date:** March 27, 2014

2426 [Kdc Foods, Inc.](#), 2013 U.S. Dist. Ct. Motions LEXIS 97382

Content: Court Filings | **Date:** June 21, 2013

2427 [SMITH v. TAYLOR, BEAN & WHITAKER MORTG. CORP.](#), 2013 U.S. Dist. Ct. Motions LEXIS 5902

Content: Court Filings | **Date:** May 17, 2013

2428 [M/V ENDEAVOR, LLC](#), 2013 U.S. Dist. Ct. Motions LEXIS 47834

Content: Court Filings | **Date:** April 29, 2013

2429 [State Nat'l Bank Of Big Spring](#), 2013 U.S. Dist. Ct. Motions LEXIS 384331

Content: Court Filings | **Date:** February 27, 2013

2430 [United States SEC Church Extension Of The Church Of God, Inc.](#), 2013 U.S. Dist. Ct. Motions LEXIS 420816

Content: Court Filings | **Date:** February 20, 2013

2431 [HORSEFIELD v. BEAN](#), 2012 U.S. Dist. Ct. Motions LEXIS 9300

Content: Court Filings | **Date:** July 16, 2012

2432 [Jenkins v. G C Servs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 390697

Content: Court Filings | **Date:** April 25, 2012

2433 [Dietz v. Spangenberg](#), 2011 U.S. Dist. Ct. Motions LEXIS 330249

Content: Court Filings | **Date:** September 9, 2011

2434 [Picard v. UBS Fund Servs.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428806

Content: Court Filings | **Date:** August 31, 2011

2435 [Picard v. Kohn](#), 2011 U.S. Dist. Ct. Motions LEXIS 427649

Content: Court Filings | **Date:** August 29, 2011

2436 [Us Airline Pilots Ass'n Pension Ben. Guar. Corp.](#), 2011 U.S. Dist. Ct. Motions LEXIS 412265

Content: Court Filings | **Date:** August 5, 2011

2437 [GAUDIN v. SAXON MORTG. SERVS.](#), 2011 U.S. Dist. Ct. Motions LEXIS 7413

Content: Court Filings | **Date:** July 20, 2011

2438 [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 427476

Content: Court Filings | **Date:** July 11, 2011

2439 [CROOKS v. HOUSEHOLD FIN. CORP.](#), 2011 U.S. Dist. Ct. Motions LEXIS 18549

Content: Court Filings | **Date:** June 24, 2011

2440 [Picard v. Maxam Absolute Return Fund](#), 2011 U.S. Dist. Ct. Motions LEXIS 428703

Content: Court Filings | **Date:** June 13, 2011

2441 [Crooks v. Household Fin. Corp. III](#), 2011 U.S. Dist. Ct. Motions LEXIS 421133

Content: Court Filings | **Date:** June 13, 2011

2442 [**CROOKS v. HOUSEHOLD FIN. CORP.**](#), 2011 U.S. Dist. Ct. Motions LEXIS 18548

Content: Court Filings | **Date:** June 13, 2011

2443 [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2011 U.S. Dist. Ct. Motions LEXIS 8902

Content: Court Filings | **Date:** June 7, 2011

2444 [**YOSHIMOTO v. O'REILLY AUTO., INC.**](#), 2011 U.S. Dist. Ct. Motions LEXIS 4135

Content: Court Filings | **Date:** May 12, 2011

2445 [**USA v. Pahutski**](#), 2011 U.S. Dist. Ct. Motions LEXIS 418967

Content: Court Filings | **Date:** April 29, 2011

2446 [**Byrd v. Johnson**](#), 2011 U.S. Dist. Ct. Motions LEXIS 386307

Content: Court Filings | **Date:** April 29, 2011

2447 [**Byrd v. Johnson**](#), 2011 U.S. Dist. Ct. Motions LEXIS 386202

Content: Court Filings | **Date:** April 29, 2011

2448 [**Colorado Sun Oil Processing LLC**](#), 2011 U.S. Dist. Ct. Motions LEXIS 378741

Content: Court Filings | **Date:** April 8, 2011

2449 [**Picard v. Kohn**](#), 2011 U.S. Dist. Ct. Motions LEXIS 428699

Content: Court Filings | **Date:** April 4, 2011

2450 [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428434

Content: Court Filings | **Date:** March 30, 2011

2451 [Ames](#), 2011 U.S. Dist. Ct. Motions LEXIS 391310

Content: Court Filings | **Date:** March 30, 2011

2452 [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 2272

Content: Court Filings | **Date:** March 30, 2011

2453 [Picard v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 426682

Content: Court Filings | **Date:** March 18, 2011

2454 [CANNATA v. WYNDHAM WORLDWIDE CORP.](#), 2011 U.S. Dist. Ct. Motions LEXIS 32968

Content: Court Filings | **Date:** February 28, 2011

2455 [WILLIAMS v. STATE VOLUNTEER MUT. INS. CO.](#), 2011 U.S. Dist. Ct. Motions LEXIS 37203

Content: Court Filings | **Date:** February 22, 2011

2456 [JOHNSON v. MITCHELL](#), 2011 U.S. Dist. Ct. Motions LEXIS 1538

Content: Court Filings | **Date:** January 20, 2011

2457 [JOHNSON v. MITCHELL](#), 2011 U.S. Dist. Ct. Motions LEXIS 1541

Content: Court Filings | **Date:** January 4, 2011

2458 [JOHNSON v. MITCHELL](#), 2011 U.S. Dist. Ct. Motions LEXIS 1537

Content: Court Filings | **Date:** January 4, 2011

2459 [Wilson v. Tucker](#), 2010 U.S. Dist. Ct. Motions LEXIS 467050

Content: Court Filings | **Date:** December 7, 2010

2460 [Fairfield Sentry Ltd. v. Safra Nat'l Bank of New York](#), 2010 U.S. Dist. Ct. Motions LEXIS 252950

Content: Court Filings | **Date:** November 12, 2010

2461 [USA v. Moser](#), 2010 U.S. Dist. Ct. Motions LEXIS 450993

Content: Court Filings | **Date:** October 21, 2010

2462 [Evans v. First Mt. Vernon, ILA](#), 2010 U.S. Dist. Ct. Motions LEXIS 57312

Content: Court Filings | **Date:** October 19, 2010

2463 [Schmidt v. Bassett Furniture Indus.](#), 2010 U.S. Dist. Ct. Motions LEXIS 456096

Content: Court Filings | **Date:** September 20, 2010

2464 [USA v. Moser](#), 2010 U.S. Dist. Ct. Motions LEXIS 449461

Content: Court Filings | **Date:** July 29, 2010

2465 [Osterlich v. Sand Canyon Corp.](#), 2010 U.S. Dist. Ct. Motions LEXIS 467898

Content: Court Filings | **Date:** April 2, 2010

2466 [Official Comm. of Admin. v. Bricker](#), 2009 U.S. Dist. Ct. Motions LEXIS 397913

Content: Court Filings | **Date:** December 11, 2009

2467 [Lariviere v. Phillips](#), 2009 U.S. Dist. Ct. Motions LEXIS 389100

Content: Court Filings | **Date:** October 9, 2009

2468 [Lariviere v. Phillips](#), 2009 U.S. Dist. Ct. Motions LEXIS 387893

Content: Court Filings | **Date:** October 9, 2009

2469 [Sumner Anesthesia Assocs. v. Hubbell](#), 2009 U.S. Dist. Ct. Motions LEXIS 418390

Content: Court Filings | **Date:** August 26, 2009

2470 [New England Wood Pellet v. New England Pellet](#), 2009 U.S. Dist. Ct. Motions LEXIS 348438

Content: Court Filings | **Date:** May 7, 2009

2471 [Hovis v. Gilliam](#), 2009 U.S. Dist. Ct. Motions LEXIS 402671

Content: Court Filings | **Date:** January 30, 2009

2472 [Hovis v. Gilliam](#), 2009 U.S. Dist. Ct. Motions LEXIS 402647

Content: Court Filings | **Date:** January 30, 2009

2473 [Hovis v. Gilliam](#), 2009 U.S. Dist. Ct. Motions LEXIS 402610

Content: Court Filings | **Date:** January 30, 2009

2474 [John C Flood of Virginia, Inc. v. John C Flood, Inc.](#), 2008 U.S. Dist. Ct. Motions LEXIS 344254

Content: Court Filings | **Date:** October 10, 2008

2475 [French v. St Rita's Med. Ctr.](#), 2008 U.S. Dist. Ct. Motions LEXIS 355370

Content: Court Filings | **Date:** June 27, 2008

2476 [Rodriguez](#), 2008 U.S. Dist. Ct. Motions LEXIS 346801

Content: Court Filings | **Date:** June 17, 2008

2477 [French v. St Rita's Med. Ctr.](#), 2008 U.S. Dist. Ct. Motions LEXIS 355365

Content: Court Filings | **Date:** May 21, 2008

2478 [Ragle](#), 2007 U.S. Dist. Ct. Motions LEXIS 270903

Content: Court Filings | **Date:** December 12, 2007

2479 [Campbell v. Cathcart](#), 2006 U.S. Dist. Ct. Motions LEXIS 244660

Content: Court Filings | **Date:** November 20, 2006

2480 [BARNES v. MOFFATT](#), 2006 U.S. Dist. Ct. Motions LEXIS 26140

Content: Court Filings | **Date:** October 6, 2006

2481 [ALBICOCCO](#), 2006 U.S. Dist. Ct. Motions LEXIS 13584

Content: Court Filings | **Date:** September 8, 2006

2482 [DAVID L. GILLILAND, & SOUTHEASTERN IMAGING GROUP v. GERAMITA](#), 2006 U.S. Dist. Ct. Motions LEXIS 16575

Content: Court Filings | **Date:** August 18, 2006

2483 [NIETO v. UNITRON](#), 2006 U.S. Dist. Ct. Motions LEXIS 7922

Content: Court Filings | **Date:** July 17, 2006

2484 [DUNKIN' DONUTS LLC v. PIELET](#), 2006 U.S. Dist. Ct. Motions LEXIS 4607

Content: Court Filings | **Date:** May 31, 2006

2485 [DUDLEY](#), 2006 U.S. Dist. Ct. Motions LEXIS 3906

Content: Court Filings | **Date:** March 23, 2006

2486 [Fehribach](#), 2006 U.S. Dist. Ct. Motions LEXIS 6891

Content: Court Filings | **Date:** February 13, 2006

2487 [Jackson v. Metropolitan St BD](#), 2006 U.S. Dist. Ct. Motions LEXIS 241161

Content: Court Filings | **Date:** January 28, 2006

2488 [Jackson v. Metropolitan St BD](#), 2006 U.S. Dist. Ct. Motions LEXIS 241401

Content: Court Filings | **Date:** January 23, 2006

2489 [**BLACKWOOD TOMLINSON**](#), 2005 U.S. Dist. Ct. Motions LEXIS 16194

Content: Court Filings | **Date:** September 23, 2005

2490 [**FTC Ameridebt, Inc.**](#), 2005 U.S. Dist. Ct. Motions LEXIS 183103

Content: Court Filings | **Date:** July 14, 2005

2491 [**ERIC HUNTER & JOCELYN v. WORLD THEATRE, INC.**](#), 2003 U.S. Dist. Ct. Motions LEXIS 9025

Content: Court Filings | **Date:** September 24, 2003

2492 [**FABPRO v. McCORMICK**](#), 2003 U.S. Dist. Ct. Motions LEXIS 9096

Content: Court Filings | **Date:** June 4, 2003

2493 [**FABPRO v. McCORMICK**](#), 2003 U.S. Dist. Ct. Motions LEXIS 9094

Content: Court Filings | **Date:** May 28, 2003

2494 [**FABPRO v. McCORMICK**](#), 2003 U.S. Dist. Ct. Motions LEXIS 9093

Content: Court Filings | **Date:** May 15, 2003

2495 [**FABPRO v. McCORMICK**](#), 2003 U.S. Dist. Ct. Motions LEXIS 9090

Content: Court Filings | **Date:** April 16, 2003

2496 [**NAPSTER, INC. COPYRIGHT LITIG.**](#), 2002 U.S. Dist. Ct. Motions LEXIS 8941

Content: Court Filings | **Date:** November 15, 2002

2497 [Nostrum Labs., Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 30373

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2498 [Berekli](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29772

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2499 [Michigan Pain](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29591

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2500 [Athersys, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28808

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2501 [Rowe](#), 2024 U.S. Bankr. Ct. Motions LEXIS 30036

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2502 [Alexander E. Jones & Official Comm. Of Unsecured Creditors](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28573

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2503 [Arch](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28147

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2504 [Phelps](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27975

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2505 [Bass](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29452

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2506 [Bass](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28595

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2507 [Cedar Circle Group](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28436

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2508 [Proffitt](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28206

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2509 [124 Penn Residence LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27885

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2510 [Haberman](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27843

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2511 [Manning](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27811

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2512 [McMinn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27567

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2513 [Fanning](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27318

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2514 [Bohn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27017

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2515 [Mountain Express Oil Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26905

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2516 [Orbit Mktg.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26660

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2517 [HUAN YUE ZHENG KONG](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29007

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2518 [MY TIME DENTAL CTRS. PLLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27945

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2519 [McKaye](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25652

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2520 [Nutritionals](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26399

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2521 [COGENT HEALTHCARE OF JACKSONVILLE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26147

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2522 [Charles Deweese Constr., Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25516

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2523 [Mirra](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25290

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2524 [Portobanco](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26500

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2525 [Hendry Hardwoods LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26315

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2526 [O'Hara](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24921

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2527 [Voth](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29933

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2528 [Compton](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25490

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2529 [McMinn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24700

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2530 [TAMG Realty Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24954

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2531 [McMinn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24590

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2532 [FOREVER GETTING CASH LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24219

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2533 [Connolly](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24196

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2534 [Geathers](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24085

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2535 [Maloney](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25063

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2536 [Worldwide Moving Sys. LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24188

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2537 [Perlacia](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25743

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2538 [Costa](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24118

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2539 [Hall](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23096

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2540 [Commercial Express, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29616

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2541 [Romero](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24176

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2542 [Raocore Tech.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23532

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2543 [Beltran](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23943

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2544 [Yoncuski](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28406

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2545 [McMinn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22373

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2546 [Welch](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22031

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2547 [Emerald Elec. Consultants LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25527

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2548 [Worksite Labs, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21973

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2549 [Austin](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23135

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2550 [Frederique](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21512

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2551 [TAMG Realty Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21491

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2552 [Carlsson](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21293

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2553 [Coletti](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21197

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2554 [Dole](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27570

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2555 [Tarpenning](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22060

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2556 [Pike County Motors, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20871

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2557 [Petry](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20660

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2558 [PHOENIX](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22001

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2559 [MMA](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20943

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2560 [Petry](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20275

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2561 [Quantum Materials Corp.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20244

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2562 [Mackey](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22079

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2563 [Bohn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22080

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2564 [LOUDERMILK](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20496

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2565 [Bass](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21720

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2566 [Bianchi](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21412

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2567 [Picciano](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19527

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2568 [MARTIN](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19424

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2569 [Michigan Pain](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18902

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2570 [Capsity, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18718

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2571 [Cajuste](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18433

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2572 [Pro-Mark Servs.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18075

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2573 [Jones](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18061

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2574 [Gisoti Plumbing & Heating, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21206

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2575 [ArtiusID, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17929

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2576 [ArtiusID, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17848

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2577 [ArtiusID, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17634

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2578 [Jomarron](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18583

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2579 [Bates](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18512

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2580 [Wray](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18447

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2581 [Darin Divendra Ramsaroop](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18376

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2582 [Gardner](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18094

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2583 [Andy's Truck & Equip. Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18381

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2584 [Gonzalez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16993

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2585 [COGENT HEALTHCARE OF JACKSONVILLE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16922

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2586 [Arch](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23025

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2587 [Tumwater Meadows Adult Family Home Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16643

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2588 [Jones](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16284

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2589 [Espinal](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29410

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2590 [Compton](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16531

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2591 [Petros](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16333

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2592 [Orbit Mktg.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16071

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2593 [Motil](#), 2024 U.S. Bankr. Ct. Motions LEXIS 30217

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2594 [Lampkin](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28787

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2595 [Langevin](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28024

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2596 [Moxion Power Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16765

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2597 [WARD](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16692

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2598 [Vrusho](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16036

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2599 [Stehling](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28766

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2600 [Quintero](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28152

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2601 [Ivan He & Peggy He](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28000

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2602 [Bishop](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19476

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2603 [TITAN SOLAR POWER AZ, INC.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15859

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2604 [VIPER TRANS INC.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15343

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2605 [920 Century LP](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15013

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2606 [Pain Med. & Rehabilitation Ctr.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29581

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2607 [Alexander E. Jones & Official Comm. Of Unsecured Creditors](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16047

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2608 [Kansara](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15139

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2609 [Geiser](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14877

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2610 [Summit Springs Holdings LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14795

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2611 [Pendleton](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27517

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2612 [Hardwick](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15097

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2613 [Nilhan Fin.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 29036

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2614 [Kaylor](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26199

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2615 [Nichols](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26177

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2616 [Korsvik](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18419

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2617 [PIRCH, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15173

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2618 [SQ USA, INC.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13836

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2619 [FLUORECYCLE, INC.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13273

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2620 [Marshall](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13963

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2621 [Jones](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13376

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2622 [Jones](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26011

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2623 [Latigo Plaza, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19536

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2624 [White](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16813

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2625 [Edwards](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16780

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2626 [Travaglini](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16777

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2627 [Gatell](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15501

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2628 [McDermott](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14908

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2629 [P2 Oakland CA](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14384

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2630 [EGAE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13526

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2631 [Kessinger](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13397

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2632 [Hoyte](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13175

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2633 [Damon Capital, Ltd.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12732

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2634 [Owens](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26321

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2635 [Killeen](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26166

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2636 [Vidatronic, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22174

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2637 [Mastino Mgmt.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15231

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2638 [Raocore Tech.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13558

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2639 [Richter](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12883

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2642 [PDG Prestige, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12665

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2643 [Burrell Farms & Gardens](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23952

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2644 [Minesen Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12457

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2645 [Premier Landscaping Contrs.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12206

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2646 [Roglieri](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12100

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2647 [McMinn](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12030

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2648 [Wilber](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12009

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2649 [COGENT HEALTHCARE OF JACKSONVILLE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12345

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2650 [Perez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20422

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2651 [9250 Big Horn Holdings](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18847

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2652 [Tucker](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13076

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2653 [Ross](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24340

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2654 [Connolly](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12149

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2655 [Martinez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24351

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2656 [Carmin Sense](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16788

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2657 [Outkast Elec. Contrs., Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11991

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2658 [Dickinson of San Antonio, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11451

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2659 [Sparc Foundry](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11320

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2660 Burk

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2661 Melki
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2662 [Rieker](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24348

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2663 [Laing](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24317

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2664 Garrett
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2665 James
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2666 [Hicks](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24336

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2667 [Diaz](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24325

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2668 [Mercado](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23359

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2669 [Canle](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22071

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2670 [Moreno](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12398

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2671 McGann
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2672 Shingara
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2673 LEAVITT
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2674 Carter
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2675 Goldberg
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2676 [Moreno](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16078

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2677 PAGAN-SANTIAGO
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2678 [2 Fish Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9907

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2679 [Butler](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19877

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2680 Jedediah
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2681 [Art](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9828

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2682 [PHOENIX](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9409

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2683 [Bryant](#), 2024 U.S. Bankr. Ct. Motions LEXIS 30363

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2684 [Sienuta](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21432

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2685 [Raocore Tech.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13434

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2686 [Tsang Constr. Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9028

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2687 [Frisch](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9008

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2688 [Britton](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23463

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2689 [Rios](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21421

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2690 [Kelly](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17436

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2691 [Bradford](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16624

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2692 [Bartlett](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11672

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2693 [ArtiusID, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7916

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2694 [Orbit Mktg.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7599

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2695 [Metz](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20643

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2696 [Farley](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16385

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2697 [Futrell](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11691

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2698 [SMITH](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28172

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2699 [Gonzalez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16991

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2700 [Red Apple Invs. LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12996

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2701 [Innerline Eng'g, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11505

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2702 [Starbridge Ontario Inv.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11463

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2703 [Ironclad Pressure Control](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8720

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2704 [Mockoviak](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7804

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2705 [Ahmad](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11655

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2706 [Nutritionals](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9625

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2707 [Livie & Luca LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7978

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2708 [Ochoa](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22300

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2709 [Malofsky](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20635

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2710 [Gerald L Knouf & Yelena](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18024

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2711 Mastino Mgmt.
2024 U.S. Bankr. Ct. Motions LEXIS 11164

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2712 [SATTERWHITE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8239

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2713 [Diosa](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8193

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2714 [M & G Oil & Gas, Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7723

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2715 [Tadder](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7067

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2716 [Acevedo](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17264

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2717 [Cruz](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17263

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2718 [KAISER](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16565

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2719 [DUNKIN](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8925

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2720 [Mordechai Cohen Cohen](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7423

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2721 [3 Kings Constr. Residential LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6809

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2722 [Syme](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6776

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2723 [King](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17228

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2724 [Tarpenning](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7973

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2725 [Morton](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7469

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2726 [Shingara](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6383

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2727 [Russo](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17216

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2728 Woomer
2024 U.S. Bankr. Ct. Motions LEXIS 7219

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2729 SASOUVONG
2024 U.S. Bankr. Ct. Motions LEXIS 6745

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2730 Modikhan
2024 U.S. Bankr. Ct. Motions LEXIS 6056

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2731 Van Camp & Emmy Jo May Van Camp
2024 U.S. Bankr. Ct. Motions LEXIS 5990

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2732 [Delea](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17224

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2733 [James A Bocken &](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17209

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2734 [SALES](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6435

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2735 US
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2736 [Soul Quest Church of Mother Earth Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 5490

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2737 [Mackie](#), 2024 U.S. Bankr. Ct. Motions LEXIS 5406

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2738 [SHR Capital](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13258

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2739 [GoGoTech II](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6232

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2740 [Rodriguez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16848

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2741 Cheryl
2024 U.S. Bankr. Ct. Motions LEXIS 11066

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2742 Wright
2024 U.S. Bankr. Ct. Motions LEXIS 6158

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2743 Gavin Invs.
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2744 [PREScott](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21737

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2745 [Elder](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16876

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2746 [King](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16629

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2747 [BOLE LOGISTICS LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14477

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2748 [Shy](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11332

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2749 [W. Pratt Leasing](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16872

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2750 [Pratt Holding Co.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16834

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2751 [Crosley](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16539

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2752 [Cortes](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16526

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2753 [Ramirez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16520

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2754 [Castellano](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15728

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2755 [PM & M ELEC., INC.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6649

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2756 [Pratt Indus.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6458

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2757 MORA
2024 U.S. Bankr. Ct. Motions LEXIS 5612

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2758 HAGA-MOF
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2759 [Gonzalez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 17010

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2760 [Robaina](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15280

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2761 Alfred
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2762 RIVERA
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2763 [Paz](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15276

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2764 [Jeannis](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12620

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2765 [Akorn Holding Co. LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21969

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2766 [Nestor](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15358

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2767 [White](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15272

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2768 [Goddard](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14284

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2769 [Arrigoni](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7589

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2770 [Ball](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13151

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2771 [Lawrence](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12873

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2772 Clark
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2773 RV Sales of Broward
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2774 [CURRY](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15098

Content: Court Filings | **Date:** June 27, 2024

2775 [Torres](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12826

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2776 [Richert](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9450

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2777 [MOORE](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26679

Content: Court Filings | **Date:** June 24, 2024

2778 [Nguyen D Truong](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12500

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2779 [Alexander](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12128

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2780 [Sepulveda](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12122

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2781 [Fantasy Rental Car LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12099

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2782 [JJB D.C., Inc.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9739

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2783 Hoyte
2024 U.S. Bankr. Ct. Motions LEXIS 10834

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2784 [Turkey Leg Hut & Co. LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 5448

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2785 [SAYLOR](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28887

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2786 Jones
2024 U.S. Bankr. Ct. Motions LEXIS 6707

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2787 [Jones](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6704

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2788 [Propst](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9353

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2789 [Keeley](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9323

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2790 [Homes4Families](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25741

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2791 [Boone](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12354

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2792 [Hector Luis Collazo Mendez & Keyla](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7852

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2793 [Hakim](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8691

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2794 [Medina](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26261

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2795 [Tyra Zanders Taylor](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9179

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2796 [Albano](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8362

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2797 [Mahmood](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8358

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2798 [Fuentes](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22809

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2799 FERNANDEZ-FERNANDEZ
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2800 [Mico](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8331

Content: Court Filings | **Date:** June 4, 2024

2801 Calvillo
2024 U.S. Bankr. Ct. Motions LEXIS 5852

Content: Court Filings | **Date:** May 29, 2024

2802 SANDERS
2024 U.S. Bankr. Ct. Motions LEXIS 6168

Content: Court Filings | **Date:** May 28, 2024

2803 Davenport
2024 U.S. Bankr. Ct. Motions LEXIS 5698

Content: Court Filings | **Date:** May 27, 2024

2804 [Keirns](#), 2024 U.S. Bankr. Ct. Motions LEXIS 28598

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2805 [Lager](#), 2024 U.S. Bankr. Ct. Motions LEXIS 20317

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2806 [Energy](#), 2024 U.S. Bankr. Ct. Motions LEXIS 25921

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2807 [Reyes](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14292

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2808 [Reyes](#), 2024 U.S. Bankr. Ct. Motions LEXIS 14282

Content: Court Filings | **Date:** May 15, 2024

2809 [DCG Boca LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 8878

Content: Court Filings | **Date:** May 13, 2024

2810 [Moon](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13484

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2811 [1901 W. Platt St. LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11269

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2812 [PAYMENTS](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7168

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2813 [3 Kings Constr. Residential LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7712

Content: Court Filings | **Date:** April 26, 2024

2814 [Guerin](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19856

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2815 [Mendiola](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27176

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2816 [Tandal](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21265

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2817 [Foti](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19972

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2818 [Mendiola](#), 2024 U.S. Bankr. Ct. Motions LEXIS 27138

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2819 [MILLES](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26643

Content: Court Filings | **Date:** April 1, 2024

2820 [FLORES-GALICIA](#), 2024 U.S. Bankr. Ct. Motions LEXIS 12169

Content: Court Filings | **Date:** April 1, 2024

2821 [Foti](#), 2024 U.S. Bankr. Ct. Motions LEXIS 19914

Content: Court Filings | **Date:** March 28, 2024

2822 Rundlett
2024 U.S. Bankr. Ct. Motions LEXIS 6812

Content: Court Filings | **Date:** March 22, 2024

2823 Scott
2024 U.S. Bankr. Ct. Motions LEXIS 6806

Content: Court Filings | **Date:** March 22, 2024

2824 [ARTS DIST. REAL ESTATE # 1, LLC](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24941

Content: Court Filings | **Date:** March 20, 2024

2825 Fortuna
2024 U.S. Bankr. Ct. Motions LEXIS 10244

Content: Court Filings | **Date:** March 14, 2024

2826 [Yellow Corp.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 18445

Content: Court Filings | **Date:** March 12, 2024

2827 [Fabregas](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7446

Content: Court Filings | **Date:** March 5, 2024

2828 [Magellan E & P Holdings](#), 2024 U.S. Bankr. Ct. Motions LEXIS 16177

Content: Court Filings | **Date:** March 4, 2024

2829 [AMD Metal Works](#), 2024 U.S. Bankr. Ct. Motions LEXIS 24836

Content: Court Filings | **Date:** February 22, 2024

2830 [Hernandez](#), 2024 U.S. Bankr. Ct. Motions LEXIS 22890

Content: Court Filings | **Date:** February 15, 2024

2831 [Darnell](#), 2024 U.S. Bankr. Ct. Motions LEXIS 6841

Content: Court Filings | **Date:** February 15, 2024

2832 [Hakenjos Hall Professional Servs.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 21228

Content: Court Filings | **Date:** February 14, 2024

2833 [JUSTUS](#), 2024 U.S. Bankr. Ct. Motions LEXIS 13898

Content: Court Filings | **Date:** January 29, 2024

2834 [Williams](#), 2024 U.S. Bankr. Ct. Motions LEXIS 26818

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2835 [Lambert](#), 2024 U.S. Bankr. Ct. Motions LEXIS 7671

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2836 [Weldon](#), 2024 U.S. Bankr. Ct. Motions LEXIS 9949

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2837 [Commercial Servs. Bldg.](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23665

Content: Court Filings | **Date:** January 9, 2024

2838 [MLS Berkowitz Invs. LLC & Fernanda Alves de Souza](#), 2024 U.S. Bankr. Ct. Motions LEXIS 11267

Content: Court Filings | **Date:** January 9, 2024

2839 [Strohl](#), 2024 U.S. Bankr. Ct. Motions LEXIS 23571

Content: Court Filings | **Date:** January 5, 2024

2840 [Catalano](#), 2024 U.S. Bankr. Ct. Motions LEXIS 15264

Content: Court Filings | **Date:** January 2, 2024

2841 [ARTS DIST. REAL ESTATE # 1, LLC](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9383

Content: Court Filings | **Date:** December 28, 2023

2842 [A T Mabry Trucking, Inc.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8845

Content: Court Filings | **Date:** December 18, 2023

2843 [Aras Bus. Group](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9228

Content: Court Filings | **Date:** November 6, 2023

2844 Dailey
2023 U.S. Bankr. Ct. Motions LEXIS 7809

Content: Court Filings | **Date:** October 30, 2023

2845 [Hernandez](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9142

Content: Court Filings | **Date:** October 12, 2023

2846 [Reece Ventura](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9005

Content: Court Filings | **Date:** October 12, 2023

2847 [Duff](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9574

Content: Court Filings | **Date:** September 22, 2023

2848 [Harmon](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8464

Content: Court Filings | **Date:** August 29, 2023

2849 [Marrero](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7878

Content: Court Filings | **Date:** August 11, 2023

2850 [Fowler](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9130

Content: Court Filings | **Date:** August 2, 2023

2851 [CI Rotomolding USA Inc.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8612

Content: Court Filings | **Date:** July 26, 2023

2852 [Stanley](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7429

Content: Court Filings | **Date:** July 21, 2023

2853 [Foote](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7684

Content: Court Filings | **Date:** June 26, 2023

2854 [Darden](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8728

Content: Court Filings | **Date:** June 21, 2023

2855 [Irontrac, Inc.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7552

Content: Court Filings | **Date:** June 9, 2023

2856 [ACR MECH., INC.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9718

Content: Court Filings | **Date:** June 5, 2023

2857 [Brimage](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9400

Content: Court Filings | **Date:** May 22, 2023

2858 [TFRC Enterprises LLC](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8436

Content: Court Filings | **Date:** May 19, 2023

2859 [DePaolo](#), 2023 U.S. Bankr. Ct. Motions LEXIS 8914

Content: Court Filings | **Date:** May 5, 2023

2860 [Port City Contr. Servs.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7096

Content: Court Filings | **Date:** May 1, 2023

2861 [LAS VEGAS EXOTIC CAR RENTALS](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9045

Content: Court Filings | **Date:** April 3, 2023

2862 [Willard](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7542

Content: Court Filings | **Date:** March 6, 2023

2863 [SWEAT](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7707

Content: Court Filings | **Date:** February 16, 2023

2864 [Parker](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7574

Content: Court Filings | **Date:** February 14, 2023

2865 [PAMPHILE](#), 2023 U.S. Bankr. Ct. Motions LEXIS 9243

Content: Court Filings | **Date:** January 19, 2023

2866 [Kelley](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7615

Content: Court Filings | **Date:** January 17, 2023

2867 [TEW, Inc.](#), 2023 U.S. Bankr. Ct. Motions LEXIS 7546

Content: Court Filings | **Date:** January 3, 2023

2868 [Goodrich](#), 2022 U.S. Bankr. Ct. Motions LEXIS 5774

Content: Court Filings | **Date:** October 28, 2022

2869 [Heron Dev.](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6398

Content: Court Filings | **Date:** October 14, 2022

2870 [Hernandez](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6445

Content: Court Filings | **Date:** October 6, 2022

2871 [Hernandez](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6429

Content: Court Filings | **Date:** August 30, 2022

2872 [Porter Ranch Integrative Med. Clinic, P.C.](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6745

Content: Court Filings | **Date:** July 15, 2022

2873 [Houston-Harris Div. Patrol, Inc.](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6407

Content: Court Filings | **Date:** July 14, 2022

2874 [HVI Cat Canyon, Inc.](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6291

Content: Court Filings | **Date:** July 6, 2022

2875 [Cox](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6726

Content: Court Filings | **Date:** May 31, 2022

2876 [Eriksson](#), 2022 U.S. Bankr. Ct. Motions LEXIS 5892

Content: Court Filings | **Date:** May 24, 2022

2877 [Flow Servs. & Consulting](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6417

Content: Court Filings | **Date:** May 6, 2022

2878 Marie
2022 U.S. Bankr. Ct. Motions LEXIS 5935

Content: Court Filings | **Date:** April 20, 2022

2879 COWART
2022 U.S. Bankr. Ct. Motions LEXIS 5962

Content: Court Filings | **Date:** March 28, 2022

2880 [114 Macon LLC](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6710

Content: Court Filings | **Date:** March 15, 2022

2881 Energy
2022 U.S. Bankr. Ct. Motions LEXIS 5931

Content: Court Filings | **Date:** March 1, 2022

2882 [Herz](#), 2022 U.S. Bankr. Ct. Motions LEXIS 6596

Content: Court Filings | **Date:** February 16, 2022

2883 [KJ Enterprises](#), 2021 U.S. Bankr. Ct. Motions LEXIS 5713

Content: Court Filings | **Date:** November 4, 2021

2884 [RGN-Group Holdings](#), 2021 U.S. Bankr. Ct. Motions LEXIS 5514

Content: Court Filings | **Date:** October 14, 2021

2885 [BARTLETT](#), 2021 U.S. Bankr. Ct. Motions LEXIS 5924

Content: Court Filings | **Date:** October 5, 2021

2886 Ganesh & Maruti LLC
2021 U.S. Bankr. Ct. Motions LEXIS 5485

Content: Court Filings | **Date:** September 30, 2021

2887 [Taicher](#), 2021 U.S. Bankr. Ct. Motions LEXIS 5537

Content: Court Filings | **Date:** September 21, 2021

2888 Lauren Eng'rs & Constructors, Inc.
2021 U.S. Bankr. Ct. Motions LEXIS 5476

Content: Court Filings | **Date:** August 25, 2021

2889 [Polaris Guam LLC](#), 2021 U.S. Bankr. Ct. Motions LEXIS 5694

Content: Court Filings | **Date:** July 30, 2021

2890 Peoria Day Surgery Ctr., Ltd.
2021 U.S. Bankr. Ct. Motions LEXIS 5654

Content: Court Filings | **Date:** March 18, 2021

2891 [Aponte](#), 2021 U.S. Bankr. Ct. Motions LEXIS 6039

Content: Court Filings | **Date:** March 9, 2021

2892 Surge Christian Academy LLC
2021 U.S. Bankr. Ct. Motions LEXIS 5460

Content: Court Filings | **Date:** January 5, 2021

2893 Quintana
2020 U.S. Bankr. Ct. Motions LEXIS 6907

Content: Court Filings | **Date:** December 8, 2020

2894 [Calypso St. Barth, Inc.](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7162

Content: Court Filings | **Date:** November 30, 2020

2895 [Golden Guernsey Dairy](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7083

Content: Court Filings | **Date:** October 2, 2020

2896 [Golden Guernsey Dairy](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7082

Content: Court Filings | **Date:** October 2, 2020

2897 [GARCIA](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7383

Content: Court Filings | **Date:** September 30, 2020

2898 [Case Consulting Servs.](#), 2020 U.S. Bankr. Ct. Motions LEXIS 6736

Content: Court Filings | **Date:** September 3, 2020

2899 [Balderas](#), 2020 U.S. Bankr. Ct. Motions LEXIS 6861

Content: Court Filings | **Date:** August 12, 2020

2900 [Barth Shapiro](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7273

Content: Court Filings | **Date:** February 6, 2020

2901 [Archbishop of Agana](#), 2020 U.S. Bankr. Ct. Motions LEXIS 7022

Content: Court Filings | **Date:** January 20, 2020

2902 [Koshkald](#), 2019 U.S. Bankr. Ct. Motions LEXIS 6373

Content: Court Filings | **Date:** October 22, 2019

2903 [Irontrac, Inc.](#), 2019 U.S. Bankr. Ct. Motions LEXIS 6369

Content: Court Filings | **Date:** October 3, 2019

2904 [Legacy Reserves Inc.](#), 2019 U.S. Bankr. Ct. Motions LEXIS 6158

Content: Court Filings | **Date:** September 23, 2019

2905 Quintana
2019 U.S. Bankr. Ct. Motions LEXIS 5894

Content: Court Filings | **Date:** May 14, 2019

2906 [Amelio](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5401

Content: Court Filings | **Date:** October 5, 2018

2907 [Amelio](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5396

Content: Court Filings | **Date:** October 4, 2018

2908 [Amelio](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5395

Content: Court Filings | **Date:** September 21, 2018

2909 [STEWART](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5359

Content: Court Filings | **Date:** September 4, 2018

2910 [Calypso St. Barth, Inc.](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5346

Content: Court Filings | **Date:** August 17, 2018

2911 [Chong C. Kim](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5237

Content: Court Filings | **Date:** July 10, 2018

2912 [Landing Council of Co-Owners](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5275

Content: Court Filings | **Date:** June 20, 2018

2913 [JVJ Pharm. Inc.](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5488

Content: Court Filings | **Date:** March 9, 2018

2914 [Long](#), 2018 U.S. Bankr. Ct. Motions LEXIS 5377

Content: Court Filings | **Date:** January 12, 2018

2915 [Gonzalez](#), 2017 U.S. Bankr. Ct. Motions LEXIS 5477

Content: Court Filings | **Date:** December 29, 2017

2916 [Gonzalez](#), 2017 U.S. Bankr. Ct. Motions LEXIS 5474

Content: Court Filings | **Date:** December 15, 2017

2917 [Hadsell Chem. Processing](#), 2017 U.S. Bankr. Ct. Motions LEXIS 5415

Content: Court Filings | **Date:** October 25, 2017

2918 [PATERNOSTER](#), 2017 U.S. Bankr. Ct. Motions LEXIS 5577

Content: Court Filings | **Date:** October 18, 2017

2919 [Maxus Energy Corp.](#), 2017 U.S. Bankr. Ct. Motions LEXIS 5387

Content: Court Filings | **Date:** April 12, 2017

2920 [Gonzalez](#), 2016 U.S. Bankr. Ct. Motions LEXIS 5681

Content: Court Filings | **Date:** July 29, 2016

2921 [Able Indus. of the Pac.](#), 2015 U.S. Bankr. Ct. Motions LEXIS 5395

Content: Court Filings | **Date:** November 26, 2015

2922 [Ansari](#), 2015 U.S. Bankr. Ct. Motions LEXIS 5393

Content: Court Filings | **Date:** August 27, 2015

2923 [Last Mile Inc.](#), 2014 U.S. Bankr. Ct. Motions LEXIS 5462

Content: Court Filings | **Date:** March 25, 2014

2924 [MCMAHAN](#), 2013 U.S. Bankr. Ct. Motions LEXIS 5019

Content: Court Filings | **Date:** April 5, 2013

2925 [FASTSHIP, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2506

Content: Court Filings | **Date:** June 27, 2012

2926 [TAXMASTERS, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2508

Content: Court Filings | **Date:** May 31, 2012

2927 [FASTSHIP, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2503

Content: Court Filings | **Date:** May 30, 2012

2928 [REDDY ICE HOLDINGS](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2736

Content: Court Filings | **Date:** May 7, 2012

2929 [FASTSHIP, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2497

Content: Court Filings | **Date:** May 5, 2012

2930 [BC FUNDING, LLC](#), 2012 U.S. Bankr. Ct. Motions LEXIS 2254

Content: Court Filings | **Date:** April 30, 2012

2931 [POTOMAC SUPPLY CORP.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 1372

Content: Court Filings | **Date:** March 2, 2012

2932 [BUFFETS RESTAURANTS HOLDINGS, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 3217

Content: Court Filings | **Date:** February 17, 2012

2933 [ROOMSTORE, INC.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 520

Content: Court Filings | **Date:** January 19, 2012

2934 [Great Atlantic & Pacific Tea Co., Inc.](#), 2012 U.S. Bankr. Ct. Motions LEXIS 1

Content: Court Filings | **Date:** January 6, 2012

2935 [Waste2Energy Holdings](#), 2011 U.S. Bankr. Ct. Motions LEXIS 5191

Content: Court Filings | **Date:** December 15, 2011

2936 [Dippin Dots Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 4746

Content: Court Filings | **Date:** November 15, 2011

2937 [Ordway Research Inst. Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3667

Content: Court Filings | **Date:** October 28, 2011

2938 [Murder Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3624

Content: Court Filings | **Date:** October 17, 2011

2939 [Local Insight Media Holdings, Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3270

Content: Court Filings | **Date:** September 30, 2011

2940 [Local Insight Media Holdings, Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3269

Content: Court Filings | **Date:** September 30, 2011

2941 [Local Insight Media Holdings, Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3290

Content: Court Filings | **Date:** August 17, 2011

2942 [MARCO POLO SEATRADE B.V.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2980

Content: Court Filings | **Date:** August 17, 2011

2943 [155 EAST TROPICANA, LLC](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2998

Content: Court Filings | **Date:** August 1, 2011

2944 [155 EAST TROPICANA, LLC](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2997

Content: Court Filings | **Date:** August 1, 2011

2945 [Local Insight Media Holdings, Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3286

Content: Court Filings | **Date:** July 31, 2011

2946 [Local Insight Media Holdings, Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 3284

Content: Court Filings | **Date:** July 15, 2011

2947 [METAMORPHIX, INC.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2433

Content: Court Filings | **Date:** June 29, 2011

2948 [LOMBARDO](#), 2011 U.S. Bankr. Ct. Motions LEXIS 13104

Content: Court Filings | **Date:** June 7, 2011

2949 [SBARRO](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2039

Content: Court Filings | **Date:** May 19, 2011

2950 [PHILADELPHIA ORCHESTRA ASS'N](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2168

Content: Court Filings | **Date:** May 13, 2011

2951 [BREWERY PARK ASSOCs., L.P.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1631

Content: Court Filings | **Date:** March 30, 2011

2952 [APPLESEED'S INTERMEDIATE HOLDINGS LLC, et al.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1112

Content: Court Filings | **Date:** March 28, 2011

2953 [APPLESEED'S INTERMEDIATE HOLDINGS LLC, et al.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1111

Content: Court Filings | **Date:** March 28, 2011

2954 [MARC STEVEN BOMARITO & FELICIA NICOLE BOMARITO](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1626

Content: Court Filings | **Date:** March 16, 2011

2955 [APPLESEED'S INTERMEDIATE HOLDINGS LLC, et al.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 840

Content: Court Filings | **Date:** March 11, 2011

2956 [Whitley](#), 2011 U.S. Bankr. Ct. Motions LEXIS 13058

Content: Court Filings | **Date:** March 7, 2011

2957 [**MARC STEVEN BOMARITO & FELICIA NICOLE BOMARITO**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1625

Content: Court Filings | **Date:** March 2, 2011

2958 [**MARC STEVEN BOMARITO & FELICIA NICOLE BOMARITO**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1623

Content: Court Filings | **Date:** February 22, 2011

2959 [**TRIKEENAN**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 624

Content: Court Filings | **Date:** February 11, 2011

2960 [**McCLURE**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2362

Content: Court Filings | **Date:** February 3, 2011

2961 [**ROBINSON**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1752

Content: Court Filings | **Date:** February 3, 2011

2962 [**BORROWS**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 597

Content: Court Filings | **Date:** February 2, 2011

2963 [**Landmark Atl. Hess Farm**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 456

Content: Court Filings | **Date:** January 31, 2011

2964 [**SAUNDERS**](#), 2011 U.S. Bankr. Ct. Motions LEXIS 190

Content: Court Filings | **Date:** January 27, 2011

2965 [Metamorphix Inc.](#), 2011 U.S. Bankr. Ct. Motions LEXIS 2284

Content: Court Filings | **Date:** January 24, 2011

2966 [HP DISTRIBUTION LLP](#), 2011 U.S. Bankr. Ct. Motions LEXIS 325

Content: Court Filings | **Date:** January 20, 2011

2967 [A&P](#), 2011 U.S. Bankr. Ct. Motions LEXIS 61

Content: Court Filings | **Date:** January 11, 2011

2968 [SCHACKNER](#), 2011 U.S. Bankr. Ct. Motions LEXIS 1212

Content: Court Filings | **Date:** January 6, 2011

2969 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16191

Content: Court Filings | **Date:** December 23, 2010

2970 [TerreStar Networks Inc., et al.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 4905

Content: Court Filings | **Date:** December 23, 2010

2971 [HARMON](#), 2010 U.S. Bankr. Ct. Motions LEXIS 4881

Content: Court Filings | **Date:** December 20, 2010

2972 [marchFIRST, INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6503

Content: Court Filings | **Date:** December 17, 2010

2973 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16195

Content: Court Filings | **Date:** December 16, 2010

2974 [GARON LEE REEVES & DIANE LINDSEY REEVES](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6078

Content: Court Filings | **Date:** November 15, 2010

2975 [marchFIRST, INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6498

Content: Court Filings | **Date:** November 10, 2010

2976 [BUCKHEAD OIL CO., INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6436

Content: Court Filings | **Date:** November 8, 2010

2977 [REPUBLIC WINDOWS](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5238

Content: Court Filings | **Date:** October 28, 2010

2978 [YERUSHALMI](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5207

Content: Court Filings | **Date:** October 19, 2010

2979 [SAND HILL CAPITAL v. WILLIAM GREER](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5439

Content: Court Filings | **Date:** October 4, 2010

2980 [CEI LIQUIDATION ESTATE, et al.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3736

Content: Court Filings | **Date:** September 22, 2010

2981 [SHORES](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6198

Content: Court Filings | **Date:** September 9, 2010

2982 [BURGIO](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6177

Content: Court Filings | **Date:** September 9, 2010

2983 [LORENZ](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5669

Content: Court Filings | **Date:** September 9, 2010

2984 [marchFIRST, INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6499

Content: Court Filings | **Date:** September 7, 2010

2985 [JOEL SEGER & CHRISTINE SEGER](#), 2010 U.S. Bankr. Ct. Motions LEXIS 4950

Content: Court Filings | **Date:** August 26, 2010

2986 [marchFIRST, INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6502

Content: Court Filings | **Date:** August 23, 2010

2987 [Miles](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16254

Content: Court Filings | **Date:** August 20, 2010

2988 [DBSI INC., et al.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5527

Content: Court Filings | **Date:** August 17, 2010

2989 [NEC](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2074

Content: Court Filings | **Date:** August 16, 2010

2990 [VAN WAGNER](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3576

Content: Court Filings | **Date:** August 10, 2010

2991 [CAFFEINE COWBOYS LLC](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2259

Content: Court Filings | **Date:** August 9, 2010

2992 [St. James Mech., Inc.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2832

Content: Court Filings | **Date:** August 4, 2010

2993 [Heinze](#), 2010 U.S. Bankr. Ct. Motions LEXIS 4443

Content: Court Filings | **Date:** July 19, 2010

2994 [marchFIRST, INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6500

Content: Court Filings | **Date:** July 9, 2010

2995 [LEGGETT](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5818

Content: Court Filings | **Date:** July 9, 2010

2996 [Passavant](#), 2010 U.S. Bankr. Ct. Motions LEXIS 5029

Content: Court Filings | **Date:** July 9, 2010

2997 [NEFF CORP.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2382

Content: Court Filings | **Date:** June 21, 2010

2998 [BLACK CROW MEDIA GROUP](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1724

Content: Court Filings | **Date:** June 17, 2010

2999 [PLATINUM OIL PROPS.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3476

Content: Court Filings | **Date:** June 15, 2010

3000 [TEXAS RANGERS BASEBALL](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1519

Content: Court Filings | **Date:** June 11, 2010

3001 [JOKIEL](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6801

Content: Court Filings | **Date:** June 9, 2010

3002 [SHORES](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6196

Content: Court Filings | **Date:** June 7, 2010

3003 [RUBICON](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3022

Content: Court Filings | **Date:** May 28, 2010

3004 [GEARHART](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3553

Content: Court Filings | **Date:** May 25, 2010

3005 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16189

Content: Court Filings | **Date:** April 28, 2010

3006 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16183

Content: Court Filings | **Date:** April 28, 2010

3007 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16175

Content: Court Filings | **Date:** April 28, 2010

3008 [Whitley](#), 2010 U.S. Bankr. Ct. Motions LEXIS 16174

Content: Court Filings | **Date:** April 28, 2010

3009 [HIBBARD](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3049

Content: Court Filings | **Date:** April 12, 2010

3010 [VAUGHAN](#), 2010 U.S. Bankr. Ct. Motions LEXIS 994

Content: Court Filings | **Date:** April 7, 2010

3011 [VAUGHAN](#), 2010 U.S. Bankr. Ct. Motions LEXIS 989

Content: Court Filings | **Date:** April 7, 2010

3012 [Rudnik](#), 2010 U.S. Bankr. Ct. Motions LEXIS 3054

Content: Court Filings | **Date:** April 5, 2010

3013 [SAUNDERS](#), 2010 U.S. Bankr. Ct. Motions LEXIS 4937

Content: Court Filings | **Date:** March 26, 2010

3014 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 237

Content: Court Filings | **Date:** March 26, 2010

3015 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 235

Content: Court Filings | **Date:** March 26, 2010

3016 [JASON](#), 2010 U.S. Bankr. Ct. Motions LEXIS 820

Content: Court Filings | **Date:** March 15, 2010

3017 [BEAR ISLAND PAPER CO.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2663

Content: Court Filings | **Date:** March 12, 2010

3018 [GREEN](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1261

Content: Court Filings | **Date:** February 24, 2010

3019 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 280

Content: Court Filings | **Date:** February 19, 2010

3020 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 279

Content: Court Filings | **Date:** February 19, 2010

3021 [Premier Int'l Holdings](#), 2010 U.S. Bankr. Ct. Motions LEXIS 528

Content: Court Filings | **Date:** February 11, 2010

3022 [JACOB](#), 2010 U.S. Bankr. Ct. Motions LEXIS 6826

Content: Court Filings | **Date:** February 8, 2010

3023 [HECKER](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1054

Content: Court Filings | **Date:** February 3, 2010

3024 [PROTOSTAR LTD.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 2055

Content: Court Filings | **Date:** January 27, 2010

3025 [MCDONALD](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1247

Content: Court Filings | **Date:** January 27, 2010

3026 [REMEMBER ENTERPRISES](#), 2010 U.S. Bankr. Ct. Motions LEXIS 108

Content: Court Filings | **Date:** January 25, 2010

3027 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 266

Content: Court Filings | **Date:** January 22, 2010

3028 [FLYING J INC.](#), 2010 U.S. Bankr. Ct. Motions LEXIS 265

Content: Court Filings | **Date:** January 22, 2010

3029 [Urban](#), 2010 U.S. Bankr. Ct. Motions LEXIS 1096

Content: Court Filings | **Date:** January 13, 2010

3030 [Rising Tide Enter. Llc](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7711

Content: Court Filings | **Date:** December 30, 2009

3031 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8784

Content: Court Filings | **Date:** December 23, 2009

3032 [KREILING](#), 2009 U.S. Bankr. Ct. Motions LEXIS 9298

Content: Court Filings | **Date:** December 15, 2009

3033 [RAMSAY](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10603

Content: Court Filings | **Date:** December 3, 2009

3034 [JOHN N. SCHELLENBERG & LISA R. SCHELLENBERG](#), 2009 U.S. Bankr. Ct. Motions LEXIS 9438

Content: Court Filings | **Date:** November 25, 2009

3035 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8770

Content: Court Filings | **Date:** November 20, 2009

3036 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8769

Content: Court Filings | **Date:** November 20, 2009

3037 [IMAGEPOINT, INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7938

Content: Court Filings | **Date:** November 19, 2009

3038 [In the Matter -of- S.W. BACH & CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8298

Content: Court Filings | **Date:** November 18, 2009

3039 [NAILITE INT'L, INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 11136

Content: Court Filings | **Date:** October 29, 2009

3040 [WENGERD](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10388

Content: Court Filings | **Date:** October 29, 2009

3041 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8759

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3042 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8758

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3043 [**THE FLINTKOTE CO. & FLINTKOTE MINES LTD.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5113

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3044 [**WENGERD**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10385

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3045 [**WENGERD**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10382

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3046 [**CDG RESEARCH CORP., CDG TECH., INC.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10850

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3047 [**HERRERA**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7134

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3048 [**BORCHERT**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7506

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3049 [**FLYING J INC.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8749

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3050 [**FLYING J INC.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8748

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3051 [Goldstein](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6585

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3052 [LAUREL HILL PAPER CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8325

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3053 [HALEKUA DEV. CORP.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6348

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3054 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8739

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3055 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3537

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3056 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3536

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3057 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3535

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3058 [W. R. GRACE & CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7853

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3059 [COLLEEN BLOSE](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5498

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3060 [RathGibson](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8266

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3061 [FLYING J INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8658

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3062 [SMITH](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5171

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3063 [POLAROID CORP.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8422

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3064 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5766

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3065 [SMITH](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6908

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3066 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2824

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3067 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2823

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3068 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2822

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3069 [LAUREL HILL PAPER CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8323

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3070 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5773

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3071 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5772

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3072 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5771

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3073 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5769

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3074 [BRADY](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6785

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3075 [CAROLINA WINE CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5762

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3076 [CHRYSLER LLC](#), 2009 U.S. Bankr. Ct. Motions LEXIS 1310

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3077 [INTERMET CORP., et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 10527

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3078 [LAZERUS](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2958

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3079 [Boulrice](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6705

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3080 [PARKWAY](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7054

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3081 [ALLIANCE RESOURCE MGMT.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5920

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3082 [**WOODRUFF**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5374

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3083 [**Liegey**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7035

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3084 [**SMITH**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5165

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3085 [**STOKES**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3941

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3086 [**Kile**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2481

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3087 [**Kile**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2480

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3088 [**ALERIS INT'L, INC., et al.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 9060

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3089 [**FIRST MAGNUS FIN. CORP.**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6004

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3090 [DE RETIRO](#), 2009 U.S. Bankr. Ct. Motions LEXIS 4754

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3091 [MERVYN'S HOLDINGS, LLC, et al.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 815

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3092 [MILLER v. WELT](#), 2009 U.S. Bankr. Ct. Motions LEXIS 4190

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3093 [GO FIG, INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 23287

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3094 [Kile](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2477

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3095 [Kile](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2476

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3096 [MENDEZ](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8294

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3097 [BISSELL](#), 2009 U.S. Bankr. Ct. Motions LEXIS 1723

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3098 [LAUREL HILL PAPER CO.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8322

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3099 [CHILDERS](#), 2009 U.S. Bankr. Ct. Motions LEXIS 1693

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3100 [PATRICK](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2519

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3101 [ETHINGTON](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2374

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3102 [AB&C GROUP, INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2725

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3103 [WOODRUFF](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5372

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3104 [ALLEN](#), 2009 U.S. Bankr. Ct. Motions LEXIS 4314

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3105 [MENDEZ](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8293

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3106 [Steen](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5556

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3107 [CUTLER](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3283

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3108 [Ralph](#), 2009 U.S. Bankr. Ct. Motions LEXIS 6826

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3109 [KOCH](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3168

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3110 [Skinner Engine Co.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 5119

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3111 [SCOTT](#), 2009 U.S. Bankr. Ct. Motions LEXIS 4943

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3112 [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2009 U.S. Bankr. Ct. Motions LEXIS 847

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3113 [MEDINA](#), 2009 U.S. Bankr. Ct. Motions LEXIS 4045

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3114 [UNITED AUTO MART, INC.](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2667

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3115 [MARILYN](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2622

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3116 [Luu](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2338

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3117 [MORTGAGE LENDERS NETWORK USA](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7542

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3118 [FOLDENAUER](#), 2009 U.S. Bankr. Ct. Motions LEXIS 2855

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3119 [MENDEZ](#), 2009 U.S. Bankr. Ct. Motions LEXIS 8292

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3120 [Jasper](#), 2009 U.S. Bankr. Ct. Motions LEXIS 414

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3121 [COPPERFIELD INVS., LLC](#), 2009 U.S. Bankr. Ct. Motions LEXIS 7270

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3122 [LINENS HOLDING CO.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8080

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3123 [DAVIDSON](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6187

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3124 [DAVIDSON](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6186

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3125 [Delta Fin. Corp.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10069

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3126 [EDWARD L.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8862

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3127 [LABRUNO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7915

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3128 [Hendricks](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7580

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3129 [AB&C GROUP, INC.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7487

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3130 [Jasper](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6339

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3131 [LINENS HOLDING CO.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8000

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3132 [BERRIS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8864

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3133 [BURBANK](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6456

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3134 [HARVEY](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7788

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3135 [WLY](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3900

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3136 [ALOHA AIRLINES, INC.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5897

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3137 [HOWE](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8762

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3138 [GREGORY S. WILLIAMS, SR., JOYCE L. WILLIAMS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10427

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3139 [WELLS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5903

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3140 [FOSTER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5659

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3141 [King](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5663

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3142 [Crawley](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6021

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3143 [CENTRAL ILLINOIS ENERGY](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7632

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3144 [CENTRAL ILLINOIS ENERGY](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4622

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3145 [WOODRUFF](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8808

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3146 [Carty v Bay-1 Props., Inc.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10587

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3147 [WILBORN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7321

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3148 [OWENS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5183

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3149 [LAKE](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10162

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3150 [LABRUNO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7914

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3151 [Baker](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5105

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3152 [DANIELS-BROWN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 9282

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3153 [LLOYD VENUSTIANO ESCANO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 9298

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3154 [Swanson](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4971

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3155 [Camp](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8882

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3156 [ADAM AIRCRAFT INDUS., INC., EIN: XXXXX3299](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10528

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3157 [ADAM AIRCRAFT INDUS., INC., EIN: XXXXX3299](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10526

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3158 [Abbas Kafi](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6275

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3159 [INTERNATIONAL GALLERIES, INC.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4455

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3160 [First NLC Fin. Servs.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 9751

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3161 [PERKINS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3443

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3162 [Perrotta](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2459

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3163 [KHOLYAVKA](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3887

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3164 [CLARK](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3368

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3165 [CASTILLO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7828

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3166 [CASTILLO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7264

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3167 [CLARK](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3367

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3168 [MARKETXT HOLDINGS, CORP.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6709

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3169 [GRANGER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4311

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3170 [NIFONG](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1576

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3171 [RICKERT](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4675

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3172 [HILSEN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2063

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3173 [TRIPLETT](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1304

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3174 [Perrotta](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2458

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3175 [CLARK](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3366

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3176 [ESTATE OF ASSIGNMENT FOR THE BEN. OF CREDITORS OF EDWARD PAUL MAY](#), 2008 U.S.
Bankr. Ct. Motions LEXIS 1908

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3177 [PERKINS](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3442

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3178 [Patterson](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2675

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3179 [NORWOOD-HILL](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6051

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3180 [DANIELS-BROWN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3838

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3181 [Patterson](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2674

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3182 [SPURLING](#), 2008 U.S. Bankr. Ct. Motions LEXIS 889

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3183 [MOLITOR](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4984

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3184 [ALLEN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8452

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3185 [Showers](#), 2008 U.S. Bankr. Ct. Motions LEXIS 6277

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3186 [HOFFMANN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 8276

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3187 [CARVIN TESSIE HINES](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3262

Content: Court Filings | **Date:** March 20, 2008

3188 [FORT WORTH OSTEOPATHIC HOSP.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 487

Content: Court Filings | **Date:** March 20, 2008

3189 [Dooley v. McGrail & McGrail, A.I.M. Mut. Ins. Co.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 7059

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3190 [BENNETT](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2278

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3191 [NEWMAN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1221

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3192 [JIMENEZ](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1725

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3193 [SANDIFER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 456

Content: Court Filings | **Date:** March 3, 2008

3194 [Watkins](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1055

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3195 [NICOLAS T. SHOOPMAN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2540

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3196 [CMGT](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1195

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3197 [SANDIFER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 455

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3198 [TFI ENTERPRISES, Inc.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 2502

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3199 [McLAUGHLIN](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1434

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3200 [COOK](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4128

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3201 [WAGNER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1730

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3202 [MOLITOR](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4982

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3203 [METRO](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1226

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3204 [Sudano, Inc.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 20557

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3205 [MENDEZ](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4309

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3206 [RODRIGUES](#), 2008 U.S. Bankr. Ct. Motions LEXIS 186

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3207 [SMITH](#), 2008 U.S. Bankr. Ct. Motions LEXIS 3083

Content: Court Filings | **Date:** January 17, 2008

3208 [SANDIFER](#), 2008 U.S. Bankr. Ct. Motions LEXIS 454

Content: Court Filings | **Date:** January 17, 2008

3209 [LLSS MGMT. CO., INC.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1905

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3210 [LLSS MGMT. CO., INC.](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1830

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3211 [WEIDERHOLD](#), 2008 U.S. Bankr. Ct. Motions LEXIS 183

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3212 [MOLITOR](#), 2008 U.S. Bankr. Ct. Motions LEXIS 4980

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3213 [RODRIGUES](#), 2008 U.S. Bankr. Ct. Motions LEXIS 185

Content: Court Filings | **Date:** January 11, 2008

3214 [VANDENBERG](#), 2008 U.S. Bankr. Ct. Motions LEXIS 543

Content: Court Filings | **Date:** January 10, 2008

3215 [Pignotti](#), 2008 U.S. Bankr. Ct. Motions LEXIS 10578

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3216 [TRIPPLETT](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1305

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3217 [Truong](#), 2008 U.S. Bankr. Ct. Motions LEXIS 1211

Content: Court Filings | **Date:** January 2, 2008

3218 [MOLITOR](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9138

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3219 [Copley v. WV State Tax Dept.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7458

Content: Court Filings | **Date:** December 26, 2007

3220 [STOCKER](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9272

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3221 [ANTOINETTE G. KING](#), 2007 U.S. Bankr. Ct. Motions LEXIS 8075

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3222 [Martinez](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7673

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3223 [CRIBBS](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7273

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3224 [SANDIFER](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7107

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3225 [WHITE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6814

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3226 [Smale](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7345

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3227 [McLAUGHLIN](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7693

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3228 [MOLITOR](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9137

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3229 [MARTINEZ](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7672

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3230 [FIRST MAGNUS FIN. CORP.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9904

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3231 [WALKER](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6652

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3232 [FIRST MAGNUS FIN. CORP.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9901

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3233 [VARONA](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7324

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3234 [Brown](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6618

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3235 [MOLITOR](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9135

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3236 [WEIDERHOLD](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6845

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3237 [STEVEN KETH MOWRIS & MARILYN SUE MOWRIS](#), 2007 U.S. Bankr. Ct. Motions LEXIS 8463

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3238 [Jacobsen](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5285

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3239 [ALCARDIO JACKSON SR.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9222

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3240 [SATISH SHETHI & ELIZA SHETHI](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7859

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3241 [BLOXSOM](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7336

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3242 [ONEIDA LTD.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6885

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3243 [GUERRIERO](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6501

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3244 [WEAVER](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6474

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3245 [Perrotta](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5033

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3246 [Perrotta](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5032

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3247 [PELHAM ENTERPRISES, INC.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4557

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3248 [Perrotta](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5031

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3249 [ZENUS IS JEWELRY, INC.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4579

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3252 [Kellett](#), 2007 U.S. Bankr. Ct. Motions LEXIS 8456

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3253 [SWIONTEK](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4526

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3254 [SHINGLETON](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3693

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3255 [Ballard](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5277

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3256 [IFS FIN. CORP.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7457

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3257 [CALLAHAN](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4415

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3258 [Uhrenholdt](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9201

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3259 [TO-VIET-DAO, LLP](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7522

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3260 [PEERY](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7467

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3261 [MORGAN](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4084

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3262 [WINSTON](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2622

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3263 [Azber Azher Ansar](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7892

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3264 [CANALES](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4620

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3265 [Osborne](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2953

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3266 [HAYNES](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5734

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3267 [MORGAN](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4086

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3268 [CRAIGHEAD](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4780

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3269 [Osborne](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2949

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3270 [CHAMPAGNE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7608

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3271 [MAKRES](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5441

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3272 [Collins](#), 2007 U.S. Bankr. Ct. Motions LEXIS 8624

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3273 [LAUREL HILL PAPER CO.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 10236

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3274 [GERALD McKENNEY](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7920

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3275 [TATE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5269

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3276 [McKENNEY](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2930

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3277 [BYRNE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3773

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3278 [BOSSART](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5252

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3279 [Feringa](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4136

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3280 [MICHAEL PERRY SMITH, STEPHANIE VICKREY SMITH](#), 2007 U.S. Bankr. Ct. Motions LEXIS 841

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3281 [NICOLE SIEGENBERG](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1474

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3282 [DOETSCH](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3541

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3283 [Osborne](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2947

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3284 [Janice Lynn Stout](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1461

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3285 [BISHOP](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3054

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3286 [LOVERIDGE v. HARRELL JR. \(In re Harrell Jr.\)](#), 2007 U.S. Bankr. Ct. Motions LEXIS 817

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3287 [GARCIA](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3487

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3288 [HAYES](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3668

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3289 [Carlson](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2551

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3290 [Billie](#), 2007 U.S. Bankr. Ct. Motions LEXIS 279

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3291 [BYRNE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3772

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3292 [NAUT](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5640

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3293 [WILKINS](#), 2007 U.S. Bankr. Ct. Motions LEXIS 798

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3294 [Wallace Packaging Corp.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3095

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3295 [Braathun](#), 2007 U.S. Bankr. Ct. Motions LEXIS 10547

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3296 [PLAZA](#), 2007 U.S. Bankr. Ct. Motions LEXIS 10455

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3297 [BYRNE](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3768

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3298 [JONES](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2348

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3299 [Robert W. Haar & Sherrie H. Haar](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1255

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3300 [OLAH v. BAIRD \(In re BAIRD\)](#), 2007 U.S. Bankr. Ct. Motions LEXIS 821

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3301 [MACK PROPS., INC.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 8195

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3302 [FACSTORE, INC.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2037

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3303 [MARCIANO](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1614

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3304 [Zuccarelli](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1095

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3305 [TAMEZ](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2676

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3306 [BAILEY](#), 2007 U.S. Bankr. Ct. Motions LEXIS 9508

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3312 [PILARSKI](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4882

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3314 [SWIONTEK](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4523

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3316 [Augenstein](#), 2007 U.S. Bankr. Ct. Motions LEXIS 5184

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3317 [Truong](#), 2007 U.S. Bankr. Ct. Motions LEXIS 616

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3318 [SPILLMAN DEV. GROUP, LTD.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1026

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3320 [Truong](#), 2007 U.S. Bankr. Ct. Motions LEXIS 615

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3321 [BROWN](#), 2007 U.S. Bankr. Ct. Motions LEXIS 4421

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3322 [Edighoffer](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3656

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3323 [E-Z Pay Servs., Inc.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 6209

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3324 [CHATLEY](#), 2007 U.S. Bankr. Ct. Motions LEXIS 778

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3325 [LEXINGTON HEALTHCARE GROUP, INC.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 110

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3326 [AMERICAN BUS. FIN. SERVS.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 7484

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3327 [VANDEVENTER, JR.](#), 2007 U.S. Bankr. Ct. Motions LEXIS 1184

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3328 [GANNON](#), 2007 U.S. Bankr. Ct. Motions LEXIS 3323

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3330 [BRAND](#), 2007 U.S. Bankr. Ct. Motions LEXIS 2175

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3331 [RAGLE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4794

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3333 [LUXA](#), 2006 U.S. Bankr. Ct. Motions LEXIS 7540

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3334 [DEBI F. FRY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10964

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3335 [LIGHTSEY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 7012

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3336 [Delbecq](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4379

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3337 [Cook](#), 2006 U.S. Bankr. Ct. Motions LEXIS 11099

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3338 [HELMERS](#), 2006 U.S. Bankr. Ct. Motions LEXIS 7781

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3339 [DeLunas](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6747

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3340 [JOHNSON](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6441

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3341 [CIETEK](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10357

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3342 [NETtel CORP.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10274

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3343 [Haar](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5557

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3345 [STARKEY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6479

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3346 [Ray](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6492

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3348 [TRACY & BETH](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4146

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3349 [Augenstein](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10063

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3350 [BRITT](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4047

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3351 [SLOAN](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10540

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3352 [COURTNEY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8656

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3353 [JEWELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4393

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3355 [BRAND](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6371

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3356 [JONES](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9117

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3357 [COCHENER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 7806

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3358 [HARE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4771

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3360 [ZAPORSKI](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4895

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3361 [Vanhoose](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10065

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3362 [Hoerlein](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8769

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3363 [RAGLE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4791

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3364 [HUMMEL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9962

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3372 [JEWELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4390

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3373 [JANKOWSKI](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10331

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3376 [TAYLOR QUALITY CONCRETE, INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5898

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3379 [INTERNATIONAL ZINC COATINGS & CHEM. CORP.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 3551

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3380 [GUINDI](#), 2006 U.S. Bankr. Ct. Motions LEXIS 7047

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3381 [LENTON](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5869

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3382 [SORRELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5593

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3384 [WILEY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9894

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3385 [CAMACHO](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9914

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3386 [THOMAS](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9796

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3388 [Hoerlein](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8771

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3390 [BROWN](#), 2006 U.S. Bankr. Ct. Motions LEXIS 3095

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3391 [WILEY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9893

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3392 [RANDLE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9670

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3393 [RANDLE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9137

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3394 [Taylor Quality Concrete, Inc.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5895

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3395 [BENEDETTI](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5840

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3396 [SORRELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5591

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3397 [HEAD GRADING CO., INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8576

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3398 [CUTSHALL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 3798

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3399 [HILSMAN](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8324

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3400 [Berman](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8016

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3401 [WALKER v. SUSAN LUNDBORG](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4120

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3402 [MCDANIEL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9744

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3403 [MITCHELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5341

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3405 [LONGO](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4820

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3407 [Richendollar](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4385

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3408 [RUSS TRANSMISSION, INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4089

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3409 [MEGGINSON](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8226

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3410 [Skvorecz](#), 2006 U.S. Bankr. Ct. Motions LEXIS 4927

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3411 [LOPEZ](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1725

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3412 [HEAD GRADING CO., INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8574

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3413 [PRICE v. PRICE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 946

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3414 [SINGLETARY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8245

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3415 [Oneida](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10784

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3416 [LENTON](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5867

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3417 [LENTEK INT'L, INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8346

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3418 [DERIVIUM CAPITAL, LLC](#), 2006 U.S. Bankr. Ct. Motions LEXIS 586

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3419 [Scarafiotti](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8373

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3420 [Plourde](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10593

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3421 [MCDANIEL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9742

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3422 [NJ AFORDABLE HOMES CORP.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10486

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3423 [DONNELL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9814

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3424 [STAINES](#), 2006 U.S. Bankr. Ct. Motions LEXIS 11055

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3425 [CINELLI](#), 2006 U.S. Bankr. Ct. Motions LEXIS 6473

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3426 [PRICE v. PRICE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 945

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3427 [BURSZTYN](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5160

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3428 [GIFFUNE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1185

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3429 [SINGLETARY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8241

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3430 [LEVY](#), 2006 U.S. Bankr. Ct. Motions LEXIS 8188

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3431 [DYE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9839

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3432 [Harris](#), 2006 U.S. Bankr. Ct. Motions LEXIS 2711

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3433 [HILL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9973

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3434 [SOUTHWEST FL HEART GROUP, P.A.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 53

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3435 [CRUMP](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10031

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3436 [HILL](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9972

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3437 [D&K AVIATION, INC.](#), 2006 U.S. Bankr. Ct. Motions LEXIS 2274

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3438 [Virgil Glen Simmons](#), 2006 U.S. Bankr. Ct. Motions LEXIS 3683

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3439 [QUINTANA](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1129

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3440 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 9033

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3441 [CEASAR GAITÉ BERNALES](#), 2006 U.S. Bankr. Ct. Motions LEXIS 151

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3442 [BALDWIN](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1548

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3443 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1093

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3444 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1089

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3445 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 10397

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3446 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1092

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3447 [WALKER](#), 2006 U.S. Bankr. Ct. Motions LEXIS 1090

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3448 [UNITED REFUSE](#), 2006 U.S. Bankr. Ct. Motions LEXIS 5871

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3449 [SEAMAN](#), 2005 U.S. Bankr. Ct. Motions LEXIS 100

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3450 [QUARLES](#), 2005 U.S. Bankr. Ct. Motions LEXIS 94

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3451 [TRI STATE ETHANOL CO., LLC](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1310

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3452 [FISCHER](#), 2005 U.S. Bankr. Ct. Motions LEXIS 2730

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3453 [RIOS](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1616

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3454 [SHERIDAN](#), 2005 U.S. Bankr. Ct. Motions LEXIS 2451

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3455 [Chism v. Southern Mortg. Co.](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1514

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3456 [BRENZIKOFER](#), 2005 U.S. Bankr. Ct. Motions LEXIS 2058

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3457 [TRI STATE ETHANOL CO., LLC](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1305

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3458 [STEFFENS](#), 2005 U.S. Bankr. Ct. Motions LEXIS 2407

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3459 [STEFFENS](#), 2005 U.S. Bankr. Ct. Motions LEXIS 2406

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3460 [GALGANO](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1924

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3461 [GALGANO](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1922

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3462 [CROWN UNLIMITED MACH., INC.](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1450

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3463 [DIDES](#), 2005 U.S. Bankr. Ct. Motions LEXIS 1795

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3464 [ALLEGIANCE TELECOM, INC.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 994

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3465 [J.T. THORPE, INC.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 591

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3466 [SODERQUIST](#), 2004 U.S. Bankr. Ct. Motions LEXIS 371

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3467 [Donahue Secs., Inc.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 448

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3468 [DONAHUE SECS., INC.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 447

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3469 [Truong](#), 2004 U.S. Bankr. Ct. Motions LEXIS 1261

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3470 [ENRON CORP.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 1075

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3471 [ENRON CORP.](#), 2004 U.S. Bankr. Ct. Motions LEXIS 266

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3472 [ROLFES](#), 2003 U.S. Bankr. Ct. Motions LEXIS 1329

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3473 [KORA & WILLIAMS CORP.](#), 2003 U.S. Bankr. Ct. Motions LEXIS 1053

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3474 [Tillotson Health Care Corp.](#), 2003 U.S. Bankr. Ct. Motions LEXIS 110

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3475 [Boyd Hites Logging, Inc.](#), 2003 U.S. Bankr. Ct. Motions LEXIS 1034

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3476 [MARTIN](#), 2003 U.S. Bankr. Ct. Motions LEXIS 1049

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3477 [Coates](#), 2002 U.S. Bankr. Ct. Motions LEXIS 143

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3478 [FLAG TELECOM HOLDNIGS LIMITED, FLAG LIMITED, FLAG PACIFIC USA LIMITED](#), 2002 U.S.
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3479 [BOYNEWICZ](#), 2002 U.S. Bankr. Ct. Motions LEXIS 482

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3480 [SCOTT CABLE COMMUNS., INC.](#), 2002 U.S. Bankr. Ct. Motions LEXIS 538

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3481 [Calvin & Deborah Evans](#), 2002 U.S. Bankr. Ct. Motions LEXIS 306

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3482 [Bank of New England Corp.](#), 2001 U.S. Bankr. Ct. Motions LEXIS 390

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3483 [BREED TECHS.](#), 2000 U.S. Bankr. Ct. Motions LEXIS 210

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3484 [Barth](#), 1987 U.S. Bankr. Ct. Motions LEXIS 2

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3485 [Turner v. Turner](#), 2021 AZ Sup. Ct. Motions LEXIS 692

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3486 [Turner v. Turner](#), 2021 AZ Sup. Ct. Motions LEXIS 687

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3487 [SHUPE v. 29 PRIME, INC.](#), 2014 AZ Sup. Ct. Motions LEXIS 2060

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3488 [CHRISTENSEN v. CHEVY CHASE BANK](#), 2011 AZ Sup. Ct. Motions LEXIS 5080

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3489 [CHRISTENSEN v. CHEVY CHASE BANK FSB](#), 2011 AZ Sup. Ct. Motions LEXIS 4388

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3490 [MENDIOLA v. WILMINGTON TRUST, N.A.](#), 2021 CA Sup. Ct. Motions LEXIS 854

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3491 [MURPHY v. U.S. BANK NAT'L ASS'N NA](#), 2020 CA Sup. Ct. Motions LEXIS 10476

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3492 [MURPHY v. U.S. BANK NAT'L ASS'N NA](#), 2020 CA Sup. Ct. Motions LEXIS 10474

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3493 [MADRIGAL v. U.S. BANK NAT'L ASS'N](#), 2020 CA Sup. Ct. Motions LEXIS 4759

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3494 [PLACENTIA DEV. CO. v. HALL](#), 2020 CA Sup. Ct. Motions LEXIS 3269

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3495 [WOO v. SALVESON](#), 2019 CA Sup. Ct. Motions LEXIS 14412

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3496 [MADRIGAL v. U.S. BANK NAT'L ASS'N](#), 2019 CA Sup. Ct. Motions LEXIS 15675

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3497 [BRIGGS v. SELECT PORTFOLIO SERVICING](#), 2019 CA Sup. Ct. Motions LEXIS 26348

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3498 [WOO v. SALVESON](#), 2019 CA Sup. Ct. Motions LEXIS 14727

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3499 [GARCIA v. SELECT PORTFOLIO SERVICING](#), 2019 CA Sup. Ct. Motions LEXIS 26419

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3500 [CMBG ADVISORS, INC. v. HOGAN ADVISORS CORP.](#), 2019 CA Sup. Ct. Motions LEXIS 11868

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3501 [JEANNETTA MILLION v. QUALITY HOME LOANS](#), 2019 CA Sup. Ct. Motions LEXIS 26201

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3502 [WOO v. SALVESON](#), 2019 CA Sup. Ct. Motions LEXIS 14669

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3503 [**JEANNETTA MILLION v. QUALITY HOME LOANS**](#), 2018 CA Sup. Ct. Motions LEXIS 37951

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3504 [**WILLIAMS v. U.S. BANK N.A.**](#), 2018 CA Sup. Ct. Motions LEXIS 38517

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3505 [**PATTERSON v. SELECT PORTFOLIO SERVICING**](#), 2018 CA Sup. Ct. Motions LEXIS 38143

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3506 [**ISERHIEN v. SELECT PORTFOLIO SERVICING**](#), 2018 CA Sup. Ct. Motions LEXIS 29950

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3507 [**ANDRADE v. JP**](#), 2018 CA Sup. Ct. Motions LEXIS 28090

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3508 [**ISERHIEN v. SELECT PORTFOLIO SERVICING**](#), 2018 CA Sup. Ct. Motions LEXIS 28021

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3509 [**ISERHIEN v. SELECT PORTFOLIO SERVICING**](#), 2018 CA Sup. Ct. Motions LEXIS 28087

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3510 [**OGILVIE v. WELLS FARGO HOME MORTG.**](#), 2017 CA Sup. Ct. Motions LEXIS 41788

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3511 [SIZE IT v. company v.](#), 2017 CA Sup. Ct. Motions LEXIS 30779

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3512 [JTS COMMUNITIES, INC. v. ZB, N.A.](#), 2017 CA Sup. Ct. Motions LEXIS 45377

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3513 [OGILVIE v. WELLS FARGO HOME MORTG.](#), 2017 CA Sup. Ct. Motions LEXIS 41495

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3514 [HRUBY v. PODESTA](#), 2017 CA Sup. Ct. Motions LEXIS 19644

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3515 [JEANETTA MILLION v. SELECT PORTFOLIO SERVICING](#), 2017 CA Sup. Ct. Motions LEXIS 48813

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3516 [JEFFERSON v. SELECT PORTFOLIO SERVICING](#), 2017 CA Sup. Ct. Motions LEXIS 36123

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3517 [THE BANKRUPTCY v. SAFECO INS. CO. OF AMERICA](#), 2017 CA Sup. Ct. Motions LEXIS 23721

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3518 [JEFFERSON v. SELECT PORTFOLIO SERVICING](#), 2017 CA Sup. Ct. Motions LEXIS 36067

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3519 [AGUILAR v. WELLS FARGO BANK, N.A.](#), 2016 CA Sup. Ct. Motions LEXIS 31165

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3520 [JONES v. SELECT PORTFOLIO SERVICING](#), 2016 CA Sup. Ct. Motions LEXIS 34037

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3521 [CASTRO v. SELECT PORTFOLIO SERVICING](#), 2016 CA Sup. Ct. Motions LEXIS 31163

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3522 [JONES v. SELECT PORTFOLIO SERVICING](#), 2016 CA Sup. Ct. Motions LEXIS 34061

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3523 [MCCOY v. PAGE](#), 2015 CA Sup. Ct. Motions LEXIS 31170

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3524 [MCCOY v. PAGE](#), 2015 CA Sup. Ct. Motions LEXIS 10186

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3525 [Zavala v. Wells, Lender Processing Servs.](#), 2015 CA Sup. Ct. Motions LEXIS 8310

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3526 [Zavala v. Wells, Lender Processing Servs.](#), 2015 CA Sup. Ct. Motions LEXIS 1875

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3527 [AGHA-KHAN v. CLEMENT](#), 2014 CA Sup. Ct. Motions LEXIS 1000

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3528 [WEINGAERTNER v. IMAGING RESOURCES](#), 2014 CA Sup. Ct. Motions LEXIS 2235

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3529 [BOREL PRIVATE BANK & TRUST CO. v. TAWFIK](#), 2014 CA Sup. Ct. Motions LEXIS 7981

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3530 [LOANVEST XII v. BUILDER, INC.](#), 2013 CA Sup. Ct. Motions LEXIS 14747

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3531 [GUESS v. YAMPA VALLEY BISON](#), 2017 CO Dist. Ct. Motions LEXIS 11160

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3532 [GUESS v. YAMPA VALLEY BISON](#), 2017 CO Dist. Ct. Motions LEXIS 6598

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3533 [ADVANTAGE BANK v. Claim](#), 2016 CO Dist. Ct. Motions LEXIS 3778

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3534 [Advantage Bank v. Community Bank](#), 2016 CO Dist. Ct. Motions LEXIS 4259

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3535 [ADVANTAGE BANK v. COLORADO COMMUNITY BANK](#), 2016 CO Dist. Ct. Motions LEXIS 3696

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3536 [ADVANTAGE BANK v. COLORADO COMMUNITY BANK](#), 2016 CO Dist. Ct. Motions LEXIS 3051

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3537 [GALLUS v. CONOCO/PHILLIPS CO.](#), 2016 CO Dist. Ct. Motions LEXIS 1737

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3538 [GALLUS v. CONOCO/PHILLIPS CO.](#), 2016 CO Dist. Ct. Motions LEXIS 1681

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3539 [GALLUS v. CONOCO/PHILLIPS CO.](#), 2016 CO Dist. Ct. Motions LEXIS 1904

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3540 [GALLUS v. CONOCO/PHILLIPS CO.](#), 2016 CO Dist. Ct. Motions LEXIS 1376

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3541 [PARKER v. ROSS DRESS FOR LESS, INC.](#), 2013 CO Dist. Ct. Motions LEXIS 6782

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3542 [**CHESAPEAKE BANK & TRUST CO. v. FEAGA**](#), 2012 CO Dist. Ct. Motions LEXIS 4382

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3543 [**CETA v. HILLSGROVE**](#), 2017 CT Sup. Ct. Motions LEXIS 20218

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3544 [**AL-NASSR v. ALI**](#), 2018 D.C. Sup. Ct. Motions LEXIS 1478

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3545 [**AL-NASSR v. ALI**](#), 2018 D.C. Sup. Ct. Motions LEXIS 1448

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3546 [**U.S., INC.**](#), 2022 DE Ch. Ct. Motions LEXIS 631

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3547 [**TRENWICK AMERICA LITIG. TRUST v. ERNST & YOUNG**](#), 2006 DE Ch. Ct. Motions LEXIS 3454

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3548 [**TRENWICK AMERICA LITIG. TRUST v. ERNST & YOUNG**](#), 2006 DE Ch. Ct. Motions LEXIS 740

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3549 [**Agway, Inc. v. Wilson**](#), 2007 DE Sup. Ct. Motions LEXIS 245

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3550 [**21st CENTURY ONCOLOGY v. STOREY**](#), 2017 FL Cir. Ct. Motions LEXIS 10325

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3551 [**21st CENTURY ONCOLOGY v. STOREY**](#), 2017 FL Cir. Ct. Motions LEXIS 10325

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3552 [**21st CENTURY ONCOLOGY v. ROSEN**](#), 2017 FL Cir. Ct. Motions LEXIS 10324

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3553 [**21st CENTURY ONCOLOGY v. ROSEN**](#), 2017 FL Cir. Ct. Motions LEXIS 10324

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3554 [**21st CENTURY ONCOLOGY v. STOREY**](#), 2017 FL Cir. Ct. Motions LEXIS 9678

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3555 [**21st CENTURY ONCOLOGY v. ROSEN**](#), 2017 FL Cir. Ct. Motions LEXIS 9677

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3556 [**TOOLE v. ST. JOSEPH'S HOSP., INC.**](#), 2016 FL Cir. Ct. Motions LEXIS 16641

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3557 [**NOBLE v. LAW OFFICES OF CHAD HAYWARD**](#), 2018 IL Cir. Ct. Motions LEXIS 194

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3558 [UZZOLINO v. MITROW](#), 2018 NJ Sup. Ct. Motions LEXIS 1429

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3559 [TALKING CAPITAL WINDUP LLC v. OMANOFF](#), 2022 NY S. Ct. Motions LEXIS 10514

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3560 [TALKING CAPITAL WINDUP LLC v. OMANOFF](#), 2022 NY S. Ct. Motions LEXIS 10492

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3561 [AKAL TAXI NYC LLC v. CITY OF NEW YORK](#), 2019 NY S. Ct. Motions LEXIS 52151

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3562 [Pergament v. Rubinstein](#), 2018 NY S. Ct. Motions LEXIS 33430

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3563 [ORR v. URBAN AMERICAN MGMT. CORP.](#), 2018 NY S. Ct. Motions LEXIS 22009

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3564 [ORR v. URBAN AMERICAN MGMT. CORP.](#), 2018 NY S. Ct. Motions LEXIS 22981

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3565 [EAGLE MGMT. v. T-CAT CORP.](#), 2017 NY S. Ct. Motions LEXIS 51616

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3566 [YATES CONSTR. CO. v. BOSTIC](#), 2013 NC Sup. Ct. Motions LEXIS 189

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3567 [PHILLIPS & JORDAN, INC. v. BOSTIC](#), 2013 NC Sup. Ct. Motions LEXIS 63

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3568 [AMERICAN MECH., INC. v. BOSTIC](#), 2013 NCBC Motions LEXIS 566

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3569 [AMERICAN MECH., INC. v. BOSTIC](#), 2013 NCBC Motions LEXIS 566

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3570 [PHILLIPS & JORDAN, INC. v. BOSTIC](#), 2010 NCBC Motions LEXIS 358

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3571 [BANK OF AMERICA, N.A. v. WILSON](#), 2019 OH C.P. Ct. Motions LEXIS 5058

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3572 [REVEILLE II LLC v. ION](#), 2010 OH C.P. Ct. Motions LEXIS 16284

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- 3573 [**CHICAGO TITLE INS. CO. v. STEWART ABSTRACT & TITLE OF OKLAHOMA**](#), 2010 OK Dist. Ct.
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- 3574 [**DAVID G. OBERDICK, Plaintiff, vs. TRIZECHAHN GATEWAY, LLC, et al., Defendants. SALLY OBERDICK, Plaintiff, vs. TRIZECHAHN GATEWAY, LLC, et al., Defendants.**](#), 2016 PA C.P. Ct.
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- 3575 [**OBERDICK v. TRIZECHAHN GATEWAY**](#), 2016 PA C.P. Ct. Motions LEXIS 7263

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- 3576 [**OBERDICK v. TRIZECHAHN GATEWAY, LLC, TRIZEC R&E HOLDINGS**](#), 2015 PA C.P. Ct. Motions LEXIS 1308

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- 3577 [**OBERDICK v. TRIZECHAHN GATEWAY, LLC, TRIZEC R&E HOLDINGS**](#), 2015 PA C.P. Ct. Motions LEXIS 1307

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- 3578 [**SANDOW v. CALVERT**](#), 2014 PA C.P. Ct. Motions LEXIS 6505

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- 3579 [**PNC BANK v. BOZZO**](#), 2010 PA C.P. Ct. Motions LEXIS 3009

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- 3580 [**AUSTIN v. MORTGAGE**](#), 2020 TX Dist. Ct. Motions LEXIS 20416

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3581 [**BOUMANS v. HOELZER**](#), 2011 TX Dist. Ct. Motions LEXIS 10549

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3582 [**KARLINS v. MID-CONTINENT CAS. CO.**](#), 2011 TX Dist. Ct. Motions LEXIS 7032

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3583 [**BOCCARD USA CORP. v. RAYTHEON CO.**](#), 2010 TX Dist. Ct. Motions LEXIS 6350

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3584 [**TOW v. PAGANO**](#), 2006 TX Dist. Ct. Motions LEXIS 657

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3585 [**HELM COS. v. HELM**](#), 2003 TX Dist. Ct. Motions LEXIS 669

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3586 [**VAN UPP v. BRADLOW**](#), 2010 U.S. Dist. Ct. Pleadings LEXIS 7635

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3587 [**US AIRLINE PILOTS ASS'N v. PENSION BEN. GUAR. CORP.**](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 40642

Content: Court Filings | **Date:** September 2, 2009

3588 [**Richards v. Stevens**](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 7902

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3589 [MACKENZIE v. LEONARD](#), 2008 U.S. Dist. Ct. Pleadings LEXIS 19519

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3590 [SHARP v. HAMILTON](#), 2008 U.S. Dist. Ct. Pleadings LEXIS 3491

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3591 [SHARP v. HAMILTON](#), 2007 U.S. Dist. Ct. Pleadings LEXIS 11773

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3592 [Mac-Truong v. Winfield](#), 2006 U.S. Dist. Ct. Pleadings LEXIS 5923

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3593 [MAC TRUONG v. STEVEN P. KARTZMAN](#), 2006 U.S. Dist. Ct. Pleadings LEXIS 8403

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3594 [GREEN v. AMERICAN INT'L GROUP](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 349

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3595 [MAYBERRY v. AMERICAN INT'L GROUP](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 343

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3596 [**POOLE v. AMERICAN INT'L GROUP**](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 330

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3597 [**POOLE-REESE v. AMERICAN INT'L GROUP**](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 333

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3598 [**TURNER v. AMERICAN INT'L GROUP**](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 339

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3599 [**MASON v. AMERICAN INT'L GROUP**](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 336

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3600 [**COPE v. AMERICAN INT'L GROUP**](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 335

Content: Court Filings | **Date:** August 8, 2005

3601 [**SCHWARZ v. PRINCIPAL MUT. LIFE INS. CO.**](#), 1999 U.S. Dist. Ct. Pleadings LEXIS 257

Content: Court Filings | **Date:** February 22, 1999

3602 [**SCHWARZ v. PRINCIPAL MUT. LIFE INS. CO.**](#), 1998 U.S. Dist. Ct. Pleadings LEXIS 123

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3603 [**DEREMO v. FIRST SAV. BANK**](#), 2018 U.S. Dist. Ct. Pleadings LEXIS 101231

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3604 [Zeko Inv. Corp. v. M&L Restaurant Group LLC](#), 2018 U.S. Dist. Ct. Pleadings LEXIS 90481

Content: Court Filings | **Date:** June 7, 2018

3605 [Shoemaker v. United States](#), 2018 U.S. Dist. Ct. Pleadings LEXIS 9337

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3606 [United States v. Liberty Mut. Ins. Co.](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 36415

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3607 [CLARK v. MIDLAND CREDIT MGMT.](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 42064

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3608 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 37759

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3609 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 10068

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3610 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 31117

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3611 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 31116

Content: Court Filings | **Date:** January 29, 2016

3612 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 11467

Content: Court Filings | **Date:** January 29, 2016

3613 [Wright v. Stretch](#), 2016 U.S. Dist. Ct. Pleadings LEXIS 11466

Content: Court Filings | **Date:** January 29, 2016

3614 [ANTIOCH LITIG. TRUST, MILLER v. McDERMOTT](#), 2013 U.S. Dist. Ct. Pleadings LEXIS 11854

Content: Court Filings | **Date:** March 25, 2013

3615 [G&G INVS., INC.](#), 2010 U.S. Dist. Ct. Pleadings LEXIS 5373

Content: Court Filings | **Date:** July 6, 2010

3616 [BERNARD](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 36163

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3617 [DIEKEMPER](#), 2008 U.S. Dist. Ct. Pleadings LEXIS 7933

Content: Court Filings | **Date:** September 15, 2008

3618 [SHADE, INC.](#), 2007 U.S. Dist. Ct. Pleadings LEXIS 14452

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3619 [Steven P. Kartzman](#), 2006 U.S. Dist. Ct. Pleadings LEXIS 8404

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- 3620 [Senior Cottages of America, LLC](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 27637

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- 3621 [Senior Cottages of America, LLC](#), 2005 U.S. Dist. Ct. Pleadings LEXIS 27635

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- 3622 [AMERICAN TISSUE, INC., a Chapter 11 bankruptcy debtor-in possession, Plaintiff, - against - ARTHUR ANDERSEN, L.L.P., Defendant](#), 2002 U.S. Dist. Ct. Pleadings LEXIS 6842

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- 3623 [Visconti v. Visconti](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 4069

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- 3624 [In the Matter -of- S.W. BACH & CO.](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 1384

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- 3625 [C. F. GRAPHICS, INC. v. FOCA](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1384

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- 3626 [MEININGER v. KHANANI](#), 2004 U.S. Bankr. Ct. Pleadings LEXIS 230

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- 3627 [BAUMAN v. POST \(In re POST\)](#), 2004 U.S. Bankr. Ct. Pleadings LEXIS 176

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3628 [R. WOOLSEY & ASSOCS., INC.](#), 2011 U.S. Bankr. Ct. Pleadings LEXIS 306

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3629 [REPUBLIC WINDOWS & DOORS](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 2768

Content: Court Filings | **Date:** December 11, 2010

3630 [REPUBLIC WINDOWS & DOORS](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 2767

Content: Court Filings | **Date:** December 11, 2010

3631 [REPUBLIC WINDOWS & DOORS](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 2766

Content: Court Filings | **Date:** December 10, 2010

3632 [Ungar v Ungar](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 4210

Content: Court Filings | **Date:** September 27, 2010

3633 [BAILEY](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 2727

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3634 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 118

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3635 [WELLS](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 2760

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3636 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 117

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3637 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 116

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3638 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 115

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3639 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 114

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3640 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 113

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3641 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 112

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3642 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 111

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3643 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 110

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3644 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 109

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3645 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 108

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3646 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 107

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3647 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 106

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3648 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 105

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3649 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 104

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3650 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 103

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3651 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 102

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3652 [KNIGHT-CELOTEX](#), 2010 U.S. Bankr. Ct. Pleadings LEXIS 101

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3653 [BEERY](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 3077

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3654 [ROBERT DEAN SCHOOLER & TINA MARIE SCHOOLER](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 3080

Content: Court Filings | **Date:** November 2, 2009

3655 [WILLIS](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 3058

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3656 [WIEDERHOLD](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 415

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3657 [Yerushalmi](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 2696

Content: Court Filings | **Date:** July 24, 2009

3658 [SCOTT](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 461

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3659 [Stepka](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 1385

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3660 [SMITH MINING & MATERIALS](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 160

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3661 [CMGT](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 2

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3662 [Yerushalmi](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 2694

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3663 [SABA ENTERPRISES](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 556

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3664 [FOUR STAR FIN. SERVS.](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 2463

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3665 [DESITIN BAKER](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1008

Content: Court Filings | **Date:** October 27, 2008

3666 [BLAKE](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 966

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3667 [Boccia](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1186

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3668 [BROUILLETTE](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1504

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3669 [Dooley](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1300

Content: Court Filings | **Date:** March 4, 2008

3670 [BLAKE](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 963

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3671 [DECORA](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 30

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3672 [NOORI](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 2867

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3673 [CMGT, INC.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 576

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3674 [SWANSON](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 1766

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3675 [BLOXSOM](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 540

Content: Court Filings | **Date:** August 8, 2007

3676 [Carolina Acoustical & Flooring, Inc.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 2942

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3677 [Carolina Acoustical & Flooring, Inc.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 555

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3678 [McLAUGHLIN](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 614

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3679 [NAUT](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 390

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3680 [Cersosimo](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 2869

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3681 [TOM'S FOODS INC. v. DEWEY](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 1508

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3682 [TOM'S FOODS INC. v. DELOITTE](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 1507

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3683 [TOM'S FOODS INC. v. MICHAEL](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 1506

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3684 [TOM'S FOODS INC. v. McDERMOTT](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 1505

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3685 [POLO BUILDERS, INC.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 183

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3686 [C. LYNCH BUILDERS, INC.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 186

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3687 [BROWN](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 466

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3688 [Price](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 126

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3689 [EBW LASER, INC.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 518

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3690 [EATON FERRY SALES & SERV., INC.](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 231

Content: Court Filings | **Date:** January 13, 2007

3691 [DILLARD](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 378

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3692 [BUCCOLO, Lori](#), 2007 U.S. Bankr. Ct. Pleadings LEXIS 2175

Content: Court Filings | **Date:** January 5, 2007

3693 [SCHMIDT](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 783

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3694 [AMERICAN TISSUE](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 538

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3695 [CHATITLEY v. STONE](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 788

Content: Court Filings | **Date:** November 20, 2006

3696 [ROCKFORT BUILDERS, INC.](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 613

Content: Court Filings | **Date:** November 15, 2006

3697 [LEXINGTON HEALTHCARE GROUP, INC.](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 619

Content: Court Filings | **Date:** November 9, 2006

3698 [**DYNAMIC TOOLING SYS.**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 264

Content: Court Filings | **Date:** July 20, 2006

3699 [**KING**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 1240

Content: Court Filings | **Date:** July 11, 2006

3700 [**BALDWIN**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 1388

Content: Court Filings | **Date:** June 30, 2006

3701 [**RMM PRACTICE MGMT., INC.**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 2695

Content: Court Filings | **Date:** May 26, 2006

3702 [**CRCGP LLC**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 1151

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3703 [**SANABRIA**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 2315

Content: Court Filings | **Date:** February 17, 2006

3704 [**DeRise**](#), 2006 U.S. Bankr. Ct. Pleadings LEXIS 2062

Content: Court Filings | **Date:** January 9, 2006

3705 [**HEAD GRADING CO., INC.**](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 930

Content: Court Filings | **Date:** December 28, 2005

3706 [SAMI ABDELMASSIA](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 410

Content: Court Filings | **Date:** December 28, 2005

3707 [Oko](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 1130

Content: Court Filings | **Date:** November 8, 2005

3708 [MULBERRY CORP.](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 325

Content: Court Filings | **Date:** October 12, 2005

3709 [CRCGP LLC](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 878

Content: Court Filings | **Date:** July 15, 2005

3710 [CRCGP LLC](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 877

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3711 [ST. HILL](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 1549

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3712 [Chicago Truck Ctr., Inc.](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 1151

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3713 [WAMSLEY](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 1118

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3714 [Alan H. Reisner & Elisa K. Reisner](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 430

Content: Court Filings | **Date:** January 5, 2005

3715 [MONAHAN FORD CORP. OF FLUSHING](#), 2004 U.S. Bankr. Ct. Pleadings LEXIS 347

Content: Court Filings | **Date:** October 15, 2004

3716 [MARYLAND K.C. INC.](#), 2004 U.S. Bankr. Ct. Pleadings LEXIS 220

Content: Court Filings | **Date:** August 9, 2004

3717 [GULF STATES PETROLEUM CORP.](#), 2004 U.S. Bankr. Ct. Pleadings LEXIS 172

Content: Court Filings | **Date:** June 14, 2004

3718 [JRA 222, INC.](#), 2003 U.S. Bankr. Ct. Pleadings LEXIS 86

Content: Court Filings | **Date:** June 6, 2003

3719 [COMPUTER PERSONALITIES SYS.](#), 2003 U.S. Bankr. Ct. Pleadings LEXIS 239

Content: Court Filings | **Date:** March 21, 2003

3720 [CONSOLIDATED INDUS. CORP.](#), 2003 U.S. Bankr. Ct. Pleadings LEXIS 141

Content: Court Filings | **Date:** February 11, 2003

3721 [**CONSOLIDATED INDUS. CORP.**](#), 2003 U.S. Bankr. Ct. Pleadings LEXIS 140

Content: Court Filings | **Date:** February 11, 2003

3722 [**TOLAND v. HEIRS OF KAYE S. HARDIN**](#), 2019 AR Cir. Ct. Pleadings LEXIS 5158

Content: Court Filings | **Date:** May 8, 2019

3723 [**HAMPTON v. WELLS FARGO BANK, N.A.**](#), 2019 AR Cir. Ct. Pleadings LEXIS 4611

Content: Court Filings | **Date:** April 11, 2019

3724 [**RIZO v. PINZON AUTO SALES**](#), 2020 CA Sup. Ct. Pleadings LEXIS 121064

Content: Court Filings | **Date:** October 9, 2020

3725 [**SILK v. UNITED AUTO CREDIT CORP.**](#), 2019 CA Sup. Ct. Pleadings LEXIS 209691

Content: Court Filings | **Date:** December 13, 2019

3726 [**CARPENTER v. UNITED AUTO CREDIT CORP.**](#), 2019 CA Sup. Ct. Pleadings LEXIS 197535

Content: Court Filings | **Date:** April 19, 2019

3727 [**STERZENBACH v. BERNARD**](#), 2018 CA Sup. Ct. Pleadings LEXIS 112535

Content: Court Filings | **Date:** October 26, 2018

3728 [**DAVID K. GOTTLIEB, solely in his capacity as chptr. 7 trustee for the estate of Thomas R. D'Arco v. ALEXANDER**](#), 2017 CA Sup. Ct. Pleadings LEXIS 61548

Content: Court Filings | **Date:** April 11, 2017

3729 [AGUILAR v. WELLS FARGO BANK, N.A.](#), 2017 CA Sup. Ct. Pleadings LEXIS 58743

Content: Court Filings | **Date:** January 13, 2017

3730 [ANDREA A. WTRUM, Trustee Of The Chapter 7 Estate Of Chadwick Clark Ertola, PLAINTIFF vs. JOHN CHIANG, CALIFORNIA STATE CONTROLLER, DEFENDANT](#), 2007 CA Sup. Ct. Pleadings LEXIS 27020

Content: Court Filings | **Date:** December 21, 2007

3731 [RIVERA v. SANTANDER CONSUMER USA, INC.](#), 2012 FL Cir. Ct. Pleadings LEXIS 4534

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3732 [POWER v. SANTANDER CONSUMER USA, INC.](#), 2011 FL Cir. Ct. Pleadings LEXIS 1064

Content: Court Filings | **Date:** October 4, 2011

3733 [WBL v. v.](#), 2020 FL Cir. Ct. Pleadings LEXIS 8389

Content: Court Filings | **Date:** September 16, 2020

3734 [CREWS v. COBB LUXURY CARS, INC.](#), 2022 GA Sup. Ct. Pleadings LEXIS 9303

Content: Court Filings | **Date:** July 11, 2022

3735 [COOPER v. MONTEZUMA'S REVENGE, INC.](#), 2021 GA Sup. Ct. Pleadings LEXIS 29320

Content: Court Filings | **Date:** November 18, 2021

3736 [BOYD v. SANTANDER CONSUMER USA, INC.](#), 2021 GA Sup. Ct. Pleadings LEXIS 2523

Content: Court Filings | **Date:** March 15, 2021

3737 [**BULLOCK v. CLASSIC CADILLAC ATLANTA CORP.**](#), 2017 GA Sup. Ct. Pleadings LEXIS 9320

Content: Court Filings | **Date:** October 16, 2017

3738 [**BULLOCK v. CLASSIC CADILLAC ATLANTA CORP.**](#), 2017 GA Sup. Ct. Pleadings LEXIS 13579

Content: Court Filings | **Date:** August 9, 2017

3739 [**WILLIAMS v. SAVANNAH HYUNDAI INC.**](#), 2017 GA Sup. Ct. Pleadings LEXIS 22887

Content: Court Filings | **Date:** May 26, 2017

3740 [**Steil v. Chemence, Inc.**](#), 2021 GA Misc. Ct. Pleadings LEXIS 17482

Content: Court Filings | **Date:** February 19, 2021

3741 [**CULBERTSON v. WELLS FARGO USA HOLDINGS**](#), 2020 LA Dist. Ct. Pleadings LEXIS 32

Content: Court Filings | **Date:** December 2, 2020

3742 [**CULBERTSON v. WELLS FARGO USA HOLDINGS**](#), 2019 LA Dist. Ct. Pleadings LEXIS 937

Content: Court Filings | **Date:** March 28, 2019

3743 [**CULBERTSON v. WELLS FARGO USA HOLDINGS**](#), 2019 LA Dist. Ct. Pleadings LEXIS 941

Content: Court Filings | **Date:** March 20, 2019

3744 [COHEN v. REHAB AT WORK, CORP.](#), 2014 MD Cir. Ct. Pleadings LEXIS 193

Content: Court Filings | **Date:** March 25, 2014

3745 [US Bank Nat'l Ass'n v. Ponder](#), 2009 OH C.P. Ct. Pleadings LEXIS 8977

Content: Court Filings | **Date:** December 4, 2009

3746 [MEADOWS OF COPLEY HOMEOWNERS ASS'N, INC. v. LASONYA M](#), 2008 OH C.P. Ct. Pleadings LEXIS 18398

Content: Court Filings | **Date:** March 20, 2008

3747 [WOODLANDS PHASE II HOMEOWNERS ASS'N, INC. v. DOE](#), 2008 OH C.P. Ct. Pleadings LEXIS 13774

Content: Court Filings | **Date:** February 28, 2008

3748 [SIKIRICA v. JOHN J. STEIGHNER, STEIGHNER CRANE SERV.](#), 2021 PA C.P. Ct. Pleadings LEXIS 5623

Content: Court Filings | **Date:** May 19, 2021

3749 [THOMAS v. ALLIANCEONE & CAPITAL ONE BANK USA](#), 2019 SC Cir. Ct. Pleadings LEXIS 3982

Content: Court Filings | **Date:** March 11, 2019

3750 [AUSTIN v. MORTGAGE](#), 2020 TX Dist. Ct. Pleadings LEXIS 26707

Content: Court Filings | **Date:** May 28, 2020

3751 [AUSTIN v. MORTGAGE](#), 2020 TX Dist. Ct. Pleadings LEXIS 25628

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3752 [AUSTIN v. MORTGAGE](#), 2020 TX Dist. Ct. Pleadings LEXIS 20544

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3753 [CHARLES v. EXETER FIN. CORP.](#), 2016 TX Dist. Ct. Pleadings LEXIS 22687

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3754 [LONG v. FIRST RESOLUTION INV. CORP.](#), 2019 WA Sup. Ct. Pleadings LEXIS 20634

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Other Citations

3755 [2012 Va. Legal Ethics Ops. LEXIS 3](#)

Content: Other Citations | **Date:** February 21, 2012

3756 [1985 FHLBB LEXIS 140](#)

Content: Other Citations | **Date:** August 27, 1985

End of Document

11 USCS § 704

Current through Public Law 118-106, approved October 4, 2024.

United States Code Service > TITLE 11. BANKRUPTCY (§§ 101 — 1532) > CHAPTER 7. Liquidation (Subchs. I — V) > Subchapter I. Officers and Administration (§§ 701 — 707)

§ 704. Duties of trustee

(a) The trustee shall—

- (1)** collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
- (2)** be accountable for all property received;
- (3)** ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title [[11 USCS § 521\(a\)\(2\)\(B\)](#)];
- (4)** investigate the financial affairs of the debtor;
- (5)** if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
- (6)** if advisable, oppose the discharge of the debtor;
- (7)** unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
- (8)** if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;
- (9)** make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
- (10)** if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);
- (11)** if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 [[29 USCS § 1002](#)]) of an employee benefit plan, continue to perform the obligations required of the administrator; and
- (12)** use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—
 - (A)** is in the vicinity of the health care business that is closing;

- (B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and
- (C) maintains a reasonable quality of care.

(b)

- (1) With respect to a debtor who is an individual in a case under this chapter—
- (A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b) [[11 USCS § 707\(b\)](#)]; and
- (B) not later than 7 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.
- (2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) [[11 USCS § 707\(b\)](#)] or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) [[11 USCS § 707\(b\)](#)] and the product of the debtor's current monthly income, multiplied by 12 is not less than—
- (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or
- (B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)

- (1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—
- (A)
- (i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act [[42 USCS §§ 664](#) and [666](#)] for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;
- (ii) include in the notice provided under clause (iii) the address and telephone number of such State child support enforcement agency; and
- (iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter [[11 USCS §§ 701](#) et seq.];
- (B)
- (i) provide written notice to such State child support enforcement agency of such claim; and
- (ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and
- (C) at such time as the debtor is granted a discharge under section 727 [[11 USCS § 727](#)], provide written notice to such holder and to such State child support enforcement agency of—
- (i) the granting of the discharge;
- (ii) the last recent known address of the debtor;
- (iii) the last recent known name and address of the debtor's employer; and

- (iv) the name of each creditor that holds a claim that—
- (I) is not discharged under paragraph (2), (4), or (14A) of section 523(a) [11 USCS § 523(a)]; or
 - (II) was reaffirmed by the debtor under section 524(c) [[11 USCS § 524\(c\)](#)].
- (2)
- (A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.
- (B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

History

HISTORY:

Nov. 6, 1978, [P. L. 95-598](#), Title I, § 101, [92 Stat. 2605](#); July 10, 1984, [P. L. 98-353](#), Title III, Subtitle A, § 311(a), Subtitle H, § 474, [98 Stat. 355](#), 381; Oct. 27, 1986, [P.L. 99-554](#), Title II, Subtitle A, § 217, [100 Stat. 3100](#); April 20, 2005, [P. L. 109-8](#), Title I, § 102(c), Title II, Subtitle B, § 219(a), Title IV, Subtitle B, § 446(b), Title XI, § 1105(a), 119 Stat. 32, 55, 118, 192; May 7, 2009, [P. L. 111-16](#), § 2(7), 123 Stat. 1607; Dec. 22, 2010, [P. L. 111-327](#), § 2(a)(24), 124 Stat. 3560.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Effective date of section:

Amendment Notes

1984.

1986.

2005.

2009.

2010.

Other provisions:

Prior law and revision:

Legislative Statements.

Section 704(8) of the Senate amendment is deleted in the House amendment. Trustees should give constructive notice of the commencement of the case in the manner specified under section 549(c) of title 11.

Senate Report No. 95-989.

The essential duties of the trustee are enumerated in this section. Others, or elaborations on these, may be prescribed by the Rules of Bankruptcy Procedure to the extent not inconsistent with those prescribed by this section. The duties are derived from section 47a of the Bankruptcy Act [section 75(a) of former title 11].

The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.

The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. If the business of the debtor is authorized to be operated, then the trustee is required to file with governmental units charged with the responsibility for collection or determination of any tax arising out of the operation of the business periodic reports and summaries of the operation, including a statement of receipts and disbursements, and such other information as the court requires. He is required to give constructive notice of the commencement of the case in the manner specified under section 342(b).

Effective date of section:

This section became effective on October 1, 1979, pursuant to § 402(a) of Act Nov. 6, 1978, [P. L. 95-598](#), which appears as [11 USCS prec § 101](#) note.

Amendment Notes

1984.

Act July 10, 1984, in para. (1), deleted "up" following "close", redesignated former paras. (3)–(8) as paras. (4)–(9), respectively, and inserted new para. (3).

1986.

Act Oct. 27, 1986 (effective and applicable as provided by § 302 of such Act, which appears as 28 USCS § 581 note), in para. (8), inserted ", with the United States trustee," and "the United States trustee or"; and in para. (9), inserted "and with the United States trustee".

2005.

Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as 11 USCS § 101 note), designated the existing provisions as subsec. (a) and, in such subsection as so designated, in para. (8), deleted "and" following the concluding semicolon, in para. (9), substituted the concluding semicolon for a period, and added paras. (10)–(12); and added subsecs. (b) and (c).

2009.

Act May 7, 2009 (effective on 12/1/2009, as provided by § 7 of such Act, which appears as 11 USCS § 109 note), in subsec. (b)(1)(B), substituted "7 days" for "5 days".

2010.

Act Dec. 22, 2010, in subsec. (a)(3), substituted “521(a)(2)(B)” for “521(2)(B)”.

Other provisions:

Application of July 10, 1984 amendments. Act July 10, 1984, *P. L.* 98-353, Title III, Subtitle K, § 553(a), [98 Stat. 392](#), which appears as [11 USCS § 101](#) note, provided that the amendments made to this section by such Act are applicable to cases filed 90 days after enactment on July 10, 1984.

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I. IN GENERAL

A. Generally

1. Generally

Chapter 7 trustee under [11 USCS § 704](#) represents not only rights of debtor but also interests of creditors of debtor. *Koch Refining v. Farmers Union Cent. Exchange, Inc.*, 831 F.2d 1339, *Bankr. L. Rep. (CCH)* ¶ 72009, 18 *Collier Bankr. Cas. 2d (MB)* 84, 1987 U.S. App. LEXIS 14454 (7th Cir. 1987), cert. denied, 485 U.S. 906, 108 S. Ct. 1077, 99 L. Ed. 2d 237, 1988 U.S. LEXIS 1020 (1988).

Trustee does not represent creditors alone; he must protect interests of bankrupt and provide for payment of administrative costs. *B & L Farms Co. v. United States*, 238 F. Supp. 407, 15 A.F.T.R.2d (RIA) 155, *Bankr. L. Rep. (CCH)* ¶ 61141, 1964-2 U.S. Tax Cas. (CCH) ¶ 9627, 64-2 U.S. Tax Cas. (CCH) ¶ 9627, 65-1 U.S. Tax Cas. (CCH) ¶ 9345, 1964 U.S. Dist. LEXIS 9652 (S.D. Fla. 1964), aff'd, [368 F.2d 571, 19 A.F.T.R.2d \(RIA\) 737, Bankr. L. Rep. \(CCH\)](#) ¶ 62036, 1967-1 U.S. Tax Cas. (CCH) ¶ 9285, 1966 U.S. App. LEXIS 4186 (5th Cir. 1966).

By virtue of Supremacy Clause, trustee's ability to examine witnesses pursuant to [11 USCS § 704](#) and Bankruptcy Rule 2004 cannot be limited by operation of state law. *In re Kreiss*, 46 B.R. 164, 12 Bankr. Ct. Dec. (LRP) 895, *Bankr. L. Rep. (CCH)* ¶ 70251, 1985 *Bankr. LEXIS 6749* (*Bankr. E.D.N.Y. 1985*).

Trustee cannot under [11 USCS § 704](#) delegate duties to his attorney, and failure of trustee to personally perform statutory duties including marshaling and selling assets and examining debtor's records warrant trustee's removal for cause notwithstanding attorney's efforts. *In re Island Amusement, Inc.*, 74 B.R. 18, 1987 *Bankr. LEXIS 1273* (*Bankr. D.P.R. 1987*).

Court will remove Chapter 7 trustee under [11 USCS § 704](#) where trustee has: (1) failed to investigate or avoid possible preferences; (2) failed to furnish information about estate requested by party in interest; and (3) intentionally violated court order requiring it to employ outside attorney on general retainer. *In re Schoen Enterprises, Inc.*, 76 B.R. 203, 1987 *Bankr. LEXIS 1238* (*Bankr. M.D. Fla. 1987*).

Court reviewed [11 USCS §§ 726, 704, 503, 507](#) and did not find authorization to include trustee's counsel's fees in base for his compensation. [In re Testaverde, 317 B.R. 51, 2004 U.S. Dist. LEXIS 23594 \(E.D.N.Y. 2004\)](#).

Chapter 7 trustee is vested with certain powers to help her perform her duties, including marshaling of assets per [11 USCS § 704](#) and ability to avoid certain pre-petition transfers and unauthorized post-petition transfers, but trustee's powers are measured as of commencement of bankruptcy case and only extend to property that was property of estate at time case was filed. [Limor v. First Nat'l Bank \(In re Cumberland Molded Prods., LLC\), 431 B.R. 718, 53 Bankr. Ct. Dec. \(LRP\) 82, Bankr. L. Rep. \(CCH\) ¶ 81858, 64 Collier Bankr. Cas. 2d \(MB\) 174, 72 U.C.C. Rep. Serv. 2d \(CBC\) 247, 2010 Bankr. LEXIS 1853 \(6th Cir. 2010\)](#).

[11 USCS § 704](#) requires clerk of court to "provide copy" of U.S. Trustee's statement to all creditors, but does not require that statement be "served" and does not even require Clerk to provide copy to debtor; in case at bar, use of "docket sheet statement" actually provided copy to creditors faster, and at less expense both for court and for creditors. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\)](#).

2. Purpose

Chapter 7, which contains Code's liquidation provisions, is designed to alleviate inequities and inefficiencies of state "grab law" by requiring similarly situated unsecured creditors to share debtor's nonexempt property equally. [In re Poage, 92 B.R. 659, 1988 Bankr. LEXIS 1782 \(Bankr. N.D. Tex. 1988\)](#).

Chapter 7 is based on premise that property of debtor's estate is held in trust for creditors and therefore, creditors should be permitted to supervise collection and liquidation of debtor's estate. [In re Poage, 92 B.R. 659, 1988 Bankr. LEXIS 1782 \(Bankr. N.D. Tex. 1988\)](#).

3. Construction

Nothing inherent in term "statement" requires statement to be written; requirement that statement be "filed with court" suggests that oral statement will not suffice, and suggests that need for documentation in some form that is preserved in court's records; a docket entry is, like all current pleadings in bankruptcy court, not tangible, but is series of electronic pulses that are interpreted by software and displayed to user by plasma, LCD, or cathode ray tube technology. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\)](#).

4. Applicability to Chapter 7, 11, 12 and 13 cases

Plaintiff's Fair Debt Collection Practices Act, [15 USCS §§ 1692–1692p](#), suit was improperly dismissed for lack of standing on ground that her Chapter 13 bankruptcy case was pending as, due to differences between Chapter 7 and Chapter 13 (such as between [11 USCS § 1302\(b\)](#) and [11 USCS § 704\(a\)](#), and based on rights of Chapter 13 debtor pursuant to [11 USCS § 1103](#)), it had been held that Chapter 13 debtors could bring claims in their own names on behalf of estate, in furtherance of [11 USCS § 1306](#); such conclusion was supported not only by legislative history but also by [Fed. R. Bankr. P. 6009. Smith v. Rockett, 522 F.3d 1080, Bankr. L. Rep. \(CCH\) ¶ 81215, 2008 U.S. App. LEXIS 7975 \(10th Cir. 2008\)](#).

Benefit plans argued that they may be prejudiced by waiting for end of bankruptcy case and that later appeal may be futile if insufficient funds remained to pay their claim, but this potential prejudice did not directly result from denial of motion to show cause; rather, bankruptcy code dictated order of distribution for property of Chapter 7 debtor, [11 USCS § 726](#), and trustee's duties with regard to Chapter 7 case, [11 USCS § 704](#); thus, this finality factor did does not weigh in plans' favor. [Contrs., Laborers, Teamsters & Eng'r Health & Welfare Plan v. Killips \(In re M & S Grading, Inc.\), 526 F.3d 363, 49 Bankr. Ct. Dec. \(LRP\) 265, Bankr. L. Rep. \(CCH\) ¶ 81254, 44 Employee Benefits Cas. \(BNA\) 1351, 2008 U.S. App. LEXIS 10364 \(8th Cir. 2008\)](#).

Debtor engaged in business in Chapter 13 proceeding must perform duties of trustee specified in [11 USCS § 704](#), including duty to make periodic reports and summaries of operation of business, and Bankruptcy Court will convert Chapter 13 proceeding to Chapter 7 liquidation where debtors fail, for over 2 months after cessation of business only 2 weeks after Chapter 13 petition was filed, to file any sort of report from which trustee or creditors could ascertain nature and extent of conduct of business, making services of Chapter 7 trustee to investigate debtors' affairs necessary, in best interest of estate and creditors. [In re Elkin, 5 B.R. 21, 6 Bankr. Ct. Dec. \(LRP\) 92, 1 Collier Bankr. Cas. 2d \(MB\) 967, 1980 Bankr. LEXIS 5401 \(Bankr. S.D. Cal. 1980\)](#).

By virtue of [11 USCS § 1107](#) and [11 USCS § 704](#), a Chapter 11 debtor in possession must maintain and file records and operating reports. [In re Horn & Hardart Baking Co., 22 B.R. 668, 7 Collier Bankr. Cas. 2d \(MB\) 65, 1982 Bankr. LEXIS 3476 \(Bankr. E.D. Pa. 1982\)](#).

Omission of [11 USCS § 704\(1\)](#) from Chapter 13 trustee's duties cannot be read so far as to preclude use of Chapter 5 avoidance powers by Chapter 13 trustee. [In re Johnson, 26 B.R. 381, 1982 Bankr. LEXIS 5154 \(Bankr. D. Colo. 1982\)](#).

Where Chapter 11 debtor's former counsel did not obtain protection of order of court permitting management arrangement, Chapter 11 debtor and its controlling officer remain accountable for property of debtor pursuant to [11 USCS § 704\(2\)](#); trustee may recover from controlling officer compensation for those items for which officer is accountable. [In re Mr. Henry's Waldorf, Inc., 34 B.R. 866, 1983 Bankr. LEXIS 5111 \(Bankr. D. Md. 1983\)](#).

It is clear from [11 USCS § 704](#) that trustee is fiduciary vis-a-vis his estate responsibilities; this is also true of debtor in possession by virtue of [11 USCS § 1107](#); as fiduciaries, debtors in possession must put aside private concerns and take only steps that are for greater good of estate, and debtors in possession who operate business will not be permitted to purchase home from assets of estate. [In re Thurmond, 41 B.R. 464, 1983 Bankr. LEXIS 5697 \(Bankr. D. Or. 1983\)](#).

Chapter 11 trustee cannot argue that payments made to self as president of radio station, which is wholly owned by debtors, and payments made to others out of radio station funds, are not subject to reporting and supervision under [11 USCS § 704](#) in that radio station is corporation, and thus is entity separate from debtors, because [11 USCS § 541\(a\)\(1\)](#) includes within estate all equitable interests of debtors, which in this case includes wholly owned radio station. [In re Baker, 68 B.R. 360, 15 Bankr. Ct. Dec. \(LRP\) 439, Bankr. L. Rep. \(CCH\) ¶ 71590, 16 Collier Bankr. Cas. 2d \(MB\) 42, 1986 Bankr. LEXIS 4719 \(Bankr. D. Or. 1986\)](#).

Bankruptcy court concluded, based on overwhelming evidence, that value of debtors if sold under Chapter 7 under [11 USCS §§ 704, 721](#), even as going concern, was less than value being paid to senior lenders under plan; court concluded that requirements of [11 USCS § 1129\(a\)\(7\)](#) were met. [In re Lason, Inc., 300 B.R. 227, 41 Bankr. Ct. Dec. \(LRP\) 278, 2003 Bankr. LEXIS 1324 \(Bankr. D. Del. 2003\)](#).

Under plain meaning of [11 USCS § 326\(a\)](#), Chapter 7 trustee was not allowed to recover where cases were converted to Chapter 13 before trustee had made any distributions or turned over any money in cases, and without disbursements, there could be no calculation of compensation; further nature of duties under [11 USCS § 704](#) supported notion that Chapter 7 trustees should not expect compensation for performing them except in accordance with Bankruptcy Code. [In re Silvus, 329 B.R. 193, 2005 Bankr. LEXIS 1668 \(Bankr. E.D. Va. 2005\)](#).

Variations in results produced by uniformly calculated national statistics were of no constitutional consequence to Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) and its means test calculations found in [11 USCS §§ 704\(b\), 707\(b\)\(2\), 1325\(b\)\(3\) and 1325\(b\)\(4\)](#); BAPCPA was uniform law on subject of bankruptcies; therefore it had been properly enacted under [U.S. Const. art. I, § 8, cl. 4. Schultz v. United States, 369 B.R. 349, Bankr. L. Rep. \(CCH\) ¶ 80955, 2007 U.S. Dist. LEXIS 35263 \(E.D. Tenn. 2007\), aff'd, 529 F.3d 343, 2008 FED App. 0206P, 50 Bankr. Ct. Dec. \(LRP\) 26, Bankr. L. Rep. \(CCH\) ¶ 81255, 59 Collier Bankr. Cas. 2d \(MB\) 1405, 2008 U.S. App. LEXIS 11686 \(6th Cir. 2008\)](#).

There was no merit to creditors' claim that Chapter 13 trustee did not have authority under [11 USCS § 1302\(b\)\(1\)](#) to file fraudulent transfer action against debtor's sister because § 1302(b)(1) omitted any reference to [11 USCS § 704\(a\)\(1\)](#); [11 USCS § 103\(a\)](#) extended trustee's Chapter 5 avoidance powers to Chapter 13 bankruptcy cases. [In re Cecil, 488 B.R. 200, 24 Fla. L. Weekly Fed. B 3, 2013 Bankr. LEXIS 841 \(Bankr. M.D. Fla. 2013\)](#).

The United States Trustee's statement of presumed abuse pursuant to [11 USCS § 704\(b\)\(1\)\(A\)](#) was applicable, where debtors had previously converted their Chapter 13 case to one under Chapter 7; word "filed" readily incorporated concept of conversion, making applicable concept of abuse under [11 USCS § 707\(b\)](#). [In re Lassiter, 65 Collier Bankr. Cas. 2d \(MB\) 1615, 2011 Bankr. LEXIS 1927 \(Bankr. E.D. Va. May 24, 2011\)](#).

Proof of claim bank filed against debtor's Chapter 13 bankruptcy estate, seeking payment of \$9,007, was disallowed under [11 USCS § 502](#) because it was filed two days after claims bar date and bankruptcy trustee filed objection to claim; [11 USCS § 726](#) did not provide basis for allowing bank's claim because it applied only in Chapter 7 bankruptcy cases, trustee was required under [11 USCS §§ 1302](#) and [704](#) to examine proofs of claims and object to any claim that was improper if purpose would have been served for doing so, and court was not allowed under [11 USCS § 105](#) and [Fed. R. Bankr. P. 3002](#) and [9006](#) to extend deadline for filing claims in debtor's case. [In re Cade, 552 B.R. 800, 2014 Bankr. LEXIS 5415 \(Bankr. S.D. Ohio 2014\)](#).

In bankruptcy cases, the motions of the UST to dismiss or convert were granted under the Bankruptcy Code because the UST demonstrated cause because the debtors failed to provide notice or proof of the opening of debtor-in-possession accounts at the outset of the cases, as required by [Fed. R. Bankr. P. 2015](#) and the Bankruptcy Code failed to provide proof of closing of pre-petition bank accounts, failed to address the duplicative filing, and failed to file any first-day motions. [In re MCM Natural Stone, Inc., 2022 Bankr. LEXIS 987 \(Bankr. W.D.N.Y. Apr. 8, 2022\)](#).

In a bankruptcy case, the Chapter 7 trustee's final report was approved because the trustee fulfilled all of its duties under [11 U.S.C.S. § 704\(a\)](#), as the trustee sufficiently investigated the debtor's assets, the trustee provided sufficient records to the debtor upon his request, and the trustee did not fail to commence or pursue legitimate causes of action. [In re Idea Buyer, LLC, 2022 Bankr. LEXIS 3589 \(Bankr. S.D. Ohio Dec. 15, 2022\)](#).

5. Relationship with other laws and rules

While [Fed. R. Bankr. P. 1017](#) still controls time during which [11 USCS § 707\(b\)\(1\)](#) or (3) motion must be filed, time to file Presumption of Abuse Motion under [11 USCS § 707\(b\)\(2\)](#) is controlled by new [11 USCS § 704\(b\)](#). [In re Singletary, 354 B.R. 455, 2006 Bankr. LEXIS 2884 \(Bankr. S.D. Tex. 2006\)](#).

Where court held that [11 USCS § 707\(b\)\(2\)\(A\)\(iii\)](#) did not prohibit debtor from deducting from their current monthly income, payments that were contractually due on collateral at time debtor's bankruptcy petition is filed, notwithstanding that collateral will not ultimately be retained, holding did not interfere with U.S. Trustee's statutory duties under [11 USCS § 704\(b\)\(1\)\(A\)](#) because duty to review materials filed by debtor simply connoted that accuracy of such materials could be questioned by Trustee; what materials meant with respect to dismissing case for abuse under [11 USCS § 707\(b\)](#) was ultimately matter for court to decide. [In re Haar, 360 B.R. 759, 2007 Bankr. LEXIS 544 \(Bankr. N.D. Ohio 2007\)](#).

Bankruptcy court rejected Chapter 7 debtors' claim that U.S. Trustee's ("UST's") motion seeking dismissal of debtors' case under [11 USCS § 707\(b\)\(3\)](#) had to be dismissed because UST did not comply with [11 USCS § 704\(b\)](#); section 704(b) was applicable in cases where UST was seeking order dismissing debtor's case based upon "presumed abuse" under [11 USCS § 707\(b\)\(2\)](#), and UST had asked court to dismiss debtors' case under § 707(b)(3), based on "totality of circumstances" test. [In re Jacob, 447 B.R. 535, 2010 Bankr. LEXIS 5183 \(Bankr. N.D. Ohio 2010\)](#).

Unpublished decision: Chapter 7 trustee did not have any liability under Worker Adjustment and Retraining Notification Act (WARN Act), [29 USCS §§ 2101](#) et seq., for not giving employees of debtor, hospital, statutorily-required, pre-termination notice before closing hospital, because trustee did not qualify as employer under WARN Act. [*Walsh v. Diamond \(In re Century City Doctors Hosp., LLC, 2010 Bankr. LEXIS 5048 \(9th Cir. Oct. 29, 2010\).*](#)

Trustee's late-filed motion to retain general counsel was subject to heightened standard of review and permitted court to review work already performed and determine whether retention should be approved. With exception of motion to compel, tasks performed by general counsel in past year were inherent to trustee's duties and, without more information, court could not evaluate whether it was necessary to retain legal counsel, whether delay in seeking retention of legal counsel was reasonable, and whether in retrospect retention of legal counsel provided any net benefit to the estate. [*In re Benitez, 68 Bankr. Ct. Dec. \(LRP\) 140, 2020 Bankr. LEXIS 661 \(Bankr. E.D.N.Y. Mar. 13, 2020\).*](#)

Claim objection was brought on behalf of the estate pursuant to [11 U.S.C.S. §§ 502\(b\)\(1\), 704\(a\)\(5\)](#); it was not derivative of debtor's rights and thus the trustee was not bound by the arbitration agreement between debtor and defendant. [*Samson v. LCF Grp., Inc. \(In re Bridger Steel, Inc.\), 2024 Bankr. LEXIS 2386 \(Bankr. D. Mont. Sept. 30, 2024\).*](#)

6.—[11 USCS § 707](#)

Duty imposed on trustee in Chapter 7 bankruptcy by [11 USCS § 704\(b\)\(1\)](#) to review documents filed therein has nothing to do with proper interpretation of [11 USCS § 707\(b\)\(2\)\(A\)\(iii\)](#). [*In re Randle, 358 B.R. 360, Bankr. L. Rep. \(CCH\) ¶ 80829, 2006 Bankr. LEXIS 3519 \(Bankr. N.D. Ill. 2006\), aff'd, Bankr. L. Rep. \(CCH\) ¶ 81038, 58 Collier Bankr. Cas. 2d \(MB\) 641, 2007 U.S. Dist. LEXIS 54985 \(N.D. Ill. 2007\).*](#)

In Chapter 7 bankruptcy, U.S. Trustee was not required to file statement within 10 days of first meeting of creditors stating whether case is presumed to be abuse under [11 USCS § 707\(b\)](#), as required under [11 USCS § 704\(b\)\(1\)](#), as prerequisite to filing motion to dismiss case under [11 USCS § 707\(b\)\(3\)](#) because filing of such statement was superfluous to filing under [11 USCS § 707\(b\)\(3\)](#) for bases other than presumed abuse. Moreover, because motion was filed within 60 days of first date set for meeting of creditors, motion was timely under [Fed. R. Bankr. P. 1017\(e\)\(1\)](#). [*In re Byrne, 376 B.R. 700, 2007 Bankr. LEXIS 3268 \(Bankr. W.D. Ark. 2007\).*](#)

When [11 USCS § 704\(b\)\(2\)](#) refers to [11 USCS § 707\(b\)](#), it means § 707(b)(2) since it clearly means motion to dismiss based on presumed abuse of bankruptcy; § 704(b)(2) does not set deadline for filing motion under § 707(b)(3) based on totality of circumstances even though it will also deal with bankruptcy debtor's ability to pay. [*In re Clark, 393 B.R. 578, 2008 Bankr. LEXIS 2502 \(Bankr. E.D. Tenn. 2008\).*](#)

United States United States Trustee's motion to dismiss or, alternatively, to strike was timely filed because, while motion was filed more than 30 days after conclusion of meeting of creditors, Trustee's failure to file statement as to whether case was presumed to be abusive did not preclude it from moving to dismiss. [*In re Dycus, 2019 Bankr. LEXIS 4085 \(Bankr. M.D. Fla. Oct. 22, 2019\).*](#)

7. Trustee's fees and compensation

Order of bankruptcy judge authorizing payment of fees to Chapter 7 trustee and his retained professionals from assets of employee benefit plan was reversed because bankruptcy court lacked non-core related to jurisdiction to order that fees and expenses be paid using assets from plan, but bankruptcy court does, however, have jurisdiction to grant or deny application seeking award for plan administration expenses from bankruptcy estate. [*United States Dep't of Labor v. Kirschenbaum, 508 B.R. 257, 58 Employee Benefits Cas. \(BNA\) 1994, 2014 U.S. Dist. LEXIS 45809 \(E.D.N.Y. 2014\), aff'd, 777 F.3d 594, 60 Bankr. Ct. Dec. \(LRP\) 146, Bankr. L. Rep. \(CCH\) ¶ 82765, 73*](#)

[Collier Bankr. Cas. 2d \(MB\) 278, 59 Employee Benefits Cas. \(BNA\) 2638, 2015 U.S. App. LEXIS 1807 \(2d Cir. 2015\).](#)

Former trustee was not entitled to compensation for any services under 11 USCS §§ 330 and [326\(a\)](#) because his unprofessional conduct, coupled with his failure to keep proper time records, and his efforts to extract consent to full commission-based fee by creating false time records, overrode his entitlement to compensation for any of time properly spent; moreover, he failed to consider abandonment of state court action pursuant to his duties under [11 USCS § 704\(a\)](#), failed to furnish debtors with information that was reasonably requested, and violated rules of professional conduct, including Conn. R. Prof. Conduct 4.1(1) with respect to false statements, and Conn. R. Prof. Conduct 8.4, with respect to acting with intent to deceive. [In re DiLieto, 468 B.R. 510, 2012 Bankr. LEXIS 959 \(Bankr. D. Conn. 2012\).](#)

Creditor's objection to Chapter 7 trustee's final report was overruled, as fees requested by trustee were proper and reasonable under 11 USCS § 330(a)(3), and extensive efforts by trustee and counsel she employed pursuant to [11 USCS § 327\(a\)](#) to determine scope and extent of debtor's assets were necessary to estate's administration; trustee and her counsel uncovered additional bank accounts, recovered vehicle, investigated short sale of debtor's house, and prosecuted adversary proceeding against purchaser and debtor's lenders, and trustee assisted United States Attorney by providing information and testimony in successful objection to discharge trial. [In re Eck, 68 Collier Bankr. Cas. 2d \(MB\) 1155, 2012 Bankr. LEXIS 4610 \(Bankr. D. Kan. Oct. 1, 2012\).](#)

When bankruptcy trustee, as part of his duties, had undertaken administration and liquidation of two Employee Retirement Income Security Act (ERISA) plans, bankruptcy court had jurisdiction to rule on fees to be paid out of non-estate ERISA plan assets, as trustee was acting under authority of Bankruptcy Code while carrying out his ERISA duties. [In re Negus-Sons, Inc., 2013 Bankr. LEXIS 3640 \(Bankr. D. Neb. Aug. 30, 2013\).](#)

There was no merit to creditors' claims that trustee who administered their grandfather's ("debtor's") Chapter 7 bankruptcy estate was not entitled to payment of \$31,989 in fees under [11 U.S.C.S. § 326](#) because he breached his duties under [11 U.S.C.S. § 704](#) to close case as expeditiously as possible, to investigate debtor's financial affairs, and to furnish information concerning debtor's estate; creditors were required to show there were extraordinary circumstances which justified award that was lower than § 326 allowed, and evidence showed that trustee used good judgment in administering debtor's case under difficult circumstances, including fact that creditors filed wrongful death action against debtor after he killed their father. [In re Munce, 2017 Bankr. LEXIS 3516 \(Bankr. W.D. Wash. Oct. 11, 2017\).](#)

8. Miscellaneous

Where trustee filed turnover complaint seeking insurance proceeds for damaged houseboat, costs incurred by debtor-in-possession in towing, dismantling, and repairing boat were not incurred in ordinary course of business, because boat was not owned or operated in way common to commercial real estate industry, and this was not expenditure within boat owner's day-to-day operations. [Braunstein v. McCabe, 571 F.3d 108, 51 Bankr. Ct. Dec. \(LRP\) 232, Bankr. L. Rep. \(CCH\) ¶ 81518, 2009 U.S. App. LEXIS 13792 \(1st Cir. 2009\).](#)

To effectuate policy of expeditious action embodied in [11 USCS § 704](#) it is necessary that claim such as those by creditor for constructive trust be asserted in any event not later than date trustee makes his first distribution from estate to creditors and thereby changes his position and reliance on basis of claims filed, and failure to assert constructive trust claim until after first distribution is fatal to success so that complaint asking for constructive trust fails to state claim for relief. [In re Black & Geddes, Inc., 30 B.R. 389, 1983 Bankr. LEXIS 6056 \(Bankr. S.D.N.Y.\), aff'd, 58 B.R. 547, 1983 U.S. Dist. LEXIS 11307 \(S.D.N.Y. 1983\).](#)

Pursuant to [11 USCS §§ 323, 704](#), trustee is fiduciary, but only for creditors; where lessor of cash registers, who had assigned all its interests to third party but reacquired lease upon revocation of assignment at debtor's default, never filed proof of claim, lessor is not creditor of Chapter 7 debtor; at most, trustee is nothing more than involuntary gratuitous bailee who is liable only for gross negligence. [In re 2001 Cincinnati, Inc. VIP Clubs etc., 43 B.R. 6, 1984 Bankr. LEXIS 5373 \(Bankr. S.D. Ohio 1984\).](#)

Chapter 7 debtor violates [11 USCS §§ 521](#) and [704](#) where debtor has repeatedly failed to produce personal and business records, preventing trustee from determining debtor's true financial condition; such violation is sufficient to deny debtor's Chapter 7 discharge. [Ailetcher, 49 B.R. 681, 1985 Bankr. LEXIS 6614 \(Bankr. D. Haw. 1985\)](#).

If automatic stay has been lifted on property, that property is no longer property of estate and thus there is no longer any power of abandonment with respect to that property under [11 USCS § 704](#). [In re Griggs, 82 B.R. 532, 1988 Bankr. LEXIS 135 \(Bankr. W.D. Mo. 1988\)](#).

Second mortgagee's motion to set aside Chapter 7 trustee's abandonment is moot and irrelevant where foreclosure by first mortgage holder was based upon and carried out pursuant to order lifting automatic stay and thus trustee had no power of abandonment under [11 USCS § 704](#). [In re Griggs, 82 B.R. 532, 1988 Bankr. LEXIS 135 \(Bankr. W.D. Mo. 1988\)](#).

Award of compensation to Chapter 7 represents maximum compensation allowable under [11 USCS § 326\(a\)](#) and award of compensation to same person in capacity as attorney to trustee is disallowed on basis "legal" services rendered were duties already required of Chapter 7 trustee under [11 USCS § 704](#). [In re Adelson, 239 B.R. 627, 13 Fla. L. Weekly Fed. B 1, 42 Collier Bankr. Cas. 2d \(MB\) 1713, 1999 Bankr. LEXIS 1258 \(Bankr. S.D. Fla. 1999\)](#).

Appellate panel reversed bankruptcy court's entry of summary judgment in favor of creditor, who sought to judicially estop debtors from asserting objection to value of secured claim they made while acting as debtors in possession and performing trustee's fiduciary duty to object under [11 USCS § 704](#), which debtors had, when filing their motion to avoid judicial lien while acting on their own account under [11 USCS § 522\(f\)\(2\)](#) to protect their homestead right, asserted was of greater value; bankruptcy court abused its discretion and applied incorrect legal standard by not considering implications of different capacities in which inconsistent positions were taken. [Cheng v. K&S Diversified Invs., Inc. \(In re Cheng\), 308 B.R. 448, 51 Collier Bankr. Cas. 2d \(MB\) 1808, 2004 Bankr. LEXIS 469 \(9th Cir. 2004\)](#), aff'd, remanded, [160 Fed. Appx. 644, 2005 U.S. App. LEXIS 28634 \(9th Cir. 2005\)](#).

Chapter 7 trustee was not permitted to declare real property of bankruptcy estate as abandoned even if debtors did not have equity in property because proceeds of sale in property could be used to satisfy two secured liens and large portion of federal tax lien. [Grochocinski v. Laredo \(In re Laredo\), 334 B.R. 401, 96 A.F.T.R.2d \(RIA\) 2005-7448, 2006-2 U.S. Tax Cas. \(CCH\) 50406, 2005 Bankr. LEXIS 2486 \(Bankr. N.D. Ill. 2005\)](#).

Bankruptcy court found that Chapter 7 trustee's request for payment of \$53,846 in compensation, plus \$1,639 for expenses, was reasonable; the amount trustee requested was 20 percent less than maximum fee she could have requested under [11 USCS § 326\(a\)](#), and trustee had diligently performed her duties as required by [11 USCS § 704](#), and had recovered \$1,474,751 and disbursed over \$1.6 million. [In re Cummings, 371 B.R. 565, 20 Fla. L. Weekly Fed. B 480, 2007 Bankr. LEXIS 2341 \(Bankr. S.D. Fla. 2007\)](#).

Where debtor filed Chapter 7 bankruptcy petition and trustee moved to dismiss, trustee's motion to dismiss was timely under [11 USCS § 704\(b\)](#) because 10-day period ran from conclusion of first meeting of creditors. [In re Allen, 411 B.R. 913, 2009 Bankr. LEXIS 2557 \(Bankr. S.D. Ga. 2009\)](#).

Chapter 7 trustee was entitled to disclosure of information on any pending claims that related to bankruptcy estate by creditors because request was reasonable and founded in [11 USCS § 704](#). [In re C.D. Jones & Co., 482 B.R. 449, 23 Fla. L. Weekly Fed. B 481, 2012 Bankr. LEXIS 5168 \(Bankr. N.D. Fla. 2012\)](#).

Chapter 13 trustees are private trustees that operate their own for-profit business, but they operate under supervision of United States Trustee pursuant to legislative and judicial directives. Regardless of whether Chapter 13 trustee's motion to dismiss debtor's case based on debtor's lack of eligibility was in service of public interest, doctrine of laches could apply. [In re Harwood, 519 B.R. 535, 72 Collier Bankr. Cas. 2d \(MB\) 992, 2014 Bankr. LEXIS 4646 \(Bankr. N.D. Cal. 2014\)](#).

Unpublished decision: Ample cause existed to dismiss debtor's Chapter 11 case besides nonpayment of fees to United States Trustee, including that his residence and rental house, which were only real assets, were

substantially over-encumbered, his case had been pending for 10 months without reasonable likelihood of reorganization, he failed to file substantive disclosure statement and plan, he refused to provide for any payments to creditors, and he had unexcused failures to satisfy monthly reporting requirements. [Sanders v. United States Trustee \(In re Sanders\), 2013 Bankr. LEXIS 4681 \(9th Cir. Apr. 11, 2013\).](#)

Unpublished decision: Creditor had no standing to bring turnover claim under [11 USCS § 542](#) where trustee did not refuse to bring demand on behalf of creditor, and even if she had, claim that creditor alleged in count IV was not colorable—at least to extent that it purported to seek “contribution” from debtor’s fellow tortfeasors; Illinois’s Joint Tortfeasor Contribution Act, [740 Ill. Comp. Stat. 100/1](#) et seq. (2002), did not provide right of contribution among intentional tortfeasors. [Access Lending Corp. v. Scott \(In re Scott\), 2006 Bankr. LEXIS 44 \(Bankr. N.D. Ill. Jan. 18, 2006\).](#)

There was no provision in [11 U.S.C.S. § 704](#) for dismissing bankruptcy case because trustee allegedly failed to comply with duty or duties. [In re Jeffery, 2018 Bankr. LEXIS 945 \(Bankr. E.D. Pa. Mar. 29, 2018\)](#), exception to discharge denied, [2023 Bankr. LEXIS 1501 \(Bankr. E.D. Pa. June 8, 2023\).](#)

Where debtor’s ex-husband commenced adversary proceeding against Chapter 7 trustee, trustee’s counsel, credit union, and others, his acts in connection with adversary proceeding and bankruptcy case were without colorable basis, brought in bad faith, and motivated by improper purposes such as harassment. Thus, monetary sanctions were awarded against him and in favor of trustee under [11 U.S.C.S. §§ 105](#) and [704](#) and court’s inherent power, and were awarded in favor of credit union under court’s inherent power to sanction abusive litigation practices. [Khan v. Corning Fed. Credit Union \(In re Khan\), 2017 Bankr. LEXIS 3687 \(Bankr. E.D.N.Y. Oct. 24, 2017\).](#)

B. Status of Trustee

9. Generally

Chapter 7 trustee has no standing under [11 USCS § 704](#) to object to payments made to shareholders of bankrupt corporation in 1979 where no creditor exists holding claim that arose prior to 1979 payments. [Kupetz v. Wolf, 845 F.2d 842, 17 Bankr. Ct. Dec. \(LRP\) 941, Bankr. L. Rep. \(CCH\) ¶ 72290, 1988 U.S. App. LEXIS 5627 \(9th Cir. 1988\).](#)

Pursuant to [11 USCS §§ 704\(1\)](#) [now 704(a)(1)], 544(b), and 550, Chapter 7 trustee has fiduciary duty to recover property of estate, including property which was fraudulently transferred. [In re Fill, 82 B.R. 200, 1987 Bankr. LEXIS 2141 \(Bankr. S.D.N.Y. 1987\).](#)

Trustee is entitled under [11 USCS § 704](#) to seek recovery on behalf of debtor’s estate for bank’s inequitable and bad faith refusal to extend or continue credit to debtor at critical point in time regarding debtor’s public offering, however, trustee has no authority to seek recovery of damages on behalf of injured creditors. [Baumgart v. Huntington Nat'l Bank, 91 B.R. 775, 1988 Bankr. LEXIS 1644 \(Bankr. N.D. Ohio 1988\).](#)

Mandate that trustee collect property of estate and reduce it to money does not grant trustee standing to assert any claim relating to debtor, but rather grants trustee standing to pursue any claim in which debtor is party in interest; thus, trustee lacked standing to assert claim for alter ego liability in order to hold debtor’s principal shareholder/president personally liable for debts owed to estate’s creditors where this liability extended beyond value of stock and cash reverted to estate and included all debts owed by estate to all of its potential creditors. [Mullin v. Dzikowski, 257 B.R. 356, 13 Fla. L. Weekly Fed. D 329, 2000 U.S. Dist. LEXIS 14846 \(S.D. Fla. 2000\).](#)

Nothing in [11 USCS § 704](#) overrides provisions of [11 USCS §§ 544](#) and [550](#). [Stalnaker v. DLC, Ltd. \(In re DLC, Ltd.\), 295 B.R. 593, 41 Bankr. Ct. Dec. \(LRP\) 122, 50 Collier Bankr. Cas. 2d \(MB\) 1012, 2003 Bankr. LEXIS 593 \(8th Cir. 2003\)](#), reh’g granted in part, reh’g denied, modified, [2003 Bankr. LEXIS 727 \(8th Cir. July 11, 2003\)](#), aff’d, [376 F.3d 819, 43 Bankr. Ct. Dec. \(LRP\) 79, Bankr. L. Rep. \(CCH\) ¶ 80132, 2004 U.S. App. LEXIS 15168 \(8th Cir. 2004\).](#)

All legal and equitable interest of debtor in property vests in trustee from time bankruptcy is filed, thereafter, only trustee can act to recover assets of debtor; it is trustee, not debtor, who has legal capacity to sue upon cause of action for damages arising prior to filing a petition in bankruptcy. [Jones v. Chrysler Credit Corp., 417 So. 2d 425, 1982 La. App. LEXIS 7674 \(La.App. 1 Cir.\)](#), cert. denied, 420 So. 2d 456, 1982 La. LEXIS 12024 (La. 1982).

10. Assertion and waiver of debtor's privileges

Trustee of corporation in bankruptcy has power to waive corporation's attorney-client privilege with respect to prebankruptcy communications. [Commodity Futures Trading Com. v. Weintraub, 471 U.S. 343, 105 S. Ct. 1986, 85 L. Ed. 2d 372, 12 Bankr. Ct. Dec. \(LRP\) 1247, Bankr. L. Rep. \(CCH\) ¶ 70360, 12 Collier Bankr. Cas. 2d \(MB\) 651, 1 Fed. R. Serv. 3d \(Callaghan\) 417, 17 Fed. R. Evid. Serv. \(CBC\) 529, 1985 U.S. LEXIS 5 \(1985\)](#).

Trustee succeeds to right of corporation to assert or waive attorney-client privilege over bankruptcy information and documents held by law firm through his statutory duty under [11 USCS § 704, § 1106, and § 1108](#) to investigate and manage corporation's affairs. [In re O.P.M. Leasing Services, Inc., 670 F.2d 383, 8 Bankr. Ct. Dec. \(LRP\) 811, Bankr. L. Rep. \(CCH\) ¶ 68497, 5 Collier Bankr. Cas. 2d \(MB\) 1252, 33 Fed. R. Serv. 2d \(Callaghan\) 504, 9 Fed. R. Evid. Serv. \(CBC\) 1179, 1982 U.S. App. LEXIS 22573 \(2d Cir. 1982\)](#).

Under peculiar facts of case in which examiner with expanded powers similar to those of trustee under [11 USCS § 704](#) was appointed, authority resided in that examiner to waive attorney-client privilege. [In re Boileau, 736 F.2d 503, Bankr. L. Rep. \(CCH\) ¶ 69919, 10 Collier Bankr. Cas. 2d \(MB\) 1246, 1 Fed. R. Serv. 3d \(Callaghan\) 593, 15 Fed. R. Evid. Serv. \(CBC\) 1584, 1984 U.S. App. LEXIS 21058 \(9th Cir. 1984\)](#).

In [11 USCS § 704](#) matter bankruptcy court ordered debtor's former attorneys to testify because (1) attorney-client privilege was inapplicable to communications between debtor and her attorneys with respect to their retention or compensation for services rendered during pendency of bankruptcy case; and (2) Chapter 7 trustee held, and was empowered to waive, any attorney-client privilege that attached to postpetition communications. [In re Eddy, 304 B.R. 591, 42 Bankr. Ct. Dec. \(LRP\) 170, 2004 Bankr. LEXIS 169 \(Bankr. D. Mass. 2004\)](#).

In certain circumstances Chapter 7 trustee can waive attorney-client privilege held by individual debtor in possession in converted Chapter 11 case, but waiver is limited to post-petition communications related to estate administration. [In re Eddy, 304 B.R. 591, 42 Bankr. Ct. Dec. \(LRP\) 170, 2004 Bankr. LEXIS 169 \(Bankr. D. Mass. 2004\)](#).

Proper valuation for purposes of statutory redemption, pursuant to [11 USCS § 722](#), of secured motor vehicle was trade-in value as of date motion for redemption was filed or date of hearing on redemption if contested. [In re Podnar, 307 B.R. 667, 51 Collier Bankr. Cas. 2d \(MB\) 1747, 2003 Bankr. LEXIS 1980 \(Bankr. W.D. Mo. 2003\)](#).

Trial court properly denied bankruptcy trustee's request for access to bankrupt patient's pathology tissue slides and test results, pursuant to [Conn. Gen. Stat. § 20-7c](#), as trustee was not entitled to personal records merely because of his position as bankruptcy trustee for bankrupt patient. [DiLieto v. County Obstetrics & Gynecology Group, P.C., 265 Conn. 79, 828 A.2d 31, 2003 Conn. LEXIS 300 \(Conn. 2003\)](#).

Chapter 7 debtor lacked standing to challenge order granting creditor relief from automatic stay regarding certain encumbered real property because property belonged to estate, and only trustee had standing to challenge order. [In re Brown, 71 Collier Bankr. Cas. 2d \(MB\) 379, 2014 Bankr. LEXIS 1018 \(6th Cir. Mar. 17, 2014\)](#).

11. Debtor's causes of action vesting in trustee

Causes of action belonging to Chapter 7 debtor at commencement of bankruptcy case are property of estate under [11 USCS § 541](#); any of these actions that are unresolved at filing then pass to trustee who, as representative of estate has responsibility under [11 USCS § 704](#) of asserting them whenever necessary for collection or preservation of estate. [In re Ozark Restaurant Equipment Co., 816 F.2d 1222, 16 Bankr. Ct. Dec. \(LRP\) 134, Bankr. L. Rep.](#)

(CCH) ¶ 71780, 16 Collier Bankr. Cas. 2d (MB) 1148, 1987 U.S. App. LEXIS 5403 (8th Cir.), cert. denied, 484 U.S. 848, 108 S. Ct. 147, 98 L. Ed. 2d 102, 1987 U.S. LEXIS 3959 (1987).

Because plaintiff, debtor's bankruptcy trustee, alleged that defendants, debtor's former officers and former underwriters, prolonged insolvent debtor's existence through bad debt, dissipating assets and thus harming value of debtor's assets, dissipation harmed debtor, even if creditors were also harmed, and trustee had standing under [11 USCS § 323](#) to pursue claims against defendants, which were property of estate under [11 USCS § 541](#) in connection with his duties under former [11 USCS § 704\(1\)](#), and to settle with some defendants. *Smith v. Arthur Andersen LLP*, 421 F.3d 989, 45 Bankr. Ct. Dec. (LRP) 58, Fed. Sec. L. Rep. (CCH) ¶ 93341, 2005 U.S. App. LEXIS 18752 (9th Cir. 2005).

Trustee for debtor company had standing to bring amended complaint alleging malpractice and aiding and abetting breach of fiduciary duty against lawyers for debtor because trustee was empowered by [11 USCS § 704\(1\)](#) to assert causes of action belonging to debtor at time of filing; fact that debtor was insolvent did not render this cause of action solely for creditors, which trustee would be barred from bringing. *Moratzka v. Morris (In re Senior Cottages of Am., LLC)*, 482 F.3d 997, 48 Bankr. Ct. Dec. (LRP) 5, 2007 U.S. App. LEXIS 7547 (8th Cir. 2007).

Under [11 USCS § 524\(a\)](#), debtor's subsequent discharge had no effect on right of plaintiff trustee to pursue malpractice claim against defendants, debtor's former attorneys, as that claim passed to bankruptcy estate under [11 USCS § 541\(a\)](#), and conclusion that debtor suffered no compensable injury was flawed; dismissing claim on that basis was reversed because trustee of estate for benefit of its creditors, became responsible, ipso facto, for satisfying creditor's judgment against debtor, to extent possible from property of debtor's bankruptcy estate and debtor's inchoate legal malpractice claim against his attorneys was property of estate. *Stanley v. Trinchart*, 500 F.3d 411, 48 Bankr. Ct. Dec. (LRP) 266, 2007 U.S. App. LEXIS 21937 (5th Cir. 2007).

Although bankruptcy trustee had no standing generally under [11 USCS §§ 704\(1\)](#) and [541\(a\)\(1\)](#) to sue third parties on behalf of all bankruptcy estate's creditors on alter ego theory, there was no reason why creditor's claims against sole owners of bankrupt corporation could not proceed to collect on foreign arbitration award in creditor's favor and breach of contract claim. *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 53 Bankr. Ct. Dec. (LRP) 223, 2010 U.S. App. LEXIS 21744 (9th Cir. 2010).

Bankruptcy trustee had standing in malpractice claims against lawyers of farmer debtors to extent claims accrued before conversion of Chapter 12 petition to Chapter 7 petition because pre-conversion claims were property of estate under [11 USCS § 1207\(a\)\(1\)](#), but trustee did not have standing in claims that accrued at or after conversion. *Timmerman v. Eich*, 809 F. Supp. 2d 932, 2011 U.S. Dist. LEXIS 102648 (N.D. Iowa 2011).

Where Chapter 11 debtor in possession makes timely demand for jury trial in adversary proceeding in Bankruptcy Court, prior to case's conversion to Chapter 11 proceeding, appointed trustee is vested with all causes of action held by debtor under [11 USCS § 704](#) but must intervene as party plaintiff to retain right to jury trial when contested by creditor. *In re Leird Church Furniture Mfg. Co.*, 61 B.R. 444, 14 Bankr. Ct. Dec. (LRP) 571, Bankr. L. Rep. (CCH) ¶ 71182, 14 Collier Bankr. Cas. 2d (MB) 1124, 1986 Bankr. LEXIS 6462 (Bankr. E.D. Ark. 1986).

Debtor is no longer proper plaintiff in action alleging tortious interference with business relations and seeking equitable conversion of creditor's claim because, upon conversion of case from Chapter 11 to Chapter 7, trustee is now vested with all property of estate, including this adversary proceeding, under former [11 USCS § 704\(1\)](#) and (5). *In re Leird Church Furniture Mfg. Co.*, 61 B.R. 444, 14 Bankr. Ct. Dec. (LRP) 571, Bankr. L. Rep. (CCH) ¶ 71182, 14 Collier Bankr. Cas. 2d (MB) 1124, 1986 Bankr. LEXIS 6462 (Bankr. E.D. Ark. 1986).

Bankruptcy Court has jurisdiction under [28 USCS § 157\(a\)](#) and (c)(1) and District Court has jurisdiction under [28 USCS § 1334](#) to hear action against individual ordered to pay \$200,000 restitution to Chapter 11 corporate debtor following conviction of criminal conspiracy to conceal assets of debtor corporation by transferring its inventory, cash, and other property to other solvent corporations; pursuant to [11 USCS § 323](#) and former [11 USCS § 704\(1\)](#), trustee is appropriate party to commence such action. *In re Timberline Energy, Inc.*, 70 B.R. 450, 1987 Bankr. LEXIS 214 (Bankr. N.D.N.Y. 1987).

Advent of Chapter 7 estate and appointment of Chapter 7 trustee divested Chapter 7 debtor of all right, title, and interest in non-exempt property of bankruptcy estate at commencement of case; since title to property of estate no longer resides in Chapter 7 debtor, debtor typically lacks any pecuniary interest in Chapter 7 trustee's disposition of that property; thus, normally it is the trustee alone, as distinguished from the chapter 7 debtor, who possesses standing to appeal from bankruptcy court orders which confirm or reject sales of property of the estate. [Beaulac v. Tomsic \(In re Beaulac\), 294 B.R. 815, 2003 Bankr. LEXIS 703 \(1st Cir. 2003\)](#).

Despite another court's finding that various provisions of Bankruptcy Code, such as 11 USCS §§ 363(b), [541\(a\)\(3\), 701\(1\), 704\(8\), 1302\(b\)\(1\), 1303, 1306\(b\), 1321, 1322\(b\)\(8\), 1325\(a\)\(4\)](#), could be interpreted as implying that Chapter 13 debtor should have standing to assert avoidance powers under fraudulent transfer provisions of [11 USCS § 548\(a\)](#), Bankruptcy Court for District of New Jersey held that Chapter 13 debtor had no such standing; [11 USCS § 1303](#) only gave Chapter 13 debtors rights and powers of trustee under specified subsections of 11 USCS § 363. [Ryker v. Current \(In re Ryker\), 315 B.R. 664, 52 Collier Bankr. Cas. 2d \(MB\) 1793, 2004 Bankr. LEXIS 1546 \(Bankr. D.N.J. 2004\)](#), remanded, [338 B.R. 642, 2006 U.S. Dist. LEXIS 8060 \(D.N.J. 2006\)](#).

Former broker, who had filed putative class suit against brokerage firm for lost commissions prior to filing for Chapter 7 bankruptcy protection, lacked standing to maintain lawsuit because upon filing of Chapter 7 petition, all of broker's interests in lawsuit were transferred to trustee. [Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc. \(In re Merrill Lynch & Co. Research Reports Sec. Litig.\), 375 B.R. 719, 2007 U.S. Dist. LEXIS 69195 \(S.D.N.Y. 2007\)](#).

Creditor lacked standing to pursue action to avoid and recover post-petition transfers on behalf of creditors, as only Chapter 7 trustee had standing to do so. Trustee's conclusion that transfers were not avoidable because cash collateral order entered into prior to conversion from Chapter 11 authorized debtor-in-possession to make them, and his refusal to bring suit, was within his sound business judgment and not unreasonable. [SunTrust Bank v. Matson \(In re CHN Constr., LLC\), 531 B.R. 126, 61 Bankr. Ct. Dec. \(LRP\) 18, 2015 Bankr. LEXIS 1672 \(Bankr. E.D. Va. 2015\)](#).

Chapter 7 trustee had standing under [11 USCS § 704](#) to seek award of damages from former CEO and CFO of corporations that declared bankruptcy, based on claims alleging, inter alia, that CEO breached his duty as fiduciary of ERISA-qualified pension plan company established when he authorized plan to purchase company stock, allowed plan to retain company's stock, and participated in scheme that distributed most of funds held by plan to CEO and CFO; however, trustee's claim alleging that CEO violated [29 USCS § 1106](#) when authorized purchase of company's stock was time-barred by [29 USCS § 1113](#) because purchase occurred more than six years before trustee filed his adversary proceeding. [Taunt v. Coenen \(In re Trans-Indus.\), 538 B.R. 323, 2015 Bankr. LEXIS 3288 \(Bankr. E.D. Mich. 2015\)](#).

Subsequent ratification of the shareholder's lender-liability suit did not cure the standing deficiency in the Bankruptcy Code; a trustee, and only a trustee, had standing to prosecute causes of action that were property of the Chapter 7 bankruptcy estate, and the determination of the real party in interest was not difficult for the shareholders, nor was there an understandable or excusable mistake by the shareholders in this regard. [Bibbs v. Cnty. Bank of Benton, 375 Ark. 150, 289 S.W.3d 393, 2008 Ark. LEXIS 761 \(2008\)](#).

Unpublished decision: Chapter 7 debtor lacked standing to prosecute adversary proceeding seeking judgment finding that transfers brokerage company made from several accounts were voidable under [11 USCS § 548\(a\)\(1\)\(B\)\(ii\)\(I\)](#); once trustee was appointed to represent bankruptcy estate, he obtained complete authority and discretion with respect to prosecution and defense of lawsuits involving debtor's bankruptcy estate, pursuant to [11 USCS § 704](#), he alone had standing to file adversary proceeding against transferee who requested payments, and he had not joined debtor in filing suit. [Truong v. Nguyen \(In re Truong\), 2006 Bankr. LEXIS 4525 \(Bankr. D.N.J. May 3, 2006\)](#).

Unpublished decision: Trustee had standing to assert savings and loan association's claim to payment on Notes, as it was properly claim of debtors' bankruptcy estate; by taking assignment of association's security interest in Notes, Trustee marshaled assets of estate pursuant to [11 USCS § 704](#) for benefit of estate, and assignment

allowed Trustee to more effectively pursue claims against defendant in single effort. [*Tulis v. M.E.-R.E. Holding, LLC \(In re Barnett\), 88 U.C.C. Rep. Serv. 2d \(CBC\) 600, 2015 Bankr. LEXIS 4370 \(Bankr. S.D.N.Y. Dec. 29, 2015\).*](#)

12. Assertion of creditors' rights

Although trustee in Chapter 7 liquidation is given power to avoid certain transfers, obligations, statutory liens, preferences, fraudulent conveyances, and postpetition transactions, under Bankruptcy Code, and is further empowered to examine debtor's claims of exemption and file objection if grounds exist, trustee lacks standing to raise issue of constitutionality of [11 USCS § 522](#) as applied to creditors who extended credit prior to October 1, 1979, under general rule that person is precluded from challenging constitutionality of statutes by invoking rights of others, and issue, if it is to be raised at all, must be raised by actual creditor who extended credit to debtor before enactment of Bankruptcy Code. [*In re Wilson, 4 B.R. 605, 6 Bankr. Ct. Dec. \(LRP\) 443, 2 Collier Bankr. Cas. 2d \(MB\) 362, 1980 Bankr. LEXIS 5007 \(Bankr. E.D. Wash. 1980\).*](#)

Under [11 USCS § 541](#), which defines bankruptcy estate by reference to assets of debtor, and [11 USCS § 704](#), which authorizes trustee to collect assets or enforce rights owned by debtor, express authority to sue extends only to assets of corporation; thus there is no general authority for trustee to act on behalf of general creditors, nor does trustee represent general creditors for purposes of collection running exclusively to them: trustee has no representative standing where creditor's claim is based on alter ego theory. [*In re S I Acquisition, Inc., 58 B.R. 454, 1986 Bankr. LEXIS 6550 \(Bankr. W.D. Tex. 1986\)*](#), rev'd, [*817 F.2d 1142, 16 Bankr. Ct. Dec. \(LRP\) 505, Bankr. L. Rep. \(CCH\) ¶ 71841, 17 Collier Bankr. Cas. 2d \(MB\) 207, 1987 U.S. App. LEXIS 6857 \(5th Cir. 1987\).*](#)

Under [11 USCS § 704\(6\)](#), Chapter 13 trustee lacks standing to object to dischargeability of specific postpetition claims, since § 704(6) imposes on trustee only duty to oppose discharge of debtor in general for benefit of all creditors; neither [11 USCS § 704\(6\)](#) nor Bankruptcy Rule 4007(a) specifically gives trustee authority to make objection to dischargeability of specific debt. [*In re Dunn, 83 B.R. 694, 1988 Bankr. LEXIS 289 \(Bankr. D. Neb. 1988\).*](#)

Chapter 7 trustee lacks standing to assert claim that nondebtor third party is obligated to indemnify debtor and pay deficiency judgment owed by debtor to creditor, where debtor will not pay any portion of deficiency judgment since this is no-asset case; trustee is simply trying to collect deficiency claim from nondebtors for benefit of creditor, and such function is not one of trustee's duties delineated under [11 USCS § 704](#). [*In re R.H.N. Realty Corp., 84 B.R. 356, 1988 Bankr. LEXIS 427 \(Bankr. S.D.N.Y. 1988\).*](#)

Chapter 7 trustee may not act under [11 USCS § 704](#) on behalf of general partners of debtor partnership since partnership interests are not claims against debtor; to extent trustee acts on behalf of partners, he is volunteer and his services are not compensable. [*In re Riverside-Linden Inv. Co., 85 B.R. 107, 1988 Bankr. LEXIS 520 \(Bankr. S.D. Cal. 1988\)*](#), aff'd, [*99 B.R. 439, Bankr. L. Rep. \(CCH\) ¶ 72998, 1989 Bankr. LEXIS 879 \(B.A.P. 9th Cir. Cal. 1989\).*](#)

Committee of unsecured creditors was automatically dissolved when debtor-in-possession converted its bankruptcy action from action under Bankruptcy Code ch. 11 to action under Bankruptcy Code ch. 7, and trial court refused to allow trustee who was appointed when action was converted to substitute himself as party to appeal which committee filed, challenging bankruptcy court's judgment approving stalking horse bid, because trustee was bound by decisions debtor-in-possession made, including decision to accept stalking horse bid. [*Official Comm. of Unsecured Creditors v. Belgravia Paper Co. \(In re Great Northern Paper, Inc.\), 299 B.R. 1, 50 Collier Bankr. Cas. 2d \(MB\) 1448, 2003 U.S. Dist. LEXIS 16852 \(D. Me. 2003\).*](#)

Creditor of debtor lacked standing to sue on claims against defendants because Chapter 7 trustee succeeded to claims when debtor filed for bankruptcy protection. [*Artesanias Hacienda Real S.A. v. North Mill Capital, LLC \(In re Wilton Armetale, Inc.\), 2018 Bankr. LEXIS 3853 \(Bankr. E.D. Pa. Dec. 6, 2018\).*](#)

13. Assertion of claims against former trustee

Successor Chapter 7 trustee has standing to assert claims against predecessor Chapter 11 and Chapter 7 trustee for breach of his fiduciary duties under [11 USCS § 704. In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)](#).

14. Miscellaneous

Following appointment of Chapter 7 trustee in corporate debtor's bankruptcy, former management could not appeal adverse bankruptcy court ruling on debtor's behalf; Chapter 7 trustee was only person authorized to bring appeal because managers were "completely ousted" when debtor's bankruptcy was converted to Chapter 7 and trustee was appointed. [C.W. Mining Co. v. Aquila, Inc. \(In re C.W. Mining Co.\), 636 F.3d 1257, 54 Bankr. Ct. Dec. \(LRP\) 80, Bankr. L. Rep. \(CCH\) ¶ 81936, 2011 U.S. App. LEXIS 2819 \(10th Cir.\)](#), cert. denied, 565 U.S. 820, 132 S. Ct. 104, 181 L. Ed. 2d 31, 2011 U.S. LEXIS 6628 (2011).

Defendants made argument that they could only be expelled by vote of general partners (primarily themselves); Trustee succeeded to administration of partnership and, in connection with his liquidation duties, to expulsion of partners. [Geron v. Fontana \(In re Thelen LLP\), 520 B.R. 388, 72 Collier Bankr. Cas. 2d \(MB\) 1491, 2014 Bankr. LEXIS 4809 \(Bankr. S.D.N.Y. 2014\)](#).

Trustee was entitled to turnover of antique cars that were transferred from principal owner of debtor to third party because cars were purchased with debtor's funds and nothing in record reflected that transferee gave value for antique cars, as required for him to be bona fide purchaser, and cars were still owned by debtor when bankruptcy case was filed, meaning they were property of bankruptcy estate which Trustee was required to collect and reduce to money. [In re Tellico Lake Props., L.P., 548 B.R. 800, 2016 Bankr. LEXIS 991 \(Bankr. E.D. Tenn. 2016\)](#).

Fundamental fairness did not require that purchaser of debtor's beneficial interest in realty trust be afforded administrative expense priority for attorneys' fees incurred in defending its title, as purchaser failed to establish that there was breach of trustee's warranties, let alone commission of tort by trustee while operating business. Trustee was not operating business and was not subject to [28 USCS § 959](#); rather, debtor merely owned beneficial interest in realty trust that trustee offered for sale. [In re Corbett, 550 B.R. 170, 62 Bankr. Ct. Dec. \(LRP\) 150, 2016 Bankr. LEXIS 1904 \(Bankr. D. Mass. 2016\)](#).

Former trustee of bankruptcy debtor trust lacked standing to assert claims against creditors since bankruptcy trustee controlled debtor trust upon commencement of Chapter 7 bankruptcy case and was only party with standing to assert debtor's causes of action against creditors. [Zalloum v. JP Morgan Chase Bank, N.A. \(In re 283 Bayou Circle Trust\), 75 Collier Bankr. Cas. 2d \(MB\) 869, 2016 Bankr. LEXIS 1902 \(Bankr. M.D. Fla. May 3, 2016\)](#).

Pro se debtor's motion regarding Trustee's fraudulent transfer action against debtor's wife could not be granted because court could not force Trustee to accept settlement of case on terms dictated by debtor, and nothing in this statute required Trustee to do so. [Shapiro v. Woodberry \(In re Woodberry\), 2020 Bankr. LEXIS 1956 \(Bankr. E.D. Mich. July 24, 2020\)](#).

ERISA claims were dismissed because trustee lacked standing where it was unclear if debtor was "fiduciary" with standing under ERISA, so that trustee could then step into debtor's place as plan fiduciary. [Mims v. Matrix Trust Co. \(In re Vantage Benefits Adm'rs\), 2021 Bankr. LEXIS 1195 \(Bankr. N.D. Tex. May 5, 2021\)](#).

Sanctions against Trustee were not warranted under [Fed. R. Bankr. P. 9011](#) and [11 U.S.C.S. § 105](#) because once debtor converted his case to Chapter 7, Trustee had the authority and obligation under [11 U.S.C.S. § 704](#) to collect all assets, investigate transfers, and take appropriate actions to gather sufficient assets to pay creditors, which is what the Trustee did here. [In re Modi, 2023 Bankr. LEXIS 1324 \(Bankr. N.D. Ga. May 17, 2023\)](#).

II. COLLECTION AND LIQUIDATION OF ESTATE

15. Generally

Chapter 7 trustee, not Chapter 7 debtor, is responsible for collecting all property of estate and reducing it to money. [In re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, Bankr. L. Rep. \(CCH\) ¶ 75253, 1993 U.S. App. LEXIS 10181 \(1st Cir. 1993\).](#)

Principal duty under former [11 USCS § 704\(1\)](#) of Chapter 7 trustee upon conversion of case from Chapter 11 to Chapter 7 is to collect property of estate and reduce it to money, and to close estate as expeditiously as is compatible with best interests of creditors; if trustee fails in this duty, he may be charged with value of assets that never came into his possession. [In re Afco Dev. Corp., 65 B.R. 781, 15 Bankr. Ct. Dec. \(LRP\) 142, Bankr. L. Rep. \(CCH\) ¶ 71545, 1986 Bankr. LEXIS 5466 \(Bankr. D. Utah 1986\),](#) disapproved, [Gillman v. Mark Oakes Trucking \(In re CVA Assocs.\), 171 B.R. 122, 1994 U.S. Dist. LEXIS 12396 \(D. Utah 1994\).](#)

Chapter 7 trustee's duties under former [11 USCS § 704\(5\)](#) are not coequal: primary duty is to close estate as quickly and expeditiously as is compatible with best interests of parties in interest. [In re Riverside-Linden Inv. Co., 85 B.R. 107, 1988 Bankr. LEXIS 520 \(Bankr. S.D. Cal. 1988\),](#) aff'd, [99 B.R. 439, Bankr. L. Rep. \(CCH\) ¶ 72998, 1989 Bankr. LEXIS 879 \(B.A.P. 9th Cir. Cal. 1989\).](#)

Trustee's duty to collect property (former [11 USCS § 704\(1\)](#)) is not limited to that which may be used, sold or leased; it extends to all property of estate and may include exempt property. [Salzer v. Jocquel Supply \(In re Salzer\), 180 B.R. 523, 1993 Bankr. LEXIS 2244 \(Bankr. N.D. Ind. 1993\).](#)

Despite numerous other changes, Congress did not amend provisions in Chapter 7 which set forth scope of trustee's duties and authority; as specifically set forth in [11 USCS § 704\(a\)](#) and [11 USCS § 726](#), trustee's authority is limited to administration and distribution of property of estate; thus, debtor's fully exempt home, having been withdrawn from estate, could not be sold by Trustee. [In re Quezada, 368 B.R. 44, 20 Fla. L. Weekly Fed. B 261, Bankr. L. Rep. \(CCH\) ¶ 80856, 57 Collier Bankr. Cas. 2d \(MB\) 1016, 2007 Bankr. LEXIS 454 \(Bankr. S.D. Fla. 2007\).](#)

Chapter 7 trustee had duty to collect and liquidate all of property of estate that was subject to administration. [In re Kopp, 374 B.R. 842, 2007 Bankr. LEXIS 2880 \(Bankr. D. Kan. 2007\).](#)

Trustee at very least is obligated to take control of disclosed tax refunds for which no exemption has been claimed; similarly, debtor is under statutory duty to surrender what now becomes estate's property immediately upon commencement of case regardless of what might be debtor's intention concerning its exemption, [11 USCS § 521\(a\)\(4\)](#); and from this duty comes debtor's corresponding obligation not to spend or otherwise dissipate targeted property unless and until its exemption is finally allowed. [In re Fleming, 424 B.R. 795, 2010 Bankr. LEXIS 549 \(Bankr. W.D. Mich. 2010\).](#)

Bankruptcy court did not err in determining that trustee was entitled to immunity because trustee enjoyed immunity when acting pursuant to court order or statute and trustee had statutory duty to collect and reduce to money property of estate under [11 USCS § 704](#), and trustee had authority to bring turnover action to get court to order attorney to turn over and disclose documents related to debtor's property or financial affairs, [11 USCS § 542\(e\). In re McKenzie, 476 B.R. 515, 2012 U.S. Dist. LEXIS 88185 \(E.D. Tenn. 2012\),](#) aff'd, [716 F.3d 404, 2013 FED App. 148P, 57 Bankr. Ct. Dec. \(LRP\) 280, 2013 U.S. App. LEXIS 10491 \(6th Cir. 2013\).](#)

Because [11 USCS § 704\(a\)\(1\)](#) specifically authorized and required trustee to collect property of estate, she was authorized but not required to file motion for turnover under [11 USCS § 542](#) before collecting debtor's assets, while debtor, by contrast, was required by [11 USCS § 521\(a\)\(3\)](#) to cooperate with trustee. [In re Bodeker, 69 Collier Bankr. Cas. 2d \(MB\) 1657, 2013 Bankr. LEXIS 2336 \(Bankr. D. Mont. June 7, 2013\).](#)

Unpublished decision: Where debtor sought removal of Chapter 7 trustee pursuant to [11 USCS § 324\(a\)](#) on grounds that he mistreated debtor by verbally abusing him and belittling him, even if facts alleged were true, allegations failed to show cause for removal; trustee's fiduciary duties were owed to estate and creditors, not to

debtor personally, and no failure by trustee to perform his [11 USCS § 704](#) duties was implicated. [Livore v. Hargrave \(In re Livore\), 2010 Bankr. LEXIS 1653 \(Bankr. D.N.J. May 6, 2010\)](#).

Court awarded law firm that represented Chapter 7 trustee and requested payment of \$18,625 in fees from debtor's bankruptcy estate for work it performed in obtaining payment of \$250,000 under life insurance policy debtor's ex-husband owned to recover only \$7,026 in fees and \$14.02 in expenses because work it performed should have been performed by trustee as part of his duties under [11 U.S.C.S. § 704](#), it billed for work that could have been performed by paralegal at attorney's hourly rate of between \$660 and \$695, and it requested payment for work that was unnecessary and duplicative; trustee's decision allowing firm to perform work he should have performed required close scrutiny of commission he would be paid pursuant to [11 U.S.C.S. § 326](#). [In re Yovtcheva, 590 B.R. 307, 66 Bankr. Ct. Dec. \(LRP\) 48, 2018 Bankr. LEXIS 2844 \(Bankr. E.D. Pa. 2018\)](#).

If fraudulent transfer occurred pre-petition, any causes of action to recover that transfer became property of bankruptcy estate as of petition date and trustee was appropriate party to pursue avoidance and recovery of that transfer; filing of bankruptcy case cut off creditor's right to proceed on its own. [Grand Rapids E Cigarette, LLC v. Mitten Pizza, LLC \(In re Ahlan Indus.\), 2021 Bankr. LEXIS 1426 \(Bankr. W.D. Mich. May 25, 2021\)](#).

If fraudulent transfer occurred post-petition, assets became property of estate as of filing date, and to extent those assets were then transferred or converted after filing of bankruptcy petition but prior to entry of sale order, trustee would be proper party to seek avoidance and recovery of those transfers. [Grand Rapids E Cigarette, LLC v. Mitten Pizza, LLC \(In re Ahlan Indus.\), 2021 Bankr. LEXIS 1426 \(Bankr. W.D. Mich. May 25, 2021\)](#).

16. Authority to pursue or terminate cause of action

Authority to collect Chapter 7 debtor's assets is vested exclusively in trustee pursuant to [11 USCS § 704](#); trustee may be divested of this authority only in narrow circumstances, such as when: (1) trustee unjustifiably refuses demand to pursue action; (2) creditor establishes colorable claim or cause of action; and (3) creditor seeks and obtains leave from Bankruptcy Court to prosecute action for and in name of trustee—then individual creditor or creditors' committee may prosecute action; when third party tries to assert action still vested in trustee, court should dismiss it. [In re Perkins, 902 F.2d 1254, Bankr. L. Rep. \(CCH\) ¶ 73385, 1990 U.S. App. LEXIS 8571 \(7th Cir. 1990\)](#).

Creditors lack standing to bring turnover action against teachers' retirement system to recover debtor's funds because such action belongs exclusively to trustee, pursuant to [11 USCS § 704](#). [In re Perkins, 902 F.2d 1254, Bankr. L. Rep. \(CCH\) ¶ 73385, 1990 U.S. App. LEXIS 8571 \(7th Cir. 1990\)](#).

Pursuant to [11 USCS § 323\(b\)](#), [11 USCS § 541\(a\)](#), and former [11 USCS § 704\(1\)](#), Chapter 7 bankruptcy trustee had standing to bring adversary proceeding to reduce, to money judgment, causes of action that various bankruptcy creditors had against bankruptcy debtors' alleged criminal co-conspirators because creditors had unconditionally assigned their claims to trustee, he was pursuing claims solely on behalf of bankruptcy estate and not on creditors' behalf, and only estate would directly benefit from any damages that trustee recovered; doctrine of in pari delicto did not apply to bar trustee from asserting claims against co-conspirators because, in filing proceeding, trustee was standing in creditors', and not debtors', shoes. [Logan v. JKV Real Estate Servs. \(In re Bogdan\), 414 F.3d 507, 44 Bankr. Ct. Dec. \(LRP\) 255, Bankr. L. Rep. \(CCH\) ¶ 80314, 2005 U.S. App. LEXIS 13385 \(4th Cir. 2005\)](#), cert. denied, 546 U.S. 1093, 126 S. Ct. 1052, 163 L. Ed. 2d 859, 2006 U.S. LEXIS 82 (2006).

Where plaintiffs fell victim to their bankrupt debtor's Ponzi scheme, plaintiffs' aiding and abetting claim against a fellow creditor for participating in debtor's fraud could not prosper because the cause of action was general to the bankruptcy estate and therefore belonged to the trustee under [11 U.S.C.S. § 704\(1\)](#). The cause of action was general to the bankruptcy estate as it was also available to debtor's own companies that he stole money from. [Ritchie Special Credit Invs., Ltd. v. JPMorgan Chase & Co., 48 F.4th 896, 2022 U.S. App. LEXIS 25579 \(8th Cir. 2022\)](#).

[11 USCS § 704\(a\)\(1\)](#) afforded, to unencumbered asset trust to which all of claims of debtor in bankruptcy had been transferred, standing to sue investment bank with which debtor had operated accounts receivable securitization program because trust had stepped into shoes of trustee, who was empowered to collect all of debtor's property; because debtor's claims against investment bank were property of estate pursuant to [11 USCS § 541](#), trust had standing to prosecute them. [*Unencumbered Assets Trust v. JP Morgan Chase Bank \(In re Nat'l Century Fin. Enters.\)*, 604 F. Supp. 2d 1128, 2009 U.S. Dist. LEXIS 35660 \(S.D. Ohio 2009\).](#)

Unpublished decision: Dismissal of most of bankruptcy creditors' claims against bankruptcy debtor and purchaser of its assets was proper because while creditors were harmed by alleged diminution of estate, depleting assets available for bankruptcy estate constituted injury to bankrupt corporation itself, not individual creditors; it was duty of bankruptcy trustee under [11 USCS § 704](#) to collect on those claims; only trustee had standing to bring claims. [*Carramerica Realty Corp. v. NVIDIA Corp.*, 302 Fed. Appx. 514, 2008 U.S. App. LEXIS 26777 \(9th Cir. 2008\)](#), amended, reh'g denied, reh'g, en banc, denied, [*2009 U.S. App. LEXIS 1197 \(9th Cir. Jan. 22, 2009\)*](#), amended, [*2009 U.S. App. LEXIS 4898 \(9th Cir. Mar. 10, 2009\)*](#), cert. denied, 558 U.S. 816, 130 S. Ct. 57, 175 L. Ed. 2d 22, 2009 U.S. LEXIS 6942 (2009).

Trustee does not need to seek authorization from court to file adversary proceeding to set aside postpetition transfers. [*In re Tom McCormick Enterprises, Inc.*, 26 B.R. 437, 7 Collier Bankr. Cas. 2d \(MB\) 1288, 1983 Bankr. LEXIS 7061 \(Bankr. M.D. Tenn. 1983\).](#)

Upon striking allegations in unsecured creditor's complaint of preferential transfers by debtor, Bankruptcy Court will not order trustee to bring preference action against debtors, since trustee, although highly accountable to court, must have independence of professional judgment in deciding to pursue any kind of litigation, and it would be premature for court to direct trustee to do so without threshold showing of existence of elements of preference; preliminary judgment is trustee's alone to make, and only upon abuse of that discretion will court direct trustee to act. [*In re Bridges*, 31 B.R. 27, 1983 Bankr. LEXIS 6216 \(Bankr. W.D. Ky. 1983\).](#)

While trustee's judgment in proposing settlement is to be informed, trustee is not obligated to explore every possible fact without regard to cost of doing so or potential benefit to be achieved; trustee must not burden assets of estate with costs and expenses arising out of all manner of questions that may be presented at litigation but must exercise prudence and be ready to act upon settlement opportunity when one arises; interim Chapter 7 trustee investigations are adequate based upon his conversations where attorneys on both sides of litigation informed him of their claims and defenses and his accountant was able to produce financial data. [*In re Carla Leather, Inc.*, 44 B.R. 457, 11 Collier Bankr. Cas. 2d \(MB\) 622, 1984 Bankr. LEXIS 6569 \(Bankr. S.D.N.Y. 1984\)](#), aff'd, [*50 B.R. 764, 13 Bankr. Ct. Dec. \(LRP\) 650, Bankr. L. Rep. \(CCH\) ¶ 70640, 1985 U.S. Dist. LEXIS 18320 \(S.D.N.Y. 1985\)*](#).

In performance of his duties listed in former [11 USCS § 704\(1\)](#), trustee may generally pursue cause of action or, in his best judgment, compromise, settle, or abandon legal claims. [*In re American Energy, Inc.*, 49 B.R. 420, 1985 Bankr. LEXIS 6304 \(Bankr. D.N.D. 1985\).](#)

Bankruptcy court's decision to approve trustee's compromise and settlement of two fraudulent transfer claims was affirmed, because court's findings (that pursuing litigation would have been consuming and expensive, that settlement resulted in substantial payment to creditors, that no creditors had objected to settlement, and that trustee satisfied applicable test) were not clearly erroneous. [*Nangle v. Surratt-States \(In re Nangle\)*, 288 B.R. 213, 40 Bankr. Ct. Dec. \(LRP\) 194, 2003 Bankr. LEXIS 20 \(8th Cir. 2003\).](#)

Chapter 7 trustee had authority to recover on behalf of debtor's estate funds that were owed to debtor because of personal injuries, but trustee could not assert interests or rights greater than what debtor himself possessed as of petition date; debtor did not have rights in money that was owed to insurer for subrogation under terms of insurance policy. [*Lovald v. McGreevy \(In re McGreevy\)*, 388 B.R. 917, 2008 Bankr. LEXIS 2560 \(Bankr. D.S.D. 2008\).](#)

Chapter 7 debtor lacked authority to assert claim that mortgage lien holder's refusal to withdraw and amend Form 1099-C violated Pennsylvania law where action arose prior to commencement of bankruptcy, neither Chapter 7 trustee, debtor, nor any other party had sought court approval to abandon cause of action, and thus only Chapter 7

trustee could have brought claim. [*Jones v. Cendant Mortg. Corp. \(In re Jones\), 396 B.R. 638, 102 A.F.T.R.2d \(RIA\) 2008-6540, 2008 Bankr. LEXIS 3381 \(Bankr. W.D. Pa. 2008\).*](#)

Creditor lacked standing to bring motion for disgorgement of fees, as institution of action to redress alleged injury to estate that was suffered by entire creditor body was exclusively responsibility of Chapter 7 trustee under [11 USCS §§ 704\(a\)\(1\)](#) and [323. Amicone v. Ramsey \(In re Ramsey\), 451 B.R. 399, 2011 Bankr. LEXIS 2229 \(Bankr. W.D. Pa. 2011\).](#)

Fact that Chapter 7 trustee owed duties described in [11 USCS § 704](#) to estate of debtor and its creditors was one basis for bankruptcy court's determination that "insured versus insured" exclusion in D&O policy owned by debtor did not operate to preclude coverage of claims brought by trustee against ex-directors of debtor. [Willson v. Vanderlick \(In re Cent. La. Grain Coop., Inc.\), 467 B.R. 390, Bankr. L. Rep. \(CCH\) ¶ 82228, 2012 Bankr. LEXIS 410 \(Bankr. W.D. La. 2012\).](#)

Creditor lacked standing to pursue action to avoid and recover post-petition transfers on behalf of creditors, as only Chapter 7 trustee had standing to do so. Trustee's conclusion that transfers were not avoidable because cash collateral order entered into prior to conversion from Chapter 11 authorized debtor-in-possession to make them, and his refusal to bring suit, was within his sound business judgment and not unreasonable. [SunTrust Bank v. Matson \(In re CHN Constr., LLC\), 531 B.R. 126, 61 Bankr. Ct. Dec. \(LRP\) 18, 2015 Bankr. LEXIS 1672 \(Bankr. E.D. Va. 2015\).](#)

Unpublished decision: Because appellant debtors' putative class action against appellee bank involved prepetition monetary claim, and had not been listed in debtors' schedules as asset, under [11 USCS § 554\(d\)](#), it was still property of estate under [11 USCS § 541\(a\)\(1\)](#) which, pursuant to [11 USCS § 704\(a\)\(1\)](#), appellee trustee had duty to reduce to money by selling or settling claims under [11 USCS § 363](#); monetary claim could have potential value for estate and issues of settlement were matters to be resolved if trustee disposed of claims; thus, refusing to compel trustee to abandon claims under [§ 544\(b\)](#) was not error, as claims were not shown as too burdensome to estate. [Yack v. Wash. Mut. Bank \(In re Yack\), 2009 Bankr. LEXIS 4554 \(9th Cir. Feb. 18, 2009\).](#)

Unpublished decision: When facts that support potential adversary proceeding are discovered by trustee, trustee should be prepared to conduct initial investigation of facts, utilizing his or her powers to examine and obtain documents under [Fed. R. Bankr. P. 2004](#), if necessary, and make informed decision whether facts warrant employment of professional to pursue further investigation; if attorney is employed to advise and represent trustee in that effort, that team must prudently expand their investigation of facts to make sure that potential claim is sufficiently meritorious to justify administrative expense and delay which will result from prosecution of adversary proceeding; [Fed. R. Bankr. P. 9011\(b\)](#) mandates that investigation should be done before adversary proceeding is filed. [In re Hurst, 2008 Bankr. LEXIS 844 \(Bankr. E.D. Cal. Mar. 25, 2008\).](#)

Unpublished decision: Where Chapter 7 trustee retained attorney to file three adversary proceedings, two of which were abandoned and third which generated through settlement just enough to cover most of trustee's compensation and attorney's fees, trustees' employment of attorney, and pursuit of three adversary proceedings, was not reasonable exercise of trustee's duties under [11 USCS § 704. In re Squaglia, 2008 Bankr. LEXIS 2390 \(Bankr. E.D. Cal. Aug. 26, 2008\).](#)

Chapter 7 trustee was taxed with collecting and liquidating debtor's non-exempt assets for benefit of creditors, and was also vested with authority to avoid preferential transfers and recover those prepetition transfers for benefit of bankruptcy estate. [Stubbins v. Jones \(In re Battistelli\), 588 B.R. 23, 2018 Bankr. LEXIS 2425 \(Bankr. S.D. Ohio 2018\).](#)

Chapter 7 trustee's application to employ special counsel stated need for this specific special counsel's expertise, and to then hire her own firm to act as liaison between trustee and special counsel and to supervise special counsel's efforts was not efficient use of estate resources. Extra layer of representation provided by that firm was unnecessary and thus, not compensable. [In re Ward, 2017 Bankr. LEXIS 4149 \(Bankr. M.D. Tenn. Dec. 6, 2017\).](#)

Debtor was not required party because plaintiff could obtain complete relief from existing parties without debtor, and Chapter 7 trustee did not claim interest in plaintiff's adversary proceeding. [Mansfield Oil Co. v. Capitala Fin. Corp. \(In re On-Site Fuel Serv.\), 2020 Bankr. LEXIS 1258 \(Bankr. S.D. Miss. May 8, 2020\).](#)

Trustee's proposed sale and settlement of claims brought by Chapter 7 debtor arising from pending foreclosure was approved because sale and settlement would generate \$5000 for bankruptcy estate, litigation did not have high probability of success, litigation would have some complexity, and all objecting parties except one were self-interested and stood to gain little or nothing from projected distributions. [In re McQuillen Place Co., 2021 Bankr. LEXIS 802 \(Bankr. N.D. Iowa Mar. 30, 2021\).](#)

17. —Alter ego claims

Chapter 7 trustee does not have standing under [11 USCS § 704](#) to bring alter ego action against debtor corporation on behalf of creditors because nature of alter ego theory of piercing corporate veil makes it personal to corporate creditors rather than corporation itself. [In re Ozark Restaurant Equipment Co., 816 F.2d 1222, 16 Bankr. Ct. Dec. \(LRP\) 134, Bankr. L. Rep. \(CCH\) ¶ 71780, 16 Collier Bankr. Cas. 2d \(MB\) 1148, 1987 U.S. App. LEXIS 5403 \(8th Cir.\), cert. denied, 484 U.S. 848, 108 S. Ct. 147, 98 L. Ed. 2d 102, 1987 U.S. LEXIS 3959 \(1987\).](#)

Chapter 7 trustee of corporate debtor has standing to pursue creditors alter ego theory establishing that debtor is partnership and that the individual directors are partners liable for contribution because former [11 USCS § 704\(1\)](#) gives trustee duty to collect and reduce to money property of estate. [Henderson v. Buchanan, 52 B.R. 743, 1985 Bankr. LEXIS 5387 \(Bankr. D. Nev. 1985\)](#), aff'd in part and rev'd in part, [131 B.R. 859, 1990 U.S. Dist. LEXIS 19304 \(D. Nev. 1990\).](#)

Under [11 USCS § 541](#), which defines bankruptcy estate by reference to assets of debtor, and [11 USCS § 704](#), which authorizes trustee to collect assets or enforce rights owned by debtor, express authority to sue extends only to assets of corporation; thus there is no general authority for trustee to act on behalf of general creditors, nor does trustee represent general creditors for purposes of collection running exclusively to them: trustee has no representative standing where creditor's claim is based on alter ego theory. [In re S I Acquisition, Inc., 58 B.R. 454, 1986 Bankr. LEXIS 6550 \(Bankr. W.D. Tex. 1986\)](#), rev'd, [817 F.2d 1142, 16 Bankr. Ct. Dec. \(LRP\) 505, Bankr. L. Rep. \(CCH\) ¶ 71841, 17 Collier Bankr. Cas. 2d \(MB\) 207, 1987 U.S. App. LEXIS 6857 \(5th Cir. 1987\).](#)

Under state law, alter ego claims brought by retired employees and union against company as disguised successor of corporation were not property of bankruptcy estate of corporation under [11 USCS § 541\(a\)\(1\)](#); therefore, bankruptcy trustee did not have standing to bring alter ego claim under [11 USCS § 704\(1\)](#) and automatic stay provision did not apply to bar lawsuit. [Nieto v. Unitron, LP, 39 Employee Benefits Cas. \(BNA\) 1076, 2006 U.S. Dist. LEXIS 54443 \(E.D. Mich. Aug. 7, 2006\).](#)

Even though successor liability claim might not be property of debtor's estate, trustee had standing to bring alter ego and successor liability claims because they were sufficiently entangled with other general, derivative-type claims asserted by trustee seeking recovery for collective benefit of all creditors. [In re Comprehensive Power, Inc., 578 B.R. 14, 94 U.C.C. Rep. Serv. 2d \(CBC\) 413, 2017 Bankr. LEXIS 4178 \(Bankr. D. Mass. 2017\).](#)

In bankruptcy adversary proceeding against principal of debtor LLC, trustee was entitled to recover for fraudulent transfers because principal caused LLC to pay to him funds that served no business purpose. Because underlying cause of action was based on Massachusetts law, prepetition interest accrued pursuant to state statute, but postjudgment interest accrued pursuant to federal statute. Trustee lacked authority to pierce the corporate veil because right to pierce corporate veil belonged to creditors and veil piercing action involved no avoidance of transfer or of obligation. [Cruickshank v. Casey \(In re Boston Grand Prix, LLC\), 624 B.R. 1, 69 Bankr. Ct. Dec. \(LRP\) 107, 2020 Bankr. LEXIS 2947 \(Bankr. D. Mass. 2020\).](#)

18. —Divorce and domestic relations orders

Where appellant, debtor ex-wife, appealed district court decision affirming bankruptcy court order giving possession of disputed property (house) to appellee trustees of individual bankruptcy estates of ex-wife and debtor ex-husband, fact that ex-husband's trustee had not participated in some of many proceedings regarding house did not mean ex-husband's trustee lacked standing because under [11 USCS § 704\(a\)\(1\)](#), he had duty to collect and reduce to money property of estate for which he served, and that statutory duty conferred standing upon him to protect interests of ex-husband's bankruptcy estate as to claims affecting property possibly belonging to it. [Alexander v. Jensen-Carter, 711 F.3d 905, 2013 U.S. App. LEXIS 6546 \(8th Cir. 2013\)](#).

Chapter 7 trustee was allowed under [11 USCS §§ 323, 541](#), and [704](#) to assert debtor's right to seek QDRO from state court, to extent QDRO required debtor's ex-husband to turn over property that was property of debtor's bankruptcy estate; however, there was question whether trustee had standing to seek order which required debtor's ex-husband to turn over \$77,646 he had in ERISA-qualified retirement plan, given fact that funds might not be property of debtor's bankruptcy estate under [Patterson v. Shumate, 504 U.S. 753, 112 S. Ct. 2242, 119 L. Ed. 2d 519 \(1992\)](#), or that debtor might have valid claim that funds were exempt from creditors' claims under [11 USCS § 522](#), and court required trustee to show that he had standing. [Walsh v. Dively \(In re Dively\), 522 B.R. 780, 2014 Bankr. LEXIS 4905 \(Bankr. W.D. Pa. 2014\)](#).

19. —Tort claims

Chapter 7 trustee has statutory and fiduciary duty under [11 USCS § 704](#) to analyze debtor's wrongful death claim and decide whether and how to pursue it on estate's behalf, including determining whether to employ special counsel to prosecute claim. [In re Wells, 87 B.R. 732, 1988 Bankr. LEXIS 992 \(Bankr. N.D. Ga. 1988\)](#).

Chapter 7 trustee's decision to assign malpractice claims against debtor's accounting firm to debtor, rather than consummate lump sum settlement of claims with accounting firm, was reasonable based on evaluation of totality of relevant circumstances—trustee examined particular set-up of estate, including claims of tax creditors, nature of administrative costs and attorney's fees involved, and concluded that assignment was in best interests of estate. [Austin Assocs. v. Howison \(In re Murphy\), 288 B.R. 1, 49 Collier Bankr. Cas. 2d \(MB\) 1248, 2002 U.S. Dist. LEXIS 24823 \(D. Me. 2002\)](#).

As matter of law, in pari delicto defense does not apply to bankruptcy trustee; where Chapter 7 debtor's principal diverted money from debtor to himself and debtor's former counsel raised in pari delicto defense to negligence claim that was brought against it by trustee, defense did not bar action; defense did not apply to trustee because use of defense would thwart important public purpose that was served by trustee in marshaling assets of estate for benefit of debtor's creditors. [Tolz v. Proskauer Rose LLP \(In re Fuzion Techs. Group, Inc.\), 332 B.R. 225, 18 Fla. L. Weekly Fed. B 479, 2005 Bankr. LEXIS 718 \(Bankr. S.D. Fla. 2005\)](#).

Court approved compensation requested by special counsel for Chapter 7 trustee under [11 USCS §§ 328](#) and 330 because amount of fees requested was less than contingency fee authorized in his appointment and services and expenses were consistent with litigation of personal injury claim in that area; although creditor asserted that he had represented debtor in that personal injury action prior to appointment of special counsel, court overruled his objection, concluding that trustee had appointed special counsel, not creditor, under [11 USCS § 327](#) to reduce personal injury action to money pursuant to [11 USCS § 704](#). [In re Beck, 377 B.R. 714, 2006 Bankr. LEXIS 4467 \(Bankr. M.D. Fla. 2006\)](#).

After counsel's failure to list all of Chapter 7 debtor's property resulted in order revoking discharge and concomitant revived liability on debtor's part for more than \$260,000 in debt, trustee's complaint against counsel for legal malpractice survived counsel's motion to dismiss, pursuant to *Fed. R. Civ. P. 12(b)(6)*, because bankruptcy court had jurisdiction, pursuant to [28 USCS § 157\(c\)\(1\)](#), to decide motion, in that any order that would result was interlocutory; nor was counsel entitled to dismissal of complaint on ground of standing because claim was property of estate within meaning of [11 USCS § 541](#) in that each of three elements of claim existed prior to filing of bankruptcy petition, and trustee thus was duty-bound to pursue claim per [11 USCS § 704\(a\)\(1\)](#). [Helbling v. Josselson \(In re Almasri\), 378 B.R. 550, 2007 Bankr. LEXIS 3973 \(Bankr. N.D. Ohio 2007\)](#).

Chapter 7 trustee could only seek damages for breaches of fiduciary duty by debtor's principal occurring between point of insolvency and date of filing of petition because debtor owed no duty to creditors until insolvency date, *Crawford v. Zambrano (In re Zambrano Corp.)*, 478 B.R. 670, 57 Bankr. Ct. Dec. (LRP) 6, 2012 Bankr. LEXIS 4294 (Bankr. W.D. Pa. 2012).

20. Reduce estate property to money

Debtors' promissory note was property of estate under [11 USCS § 541](#) and concept of adequate protection was not applicable in Chapter 7 bankruptcy where trustee had power and duty to reduce promissory note to money pursuant to [11 USCS § 704\(1\)](#). *In re Be Vier*, 12 B.R. 75, 8 Bankr. Ct. Dec. (LRP) 80, 1981 Bankr. LEXIS 3530 (Bankr. D.S.D. 1981).

Where all parties agreed there would likely be assets returned to debtor under [11 USCS § 726\(a\)\(6\)](#), debtor was clearly party in interest as holder of some amount of unencumbered equity in inventory of its business, and trustee should take that equity into account in considering entire case and determining how inventory should best be sold to satisfy claims of creditors; in instant case, liquidation at retail was appropriate method for disposing of debtor's inventory; trustees must understand that acceptance of conventional and expedient methods does not necessarily fulfill their fiduciary duty to parties in interest of estate since trustee also owes duty to debtor to maximize value, particularly where, as here, there is real chance that all creditors may be paid in full and that debtor may receive funds back. *In re Kazis*, 257 B.R. 112, 37 Bankr. Ct. Dec. (LRP) 57, 2001 Bankr. LEXIS 14 (Bankr. D. Mass. 2001).

Chapter 7 trustee's fiduciary duties may require him or her to consider costs and benefits of pursuing potential estate asset. *In re Ambotiene*, 316 B.R. 25, 2004 Bankr. LEXIS 1540 (Bankr. E.D.N.Y. 2004), aff'd, [2005 U.S. Dist. LEXIS 45314](#) (E.D.N.Y. Sept. 30, 2005).

Debtor's undivided one-half interest in his mother's property was inherited within 180 days after filing of Chapter 7 petition and was included in property of bankruptcy estate, pursuant to [11 USCS § 541\(a\)\(5\)\(A\)](#), to be administered by trustee; therefore, debtor's post-petition partial disclaimer of his interest in inherited property was void because, once debtor filed for bankruptcy, he lost any right to exercise disclaimer under Va. Code Ann. § 64.1-196.4 and trustee had duty under [11 USCS § 704\(a\)\(1\)](#) to collect and reduce to money estate property. *Wolfe v. Farrior (In re Farrior)*, 344 B.R. 483, 56 Collier Bankr. Cas. 2d (MB) 333, 2006 Bankr. LEXIS 1098 (Bankr. W.D. Va. 2006).

Property at issue was not wages earned by debtors or Chapter 13 plan payments; rather, it was nonexempt, personal property owned by debtors at time of petition and which allegedly remained in their possession at time of conversion to Chapter 7; since such property was property of estate, Chapter 7 Trustee was required by statute to pursue to it and reduce it to money, [11 USCS §§ 348\(f\)\(1\)\(A\), 704\(a\)\(1\)](#). *In re John*, 352 B.R. 895, 20 Fla. L. Weekly Fed. B 20, 2006 Bankr. LEXIS 2606 (Bankr. N.D. Fla. 2006).

Pursuant to [11 USCS § 704\(a\)\(1\)](#), Chapter 7 trustee was not authorized to liquidate exempt property for benefit of domestic support obligation (DSO) claimant because exempt property was not property of estate under [11 USCS § 541\(a\)\(1\)](#) subject to administration of trustee; although Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 enhanced rights of DSO claimants, it conspicuously did not authorize trustees to liquidate exempt property to pay DSO claimant, and there was nothing in Bankruptcy Code that authorized Chapter 7 trustee to collect money not owed to estate. *In re Ruppel*, 368 B.R. 42, 57 Collier Bankr. Cas. 2d (MB) 698, 2007 Bankr. LEXIS 121 (Bankr. D. Or. 2007).

Where former broker, who had filed putative class suit against brokerage firm for lost commissions prior to filing for Chapter 7 bankruptcy protection, lacked standing to maintain lawsuit, since all of broker's interests in lawsuit were transferred to trustee, trustee was unable to act as class representative in class action because he had fiduciary duty under [11 USCS § 704\(1\)](#) to broker's creditors to collect and reduce to money estate property as expeditiously as possible, which would conflict with his duty to putative class. *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (In re Merrill Lynch & Co. Research Reports Sec. Litig.)*, 375 B.R. 719, 2007 U.S. Dist. LEXIS 69195 (S.D.N.Y. 2007).

Under 11 USCS § 330(a), attorneys were entitled to compensation because bankruptcy court erred in holding as matter of law that unsuccessful [Fed. R. Bankr. P. 9019\(a\)](#) proceeding that bankruptcy court itself had mandated provided no benefit to estate; given highly contentious bankruptcy proceeding, trustee's decision to obtain pre-settlement judicial approval of distribution was entirely consistent with his duty to collect and reduce to money property of estate and close such estate as expeditiously as was compatible with best interests of parties in interest under [11 USCS § 704\(a\)\(1\)](#). [Boyd v. Engman, 404 B.R. 467, 2009 U.S. Dist. LEXIS 16958 \(W.D. Mich. 2009\)](#).

With access to markets of liquidation, Chapter 13 case trustee can derive true value of assets and need not be limited by unreliable estimates or any particular methodology of valuation. [In re Burgio, 441 B.R. 218, 2010 Bankr. LEXIS 4955 \(Bankr. W.D.N.Y. 2010\)](#).

Sale by Chapter 7 trustee of estate's interests in certain claims against non-debtor defendants in adversary proceeding in which entity that purchased claim was also party plaintiff was not sale of trustee's statutory authority granted by [11 USCS § 704](#) but rather was trustee's liquidation of estate's claim in exchange for co-plaintiff's payment; by reason thereof, co-plaintiff was entitled to proceed against non-debtor defendants and any recovery obtained was for its own benefit. [Church J.V. v. Blasingame \(In re Blasingame\), 472 B.R. 754, 2012 Bankr. LEXIS 2610 \(Bankr. W.D. Tenn. 2012\)](#), discharge denied, [2015 Bankr. LEXIS 4535 \(Bankr. W.D. Tenn. Jan. 15, 2015\)](#).

Appeal of orders allowing sale of Chapter 7 debtors' investment properties under 11 USCS § 363 was dismissed for lack of appellate standing as: (1) debtors did not have actual, non-contingent, pecuniary interest in properties as it was unlikely that resolution of state court appeal of judgment encumbering properties would result in overall surplus; (2) debtors put properties into estate; (3) they had not obtained stay of execution in state court, and did not seek abandonment of properties under [11 USCS § 554](#) or dismissal of case, suggesting that case was filed to obtain automatic stay under [11 USCS § 362](#); and (4) trustee filed his motions almost year after case was filed, and did not act precipitously in fulfilling his [11 USCS § 704\(a\)\(1\)](#) duties. [Gentile v. DeGiacomo \(In re Gentile\), 492 B.R. 580, 57 Bankr. Ct. Dec. \(LRP\) 282, 69 Collier Bankr. Cas. 2d \(MB\) 912, 2013 Bankr. LEXIS 2082 \(1st Cir. 2013\)](#).

[11 USCS § 704\(a\)\(1\)](#) requires chapter 7 trustee to reduce to money property of bankruptcy estate, clearly contemplating sale or other disposition of property; this is different from determining intrinsic value, or its worth to parties, in divorce proceeding. [In re Cole, 548 B.R. 132, 2016 Bankr. LEXIS 932 \(Bankr. E.D. Va. 2016\)](#).

Chapter 7 trustee was denied authority to disburse, to IRS, funds representing proceeds of sale per [11 USCS § 522](#) of exempt property belonging to debtors, which disbursement would be in partial payment of priority tax claim that IRS was enforcing per [11 USCS § 507\(a\)\(8\)](#) because Chapter 7 trustee did not "hold" tax claim and could not enforce it; inasmuch as [11 USCS § 323](#) and [11 USCS § 704\(a\)\(1\)](#) provided for trustee to represent estate, not creditor, in collection and liquidation of estate property, it was improper for trustee to interpose himself in dispute between debtors and IRS. [In re Wolf, 109 A.F.T.R.2d \(RIA\) 501 \(BC ED Ky 2012\)](#).

Trustee's settlement of debtor's equitable distribution claim in divorce case for \$30,000 was approved since: (1) debtor's husband's pension totaled \$106,224.26 at time of separation; (2) projected litigation costs would negate any anticipated additional recovery; (3) settlement provided for payment through QDRO, which minimized risk of debtor's or ex-husband's failure to cooperate when funds were distributed; (4) settlement provided for 100 percent payment of claims against estate and administrative claims and allowed for debtor's exemption; and (5) any perceived unfairness was due to debtor's bad faith, delay and failure to cooperate with trustee. [Walsh v. Urmann \(In re Urmann\), 71 Collier Bankr. Cas. 2d \(MB\) 670, 2014 Bankr. LEXIS 1629 \(Bankr. W.D. Pa. Apr. 15, 2014\)](#), aff'd, [523 B.R. 472, 2014 U.S. Dist. LEXIS 151254 \(W.D. Pa. 2014\)](#).

Unpublished decision: Bankruptcy court erred in addressing merits of debtors' claims for wrongful foreclosure without determining whether they had standing to pursue claims on behalf of estate; debtors did not schedule claims, so they remained property of estate under [11 USCS § 541\(a\)](#) and only could be prosecuted by Trustee under [11 USCS § 704\(a\)\(1\)](#). [Lopez v. JPMorgan Chase Bank, N.A. \(In re Lopez\), 2012 Bankr. LEXIS 678 \(9th Cir. Feb. 3, 2012\)](#), dismissed, [2012 Bankr. LEXIS 1689 \(Bankr. C.D. Cal. Apr. 18, 2012\)](#).

Unpublished decision: Court was not required to make explicit finding that purchaser was good faith purchaser in sale under [11 USCS § 704](#) because, unlike in Chapter 11 case where sale of substantial assets outside plan was exception, motivation for sale in debtor's Chapter 7 case was not in question and it was duty of trustee to reduce estate property to money. [In re A.D. Mac Consulting Corp., 2008 Bankr. LEXIS 2374 \(Bankr. D.N.J. Sept. 5, 2008\)](#).

Unpublished decision: Trustee was not required to abandon real properties under [11 USCS § 554\(b\)](#), in which debtors held property interest, where property appeared to have equity, and where plausible adversary proceeding to avoid transfers of properties could be filed by trustee, who was entitled to access property subject to debtor's parent's life estate under [11 USCS § 704\(a\)\(1\)](#). [In re Celentano, 2012 Bankr. LEXIS 4122 \(Bankr. D.N.J. Sept. 6, 2012\)](#).

Unpublished decision: Law firm that was hired by Chapter 7 trustee and sought payment of \$1,340 for 6.7 hours of work it performed for trustee, who was partner in firm, was not entitled to payment of fees it billed for 3.4 hours of work because work in question was part of trustee's duties under [11 USCS § 704](#) or description of work it performed was unclear; routine and traditional and unproblematic matters had to be completed by trustee, even if attorney involvement was required, and time trustee billed for reviewing appraisal of debtor's real property, and for discussions trustee had with debtor's attorney regarding value of debtor's nonexempt personal property, fell within trustee's duty under § 704 to collect debtor's property and reduce it to money. [In re Dreibelbis, 2015 Bankr. LEXIS 1837 \(Bankr. N.D. Ohio June 3, 2015\)](#).

Motion to sell property free and clear of liens was granted, as Chapter 7 trustee articulated good, sufficient and sound business reasons and exigencies for sale to occur promptly; sale was reasonable and appropriate and represented, under circumstances, best method for maximizing return to bankruptcy estate and its creditors; sale appropriately enabled trustee, without undue delay, to monetize Chapter 7 bankruptcy estate's assets within reasonable period of time; purchaser provided highest and best offer; and contract and its subsequent modification were negotiated, proposed, and entered into by both parties without collusion or fraud, in good faith, and from an arm's length bargaining position. [Novak v. Town of W. Hartford Tax Collector \(In re Hampton Ventures, LLC\), 2019 Bankr. LEXIS 797 \(Bankr. D. Conn. Mar. 12, 2019\)](#).

Court denied stay relief, as state court jury trial to establish liability and damages, along with accounting and imposition of a constructive trust, followed by trial in bankruptcy court on nondischargeability and denial of discharge would be unnecessarily costly, duplicate judicial resources, and contravene trustee's and bankruptcy court's control and jurisdictional mandate over estate property. State court's adjudication of demand for accounting and imposition of constructive trust would be tantamount to division of partnership assets, revenue, and income between creditor and bankruptcy estate, and state court did not have jurisdiction to divvy up assets that included estate property. [In re Morris, 2020 Bankr. LEXIS 3197 \(Bankr. N.D. Ala. Nov. 13, 2020\)](#).

Retroactive expansion of law firm's role to include its role in assisting Chapter 7 trustee's efforts to liquidate estate assets was not warranted, as trustee's failure to seek authorization was not attributable to excusable neglect where trustee had retained general counsel to liquidate estate's assets and, in authorizing retention of general counsel, court made clear that general counsel was to assist in liquidation of any assets or property of estate other than claims that were pursued by special counsel. [In re Mohiuddin, 627 B.R. 875, 2021 Bankr. LEXIS 1232 \(Bankr. S.D. Tex. 2021\)](#).

21. —Advertisement

In absence of recognized market with established prices, trustee was required to advertise property to be sold; where trustee requested court to conduct auction, it was for court to determine minimum overbid; further, trustee's requirement that winning bidder present cashier's check for entire purchase price at time of sale imposed impermissible and improper condition on sale. [In re Mama's Original Foods, Inc., 234 B.R. 500, 34 Bankr. Ct. Dec. \(LRP\) 649, Bankr. L. Rep. \(CCH\) ¶ 77991, 1999 Bankr. LEXIS 671 \(Bankr. C.D. Cal. 1999\)](#).

22. —Expeditious administration

Trustee is under obligation under [11 USCS § 704](#) to collect property of estate expeditiously and in case of bank account that is clearly property of estate, trustee breaches that obligation when for nearly 2 months after notice of account all he does is send letter to bank requesting freeze; however, trustee's breach does not relieve bank of liability because it has duty to deliver funds to trustee under [11 USCS § 542](#): This duty is not contingent upon request by trustee, which was in fact made, or upon any resolution of exemption issue, or upon issuance of turnover order by court, or upon any other condition precedent but, instead, bank's duty to deliver funds to trustee, especially where it has knowledge of bankruptcy, is absolute. [*In re Bidlofsky, 57 B.R. 883, 1985 Bankr. LEXIS 4726 \(Bankr. E.D. Mich. 1985\).*](#)

Unpublished decision: Chapter 7 trustee's failure to reasonably expedite administration of case was cause to dismiss under [11 USCS § 707\(a\)](#); it was not reasonable exercise of trustee's duty under [11 USCS § 704](#) to report case as asset case and then hold it open for more than two years, speculating that she might be able to generate some small value from stock. [*In re Thompson, 2008 Bankr. LEXIS 573 \(Bankr. E.D. Cal. Feb. 29, 2008\).*](#)

Unpublished decision: Where debtor sought removal of Chapter 7 trustee pursuant to [11 USCS § 324\(a\)](#) on grounds that he improperly and unnecessarily planned to completely liquidate all estate assets for personal gain, notwithstanding availability of equity in one property alone to satisfy all unsecured creditors in full, this conclusory allegation was not entitled to presumption of truth, and complaint was dismissed; trustee had duty to liquidate assets of estate expeditiously under [11 USCS § 704\(a\)\(1\)](#) and was required to exercise his business judgment to determine manner of liquidation. [*Livore v. Hargrave \(In re Livore\), 2010 Bankr. LEXIS 1653 \(Bankr. D.N.J. May 6, 2010\).*](#)

Unpublished decision: Court approved fee application filed by counsel for Chapter 7 trustee, as services provided in connection with objection to Chapter 13 plan filed while Chapter 7 case was still pending were necessary and compensable because confirmed Chapter 13 plan would bind all creditors and numerous complex and expensive challenges to confirmation order would have undoubtedly followed; further, debtor thwarted trustee's duty to investigate his financial affairs and thus, counsel had to compel document production and testimony, and those services were also necessary and compensable. [*In re Leonis, 2016 Bankr. LEXIS 287 \(Bankr. E.D. Cal. Jan. 28, 2016\).*](#)

23. —Renting out of property

Trustee had no duty to rent Chapter 11 debtor's residence under [11 USCS § 704](#) and will not be removed for failure to do so because § 704 does not specifically create duty to rent nonrental property and duty to close estate quickly is not compatible with finding renters and trying to sell property burdened with leases and tenancy rights. [*In re Miller, 50 B.R. 870, 1985 Bankr. LEXIS 5753 \(Bankr. N.D. Ohio 1985\).*](#)

24. —Sale of business

Exclusion from estate property of debtor's future earnings, [11 USCS § 541\(a\)\(6\)](#), included debtor's right to work in certain counties; thus, even though inclusion of covenant not to compete could increase value of goodwill associated with debtor's business, court denied Chapter 7 Trustee's request to include in sale of business, [11 USCS § 704\(a\)\(1\)](#), covenant not to compete in three counties for period of two years. [*In re Glazer, 317 B.R. 488, 43 Bankr. Ct. Dec. \(LRP\) 268, 53 Collier Bankr. Cas. 2d \(MB\) 1029, 2004 Bankr. LEXIS 2188 \(Bankr. E.D. Mich. 2004\).*](#)

25. —Sale of personal property

Chapter 7 trustee's second motion to sell debtors' personal property, including two boats, satisfied requirements of [11 USCS §§ 363](#) and [704](#), because trustee had arranged for property to get wider exposure at general auction. [*In re Duncan, 406 B.R. 904, 103 A.F.T.R.2d \(RIA\) 2009-2449, 2009 Bankr. LEXIS 1818 \(Bankr. D. Mont. 2009\).*](#)

Upon reviewing duties set forth in [11 USCS § 704](#) and case law, court found that services performed by applicant with respect to sale of personal property, and abandonment of other property, were within scope of trustee duties

and did not require any legal expertise beyond normal knowledge and skill possessed by trustees; furthermore, services related to contested motion to modify stay and settlement were outside of simple and routine trustee tasks, and attorney fees and costs incurred by applicant were actual, reasonable and necessary for estate at time they were incurred; by contrast, \$225 fee requested for preparing notice of abandonment of mobile home on December 15, 2010, and \$292.50 requested for preparing exhibits and notices of sale of personal property on April 25, 2012, were tasks within scope of trustee's duties. [In re Kohlruss, 68 Collier Bankr. Cas. 2d \(MB\) 1847, 2013 Bankr. LEXIS 2 \(Bankr. D. Mont. Jan. 2, 2013\).](#)

Chapter 7 trustee's motion to sell debtor's boat free and clear of liens, interest, encumbrances, and claims was granted over objection of individual who contended that he owned 50 percent interest in boat, as court did not find his testimony or his documentation credible. [In re Jenkins, 2020 Bankr. LEXIS 2991 \(Bankr. N.D. Miss. Oct. 22, 2020\)](#), aff'd, dismissed, [2021 U.S. Dist. LEXIS 180449 \(N.D. Miss. Sept. 21, 2021\).](#)

26.—Sale of other property or property interest

California homestead exemption which permits forced sale of homestead if its sale price exceeds amount of homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on property does not require that sale price also account for selling costs; trustee has obligation under [11 USCS § 704](#) to act in best interest of estate in reducing estate property to cash and it is doubtful that this obligation would be satisfied if trustee sold debtors' home for less than homestead exemption, encumbrances, selling costs, and trustee's own fees, but nothing in § 704 requires that trustee demonstrate in advance of attempting sale that market price will exceed all costs and encumbrances; little would be gained by prohibiting trustee from attempting sale in sound belief that there will be something left for estate after liens, sale expenses, and homestead exemption are covered, particularly because trustee is not bound to accept bid that does not enable him to satisfy his obligations and may simply refuse to go through with sale if none of bids proves sufficiently advantageous. [In re Hyman, 967 F.2d 1316, 92 Cal. Daily Op. Service 5323, 92 D.A.R. 8504, 23 Bankr. Ct. Dec. \(LRP\) 153, Bankr. L. Rep. \(CCH\) ¶ 74706, 1992 U.S. App. LEXIS 14118 \(9th Cir. 1992\)](#), abrogated in part, [Schwab v. Reilly, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234, 22 Fla. L. Weekly Fed. S 494, 53 Bankr. Ct. Dec. \(LRP\) 78, Bankr. L. Rep. \(CCH\) ¶ 81787, 2010 U.S. LEXIS 4974 \(2010\).](#)

Bankruptcy trustees have power to sell property of estate and to employ professional persons, such as auctioneers, in order to carry out this essential liquidation function. [In re Sheldon's, Inc. of Maine, 28 B.R. 568, 10 Bankr. Ct. Dec. \(LRP\) 450, Bankr. L. Rep. \(CCH\) ¶ 69216, 1983 Bankr. LEXIS 6533 \(Bankr. D. Me. 1983\)](#), disapproved, [California State Bd. of Equalization v. Sierra Summit, Inc., 490 U.S. 844, 109 S. Ct. 2228, 104 L. Ed. 2d 910, 19 Bankr. Ct. Dec. \(LRP\) 401, Bankr. L. Rep. \(CCH\) ¶ 72842, 20 Collier Bankr. Cas. 2d \(MB\) 1501, 1989 U.S. LEXIS 2865 \(1989\).](#)

In view of Bankruptcy Court's prior determination that Chapter 7 debtor's interest in trust established by debtor's father was property of bankruptcy estate, trustee was entitled, pursuant to former [11 USCS § 704\(1\)](#), to complete sale of debtor's interest in trust in order to generate money for bankruptcy estate and could not be enjoined from fulfilling his statutory duty. [Taylor v. Grant \(In re Taylor\), 196 B.R. 197, 9 Fla. L. Weekly Fed. B 396, 1996 Bankr. LEXIS 596 \(Bankr. M.D. Fla. 1996\).](#)

Bankruptcy court's determination that Chapter 7 bankruptcy trustee had not engaged in champerty was upheld where trustee's attempt to sell debtor's survivorship interest in real estate held via tenancy by entirety was fully within scope of duties delegated by [11 USCS § 704\(1\)](#) and trustee had acted as lien creditor in selling interest pursuant to [11 USCS § 544](#). [In re Ryan, 282 B.R. 742, 49 Collier Bankr. Cas. 2d \(MB\) 140, 2002 U.S. Dist. LEXIS 16738 \(D.R.I. 2002\).](#)

Since one duty of trustee is to collect and reduce to money property of estate, trustee is given great judicial deference by bankruptcy court in deciding which bid to accept as best and highest bid for sale of property. [In re Gulf States Steel, Inc., 285 B.R. 497, 2002 Bankr. LEXIS 1317 \(Bankr. N.D. Ala. 2002\).](#)

Trustee was justified in deciding that modified Chapter 13 plan did not require him to receive proceeds of sale of debtor's home and use them to pay debt to bank that was secured by property; plan did not expressly imposed those duties on trustee; trustee in past had relied on debtors and their closing agents to receive and distribute proceeds to secured creditors; and law under [11 USCS §§ 1302\(b\)](#) and [704\(1\)](#) did not require it. *First Am. Title Ins. Co. v. Nation (In re Nation)*, 352 B.R. 656, 56 Collier Bankr. Cas. 2d (MB) 1623, 2006 Bankr. LEXIS 2600 (Bankr. E.D. Tenn. 2006).

Chapter 7 trustee had duty to sell debtor's real property for benefit of estate, and pre-petition right of first refusal entered between debtor and adjoining landowner was not applicable to trustee's sale that proceeded under 11 USCS § 363 because trustee's sale could not be characterized as debtor's "choosing to sell" as required by right of first refusal agreement. *In re Claywell*, 364 B.R. 158, 2007 Bankr. LEXIS 723 (Bankr. D. Conn. 2007).

Chapter 7 trustees are tasked with host of responsibilities which include investigation of financial affairs of debtor, opposing debtor's discharge if advisable, and making distributions to creditors under final report, and in conducting these responsibilities, chapter 7 trustee is also considered representative of interests of creditors; in light of all these responsibilities, trustee could not be said to have acted in his own personal interests simply because he advocated sale which would not pay unsecured creditors. *In re George Love Farming, LC*, 366 B.R. 170, 48 Bankr. Ct. Dec. (LRP) 32, 57 Collier Bankr. Cas. 2d (MB) 1392, 2007 Bankr. LEXIS 1095 (Bankr. D. Utah 2007).

Appeal of that portion of bankruptcy court's order concerning motion to invalidate foreclosure sale was denied because appraisal report was not presented to bankruptcy court, and thus, instant court could not now consider it on appeal, there was no prohibition in Bankruptcy Code limiting amount of property to be sold in Chapter 7 liquidation case, and since bankruptcy court provided its basis for rejecting new argument raised concerning amount of property sold by trustee pursuant to [11 USCS § 704\(a\)](#), bankruptcy court's findings of fact sufficiently supported its legal conclusions. *Rahmi v. Trumble (In re Bon-Air P'ship)*, 464 B.R. 710, 2011 U.S. Dist. LEXIS 149565 (N.D. W. Va. 2011), aff'd, [521 Fed. Appx. 131, 2013 U.S. App. LEXIS 7316 \(4th Cir. 2013\)](#).

While sales of fully encumbered assets are generally improper, there is no per se rule against Trustee entering into carve-out agreement with secured creditor; thus, bankruptcy court abused its discretion by denying approval of stipulation between Trustee and creditor bank which contemplated sale of bank's fully encumbered property in exchange for carve-out because court did not determine whether sale and carve-out would result in meaningful distribution to unsecured creditors. *In re KVN Corp.*, 514 B.R. 1, 59 Bankr. Ct. Dec. (LRP) 237, Bankr. L. Rep. (CCH) ¶ 82671, 2014 Bankr. LEXIS 3235 (9th Cir. 2014).

Where Chapter 7 debtors objected to sale of estate property, objection to sale raised no substantive objections against sale itself, and thus provided no basis for court to interfere with trustee's judgment in accepting bid at issue for interest in Florida beach house. *In re Bryan*, 58 Bankr. Ct. Dec. (LRP) 108, 2013 Bankr. LEXIS 3650 (Bankr. M.D. Ala. Sept. 3, 2013).

Unpublished decision: Given bankruptcy court's rejection of debtor's persistent claim that sale by Chapter 7 trustee of certain real estate was unnecessary, debtor's cognate objection to fee applications filed by law firm that had assisted trustee in winning approval for sale and in selling property was properly overruled given requirement in [11 USCS § 704](#) that finding that sale of debtor's property was necessary imposed on trustee duty to reduce to money property in question. *Thomas v. Namba (In re Thomas)*, 2007 Bankr. LEXIS 4681 (9th Cir. Nov. 5, 2007).

Unpublished decision: Property remained asset of Chapter 7 estate when debtors filed their concurrent Chapter 13 petition, and appellee Chapter 7 trustee was obliged to sell property pursuant to [11 USCS § 704\(a\)\(1\)](#); trustee's efforts in selling property were necessary and sale benefited creditors of estate; thus, trustee and his attorney were entitled to compensation and expenses pursuant to [11 USCS §§ 326\(a\)](#), 330(a)(1), over objection of appellant debtors. *Heath v. Farmer (In re Heath)*, 2007 Bankr. LEXIS 4847 (9th Cir. Apr. 2, 2007).

Unpublished decision: In order to fulfill his duty of collecting cash to distribute to creditors, Chapter 7 trustee could sell estate property outside ordinary course of business, subject to court approval and after notice and hearing. *TMC Aerospace, Inc. v. Joseph (In re Ice Mgmt. Sys.)*, 2014 Bankr. LEXIS 4947 (9th Cir. Dec. 8, 2014).

Unpublished decision: Chapter 7 trustee had duty to analyze whether or not there was equity in debtor's homestead property that could be used to satisfy claims of unsecured creditors, and debtor had obligation, pursuant to [11 USCS § 521\(a\)\(3\)](#), (4), to cooperate with trustee's efforts to have property appraised and to surrender property if necessary. [*Toffel v. Silmon \(In re Silmon\), 2007 Bankr. LEXIS 3183 \(Bankr. N.D. Ala. Sept. 14, 2007\).*](#)

Unpublished decision: Chapter 7 trustee's judgment that it was in best interest of debtor's estate for trustee to accept all-cash offer worth \$50,500 instead of offer that combined \$50,000 in cash with interest in any recovery in certain litigation involving debtor and both bidders was accepted by U.S. bankruptcy court, which declined to undertake substantive comparison of two bids, because such determinations were within scope of duties assigned by [11 USCS § 704](#) to Chapter 7 trustee, because trustee's recommendation on such matter was entitled to significant deference, and because evaluation of such matters was outside of role assigned by Congress to U.S. bankruptcy courts. [*In re A.D. Mac Consulting Corp., 2008 Bankr. LEXIS 555 \(Bankr. D.N.J. Mar. 4, 2008\).*](#)

Chapter 7 trustee's decision to sell estate's interest in property to debtor's former husband was entirely consistent with her statutory obligation to liquidate estate expeditiously, as it was debtor's only asset with equity, trustee reasonably anticipated that proceeds would be sufficient to pay all claims against estate, and sale and compromise avoided costs of litigation and sale. Trustee exercised her business judgment, and bankruptcy court's approval of this decision was not erroneous. [*McClenney v. McClenney \(In re McClenney\), 2018 Bankr. LEXIS 736 \(9th Cir. Mar. 6, 2018\).*](#)

Court had subject matter jurisdiction to authorize payment of property liens after it authorized the sale of property owned by debtor because debtor's interest in property became property of the estate, trustee was permitted to sell the property, and trustee was required to distribute the proceeds in accordance with the priorities set forth in [11 U.S.C.S. § 726](#). [*In re McKeever, 588 B.R. 649, 2018 Bankr. LEXIS 1287 \(Bankr. N.D. Ga. 2018\).*](#)

Debtor's motion to alter or amend judgment was denied because, with respect to court's earlier decision denying debtor's exemptions, debtor did not argue that there was newly discovered evidence or that there was intervening change in law; court previously found Trustee did not act contrary to his duties under this statute and accorded debtor due process as to sale of real property since debtor was given notice and opportunity to be heard before court authorized sale. [*In re Gonzalez, 2019 Bankr. LEXIS 2684 \(Bankr. C.D. Cal. Aug. 23, 2019\).*](#)

Chapter 7 trustee was required to expeditiously liquidate or abandon property of estate. Trustee demonstrated that proposed sale of farm real estate outside ordinary course of business was in best interest of estate, would maximize value of estate, and was in good faith where, at effectively 89 percent of appraised value, sale was for fair and reasonable price and would provide needed cash to pay claims. [*In re Yuska, 2017 Bankr. LEXIS 4309 \(Bankr. N.D. Iowa Dec. 19, 2017\).*](#)

Chapter 7 trustee's power to sell estate property for purpose of satisfying creditors' claims was not limited to debtor's state law rights to partition that property as joint tenant. Chapter 7 trustee had power, as hypothetical lien creditor, to compel partition of property under Virginia Code, but what was more, if property could not be divided, Bankruptcy Code allowed trustee to sell undivided joint property so long as certain conditions were met. [*Scott v. Hoole \(In re Hoole\), 2018 Bankr. LEXIS 810 \(Bankr. W.D. Va. Mar. 21, 2018\).*](#)

Court had subject matter jurisdiction to authorize payment of property liens after it authorized the sale of property owned by debtor because debtor's interest in property became property of the estate, trustee was permitted to sell the property, and trustee was required to distribute the proceeds in accordance with the priorities set forth in [11 U.S.C.S. § 726](#). [*In re McKeever, 588 B.R. 649, 2018 Bankr. LEXIS 1287 \(Bankr. N.D. Ga. 2018\).*](#)

Bankruptcy trustee was awarded compensation of \$406.00 and all other requested compensation was disallowed because case was routine, trustee provided services in accordance with statute, and compensation was for reasonable, actual, and necessary services. Trustee's law firm was not entitled to compensation in excess of \$210 because services it provided either constituted trustee work, including retaining real estate broker, or, in case of opposition to motion to convert to chapter 13, were neither necessary nor beneficial to estate. Further, because trustee's law firm was not entitled to compensation, it was not entitled to compensation for preparing unsuccessful

application for fees. [*In re McConnell, 2021 Bankr. LEXIS 163 \(Bankr. N.D. Ga. Jan. 4, 2021\)*](#), rev'd in part, aff'd, remanded, [641 B.R. 261, 2022 U.S. Dist. LEXIS 86521 \(N.D. Ga. 2022\)](#).

Trustee's sale procedures regarding the sale of three pieces of contiguous commercial real estate under 11 U.S.C.S. § 363 were approved as the trustee's proposed sale process fell squarely within her mandate to liquidate property of the Chapter 7 bankruptcy estate, was a sound and prudent exercise of her reasonable business judgment, and reflected the best interest of the estate and creditors. [*In re Sakon, 2023 Bankr. LEXIS 1584 \(Bankr. D. Conn. June 16, 2023\)*](#).

27. —Winding up

Trustee was entitled to order allowing him leave to wind up partnership; based on Partial Summary Judgment Order, partnership was dissolved by withdrawal of general partner, and debtor's 70 percent interest in partnership constituted property of estate; trustee had duty to administer assets of estate, including debtor's 70 percent partnership interest, [11 USCS § 704](#), and it was thus appropriate to grant trustee such leave. [*In re Thadikamalla v. Thadikamalla, 488 B.R. 791, 57 Bankr. Ct. Dec. \(LRP\) 220, 2013 Bankr. LEXIS 1281 \(Bankr. N.D. Ga. 2013\)*](#).

28. Miscellaneous

Former [11 USCS § 704\(1\)](#) gives trustee standing to assert interest of Chapter 7 debtor's former partnership in strip mining land reclamation bond fund controlled by state agency because debtor's filing dissolved partnership, upon which each partner becomes entitled not only to share in partnership property but also to apply partnership property to pay partnership debts for which partner otherwise would be personally liable. [*In re Wood, 52 B.R. 513, 13 Bankr. Ct. Dec. \(LRP\) 539, 1985 Bankr. LEXIS 5866 \(Bankr. N.D. Ala. 1985\)*](#).

Because accounts receivable arising from underpayments on prepetition freight charges are property of estate, Chapter 11 debtors are obligated to administer them in best interest of creditors pursuant to [11 USCS § 1107](#), [11 USCS § 1106](#), [11 USCS § 704](#), and [11 USCS § 323](#). *Maislin Industries, U.S., Inc. v. A.J. Hollander Co.*, 69 B.R. 771, 17 Collier Bankr. Cas. 2d (MB) 454, 1986 Bankr. LEXIS 5103 (E.D. Mich.), adopted, 69 B.R. 771, 17 Collier Bankr. Cas. 2d (MB) 454, 1986 U.S. Dist. LEXIS 18870 (E.D. Mich. 1986).

Even though Chapter 7 debtor's interest in commercial real property makes him "party in interest" for purposes of former [11 USCS § 704\(1\)](#), request for stay of liquidation of property on basis that state court judgment against debtor might be overturned on appeal is denied, as court will not substitute its judgment for discretion of trustee who is charged with duty of liquidating property of estate. [*In re Poland, 222 B.R. 371, 11 Fla. L. Weekly Fed. B 327, 40 Collier Bankr. Cas. 2d \(MB\) 729, 1998 Bankr. LEXIS 820 \(Bankr. M.D. Fla. 1998\)*](#).

Property damage insurance proceeds that remained in debtor's account on date that bankruptcy petition was filed were part of debtor's bankruptcy estate under [11 USCS § 541\(a\)\(1\)](#) and were subject to administration by trustee pursuant to former [11 USCS § 704\(1\)](#). [*In re Robinson, 292 B.R. 599, 2003 Bankr. LEXIS 591 \(Bankr. S.D. Ohio 2003\)*](#).

Services and expenses that Chapter 7 trustee provided while acting as his own attorney in objecting to debtor's conversion of her Chapter 7 case to Chapter 13 case were both reasonably likely to benefit debtor's estate, and necessary to administration of case; accordingly, trustee, acting as his own attorney, was entitled to claim for reasonable value of attorney services and expenses that were provided. [*In re Kuhn, 337 B.R. 668, 55 Collier Bankr. Cas. 2d \(MB\) 1162, 2006 Bankr. LEXIS 199 \(Bankr. N.D. Ind. 2006\)*](#).

Trustee's delay in bringing action was not unreasonable or incompatible with best interests of debtors; in fact, it was debtors' actions that initially created delay, and complexity of bankruptcy case, as evidenced by numerous [11 USCS § 341\(a\)](#) meetings and voluminous transcripts along with very high level of docket activity in case, provided

ample explanation for trustee's timing. [*Rice v. Johnson \(In re Johnson\), 371 B.R. 380, 2007 Bankr. LEXIS 2353 \(Bankr. E.D. Ark. 2007\).*](#)

Chapter 7 trustee did not have standing to assert claim under trust fund doctrine as construed under South Carolina law because any recovery under allegation would be for benefit of creditor and would not confer any benefit to debtor's estate. [*Vieira v. AGM II, LLC \(In re Worldwide Wholesale Lumber, Inc.\), 372 B.R. 796, 2007 Bankr. LEXIS 1882 \(Bankr. D.S.C. 2007\).*](#)

Chapter 7 trustee's motion for reconsideration of order, which denied her motion for approval of stipulation under [*Fed. R. Bankr. P. 9019\(a\)*](#), was denied because settlement was substantively deficient in that it contemplated control of debtors' personal injury claim being shifted from estate to them without 11 USCS § 363(b) conveyance of claim and, thus, trustee sought to unlawfully delegate her statutory duty under [*11 USCS § 704*](#) to administer asset for estate's benefit. [*In re Novak, 383 B.R. 660, 2008 Bankr. LEXIS 833 \(Bankr. W.D. Mich. 2008\).*](#)

Chapter 7 trustee had duty to collect assets for distribution to debtor's creditors, and debtor had correlated duty to cooperate with trustee so that trustee could perform his duties. [*In re Gabriel, 390 B.R. 816, 2008 Bankr. LEXIS 894 \(Bankr. D.S.C. 2008\).*](#)

Bankruptcy court had jurisdiction under [*28 USCS §§ 1334*](#) and [*157*](#) to hear Chapter 7 trustee's request for order approving payment of compensation for work trustee and his counsel performed after court authorized trustee to terminate retirement plan corporation established under Employee Retirement Income Security Act of 1974, [*29 USCS §§ 1001*](#) et seq., even though compensation was paid out of retirement plan; trustee administered debtor's plan pursuant to [*11 USCS § 704\(a\)\(11\)*](#), and court's right to oversee trustee's actions and to approve payment of compensation fell within its core jurisdiction. [*In re Franchi Equip. Co., 452 B.R. 352, 55 Bankr. Ct. Dec. \(LRP\) 15, 51 Employee Benefits Cas. \(BNA\) 2777, 2011 Bankr. LEXIS 2489 \(Bankr. D. Mass. 2011\).*](#)

In Chapter 7 bankruptcy estate where debtor's counsel sought sanctions relating to funds in bank account, bank had duty to turn over funds in account to Chapter 7 trustee, not to debtor; had bank turned over funds to anyone else, it would have been liable to bankruptcy estate. Trustee was responsible for collecting estate property. [*In re Zarco, 507 B.R. 247, 2014 Bankr. LEXIS 1207 \(Bankr. N.D. Ill. 2014\).*](#)

Plaintiff, which was established to liquidate and distribute assets of bankruptcy estate, was not per se trustee in bankruptcy but rather was representative of estate as that term was used in Bankruptcy Code, and operative documents (confirmed plan, confirmation order, and LLC agreement) gave it powers of debtor-in-possession to pursue claims on behalf of estate; further, broad definition of estate and estate property included causes of action assigned by creditors, and plan did not prohibit plaintiff from accepting such assignment. [*BC Liquidating, LLC v. Weinstein \(In re BC Funding, LLC\), 519 B.R. 394, 2014 Bankr. LEXIS 4593 \(Bankr. E.D.N.Y. 2014\).*](#)

Because trustees were authorized under [*11 USCS § 550*](#) to recover for benefit of estate property in respect to transfers avoided under [*11 USCS § 547*](#) but were not mandated to do so under [*11 USCS § 704*](#), court ordered trustee not to sue creditors listed in certain categories of preferential transfers in order to strike fair balance in preference litigation in case. [*In re Brook Mays Music Co., 48 Bankr. Ct. Dec. \(LRP\) 164, 58 Collier Bankr. Cas. 2d \(MB\) 874, 2007 Bankr. LEXIS 2902 \(Bankr. N.D. Tex. Aug. 1, 2007\).*](#)

Unpublished decision: Individual's role as designated debtor of Chapter 7 corporate debtor did not convey standing to object to claims filed in liquidation of his failed company or supplant trustee in his duties to administer estate; designated debtor's duties were to file list of creditors, submit statement of financial affairs, and appear at meeting of creditors; however, it remained Chapter 7 trustee's responsibility to administer estate. [*In re Fiber Optek Interconnect Corp., 2010 Bankr. LEXIS 5007 \(Bankr. S.D.N.Y. Jan. 15, 2010\)*](#), aff'd, [*445 B.R. 124, 2011 U.S. Dist. LEXIS 8476 \(S.D.N.Y. 2011\).*](#)

Debtor's one-third interest in funds derived from his deceased mother's probate estate following conversion of his case to Chapter 7 were property of his bankruptcy estate. By taking his one-third of inheritance and spending it on himself and family members, debtor failed to perform his duty to surrender to trustee all property of bankruptcy

estate and hindered trustee in performance of his duties to collect and reduce to money property of estate. [Samson v. Franz \(In re Franz\), 76 Collier Bankr. Cas. 2d \(MB\) 974, 2016 Bankr. LEXIS 3747 \(Bankr. D. Mont. Oct. 17, 2016\).](#)

After motions to remove Chapter 7 trustee and for leave to sue him were denied, case was closed and trustee was discharged as trustee had fully administered estate and [Fed. R. Bankr. P. 5009](#) presumption had not been rebutted; trustee was entitled to receive amounts owed him under 11 U.S.C.S. § 330 and Bankruptcy Court Miscellaneous Fee Schedule and as he had collected and reduced to money property of estate and debtor had received discharge, revesting of title to debtor's property ought not to be further delayed, but case would be reopened to allow movant to pursue belated motion to convert case to Chapter 11, and for [11 U.S.C.S. § 1115](#) purposes, case would not be deemed to have been closed. [In re Carvalho, 2017 Bankr. LEXIS 4411 \(Bankr. D.D.C. Dec. 27, 2017\).](#)

Trustee's motion for turnover of estate property was unsuccessful because debtors' \$11,000 pre-petition payment to counsel created advance payment retainer, which was not property of estate. [In re Rodenbough, 2018 Bankr. LEXIS 3192 \(Bankr. D. Idaho Apr. 19, 2018\).](#)

Personal injury claim that was acquired by debtor wife after Chapter 13 petition date but prior to date debtors' case was converted to Chapter 7 was not property of debtors' bankruptcy estate and thus, their motion to compel Chapter 7 trustee to abandon that claim was denied. Because personal injury claim was not property of estate, debtors did not have to exempt it and, for same reason, Chapter 7 trustee could not administer it. [In re Love, 2019 Bankr. LEXIS 1791 \(Bankr. E.D. Va. June 10, 2019\).](#)

As result of debtor's judicial admission on his schedules, his legal or equitable interest in subject funds, if any, was property of estate, and Chapter 7 trustee was required to collect those funds. [In re Chambers, 2020 Bankr. LEXIS 3611 \(Bankr. D. Nev. Nov. 16, 2020\).](#)

Although debtor claimed proceeds held by law firm in escrow as exempt, 30-day exemption deadline had not started and thus, control of proceeds remained in Chapter 7 trustee until exemption was allowed and law firm was required to turnover funds. Trustee's statutory obligation to collect proceeds did not require him to prove that turnover was in best interest of creditors; rather, applicability of exception to custodian's turnover obligation had to be demonstrated by party seeking relief, not bankruptcy trustee. [In re Chambers, 2020 Bankr. LEXIS 3611 \(Bankr. D. Nev. Nov. 16, 2020\).](#)

Chapter 7 trustee's efforts in bankruptcy case were necessitated by debtor's claim that he owned personal property valued at more than \$4 million. Trustee had statutory duty to investigate all assets scheduled by debtor to determine whether any could be liquidated for benefit of estate, and to discharge her duty, she employed attorney, interviewed debtor and others regarding location and status of scheduled assets, filed motions, objections, and other papers with court, and appeared in court to obtain turnover of debtor's nonexempt property. [In re Demicher, 2018 Bankr. LEXIS 4307 \(Bankr. M.D. Fla. Apr. 3, 2018\).](#)

Because a birth certificate had no financial value and was not an asset of the bankruptcy estate, the debtor's objection to the Chapter 7 trustee's report of no distribution on the ground that the trustee failed to consider her birth certificate as an asset was meritless; a birth certificate could not be collected and reduced to money. [In re Henry, 2024 Bankr. LEXIS 1943 \(Bankr. N.D. Ga. Aug. 20, 2024\).](#)

III. OTHER DUTIES

29. Abandonment

Abandonment of portion of debtor's homestead property that belonged to bankruptcy estate was not available remedy for alleged misconduct by Chapter 7 trustee in leaving case open longer than necessary; requiring trustee

to abandon homestead property would have punished creditors. [*Gebhart v. Gaughan \(In re Gebhart\), 621 F.3d 1206, Bankr. L. Rep. \(CCH\) ¶ 81846, 2010 U.S. App. LEXIS 19135 \(9th Cir. 2010\).*](#)

Trustees should abandon property that does not benefit estate; “carve out” for sole purpose of creating trustee’s commission for administering secured assets that should be abandoned will no longer be approved; where Chapter 7 debtor filed notice of sale for \$200,000 of realty which was subject to first mortgage exceeding that amount and second mortgage exceeding \$51,000 and trustee did not object to sale but negotiated \$1,000 carve out to cover administrative expenses and distribution to unsecured creditors, entire sale proceeds will be ordered turned over to first mortgagee and trustee will be denied compensation. [*In re Tobin, 202 B.R. 339, 29 Bankr. Ct. Dec. \(LRP\) 1232, 37 Collier Bankr. Cas. 2d \(MB\) 52, 1996 Bankr. LEXIS 1437 \(Bankr. D.R.I. 1996\).*](#)

Trustee could only collect and distribute assets of debtor that were property of estate pursuant to former [11 USCS § 704\(1\)](#); theoretically, homeowner fees for post-petition assessments might be classified as property of estate, but in actuality they had little or no value and would be abandoned by trustee. [*In re Oak Park Calabasas Condo. Ass’n, 302 B.R. 682, 42 Bankr. Ct. Dec. \(LRP\) 76, 51 Collier Bankr. Cas. 2d \(MB\) 746, 2003 Bankr. LEXIS 1680 \(Bankr. C.D. Cal. 2003\).*](#)

When Chapter 7 debtor failed to list prepetition cause of action as asset of estate under [11 USCS § 541\(a\)](#) in his schedules as required by [11 U.S.C.S. § 521\(a\)\(1\)\(B\)\(i\)](#) and this property was not administered pursuant to [11 USCS § 704](#) before case was closed, asset was not deemed abandoned under [11 USCS § 554\(c\)](#) at time case was closed; cause of action, therefore, remained property of estate under [11 USCS § 554\(d\)](#). [*In re Wilmoth, 412 B.R. 791, 61 Collier Bankr. Cas. 2d \(MB\) 1285, 2009 Bankr. LEXIS 882 \(Bankr. E.D. Va. 2009\).*](#)

Garnished wages became property of debtor’s estate under [11 USCS § 541\(a\)](#) and subject to administration by Chapter 7 trustee under [11 USCS § 704\(a\)](#), and garnished funds remained property of estate because although she homesteaded them pursuant to [Va. Code Ann. § 34-17\(A\)](#), she failed to claim exemption in garnished funds on Schedule C of her bankruptcy schedules as required by [Fed. R. Bankr. P. 4003\(a\)](#), and there was no order of abandonment entered by court under [11 USCS § 554](#); thus, garnished funds were subject to administration of Chapter 7 trustee, and creditor who initiated garnishment proceedings was not entitled to return of garnished funds. [*Harris v. Banks, 443 B.R. 708, 2011 Bankr. LEXIS 336 \(Bankr. W.D. Va. 2011\).*](#)

Ordering Trustee to abandon or sell estate’s interest in partnership was not in best interest of bankruptcy estate; such transfer would have been taxable event which would have provided no benefit to estate; rather, it would have exposed estate to potential tax liability, and estate would also have been required to expend time and funds to prepare additional tax returns. [*In re Corn Advantage Coop., 56 Bankr. Ct. Dec. \(LRP\) 281, 2012 Bankr. LEXIS 4280 \(Bankr. N.D. Iowa Sept. 14, 2012\).*](#)

Unpublished decision: Trustee did not abandon debtor’s state court action under [11 USCS § 554](#) because, at time of trustee’s settlement/sale motion, bankruptcy case was still open; while trustee was required under [11 USCS § 704\(a\)](#) to expeditiously liquidate or abandon property of estate, and his unexplained delay in closing case may have been unwarranted, nothing suggested that trustee was keeping case open for improper purpose or that his actions warranted finding that he should be estopped from proceeding with settlement and sale of action. [*In re Slates, 2012 Bankr. LEXIS 5159 \(9th Cir. Oct. 31, 2012\).*](#)

Bankruptcy court did not err in denying Chapter 7 trustee’s application for fees in two cases on basis that services were not necessary and beneficial to administrative of debtors’ estates where trustee’s negotiation of carve-out with secured creditor as means of creating equity necessary to justify sale of fully encumbered estate property was suspect, as it would shift assets away from IRS to professionals, harming debtors in process. Abandonment of homesteads would have better comported with Chapter 7 trustee’s ultimate duties and responsibilities. [*In re Bird, 577 B.R. 365, 64 Bankr. Ct. Dec. \(LRP\) 258, Bankr. L. Rep. \(CCH\) ¶ 83185, 2017 Bankr. LEXIS 4071 \(10th Cir. 2017\).*](#)

30. Accountability for property received

Where Chapter 7 trustee has actual possession of asset of estate at time it is destroyed, he is responsible to debtor for consequences under [11 USCS § 704](#). *In re Reich*, 54 B.R. 995, 13 Bankr. Ct. Dec. (LRP) 953, 13 Collier Bankr. Cas. 2d (MB) 988, 1985 Bankr. LEXIS 4955 (Bankr. E.D. Mich. 1985), disapproved, *Seifert v. Selby*, 125 B.R. 174, 1989 U.S. Dist. LEXIS 17553 (E.D. Mich. 1989).

Trustee is not liable under [11 USCS § 704](#) to purchasers of Chapter 7 debtor's business for "undelivered" equipment where there is no provision in any agreement between trustee and purchasers identifying debtor's equipment, and no misrepresentation was made by trustee to purchasers concerning equipment; trustee is liable for shortfall in inventory delivered to purchasers where inventory was detailed by trustee before sale. *In re Baum's Florist, Inc.*, 65 B.R. 814, 1986 Bankr. LEXIS 5452 (Bankr. E.D. Tenn. 1986).

Husband had no standing to sue bankruptcy trustee, claiming that trustee, inter alia, failed to escrow half of profits of mutually owned golf course and account to bankruptcy estate for profits; even if those claims were true, husband would not have benefited either directly or indirectly if trustee had acted otherwise because bankruptcy estate had no interest in those assets, and trustee owed no fiduciary duty to husband. *Ebel v. King (In re Ebel)*, 338 B.R. 862, 2005 Bankr. LEXIS 2662 (Bankr. D. Colo. 2005).

31. Administrator of employee benefit plan

Pensions funds' motions to examine representatives of Chapter 7 debtors under [Fed. R. Bankr. P. 2004](#) were denied because to extent they were seeking to discover avoidable transfers, they were intruding upon trustees' duties, and to extent they were seeking to identify third parties who might be liable to them for debtors' obligations, they were trying to use Rule 2004 as private collection device. *In re J & R Trucking, Inc.*, 431 B.R. 818, 2010 Bankr. LEXIS 2148 (Bankr. N.D. Ind. 2010).

Bankruptcy court lacked jurisdiction to authorize bankruptcy trustee to liquidate bankruptcy debtor's employee benefit plan governed by Employee Retirement Income Security Act of 1974 (ERISA), [29 USCS §§ 1001 et seq.](#), as successor administrator of plan under [11 USCS § 704\(a\)\(11\)](#), since trustee's substantive rights arose under ERISA rather than bankruptcy law, legal nature of right did not arise only in bankruptcy, and ERISA already authorized liquidation. *In re Mid-States Express, Inc.*, 433 B.R. 688, 53 Bankr. Ct. Dec. (LRP) 131, 2010 Bankr. LEXIS 1969 (Bankr. N.D. Ill. 2010).

Court had jurisdiction over Chapter 7 trustee while he performed his obligations as administrator of debtors' retirement savings plan; because trustee was fulfilling his duties imposed by Bankruptcy Code pursuant to [11 USCS § 704\(a\)\(11\)](#), trustee was subject to court's core jurisdiction while performing those duties. *In re Robert Plan Corp.*, 439 B.R. 29, 53 Bankr. Ct. Dec. (LRP) 248, 2010 Bankr. LEXIS 3821 (Bankr. E.D.N.Y. 2010).

Chapter 7 trustee who was appointed to administer consolidated bankruptcy cases of two corporations ("debtors") that offered ERISA-qualified pension plan was required to disgorge \$6,282 in interim compensation he received from debtors' estates because he calculated his compensation under [11 U.S.C.S. § 326](#) by including amounts he distributed to plan beneficiaries when plan beneficiaries were not "parties in interest" under [11 U.S.C.S. § 726](#); court also directed trustee's law firm to disgorge \$84,146 in interim compensation it received from debtors' estates because it billed estates for work that addressed dispute trustee had with U.S. Department of Labor over administration of debtors' pension plan that did not benefit debtors' estates. *In re Robert Plan Corp.*, 2018 Bankr. LEXIS 596 (Bankr. E.D.N.Y. Mar. 1, 2018).

32. Completion of work

In proceeding under [Fed. R. Bankr. P. 9019\(a\)](#), court approval of proposed settlement in Chapter 7 bankruptcy case was denied because trustee did not exercise good business judgment consistent with his fiduciary duties in proposing to pay full sum claimed by condominium association; debtor asserted that [Mich. Comp. Laws § 559.208\(1\)](#) did not provide authority for association's claim for damages for incomplete development work, that association would not have been entitled to attorney fees under Mich. Ct. R. 2.625(A)(1), (B), and that trustee should have sought authority to complete work pursuant to [11 USCS § 721](#) if he did not already have inherent

authority under [11 USCS § 704](#) to do so. [In re Engman, 331 B.R. 277, 2005 Bankr. LEXIS 1887 \(Bankr. W.D. Mich. 2005\)](#).

Upon bankruptcy trustee's termination of bankruptcy debtor's employee benefit plan governed by Employee Retirement Income Security Act (ERISA), [29 USCS §§ 1001](#) et seq., trustee was not entitled to declaration that trustee fulfilled obligations under ERISA; such order was premature since trustee's duties in administering plan were not treated differently than other duties of trustee, and trustee would receive same order indicating satisfaction of statutory obligations as trustee received in all cases. [In re NSCO, Inc., 427 B.R. 165, 52 Bankr. Ct. Dec. \(LRP\) 278, 49 Employee Benefits Cas. \(BNA\) 1693, 2010 Bankr. LEXIS 869 \(Bankr. D. Mass. 2010\)](#).

33. Ensure debtor performs intention

Failure of debtor to comply with [11 USCS § 521\(2\)\(A\)](#) and (B) provides no basis for holding debtor in contempt where creditor has not alleged that it first sought involvement of trustee whose duty it is to ensure debtor's compliance pursuant to [11 USCS § 704\(3\)](#). [In re Williams, 64 B.R. 737, 1986 Bankr. LEXIS 5394 \(Bankr. S.D. Ohio 1986\)](#).

Trustee's duties under former [11 USCS § 704\(3\)](#) with respect to Chapter 7 debtor's statement of intention at time of creditor's meeting include, among others: (1) responsibility to determine if debtor has filed statement of intention; (2) if debtor has not completed such filing, to demand that debtor comply immediately; (3) to examine debtor with regard to any requests received prior to or at time of [11 USCS § 341\(a\)](#) meeting from creditors concerning [11 USCS § 521\(2\)\(A\)](#) or (B); and (4) to respond to appropriate creditors' inquiries following such meeting; however, in absence of any secured creditor's appearance at § 341(a) meeting, or any written request from secured creditor seeking trustee's involvement within period provided under [11 USCS § 521\(2\)\(B\)](#), trustee may assume that debtor has performed stated intention. [In re Bayless, 78 B.R. 506, 1987 Bankr. LEXIS 1538 \(Bankr. S.D. Ohio 1987\)](#).

Failure by Chapter 13 debtors to appear at [11 USCS § 341](#) meeting of creditors, to satisfy reporting responsibilities imposed by [11 USCS § 704\(8\)](#), and to assure that their filings were accurate constituted sufficient abuse of bankruptcy system to justify finding that although debtors had absolute right under [11 USCS § 1307](#) to voluntarily dismiss their Chapter 13 case despite pendency of motion to convert to Chapter 7, order of dismissal properly included, per [11 USCS § 349](#), provision barring debtors from refiling bankruptcy case within one year. [In re Mangual, 64 Collier Bankr. Cas. 2d \(MB\) 1838, 2010 Bankr. LEXIS 4688 \(Bankr. D.P.R. Dec. 20, 2010\)](#).

34. Examine and object to claims

Where Chapter 7 trustee filed adversary action to avoid mortgage because copy of mortgage in county recorder of deeds office did not contain embossment of notary public who had acknowledged execution, under state law, lien of mortgage was not affected by fact that notary public's embossed seal was not visible in acknowledgment on document filed in county recorder of deeds office. [Schwab v. GMAC Mortg. Corp, 333 F.3d 135, 2003 U.S. App. LEXIS 11805 \(3d Cir. 2003\)](#).

Chapter 13 trustee may not attack prior state court judgment rendered against debtor on grounds of improper service and lack of subject matter jurisdiction where debtor had opportunity to fully litigate jurisdictional questions when he authorized his associate to handle dispute and subsequently failed to monitor matter and representation of debtor in judicial appeal, without raising these issues; thus debtor's actions constitute waiver, which cannot be avoided by trustee under [11 USCS § 704](#) through objection to allowance of claim. [In re Gilman, 59 B.R. 234, 1986 Bankr. LEXIS 6344 \(Bankr. D. Ariz. 1986\)](#).

Pursuant to former [11 USCS § 704\(5\)](#), Chapter 7 trustee has independent fiduciary duty to examine claims and object to them. [In re Fill, 82 B.R. 200, 1987 Bankr. LEXIS 2141 \(Bankr. S.D.N.Y. 1987\)](#).

Prebankruptcy in personam default judgment rendered against Chapter 7 debtor will not bind his bankruptcy trustee where it is shown that judgment was obtained with cooperation of debtor through fraud and collusion and with aim of defeating debtor's creditors. [In re Fill, 82 B.R. 200, 1987 Bankr. LEXIS 2141 \(Bankr. S.D.N.Y. 1987\)](#).

When cost benefit analysis indicates that only parties who will likely benefit from investigation of claim under former [11 USCS § 704\(5\)](#) are Chapter 7 trustee and his professionals, investigation is unwarranted. [In re Riverside-Linden Inv. Co., 85 B.R. 107, 1988 Bankr. LEXIS 520 \(Bankr. S.D. Cal. 1988\)](#), aff'd, [99 B.R. 439, Bankr. L. Rep. \(CCH\) ¶ 72998, 1989 Bankr. LEXIS 879 \(B.A.P. 9th Cir. Cal. 1989\)](#).

Chapter 7 trustee, while having right to investigate claims without court authority under former [11 USCS § 704\(5\)](#), must exercise that right judiciously. [In re Riverside-Linden Inv. Co., 85 B.R. 107, 1988 Bankr. LEXIS 520 \(Bankr. S.D. Cal. 1988\)](#), aff'd, [99 B.R. 439, Bankr. L. Rep. \(CCH\) ¶ 72998, 1989 Bankr. LEXIS 879 \(B.A.P. 9th Cir. Cal. 1989\)](#).

Although Chapter 7 trustee has duty, pursuant to former [11 USCS § 704\(5\)](#), to object to allowance of claims against estate where such claims seem inappropriate, it is not his fiduciary duty to attempt to maximize assertion of such claims or to be unduly concerned about widest possible notice to potential claimants. [Cardinal Casualty Co. v. Correct Mfg. Corp. \(In re Correct Mfg. Corp.\), 88 B.R. 158, 1988 Bankr. LEXIS 1236 \(Bankr. S.D. Ohio 1988\)](#).

Because (1) debtor had waived discharge and agreed to pay all allowed claims in full, (2) debtor would be entitled to any surplus funds under [11 USCS § 727\(a\)\(3\)](#), and (3) trustee would not object to remaining claims under former [11 USCS § 704\(5\)](#) because debtor would pay all of claims, debtor had standing, as party in interest under [11 USCS § 502\(a\)](#), to object to claims; debtor's motion for leave to object to claims was granted. [In re Choquette, 290 B.R. 183, 41 Bankr. Ct. Dec. \(LRP\) 3, 2003 Bankr. LEXIS 241 \(Bankr. D. Mass. 2003\)](#).

Trustee's objection to allowance of creditor's proof of claim, which was based on creditor's failure to affirmatively state that no documentation existed to attach to claim, was denied because: (1) official proof of claim form did not require affirmative statement; (2) it would have been patently unfair to disallow claim simply for failure to affirmatively state that no documentation existed; and (3) trustee's remedy was to refuse to administer proof of claim as filed, pursuant to authority under [11 USCS § 704](#); trustee's remedy did not lie in disallowance of claim under [11 USCS § 502](#). [In re Shaffner, 320 B.R. 870, 2005 Bankr. LEXIS 285 \(Bankr. W.D. Mich. 2005\)](#).

Trustee had standing to object to creditor's secured claim on basis that there was failure to report transfer of claim because objection was made on behalf of entire bankruptcy estate, not just personal claim of one party. [In re Kreisler, 331 B.R. 364, 45 Bankr. Ct. Dec. \(LRP\) 132, 2005 Bankr. LEXIS 1888 \(Bankr. N.D. Ill. 2005\)](#), aff'd, [352 B.R. 671, 2006 U.S. Dist. LEXIS 82249 \(N.D. Ill. 2006\)](#).

Creditors of Chapter 7 debtor did not have standing to contest validity of proofs of claims filed by other creditors because bankruptcy trustee had filed and was prosecuting objections to claims in accordance with trustee's statutory duties and authority under [11 USCS §§ 502\(a\)](#), former 704(5) and [Fed. R. Bankr. P. 3007](#). [Trauner v. Huffman \(In re Trusted Net Media Holdings, LLC\), 334 B.R. 470, 45 Bankr. Ct. Dec. \(LRP\) 77, 2005 Bankr. LEXIS 1637 \(Bankr. N.D. Ga. 2005\)](#).

Preparation of routine objection to claim that requires no legal analysis is trustee duty; objections based on lack of appropriate documentation or support for claim, inconsistency between amount of claim and amount shown on debtor's records, or two claims for same indebtedness are examples of routine objections that require no legal analysis; if legal analysis is necessary to objection, then it is service that must be provided by attorney. [In re Lexington Hearth Lamp & Leisure, LLC, 402 B.R. 135, 2009 Bankr. LEXIS 1124 \(Bankr. M.D.N.C. 2009\)](#).

In making distributions to unsecured creditors, Chapter 7 trustee has no duty to calculate for partially secured creditor amount of its unsecured claim if creditor has not filed unsecured claim. [In re Channakhon, 465 B.R. 132, 2012 Bankr. LEXIS 660 \(Bankr. S.D. Ohio 2012\)](#).

Although Chapter 7 trustee acknowledged existence of creditor's unsecured claim and amended sale order stated that creditor could participate in distributions from estate, trustee was not obligated to reclassify creditor's claim after sale, as it was not trustee's duty to correct or amend claim so that creditor could receive disbursements from estate and, in particular, it was not trustee's responsibility to reclassify as unsecured claim originally filed as secured; rather, it was incumbent on creditor to file amended proof of claim. [Slobodian v. Capital for Merchants,](#)

[LLC \(In re ABS Ventures, Inc.\), 523 B.R. 443, 60 Bankr. Ct. Dec. \(LRP\) 103, 2014 Bankr. LEXIS 4939 \(Bankr. M.D. Pa. 2014\).](#)

If IRS had filed proof of claim pursuant to [11 USCS § 502\(a\)](#) as to unsecured claim, trustee and any other parties would have been placed on notice of unsecured claim and, thus, have been provided with opportunity to object under [11 USCS § 704\(5\)](#); however, having not filed unsecured claim, trustee was not provided with any opportunity to object, and it was not trustee's duty to protect individual creditors against consequences of failing to file claim; accordingly, in light of those due process requirements, IRS's argument that it was not required to bifurcate its claim between secured and unsecured portions pursuant to [11 USCS § 506\(a\)](#) failed. [United States v. Oscher \(In re J. H. Inv. Servs.\), 106 A.F.T.R.2d \(RIA\) 2010-6716, Bankr. L. Rep. \(CCH\) ¶ 81890, 2010 U.S. Dist. LEXIS 119128 \(M.D. Fla. Oct. 7, 2010\).](#)

Court reviews fee applications for reasonableness, but does not have investigative resources to insure their accuracy; court relies on professionals in case to make sure that their own fee applications are correct and that applications of other professionals are in order. "Professional courtesy" has no place in such serious matters, and, here, pursuant to [11 USCS § 704\(a\)\(5\)](#), trustee had duty to examine and object to attorney's fee application. [In re Straightline Invs., Inc., 52 Bankr. Ct. Dec. \(LRP\) 21, 2009 Bankr. LEXIS 2711 \(Bankr. N.D. Cal. Sept. 7, 2009\).](#)

Unpublished decision: When judgment creditor and trustee disagreed as to whether debtor was insolvent on date of transfer under [11 USCS § 547\(b\)\(3\)](#), neither party was entitled to summary judgment; trustee, in reaching his conclusion of solvency, included pre-petition claim yet failed to show that he examined claim to determine whether it was allowable as required by [11 USCS § 704\(a\)\(5\)](#), and creditor, in determining solvency, asked court to disallow that claim but failed to file proper objection under [Fed. R. Bankr. P. 3007. Liebert v. Nisselson \(In re Levine\), 2008 Bankr. LEXIS 2639 \(Bankr. S.D.N.Y. Sept. 5, 2008\).](#)

Whether or not debtor's estranged wife's amended claim was tardily filed or whether it related back to timely filed original claim could not be determined by court where Chapter 7 trustee did not object and where neither bank nor other party in interest did not object or request leave to file its own objection. Bank could not raise objection to claim by filing objection to trustee's final report. [In re Cremo, 557 B.R. 343, 76 Collier Bankr. Cas. 2d \(MB\) 404, 2016 Bankr. LEXIS 3335 \(Bankr. M.D. Pa. 2016\).](#)

Creditor had standing to object to proof of claim where trustee had not indicated that he objected to creditor challenging claim. [In re Ruggiero, 2020 Bankr. LEXIS 1452 \(Bankr. E.D. Pa. June 2, 2020\).](#)

Trustee expended substantial efforts in objecting to debtor's homestead exemption prior to case being converted to Chapter 13, but as these efforts were performed pursuant to trustee's statutory duties, these circumstances were not so extraordinary as to justify an award of fees to trustee beyond commission rates contained in [11 U.S.C.S. § 326\(a\)](#), plus trustee's application was based on speculation and his supporting documentation was lacking. [In re Mitchell, 638 B.R. 455, 2022 Bankr. LEXIS 581 \(Bankr. D. Idaho 2022\).](#)

35. —Determination of validity

Trustee has standing to object to fee request by attorney seeking to recover from nonclient creditors' distributions for work he performed which enabled these deemed-filed creditors in case converted from Chapter 11 to Chapter 7 to recover on their claims because, pursuant to former [11 USCS § 704\(5\)](#), trustee had to determine whether attorney's claims were valid, otherwise he might have improperly reduced nonclient creditor's distribution. [In re Fesco Plastics Corp., 996 F.2d 152, 24 Bankr. Ct. Dec. \(LRP\) 549, Bankr. L. Rep. \(CCH\) ¶ 75284, 28 Collier Bankr. Cas. 2d \(MB\) 1503, 1993 U.S. App. LEXIS 13194 \(7th Cir. 1993\), reh'g, en banc, denied, 1993 U.S. App. LEXIS 15440 \(7th Cir. June 25, 1993\).](#)

Chapter 13 trustee who was aware, prior to confirmation, about defects in creditor's security interest but did not object to creditor's claim and affirmatively recommended confirmation of debtor's plan that gave creditor secured position, was bound by confirmed plan and could not later seek to avoid creditor's lien; trustee's duties under Bankruptcy Code generally required Chapter 13 trustee to object to confirmation if claim was invalid or improperly

characterized and failure to do so still bound trustee. [Hope v. Acorn Fin., Inc., 731 F.3d 1189, 24 Fla. L. Weekly Fed. C 680, 70 Collier Bankr. Cas. 2d \(MB\) 356, 2013 U.S. App. LEXIS 19661 \(11th Cir. 2013\).](#)

Bankruptcy Appellate Panel properly denied debtors' motions for derivative standing or, alternatively, to compel bankruptcy trustee to abandon fraud claims because appeals were not constitutionally moot, dismissal of fraud claims was not particularly complex or difficult to unwind, no one prejudicially relied on dismissal, there had not been such comprehensive change in circumstances as to render it inequitable for court to consider merits of the appeals, estates' retention of such claims was not burdensome, and conferred value and benefit upon estates by aiding efficient and timely administration of cases, and debtors were not entitled to derivative standing where fraud claims were neither plausible nor colorable. [Morabito v. JH, Inc. \(In re Consol. Nev. Corp.\), 778 Fed. Appx. 432, 2019 U.S. App. LEXIS 23708 \(9th Cir. 2019\).](#)

Duty of Chapter 11 trustee to examine proof of claims and object to allowance of any claim that is improper is duty of Chapter 11 debtor in possession and debtor may object to creditor's perfection of its security interest even though debtor had actual knowledge of contents of financing statement filed in county registrar's office. [Cookeville Production Credit Ass'n v. Frazier, 16 B.R. 674, 33 U.C.C. Rep. Serv. \(CBC\) 1150, 1981 Bankr. LEXIS 2319 \(Bankr. M.D. Tenn. 1981\).](#)

Chapter 13 debtor is required to examine proof of claim and to cause timely objection to be made to any improper claim under Bankruptcy Rule 13-307, and [11 USCS §§ 1302\(b\)\(1\)](#) and [704\(4\)](#) [now 704(5)]; otherwise, proof of claim filed in accordance with [11 USCS § 501](#) is deemed allowed and filing thereof is prima facie evidence of claim under Bankruptcy Rules 301(b), 13-301(b) and Interim Rule 3001(b)(5). [Shaw v. Easter, 25 B.R. 418, 1982 Bankr. LEXIS 5446 \(Bankr. S.D. Ohio 1982\).](#)

Debtor is required to examine proof of claim and to cause timely objection to be made to any improper claim under Bankruptcy Rule 13-307, and [11 USCS §§ 1302\(b\)\(1\)](#) and [704](#); otherwise, proof of claim filed in accordance with [11 USCS § 501](#) is deemed allowed and filing thereof is prima facie evidence of claim under Bankruptcy Rules 301(b), 13-301(b) and Interim Rule 3001(b)(5). [Shaw v. Easter, 25 B.R. 418, 1982 Bankr. LEXIS 5446 \(Bankr. S.D. Ohio 1982\).](#)

Hearing on Chapter 7 trustee's motion to determine proofs of claim was valid under former [11 USCS § 704\(4\)](#) since trustee does render service and does have purpose in objecting to claims which should not be allowed in bankruptcy proceeding. [In re Tesmetges, 87 B.R. 263, 17 Bankr. Ct. Dec. \(LRP\) 976, 1988 Bankr. LEXIS 843 \(Bankr. E.D.N.Y.\), aff'd, 95 B.R. 19, 1988 U.S. Dist. LEXIS 14904 \(E.D.N.Y. 1988\).](#)

Court disallowed legal fees that Chapter 7 trustee's law firm charged to bankruptcy estate to defend dischargeable credit card claim because trustee improperly took on role of defending claim; there was no apparent benefit to debtor in trustee's filing of claim. [In re Skubal, 596 B.R. 826, 2018 Bankr. LEXIS 3950 \(Bankr. E.D. Va. 2018\).](#)

Court allowed legal fees that Chapter 7 trustee's law firm charged to bankruptcy estate that were incurred in defense of non-dischargeable student loan claims because debtor benefitted from payment in full of her non-dischargeable student loans by her father, who acted as volunteer in paying off student loans in effort to avert sale of his properties. [In re Skubal, 596 B.R. 826, 2018 Bankr. LEXIS 3950 \(Bankr. E.D. Va. 2018\).](#)

36. Furnish information about estate

In plan participants' breach of fiduciary duty suit against Pension Benefit Guaranty Corporation (PBGC) regarding administration of terminated plan, participants were entitled to summary judgment as to their claim regarding PBGC's requirement that participants use Freedom of Information Act to obtain participant documents because PBGC violated former [11 USCS § 704\(7\)](#) and breached its duty to disclose information. [Pineiro v. Pension Benefit Guar. Corp., 318 F. Supp. 2d 67, 31 Employee Benefits Cas. \(BNA\) 1624, 2003 U.S. Dist. LEXIS 15034 \(S.D.N.Y. 2003\).](#)

Considering overriding duty of trustee to keep creditors informed pursuant to [11 USCS § 704](#), creditor's application for order instructing trustee to furnish information concerning administration of estate is not delayed pending full discovery in related District Court action between trustee and creditor. [In re Sports Accessories, Inc., 34 B.R. 80, 1983 Bankr. LEXIS 5146 \(Bankr. D. Md. 1983\)](#).

Because former [11 USCS § 704\(6\)](#) obligation of trustee and debtor in possession to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" is one of most important fiduciary obligations, and because committee of creditors has not requested information regarding liquidation value of assets of estate, application by committee of creditors to retain appraiser to conduct appraisal of assets will be denied as premature. [In re UNR Indus., 42 B.R. 99, 1984 Bankr. LEXIS 5255 \(Bankr. N.D. Ill. 1984\)](#).

Chapter 7 trustee is entitled to maximum award authorized under [11 USCS § 326](#) less \$50 where, although no assets would be available for distribution if it were not for effort of trustee, trustee failed to comply with his duties under former [11 USCS § 704\(7\)](#) by refusing to respond to requests for information from creditor's counsel and failed to appear at hearing to remove him as trustee and to stay decision on his petition for sale. [In re Vlachos, 61 B.R. 473, 1986 Bankr. LEXIS 5994 \(Bankr. S.D. Ohio 1986\)](#).

Failure of Chapter 11 trustee to pay taxes to Puerto Rico and United States, causing estate to incur tax deficiencies, penalties, and interest charges, constitutes breach of duties imposed upon trustee by former [11 USCS § 704\(7\)](#) and [11 USCS § 505\(b\)\(1\)](#), because he failed to conserve and protect interests and assets of estate. [In re San Juan Hotel Corp., 71 B.R. 413, 1987 U.S. Dist. LEXIS 4944 \(D.P.R. 1987\)](#), aff'd in part and rev'd in part, [847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)](#).

Unpaid former Chapter 7 trustee or his attorney has duty under [11 USCS § 704](#) to furnish relevant information concerning case to Chapter 13 trustee and debtor upon conversion; either may request debtor in possession or Chapter 13 trustee to pursue assets identified as result of investigation in Chapter 7 case; they may report situation to United States Trustee and seek his assistance if Chapter 13 trustee or debtor fail to act. [In re Wells, 87 B.R. 732, 1988 Bankr. LEXIS 992 \(Bankr. N.D. Ga. 1988\)](#).

Debtor's accountant's position in trying to reconcile trustee's duty under former [11 USCS § 704\(7\)](#) with confidentiality restrictions of protective orders amounted to concession constituting waiver of accountant privilege at least to extent of documents containing information which accountant agreed trustee could disclose; creditor is entitled to access to all documents already made available to trustee, except those which might possibly be so sensitive and so irrelevant for bankruptcy purposes that prohibition against disclosure might be justified in interests of justice; even assuming that "good cause" standard of Bankruptcy Rule 2004 is appropriate to apply to creditor's motion under former [11 USCS § 704\(7\)](#), creditor has made such showing in light of missing assets and documents, claims of privilege by corporate officers, and need of creditor to protect its interests. [In re Grabill Corp., 109 B.R. 329, 1989 U.S. Dist. LEXIS 14119 \(N.D. Ill. 1989\)](#).

Work performed by accountants for Chapter 7 trustee in prosecuting fraudulent conveyance adversary proceeding against debtor's nondebtor spouse which has been settled does not constitute information concerning estate and estate's administration within meaning of former [11 USCS § 704\(7\)](#) which trustee must turn over to creditors seeking to have debtor's discharge denied. [In re Walters, 136 B.R. 256, 22 Bankr. Ct. Dec. \(LRP\) 942, 1992 Bankr. LEXIS 154 \(Bankr. C.D. Cal. 1992\)](#).

Chapter 13 debtor who failed to comply with bankruptcy court's orders requiring him to respond to discovery requests in state court divorce proceedings was found in contempt because he had not documented his self-employment earnings and had not filed monthly operating reports required by former [11 USCS § 704\(8\)](#) as implemented by [Fed. R. Bankr. P. 2015\(a\)\(2\)-\(4\), \(c\)\(1\). McGrath v. McGrath \(In re McGrath\), 298 B.R. 56, 2003 Bankr. LEXIS 1055 \(Bankr. W.D. Pa. 2003\)](#).

While bankruptcy court approval was not required of compensation of non-attorney professionals in liquidation of securities broker, liquidating trustee was required to disclose such compensation as information concerning estate

and estate's administration in order to assess reasonableness of trustee's own fee applications. [In re MF Global Inc., 506 B.R. 582, 59 Bankr. Ct. Dec. \(LRP\) 88, 2014 Bankr. LEXIS 1113 \(Bankr. S.D.N.Y. 2014\).](#)

Where creditor made a request for Chapter 7 trustee's records, including the records obtained by the trustee in its investigations of debtors' assets in order to evaluate the trustee's proposed settlement and potential alternatives to that settlement, as a fiduciary of the estate, the trustee had a duty under [11 U.S.C.S. § 704\(a\)\(7\)](#) to provide information to interested parties upon request. [In re Pearlstein, 2022 Bankr. LEXIS 1370 \(Bankr. D. Or. May 11, 2022\).](#)

Compelling chapter 7 trustee to act was appropriate as to providing information that trustee had agreed to provide; however, asking court to determine existence of surplus estate was improper because court was not asked to compel trustee to act or to find trustee had breached fiduciary duties, and determination sought was advisory opinion on potential future action, which was not authorized under [11 U.S.C.S. § 105](#) and was not actual case or controversy to support constitutional jurisdiction. [In re Cahill, 642 B.R. 813, 2022 Bankr. LEXIS 2275 \(Bankr. N.D. Ill. 2022\).](#)

37. Investigate debtor's financial affairs

Trustee acted within his authority by bringing action to secure determination as to what records constituted property of debtor or bankruptcy estate; even if that were not case, action for turnover under [11 USCS § 542\(e\)](#) did not require that information be property of estate, [11 USCS § 704\(a\)\(4\). Grant, Konvalinka & Harrison, PC v. Banks \(In re McKenzie\), 716 F.3d 404, 2013 FED App. 0148P, 57 Bankr. Ct. Dec. \(LRP\) 280, 2013 U.S. App. LEXIS 10491 \(6th Cir.\)](#), cert. denied, 571 U.S. 955, 134 S. Ct. 444, 187 L. Ed. 2d 285, 2013 U.S. LEXIS 7362 (2013).

Unpublished decision: Employee was not judicially estopped from litigating subject matter of her administrative complaints because it was undisputed that employee did not conceal her complaints during her Chapter 7 bankruptcy proceedings as she stated in her affidavit that she informed trustee about her pending complaints at meeting of creditors, and employee's bankruptcy disclosures were not measured solely by information provided in her initial schedules filed with Chapter 7 petition pursuant to [11 USCS §§ 341](#) and [704\(a\)\(4\)](#); inference drawn was that following employee's oral disclosure, trustee decided that her discrimination claims were not sufficiently valuable to warrant pursuing them on behalf of creditors. [Matthews v. Potter, 316 Fed. Appx. 518, 105 Fair Empl. Prac. Cas. \(BNA\) 1790, 2009 U.S. App. LEXIS 6038 \(7th Cir. 2009\).](#)

Debtor must be given opportunity to appear and oppose redirection of his mail to trustee, and court must impose conditions on authority of trustee to examine and communicate contents of debtor's mail. [In re Benny, 29 B.R. 754, 10 Bankr. Ct. Dec. \(LRP\) 921, Bankr. L. Rep. \(CCH\) ¶ 69284, 9 Collier Bankr. Cas. 2d \(MB\) 240, 1983 U.S. Dist. LEXIS 17710 \(N.D. Cal. 1983\)](#), aff'd, [786 F.2d 1410, 1986 U.S. App. LEXIS 24053 \(9th Cir. 1986\).](#)

Consideration of [11 USCS § 704](#) which mandates trustee to investigate financial affairs of debtor, creditor cannot enjoin trustee from pursuing any lawful investigatory activity; likewise, creditor subject to such investigation cannot enjoin trustee from any threatened lawsuit resulting from investigation or require trustee to show probable cause as precondition to initiation of any such litigation. [In re Hartley, 36 B.R. 594, 10 Collier Bankr. Cas. 2d \(MB\) 156, 1983 Bankr. LEXIS 4839 \(Bankr. N.D. Ohio 1983\).](#)

Chapter 11 trustee's failure to investigate evidence indicative of misappropriations and/or preferential payments to stockholder and former director of debtor in amount no less than \$66,000 is inexcusable under former [11 USCS § 704\(3\). In re San Juan Hotel Corp., 71 B.R. 413, 1987 U.S. Dist. LEXIS 4944 \(D.P.R. 1987\)](#), aff'd in part and rev'd in part, [847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\).](#)

Bankruptcy court properly denied Chapter 7 debtor's motion to remove bankruptcy trustee for failure to investigate where debtor failed to allege any transfers that might have been avoidable and had not established any avoidable preferences for trustee to pursue and there was no basis for trustee to mount collateral attack on criminal judgment against debtor that gave rise to his indebtedness to federal agency. [Terry v. Sparrow, 328 B.R. 450, 2005 U.S. Dist. LEXIS 20069 \(M.D.N.C. 2005\).](#)

Quantum meruit expenses and attorney's fees incurred by chapter 7 trustee and her attorney were awarded post-dismissal, where debtor's obfuscation and lack of candor necessitated trustee's investigative activities as part of her duties under [11 USCS § 704. In re Jankowski, 382 B.R. 533, 21 Fla. L. Weekly Fed. B 197, 2007 Bankr. LEXIS 4561 \(Bankr. M.D. Fla. 2007\).](#)

Applications requested compensation for numerous services that did not require law license, and many of them fell squarely within scope of trustee's duties as enumerated in [11 USCS § 704](#); consequently, trustee could not be compensated for them in his capacity as attorney for trustee; they fall into one or more of following categories: reviewing debtor's records, investigating estate property, communicating with other parties, reviewing and objecting to claims, communicating with and supervising estate professionals, and selling and disposing of estate assets. [In re Lexington Hearth Lamp & Leisure, LLC, 402 B.R. 135, 2009 Bankr. LEXIS 1124 \(Bankr. M.D.N.C. 2009\).](#)

Although bankruptcy trustee enjoys standing to seek order of dismissal under [11 USCS § 521\(i\)\(2\)](#), Bankruptcy Code imposes no duty upon trustee to enforce any timetable for submission of payment advices; that is, [11 USCS § 704](#) obliges trustee to ensure that debtors perform duties stated in § 521(a)(2)(B) but imposes no similar mandate to enforce duties referenced in § 521(a)(1). [In re Gilbert, 403 B.R. 297, 61 Collier Bankr. Cas. 2d \(MB\) 1684, 2009 Bankr. LEXIS 967 \(Bankr. W.D.N.Y. 2009\).](#)

On a motion of the Chapter 7 trustee, one of two controlling shareholders in a debtor was appointed debtor's representative pursuant to [Fed. R. Bankr. P. 9001\(5\)](#) and charged with satisfying the duties listed in [11 USCS § 521](#) because the shareholder, a corporation organized in the Cayman Islands, qualified for such an appointment given that the definition of "person" in [11 USCS § 101\(41\)](#) did not exclude juridical entities and that the appointee had both important records and knowledge of corporate affairs superior to that of other candidates, therefore facilitating the fulfillment of the trustee's fiduciary duties including those detailed in [11 USCS § 704\(4\)](#). [In re Red River Energy, Inc., 409 B.R. 163, 2009 Bankr. LEXIS 1793 \(Bankr. S.D. Tex. 2009\).](#)

Unpublished decision: Where Chapter 13 trustee proposed modified Chapter 13 plan pursuant to [11 USCS § 1329](#), to increase total amount of distribution to creditors due to substantial increase in debtors' income, trustee did not breach his duties under Bankruptcy Code in filing modified plan because under [11 USCS § 704](#), as incorporated by [11 USCS § 1302](#), trustee had duty to investigate debtor's financial affairs and under § 1329(b) trustee had right, under appropriate circumstances, to propose plan which would increase payments to unsecured creditors. [In re Midgley, 413 B.R. 820, 2009 Bankr. LEXIS 22 \(Bankr. D. Or. 2009\).](#)

Asset in question, breach of contract claim, was sufficiently described in Schedule B to put Chapter 7 trustee on notice that claim existed and that it had potential value for plumbing company's bankruptcy estate; it was debtors' duty to put trustee on notice that such claim existed and it was trustee's duty under [11 USCS § 704\(a\)](#) to investigate, and each met their responsibilities. [In re Furlong, 437 B.R. 712, 2010 Bankr. LEXIS 3299 \(Bankr. D. Mass. 2010\), aff'd, 450 B.R. 263, Bankr. L. Rep. \(CCH\) ¶81981, 2011 U.S. Dist. LEXIS 36077 \(D. Mass. 2011\).](#)

Although [28 USCS § 959\(a\)](#) provided that trustees may be sued without leave of appointing court with regard to any of their acts or transactions in carrying on business connected with such property, breach of fiduciary duty did not fall within that exception, and carrying on business typically did not include acts of merely collecting, taking steps to preserve, and/or holding assets, as well as other aspects of administering and liquidating estate; however, because trustees' actions were taken pursuant to his duties and obligations under [11 USCS § 704](#), which included investigating debtor's financial affairs, trustee was not required to obtain order to sue. [In re McKenzie, 476 B.R. 515, 2012 U.S. Dist. LEXIS 88185 \(E.D. Tenn. 2012\), aff'd, 716 F.3d 404, 2013 FED App. 148P, 57 Bankr. Ct. Dec. \(LRP\) 280, 2013 U.S. App. LEXIS 10491 \(6th Cir. 2013\).](#)

Bankruptcy court did not abuse its discretion in dismissing law firm's claims against trustee and his attorney because trustee and his attorney acted within scope of their authority since pursuant to [11 USCS § 704\(a\)](#), trustee had number of statutory duties and those duties included recovering property of estate and investigating debtor's financial affairs; although trustee's conclusion regarding property at issue was incorrect in hindsight, his conduct fell within scope of his authority to investigate debtor's financial affairs and collect property believed at time to be part of estate. [In re McKenzie, 476 B.R. 515, 2012 U.S. Dist. LEXIS 88185 \(E.D. Tenn. 2012\)](#), aff'd, [716 F.3d 404, 2013 FED App. 148P, 57 Bankr. Ct. Dec. \(LRP\) 280, 2013 U.S. App. LEXIS 10491 \(6th Cir. 2013\)](#).

Chapter 7 trustee had standing to challenge court's order granting debtor's application for waiver of Chapter 7 filing fee, pursuant to [28 USCS § 1930\(f\)\(1\)](#), because he was charged with responsibility for administering debtor's estate and amount of compensation he received could have depended on whether court affirmed or vacated its order granting waiver; after considering trustee's arguments, including his argument that debtor could pay filing fees out of excessive or unnecessary expenses that could be reduced or eliminated, court found that debtor had ability to pay fee in installments. [In re Stickney, 2007 BNH 25, 370 B.R. 31, 2007 Bankr. LEXIS 1983 \(Bankr. D.N.H. 2007\)](#).

Pursuant to [11 USCS § 521\(a\)\(3\)](#) and [Fed. R. Bankr. P. 4002\(a\)\(4\)](#), Chapter 7 debtor's designated representative had affirmative duty to cooperate with trustee and turn over documents requested because items and information requested by trustee were necessary for trustee to perform his duties under § [11 USCS § 704](#); representative's duties included sifting through voluminous boxes of documents to locate specific records requested by trustee and creating certain corporate charts, which court had authority to demand under its broad [11 USCS § 105](#) powers. [In re Royce Homes, LP, 52 Bankr. Ct. Dec. \(LRP\) 41, 2009 Bankr. LEXIS 2986 \(Bankr. S.D. Tex. Sept. 22, 2009\)](#).

Unpublished decision: Doctrine of laches did not apply to Chapter 7 debtor's discharge under [11 USCS § 524\(a\)](#), [11 USCS § 727\(b\)](#), and [11 USCS § 523\(a\)\(3\)\(A\)](#) did not apply to creditor's unscheduled debt because bankruptcy case was administered as no asset case with no deadline to file proofs of claim and creditor could file timely claim if assets were found since bankruptcy case had been reopened and schedules had been amended to include creditor; by admitting debt was discharged in no asset case, and failing to show asset disclosures were false or trustee breached his investigative duties pursuant to [11 USCS § 323\(a\)](#), [11 USCS § 341](#), [11 USCS § 343](#), and [11 USCS § 704](#), argument of being denied opportunity to participate in "no asset" finding was waived. [Pritner v. COFCO Credit Co., L.L.C. \(In re Pritner\), 2005 Bankr. LEXIS 404 \(10th Cir. Mar. 21, 2005\)](#).

Unpublished decision: Pursuit of adversary proceeding in no-asset case at last minute without reasonable investigation was not reasonable exercise of trustee's duties under [11 USCS § 704](#) and [Fed. R. Bankr. P. 9011](#). [In re Freeman, 2012 Bankr. LEXIS 6106 \(Bankr. E.D. Cal. Mar. 9, 2012\)](#).

Chapter 7 trustee was not required to pursue formal discovery under [Fed. R. Bankr. P. 2004](#) before seeking turnover of recorded information he had previously requested, as trustee's duties included investigating financial affairs of debtor, and turnover motion directing debtor to produce recorded information was itself investigatory tool. [Rupp v. Auld \(In re Auld\), 561 B.R. 512, Bankr. L. Rep. \(CCH\) ¶ 83052, 77 Collier Bankr. Cas. 2d \(MB\) 15, 2017 Bankr. LEXIS 1 \(10th Cir. 2017\)](#).

Bankruptcy trustee did not violate professional conduct rules in questioning debtor without his attorney present, as he was strictly performing his statutory duties as trustee under [11 U.S.C.S. § 704](#) by collecting requested information from the debtor and at the time of the conversation no adversarial relationship existed between the two. [Butler v. Simpson \(In re Simpson\), 2004 Bankr. LEXIS 2735 \(Bankr. E.D.N.C. Oct. 28, 2004\)](#), discharge denied, [2005 Bankr. LEXIS 3599 \(Bankr. E.D.N.C. Apr. 29, 2005\)](#).

Trustee removal under [11 U.S.C.S. § 324](#) was not warranted due to Trustee's accessing debtor's computer because Trustee was required by [11 U.S.C.S. § 704](#) to investigate the financial affairs of the debtor and the computer review was conducted pursuant to court order. [In re Regan, 2021 Bankr. LEXIS 2855 \(Bankr. N.D.N.Y. Oct. 14, 2021\)](#).

38. —Inspect property

While trustee does act under authority of law when inspecting debtor's residence to search for property of estate, circumstances surrounding status and function of trustee in Chapter 7 case all suggest sufficient nexus to government and its power that it is necessary and appropriate to apply to trustee's inspection of debtor's residence Fourth Amendment limitations on government power. [Taunt v. Barman \(In re Barman\), 252 B.R. 403, Bankr. L. Rep. \(CCH\) ¶ 78256, 2000 Bankr. LEXIS 988 \(Bankr. E.D. Mich. 2000\)](#).

Trustee's efforts to gain access to premises to inspect equipment, by his informal and formal requests, were good faith efforts to pursue his duties and obligations under Bankruptcy Code as trustee of Debtor's bankruptcy estate under [11 USCS § 704. In re Ambotiene, 316 B.R. 25, 2004 Bankr. LEXIS 1540 \(Bankr. E.D.N.Y. 2004\)](#), aff'd, [2005 U.S. Dist. LEXIS 45314 \(E.D.N.Y. Sept. 30, 2005\)](#).

Court authorized search and seizure of jewelry and artwork from Chapter 7 debtor's home by trustee did not violate debtor's Fourth Amendment rights because trustee justifiably believed that debtor was hiding valuable assets, which were of type easily transported and concealed, and scope of trustee' search was reasonably related to circumstances. [Youngman v. Bursztyn \(In re Bursztyn\), 366 B.R. 353, 2007 Bankr. LEXIS 1207 \(Bankr. D.N.J. 2007\)](#).

Position, status, and function of bankruptcy trustee evidences sufficiently close nexus to governmental action that it is appropriate to apply Fourth Amendment limitations to trustee's conduct in seeking order to search debtor's residence and seize hidden, undisclosed assets belonging to bankruptcy estate [Youngman v. Bursztyn \(In re Bursztyn\), 366 B.R. 353, 2007 Bankr. LEXIS 1207 \(Bankr. D.N.J. 2007\)](#).

Chapter 7 trustee's search of debtor's home for gold and silver did not violate Fourth Amendment where, applying Ninth Circuit's two-part test, court found that although government, in form of United States Trustee, knew of and acquiesced to trustee's conduct of search of debtor's home, no evidence existed that trustee, private party, intended to assist law enforcement efforts; rather, she had legitimate independent motivation for engaging in challenged conduct—to satisfy her duties under [11 USCS § 704\(a\)\(1\)](#) to collect property of estate and to sell it pursuant to [11 USCS § 363\(b\)\(1\)](#)—and further, debtor did not have objectively reasonable expectation of privacy, as he was required to, and did not, disclose his gold and silver in his sworn schedules under [11 USCS § 521\(a\)\(1\)\(B\)\(I\). In re Bodeker, 69 Collier Bankr. Cas. 2d \(MB\) 1657, 2013 Bankr. LEXIS 2336 \(Bankr. D. Mont. June 7, 2013\)](#).

39. Make final report and account

Chapter 7 cases come to an end in final report indicating distribution of proceeds from liquidated assets; even if final account of administration can be extracted from various papers filed with court, this final account is not enough without trustee's final report. [In re Wade, 991 F.2d 402, 24 Bankr. Ct. Dec. \(LRP\) 210, Bankr. L. Rep. \(CCH\) ¶ 75216, 28 Collier Bankr. Cas. 2d \(MB\) 1253, 1993 U.S. App. LEXIS 8023 \(7th Cir. 1993\)](#), reh'g denied, [1993 U.S. App. LEXIS 12048 \(7th Cir. May 21, 1993\)](#), cert. denied, 510 U.S. 870, 114 S. Ct. 195, 126 L. Ed. 2d 153, 1993 U.S. LEXIS 5742 (1993).

Chapter 13 trustee must prove that estate has been fully administered before it can be closed by court pursuant to [11 USCS § 350\(a\)](#); to prove that estate has been fully administered, trustee must prepare final report and account. [In re Avery, 272 B.R. 718, 2002 Bankr. LEXIS 109 \(Bankr. E.D. Cal. 2002\)](#).

In addition to including trustee's receipts and disbursements, trustee's final report and account must also inform parties in interest whether debtor has made all plan payments and whether trustee has paid all claims in accordance with plan. [In re Avery, 272 B.R. 718, 2002 Bankr. LEXIS 109 \(Bankr. E.D. Cal. 2002\)](#).

It is vital to accuracy of trustee's final report and account that debtor and creditors be served with report and account before court approves them, discharges debtor's liability for prepetition claims, and discharges trustee from his duties. [In re Avery, 272 B.R. 718, 2002 Bankr. LEXIS 109 \(Bankr. E.D. Cal. 2002\)](#).

Bankruptcy court denied creditors' contempt request against debtor's officers and legal counsel where [Fed. R. Bankr. P. 9011](#) did not apply to inaccurate monthly financial reports submitted, but court held debtor's officers in contempt, pursuant to [Fed. R. Bankr. P. 9020](#), for intentional violation of court's previous order to segregate assets. [In re World Parts, LLC, 291 B.R. 248, 41 Bankr. Ct. Dec. \(LRP\) 39, 50 Collier Bankr. Cas. 2d \(MB\) 585, 2003 Bankr. LEXIS 312 \(Bankr. W.D.N.Y. 2003\)](#).

Creditor's motion for strict compliance was denied because self-employed debtors were not debtors engaged in business under [11 USCS § 1304\(a\)](#) since they did not incur trade credit and, therefore, they were not required to perform duties of trustee specified in former [11 USCS § 704\(8\)](#), which included filing of monthly operating reports. [In re Whitcomb, 310 B.R. 428, 2004 Bankr. LEXIS 765 \(Bankr. W.D. Ark. 2004\)](#).

Responsibility to review accuracy and correctness of trustee's final report as filed pursuant to [11 USCS § 704\(a\)\(9\)](#) lies with U.S. trustee by virtue of [28 USCS § 586](#), and bankruptcy court will intervene therein only when objection is filed as provided by [Fed. R. Bankr. P. 5009](#). [Eresian v. Koza \(In re Koza\), 375 B.R. 711, 2007 Bankr. LEXIS 3167 \(1st Cir. 2007\)](#).

There was cause for dismissal of debtors' bankruptcy cases, under [11 USCS § 1112\(b\)\(4\)\(E\)](#) and (F), because debtors did not file timely and accurate reports required by court order and [11 USCS § 704\(a\)\(8\)](#). [Pal Family Credit Co. v. County of Albany, 425 B.R. 1, 2010 U.S. Dist. LEXIS 16894 \(N.D.N.Y. 2010\)](#).

Although no objection was filed to trustee's final report by United States Trustee pursuant to [11 USCS § 704\(a\)\(9\)](#) and [28 USCS § 586](#), bankruptcy court found cause to conduct independent examination based on report's proposal to distribute assets to Chapter 7 debtors ahead of unsecured claimants in contravention of order of priority in [11 USCS § 726\(a\)](#); although debtors and trustee wanted court to overlook debtors' technical disqualification as priority claimants and instead consider reality that debtors, by paying from their own personal funds their outstanding tax liabilities, eliminated need for governmental units to file those claims, which would have been entitled to priority under [11 USCS § 507\(a\)\(8\)](#), court refused to do so. [In re Sarnovsky, 436 B.R. 461, 2010 Bankr. LEXIS 2216 \(Bankr. N.D. Ohio 2010\)](#).

Even after dismissal of Chapter 13 case, court still retained jurisdiction under [28 USCS § 157\(b\)\(2\)\(A\)](#) over certain matters, including distributions of funds held by trustee pursuant to [11 USCS §§ 1302\(b\)\(1\)](#) and [704\(a\)\(9\)](#). [In re Hufford, 460 B.R. 172, 2011 Bankr. LEXIS 3787 \(Bankr. N.D. Ohio 2011\)](#).

Debtor did not meet her burden to show that Chapter 7 trustee's final report should not be approved, as her objection was not based on any specific items in final report itself, but rather on totality of her situation and her desire to regain control of lawsuit, which became property of her estate when she filed her petition even though it was not listed or scheduled. [In re Ordonez, 2018 Bankr. LEXIS 554 \(Bankr. D. Utah Feb. 28, 2018\)](#).

40. Motion to dismiss

Court denied U.S. Trustee's motion for examination of debtor and production of documents under [Fed. R. Bankr. P. 2004](#) because she could satisfy her obligations under [Fed. R. Bankr. P. 9011](#) in making determinations of abuse required under [11 USCS § 704\(b\)\(2\)](#) based on documents filed with court and provided to Chapter 7 trustee; if she filed motion to dismiss under [11 USCS § 707\(b\)\(2\)](#), she could then pursue discovery under contested matter rule of [Fed. R. Bankr. P. 9014\(c\)](#) in prosecuting that motion. [In re Perrotta, 2007 BNH 40, 378 B.R. 27, Bankr. L. Rep. \(CCH\) ¶ 81064, 2007 Bankr. LEXIS 3813 \(Bankr. D.N.H. 2007\)](#).

U.S. Trustee's motion for extension of 60 days in which to file motion to dismiss for abuse under [11 USCS § 707\(b\)](#) was denied because trustee had not established sufficient grounds for extending 30-day deadline for filing motion to dismiss; from outset, debtor's statements and schedules had indicated that presumption of abuse arose and trustee was alerted to fact that motion to dismiss might need to be filed. [In re Nolen, 58 Collier Bankr. Cas. 2d \(MB\) 1505, 2007 Bankr. LEXIS 3747 \(Bankr. D.N.M. Oct. 29, 2007\)](#).

United States Trustee's motion to dismiss Chapter 7 debtor's case on basis of presumption of abuse was timely, as relevant date from which ten-day statement had to be filed ran from conclusion, rather than commencement, of meeting of creditors. [In re Dinardo, 559 B.R. 32, 2016 Bankr. LEXIS 3619 \(Bankr. D. Conn. 2016\)](#).

41. Object to claimed exemptions

Trustee has standing to object to exemptions claimed by debtors because duty of trustee to collect property of the estate under [11 USCS § 704](#) inevitably involved determining what property was exempt. [First Nat'l Bank v. Norris, 701 F.2d 902, 10 Bankr. Ct. Dec. \(LRP\) 473, 8 Collier Bankr. Cas. 2d \(MB\) 1078, 1983 U.S. App. LEXIS 29355 \(11th Cir. 1983\)](#), limited, [In re Lawery, 57 B.R. 104, 1985 Bankr. LEXIS 4677 \(Bankr. M.D. Ala. 1985\)](#).

Operation of [11 USCS § 541](#) vests title even to properly exempt property in Chapter 7 trustee, and thus prior law compelling trustee to turn over exempt assets to debtor, who retained title, is inapplicable, and trustee may retain exempt property in estate, but trustee may not necessarily be entitled to hold distribution of exempt assets to final distribution under [11 USCS § 726](#); rather, various subsections of [11 USCS § 704](#) require only that trustee satisfy himself that exempt assets are not subject to some unavoidable claim such as tax claim under [11 USCS § 523\(a\)\(1\)](#); where, as here, debtor has been divorced, Chapter 7 trustee is entitled to hold Chapter 7 debtor's homestead exemption until trustee is satisfied within reasonable time that exempt assets are not subject to superior rights, including claims for alimony or support under [11 USCS § 522\(c\)\(1\)](#). [In re Kaufman, 68 B.R. 391, 15 Bankr. Ct. Dec. \(LRP\) 273, Bankr. L. Rep. \(CCH\) ¶ 71578, 1986 Bankr. LEXIS 4702 \(Bankr. S.D.N.Y. 1986\)](#).

Under state law spouse is entitled to exempt award based on lost consortium resulting from injury to other spouse, and thus Chapter 7 trustee's objection to debtor's exemption pursuant to [11 USCS § 704\(5\)](#) must be overruled. [In re Loyd, 86 B.R. 663, 1988 Bankr. LEXIS 886 \(Bankr. W.D. Okla. 1988\)](#).

Bankruptcy appellate panel found that bankruptcy court properly denied (1) debtor's motion to remove Chapter 7 trustee where debtor failed to show cause; and (2) order to compel abandonment of debtor's alleged exempt property in issue where debtor failed to show that property was burdensome or of inconsequential value; court correctly enjoined debtor from any further related litigation where bankruptcy court's order that sustained trustee's objection to debtor's exemption was ultimately affirmed by Court of Appeals for Eighth Circuit. [Alexander v. Jensen-Carter \(In re Alexander\), 289 B.R. 711, 49 Collier Bankr. Cas. 2d \(MB\) 1463, 2003 Bankr. LEXIS 179 \(8th Cir.\)](#), aff'd, [80 Fed. Appx. 540, 2003 U.S. App. LEXIS 23081 \(8th Cir. 2003\)](#).

Court approved compensation sought by attorney for Chapter 7 trustee where attorney's services, which related to objection to exemption and proof of claim, fell squarely within duties of trustee under [11 USCS § 704](#), and hours spent and rates charged were reasonable. [In re Beck, 377 B.R. 714, 2006 Bankr. LEXIS 4467 \(Bankr. M.D. Fla. 2006\)](#).

Chapter 7 trustee did not violate his duties under [11 USCS §§ 323](#) or [704](#) when he filed objection to debtor's claim that total cash value debtor had in five whole life insurance policies was exempt from creditors' claims under [Idaho Code Ann. § 11-605\(10\)](#) and obtained order which allowed him to liquidate policies and pay debtor \$5,000; debtor had not claimed that policies were exempt from creditors' claims under [Idaho Code Ann. § 11-605\(9\)](#), trustee was not obliged to divine that debtor intended to rely on § 11-605(9) when he claimed exemptions under § 11-605(10), and debtor's rights in policies were limited to interest in \$5,000 of cash value of largest policy under § 11-605(10). [In re Wisdom, 478 B.R. 394, 2012 Bankr. LEXIS 4217 \(Bankr. D. Idaho 2012\)](#), aff'd, [490 B.R. 412, 2013 U.S. Dist. LEXIS 56567 \(D. Idaho 2013\)](#).

Bankruptcy court did not abuse its discretion by awarding attorneys' fees and costs to Chapter 7 trustee after extended proceedings relating to debtors' exemption claims, as trustee needed services of counsel to perform his duties of investigating debtors' assets and maximizing recovery for estate, and it was debtors and their counsel who were not forthright with trustee and unnecessarily prolonged proceedings. Trustee complied with his duty to investigate by objecting to debtors' claim of exemption and advising debtors and their counsel of documentation needed to verify exemptions. [Starky v. Birdsell \(In re Starky\), 522 B.R. 220, Bankr. L. Rep. \(CCH\) ¶ 82739, 72 Collier Bankr. Cas. 2d \(MB\) 1333, 2014 Bankr. LEXIS 4952 \(9th Cir. 2014\)](#).

42. Object to dismissal of case

Chapter 7 trustee has standing, on behalf of unsecured creditors who have not affirmatively consented to dismissal, to object to applications for voluntary dismissal filed by debtor; trustee's duty to object to debtor's motion to dismiss may be inferred from former [11 USCS § 704\(1\). Penick v. Tice, 732 F.2d 1211, 11 Bankr. Ct. Dec. \(LRP\) 1278, Bankr. L. Rep. \(CCH\) ¶ 69854, 10 Collier Bankr. Cas. 2d \(MB\) 828, 1984 U.S. App. LEXIS 23111 \(4th Cir. 1984\)](#).

As special officer of court and as representative of debtor's estate under [11 USCS § 323](#), trustee has right to object to debtor's application to dismiss voluntary petition under [11 USCS § 707](#), particularly where other creditors have joined in his objection and where there is evidence of fraud by debtor. [In re Jennings, 31 B.R. 378, 1983 Bankr. LEXIS 5897 \(Bankr. S.D. Ohio 1983\)](#).

Chapter 7 trustee does not have standing under [11 USCS § 704](#) to object to general partner's motion for dismissal of partnership's bankruptcy case where motion has support of sole creditor of estate. [In re Riverside-Linden Inv. Co., 85 B.R. 107, 1988 Bankr. LEXIS 520 \(Bankr. S.D. Cal. 1988\)](#), aff'd, [99 B.R. 439, Bankr. L. Rep. \(CCH\) ¶ 72998, 1989 Bankr. LEXIS 879 \(B.A.P. 9th Cir. Cal. 1989\)](#).

43. Oppose discharge

Debtors were entitled to include applicable ownership expenses for their second vehicle even though debtors owed vehicle free and clear, pursuant to [11 USCS § 707\(b\)\(2\)\(A\)\(ii\)](#); inclusion of additional expenses gave debtors negative monthly disposable income and removed presumption of abuse, and trustee's motion to dismiss was therefore denied. [In re Ragle, 2007 Bankr. LEXIS 874 \(Bankr. E.D. Ky. Mar. 23, 2007\)](#), remanded, [2007 U.S. Dist. LEXIS 88828 \(E.D. Ky. Dec. 3, 2007\)](#), aff'd, remanded, [395 B.R. 387, Bankr. L. Rep. \(CCH\) ¶ 81374, 60 Collier Bankr. Cas. 2d \(MB\) 1109, 2008 U.S. Dist. LEXIS 75280 \(E.D. Ky. 2008\)](#).

Trustee has no duty under [11 USCS § 704](#) to pursue nondischargeability of particular debts; hence, trustee is not "party in interest" for purpose of applying for extension of time on behalf of creditors to file complaints to determine dischargeability of their debts. [In re Overmyer, 26 B.R. 755, Bankr. L. Rep. \(CCH\) ¶ 68930, 1982 Bankr. LEXIS 5396 \(Bankr. S.D.N.Y. 1982\)](#).

Although trustee is required to investigate financial affairs of debtor under [11 USCS § 704](#) and to oppose discharge of debtor if advisable, trustee does not have responsibility to commence adversary proceeding to contest dischargeability under [11 USCS § 523](#); if creditor suspects fraud, it must object to dischargeability of debt. [In re Kirschner, 46 B.R. 583, 1985 Bankr. LEXIS 6696 \(Bankr. E.D.N.Y. 1985\)](#).

Chapter 7 trustee has no authority to settle objections to discharge in exchange for consideration; therefore, court denied trustee's motion to approve settlement with Chapter 7 debtor that provided for resolution of trustee's objection to debtor's discharge in exchange for debtor paying \$5,000 if paid by certain date, or \$15,000 if paid after that date. [In re Levine, 287 B.R. 683, 49 Collier Bankr. Cas. 2d \(MB\) 1901, 2002 Bankr. LEXIS 1567 \(Bankr. E.D. Mich. 2002\)](#).

After original plaintiff settled and bar date of [Fed. R. Bankr. P. 4004](#) expired, other creditors sought to intervene to prosecute [11 USCS § 727\(a\)](#) proceeding; bankruptcy court ordered trustee to report on merits of case before it would rule on intervention motion since such investigation, though not binding on court, might be helpful and fell within trustee's obligations under [11 USCS § 704\(a\)\(4\)](#) and (6) to investigate debtor's financial affairs and, if advisable, oppose his discharge. [Jones v. Buzzo \(In re Buzzo\), 315 B.R. 243, 52 Collier Bankr. Cas. 2d \(MB\) 1699, 2004 Bankr. LEXIS 1507 \(Bankr. D. Conn. 2004\)](#).

Bankruptcy court approved applications filed by Chapter 7 trustee and accounting firm and law firm trustee hired, seeking payment under [11 USCS §§ 326](#) and 330 of fees and expenses, but reduced law firm's request for payment of \$134,128 in fees to \$102,226 because some work firm performed was unnecessary or amount of time firm spent completing some tasks was excessive; although debtor claimed that trustee, accounting firm, and law firm were not entitled to recover fees and expenses they billed for work they performed on adversary proceeding

trustee filed against debtor to determine if he was eligible under [11 USCS § 727\(a\)\(3\)](#) to have his debts discharged because court ruled in his favor, court found that trustee properly exercised her responsibilities under [11 USCS § 704\(a\)\(6\)](#) when she filed adversary proceeding; court also found that trustee properly included amounts she was allowed to pay law firm and accounting firm in total amount of property she distributed, when she determined her fee. [In re Mohsen, 473 B.R. 779, 2012 Bankr. LEXIS 2775 \(Bankr. N.D. Cal. 2012\)](#), aff'd, [506 B.R. 96, 2013 U.S. Dist. LEXIS 137900 \(N.D. Cal. 2013\)](#).

Bankruptcy court denied creditor's motion for summary judgment on amended claim filed by creditor because there was no issue presented at that juncture of proceedings when trustee had not objected to claim. Fact that trustee objected in related adversary proceeding to admission of creditor's amended claim into evidence and objection was overruled did not mean that trustee was objecting at that point to amended claim; trustee had authority to refrain from placing objection to claim if trustee determined that no purpose would be served. [In re Bankest Capital Corp., 20 Fla. L. Weekly Fed. B 293, 2007 Bankr. LEXIS 781 \(Bankr. S.D. Fla. Feb. 27, 2007\)](#).

[11 USCS § 704\(b\)](#) establishes duty, but does not establish penalty for failure to perform that duty, and therefore even if U.S. Trustee failed to comply strictly with his § 704(b) duties, his motion to dismiss would not (merely for that reason) be time-barred. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\)](#).

Function of "first" in [11 USCS § 704](#) is ambiguous, at best, and one cannot determine plain meaning; the most reasonable interpretation is to recognize essential equivalence of "first meeting of creditors" and "meeting of creditors" in general parlance. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\)](#).

Court had allowed U.S. Trustee to file [11 USCS § 704](#) statement by choosing correct "radio button" from CM/ECF system developed by Administrative Office of US Courts; the US Trustee's actions complied with court's requirements, and docket entry by U.S. Trustee satisfied requirement for "statement" by U.S. Trustee. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\)](#).

44. Payment of attorneys fees

Bankruptcy court erred by allowing Chapter 7 Trustee to apply against proceeds of sale of co-owned property attorney fees that were incurred by Trustee's law firm for (1) services that were rendered in defending property from relief from automatic stay, and (2) marketing and selling property; plain meaning of [11 USCS § 363\(j\)](#) was that only costs and expenses that did not include compensation of Trustee could be deducted from sale proceeds before they were divided, and preserving and disposing of estate property were matters that were squarely within duties of Chapter 7 bankruptcy trustee, pursuant to [11 USCS § 704. Stine v. Diamond \(In re Flynn\), 418 F.3d 1005, Bankr. L. Rep. \(CCH\) ¶ 80334, 2005 U.S. App. LEXIS 16715 \(9th Cir. 2005\)](#).

Where Chapter 11 debtor's case was converted to Chapter 7, United States, on behalf of IRS, was bound by settlement reached between Chapter 11 trustee and debtor's counsel because trustee was granted authority to perform Chapter 7 trustee's duties and U.S. filed no objection to fee application or settlement agreement. [In re St. Catherine Hosp. of Ind., LLC, 2017 Bankr. LEXIS 4617 \(Bankr. S.D. Ind. Sept. 13, 2017\)](#), aff'd, [2018 U.S. Dist. LEXIS 165112 \(S.D. Ind. Sept. 26, 2018\)](#).

In a case wherein the bankruptcy trustee's application for attorney's fees was reduced to \$3,360 from the \$10,000 sought in representing the bankruptcy estate, the reduction was upheld because the trustee failed to meet his burden to show the services required legal expertise and were not trustee duties. [Smith v. UST-U.S. Tr. \(In re Earle's Custom Wines, Inc.\), 2023 Bankr. LEXIS 2967 \(9th Cir. Dec. 19, 2023\)](#).

Bankruptcy court has discretion to determine reasonable compensation as 11 U.S.C.S. § 330 implicitly requires counsel to exercise billing discretion; therefore, the bankruptcy court properly considered the anticipated return to creditors standard when disallowing the time and fees. [*Smith v. UST-U.S. Tr. \(In re Earle's Custom Wines, Inc.\), 2023 Bankr. LEXIS 2967 \(9th Cir. Dec. 19, 2023\)*](#).

45. Payment of taxes

Chapter 11 trustee may be surcharged under [11 USCS § 704](#) for penalties and interest incurred by estate as result of his failure to pay federal payroll taxes, but he may not be surcharged for principal of tax owed by debtor. [*In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)*](#).

Failure of Chapter 11 trustee to pay taxes to Puerto Rico and United States, causing estate to incur tax deficiencies, penalties, and interest charges, constitutes breach of duties imposed upon trustee by former [11 USCS § 704\(7\)](#) and [11 USCS § 505\(b\)\(1\)](#), because he failed to conserve and protect interests and assets of estate. [*In re San Juan Hotel Corp., 71 B.R. 413, 1987 U.S. Dist. LEXIS 4944 \(D.P.R. 1987\)*](#), aff'd in part and rev'd in part, [*847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)*](#).

Chapter 7 trustee, who is not operating trustee according to [11 USCS § 721](#), is not obligated to pay to IRS administrative expense taxes when they are due, as such tax payments must (in absence of court order allowing tax liabilities and directing interim distribution) await complete administration of bankruptcy estate and subsequent distribution under [11 USCS § 726](#) and Bankruptcy Rule 3009; thus, bankruptcy estate, rather than IRS, is entitled to use of such tax payments while trustee is performing his duties under former [11 USCS § 704\(1\)](#). [*In re Quid Me Broadcasting, 181 B.R. 715, 75 A.F.T.R.2d \(RIA\) 1995-2135, 75 A.F.T.R.2d \(RIA\) 95-2135, 33 Collier Bankr. Cas. 2d \(MB\) 723, 95 TNT 99-46, 1995 Bankr. LEXIS 616 \(Bankr. W.D.N.Y. 1995\)*](#), aff'd, [*78 A.F.T.R.2d \(RIA\) 96-5039, 1996 U.S. Dist. LEXIS 7581 \(W.D.N.Y. 1996\)*](#).

46. Payment of other fees

Bankruptcy court had jurisdiction to consider applications filed by Chapter 7 trustee who was appointed under [11 USCS § 704\(a\)\(11\)](#) to administer ERISA plan for benefit of employees who worked for two corporations that declared bankruptcy, seeking award of his fees and fees and expenses that were charged by law firm, pension consultant, and auditor he hired, and court approved trustee's applications and authorized trustee to pay fees and expenses from funds in account he created to fund administration of ERISA plan and from corporations' bankruptcy estate; there was no merit to U.S. Department of Labor's claim that court did not have jurisdiction to approve payment of fees and expenses from assets that remained in corporations' ERISA plan, and standards that were embodied in [11 USCS §§ 326\(a\)](#) and 330 for determining whether amount of compensation trustee sought was reasonable were similar to standards ERISA used for evaluating compensation paid to plan fiduciary. [*In re Robert Plan Corp., 493 B.R. 674, 56 Bankr. Ct. Dec. \(LRP\) 260, 2012 Bankr. LEXIS 3838 \(Bankr. E.D.N.Y. 2012\)*](#), rev'd, [*508 B.R. 257, 58 Employee Benefits Cas. \(BNA\) 1994, 2014 U.S. Dist. LEXIS 45809 \(E.D.N.Y. 2014\)*](#).

47. Provide legal services

If service performed by person who serves as trustee and who is also employed as attorney for trustee pertains to adversary proceeding or contested motion where trustee is required to appear and prosecute or defend, then trustee is entitled to compensation above limit of [11 USCS § 326](#); however, routine objections to claims which are unopposed and do not require legal analysis or brief, fall within trustee's duties under [11 USCS § 704](#) and may not be compensated as professional services. [*In re Perkins, 244 B.R. 835, 2000 Bankr. LEXIS 134 \(Bankr. D. Mont. 2000\)*](#).

Neither [11 USCS § 704](#) nor [11 USCS § 328\(b\)](#) can be legitimately construed to compel trustee to engage in unauthorized practice of law nor to compel trustee-attorney to provide legal services for benefit of bankruptcy estate without compensation; burden of proof remains on trustee-attorney to demonstrate that any service for which

attorney compensation is sought cannot be performed practically or lawfully except by attorney. [In re Howard Love Pipeline Supply Co., 253 B.R. 781, 45 Collier Bankr. Cas. 2d \(MB\) 335, 2000 Bankr. LEXIS 1240 \(Bankr. E.D. Tex. 2000\).](#)

Trustee should give meaningful thought to selection of counsel, and application should reflect that process; in so doing, court will not substitute its judgment for that of trustee. Court's obligation is to ensure that trustee gives reasoned analysis to employment issue and reaches rational conclusion within bounds of trustee's duty; if, upon review of trustee's reasoning, court determines that trustee failed to properly meet fiduciary duty, court will deny application. [In re Edwards, 510 B.R. 554, 2014 Bankr. LEXIS 1508 \(Bankr. S.D. Tex. 2014\).](#)

Application for employment of counsel in Chapter 7 bankruptcy case, although not perfect, addressed issues raised in case law where it identified attorney-in-charge, sought employment on hourly rate, stated why counsel was chosen, outlined legal services to be performed, and listed connections between counsel, parties, and issues; moreover, trustee's testimony satisfied requirement that hiring counsel was in best interest of estate. Trustee satisfied fiduciary duty, as well as requirements of bankruptcy statute and rule. [In re Edwards, 510 B.R. 554, 2014 Bankr. LEXIS 1508 \(Bankr. S.D. Tex. 2014\).](#)

In this Chapter 7 action, several services rendered were disallowed where (1) trustee's law firm was seeking compensation for numerous non-legal services that were per se non-compensable, and (2) trustee's law firm was requesting compensation for many services that were presumptively non-compensable and it failed to meet its burden of establishing that these particular services involved "unique difficulties" beyond trustee's abilities. [In re King, 546 B.R. 682, 2016 Bankr. LEXIS 850 \(Bankr. S.D. Tex. 2016\).](#)

Where Chapter 7 trustee employed herself as attorney, court overruled debtor's objections to entries requesting compensation for time spent, inter alia, drafting objections to exemptions, drafting and revising motion to compromise, and corresponding with debtor's attorney regarding settlement of objection to exemptions, as those services related to issues that required skills of attorney and were beyond scope of trustee's ordinary duties. [In re Parker, 2018 Bankr. LEXIS 1884 \(Bankr. E.D. Mich. June 20, 2018\).](#)

Many services performed by Chapter 7 trustee, who hired herself as attorney, fell within scope of her ordinary duties and were routinely performed by trustee without assistance of attorney and thus, she was not entitled to compensation for those services, which included, inter alia, receipt and review of documents from special counsel and drafting correspondence to creditor regarding potential claim. [In re Parker, 2018 Bankr. LEXIS 1884 \(Bankr. E.D. Mich. June 20, 2018\).](#)

Where Chapter 7 trustee employed herself as attorney, time spent preparing fee application for special counsel was legal service for which trustee was entitled to compensation. [In re Parker, 2018 Bankr. LEXIS 1884 \(Bankr. E.D. Mich. June 20, 2018\).](#)

48. Preserve or insure property

Underwriting company which provided workers' compensation insurance to corporation attempting ultimately unsuccessful reorganization [11 USCS §§ 1101](#) et seq. cannot invoke § 506(c) to recover company's unpaid premiums from corporation's assets, essentially all of which are subject to bank's security interest, after reorganization is converted into liquidation under [11 USCS §§ 701](#) et seq., even if the results of contrary rule would be better as matter of policy, that is matter for Congress to address rather than courts. [Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1, 13 Fla. L. Weekly Fed. S 359, 2000 Cal. Daily Op. Service 4153, 2000 Colo. J. C.A.R. 2982, 2000 D.A.R. 5563, 36 Bankr. Ct. Dec. \(LRP\) 38, Bankr. L. Rep. \(CCH\) ¶ 78183, 43 Collier Bankr. Cas. 2d \(MB\) 861, 2000 U.S. LEXIS 3624 \(2000\).](#)

Chapter 7 bankruptcy trustee was entitled to qualified immunity from tenant's wrongful eviction claims, which were based on trustee's acceptance of only key to building after locks were changed; trustee was government official for purposes of qualified immunity doctrine, trustee had statutory duty to protect and preserve estate property, and flooding of building caused by tenant's inaction required trustee to act. [Phoenician Mediterranean Villa, LLC v.](#)

[Swope \(In re J & S Props., LLC\), 872 F.3d 138, 64 Bankr. Ct. Dec. \(LRP\) 184, Bankr. L. Rep. \(CCH\) ¶ 83160, 2017 U.S. App. LEXIS 18726 \(3d Cir. 2017\).](#)

While trustee, as fiduciary, represents all creditors of estate, secured creditors are represented only in capacity as custodian of property upon which they have lien; as custodian, trustee's obligation to secured creditors under [11 USCS § 704](#) is to preserve estate assets and not to act as investment manager for mortgage holders by renting mortgaged farm property, there being no duty in Chapter 7 case to manage assets which have no value to estate for benefit of secured creditors; bank which allowed farm property of Chapter 7 debtor to remain in estate for 2 years without objection cannot now object to consequences of trustee's actions as a tactical move where estate would suffer more by trustee's removal, assets having been sold and proceeds distributed; since trustee is not required by [11 USCS § 704](#) to do any more than preserve collateral, secured creditors have duty and responsibility to monitor bankruptcy proceeding and to keep informed of action taken with respect to property in which they claim interest. [In re Peckinpaugh, 50 B.R. 865, 1985 Bankr. LEXIS 5752 \(Bankr. N.D. Ohio 1985\).](#)

In addition to duties enumerated in [11 USCS § 704](#), Chapter 7 trustee is considered to be fiduciary of secured creditors with duty to exercise reasonable care as custodian of properties which serve as collateral for secured claim. [In re Thu Viet Dinh, 80 B.R. 819, 1987 Bankr. LEXIS 1981 \(Bankr. S.D. Miss. 1987\).](#)

Pursuant to [11 USCS § 704](#), Chapter 7 trustee did not act negligently in allowing insurance coverage to lapse on property serving as collateral for secured debt, where no notice of cancellation was sent to trustee and where, at time of trustee's inquiry, insurance was in effect and was to be in effect until date subsequent to loss; trustee, in any event, is not required to utilize nominal funds in his account, funds which are obviously subject to claims of other creditors and parties in interest, to acquire insurance to protect interest of one secured creditor. [In re Thu Viet Dinh, 80 B.R. 819, 1987 Bankr. LEXIS 1981 \(Bankr. S.D. Miss. 1987\).](#)

Chapter 7 debtors lack standing to bring negligence action against trustee and bonding company arising from trustee's failure to discover lack of insurance and failure to obtain fire insurance covering debtors' restaurant and its contents, because trustee did not owe duty to debtors to insure diner and its contents since debtors were not entitled to exempt property and had no expectation of receiving any surplus from bankruptcy estate upon liquidation of assets, and although debtors argue that but for trustee's failure to insure diner and its contents, amounts due and owing taxing authorities would have been paid out of estate and liability of debtors for taxes, as well as any penalties and interest, would have been reduced, trustee is not in anyway liable for penalties and interest as result of his activities in administering case, and debtors' interest, although indirectly pecuniary, is remote and consequential rather than direct and immediate; to rest their claim to relief on interests and rights which may be held by taxing authorities in maximizing recovery from estate does not constitute basis for standing to sue trustee or his bonding company. [Slack v. Saint Paul/Seaboard Sur. Co. \(In re Slack\), 164 B.R. 19, 25 Bankr. Ct. Dec. \(LRP\) 370, Bankr. L. Rep. \(CCH\) ¶ 75783, 30 Collier Bankr. Cas. 2d \(MB\) 1315, 1994 Bankr. LEXIS 212 \(Bankr. N.D.N.Y. 1994\).](#)

Duty of trustee is to preserve assets of estate, and procuring insurance would ordinarily be integral part of trustee's duty; however, in certain circumstances, insuring particular asset might be unfeasible or unwarranted, and in such instance, trustee's choice to stand uninsured might well be founded; whether trustee could have, even ought to have, insured property is inextricably bound with particular facts of case. [United States by Central Sav. Bank v. Lasich \(In re Kinross Mfg. Corp.\), 174 B.R. 702, 1994 Bankr. LEXIS 1800 \(Bankr. W.D. Mich. 1994\).](#)

Trustee in bankruptcy had standing, as representative of estate, to raise objection to debtor's claim of exemption for residential property owned by tenancy by entireties under [11 USCS § 522\(b\)\(2\)\(B\)](#); trustee is party in interest because of duties as representative of estate; further, such claim of exemption was impermissible as it related to joint creditors because under Michigan law, entireties property is not exempt from process by joint creditors in satisfaction of joint debts owed by husband and wife. [In re Guzior, 347 B.R. 237, 2006 Bankr. LEXIS 1813 \(Bankr. E.D. Mich. 2006\).](#)

Even assuming bankruptcy trustee breached his duties under [11 USCS § 704](#) when he delivered check he received from Chapter 7 debtor to bank that had filed claim against debtor's bankruptcy estate, to hold while court ruled on bank's motion to lift automatic stay pursuant to [11 USCS § 362](#), debtor could not recover damages from trustee because debtor was not injured by trustee's action; bank's right to receive funds was superior to debtor's right to receive funds under security agreement debtor entered when it borrowed money from bank before it declared bankruptcy. [*R. Woolsey & Assocs. v. Gugino \(In re R. Woolsey & Assocs.\), 454 B.R. 782, 54 Bankr. Ct. Dec. \(LRP\) 142, 2011 Bankr. LEXIS 1160 \(Bankr. D. Idaho 2011\).*](#)

Person who owned restaurant business that was in Chapter 7 bankruptcy attempted to impede trustee's administration of business's bankruptcy case when he contacted police after trustee entered building he owned to conduct inventory and changed locks on building, identified trustee as perpetrator of criminal trespass and burglary, and failed to tell police that his business was in bankruptcy and that trustee had been appointed to administer business's bankruptcy estate, and court ordered owner to pay all reasonable attorneys' fees and expenses Chapter 7 trustee, U.S. Trustee, and court incurred to hear trustee's motion for sanctions and to have criminal charges removed and record of arrest expunged. [*Crawford v. Margabandhu \(In re Maya Rests., Inc.\), 585 B.R. 761, 2018 Bankr. LEXIS 968 \(Bankr. W.D. Pa. 2018\).*](#)

49. Reject sales contract

Rejection of prior contract for sale of debtor's real property to purchaser was approved because trustee's business judgment was reasonable where new buyer had offered to buy property for \$400,000 more than purchaser, new buyer was ready to close and had funds to do so, and only reasonable expectation of distribution to unsecured creditors was rejection of prior purchaser's contract. [*In re Balco Equities Ltd., 323 B.R. 85, 2005 Bankr. LEXIS 532 \(Bankr. S.D.N.Y. 2005\).*](#)

50. Settlement of claim

Chapter 7 liquidating supervisor had authority to enter into settlement agreement with debtor's president concerning president's claim for severance benefits; although president's claim was not entitled to administrative priority, because there was no showing that consideration for president's severance contract had been rendered after debtor filed its bankruptcy petition, settlement was nevertheless reasonable and advantageous to debtor's estate because claim was colorable and cost of litigating president's claim would exceed any settlement that estate would have to pay. [*ARS Brook, LLC v. Jalbert \(In re ServiSense.com, Inc.\), 382 F.3d 68, 43 Bankr. Ct. Dec. \(LRP\) 154, Bankr. L. Rep. \(CCH\) ¶ 80160, 34 Employee Benefits Cas. \(BNA\) 2082, 2004 U.S. App. LEXIS 18938 \(1st Cir. 2004\).*](#)

Unpublished decision: Debtor's fraud upon court complaint was properly dismissed because trustee fulfilled his duties under [11 USCS § 704](#); even assuming that he had qualms about certain property valuation opinions and did not disclose them, his conclusion, in best interests of estate and its creditors, that opinions warranted his withdrawal of agreed-upon settlement was appropriate; it was clear on face of complaint and attached exhibits that bankruptcy court took no action in misled reliance on trustee's alleged nondisclosure of information that resulted in prejudice to debtor. [*Followell v. Mills, 317 Fed. Appx. 501, 2009 FED App. 0209N, 2009 U.S. App. LEXIS 5930 \(6th Cir. 2009\).*](#)

Settlement was in best interests of estate, where each claimant was notified and none objected, office of United States Trustee filed no objection or comment, unsecured claimants who shared highest economic risk filed no objections, and, in addition to providing notice to each claimant of proposed compromise, trustee's counsel discussed proposal with counsel who represent more than ten percent in number and amount of estate's claimants. [*Treinish v. TOPCO Assocs. \(In re AWF Liquidation Corp.\), 208 B.R. 399, 30 Bankr. Ct. Dec. \(LRP\) 1083, 1997 Bankr. LEXIS 693 \(Bankr. N.D. Ohio 1997\).*](#)

Bankruptcy court found that Chapter 7 trustee had considered risks of litigating issues related to claim for \$3,611,882 that general contractor filed against corporate debtor after debtor's ethanol plant was damaged in explosion and approved trustee's motion seeking permission to settle contractor's claim for \$2 million; while creditor that objected to settlement raised legal and factual reasons why contractor's claim should not be paid in full, it failed

to show that trustee's assessment of estate's probability of success on those issues, and estate's ability to avoid judgment requiring it pay contractor's claim in full, was flawed. [In re Tri-State Ethanol Co. LLC, 370 B.R. 222, 2007 Bankr. LEXIS 2081 \(Bankr. D.S.D. 2007\)](#).

Court approved settlement whereby Chapter 7 trustee would sell back to debtors any interest he possessed under [11 USCS §§ 541\(a\)\(1\)](#) and [704](#) in real estate brokerage and related entities owned by debtors prior to their bankruptcy and in exchange, would withdraw pending motions in debtors' bankruptcy and in brokerage's Chapter 11, as settlement was based on sound and thorough assessment of facts; trustee duly weighed substantial administrative costs and risks associated with continued litigation against prospects of recovery in excess of settlement and concluded that settlement was in best interests of estate. [In re Soderstrom, 477 B.R. 249, 23 Fla. L. Weekly Fed. B 451, 56 Bankr. Ct. Dec. \(LRP\) 263, 2012 Bankr. LEXIS 3902 \(Bankr. M.D. Fla. 2012\)](#).

Trustee's motion for approval per [Fed. R. Bankr. P. 9019](#) of proposed compromise of debtor's \$80,000 claim against her ex-husband was granted despite debtor's claim that amount proposed to be paid was inadequate and that there was high probably of success if trustee sued on obligation because trustee would likely encounter significant difficulties in collecting any judgment; since trustee had duty per [11 USCS § 704](#) to realize maximum from estate for distribution to creditors, settling claim on bases proposed by trustee would avoid further delay to creditors, who had already waited three years, and would be in best interests of creditors. [In re Hildreth, 68 Collier Bankr. Cas. 2d \(MB\) 874, 2012 Bankr. LEXIS 4627 \(Bankr. N.D. Iowa Oct. 1, 2012\)](#).

Unpublished decision: Denial of debtor's motion to remove Chapter 7 trustee "for cause," pursuant to [11 USCS § 324\(a\)](#), on alleged ground that trustee's proposed compromise of certain claims evidenced failure to manage estate property in best interests of parties as required by [11 USCS § 704\(a\)\(1\)](#) and (5), was affirmed on appeal because trustee, in whom was vested all of debtor's legal and equitable interests at date of filing per [11 USCS § 541\(a\)\(1\)](#), had authority to enter into settlement of claim by or against estate per [Fed. R. Bankr. P. 9019\(a\)](#) (provided that bankruptcy court approved of same); because trustee's evaluation of value of claims at issue satisfied four-prong test in [Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 \(1968\)](#) and because bankruptcy courts are entitled to determine "cause" for removal on case by case basis under [11 USCS § 324](#), U.S. Bankruptcy Court for District of Colorado did not abuse its discretion in denying removal of trustee under these circumstances. [Lewis v. McCallum \(In re Lewis\), 2007 Bankr. LEXIS 2500 \(10th Cir. July 31, 2007\)](#).

Trustee's settlement with mortgagee holding secured claim on debtors' interest in their home was fair, reasonable, and consistent with his duties under this section, because debtors' challenge to assignment of the deed was not likely to succeed and mortgagee had colorable claim for payment of debtors' share of taxes, insurance, and homeowners association dues on property. [In re Morgan, 600 B.R. 725, 2019 Bankr. LEXIS 1385 \(Bankr. N.D. Ga. 2019\)](#).

Although no party objected to Chapter 7 trustee's proposed settlement of consumer protection claims and Eleventh Circuit's first three Justice Oaks factors — probability of success, difficulty of collection, and complexity of litigation — were not really at issue, court determined that trustee did not use appropriate and reasonable business judgment in considering paramount interest of creditors. Percentage of administrative, professional fees, and costs equaled 74 percent of the total recovery, and court found that all creditors and debtor would be better off if settlement was not approved. [In re Ortiz, 619 B.R. 273, 2020 Bankr. LEXIS 2605 \(Bankr. M.D. Fla. 2020\)](#).

51. Statement of presumed abuse

U.S. Trustee's (UST) [11 USCS § 707\(b\)\(2\)](#) motion to dismiss debtor's Chapter 7 bankruptcy case was denied because UST did not file unequivocal statement, pursuant to [11 USCS § 704\(b\)\(1\)](#), that case was or was not presumptively abuse and motion did not implicate [11 USCS § 707\(b\)\(3\)](#) on its merits in that it was framed as arising essentially under [11 USCS § 707\(b\)\(2\)](#), two final paragraphs raising [11 USCS § 707\(b\)\(3\)](#) constituted mere afterthought pleadings, subject was entirely omitted from memorandum of law, and [Fed. R. Bankr. P. 1017\(e\)\(1\)](#) did

not contemplate cursory contentions and speculative conclusions. [In re Ansar, 383 B.R. 344, Bankr. L. Rep. \(CCH\) ¶ 81213, 2008 Bankr. LEXIS 544 \(Bankr. D. Minn. 2008\).](#)

Under [11 USCS § 704\(b\)](#), U. S. Trustee is allowed 10 days after first date set for meeting of creditors, rather than conclusion of meeting, to file statement of presumed abuse of bankruptcy and 30 days after that to file motion to dismiss on ground of presumed abuse under [11 USCS § 707\(b\)\(2\)](#). [In re Clark, 393 B.R. 578, 2008 Bankr. LEXIS 2502 \(Bankr. E.D. Tenn. 2008\).](#)

United States Trustee's [11 USCS § 704\(b\)\(1\)\(A\)](#) statement of presumed abuse was timely where it was filed within 10 days of conclusion of meeting of creditors. [In re Molitor, 395 B.R. 197, 2008 Bankr. LEXIS 2950 \(Bankr. S.D. Ga. 2008\).](#)

To satisfy [11 USCS § 704\(b\)\(1\)](#) requirement, 10-day statement has to clearly state United States Trustee's conclusion as to whether case was presumed to be abuse. [Reed v. Anderson \(In re Reed\), 422 B.R. 214, 2009 U.S. Dist. LEXIS 123961 \(C.D. Cal. 2009\).](#)

10-day period for filing statement under [11 USCS § 704\(b\)\(1\)](#) runs from conclusion of [11 USCS § 341\(a\)](#) meeting rather than its commencement. [Reed v. Anderson \(In re Reed\), 422 B.R. 214, 2009 U.S. Dist. LEXIS 123961 \(C.D. Cal. 2009\).](#)

United States Trustee's supplemental 10-day statement was timely where it clearly stated that presumption of abuse had arisen, and it was filed before [11 USCS § 341\(a\)](#) meeting concluded. [Reed v. Anderson \(In re Reed\), 422 B.R. 214, 2009 U.S. Dist. LEXIS 123961 \(C.D. Cal. 2009\).](#)

Because United States Trustee failed to file [11 USCS § 704\(b\)\(1\)\(A\)](#) statement of presumed abuse within 10 days of first date set for meeting of creditors in Chapter 7 case, Trustee's motion to dismiss for abuse under [11 USCS § 707\(b\)\(1\)](#), based upon presumption of abuse under [11 USCS § 707\(b\)\(2\)](#), was time-barred. [In re Wise, 453 B.R. 220, 66 Collier Bankr. Cas. 2d \(MB\) 340, 2011 Bankr. LEXIS 2770 \(Bankr. D. Vt. 2011\).](#)

Genuine and reasonable statement that U.S. Trustee cannot make computation (presumption of abuse calculation) without additional documentation is adequate for purposes of [11 USCS § 704\(b\)](#). [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\).](#)

Singular includes plural," so term "date" must be read as "dates" to include entire period that [11 USCS § 341](#) meeting convenes, [11 USCS § 102\(7\)](#); thus, if one then reads statutory language to be "not later than 10 days after dates of first meeting of creditors," and if one concludes that "first" is ambiguous at best, then one must conclude that deadline refers to all dates of first meeting of creditors and therefore includes continuances or resets; the ten days in which U.S. Trustee must file his statement runs from end of creditors' meeting, not commencement of creditors' meeting. [In re Cadwalder, 58 Collier Bankr. Cas. 2d \(MB\) 538, 2007 Bankr. LEXIS 2260 \(Bankr. S.D. Tex. June 28, 2007\).](#)

Unpublished decision: [11 USCS § 704\(b\)\(2\)](#) does not set forth requirement that United States Trustee (UST) file statement of presumed abuse prior to filing motion to dismiss under [11 USCS § 707\(b\)\(1\)](#) or [\(b\)\(3\)](#) where UST is not basing such motion on presumption of abuse; for that reason, thirty-day deadline in [11 USCS § 704\(b\)\(2\)](#) is not applicable. [In re Perrotta, 2008 BNH 9, 390 B.R. 26, 2008 Bankr. LEXIS 1810 \(Bankr. D.N.H. 2008\).](#)

Unpublished decision: Last clause of [11 USCS § 704\(b\)\(2\)](#) modifies binary choice Congress imposed on United States Trustee to act only when presumed abuse arises and has been timely disclosed by statement under [11 USCS § 704\(b\)\(1\)\(A\)](#); while it is true that last clause refers to "section 707(b)" and not [11 USCS § 707\(b\)\(2\)](#), this distinction makes no difference because presumption of abuse can only arise under provisions of [11 USCS § 707\(b\)\(2\)](#). [In re Perrotta, 2008 BNH 9, 390 B.R. 26, 2008 Bankr. LEXIS 1810 \(Bankr. D.N.H. 2008\).](#)

United States Trustee's motion to dismiss Chapter 7 debtors' case pursuant to [11 USCS § 707\(b\)](#) was denied because Trustee failed to timely file statement as to whether debtors' case would be presumed to be abuse under § 707(b), as required under [11 USCS § 704\(b\)\(1\)\(A\)](#). *In re Robertson*, 370 B.R. 804, 2007 Bankr. LEXIS 2250 (Bankr. D. Minn. 2007).

Phrase "date of first meeting of creditors" in [11 USCS § 704\(b\)\(1\)\(A\)](#) refers to first meeting date and not entire meeting of creditors as it may be continued from time to time. *Turner v. Close (In re Close)*, 384 B.R. 856, Bankr. L. Rep. (CCH) ¶ 81207, 2008 U.S. Dist. LEXIS 25872 (D. Kan. 2008).

Bankruptcy court properly denied as untimely filed under [11 USCS § 704\(b\)\(1\)\(A\)](#) U.S. Trustee's motion to dismiss Chapter 7 debtors' bankruptcy case pursuant to [11 USCS § 707\(b\)\(2\)](#) because phrase "date of first meeting of creditors" in [11 USCS § 704\(b\)\(1\)\(A\)](#) referred to first meeting date and not entire meeting of creditors as it was continued. *Turner v. Close (In re Close)*, 384 B.R. 856, Bankr. L. Rep. (CCH) ¶ 81207, 2008 U.S. Dist. LEXIS 25872 (D. Kan. 2008).

United States Trustee's failure to file timely 10-day statement under [11 USCS § 704\(b\)\(1\)](#) precludes filing of motion to dismiss under [11 USCS § 707\(b\)\(2\)](#). *Reed v. Anderson (In re Reed)*, 422 B.R. 214, 2009 U.S. Dist. LEXIS 123961 (C.D. Cal. 2009).

Date from which to measure ten-day deadline under [11 USCS § 704\(b\)\(1\)](#) is date when § 341 meeting concludes. *In re Persaud*, 486 B.R. 251, 2013 Bankr. LEXIS 490 (Bankr. E.D.N.Y. 2013).

United States Trustee's ten-day statement pursuant to [11 USCS § 704\(b\)\(1\)](#) was timely because it was filed prior to conclusion of § 341 meeting. *In re Persaud*, 486 B.R. 251, 2013 Bankr. LEXIS 490 (Bankr. E.D.N.Y. 2013).

Even if United States Trustee's statement pursuant to [11 USCS § 704\(b\)\(1\)](#) was untimely filed, untimeliness did not bar Trustee from later filing motion to dismiss for abuse within 30 day time frame set by § 704(b)(2). *In re Persaud*, 486 B.R. 251, 2013 Bankr. LEXIS 490 (Bankr. E.D.N.Y. 2013).

United States Trustee's (UST) failure to timely file statement of presumed abuse by deadline in [11 USCS § 704\(b\)\(1\)](#) resulted in UST being unable to pursue dismissal of case for presumed abuse under [11 USCS § 707\(b\)\(1\)](#) and (2) (this did not, however, prevent UST from going forward with motion under [11 USCS § 707\(b\)\(3\)](#) where burden of proof rested on UST); although prior to deadline UST filed statement under [11 USCS § 704\(b\)\(1\)\(A\)](#) indicating that she was unable to determine if debtor's case were presumptively abusive under [11 USCS § 707\(b\)](#), filing of that statement did not protect UST from consequences of failing to meet statutory deadline. *In re Perrotta*, 2007 BNH 42, 378 B.R. 434, 58 Collier Bankr. Cas. 2d (MB) 1628, 2007 Bankr. LEXIS 3935 (Bankr. D.N.H. 2007).

Unpublished decision: Deadline of 60 days under [Fed. R. Bankr. P. 1017\(e\)](#) was applicable and statement and time limitations under [11 USCS § 704\(b\)](#) did not apply because United States Trustee (UST) was seeking dismissal of debtor's Chapter 7 case under [11 USCS § 707\(b\)\(1\)](#) or (3) without invoking presumption of abuse; therefore, UST's motion was timely filed under [Fed. R. Bankr. P. 1017\(e\)\(1\)](#) because meeting of creditors was set for September 4, 2007, and motion was filed on October 12, 2007. *In re Perrotta*, 2008 BNH 9, 390 B.R. 26, 2008 Bankr. LEXIS 1810 (Bankr. D.N.H. 2008).

53. Miscellaneous

Unpublished decision: Trustee's decision not to pursue unliquidated speculative claims against debtor corporation's franchisees did not violate trustee's duties under [11 USCS § 704\(a\)\(1\)](#) to exercise reasonable diligence to preserve and protect estate property because corporation did not have money or backer to finance collection activity and because no law firm would take claims on contingency basis given remote possibility of success. *In re USA Baby, Inc.*, 424 Fed. Appx. 558, 2011 U.S. App. LEXIS 10855 (7th Cir. 2011).

Trustee's involvement in amendment of contract is not justification for compensation for services rendered under 11 USCS § 330(a)(1) since negotiating between parties or advising them of benefits of such negotiations is not among duties of trustee under [11 USCS § 704](#). *In re Bofill*, 25 B.R. 550, 9 Bankr. Ct. Dec. (LRP) 1371, 7 Collier Bankr. Cas. 2d (MB) 975, 1982 Bankr. LEXIS 5299 (Bankr. S.D.N.Y. 1982), disapproved, *In re Computer Communs.*, 824 F.2d 725, 16 Bankr. Ct. Dec. (LRP) 615, Bankr. L. Rep. (CCH) ¶ 71933, 17 Collier Bankr. Cas. 2d (MB) 556, 1987 U.S. App. LEXIS 10561 (9th Cir. 1987).

Implicit authority exists under [11 USCS § 704](#) to order transcripts of examination of debtor's chief financial officer along with exhibits produced at examination in order to cooperate with criminal investigation by United States Attorney's Office; however, such order will be vacated because of the following considerations: (1) extensive third party access which order contemplates and permits; (2) failure of application to be sealed thus alerting principal officer of debtor to some of information which trustee sought to conceal as possibly detrimental to his own and government investigation; (3) absence of any statute or regulation protecting confidentiality of government's investigation such that Bankruptcy Rule 9018 would apply; (4) trustee's, rather than government's, request for issuance of order coupled with government's statement that it supported rather than sought order; (5) procurement by trustee of financial officer's testimony on 5 occasions prior to trustee's seeking entry of order; and (6) trustee's representation that financial officer has received immunity. *In re Robert Landau Associates, Inc.*, 50 B.R. 670, 13 Bankr. Ct. Dec. (LRP) 231, 1985 Bankr. LEXIS 5820 (Bankr. S.D.N.Y. 1985).

Under state law spouse is entitled to exempt award based on lost consortium resulting from injury to other spouse, and thus Chapter 7 trustee's objection to debtor's exemption pursuant to former [11 USCS § 704\(5\)](#) must be overruled. *In re Loyd*, 86 B.R. 663, 1988 Bankr. LEXIS 886 (Bankr. W.D. Okla. 1988).

Where it appeared that liquidation proceeds to be distributed by Chapter 7 trustee would be insufficient to pay even Chapter 7 administrative claimants in full, Chapter 7 trustee was left discretion to administer lessor's administrative claim along with balance of administrative claims against estate subject to distribution provisions of [11 USCS § 726](#) and his general duties under [11 USCS § 704](#). *In re Palace Quality Servs. Indus.*, 283 B.R. 868, 2002 Bankr. LEXIS 1288 (Bankr. E.D. Mich. 2002).

Economic Development Administration sat back and relied on trustee and his counsel to convince one or another federal agency with funds to do so to pay to clean up radioactive contamination so that trustee could find willing buyer for site and encouraged effort; in undertaking such actions, trustee sought to discharge his obligation to collect and reduce to money property of bankruptcy estate, and to close estate as expeditiously as was compatible with best interests of creditors, especially EDA, and EDA was estopped from taking position that "direct benefit to secured creditor" requirement had not been satisfied. *In re Guterl Special Steel Corp.*, 316 B.R. 843, 43 Bankr. Ct. Dec. (LRP) 235, 2004 Bankr. LEXIS 1688 (Bankr. W.D. Pa. 2004).

Where creditor sought to remove Chapter 7 Trustee because of his alleged improper decision not to prosecute certain causes of action, creditor's request for discovery in response to Trustee's motion for summary judgment was unreasonable where creditor failed to provide any reason, based on information available to it, suggesting that Trustee's decision was unjustifiable and, if this was not possible, identifying any areas where further inquiry was needed. *In re Consol. Indus. Corp.*, 330 B.R. 712, 2005 Bankr. LEXIS 1929 (Bankr. N.D. Ind. 2005).

Debtor did not establish that his Chapter 13 plan complied with liquidation test in [11 USCS § 1325\(a\)\(4\)](#) and, thus, should have been confirmed, because book of business of debtor's insurance agency was asset of estate, agency had value of at least \$122,478 based on its gross income for 12 months pre-petition, and debtor's contracts with insurance companies did not prevent chapter 7 trustee from employing licensed agent to manage accounts post-petition with companies' consent while trustee marketed asset, pursuant to [11 USCS §§ 704](#) and [721](#). *In re Williams*, 354 B.R. 604, 57 Collier Bankr. Cas. 2d (MB) 323, 2006 Bankr. LEXIS 3107 (Bankr. N.D.N.Y. 2006), aff'd, 2008 U.S. Dist. LEXIS 32216 (N.D.N.Y. Apr. 18, 2008).

Chapter 7 trustee's motion to close Chapter 7 case pursuant to [11 USCS § 350](#) was denied because Chapter 7 trustee asserted that motion to close was brought because of pressure from U.S. Trustee to close case, based on

U.S. Trustee's intent to prevent undue delay in proceedings, but it was not clear whether or not Chapter 7 trustee had been able to fully collect all of available funds for distribution as required under [11 USCS § 704. In re Jackson, 388 B.R. 40, 2008 Bankr. LEXIS 2395 \(Bankr. W.D.N.Y. 2008\)](#).

Chapter 7 trustee was not party in interest entitled to seek extension of time limits in [Fed. R. Bankr. P. 4007\(c\)](#) for filing of complaint objecting to discharge of creditor's claim under 11 USCS § 523(c); unique facts of this case did not require different result, as there was no evidence that creditor's nondischargeability complaint would have any effect on trustee, estate, or other creditors. [In re Owen-Moore, 435 B.R. 685, 2010 Bankr. LEXIS 2682 \(Bankr. S.D. Cal. 2010\)](#).

Chapter 7 trustee had right and duty to ensure that successor to first mortgage holder did not get more than its proper share of estate's assets where although successor had not filed proof of claim, it had asserted secured claim against property which trustee now owned. [In re Mortg. Store, 509 B.R. 292, 2014 Bankr. LEXIS 1477 \(Bankr. D. Haw. 2014\)](#).

Unpublished decision: Where involuntary petition was filed against corporate debtor under Chapter 7, there was not reasonable likelihood of surplus sufficient to grant designated debtor standing to object to creditor's claim where most of assets of estate were lawsuits and where determination of true value of lawsuits was part of efficient administration of estate by trustee under 11 USCS §§ 363(b) and [704](#) and [Fed. R. Bankr. P. 9014](#); court refused to rely on designated debtor's estimation of value of lawsuits. [In re Fiber Optek Interconnect Corp., 2010 Bankr. LEXIS 5007 \(Bankr. S.D.N.Y. Jan. 15, 2010\)](#), aff'd, [445 B.R. 124, 2011 U.S. Dist. LEXIS 8476 \(S.D.N.Y. 2011\)](#).

Unpublished decision: Stipulation for relief from automatic stay to allow post-petition setoff of creditor's claim was disapproved without prejudice because parties did not bring required motion, because creditor failed to make any evidentiary showing that it was entitled to annulment of automatic stay based on balancing of equities, and because there was no de minimis exception to those requirements; further, as stipulation affected property of bankruptcy estate, court directed that Chapter 7 trustee be served with any motion for approval of stipulation and relief requested therein. [In re Seriosa, 2016 Bankr. LEXIS 2336 \(Bankr. C.D. Cal. June 20, 2016\)](#).

Although estate no longer had interest in district court litigation following closing of sale to debtor's primary secured creditor, in seeking to settle breach of contract claim and amend asset purchase agreement, Chapter 7 trustee was not asserting present interest in that litigation but rather, claim based upon promises made in sale agreement. Court retained jurisdiction over issues relating to proceeds due to estate from sale agreement entered into during bankruptcy, and trustee maintained authority to seek to enforce that same sale agreement. [In re Cresta Tech. Corp., 2018 Bankr. LEXIS 1569 \(Bankr. N.D. Cal. May 29, 2018\)](#).

To extent application for compensation filed by Chapter 7 trustee's law firm contained requests for compensation for services that were statutory and associative duties of trustee, it was disallowed, as those services could not be delegated to other professionals absent substantial support of necessity. For example, employing professional to assist trustee was responsibility of trustee and was duty contemplated by fee structure in Bankruptcy Code. [In re Ward, 2017 Bankr. LEXIS 4149 \(Bankr. M.D. Tenn. Dec. 6, 2017\)](#).

Transferee introduced no testimony or document to refute prima facie evidence manifested by deed that debtor owned property at issue. Thus, it was property of bankruptcy estate and subject to administration by Chapter 7 trustee. [Lubetkin v. Sheikh \(In re 40 Lakeview Drive\), 2018 Bankr. LEXIS 4155 \(Bankr. D.N.J. Sept. 6, 2018\)](#).

Chapter 13 debtor was required to send to Chapter 13 trustee all of his post-confirmation federal income tax returns, as that would assist trustee in determining whether any modification of plan was necessary, especially with uncertainty of possible future income from bonuses. Further, debtor was obligated to submit annual statement of amount and sources of income because bonus information was not identified separately on federal income tax returns. [In re Styerwalt, 610 B.R. 356, 2019 Bankr. LEXIS 3794 \(Bankr. D. Colo. 2019\)](#).

Trustee's final report was allowed; because bank's actions rendered no benefit to estate, its alleged indemnification rights arose from prepetition contract that bank no longer owned, and its claims did not fall within so-called Reading

exception to benefit requirement, bank had no allowable administrative claim. [In re Lister-Petter Ams., Inc., 2020 Bankr. LEXIS 314 \(Bankr. D. Kan. Feb. 6, 2020\).](#)

IV. PERSONAL LIABILITY FOR VIOLATION OF FIDUCIARY DUTIES

54. Generally

If, in performance of his duties, trustee violates law or acts so negligently or carelessly as to inflict loss upon estate or persons interested therein, he must answer in damages. [In re B.A. Montgomery & Son, 17 F.2d 404, 9 Am. B.R. \(n.s.\) 407, 1927 U.S. Dist. LEXIS 974 \(D. Ohio 1927\).](#)

It is duty of trustee to collect assets and he is responsible for failure to do so; he may be charged with value of assets which never came into his possession, if he fails in his duty to get them into his possession. [In re Power, 115 F.2d 69, 44 Am. B.R. \(n.s.\) 351, Bankr. L. Rep. \(CCH\) ¶ 52614, 1940 U.S. App. LEXIS 2797 \(7th Cir. 1940\).](#)

Bankruptcy trustees are subject to personal liability for willful and deliberate violation of their fiduciary duties under [11 USCS § 704](#) and such liability may be imposed either for benefit of estate in form of surcharge, or for benefit of creditor in form of damages in direct action against trustee. [In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\).](#)

Proven qualifiable loss to estate is not prerequisite to personal liability for trustees for violation of [11 USCS § 704](#) duties; where exact amount of loss to estate can be determined, that amount is correct measure of damages, and where fact of harm can be determined but not exact extent thereof, estimated amount of harm to estate should be surcharged. [In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\).](#)

Party may only assert against trustee harm it has directly suffered due to trustee's violation of [11 USCS § 704](#) duties; where assets of estate have been diminished by trustee's actions, representative of estate is proper party to assert claims against trustee, and where estate itself has suffered no loss but actions of trustee have directly harmed creditor, it should be creditor, not estate, that sues. [In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\).](#)

Trustee is personally liable for failure to properly administer bankruptcy estate for benefit of creditors. [De Pinto v. United States, 407 F. Supp. 5, 37 A.F.T.R.2d \(RIA\) 796, 1976-1 U.S. Tax Cas. \(CCH\) ¶ 9421, 76-1 U.S. Tax Cas. \(CCH\) ¶ 9421, 1976 U.S. Dist. LEXIS 17054 \(D. Ariz. 1976\), aff'd, 585 F.2d 405, 42 A.F.T.R.2d \(RIA\) 6345, 1978-2 U.S. Tax Cas. \(CCH\) ¶ 9816, 1978 U.S. App. LEXIS 8022 \(9th Cir. 1978\).](#)

Bankruptcy trustee is personally liable if he acted willfully and deliberately, disregarding estate's best interest; in exercise of duties towards estate, trustee will not be called upon to compensate damages he has caused if such damages accrued during normal operation of estate while trustee was proceeding in good faith under what reasonable men would define as acceptable procedures or guidelines, but if trustee acts beyond powers conferred upon him by law, or ignores his lawful duties, he necessarily assumes individual responsibility. [In re San Juan Hotel Corp., 71 B.R. 413, 1987 U.S. Dist. LEXIS 4944 \(D.P.R. 1987\), aff'd in part and rev'd in part, 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\).](#)

Trustee is fiduciary of all creditors of bankruptcy estate but owes primary duty to unsecured creditors, and in determining whether trustee has met that duty or should be removed pursuant to [11 USCS § 324](#), applicable test is whether trustee has exercised due care, diligence, and skill as measured by reasonable person standard. [In re Lundborg, 110 B.R. 106, 1990 Bankr. LEXIS 225 \(Bankr. D. Conn. 1990\).](#)

Negligence by trustee in bankruptcy in performance of his or her duties is actionable and can constitute basis for personal liability to extent that such negligence constitutes failure to exercise that degree of due care appropriate to performance of trustee's duties; since such negligence would constitute breach of fiduciary duty, it is no answer to claim against trustee in that context that trustee has some discretion as to whether that fiduciary duty will be

performed. [Barrows v. Bezanson \(In re Barrows\), 171 B.R. 455, 31 Collier Bankr. Cas. 2d \(MB\) 1512, 1994 Bankr. LEXIS 1390 \(Bankr. D.N.H. 1994\).](#)

For purposes of determining issue of trustee's liability for violation of duties imposed by [11 USCS § 704](#), standard of care is one of expeditious conduct; burden is on plaintiff to show failure to meet such standard by preponderance of evidence. [New Jersey Steel Corp. v. Huffman \(In re Valley Steel Corp.\), 208 B.R. 388, 9 4th Cir. & D.C. Bankr. Ct. Rep. 227, 30 Bankr. Ct. Dec. \(LRP\) 1007, 1997 Bankr. LEXIS 568 \(Bankr. W.D. Va. 1997\).](#)

55. Negligence

Trustee may be held personally liable for his negligence if he disposes of property in his hands without discovering record fact of existence of valid lien upon that property. [In re Woodmar Realty Co., 294 F.2d 785, Bankr. L. Rep. \(CCH\) ¶ 60048, 1961 U.S. App. LEXIS 4106 \(7th Cir. 1961\)](#), cert. denied, 369 U.S. 803, 82 S. Ct. 643, 7 L. Ed. 2d 550, 1962 U.S. LEXIS 1723 (1962); [In re Prather, 138 F. Supp. 433, Bankr. L. Rep. \(CCH\) ¶ 58772, 1956 U.S. Dist. LEXIS 3777 \(D. Ill. 1956\).](#)

Trustee should not be subjected to personal liability unless he was found to have acted with gross negligence; evidence was insufficient to support finding that trustee was even negligent, much less grossly negligent, regarding debtor's tax liabilities, where it was uncertain whether trustee could abandon property in order to shift tax liabilities, tax penalties for understatement and underpayment of taxes were due to matters beyond trustee's control, and trustee had already agreed to sanction for incurring penalties for filing late tax returns, which in all likelihood was based on only simple negligence. [Dodson v. Huff \(In re Smyth\), 207 F.3d 758, 35 Bankr. Ct. Dec. \(LRP\) 263, Bankr. L. Rep. \(CCH\) ¶ 78143, 2000 U.S. App. LEXIS 5110 \(5th Cir. 2000\)](#), reh'g denied, [2000 U.S. App. LEXIS 12700 \(5th Cir. May 12, 2000\).](#)

Trustee who fails to exercise due diligence to conserve assets of Chapter 7 bankruptcy estate must account for assets dissipated through negligence; measure of care, diligence, and skill required of trustee is that of ordinarily prudent man in conduct of private affairs under similar circumstances and with similar object in view; although mistake of judgment is not basis to impose liability on trustee, failure to meet standard of care does subject him to liability; trustee is liable personally only for acts willfully and deliberately in violation of his fiduciary duties. [In re Reich, 54 B.R. 995, 13 Bankr. Ct. Dec. \(LRP\) 953, 13 Collier Bankr. Cas. 2d \(MB\) 988, 1985 Bankr. LEXIS 4955 \(Bankr. E.D. Mich. 1985\)](#), disapproved, [Seifert v. Selby, 125 B.R. 174, 1989 U.S. Dist. LEXIS 17553 \(E.D. Mich. 1989\).](#)

Chapter 7 trustee is liable for destruction of building included in estate assets where building is located in part of Michigan subject to severe winters, building's roof collapsed from weight of snow built up thereon, and trustee knew or should have known that reasonably prudent person would from time to time cause snow to be removed from roof. [In re Reich, 54 B.R. 995, 13 Bankr. Ct. Dec. \(LRP\) 953, 13 Collier Bankr. Cas. 2d \(MB\) 988, 1985 Bankr. LEXIS 4955 \(Bankr. E.D. Mich. 1985\)](#), disapproved, [Seifert v. Selby, 125 B.R. 174, 1989 U.S. Dist. LEXIS 17553 \(E.D. Mich. 1989\).](#)

Chapter 7 trustee was negligent when he failed to promptly investigate and collect estate's interest in debtor's inheritance after debtor did not give trustee requested information very shortly after first meeting of creditors, at which time trustee had requested debtor provide him with information regarding probate proceeding, despite trustee's argument that there was nothing improper in requesting and relying on information about inheritance from debtor rather than from his own investigative efforts; information requested by trustee—decedent's will, any inventory of probate estate, and name of attorney representing estate—should have been readily available to debtor, she testified that she and her 3 sisters were expecting between \$15,000 and \$20,000 each, that this was all cash, and that information requested could be obtained by contacting one of her sisters, she promised to call her sister to get information, and trustee, therefore, should have expected information in matter of days; further, trustee should have been alerted to need for quick investigation since inheritance was all cash, which can be easily converted, and once converted, hard to trace, probate was pending in Los Angeles Superior Court, which is split into various divisions and serves most populous area of state, such that trustee should not have thought that if

debtor could not get information from her sister, she would be more adept than he at obtaining information from court, and probate proceeding was not of recent vintage. [In re Rollins, 175 B.R. 69, 32 Collier Bankr. Cas. 2d \(MB\) 609, 1994 Bankr. LEXIS 1896 \(Bankr. E.D. Cal. 1994\).](#)

56. Immunity

Immunity of trustee is not absolute; so long as trustee is acting under direct order of Bankruptcy Court there is immunity, but, in absence of explicit court order, factual issue may arise regarding whether trustee has acted within her authority; where question of fact exists as to whether Chapter 7 trustee sold debtors' dairy farm as expeditiously as possible, trustee is not immune as a matter of law from liability for failure to make a prompt sale pursuant to former [11 USCS § 704\(1\)](#). [Yadkin Valley Bank & Trust Co. v. McGee \(In re Hutchinson\), 819 F.2d 74, 16 Bankr. Ct. Dec. \(LRP\) 182, Bankr. L. Rep. \(CCH\) ¶ 71811, 16 Collier Bankr. Cas. 2d \(MB\) 1491, 1987 U.S. App. LEXIS 6681 \(4th Cir. 1987\)](#), app. after remand, [132 B.R. 827, 3 4th Cir. & D.C. Bankr. Ct. Rep. 653, Bankr. L. Rep. \(CCH\) ¶ 74342, 25 Collier Bankr. Cas. 2d \(MB\) 1247, 1991 Bankr. LEXIS 1479 \(Bankr. M.D.N.C. 1991\).](#)

Bankruptcy trustee had judicial immunity over creditor's adversary proceeding against him alleging negligence and breach of fiduciary duty under [11 USCS § 704](#); however, bankruptcy court did have jurisdiction, although not under [28 USCS § 959\(a\)](#), but pursuant to [28 USCS §§ 157\(a\), 1334\(b\)](#), where claim obviously related to underlying bankruptcy case; while Chapter 7 creditors may appear and be heard, just as provided in [11 USCS § 1109\(b\)](#) for other chapters, plaintiff's exclusive remedy was via direct appeal of court order approving abandonment of right to seek revocation of settlement. [LeBlanc v. Salem \(In re Mailman Steam Carpet Cleaning Corp.\), 196 F.3d 1, 35 Bankr. Ct. Dec. \(LRP\) 40, Bankr. L. Rep. \(CCH\) ¶ 78028, 1999 U.S. App. LEXIS 28409 \(1st Cir. 1999\)](#), cert. denied, 530 U.S. 1230, 120 S. Ct. 2661, 147 L. Ed. 2d 275, 2000 U.S. LEXIS 4024 (2000).

Bankruptcy trustee was immune from law firm's claims of malicious prosecution of malpractice action against firm and abuse of process, since pursuing potential claim of estate was within scope of trustee's authority, and lack of success of malpractice action did not establish malice or lack of probable cause. [Grant, Konvalinka & Harrison, P.C. v. Banks \(In re McKenzie\), 472 B.R. 455, 2012 Bankr. LEXIS 1339 \(Bankr. E.D. Tenn. 2012\)](#), adversary proceeding, [471 B.R. 884, 2012 Bankr. LEXIS 1340 \(Bankr. E.D. Tenn. 2012\)](#), aff'd, [497 B.R. 514, 2013 U.S. Dist. LEXIS 111786 \(E.D. Tenn. 2013\).](#)

Chapter 7 trustee and his attorneys were immune from claims of malicious prosecution and abuse of process brought by plaintiff after trustee sued plaintiff and others for, inter alia, fraudulent transfer and breach of fiduciary duty owed to debtor as business partner, because pursuit of claims constituted actions taken within scope of trustee's duties. [Bowers v. Banks \(In re McKenzie\), 473 B.R. 274, 2012 Bankr. LEXIS 2154 \(Bankr. E.D. Tenn. 2012\)](#), adversary proceeding, [2012 Bankr. LEXIS 3820 \(Bankr. E.D. Tenn. Aug. 20, 2012\).](#)

Bankruptcy court dismissed Chapter 7 debtor's claims alleging that Chapter 7 trustee was liable for damages because he breached his duties under [11 USCS § 704](#) and committed defamation when he administered debtor's bankruptcy estate; trustee was officer of court and he had quasi-judicial immunity because all actions he took while administering debtors' bankruptcy estate were within scope of his authority, he gave debtor and court notice of proposed actions before he took them, and court approved actions. [Pulliam v. Jensen \(In re Pulliam\), 67 Collier Bankr. Cas. 2d \(MB\) 236, 2012 Bankr. LEXIS 366 \(Bankr. D. Mont. Jan. 27, 2012\).](#)

Where plaintiff argued that Chapter 7 trustee and special counsel had engaged in fraudulent transfers, slandered plaintiff's title, disrupted plaintiff's charitable purposes, and violated Elliott Larsen Act, trustee and special counsel were immune from suit because they were acting in their official capacities when they liquidated assets of bankruptcy estate. [In re Reed, 2017 Bankr. LEXIS 4695 \(Bankr. E.D. Mich. Mar. 1, 2017\).](#)

Where trustee filed proceeding against defendants to avoid creditor's judgment lien, bankruptcy court denied defendant's motion to withdraw reference because breach of fiduciary duty and waste claim under [11 U.S.C.S. § 704](#) constituted "core proceeding" under [28 U.S.C.S. § 157\(b\)\(2\)](#); it was premised on trustee's potential liability for

administering estate. The bankruptcy court granted trustee's motion for summary judgment, because he acted pursuant to court order and within his statutory authority as bankruptcy trustee under [11 U.S.C.S. § 704. Sweet v. Duggan \(In re Wyman\), 2022 Bankr. LEXIS 3661 \(Bankr. E.D. Mich. Dec. 28, 2022\)](#).

57. Personal liability under particular circumstances

Trustee in Chapter 7 bankruptcy will not be held liable under [11 USCS § 704](#) for breach of fiduciary duty through failure to turn over to secured creditor proceeds covered by creditor's lien following sale where trustee was faced with conflicting judicial interpretations of applicable law and some of confusion was caused by unclear manner in which [11 USCS § 506\(d\)](#) was drafted. [In re Atoka Agricultural Systems, Inc., 39 B.R. 474, 10 Collier Bankr. Cas. 2d \(MB\) 787, 1984 Bankr. LEXIS 5813 \(Bankr. E.D. Va. 1984\)](#).

Individual acting as trustee for debtor's estate, while in both Chapter 11 and Chapter 7, willfully breached his fiduciary duty to estate and so will be held personally liable under [11 USCS § 704](#) where he: (1) failed to follow comptroller's recommendations to collect or attempt to collect all assets of estate; (2) failed to supervise and properly direct persons hired by him; (3) failed, as operating trustee, to pay taxes accruing against estate during bankruptcy; (4) failed to act under scope of powers conferred upon him when he summarily discharged casino employees, knowing that he was engaging in unfair labor practices which would, in long run, dissipate assets of estate; (5) failed to keep proper records of receipts and of disposition of money and property received; and (6) failed to comply in many respects with [11 USCS § 363\(b\)](#) in that he used, sold, or disposed of property of estate, not in ordinary course of business, without notice and hearing. [In re San Juan Hotel Corp., 71 B.R. 413, 1987 U.S. Dist. LEXIS 4944 \(D.P.R. 1987\)](#), aff'd in part and rev'd in part, [847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)](#).

Chapter 7 trustee breached his fiduciary duty under [11 USCS § 704](#) when he failed to comply with court order to turn over to debtor surplus funds remaining in estate after all filed and allowed claims had been paid, which prevented expeditious closing of estate and deprived debtor of funds to which it was entitled; fact that failure to comply with order was based on advice of counsel is not valid excuse because trustee himself is practicing attorney; judgment may be awarded against trustee and issuer of performance bond jointly and severally, although trustee was covered by bond issued by another entity at time original order was entered, where trustee breached duty again when he was covered by bond issued by instant issuer through his failure to comply with subsequent turnover order; debtor is entitled to interest on full amount of refund at current federal judgment rate until date trustee turned over funds and from that date debtor is entitled to interest on shortfall accruing until full payment is made. [United States on behalf of George Schumann Tire & Battery Co. v. Grant, 145 B.R. 104, 6 Fla. L. Weekly Fed. B 223, 1992 Bankr. LEXIS 1455 \(Bankr. M.D. Fla. 1992\)](#).

Motion by creditor for imposition of personal liability on trustee and his counsel is denied where creditor's attorney made no inquiry directly of trustee, creditor had received exactly notice to which it was entitled, and, although creditor's attorney requested information from trustee's attorney regarding status of case, creditor's attorney was not "a party in interest" under former [11 USCS § 704\(7\)](#) where attorney had not filed notice of appearance; furthermore, imposition of sanctions against creditor's attorney is not warranted under Bankruptcy Rule 9011. [In re Cole, 189 B.R. 40, 1995 Bankr. LEXIS 1624 \(Bankr. S.D.N.Y. 1995\)](#).

Chapter 7 trustee who, pursuant to court order, sold free and clear whatever rights estate had in certain publications was absolutely immune from liability relating to sale of assets as was his attorney; trustee further had no liability with respect to attorney's letter stating that particular publication had been foreclosed upon and had not been sold by estate, leaving implication that purchaser did not own rights to publication for which it was charging for advertising, since, under applicable Illinois law, trustee/principal was not liable for attorney/agent's torts if agent was not employee; attorney's conduct in sending letter was not privileged or justified for purposes of instant motion for leave to file action against trustee and his attorney since statements regarding rights to publication were not made in official report required by statute and did not appear to have any pertinence to affairs of debtor, bankruptcy case,

or administration of case. [*In re Berry Publ'g Servs., Inc.*, 231 B.R. 676, 1999 Bankr. LEXIS 257 \(Bankr. N.D. Ill. 1999\).](#)

Trustee who breached his statutory duty under [11 USCS § 704](#) to maximize proceeds of collection and distribute them as expeditiously as possible, as well as his duty not to object to general or priority unsecured claims if no purpose would be served by doing so, would be personally liable to priority creditors for substantial net opportunity costs resulting directly from his breaches. [*In re C. Keffas & Son Florist*, 240 B.R. 466, 43 Collier Bankr. Cas. 2d \(MB\) 48, 1999 Bankr. LEXIS 1397 \(Bankr. E.D.N.Y. 1999\).](#)

Plaintiffs failed to state *prima facie* case against trustee and his special counsel for breach of fiduciary duty and malicious prosecution, where allegations of breach of fiduciary duty referred not to willful acts but to omissions and tactical judgments, and plaintiffs failed to allege sufficient "special injury" to sustain claim for malicious prosecution. *In re Kids Creek, L.P.*, 248 B.R. 554, 36 Bankr. Ct. Dec. (LRP) 26, 2000 Bankr. LEXIS 1668 (Bankr. N.D. Ill. 2000), aff'd, [*2000 U.S. Dist. LEXIS 17718 \(N.D. Ill. Nov. 29, 2000\)*](#).

Counterclaims asserted by transferee and attorney against Chapter 7 trustee for breach of fiduciary duties were not actionable because trustee had derivative judicial immunity for duties performed under [11 USCS § 704](#), transferee and attorney were not interested parties in bankruptcy proceeding and did not have standing, and transferee and attorney had not obtained permission to sue before filing their counterclaims. [*Lassman v. Reilly \(In re Feely\)*, 393 B.R. 43, 2008 Bankr. LEXIS 2298 \(Bankr. D. Mass. 2008\)](#).

Barring all claims related to bankruptcy trustee's termination of employee benefit plan governed by Employee Retirement Income Security Act (ERISA), [29 USCS §§ 1001 et seq.](#), was not warranted since trustee would receive discharge upon closure of bankruptcy case and, if it was subsequently determined within ERISA limitations period that trustee breached fiduciary duties under ERISA, party could return to bankruptcy court to seek leave to reopen case and assert claim against trustee. [*In re NSCO, Inc.*, 427 B.R. 165, 52 Bankr. Ct. Dec. \(LRP\) 278, 49 Employee Benefits Cas. \(BNA\) 1693, 2010 Bankr. LEXIS 869 \(Bankr. D. Mass. 2010\)](#).

Court ordered debtor to pay his former business partner \$5,000 in compensatory damages and additional \$10,000 in punitive damages because he willfully violated stay that was imposed when he declared Chapter 7 bankruptcy, when he concealed his bankruptcy from his former business partner and prosecuted claim in state court which required his former partner to reconvey ownership interest in bar to debtor and another person; although debtor's attorney and Chapter 7 trustee also failed to fulfill their obligations under Bankruptcy Code, they admitted their errors and were not assessed monetary damages. [*Bandy v. DeLay \(In re DeLay\)*, 2018 Bankr. LEXIS 934 \(Bankr. C.D. Ill. Mar. 29, 2018\)](#), aff'd, [*2019 U.S. Dist. LEXIS 162341 \(C.D. Ill. Sept. 23, 2019\)*](#).

58. Surcharge under particular circumstances

Pursuant to [11 USCS § 704](#), Chapter 11 trustee may be surcharged \$15,000 for remodeling of Presidential Suite of debtor hotel and \$6,000 for cost of trustee's daughter's wedding reception where: (1) trustee personally used Presidential Suite on occasion and also approved of its complimentary use by others; (2) at one point in trusteeship, trustee took possession of keys to suite and denied access to all others; (3) trustee authorized redecoration of suite; and (4) trustee issued instructions that he should be given 50 percent discount for wedding reception held at debtor hotel for about 200 people and eventually paid a little under \$6000 when bill would have been approximately \$12,000 at regular hotel prices. [*In re San Juan Hotel Corp.*, 847 F.2d 931, Bankr. L. Rep. \(CCH\) ¶ 72300, 1988 U.S. App. LEXIS 6456 \(1st Cir. 1988\)](#).

Chapter 11 trustee may not be surcharged for losses incurred by debtor hotel from 3 separate dinner boxing show events on grounds that trustee breached his fiduciary duty imposed by [11 USCS § 704](#) by (1) approving 2 more events against comptroller's advice after first boxing show suffered substantial loss and (2) by issuing numerous complimentary tickets to each event; trustee's decision to stage these events against comptroller's advice after loss from first event makes wrongful only decision to hold latter 2 events, not first, which preceded advice, but evidence shows that comptroller's advice on issue was entirely equivocal, and secondly, there is no evidence to show that

trustee himself issued complimentary tickets. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Under [11 USCS § 704](#) Chapter 11 trustee did not act improperly by writing off part of casino debt, and thus, he may not be surcharged for this write off; there is general practice of partially writing off casino debts. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Under [11 USCS § 704](#) Chapter 11 trustee may not be surcharged amount representing expense allowances drawn by trustee from New York account maintained by debtor hotel where evidence indicates that amount drawn on New York account of debtor was simply deposited back into Puerto Rico account of hotel; such transfer represents neither loss for estate nor gain by trustee. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Pursuant to [11 USCS §§ 704](#) and [1107](#) Chapter 11 trustee may be surcharged where he unlawfully fired striking workers against advice of counsel and NLRB determined that he had incurred in unfair labor practices and ordered workers' reinstatement with back pay; trustee delayed seeking rejection of casino workers' agreement, and then, once rejection was sought and approval granted by Bankruptcy Court, trustee acted erratically and inconsistently in implementing rejection, thus fueling discontent and dissension among workers and undoubtedly contributing to their decision strike, and second, trustee ignored advice of attorneys not to fire casino workers and did so, showing that trustee acted recklessly in disregard of estate's well being, which supports inference that his actions were intentional. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Chapter 11 trustee may not be surcharged where he collected money owed by casino debtors, but failed to turn it over to creditor bank; this loss was direct loss to particular creditor, not loss to estate, and thus, trustee violated duty owed to bank, not duty owed to estate under [11 USCS § 704](#). *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Chapter 11 trustee's failure to pay union dues owed by estate to local union has not harmed estate, and thus, trustee may not be surcharged under [11 USCS §§ 704](#) and [1107](#) for his failure to pay dues; only union itself has been harmed because it did not receive dues to which it was entitled. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Chapter 11 trustee may be surcharged under [11 USCS §§ 704](#) and [1107](#) for interest and penalties incurred as result of his failure to pay local taxes. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Chapter 11 trustee may be surcharged under [11 USCS § 704](#) for penalties and interest incurred by estate as result of his failure to pay federal payroll taxes, but he may not be surcharged for principal of tax owed by debtor. *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Where individual acting as trustee in debtor hotel's Chapter 11 and Chapter 7 proceeding willfully breached fiduciary duties, he will be surcharged under [11 USCS § 704](#). *In re San Juan Hotel Corp., 847 F.2d 931, Bankr. L. Rep. (CCH) ¶ 72300, 1988 U.S. App. LEXIS 6456 (1st Cir. 1988)*.

Unpublished decision: In surplus asset Chapter 7 case, surcharging trustee for negligently failing to perform his duties under [11 USCS § 704](#) was not warranted because debtor failed to articulate any errors which trustee made in performance of his duties as trustee's counsel, debtor failed to support his allegations with admissible evidence, and relief which debtor sought had to be prosecuted through adversary proceeding. *In re Park, 2009 Bankr. LEXIS 223 (Bankr. E.D. Cal. Jan. 30, 2009)*.

59. Bond coverage

Bankruptcy bond issued to Chapter 7 trustee is fidelity bond which provides that surety's obligation arises only if trustee fails to obey Bankruptcy Court's orders or fails to account faithfully and truly for all monies and assets of estate; therefore liability of trustee incurred in his capacity as trustee as result of judgment against him for breach of contract to sell estate's assets, which liability did not arise from violation of Bankruptcy Court orders or from breach of trustee's duty to account, is not within scope of coverage of bond and surety is not liable on bond. [In re James E. O'Connell Co., 82 B.R. 118, 18 Collier Bankr. Cas. 2d \(MB\) 807, 1988 U.S. Dist. LEXIS 2159 \(N.D. Cal. 1988\).](#)

Insurer that posted bond to guaranty proper performance of Chapter 7 trustee's duties under [11 USCS § 704](#) was ordered to pay debtors' bankruptcy estate \$112,247 because trustee performed her duties in grossly negligent manner and, in doing so, allowed one of debtors to take that money from her deceased father's estate and use it to defray personal living expenses, even though money was property of debtors' bankruptcy estate; although bank that filed adversary proceeding against insurer, pursuant to [Fed. R. Bankr. P. 2010\(b\)](#), sought order requiring insurer to pay money to bank, court found that insurer had to make payment to debtors' bankruptcy estate because bond it issued ran in favor of United States, and it also denied bank's request for award of \$28,438 in attorneys' fees it incurred to sue insurer. [United States v. Liberty Mut. Sur. \(In re Schooler\), 449 B.R. 502, 2010 Bankr. LEXIS 6257 \(Bankr. N.D. Tex. 2010\)](#), aff'd, [725 F.3d 498, 58 Bankr. Ct. Dec. \(LRP\) 68, Bankr. L. Rep. \(CCH\) ¶ 82539, 2013 U.S. App. LEXIS 16339 \(5th Cir. 2013\).](#)

60. Standing to sue trustee

Secretary of United States Department of Labor was held to have standing to appeal interlocutory portions of order of Bankruptcy Judge authorizing payment of fees to Chapter 7 trustee and his retained professionals from assets of employee benefit plan because United States Congress has explicitly recognized that employee benefit plans are affected with national public interest. [United States Dep't of Labor v. Kirschenbaum, 508 B.R. 257, 58 Employee Benefits Cas. \(BNA\) 1994, 2014 U.S. Dist. LEXIS 45809 \(E.D.N.Y. 2014\)](#), aff'd, [777 F.3d 594, 60 Bankr. Ct. Dec. \(LRP\) 146, Bankr. L. Rep. \(CCH\) ¶ 82765, 73 Collier Bankr. Cas. 2d \(MB\) 278, 59 Employee Benefits Cas. \(BNA\) 2638, 2015 U.S. App. LEXIS 1807 \(2d Cir. 2015\).](#)

Chapter 7 debtor has standing to sue bankruptcy trustee for failure to preserve estate assets. [In re Reich, 54 B.R. 995, 13 Bankr. Ct. Dec. \(LRP\) 953, 13 Collier Bankr. Cas. 2d \(MB\) 988, 1985 Bankr. LEXIS 4955 \(Bankr. E.D. Mich. 1985\)](#), disapproved, [Seifert v. Selby, 125 B.R. 174, 1989 U.S. Dist. LEXIS 17553 \(E.D. Mich. 1989\).](#)

Chapter 7 debtor is party in interest within meaning of former [11 USCS § 704\(1\)](#) with standing to sue trustee for alleged breach of duty because debtor incurred liability for penalties and fines as result of trustee's failure to bond oil wells subject to mortgage while wells were property of estate where state Department of Mines and Minerals, Oil and Gas Division, has ordered debtor to provide \$25,000 blanket bond for wells listed in department's notice and to pay \$225 civil penalty, and assuming debtor's asserted liability for wells that were not bonded during course of Chapter 7 bankruptcy proceeding, debtor has pecuniary interest in proper management of estate property; however, debtor's nondebtor spouse, as unsecured creditor whose claim has been disallowed as untimely, has no standing as she was nothing more than stranger to bankruptcy proceeding with no interest in or claim to estate assets and trustee owed no duty to her. [White County Bank v. Leavell, 141 B.R. 393, 1992 Bankr. LEXIS 754 \(Bankr. S.D. Ill. 1992\).](#)

Chapter 7 debtors lack standing to bring negligence action against trustee and bonding company arising from trustee's failure to discover lack of insurance and failure to obtain fire insurance covering debtors' restaurant and its contents, because trustee did not owe duty to debtors to insure diner and its contents since debtors were not entitled to exempt property and had no expectation of receiving any surplus from bankruptcy estate upon liquidation of assets, and although debtors argue that but for trustee's failure to insure diner and its contents, amounts due and owing taxing authorities would have been paid out of estate and liability of debtors for taxes, as well as any penalties and interest, would have been reduced, trustee is not in anyway liable for penalties and interest as result of his activities in administering case, and debtors' interest, although indirectly pecuniary, is remote and consequential rather than direct and immediate; to rest their claim to relief on interests and rights which may be held by taxing authorities in maximizing recovery from estate does not constitute basis for standing to sue trustee or

his bonding company. [*Slack v. Saint Paul/Seaboard Sur. Co. \(In re Slack\)*, 164 B.R. 19, 25 Bankr. Ct. Dec. \(LRP\) 370, Bankr. L. Rep. \(CCH\) ¶ 75783, 30 Collier Bankr. Cas. 2d \(MB\) 1315, 1994 Bankr. LEXIS 212 \(Bankr. N.D.N.Y. 1994\).](#)

Bankruptcy trustee appointed in case that was converted from Chapter 11 to Chapter 7 had no liability under New York law on counterclaim brought in adversary proceeding for breach of fiduciary duties because quasi-judicial immunity applied to acts undertaken while serving as Chapter 11 trustee, absent allegations that any acts were negligent or willful, and claimant lacked standing to assert claims on behalf of third party as to acts undertaken as Chapter 7 trustee. [*Mendelsohn v. Schoolman \(In re Hampton Transp. Ventures, Inc.\)*, 2024 Bankr. LEXIS 1815 \(Bankr. E.D.N.Y. Aug. 2, 2024\).](#)

61. Miscellaneous

Because plaintiff debtor had not obtained leave of bankruptcy court to sue defendant bankruptcy Trustee, debtor's claims, alleging Trustee and others colluded to enforce order of bankruptcy court, and otherwise unlawfully attempted to bring assets into estate as Trustee was required to do under [11 USCS § 704\(a\)\(1\)](#), were properly dismissed under "Barton doctrine"; all of claims fell within Barton doctrine as being "related to" his bankruptcy under [28 USCS § 157](#). [*Lawrence v. Goldberg*, 573 F.3d 1265, 21 Fla. L. Weekly Fed. C 2035, 51 Bankr. Ct. Dec. \(LRP\) 246, Bankr. L. Rep. \(CCH\) ¶ 81576, 61 Collier Bankr. Cas. 2d \(MB\) 1827, 2009 U.S. App. LEXIS 15521 \(11th Cir. 2009\).](#)

Trustee and his attorneys were entitled to quasi-judicial immunity from law firm's claims of malicious prosecution and abuse of process for bringing Avoidance Action, [11 USCS § 704\(a\)](#); function, filing suit on behalf of estate in seeking to avoid potentially fraudulent transfer, was authorized by statute, and exposure to potential liability for doing so would have negative effect on appropriate exercise of that function. [*Grant, Konvalinka & Harrison, PC v. Banks \(In re McKenzie\)*, 716 F.3d 404, 2013 FED App. 0148P, 57 Bankr. Ct. Dec. \(LRP\) 280, 2013 U.S. App. LEXIS 10491 \(6th Cir.\)](#), cert. denied, 571 U.S. 955, 134 S. Ct. 444, 187 L. Ed. 2d 285, 2013 U.S. LEXIS 7362 (2013).

Bankruptcy court's findings with respect to a creditor's claims that the former Chapter 7 trustee had breached his fiduciary duties in handling a real property asset were not clearly erroneous where the liens exceeded the value of the property, credible evidence showed that the vacant building was in disrepair, the valuation methodology employed by the creditor's expert was properly rejected as problematic, and the creditor had a full opportunity to challenge the valuation evidence. [*New Prods. Corp. v. Tibble \(In re Modern Plastics Corp.\)*, 732 Fed. Appx. 379, 2018 FED App. 0211N, 2018 U.S. App. LEXIS 10297 \(6th Cir.\)](#), cert. denied, 139 S. Ct. 265, 202 L. Ed. 2d 133, 2018 U.S. LEXIS 5256 (2018).

Defendants were not entitled to jury trial on their counterclaims asserting trustee's breach of fiduciary duty under [11 USCS § 704](#), since such claims were equitable in nature. [*Anderson v. Simchon \(In re Southern Textile Knitters, Inc.\)*, 236 B.R. 207, 11 4th Cir. & D.C. Bankr. Ct. Rep. 595, 1999 Bankr. LEXIS 1168 \(Bankr. D.S.C. 1999\).](#)

Plaintiff's suit against trustee sounding faintly in fiduciary duty and fraud must be dismissed, since plaintiff's failure to obtain leave of court which appointed trustee deprived that court of pursuing its legitimate interests in monitoring conduct of its officers and in protecting them from frivolous suits, and exception of [28 USCS § 959](#) did not apply. [*Richman v. Batt*, 265 B.R. 416, 46 Collier Bankr. Cas. 2d \(MB\) 215, 2001 U.S. Dist. LEXIS 4670 \(E.D. Pa. 2001\).](#)

Bankruptcy court properly denied motion to reopen case so that debtor and others could pursue claims against Chapter 7 trustee and trustee's counsel or bond for alleged malpractice because any potential claims were time barred and assertion that trustee should have sued his own counsel for malpractice was without merit. [*In re Smith*, 426 B.R. 435, 2010 U.S. Dist. LEXIS 27658 \(E.D.N.Y. 2010\)](#), aff'd, [*645 F.3d 186, 2011 U.S. App. LEXIS 10309 \(2d Cir. 2011\)*](#).

Where lawyer filed counterclaims against Chapter 7 trustee in adversary action for improper purpose, counterclaims were without colorable basis, and lawyer acted in bad faith in advancing counterclaims, award of sanctions under [28 USCS § 1927](#) and court's inherent authority was warranted. Here, trustee acted pursuant to her duties as Chapter 7 trustee, which included duty to marshal assets of debtor's estate pursuant to [11 USCS § 704](#), and there was thus no basis for abuse of process as stated in counterclaim filed by lawyer. *Kramer v. Mahia (In re Khan), 488 B.R. 515, 2013 Bankr. LEXIS 911 (Bankr. E.D.N.Y. 2013)*, aff'd, *2014 U.S. Dist. LEXIS 41425 (E.D.N.Y. Mar. 27, 2014)*.

Trustee did not violate her fiduciary duty to Bankruptcy Estate because estate of decedent had not shown by clear and convincing evidence that trustee failed to perform her duties and estate of decedent had not demonstrated by preponderance of evidence that cause existed to remove trustee for misconduct. *In re Gutierrez, 633 B.R. 768, 2021 Bankr. LEXIS 2810 (Bankr. S.D. Tex. 2021)*.

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Objections to claims, [USCS Court Rules, Bankruptcy Rule 3007](#).

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Time for filing complaint objecting to discharge, [USCS Court Rules, Bankruptcy Rule 4004\(a\)](#).

Burden of proof in objecting to discharge, [USCS Court Rules, Bankruptcy Rule 4005](#).

Closing cases, [USCS Court Rules, Bankruptcy Rule 5009](#).

Appraisers and auctioneers, [USCS Court Rules, Bankruptcy Rule 6005](#).

Use, sale, or lease of property by trustee, [11 USCS § 363](#).

Trustee as lien creditor and successor to certain creditors and purchasers, [11 USCS § 544](#).

Limitations on avoiding powers of trustee, [11 USCS § 546](#).

Trustee's power to avoid preferences, [11 USCS § 547](#).

Power of trustee to avoid fraudulent transfers and obligations, [11 USCS § 548](#).

Power of trustee to avoid postpetition transactions, [11 USCS § 549](#).

Authorization of trustee to operate business, [11 USCS § 721](#).

Rights of partnership trustee against general partners, [11 USCS § 723](#).

Transfers voidable by trustee in stockbroker liquidation, [11 USCS § 749](#).

Transfers voidable by trustee in commodity broker liquidation, [11 USCS § 764](#).

Avoiding powers of trustee in case of municipal debt adjustment, [11 USCS § 926](#).

Duties of trustee and examiner in corporate reorganization, [11 USCS § 1106](#).

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9B Am Jur 2d, Bankruptcy §§ 1654, 1663, 1670, 1671, 1997.

9C Am Jur 2d, Bankruptcy §§ 2631, 2637, 2640, 2641.

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9E Am Jur 2d, Bankruptcy §§ 3728, 3734, 3735.

69 Am Jur 2d, Securities Regulation—Federal § 856.

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64 Am Jur Proof of Facts 3d, Topic: Proof of Objections to Discharge of Individual Debtor Under [11 U.S.C.A. § 727\(A\)](#) [[11 USCS § 727\(A\)](#)] and [Fed. R. Bankr. P. 7001](#) in a Liquidation Bankruptcy Case Under Chapter 7 of the Bankruptcy Code [[11 USCS §§ 701 et seq.](#)], p. 113.

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Dobbs; Anderson. Bankruptcy Law Changes Will Affect Business Cases Too: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. 11 Ga BJ 32, October 2005.

Treatment of Income Tax Refunds in Bankruptcy After *Lines v. Frederick*. 72 Mich L Rev 331, December 1973.

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29 [Moore's Federal Practice \(Matthew Bender 3d ed.\), ch 705](#), Admiralty Arrest and Attachment § 705.07.

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4 [Nimmer on Copyright \(Matthew Bender\), ch 19A](#), Bankruptcy § 19A.02.

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[4 Collier Bankruptcy Practice Guide, ch 75, Discharge and Objections to Discharge ¶ 75.11.](#)

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3B-VI Benedict on Admiralty, Maritime Bankruptcy, Proofs of Claim § 13.

1 *Energy Law & Transactions (Matthew Bender), ch 24*, Bankruptcy § 24.07.

Hierarchy Notes:

11 USCS, Ch. 7

11 USCS, Ch. 7, Subch. I

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 **Pending Legislation**

Subsection reports by specific court citation

History (1)

1. Dec. 30, 1970, P. L. 91-598, § 6, 84 Stat. 1646; May 21, 1978, P. L. 95-283, § 8, 92 Stat. 259; Nov. 6, 1978, P. L. 95-598, Title III, § 308(g), (h), 92 Stat. 2675; April 20, 2005, P. L. 109-8, Title XV, § 1502(b), 119 Stat. 217.

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1. [Holmes v. Securities Investor Protection Corp.](#), 503 U.S. 258 

LB Cited by: 503 U.S. 258 p.261, p.273; 112 S. Ct. 1311 p.1314, p.1320; 117 L. Ed. 2d 532 p.540, p.547
Court: U.S. | **Date:** March 24, 1992

2. [Touche Ross & Co. v. Redington](#), 442 U.S. 560 

LB Cited by: 442 U.S. 560 p.565; 99 S. Ct. 2479 p.2483; 61 L. Ed. 2d 82 p.89
Court: U.S. | **Date:** June 18, 1979

3. [Securities Investor Protection Corp. v. Barbour](#), 421 U.S. 412 

LB Cited by: 421 U.S. 412 p.417; 95 S. Ct. 1733 p.1733; 44 L. Ed. 2d 263 p.268
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4. [SEC v. Milner](#), 474 F.2d 162 

LB Cited by: 474 F.2d 162 p.163
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7. [Picard v. Citibank, N.A. \(In re Bernard L. Madoff Inv. Secs. LLC\)](#), 12 F.4th 171 

B Interpreted or construed by: 12 F.4th 171 p.192
LB Cited by: 12 F.4th 171 p.178, p.200
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8. [Picard v. Gettinger \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 976 F.3d 184 

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9. [SPV OSUS, Ltd. v. UBS AG](#), 882 F.3d 333 

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10. [ANZ Sec., Inc. v. Giddens \(In re Lehman Bros.\)](#), 808 F.3d 942 

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B Interpreted or construed by: 721 F.3d 54 p.71

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36. [Picard v. Greiff](#), 617 B.R. 198 

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LB Cited by: 2022 Bankr. LEXIS 1678

Court: Bankr. Southern Dist. N.Y. | **Date:** June 14, 2022

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LB Cited by: 2021 Bankr. LEXIS 2101

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119. [Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC](#), 603 B.R. 682 

LB Cited by: 603 B.R. 682 p.688

Court: Bankr Southern Dist. N.Y. | **Date:** June 25, 2019

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120. [Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC \(In re Madoff\)](#), 597 B.R. 466 

LB Cited by: 597 B.R. 466 p.471

Court: Bankr Southern Dist. N.Y. | **Date:** January 18, 2019

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121. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC](#), 2018 Bankr. LEXIS 828 

LB Cited by: 2018 Bankr. LEXIS 828

Court: Bankr Southern Dist. N.Y. | **Date:** March 22, 2018

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122. [Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 2016 Bankr. LEXIS 4686 

LB Cited by: 2016 Bankr. LEXIS 4686

Court: Bankr Southern Dist. N.Y. | **Date:** April 25, 2016

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123. [In re MF Global, Inc.](#), 2016 Bankr. LEXIS 228 

LB Cited by: 2016 Bankr. LEXIS 228

Court: Bankr Southern Dist. N.Y. | **Date:** January 15, 2016

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124. [In re Lehman Bros.](#), 2015 Bankr. LEXIS 3981 
- LB Cited by:** 2015 Bankr. LEXIS 3981
Court: Bankr Southern Dist. N.Y. | **Date:** November 23, 2015

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125. [In re Lehman Bros., Inc.](#), 541 B.R. 45 
- LB Cited by:** 541 B.R. 45 p.50
Court: Bankr Southern Dist. N.Y. | **Date:** October 8, 2015

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126. [In re MF Global Ltd.](#), 535 B.R. 596 
- LB Cited by:** 535 B.R. 596 p.607
Court: Bankr Southern Dist. N.Y. | **Date:** August 19, 2015

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127. [In re Bernard L. Madoff Inv. Secs. LLC](#), 2015 Bankr. LEXIS 2674 
- LB Cited by:** 2015 Bankr. LEXIS 2674
Court: Bankr Southern Dist. N.Y. | **Date:** August 11, 2015

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128. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC](#), 531 B.R. 439 
- LB Cited by:** 531 B.R. 439 p.448
Court: Bankr Southern Dist. N.Y. | **Date:** June 2, 2015

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129. [In re MF Global, Inc.](#), 531 B.R. 424 
- LB Cited by:** 531 B.R. 424 p.427
Court: Bankr Southern Dist. N.Y. | **Date:** June 2, 2015

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130. [In re MF Global, Inc.](#), 515 B.R. 434 
- LB Cited by:** 515 B.R. 434 p.439
Court: Bankr Southern Dist. N.Y. | **Date:** September 4, 2014

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131. [Picard v. Merkin \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 515 B.R. 117 
- LB Cited by:** 515 B.R. 117 p.136, p.154, p.155
Court: Bankr Southern Dist. N.Y. | **Date:** August 12, 2014

132. [In re Lehman Bros. Holdings](#), 513 B.R. 624 

LB Cited by: 513 B.R. 624 p.632

Court: Bankr Southern Dist. N.Y. | **Date:** July 28, 2014

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133. [In re MF Global Inc.](#), 506 B.R. 582 

LB Cited by: 506 B.R. 582 p.589

Court: Bankr Southern Dist. N.Y. | **Date:** March 21, 2014

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134. [In re MF Global Inc.](#), 2014 Bankr. LEXIS 688 

B Interpreted or construed by: 2014 Bankr. LEXIS 688

Court: Bankr Southern Dist. N.Y. | **Date:** February 20, 2014

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135. [Thielmann v. MF Global Holdings, Ltd. \(In re MF Global Holdings, Ltd.\)](#), 2013 Bankr. LEXIS 3442 

LB Cited by: 2013 Bankr. LEXIS 3442

Court: Bankr Southern Dist. N.Y. | **Date:** August 23, 2013

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136. [In re Lehman Bros.](#), 493 B.R. 437 

LB Cited by: 493 B.R. 437 p.440, p.443

Court: Bankr Southern Dist. N.Y. | **Date:** July 11, 2013

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137. [Thielmann v. MF Global Holdings Ltd. \(In re MF Global Holdings Ltd.\)](#), 481 B.R. 268 

LB Cited by: 481 B.R. 268 p.273

Court: Bankr Southern Dist. N.Y. | **Date:** October 23, 2012

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138. [Sec. Investor Prot. SIPA Liquidation Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 480 B.R. 501 

LB Cited by: 480 B.R. 501 p.506

Court: Bankr Southern Dist. N.Y. | **Date:** October 11, 2012

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139. [In re MF Global Inc.](#), 2012 Bankr. LEXIS 2703 

LB Cited by: 2012 Bankr. LEXIS 2703

Court: Bankr Southern Dist. N.Y. | **Date:** June 14, 2012

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140. [In re MF Global Inc.](#), 464 B.R. 594 

LB Cited by: 464 B.R. 594 p.599

Court: Bankr Southern Dist. N.Y. | **Date:** December 27, 2011

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141. [In re MF Global Inc.](#), 2011 Bankr. LEXIS 5101 

LB Cited by: 2011 Bankr. LEXIS 5101

Court: Bankr Southern Dist. N.Y. | **Date:** December 20, 2011

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142. [In re MF Global Inc.](#), 462 B.R. 36 

LB Cited by: 462 B.R. 36 p.40

Court: Bankr Southern Dist. N.Y. | **Date:** November 23, 2011

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143. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC](#), 460 B.R. 106 

LB Cited by: 460 B.R. 106 p.114

Court: Bankr Southern Dist. N.Y. | **Date:** October 12, 2011

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144. [In re Lehman Bros., Inc.](#), 458 B.R. 134 

LB Cited by: 458 B.R. 134 p.136

Court: Bankr Southern Dist. N.Y. | **Date:** October 4, 2011

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145. [Picard v. Madoff \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 458 B.R. 87 

LB Cited by: 458 B.R. 87 p.100

Court: Bankr Southern Dist. N.Y. | **Date:** September 22, 2011

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146. [Picard v. Cohmad Sec. Corp. \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 454 B.R. 317 

LB Cited by: 454 B.R. 317 p.322

Court: Bankr Southern Dist. N.Y. | **Date:** August 1, 2011

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147. [Picard v. Estate of Chais \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 445 B.R. 206 

LB Cited by: 445 B.R. 206 p.215

Court: Bankr Southern Dist. N.Y. | **Date:** February 24, 2011

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148. [In re Lehman Bros. Holdings](#), 445 B.R. 143 

LB Cited by: 445 B.R. 143 p.191

Court: Bankr Southern Dist. N.Y. | **Date:** February 22, 2011

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149. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 443 B.R. 295 

LB Cited by: 443 B.R. 295 p.302

Court: Bankr Southern Dist. N.Y. | **Date:** February 9, 2011

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150. [Picard v. Merkin \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 440 B.R. 243 

LB Cited by: 440 B.R. 243 p.249

Court: Bankr Southern Dist. N.Y. | **Date:** November 17, 2010

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151. [Togut v. RBC Dain Correspondent Servs. \(In re S.W. Bach & Co.\)](#), 435 B.R. 866 

LB Cited by: 435 B.R. 866 p.885

Court: Bankr Southern Dist. N.Y. | **Date:** August 18, 2010

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152. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 2010 Bankr. LEXIS 6400 

LB Cited by: 2010 Bankr. LEXIS 6400

Court: Bankr Southern Dist. N.Y. | **Date:** August 3, 2010

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153. [Sec. Investor Prot. Corp. v. Lehman Bros.](#), 433 B.R. 127 

LB Cited by: 433 B.R. 127 p.135

Court: Bankr Southern Dist. N.Y. | **Date:** June 1, 2010

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154. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 429 B.R. 423 

LB Cited by: 429 B.R. 423 p.430

Court: Bankr Southern Dist. N.Y. | **Date:** May 3, 2010

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155. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC \(In re Bernard L. Madoff Inv. Sec. LLC\)](#), 424 B.R. 122 

LB Cited by: 424 B.R. 122 p.133

Court: Bankr Southern Dist. N.Y. | **Date:** March 1, 2010

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156. [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC](#), 2009 Bankr. LEXIS 446 

LB Cited by: 2009 Bankr. LEXIS 446

Court: Bankr Southern Dist. N.Y. | **Date:** February 24, 2009

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157. [In re Lehman Bros., Inc.](#), 2008 Bankr. LEXIS 3543 
- LB Cited by:** 2008 Bankr. LEXIS 3543
Court: Bankr Southern Dist. N.Y. | **Date:** November 26, 2008
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158. [In re Vision Inv. Group, Inc.](#), 330 B.R. 358 
- LB Cited by:** 330 B.R. 358 p.359
Court: Bankr Western Dist. N. Y. | **Date:** September 22, 2005
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159. [Sec. Investor Prot. Corp. v. Rossi \(In re Cambridge Capital, LLC\)](#), 331 B.R. 47 
- LB Cited by:** 331 B.R. 47 p.51
Court: Bankr Eastern Dist. N. Y. | **Date:** August 22, 2005
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160. [Picard v. Taylor \(In re Park S. Sec., LLC\)](#), 326 B.R. 505 
- LB Cited by:** 326 B.R. 505 p.511
Court: Bankr Southern Dist. N.Y. | **Date:** April 8, 2005
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161. [In re New Times Secs. Servs.](#), 318 B.R. 753 
- LB Cited by:** 318 B.R. 753 p.755
Court: Bankr Eastern Dist. N. Y. | **Date:** November 18, 2004
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162. [Giddens v. D.H. Blair & Co. \(In re A.R. Baron & Co.\)](#), 280 B.R. 794 
- LB Cited by:** 280 B.R. 794 p.803
Court: Bankr Southern Dist. N.Y. | **Date:** July 24, 2002
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163. [Mishkin v. Siclari \(In re Adler, Coleman Clearing Corp.\)](#), 277 B.R. 520 
- LB Cited by:** 277 B.R. 520 p.556
Court: Bankr Southern Dist. N.Y. | **Date:** March 27, 2002
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164. [Securities Investor Protection Corp. v. Stratton Oakmont, Inc \(In re Stratton Oakmont, Inc.\)](#), 257 B.R. 644 
- LB Cited by:** 257 B.R. 644 p.650, p.651
Court: Bankr Southern Dist. N.Y. | **Date:** January 24, 2001

165. [Mishkin v. Ensminger \(In re Adler, Coleman Clearing Corp.\)](#), 247 B.R. 51 

LB Cited by: 247 B.R. 51 p.103

Court: Bankr Southern Dist. N.Y. | **Date:** December 15, 1999

166. [Securities Investor Protection Corp. v. Stratton Oakmont, Inc.](#), 234 B.R. 293 

LB Cited by: 234 B.R. 293 p.305

Court: Bankr Southern Dist. N.Y. | **Date:** May 7, 1999

167. [Securities Investor Protection Corp. v. Stratton Oakmont, Inc.](#), 229 B.R. 273 

LB Cited by: 229 B.R. 273 p.279

Court: Bankr Southern Dist. N.Y. | **Date:** January 13, 1999

168. [In re A.R. Baron Co.](#), 226 B.R. 790 

LB Cited by: 226 B.R. 790 p.792

Court: Bankr Southern Dist. N.Y. | **Date:** October 16, 1998

169. [Kusch v. Mishkin \(In re Adler, Coleman Clearing Corp.\)](#), 1998 Bankr. LEXIS 1076 

LB Cited by:

Court: Bankr Southern Dist. N.Y. | **Date:** August 24, 1998

170. [Mishkin v. Ensminger \(In re Adler, Coleman Clearing Corp.\)](#), 218 B.R. 13 

LB Cited by: 218 B.R. 13 p.16

Court: Bankr Southern Dist. N.Y. | **Date:** March 13, 1998

171. [Mishkin v. Ensminger \(In re Adler, Coleman Clearing Corp.\)](#), 218 B.R. 689 

LB Cited by: 218 B.R. 689 p.695

Court: Bankr Southern Dist. N.Y. | **Date:** March 6, 1998

172. [In re Adler, Coleman Clearing Corp.](#), 216 B.R. 719 

LB Cited by: 216 B.R. 719 p.727

Court: Bankr Southern Dist. N.Y. | **Date:** January 22, 1998

173. [Mishkin v. Ageloff \(In re Adler, Coleman Clearing Corp.\)](#), 1997 Bankr. LEXIS 2363 

LB Cited by:

Court: Bankr Southern Dist. N.Y. | **Date:** August 8, 1997

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174. [In re Adler Coleman Clearing Corp.](#), 198 B.R. 70 

LB Cited by: 198 B.R. 70 p.74

Court: Bankr Southern Dist. N.Y. | **Date:** June 26, 1996

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175. [In re Adler Coleman Clearing Corp.](#), 195 B.R. 266 

LB Cited by: 195 B.R. 266 p.269, p.274

Court: Bankr Southern Dist. N.Y. | **Date:** May 8, 1996

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176. [Horwitz v. Sheldon](#), 153 B.R. 661 

LB Cited by: 153 B.R. 661 p.667

Court: Bankr Southern Dist. N.Y. | **Date:** May 5, 1993

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177. [Horwitz v. Sheldon](#), 148 B.R. 385 

LB Cited by: 148 B.R. 385 p.387, p.388

Court: Bankr Southern Dist. N.Y. | **Date:** December 18, 1992

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178. [In re Investors Center, Inc.](#), 129 B.R. 339 

LB Cited by: 129 B.R. 339 p.342

Court: Bankr Eastern Dist. N. Y. | **Date:** June 11, 1991

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179. [In re Thomson McKinnon Secur., Inc.](#), 125 B.R. 88 

LB Cited by: 125 B.R. 88 p.90

Court: Bankr Southern Dist. N.Y. | **Date:** March 7, 1991

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180. [In re Hanover Square Sec.](#), 55 B.R. 235 

LB Cited by: 55 B.R. 235 p.237

Court: Bankr Southern Dist. N.Y. | **Date:** November 22, 1985

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181. [In re MV Secur., Inc.](#), 48 B.R. 156 

LB Cited by: 48 B.R. 156 p.159

Court: Bankr Southern Dist. N.Y. | **Date:** April 2, 1985

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182. [In re John Muir & Co.](#), 28 B.R. 946 

LB Cited by: 28 B.R. 946 p.947, p.948

Court: Bankr Southern Dist. N.Y. | **Date:** April 15, 1983

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183. [In re SSIW Corp.](#), 7 B.R. 735 

LB Cited by:

Court: Bankr Southern Dist. N.Y. | **Date:** December 16, 1980

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184. [SECURITIES INVESTOR PROTECTION CORP. v. EXECUTIVE SECS. CORP.](#), 1980 Bankr. LEXIS 5238

LB Cited by:

Court: Bankr Southern Dist. N.Y. | **Date:** April 24, 1980

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185. [In re SEC](#), 2 B.R. 284 

LB Cited by: 2 B.R. 284 p.287

Court: Bankr Southern Dist. N.Y. | **Date:** January 22, 1980

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186. [SEC v. Morgan, Kennedy & Co.](#), 1975 U.S. Dist. LEXIS 14251 

LB Cited by:

Court: Bankr Southern Dist. N.Y. | **Date:** January 21, 1975

3rd Circuit - Court of Appeals

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187. [In re Lloyd Sec.](#), 75 F.3d 853 

LB Cited by: 75 F.3d 853 p.856

Court: 3d Cir. Pa. | **Date:** February 6, 1996

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188. [Securities Investor Protection Corp. v. Christian-Paine & Co.](#), 755 F.2d 359 

LB Cited by: 755 F.2d 359 p.361

Court: 3d Cir. N.J. | **Date:** February 28, 1985

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189. [SEC v. Albert & Maguire Sec. Co.](#), 560 F.2d 569 

LB Cited by: 560 F.2d 569 p.569

Court: 3d Cir. Pa. | **Date:** July 27, 1977

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190. [SEC v. Investors Sec. Corp.](#), 560 F.2d 561 

LB Cited by: 560 F.2d 561 p.562

Court: 3d Cir. Pa. | **Date:** July 26, 1977

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191. [SEC v. Aberdeen Sec. Co.](#), 526 F.2d 603 

LB Cited by: 526 F.2d 603 p.603

Court: 3d Cir. Del. | **Date:** November 13, 1975

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192. [SEC v. Aberdeen Sec. Co.](#), 480 F.2d 1121 

LB Cited by: 480 F.2d 1121 p.1128

Court: 3d Cir. Del. | **Date:** June 28, 1973

3rd Circuit - U.S. District Courts

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193. [In re Lloyd Secs. Inc.](#), 1995 Bankr. LEXIS 8467

LB Cited by: 1995 Bankr. LEXIS 8467

Court: Eastern Dist. Pa. | **Date:** June 21, 1995

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194. [In re Lloyd Sec.](#), 183 B.R. 386 

LB Cited by: 183 B.R. 386 p.389, p.391, p.393

Court: Eastern Dist. Pa. | **Date:** June 20, 1995

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195. [Barton v. Securities Investor Protection Corp.](#), 185 B.R. 701 

LB Cited by:

Court: Dist. N.J. | **Date:** November 26, 1994

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196. [Hill v. Spencer S&L Ass'n \(In re Bevill, Bresler & Schulman, Inc.\)](#), 83 B.R. 880 

LB Cited by: 83 B.R. 880 p.886

Court: Dist. N.J. | **Date:** March 14, 1988

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197. [First Fed. S&L Ass'n v. Bevill, Bresler & Schulman, Inc. \(In re Bevill, Bresler & Schulman, Inc.\)](#), 59 B.R. 353 

LB Cited by: 59 B.R. 353 p.371

Court: Dist. N.J. | **Date:** March 25, 1986

198. [Securities Investor Protection Corp. v. I.E.S. Management Group, Inc.](#), 612 F. Supp. 1172 

LB Cited by: 612 F. Supp. 1172 p.1176

Court: Dist. N.J. | **Date:** July 12, 1985

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199. [In re Albert & Maguire Sec. Co.](#), 419 F. Supp. 1171 

LB Cited by: 419 F. Supp. 1171 p.1172

Court: Eastern Dist. Pa. | **Date:** September 10, 1976

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200. [Securities & Exchange Com. v. Investors Sec. Corp.](#), 415 F. Supp. 745 

LB Cited by: 415 F. Supp. 745 p.747

Court: Western Dist. Pa. | **Date:** June 17, 1976

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201. [SEC v. Aberdeen Sec. Co.](#), 381 F. Supp. 614 

LB Cited by: 381 F. Supp. 614 p.614

Court: Dist. Del. | **Date:** August 29, 1974

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202. [Securities & Exchange Com. v. Aberdeen Sec. Co.](#), 371 F. Supp. 1343 

LB Cited by:

Court: Dist. Del. | **Date:** March 6, 1974

3rd Circuit - U.S. Bankruptcy Courts

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203. [In re First Interregional Equity Corp.](#), 227 B.R. 358 

LB Cited by: 227 B.R. 358 p.367

Court: Bankr. Dist. N.J. | **Date:** November 30, 1998

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204. [In re First Interregional Equity Corp.](#), 218 B.R. 731 

LB Cited by: 218 B.R. 731 p.736

Court: Bankr. Dist. N.J. | **Date:** November 10, 1997

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205. [In re Lloyd Sec.](#), 163 B.R. 242 

LB Cited by: 163 B.R. 242 p.248, p.255

Court: Bankr. Eastern Dist. Pa. | **Date:** January 21, 1994

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206. [In re Investors Sec. Corp.](#), 30 B.R. 214 

LB Cited by:

Court: Bankr. Western Dist. Pa. | **Date:** May 12, 1983

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207. [In re Investors Sec. Corp.](#), 6 B.R. 415 

LB Cited by:

Court: Bankr. Western Dist. Pa. | **Date:** July 30, 1980

4th Circuit - Court of Appeals

208. [Securities Investor Protection Corp. v. National Union Fire Ins. Co. \(In re Waddell Jenmar Sec.\)](#),
1993 U.S. App. LEXIS 9535 

LB Cited by:

Court: 4th Cir. N.C. | **Date:** April 23, 1993

5th Circuit - Court of Appeals

209. [In re Stalvey & Associates, Inc.](#), 750 F.2d 464 

LB Cited by: 750 F.2d 464 p.471

Court: 5th Cir. Miss. | **Date:** January 17, 1985

5th Circuit - U.S. District Courts

210. [Trefny v. Bear Stearns Sec. Corp.](#), 243 B.R. 300 

LB Cited by: 243 B.R. 300 p.314

Court: Southern Dist. Tex. | **Date:** May 26, 1999

5th Circuit - U.S. Bankruptcy Courts

211. [Secs. Inv. Prot. Corp. v. Cheshier & Fuller, L.L.P. \(In re Sunpoint Secs., Inc.\)](#), 377 B.R. 513 

LB Cited by: 377 B.R. 513 p.553

Court: Bankr. Eastern Dist. Tex. | **Date:** April 23, 2007

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212. [Secs. Investor Prot. Corp. v. Cheshier & Fuller L.L.P. \(In re Sunpoint Secs., Inc.\)](#), 262 B.R. 384 

LB Cited by: 262 B.R. 384 p.394, p.397

Court: Bankr. Eastern Dist. Tex. | **Date:** April 23, 2001

6th Circuit - Court of Appeals

213. [In re Bell & Beckwith](#), 937 F.2d 1104 

LB Cited by: 937 F.2d 1104 p.1107

Court: 6th Cir. Ohio | **Date:** July 1, 1991

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214. [Securities Investor Protection Corp. v. Ambassador Church Finance/Development Group, Inc.](#), 788 F.2d 1208 

LB Cited by: 788 F.2d 1208 p.1210
Court: 6th Cir. Tenn. | **Date:** April 23, 1986

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215. [SEC v. Ambassador Church Finance/Development Group, Inc.](#), 679 F.2d 608 

LB Cited by: 679 F.2d 608 p.609
Court: 6th Cir. Tenn. | **Date:** May 27, 1982

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216. [Securities & Exchange Com. v. Guaranty Bond & Sec. Corp.](#), 496 F.2d 145 

LB Cited by: 496 F.2d 145 p.146
Court: 6th Cir. Tenn. | **Date:** April 23, 1974

6th Circuit - U.S. District Courts

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217. [Appleton v. First Nat'l Bank](#), 1993 U.S. Dist. LEXIS 15472 

LB Cited by:
Court: Northern Dist. Ohio | **Date:** October 14, 1993

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218. [In re Atkeison](#), 446 F. Supp. 844 

LB Cited by: 446 F. Supp. 844 p.846
Court: Middle Dist. Tenn. | **Date:** December 1, 1977

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219. [SEC v. Schreiber Bosse & Co.](#), 368 F. Supp. 24 

LB Cited by: 368 F. Supp. 24 p.25
Court: Northern Dist. Ohio | **Date:** August 6, 1973

6th Circuit - U.S. Bankruptcy Courts

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220. [Zaremba v. Fed. Ins. Co. \(In re Cont'l Capital Inv. Servs.\)](#), 439 B.R. 111 

LB Cited by: 439 B.R. 111 p.120
Court: Bankr. Northern Dist. Ohio | **Date:** September 30, 2010

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221. [Sec. Investor Prot. Corp. v. Cont'l Capital Inv. Servs. \(In re Cont'l Capital Inv. Servs.\)](#), 2009 Bankr. LEXIS 1450 

LB Cited by: 2009 Bankr. LEXIS 1450
Court: Bankr. Northern Dist. Ohio | **Date:** March 6, 2009

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222. [Zaremba v. Davis \(In re Cont'l Capital Inv. Servs.\)](#), 2008 Bankr. LEXIS 4578 

LB Cited by: 2008 Bankr. LEXIS 4578

Court: Bankr. Northern Dist. Ohio | **Date:** September 12, 2008

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223. [Zaremba v. Pheasant \(In re Cont'l Capital Inv. Servs., Inc.\)](#), 2006 Bankr. LEXIS 5164 

LB Cited by: 2006 Bankr. LEXIS 5164

Court: Bankr. Northern Dist. Ohio | **Date:** June 12, 2006

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224. [Lutz v. Chitwood \(In re Donahue Sec., Inc.\)](#), 304 B.R. 797 

LB Cited by: 304 B.R. 797 p.798

Court: Bankr. Southern Dist. Ohio | **Date:** October 2, 2003

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225. [In re Bell & Beckwith](#), 144 B.R. 978 

LB Cited by: 144 B.R. 978 p.980

Court: Bankr. Northern Dist. Ohio | **Date:** July 23, 1992

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226. [In re Bell & Beckwith](#), 140 B.R. 448 

LB Cited by: 140 B.R. 448 p.451

Court: Bankr. Northern Dist. Ohio | **Date:** March 23, 1992

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227. [In re Bell & Beckwith](#), 112 B.R. 876 

LB Cited by: 112 B.R. 876 p.878

Court: Bankr. Northern Dist. Ohio | **Date:** February 15, 1990

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228. [In re Bell & Beckwith](#), 104 B.R. 842 

G Constitutional by: 104 B.R. 842 p.851

Court: Bankr. Northern Dist. Ohio | **Date:** August 10, 1989

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229. [In re Betz](#), 64 B.R. 248 

LB Cited by: 64 B.R. 248 p.250

Court: Bankr. Northern Dist. Ohio | **Date:** August 8, 1986

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230. [In re Bell & Beckwith](#), 50 B.R. 422 

LB Cited by: 50 B.R. 422 p.430, p.433

Court: Bankr. Northern Dist. Ohio | **Date:** June 4, 1985

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231. [In re Bell & Beckwith](#), 47 B.R. 528 

LB Cited by:

Court: Bankr. Northern Dist. Ohio | **Date:** January 8, 1985

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232. [In re Bell & Beckwith](#), 44 B.R. 656 

LB Cited by: 44 B.R. 656 p.658

Court: Bankr. Northern Dist. Ohio | **Date:** September 26, 1984

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233. [Securities Investor Protection Corp. v. Bell & Beckwith](#), 28 B.R. 285 

LB Cited by: 28 B.R. 285 p.286

Court: Bankr. Northern Dist. Ohio | **Date:** March 14, 1983

7th Circuit - Court of Appeals

234. [SEC v. First Sec. Co.](#), 528 F.2d 449 

LB Cited by: 528 F.2d 449 p.450

Court: 7th Cir. Ill. | **Date:** January 7, 1976

7th Circuit - U.S. District Courts

235. [Holland v. Loeb Rhoades & Co.](#), 1981 U.S. Dist. LEXIS 14146

LB Cited by:

Court: Northern Dist. Ill. | **Date:** May 22, 1981

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236. [SEC v. Wick](#), 360 F. Supp. 312 

LB Cited by: 360 F. Supp. 312 p.313

Court: Northern Dist. Ill. | **Date:** March 15, 1973

7th Circuit - U.S. Bankruptcy Courts

237. [Sec. Investor Prot. Corp. v. R.D. Kushnir & Co.](#), 274 B.R. 768 

LB Cited by: 274 B.R. 768 p.780

Court: Bankr. Northern Dist. Ill. | **Date:** March 12, 2002

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238. [Holland v. Cho \(In re John Dawson & Assocs.\)](#), 271 B.R. 270 

LB Cited by: 271 B.R. 270 p.271

Court: Bankr. Northern Dist. Ill. | **Date:** November 28, 2001

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239. [In re John Dawson & Assocs.](#), 271 B.R. 561 
LB Cited by:
Court: Bankr. Northern Dist. Ill. | **Date:** August 10, 2001

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240. [In re Chicago Pshp. Bd., Inc.](#), 236 B.R. 249 
LB Cited by: 236 B.R. 249 p.259
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1995 U.S. S. Ct. Briefs LEXIS 142

Content: Court Filings | **Date:** March 2, 1995

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136. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2019 U.S. 1st Cir. Briefs LEXIS 82

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137. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2021 U.S. 2nd Cir. Briefs LEXIS 377

Content: Court Filings | **Date:** June 1, 2021

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138. [**Giddens v. Lehman Bros.**](#), 2021 U.S. 2nd Cir. Briefs LEXIS 2172

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139. [**Giddens v. Lehman Bros.**](#), 2021 U.S. 2nd Cir. Briefs LEXIS 2207

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140. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 2167

Content: Court Filings | **Date:** November 25, 2020

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141. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 2163

Content: Court Filings | **Date:** November 25, 2020

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142. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 1311

Content: Court Filings | **Date:** November 5, 2020

143. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 949

Content: Court Filings | **Date:** November 5, 2020

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144. [**Inves**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 5538

Content: Court Filings | **Date:** August 6, 2020

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145. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 2104

Content: Court Filings | **Date:** August 6, 2020

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146. [**Harris v. TD Ameritrade Inc.**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 884

Content: Court Filings | **Date:** June 23, 2020

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147. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 254

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148. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 242

Content: Court Filings | **Date:** April 23, 2020

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149. [**Lehman Bros.**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 3102

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150. [**LEHMAN BROS. HOLDINGS**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 1873

Content: Court Filings | **Date:** March 5, 2020

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151. [**United States Secs. & v. Alpine Secs. Corp.**](#), 2020 U.S. 2nd Cir. Briefs LEXIS 4630

Content: Court Filings | **Date:** March 3, 2020

152. [BERNARD L. MADOFF INV. SECS. LLC](#), 2019 U.S. 2nd Cir. Briefs LEXIS 2443

Content: Court Filings | **Date:** September 24, 2019

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153. [LEHMAN BROS. HOLDINGS](#), 2019 U.S. 2nd Cir. Briefs LEXIS 2180

Content: Court Filings | **Date:** May 7, 2019

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154. [Picard](#), 2018 U.S. 2nd Cir. Briefs LEXIS 95

Content: Court Filings | **Date:** October 2, 2018

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155. [PICARD](#), 2018 U.S. 2nd Cir. Briefs LEXIS 3505

Content: Court Filings | **Date:** May 8, 2018

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156. [PICARD](#), 2018 U.S. 2nd Cir. Briefs LEXIS 21

Content: Court Filings | **Date:** April 18, 2018

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157. [Picard](#), 2017 U.S. 2nd Cir. Briefs LEXIS 2392

Content: Court Filings | **Date:** September 27, 2017

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158. [Lehman Bros.](#), 2017 U.S. 2nd Cir. Briefs LEXIS 7237

Content: Court Filings | **Date:** May 10, 2017

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159. [LEHMAN BROS.](#), 2017 U.S. 2nd Cir. Briefs LEXIS 4386

Content: Court Filings | **Date:** May 3, 2017

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160. [U.S. Secs. & Exch. v. Payton](#), 2017 U.S. 2nd Cir. Briefs LEXIS 5292

Content: Court Filings | **Date:** April 28, 2017

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161. [**SPV OSUS LTD. v. UBS AG**](#), 2017 U.S. 2nd Cir. Briefs LEXIS 909

Content: Court Filings | **Date:** January 20, 2017

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162. [**SPV OSUS LTD. v. UBS AG**](#), 2017 U.S. 2nd Cir. Briefs LEXIS 1034

Content: Court Filings | **Date:** January 6, 2017

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163. [**SPV OSUS LTD. v. UBS AG**](#), 2017 U.S. 2nd Cir. Briefs LEXIS 44

Content: Court Filings | **Date:** January 6, 2017

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164. [**SPV OSUS LTD. v. UBS AG**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 1313

Content: Court Filings | **Date:** October 13, 2016

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165. [**BERNARD L. MADOFF INV. SECS.**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 4641

Content: Court Filings | **Date:** September 29, 2016

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166. [**REPLY BRIEF FOR APPELLANTS THERESA R. RYAN, LAWRENCE J. RYAN, CALLIE A. OSTENSON-MURRAY, KELLY BUNCH, ROBERTA SCHWARTZ, BRET PALMER, SLOAN G. KAMENSTEIN, AARON BLECKER, ANGELA TILETNICK, BARBARA ENGEL, BARBARA KOTLIKOFF HARMAN, BEN HELLER, BENJAMIN T. HELLER IRREVOCABLE TRUST, BETH P. FELDMAN, BRUCE N. PALMER, CAROL FISHER, CAROL KAMENSTEIN, CHALEK ASSOCS. LLC, DAVID CHALEK, FRANCES REISS, ISABEL CHALEK, JOHN TZANNES TRUST, MITCHEL CHALEK, MORTON CHALEK, PETER TZANNES, RICHARD MARK CHALEK, ROBIN TZANNES, LAURA HALICK, ELAINE R. SCHAFER, FERN C. PALMER, ESTATE OF GABRIEL FRIEDMAN**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 1315

Content: Court Filings | **Date:** September 29, 2016

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167. [**BERNARD L. MADOFF INV. SECS.**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 20

Content: Court Filings | **Date:** September 29, 2016

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168. [**, LEHMAN BROS., INC.**](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3057

Content: Court Filings | **Date:** August 10, 2016

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169. [LEHMAN BROS. HOLDINGS](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3401

Content: Court Filings | **Date:** August 5, 2016

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170. [LEHMAN BROS.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3279

Content: Court Filings | **Date:** July 22, 2016

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171. [FAIRFIELD SENTRY LTD.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3265

Content: Court Filings | **Date:** June 24, 2016

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172. [SPV OSUS LTD. v. UBS AG](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3156

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173. [Lehman Bros.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 7399

Content: Court Filings | **Date:** April 15, 2016

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174. [LEHMAN BROS.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 4698

Content: Court Filings | **Date:** April 15, 2016

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175. [Lehman Bros.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 7012

Content: Court Filings | **Date:** March 25, 2016

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176. [LEHMAN BROS. HOLDINGS](#), 2016 U.S. 2nd Cir. Briefs LEXIS 4454

Content: Court Filings | **Date:** March 25, 2016

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177. [BERNARD L. MADOFF INV. SECS.](#), 2016 U.S. 2nd Cir. Briefs LEXIS 3419

Content: Court Filings | **Date:** February 16, 2016

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178. [**SECURITIES INVESTOR PROTECTION CORP. v. 2427 PARENT CORP.**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 380

Content: Court Filings | **Date:** April 29, 2014

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179. [**PICARD v. SEC. INVESTOR PROT. CORP. \(In re BERNARD L. MADOFF INV. SEC. LLC\)**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 34

Content: Court Filings | **Date:** January 31, 2014

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180. [**SECURITIES INVESTOR PROTECTION CORP. v. 2427 PARENT CORP.**](#), 2014 U.S. 2nd Cir. Briefs LEXIS 1491

Content: Court Filings | **Date:** January 22, 2014

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181. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 3063

Content: Court Filings | **Date:** October 11, 2013

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182. [**IN RE: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff-Appellant, SECURITIES INVESTOR PROTECTION CORPORATION, Statutory Intervenor pursuant to Securities Investor Protection Act, 15 U.S.C. 78eee\(d\), Intervenor-Appellant, -v.- IDA FISHMAN REVOCABLE TRUST, PAUL S. SHURMAN, in his capacity as co-trustee of the Ida Fishman Revocable Trust, WILLIAM SHURMAN, in his capacity as co-trustee of the Ida Fishman Revocable Trust and as Executor of the estate of Ida Fishman, Defendants-Appellees. Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000; Kenneth L. Evenstad, in his capacity as Grantor and Trustee for the Kenneth L. Evenstad Revocable Trust; Grace B. Evenstad, in her capacity as Trustee for the Kenneth L. Evenstad Revocable Trust; Kenneth L. Evenstad, individually; Grace B. Evenstad, individually; MBE Preferred Limited Partnership; MBE General LLC, as the General Partner of MBE Preferred Limited Partnership; Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000, as a Limited Partner of MBE Preferred Limited Partnership; Mark B. Evenstad Revocable Trust u/a/d January 30, 2003, as a Limited Partner of MBE Preferred Limited Partnership; Mark B. Evenstad, in his capacity as Grantor and Trustee for the Mark B. Evenstad Revocable Trust u/a/d January 30, 2003; Shannon Mahoney Evenstad, in her capacity as Trustee for the Mark B. Evenstad Revocable Trust u/a/d January 30, 2003; Mark B. Evenstad, individually; Shannon Mahoney Evenstad, individually; Mark B. Evenstad Revocable Trust u/a dated January 30, 2003; Mark B. Evenstad, in his capacity as Grantor and Trustee for the Mark B. Evenstad Revocable Trust; Shannon Mahoney Evenstad, in her capacity as Trustee for the Mark B. Evenstad Revocable Trust; Sew Preferred Limited Partnership; Sew General, LLC; Grace B. Evenstad Revocable Trust; Grace B. Evenstad, as co-trustee of the Grace B. Evenstad Revocable Trust; Kenneth L.**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 108

Content: Court Filings | **Date:** October 11, 2013

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183. [**PICARD v. IDA FISHMAN REVOCABLE TRUST \(In Re Bernard L. Madoff Inv. Secs. LLC\)**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 105

Content: Court Filings | **Date:** October 11, 2013

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184. [**PICARD v. IDA FISHMAN REVOCABLE TRUST \(In Re Bernard L. Madoff Inv. Secs. LLC\)**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 104

Content: Court Filings | **Date:** October 11, 2013

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185. [**United States v. NewmanChiasson**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 4008

Content: Court Filings | **Date:** August 15, 2013

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186. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 3143

Content: Court Filings | **Date:** June 6, 2013

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187. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 3030

Content: Court Filings | **Date:** May 30, 2013

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188. [**Bernard L. Madoff Inv. Secs. LLC**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 3170

Content: Court Filings | **Date:** May 15, 2013

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189. [**IRVING H. PICARD, TRUSTEE FOR THE SUBSTANTIVELY CONSOL. SIPA LIQUIDATION OF BERNARD L. MADOFF INV. SECS. LLC & THE ESTATE OF BERNARD L. MADOFF v. SCHNEIDERMAN**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 1201

Content: Court Filings | **Date:** May 7, 2013

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190. [**MF Global Holdings**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 4857

Content: Court Filings | **Date:** March 19, 2013

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191. [**MF Global Holdings v. Giddens**](#), 2013 U.S. 2nd Cir. Briefs LEXIS 1374

Content: Court Filings | **Date:** February 13, 2013

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192. [**LEHMAN BROS. HOLDING INC.**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 2878

Content: Court Filings | **Date:** September 20, 2012

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193. [**Inves**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 5166

Content: Court Filings | **Date:** August 23, 2012

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194. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. 2nd Cir. Briefs LEXIS 692

Content: Court Filings | **Date:** April 5, 2012

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195. [**WC CAPITAL MGMT. v. UBS SECS.**](#), 2011 U.S. 2nd Cir. Briefs LEXIS 177

Content: Court Filings | **Date:** August 26, 2011

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196. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2010 U.S. 2nd Cir. Briefs LEXIS 163

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197. [**Securities Investor Protection v. Bernard L. Madoff Inv.**](#), 2010 U.S. 2nd Cir. Briefs LEXIS 1539

Content: Court Filings | **Date:** October 7, 2010

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198. [**MELLIS v. BERNARD L. MADOFF INV. SECS.**](#), 2010 U.S. 2nd Cir. Briefs LEXIS 167

Content: Court Filings | **Date:** October 7, 2010

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199. [**BERNARD L. MADOFF INV. SECS. LLC**](#), 2010 U.S. 2nd Cir. Briefs LEXIS 43

Content: Court Filings | **Date:** August 10, 2010

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200. [**Securities Investor Protection v. Bernard L. Madoff Inv.**](#), 2010 U.S. 2nd Cir. Briefs LEXIS 689

Content: Court Filings | **Date:** June 16, 2010

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201. [E. Ohman J v. NVIDIA Corp.](#), 2021 U.S. 9th Cir. Briefs LEXIS 8057

Content: Court Filings | **Date:** August 11, 2021

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202. [Khoja v. Orexigen Therapeutics, Inc.](#), 2018 U.S. 9th Cir. Briefs LEXIS 10403

Content: Court Filings | **Date:** October 15, 2018

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203. [Kriegman v. Perry](#), 2016 U.S. 9th Cir. Briefs LEXIS 16348

Content: Court Filings | **Date:** April 18, 2016

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204. [Kriegman v. Perry](#), 2015 U.S. 9th Cir. Briefs LEXIS 6810

Content: Court Filings | **Date:** December 18, 2015

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205. [GOBLE v. UNITED STATES, SEC, SECS. INVESTOR PROTECTION CORP.](#), 2021 U.S. 11th Cir. Briefs LEXIS 13960

Content: Court Filings | **Date:** May 29, 2021

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206. [SEC v. GOBLE](#), 2015 U.S. 11th Cir. Briefs LEXIS 1866

Content: Court Filings | **Date:** August 31, 2015

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207. [ARKANSAS PUB. EMPLES. RETIREMENT SYS. v. HARMAN INT'L INDUS.](#), 2014 U.S. D.C. Cir. Briefs LEXIS 913

Content: Court Filings | **Date:** September 29, 2014

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208. [SEC v. SECURITIES INVESTOR PROTECTION CORP.](#), 2013 U.S. D.C. Cir. Briefs LEXIS 75

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209. [**SEC v. SECURITIES INVESTOR PROTECTION CORP.**](#), 2013 U.S. D.C. Cir. Briefs LEXIS 74

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210. [**SEC v. SECURITIES INVESTOR PROTECTION CORP.**](#), 2013 U.S. D.C. Cir. Briefs LEXIS 1255

Content: Court Filings | **Date:** June 12, 2013

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211. [**SEC v. SECURITIES INVESTOR PROTECTION CORP.**](#), 2013 U.S. D.C. Cir. Briefs LEXIS 76

Content: Court Filings | **Date:** April 12, 2013

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212. [**SEC v. SECURITIES INVESTOR PROTECTION CORP.**](#), 2013 U.S. D.C. Cir. Briefs LEXIS 301

Content: Court Filings | **Date:** January 11, 2013

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213. [**Bernard L. Madoff Inv. Secs.**](#), 2015 U.S. Dist. Ct. Briefs LEXIS 16061

Content: Court Filings | **Date:** June 25, 2015

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214. [**Bernard L. Madoff Inv. Secs.**](#), 2015 U.S. Dist. Ct. Briefs LEXIS 16062

Content: Court Filings | **Date:** May 27, 2015

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215. [**Bernard L. Madoff Inv. Secs.**](#), 2015 U.S. Dist. Ct. Briefs LEXIS 16055

Content: Court Filings | **Date:** April 27, 2015

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216. [**SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendants. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. Fairfield Greenwich Limited, Fairfield Greenwich \(Bermuda\) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company \(SICO\) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andres Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya, Defendants.**](#), 2013 U.S. Dist. Ct. Briefs LEXIS 26082

Content: Court Filings | **Date:** January 11, 2013

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217. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 15103

Content: Court Filings | **Date:** October 3, 2012

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218. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 15102

Content: Court Filings | **Date:** October 3, 2012

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219. **Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.**, 2012 U.S. Dist. Ct. Briefs LEXIS 29204

Content: Court Filings | **Date:** September 14, 2012

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220. **Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.**, 2012 U.S. Dist. Ct. Briefs LEXIS 29175

Content: Court Filings | **Date:** September 14, 2012

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221. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 16362

Content: Court Filings | **Date:** September 14, 2012

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222. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 16257

Content: Court Filings | **Date:** September 14, 2012

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223. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 15172

Content: Court Filings | **Date:** September 14, 2012

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224. **SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**, 2012 U.S. Dist. Ct. Briefs LEXIS 15162

Content: Court Filings | **Date:** September 14, 2012

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225. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 11363

Content: Court Filings | **Date:** September 4, 2012

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226. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15173

Content: Court Filings | **Date:** August 31, 2012

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227. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15151

Content: Court Filings | **Date:** August 17, 2012

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228. [**Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 29219

Content: Court Filings | **Date:** August 3, 2012

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229. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15171

Content: Court Filings | **Date:** August 3, 2012

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230. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15144

Content: Court Filings | **Date:** July 25, 2012

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231. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15155

Content: Court Filings | **Date:** July 20, 2012

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232. [**Securities Investor Protection Corp. Bernard L Madoff Inv. Secs. Llc**](#), 2012 U.S. Dist. Ct. Briefs

LEXIS 29213

Content: Court Filings | **Date:** June 12, 2012

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233. [**Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 29223

Content: Court Filings | **Date:** June 11, 2012

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234. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15159

Content: Court Filings | **Date:** June 11, 2012

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235. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 10805

Content: Court Filings | **Date:** June 11, 2012

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236. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15160

Content: Court Filings | **Date:** May 25, 2012

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237. [**Securities Investor Protection Corp. Bernard L Madoff Inv. Secs. Llc**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 29185

Content: Court Filings | **Date:** May 3, 2012

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238. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 10806

Content: Court Filings | **Date:** May 3, 2012

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239. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 11352

Content: Court Filings | **Date:** April 17, 2012

240. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 11267

Content: Court Filings | **Date:** April 17, 2012

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241. [**In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. SAUL B. KATZ, et al., Defendants.**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 15485

Content: Court Filings | **Date:** April 13, 2012

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242. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 12952

Content: Court Filings | **Date:** April 13, 2012

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243. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 8816

Content: Court Filings | **Date:** February 24, 2012

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244. [**SEC v. Securities Investor Protection Corp.**](#), 2012 U.S. Dist. Ct. Briefs LEXIS 1719

Content: Court Filings | **Date:** February 16, 2012

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245. [**Bernard L Madoff Inv. Secs. LLC**](#), 2011 U.S. Dist. Ct. Briefs LEXIS 11102

Content: Court Filings | **Date:** July 28, 2011

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246. [**Madoff**](#), 2009 U.S. Dist. Ct. Briefs LEXIS 11583

Content: Court Filings | **Date:** November 23, 2009

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247. [**PESKIN v. PICARD**](#), 2009 U.S. Dist. Ct. Briefs LEXIS 925

Content: Court Filings | **Date:** November 23, 2009

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248. [**LEHMAN BROS. HOLDINGS**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1309

Content: Court Filings | **Date:** December 12, 2008

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249. [**LEHMAN BROS. HOLDINGS**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1308

Content: Court Filings | **Date:** December 12, 2008

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250. [**Lopez v. Zaremba**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1354

Content: Court Filings | **Date:** June 23, 2008

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251. [**Lopez v. Zaremba**](#), 2008 U.S. Dist. Ct. Briefs LEXIS 1353

Content: Court Filings | **Date:** June 12, 2008

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252. [**Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.**](#), 2012 U.S. Dist. Ct. Motions LEXIS 155850

Content: Court Filings | **Date:** July 20, 2012

Motions

253. [**Securities and Exchange Commission, Applicant, v. Securities Investor Protection Corporation, Respondent.**](#), 2012 U.S. Dist. Ct. Motions LEXIS 1317

Content: Court Filings | **Date:** February 16, 2012

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254. [**UTTERBACK v. GEITHNER**](#), 2010 U.S. Dist. Ct. Motions LEXIS 40598

Content: Court Filings | **Date:** July 30, 2010

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255. [**SECURITIES INVESTOR PROTECTION CORP. v. CONTINENTAL CAPITAL INV. SERVS.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 85313

Content: Court Filings | **Date:** June 15, 2007

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256. [**Securities Investor Protection Corp. v. Continental Capital Inv. Servs.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 85312

Content: Court Filings | **Date:** May 30, 2007

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257. [**SECURITIES INVESTOR PROTECTION CORP. v. CONTINENTAL CAPITAL INV. SERVS.**](#), 2007 U.S. Dist. Ct. Motions LEXIS 85311

Content: Court Filings | **Date:** May 3, 2007

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258. [**FINANCIAL INDUS. ASS'N, G&G HOLDINGS v. UNITED STATES, SEC, SECS. INVESTOR PROTECTION CORP.**](#), 2021 U.S. Dist. Ct. Motions LEXIS 602252

Content: Court Filings | **Date:** July 17, 2021

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259. [**HORWITT v. ALAN L. SARROFF, A.L. SARROFF MGMT.**](#), 2021 U.S. Dist. Ct. Motions LEXIS 129073

Content: Court Filings | **Date:** February 5, 2021

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260. [**HORWITT v. ALAN L. SARROFF, A.L. SARROFF MGMT.**](#), 2021 U.S. Dist. Ct. Motions LEXIS 128922

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261. [**HORWITT v. ALAN L. SARROFF, A.L. SARROFF MGMT.**](#), 2021 U.S. Dist. Ct. Motions LEXIS 117567

Content: Court Filings | **Date:** February 5, 2021

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262. [**HORWITT v. ALAN L. SARROFF, A.L. SARROFF MGMT.**](#), 2021 U.S. Dist. Ct. Motions LEXIS 117326

Content: Court Filings | **Date:** February 4, 2021

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263. [**Irving H. Picard Rar Entrepreneurial Fund, Ltd.**](#), 2020 U.S. Dist. Ct. Motions LEXIS 578003

Content: Court Filings | **Date:** June 5, 2020

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264. [**HORWITT v. ALAN L. SARROFF, A.L. SARROFF MGMT.**](#), 2020 U.S. Dist. Ct. Motions LEXIS 532829

Content: Court Filings | **Date:** February 8, 2020

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265. [**Lip**](#), 2019 U.S. Dist. Ct. Motions LEXIS 597799

Content: Court Filings | **Date:** April 25, 2019

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266. [Nelson](#), 2018 U.S. Dist. Ct. Motions LEXIS 748810

Content: Court Filings | **Date:** May 29, 2018

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267. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2014 U.S. Dist. Ct. Motions LEXIS 327272

Content: Court Filings | **Date:** June 5, 2014

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268. [FINANCIAL INDUS. ASS'N v. UNITED STATES](#), 2014 U.S. Dist. Ct. Motions LEXIS 7058

Content: Court Filings | **Date:** April 7, 2014

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269. [FIN. INDUS. ASS'N v. UNITED STATES](#), 2014 U.S. Dist. Ct. Motions LEXIS 5625

Content: Court Filings | **Date:** April 7, 2014

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270. [Irving H. Picard Fairfield Greenwich Ltd.](#), 2013 U.S. Dist. Ct. Motions LEXIS 140966

Content: Court Filings | **Date:** February 19, 2013

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271. [Irving H. Picard Fairfield Greenwich Ltd.](#), 2013 U.S. Dist. Ct. Motions LEXIS 443128

Content: Court Filings | **Date:** January 11, 2013

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272. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 180042

Content: Court Filings | **Date:** October 5, 2012

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273. [Picard](#), 2012 U.S. Dist. Ct. Motions LEXIS 399370

Content: Court Filings | **Date:** October 3, 2012

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274. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS

397517

Content: Court Filings | **Date:** September 28, 2012

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275. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 220911

Content: Court Filings | **Date:** September 14, 2012

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276. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 179797

Content: Court Filings | **Date:** September 14, 2012

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277. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 71683

Content: Court Filings | **Date:** August 31, 2012

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278. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 397130

Content: Court Filings | **Date:** August 17, 2012

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279. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 397946

Content: Court Filings | **Date:** July 25, 2012

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280. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 109725

Content: Court Filings | **Date:** May 25, 2012

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281. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 308210

Content: Court Filings | **Date:** May 8, 2012

282. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 308209

Content: Court Filings | **Date:** April 24, 2012

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283. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 192694

Content: Court Filings | **Date:** April 17, 2012

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284. [Securities Investor Protection Corp. Bernard L. Madoff Inv. Secs.](#), 2012 U.S. Dist. Ct. Motions LEXIS 90746

Content: Court Filings | **Date:** April 13, 2012

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285. [Bernard L. Madoff Inv. Secs. Llc](#), 2012 U.S. Dist. Ct. Motions LEXIS 397879

Content: Court Filings | **Date:** February 24, 2012

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286. [Bernard L. Madoff Inv. Secs. Llc](#), 2012 U.S. Dist. Ct. Motions LEXIS 397788

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287. [Picard v. Katz](#), 2012 U.S. Dist. Ct. Motions LEXIS 397799

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288. [Picard v. Banco](#), 2012 U.S. Dist. Ct. Motions LEXIS 397843

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289. [Picard v. Trotanoy Inv. Co.](#), 2012 U.S. Dist. Ct. Motions LEXIS 398358

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290. [Picard v. Danville Mfg. Co](#), 2011 U.S. Dist. Ct. Motions LEXIS 428458

Content: Court Filings | **Date:** December 20, 2011

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291. [Picard v. Metro Motor Imports](#), 2011 U.S. Dist. Ct. Motions LEXIS 235756

Content: Court Filings | **Date:** December 8, 2011

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292. [Picard v. Alpha Prime Fund Ltd.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428641

Content: Court Filings | **Date:** December 7, 2011

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293. [Picard v. Blumenthal](#), 2011 U.S. Dist. Ct. Motions LEXIS 428379

Content: Court Filings | **Date:** December 2, 2011

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294. [Picard v. Kenneth L Evenstad Trust /A/D May 2, 2000](#), 2011 U.S. Dist. Ct. Motions LEXIS 102851

Content: Court Filings | **Date:** November 30, 2011

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295. [Picard v. Alpha Prime Fund Ltd.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428439

Content: Court Filings | **Date:** November 29, 2011

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296. [Picard](#), 2011 U.S. Dist. Ct. Motions LEXIS 330044

Content: Court Filings | **Date:** October 26, 2011

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297. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 426910

Content: Court Filings | **Date:** October 21, 2011

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298. [Picard v. M & B Weiss Family](#), 2011 U.S. Dist. Ct. Motions LEXIS 428304

Content: Court Filings | **Date:** October 12, 2011

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299. [Picard v. Flinn Invs.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428477

Content: Court Filings | **Date:** October 7, 2011

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300. [Irving H. Picard Abn Amro Bank Ireland Ltd.](#), 2011 U.S. Dist. Ct. Motions LEXIS 267704

Content: Court Filings | **Date:** September 30, 2011

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301. [Picard v. Hein](#), 2011 U.S. Dist. Ct. Motions LEXIS 93852

Content: Court Filings | **Date:** September 26, 2011

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302. [Picard v. Hein](#), 2011 U.S. Dist. Ct. Motions LEXIS 428491

Content: Court Filings | **Date:** September 19, 2011

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303. [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 74356

Content: Court Filings | **Date:** September 16, 2011

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304. [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 426653

Content: Court Filings | **Date:** September 13, 2011

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305. [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 427012

Content: Court Filings | **Date:** September 1, 2011

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306. [Picard v. UBS Fund Servs.](#), 2011 U.S. Dist. Ct. Motions LEXIS 426466

Content: Court Filings | **Date:** September 1, 2011

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307. [Picard v. Kohn](#), 2011 U.S. Dist. Ct. Motions LEXIS 427649

Content: Court Filings | **Date:** August 29, 2011

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308. [Picard v. Blumenthal](#), 2011 U.S. Dist. Ct. Motions LEXIS 192843

Content: Court Filings | **Date:** August 29, 2011

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309. [Picard v. Blumenthal](#), 2011 U.S. Dist. Ct. Motions LEXIS 428592

Content: Court Filings | **Date:** August 22, 2011

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310. [Fairfield Sentry Ltd.](#), 2011 U.S. Dist. Ct. Motions LEXIS 196535

Content: Court Filings | **Date:** August 10, 2011

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311. [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 427160

Content: Court Filings | **Date:** August 1, 2011

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312. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 426601

Content: Court Filings | **Date:** July 22, 2011

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313. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 44324

Content: Court Filings | **Date:** July 15, 2011

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314. [Picard v. Greiff](#), 2011 U.S. Dist. Ct. Motions LEXIS 427314

Content: Court Filings | **Date:** July 11, 2011

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315. [Picard v. Greiff](#), 2011 U.S. Dist. Ct. Motions LEXIS 426478

Content: Court Filings | **Date:** July 11, 2011

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316. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 427364

Content: Court Filings | **Date:** July 8, 2011

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317. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 427323

Content: Court Filings | **Date:** July 7, 2011

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318. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 199074

Content: Court Filings | **Date:** July 7, 2011

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319. [Picard v. Katz](#), 2011 U.S. Dist. Ct. Motions LEXIS 427285

Content: Court Filings | **Date:** June 17, 2011

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320. [PICARD v. HSBC BANK PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 8904

Content: Court Filings | **Date:** June 17, 2011

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321. [Picard v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 426561

Content: Court Filings | **Date:** June 7, 2011

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322. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 8903

Content: Court Filings | **Date:** June 7, 2011

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323. [Picard v. Jpmorgan Chase & Co](#), 2011 U.S. Dist. Ct. Motions LEXIS 426477

Content: Court Filings | **Date:** June 3, 2011

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324. [Picard v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 426875

Content: Court Filings | **Date:** May 4, 2011

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325. [PICARD v. HSBC BANK PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 8901

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326. [Picard v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 426859

Content: Court Filings | **Date:** May 3, 2011

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327. [Picard v. Kohn](#), 2011 U.S. Dist. Ct. Motions LEXIS 428699

Content: Court Filings | **Date:** April 4, 2011

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328. [Picard v. Jpmorgan Chase & Co.](#), 2011 U.S. Dist. Ct. Motions LEXIS 428434

Content: Court Filings | **Date:** March 30, 2011

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329. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 2272

Content: Court Filings | **Date:** March 30, 2011

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330. [Picard v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 426682

Content: Court Filings | **Date:** March 18, 2011

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331. [De David](#), 2011 U.S. Dist. Ct. Motions LEXIS 368841

Content: Court Filings | **Date:** March 15, 2011

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332. [Bernard L Madoff Inv. Secs. LLC v. HSBC Bank PLC](#), 2011 U.S. Dist. Ct. Motions LEXIS 78142

Content: Court Filings | **Date:** February 7, 2011

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333. [CFTC](#), 2011 U.S. Dist. Ct. Motions LEXIS 429440

Content: Court Filings | **Date:** January 19, 2011

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334. [Picard v. Merkin](#), 2011 U.S. Dist. Ct. Motions LEXIS 426698

Content: Court Filings | **Date:** January 14, 2011

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335. [Madoff](#), 2010 U.S. Dist. Ct. Motions LEXIS 470480

Content: Court Filings | **Date:** November 23, 2010

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336. [**Securities Investor Protection Corp. v. Lehman Bros.**](#), 2009 U.S. Dist. Ct. Motions LEXIS 219610

Content: Court Filings | **Date:** December 10, 2009

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337. [**Madoff**](#), 2009 U.S. Dist. Ct. Motions LEXIS 435612

Content: Court Filings | **Date:** December 2, 2009

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338. [**Picard v. Cohmad Secs. Corp.**](#), 2009 U.S. Dist. Ct. Motions LEXIS 433368

Content: Court Filings | **Date:** September 18, 2009

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339. [**MF Global Holdings LTD v Statutory Creditos Committee**](#), 2012 U.S. Bankr. Ct. Motions LEXIS 64

Content: Court Filings | **Date:** January 12, 2012

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340. [**SECURITIES INVESTOR PROTECTION CORP. v. MADOFF**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 3355

Content: Court Filings | **Date:** May 5, 2009

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341. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 847

Content: Court Filings | **Date:** February 23, 2009

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342. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS., LLC**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 846

Content: Court Filings | **Date:** February 20, 2009

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343. [**SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2009 U.S. Bankr. Ct. Motions LEXIS 843

Content: Court Filings | **Date:** February 10, 2009

344. [**LEHMAN BROS. HOLDINGS**](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5592

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345. [**Lehman Bros. Holdings v. Lehman Bros.**](#), 2008 U.S. Bankr. Ct. Motions LEXIS 5313

Content: Court Filings | **Date:** October 4, 2008

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346. [**FORT WORTH OSTEOPATHIC HOSP.**](#), 2008 U.S. Bankr. Ct. Motions LEXIS 479

Content: Court Filings | **Date:** February 19, 2008

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347. [**BOTTLEBRUSH INVS., L.P. v. LAMBETH CO.**](#), 2011 CA Sup. Ct. Motions LEXIS 6524

Content: Court Filings | **Date:** May 11, 2011

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348. [**HALL v. CHAIS**](#), 2011 CA Sup. Ct. Motions LEXIS 6523

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349. [**WEXLER v. TREMONT**](#), 2009 NY S. Ct. Motions LEXIS 102

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Pleadings

350. [**SEC v. Securities Investor Protection Corp.**](#), 2011 U.S. Dist. Ct. Pleadings LEXIS 5601

Content: Court Filings | **Date:** December 12, 2011

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351. [**SECURITIES INVESTOR CORP. v. BERNARD L. MADOFF INV. SECS. LLC**](#), 2011 U.S. Dist. Ct. Pleadings LEXIS 281

Content: Court Filings | **Date:** February 9, 2011

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352. [**MBIA v. INDYMAC**](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 46380

Content: Court Filings | **Date:** September 22, 2009

353. [Genesee County Emples. Retirement Sys. v. Thornburg Mortg., Inc.](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 36190

Content: Court Filings | **Date:** March 27, 2009

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354. [SECURITIES INVESTOR PROTECTION CORP. v. CONTINENTAL CAPITAL INV. SERVS.](#), 2006 U.S. Dist. Ct. Pleadings LEXIS 18047

Content: Court Filings | **Date:** October 3, 2006

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355. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2013 U.S. Dist. Ct. Pleadings LEXIS 12929

Content: Court Filings | **Date:** February 19, 2013

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356. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2012 U.S. Dist. Ct. Pleadings LEXIS 11668

Content: Court Filings | **Date:** October 5, 2012

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357. [SECURITIES INVESTOR PROTECTION CORP. v. BERNARD L. MADOFF INV. SECS. LLC](#), 2012 U.S. Dist. Ct. Pleadings LEXIS 12119

Content: Court Filings | **Date:** August 8, 2012

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358. [BERNARD](#), 2009 U.S. Dist. Ct. Pleadings LEXIS 36163

Content: Court Filings | **Date:** May 12, 2009

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359. [SECURITIES v. MADOFF](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 478

Content: Court Filings | **Date:** October 2, 2009

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360. [LEHMAN BROS.](#), 2009 U.S. Bankr. Ct. Pleadings LEXIS 47

Content: Court Filings | **Date:** February 9, 2009

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361. [LEHMAN BROS. HOLDINGS](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1466

Content: Court Filings | **Date:** September 26, 2008

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362. [**LEHMAN BROS. HOLDINGS**](#), 2008 U.S. Bankr. Ct. Pleadings LEXIS 1092

Content: Court Filings | **Date:** September 26, 2008

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363. [**SUNPOINT SECS., INC.**](#), 2005 U.S. Bankr. Ct. Pleadings LEXIS 463

Content: Court Filings | **Date:** April 11, 2005

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364. [**KANNING v. HEDGES**](#), 2013 CA Sup. Ct. Pleadings LEXIS 25786

Content: Court Filings | **Date:** December 23, 2013

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365. [**KANNING**](#), 2013 CA Sup. Ct. Pleadings LEXIS 5373

Content: Court Filings | **Date:** December 23, 2013

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366. [**KEVIN G. KANNING, Plaintiff, v. JOE D. HEDGES; CATHLEEN C. HEDGES; JOHNNY Q. ZHONG; SHARON CHEN; VOELKER SENSORS, INC; PAUL VOELKER; BRIAN STEUER; OIL GUARDIAN, INC.; BILL WELCH; and DOES 1-60, inclusive, Defendants.**](#), 2013 CA Sup. Ct. Pleadings LEXIS 3662

Content: Court Filings | **Date:** December 23, 2013

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367. [**KANNING v. HEDGES**](#), 2013 CA Sup. Ct. Pleadings LEXIS 25763

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-
368. [**KANNING v. HEDGES**](#), 2013 CA Sup. Ct. Pleadings LEXIS 6212

Content: Court Filings | **Date:** November 26, 2013

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369. [**KANNING v. HEDGES**](#), 2013 CA Sup. Ct. Pleadings LEXIS 3647

Content: Court Filings | **Date:** November 26, 2013

370. [HALL v. CHAIS](#), 2010 CA Sup. Ct. Pleadings LEXIS 8818

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371. [LEGHORN INVS. v. BRIGHTON INVS.](#), 2010 CA Sup. Ct. Pleadings LEXIS 9107

Content: Court Filings | **Date:** April 30, 2010

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372. [HALL v. CHAIS](#), 2010 CA Sup. Ct. Pleadings LEXIS 8817

Content: Court Filings | **Date:** April 30, 2010

Other Citations

373. [1974 FHLBB LEXIS 71](#)

Content: Other Citations | **Date:** June 27, 1974

End of Document

15 USCS § 78fff

Current through Public Law 118-106, approved October 4, 2024.

United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 123) > CHAPTER 2B-1. SECURITIES INVESTOR PROTECTION (§§ 78aaa — 78III)

§ 78fff. General provisions of a liquidation proceeding

(a) Purposes. The purposes of a liquidation proceeding under this Act shall be—

- (1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this Act—
 - (A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 8(c)(2) [[15 USCS § 78fff-2\(c\)\(2\)](#)]; and
 - (B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;
- (2) to sell or transfer offices and other productive units of the business of the debtor;
- (3) to enforce rights of subrogation as provided in this Act; and
- (4) to liquidate the business of the debtor.

(b) Application of title 11. To the extent consistent with the provisions of this Act, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11 of the United States Code [[11 USCS §§ 101](#) et seq., [301](#) et seq., [501](#) et seq., [701](#) et seq., [721](#) et seq.]. For the purposes of applying such title [[11 USCS §§ 101](#) et seq.] in carrying out this section, a reference in such title [[11 USCS §§ 101](#) et seq.] to the date of the filing of the petition shall be deemed to be a reference to the filing date under this Act.

(c) Determination of customer status. In a liquidation proceeding under this Act, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment. In a liquidation proceeding under this Act, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 16(5)(A) [16(4)(A)] [[15 USCS § 78III\(4\)\(A\)](#)].

(e) Costs and expenses of administration. All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is

sufficient therefor, and the priorities of distribution from the general estate shall be as provided in in [section 726 of title 11 of the United States Code \[11 USCS § 726\]](#). Costs and expenses of administration shall include payments pursuant to section 8(e) and section 9(c)(1) [[15 USCS §§ 78fff-2\(e\), 78fff-3\(c\)\(1\)](#)] (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d)) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 7(a)(2) [[15 USCS § 78fff-1\(a\)\(2\)](#)]. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under [section 507\(a\)\(2\) of title 11 of the United States Code \[11 USCS § 507\(a\)\(2\)\]](#).

History

HISTORY:

Dec. 30, 1970, [P. L. 91-598](#), § 6, [84 Stat. 1646](#); May 21, 1978, [P. L. 95-283](#), § 8, [92 Stat. 259](#); Nov. 6, 1978, [P. L. 95-598](#), Title III, § 308(g), (h), [92 Stat. 2675](#); April 20, 2005, P. L. 109-8, Title XV, § 1502(b), [119 Stat. 217](#).

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Explanatory notes:

Amendment Notes

1978.

2005.

References in text:

"This Act", referred to in this section, is Act Dec. 30, 1970, [P. L. 91-598](#), popularly known as the Securities Investor Protection Act of 1970, which appears generally as [15 USCS §§ 78aaa et seq.](#) For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The reference to section "16(4)(A)" has been inserted in brackets in subsec. (d) to indicate the section probably intended by Congress.

Amendment Notes

1978.

Act May 21, 1978, substituted this section for one which read:

"(a) General purposes of liquidation proceeding. The purposes of any proceeding in which a trustee has been appointed under section 5(b)(3) (hereafter in this section referred to as a 'liquidation proceeding') shall be:

"(1) as promptly as possible after such appointment and in accordance with the provisions of this section—

- “(A) to return specifically identifiable property to the customers of the debtor entitled thereto;
- “(B) to distribute the single and separate fund, and (in advance thereof or concurrently therewith) pay to customers moneys advanced by SIPC, as provided in subsection (f);
- “(2) to operate the business of the debtor in order to complete open contractual commitments of the debtor pursuant to subsection (d);
- “(3) to enforce rights of subrogation as provided in this Act; and
- “(4) to liquidate the business of the debtor.

“(b) Powers and duties of trustee.

“(1) Trustee powers. A trustee appointed under section 5(b)(3) (hereinafter referred to as ‘trustee’) shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act have with respect to a bankrupt and a chapter X debtor. In addition, a trustee shall have the right—

- “(A) with the approval of SIPC, to hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including but not limited to accountants) that are deemed by such trustee necessary for all or any purposes of the liquidation proceeding, and

- “(B) to operate the business of the debtor in order to complete open contractual commitments pursuant to subsection (d),

and no approval of the court shall be required therefor.

“(2) Trustee duties. Except as inconsistent with the provisions of this Act or otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee appointed under section 44 of the Bankruptcy Act, except that a trustee may, but shall have no duty to, reduce to money any securities in the single and separate fund (provided under subsection (c)(2)(B)) or in the general estate of the debtor.

“(c) Application of Bankruptcy Act.

“(1) General provisions applicable. Except as inconsistent with the provisions of this Act and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII inclusive; except that the court may, for such period as may be appropriate, stay enforcement of, but shall not abrogate, the rights provided in section 68 of the Bankruptcy Act and the right to enforce a valid, non-preferential lien or pledge against the property of the debtor. For purposes of applying the Bankruptcy Act in carrying out this section, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date (as defined in section 5(b)(4)(B)).

“(2) Special provisions. The following subparagraphs of this paragraph shall apply to a liquidation proceeding in lieu of section 60e of the Bankruptcy Act:

- “(A) Definitions. Except as otherwise expressly provided in this section, for purposes of this section and the application of the Bankruptcy Act to a liquidation proceeding—

- “(i) ‘property’ includes cash and securities, whether or not negotiable and all property of a similar character;

- “(ii) ‘customers’ of a debtor means persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired, or held by the debtor from or for the account of such persons (I) for safekeeping, or (II) with a view to sale, or (III)

to cover consummated sales, or (IV) pursuant to purchases, or (V) as collateral security, or (VI) by way of loans of securities by such persons to the debtor, and shall include persons who have claims against the debtor arising out of sales or conversions of such securities, and shall include any person who has deposited cash with the debtor for the purpose of purchasing securities, but shall not include any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor;

"(iii) 'cash customer' means, with respect to any securities or cash, customers entitled to immediate possession of such securities or cash without the payment of any sum to the debtor, and for purposes of this clause, the same person may be a cash customer with reference to certain securities or cash and not a cash customer with reference to other securities or cash;

"(iv) 'net equity' of a customer's account or accounts means the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d), by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers; and

"(v) 'securities' has the same meaning as such term has under section 60e of the Bankruptcy Act.

"(B) Single and separate fund. All property at any time received, acquired, or held by or for the account of a debtor from or for the account of customers except cash customers who are able to identify specifically their property in the manner prescribed in subparagraph (C), and the proceeds of all customers' property transferred by the debtor, including property unlawfully converted, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the filing date and in priority to all other payments, except that (i) there shall be repaid to SIPC, in priority to all other claims payable from such single and separate fund, the amount of all advances made by SIPC to the trustee to permit the completion of open contractual commitments pursuant to subsection (d), and (ii) to the extent that any other assets of the debtor may be available therefor or as otherwise ordered by the court, all costs and expenses specified in clauses (1) and (2) of section 64a of the Bankruptcy Act shall be paid from such single and separate fund in priority to the claims of such single and separate class of creditors, and any moneys advanced by SIPC for such costs and expenses shall be recouped as such. If such single and separate fund shall not be sufficient to pay in full the claims of such single and separate class of creditors, the creditors of such class shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with general creditors. In, or for the purpose of, distributing such fund, all property other than cash shall be valued as of the close of business on the filing date. To the greatest extent considered practicable by the trustee, the trustee shall deliver in payment of claims of customers for their net equities based upon securities held on the filing date in their accounts (after giving effect to open contractual commitments completed as hereinafter provided), securities of the same class and series of an issuer ratably up to the respective amounts which were so held in such accounts. Any property remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and the single and separate fund in the proportion in which the general property of the debtor and the property of his customers contributed to such lien or pledge.

"(C) Specifically identifiable property. The trustee shall return specifically identifiable property to the customers of the debtor, entitled thereto. No cash or securities at any time received, acquired, or held by or for the account of a debtor from or for the accounts of customers shall for the purposes of this paragraph be deemed to be specifically identified, unless such property remained in its identical form in the debtor's possession until the filing date, or unless such property was allocated to or physically set

aside for such customers on the filing date. In determining whether property was allocated to or physically set aside for such customers, it shall be sufficient that on the filing date:

- “(i) securities are segregated individually, or in bulk for customers collectively;
- “(ii) in the case of securities held for the account of the debtor as part of any central certificate service of any clearing corporation or any similar depositary—
 - “(I) the records of the debtor show or there is otherwise established to the satisfaction of the trustee that all or a specified part of the securities held by such clearing corporation or other similar depositary are held for specified customers, or for customers collectively, and
 - “(II) such records of the debtor also show or there is otherwise established to the satisfaction of the trustee the identities of the particular customers entitled to receive specified numbers or units of such securities so held for customers collectively; or
- “(iii) such property is held for the account of customers of the debtor in such other manner as the Commission, for the protection of customers and other creditors on a fair and equitable basis, by rule or regulation shall have determined to be sufficiently identifiable as the property of such customers.

If there is any shortage in securities of the same class and series of an issuer so segregated in bulk or otherwise held for customers pursuant to this subparagraph, as compared to the aggregate rights of particular customers to receive securities of such class and series, the respective interests of such customers in such securities of such class and series shall be prorated, without prejudice, however, to the satisfaction of any claim for deficiencies as otherwise provided in this section.

“(D) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a debtor of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of the Bankruptcy Act. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. Subject to the provisions of paragraph (D), if any securities received or acquired by a debtor from a cash customer are transferred by the debtor, such customer shall not have any specific interest in or specific right to any securities of like kind on hand on the filing date, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund.

“(d) Completion of open contractual commitments. The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

- “(1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not be in the public interest, or
- “(2) in which a customer did not have an interest, to the extent that the Commission shall by rule or regulation have determined the completion of such commitments to be in the public interest.

For purposes of this subsection (but not for any other purpose of this Act) (i) the term ‘customer’ means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. All property at any time received, acquired, or held by or for the account of the debtor (except for cash or securities that are specifically identifiable as the property of particular customers and are not the subject of an open contractual commitment), and all property in the single and separate fund, shall be available to complete open contractual commitments pursuant to this subsection. Securities purchased or cash received by the trustee upon completion of any such commitment shall constitute specifically identifiable property of a customer to the extent that such commitment was completed

with property which constituted specifically identifiable property of such customer on the filing date, or was paid or delivered by or for the account of such customer to the debtor or the trustee after the filing date.

"(e) Notice. Promptly after his appointment, the trustee shall cause notice of the commencement of proceedings under this section to be published in accordance with a designation of the court, made in accordance with the requirements of section 28 of the Bankruptcy Act, and at the same time shall cause to be mailed a copy of such notice to each of the customers of the debtor as their addresses shall appear from the debtor's books and records. Except as the trustee may otherwise permit, claims for specifically identifiable property (other than securities registered in the name of the claimant or segregated for him in his individual name) or claims payable from property in the single and separate fund or payable with moneys advanced by SIPC, shall not be paid other than from the general estate of the debtor unless filed within such period of time (not exceeding sixty days after such publication) as may be fixed by the court, and no claim shall be allowed after the time specified in section 57 of the Bankruptcy Act. Subject to the foregoing, and without limiting the powers and duties of the trustee to discharge promptly obligations as specified in this section, the court may make appropriate provision for proof and enforcement of all claims against the debtor including those of any subrogee.

"(f) SIPC advances to trustee.

"(1) Advances for customers' claims. In order to provide for prompt payment and satisfaction of the net equities of customers of debtor, SIPC shall advance to the trustee such moneys as may be required to pay or otherwise satisfy claims in full of each customer, but not to exceed \$50,000 for such customer; except that—

"(A) insofar as all or any portion of the net equity of a customer is a claim for cash, as distinct from securities, the amount advanced by reason of such claim to cash shall not exceed \$20,000;

"(B) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

"(C) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any claims of any customer who is a general partner, officer, or director of the debtor, the beneficial owner of 5 per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights) or limited partner with a participation of 5 per centum or more in the net assets or net profits of the debtor; and

"(D) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy claims of any customer who is a broker or dealer or bank other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank or otherwise, that claims of such broker or dealer or bank against the debtor arise out of transactions for customers of such broker or dealer or bank, in which event, each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent that moneys are advanced by SIPC to the trustee to pay the claims of customers, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this section.

"(2) Other advances. SIPC may advance to the trustee such moneys as may be required to effectuate subsection (b)(1)(A). SIPC shall advance to the trustee such moneys as (with those available pursuant to subsection (d)) may be required to effectuate subsection (d).

"(g) Payments to customers; no proof of claim required. It shall be the duty of the trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, or net equities based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to subsection (f)(1), to the extent that such payments are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim. For that purpose the court among other things shall—

"(1) in respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC notwithstanding the fact that there shall not have been any showing or determination that there are sufficient funds of the debtor available to make such payment; and

"(2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer, which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

"Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute in a form to be determined by the trustee, appropriate receipts, supporting affidavits, and assignments, but shall be without prejudice to the right of any claimant to file formal proof of claim within the period specified in subsection (e) for any balance of securities or cash to which he may deem himself entitled.

"(h) Proof of claim by associates and others. The provisions of this section permitting discharge of obligations of the debtor to pay cash or to deliver securities without formal proof of claim shall not apply to any person 'associated' with the debtor as defined in section 3(a)(18) of the 1934 Act, to any beneficial owner of 5 per centum or more of the voting stock of the debtor, or to any member of the immediate family of any of the foregoing.

"(i) Reports by trustee to court. All reports to the court by a trustee (other than reports required to be filed pursuant to section 167(3) of the Bankruptcy Act shall be in such form and detail as, having due regard to the requirements of section 17 of the 1934 Act and the rules and regulations thereunder and the magnitude of items and transactions involved in connection with the operations of a broker or dealer, the Commission shall determine by rules and regulations to present fairly the results of such proceeding as at the dates or for the periods covered by such reports.

"(j) Effect of act on claims. Except as otherwise provided in this section, nothing in this section shall limit the right of any person to establish by formal proof such claims as such person may have to payment, or to delivery of specific securities, without resort to moneys advanced by SIPC to the trustee."

Act Nov. 6, 1978 (effective 10/1/79, as provided by § 402(a) of such Act, which appears as a note prec. 11 USCS § 101), substituted subsec. (b) for one which read: "To the extent consistent with the provisions of this Act, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this Act, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this Act.", and in subsec. (e), substituted "in section 726 of title 11 of the United States Code" for "in the Bankruptcy Act", and substituted "under section 507(a)(1) of title 11 of the United States Code" for "as a first priority under the Bankruptcy Act".

2005.

Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as 11 USCS § 101 note), in subsec. (e), substituted "507(a)(2)" for "507(a)(1)".

NOTES TO DECISIONS

1. Generally

2. Purpose

3. Applicability of Bankruptcy Act

4. Date of commencement of liquidation

5. Miscellaneous

1. Generally

Bankruptcy court did not err in making trustee assignee of customers' claims because SIPA did not bar assignment. [PricewaterhouseCoopers LLP v. Giddens \(In re MF Global Inc.\), 505 B.R. 623, 2014 U.S. Dist. LEXIS 23542 \(S.D.N.Y. 2014\).](#)

[15 USCS § 78fff](#) expresses intent to give preclusive effect to claim determinations that are made in direct payment proceedings. [Sec. Investor Prot. Corp. v. Murphy \(In re Selheimer & Co.\), 319 B.R. 395, 53 Collier Bankr. Cas. 2d \(MB\) 1097, 2005 Bankr. LEXIS 194 \(Bankr. E.D. Pa. 2005\).](#)

2. Purpose

Purpose of incorporating provisions of Bankruptcy Act in SIPA was to serve public interest in such matters at level somewhat different from straight bankruptcy proceedings, primary criterion being not rigid economy as in straight bankruptcy. [Securities Investor Protection Corp. v. Charisma Sec. Corp., 352 F. Supp. 302, Fed. Sec. L. Rep. \(CCH\) ¶ 93695, 1972 U.S. Dist. LEXIS 10664 \(S.D.N.Y. 1972\).](#)

Standard of solvency and application thereof required by Securities Investor Protection Act for broker-dealers exists independently from general bankruptcy definitions of solvency, legislative intent having been to set stricter standard of solvency as initial triggering device to call into play regulatory authority conferred upon SEC by Congress. [SEC v. Wick, 360 F. Supp. 312, Fed. Sec. L. Rep. \(CCH\) ¶ 93953, 1973 U.S. Dist. LEXIS 14499 \(N.D. Ill. 1973\).](#)

Purposes of liquidation under Securities Investor Protection Act (SIPA) ([15 USCS § 78fff\(a\)](#)) are: (1) delivery of customer name securities to customers and distribution of customer property and not equity claims as promptly as possible after appointment of trustee, (2) sale or transfer of offices and other productive units of debtor's business, (3) enforcement of rights of subrogation provided by SIPA, and (4) liquidation of debtor's business. [In re Brittenum & Associates, Inc., 82 B.R. 64, Fed. Sec. L. Rep. \(CCH\) ¶ 93630, 1987 Bankr. LEXIS 2156 \(Bankr. E.D. Ark. 1987\).](#)

Under Securities Investor Protection Act of 1970 (SIPA) liquidation, where creditor had posted cash collateral with debtor broker-dealer in exchange for loaned securities, requiring trustee to freeze cash, account for all cash collateral, and seek permission to use such cash would run counter to SIPA's intent to protect public customers. [Ferris, Baker, Watts, Inc. v. Stephenson \(In re MJK Clearing\), 286 B.R. 109, 49 U.C.C. Rep. Serv. 2d \(CBC\) 11, 2002 Bankr. LEXIS 1618 \(Bankr. D. Minn. 2002\), aff'd, 49 Collier Bankr. Cas. 2d \(MB\) 1722, 2003 U.S. Dist. LEXIS 5954 \(D. Minn. 2003\).](#)

3. Applicability of Bankruptcy Act

One objective of predecessor to [11 USCS § 741\(1\)](#) was to eliminate, in bankruptcy proceedings, conflict in rules and to create rules which would be uniform throughout nation; interest in uniformity of treatment of insolvent brokerage houses was furthered through Securities Investor Protection Act which, in [15 USCS § 78fff](#), adopted, to large degree, provisions of predecessor to § 741(1) and made them applicable to brokerage house liquidation proceedings under SIPA. [SEC v. First Sec. Co., 507 F.2d 417, 1974 U.S. App. LEXIS 5941 \(7th Cir. 1974\).](#)

In proceedings under Securities Investor Protection Act prior to 1978, court could make general reference of proceedings to bankruptcy referee under Bankruptcy Act. Exchange Nat. [Exchange Nat'l Bank v. Wyatt, 517 F.2d 453, 4 Collier Bankr. Cas. \(MB\) 317, Fed. Sec. L. Rep. \(CCH\) ¶ 95076, 1975 U.S. App. LEXIS 14965 \(2d Cir. 1975\).](#)

Procedural rights accorded stockholders by predecessor to [11 USCS § 1109](#) were inconsistent with provisions of SIPA, and therefore not applicable under [15 USCS § 78fff](#) prior to 1978 amendments, since formulation of any plan

of reorganization in SIPA proceeding was expressly prohibited. [SEC v. Securities Northwest, Inc., 573 F.2d 622, 4 Bankr. Ct. Dec. \(LRP\) 403, Bankr. L. Rep. \(CCH\) ¶ 66820, 17 Collier Bankr. Cas. \(MB\) 155, Fed. Sec. L. Rep. \(CCH\) ¶ 96413, 1978 U.S. App. LEXIS 11669 \(9th Cir. 1978\).](#)

Under § 6(b) of Securities Investor Protection Act (SIPA) ([15 USCS § 78fff\(b\)](#)), SIPA trustee has duties of trustee appointed under § 47 of Bankruptcy Act (11 USCS § 75), and under that power he is obliged to collect and reduce to money property of estate. [Securities Investor Protection Corp. v. Christian-Paine & Co., 755 F.2d 359, Fed. Sec. L. Rep. \(CCH\) ¶ 91959, 1985 U.S. App. LEXIS 29249 \(3d Cir. 1985\).](#)

In accordance with bankruptcy law, which applies to liquidation under SIPA, court could not award interest on customer's claims; SIPA does not authorize SIPC to pay interest either to trustee or to debtor's customers. [Securities Investor Protection Corp. v. Ambassador Church Finance/Development Group, Inc., 788 F.2d 1208, Fed. Sec. L. Rep. \(CCH\) ¶ 92708, 1986 U.S. App. LEXIS 25014 \(6th Cir.\)](#), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113, 1986 U.S. LEXIS 3841 (1986).

Anti-termination provision of [11 USCS § 541\(c\)\(1\)\(B\)](#) applies to liquidation proceeding under Securities Investor Protection Act to invalidate fidelity bond clause that purports to terminate liability under bond automatically upon takeover of bonded entity by receiver or other liquidator. [In re Government Sec. Corp., 972 F.2d 328, 6 Fla. L. Weekly Fed. C 1134, 23 Bankr. Ct. Dec. \(LRP\) 721, Bankr. L. Rep. \(CCH\) ¶ 74912, Fed. Sec. L. Rep. \(CCH\) ¶ 97013, 1992 U.S. App. LEXIS 21170 \(11th Cir. 1992\)](#), cert. denied, 507 U.S. 952, 113 S. Ct. 1366, 122 L. Ed. 2d 744, 1993 U.S. LEXIS 1698 (1993).

[11 USCS § 503](#) is incorporated into SIPA by plain language of [15 USCS § 78fff\(b\)](#); thus, there can be no recovery for customer expenses pursuant to [15 USCS § 78eee\(b\)\(5\)](#) in any SIPA liquidation, because § 503 applies only to Chapter 9 and 11 bankruptcy cases, and § 78fff(b) expressly provides that SIPA liquidation is to be treated as Chapter 7 bankruptcy. [In re Lloyd Sec., 75 F.3d 853, 28 Bankr. Ct. Dec. \(LRP\) 676, Fed. Sec. L. Rep. \(CCH\) ¶ 99040, 1996 U.S. App. LEXIS 1570 \(3d Cir. 1996\).](#)

Claimants who have deposited cash with debtor brokerage qualify as customers under Securities Investor Protection Act only if they entrusted funds for purpose of purchasing securities ([15 USCS § 78III\(2\)](#)); whether investment was to be made in "security" is matter of law, because Act provides definition of that term. [Focht v. Heebner \(In re Old Naples Sec., Inc.\), 223 F.3d 1296, 13 Fla. L. Weekly Fed. C 1033, 36 Bankr. Ct. Dec. \(LRP\) 172, Fed. Sec. L. Rep. \(CCH\) ¶ 91052, 2000 U.S. App. LEXIS 21280 \(11th Cir. 2000\).](#)

Although lack of diligence does not defeat claim under Securities Investor Protection Act, willful ignorance on claimant's part in face of clear indications that investment scheme is suspect may preclude finding that claimant intended to purchases "securities" covered by Act. [Focht v. Heebner \(In re Old Naples Sec., Inc.\), 223 F.3d 1296, 13 Fla. L. Weekly Fed. C 1033, 36 Bankr. Ct. Dec. \(LRP\) 172, Fed. Sec. L. Rep. \(CCH\) ¶ 91052, 2000 U.S. App. LEXIS 21280 \(11th Cir. 2000\).](#)

Lack of good faith in Securities Investor Protection Act (SIPA) liquidation applied inquiry notice, not willful blindness, standard, and SIPA trustee did not bear burden of pleading transferee's lack of good faith, but rather, burden to plead good faith was on transferee. [Picard v. Citibank, N.A. \(In re Bernard L. Madoff Inv. Secs. LLC\), 12 F.4th 171, 2021 U.S. App. LEXIS 26100 \(2d Cir. 2021\)](#), cert. denied, 142 S. Ct. 1209, 212 L. Ed. 2d 217, 2022 U.S. LEXIS 1304 (2022).

Effect of SIPA prior to 1978 amendments on Bankruptcy Act was strictly limited, and only those sections of Bankruptcy Act which would frustrate ability of SIPC to protect customers funds in manner analogous to similar Federal Savings and Loan Insurance Corporation were superseded by sections of SIPA which were more consistent with legislative purpose; SIPA was not intended to supplant Bankruptcy Act in broker-dealer liquidation proceedings, and once broker-dealer fell below solvency standards established by SEC, subsequent liquidation of its assets for benefit of creditors was to proceed under Bankruptcy Act. [SEC v. Wick, 360 F. Supp. 312, Fed. Sec. L. Rep. \(CCH\) ¶ 93953, 1973 U.S. Dist. LEXIS 14499 \(N.D. Ill. 1973\).](#)

Prior to 1978 amendment, reconsideration of claims under Securities Investor Protection Act by court was governed by Rule 307 of Rules of Bankruptcy Procedure; motion to reconsider was addressed to discretion of court; court was to apply equitable doctrines of laches and estoppel in deciding whether to reconsider claim. [SEC v. E.P. Seggos & Co., 416 F. Supp. 280, 1976 U.S. Dist. LEXIS 15558 \(S.D.N.Y. 1976\).](#)

Clear intent of Securities Investor Protection Act ([15 USCS §§ 78aaa](#) et seq.) prior to 1978 amendments was to make former § 241 of Bankruptcy Act applicable to fee allowances in brokerage liquidations. [SEC v. Kenneth Bove & Co., 451 F. Supp. 355, Fed. Sec. L. Rep. \(CCH\) ¶ 96460, 1978 U.S. Dist. LEXIS 17372 \(S.D.N.Y. 1978\).](#)

Securities Investor Protection Corporation liquidation operated as automatic stay of commencement or continuation of judicial, administrative, or other action or proceeding against debtor, or any act to obtain possession of or to exercise control over property of estate, under [15 USCS § 78fff\(b\)](#). [Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC, 460 B.R. 106, 55 Bankr. Ct. Dec. \(LRP\) 160, 2011 Bankr. LEXIS 4033 \(Bankr. S.D.N.Y. 2011\), aff'd, 474 B.R. 76, Bankr. L. Rep. \(CCH\) ¶ 82310, 2012 U.S. Dist. LEXIS 63508 \(S.D.N.Y. 2012\).](#)

Plain language of asset purchase agreement evidenced debtor's delegation of its obligation to pay transferred employees' 2008 fiscal year bonuses and purchaser's acceptance of such delegation. To extent purchaser satisfied debtor's obligations to pay bonuses, objections by trustee for liquidation of debtor under Securities Investor Protection Act of 1970 (SIPA), as amended, were sustained but to extent purchaser did not fully satisfy debtor's obligation, claims were allowed, in part as general unsecured claims and in part as priority claims. [In re Lehman Bros., Inc., 541 B.R. 45, 2015 Bankr. LEXIS 3422 \(Bankr. S.D.N.Y. 2015\), aff'd in part and rev'd in part, remanded, 554 B.R. 626, 2016 U.S. Dist. LEXIS 87852 \(S.D.N.Y. 2016\), aff'd in part and rev'd in part, remanded, 2016 U.S. Dist. LEXIS 104500 \(S.D.N.Y. July 6, 2016\).](#)

Unpublished decision: Court granted liquidation trustee's motion to assume and assign unexpired sublease pursuant to [15 USCS § 78fff\(a\)\(4\)](#), and pursuant to [11 USCS § 365](#), as made applicable by [15 USCS §§ 78fff\(b\)](#) and [78fff-1\(a\)](#), as original lessee and sublessee received adequate assurance of future performance as required by [11 USCS § 365\(f\)](#), and trustee appropriately exercised business judgment. [In re MF Global Inc., 2011 Bankr. LEXIS 5101 \(Bankr. S.D.N.Y. Dec. 20, 2011\).](#)

4. Date of commencement of liquidation

By virtue of [15 USCS § 78fff\(b\)](#) of Securities Investors Protection Act (SIPA), when applying provisions of Bankruptcy Code in SIPA liquidation, references to date of filing of bankruptcy petition are deemed to be references to filing date of SEC application for customer protective decree in District Court and therefore date of filing of SEC complaint determines whether trustee should proceed under [11 USCS § 547](#) or [§ 549](#) to avoid transfer of customer's property to customer as either avoidable prepetition or postpetition transfer. [Hill v. Spencer S&L Ass'n \(In re Bevill, Bresler & Schulman, Inc.\), 83 B.R. 880, 1988 U.S. Dist. LEXIS 1951 \(D.N.J. 1988\).](#)

Court upheld bankruptcy trustee's determination that, with respect to funds that were transferred to promissory notes, claimants were not "customers" as of time of filing of liquidation proceeding within meaning of Securities Investor Protection Act of 1970, [15 USCS §§ 78aaa](#) et seq.; fact that funds were originally deposited with debtors for purchase of securities did not change fact that as of filing date, claimants held promissory notes, not securities. [In re New Times Secs. Servs., 318 B.R. 753, 44 Bankr. Ct. Dec. \(LRP\) 40, 2004 Bankr. LEXIS 2125 \(Bankr. E.D.N.Y. 2004\).](#)

Date of commencement of liquidation proceedings under [15 USCS § 78fff](#), is filing date. SEC v John E. Samuel & Co. (SD NY 1973).

5. Miscellaneous

Securities Investor Protection Act did not change rule that assets targeted by fraudulent conveyance action did not become property of bankruptcy debtor's estate until trustee obtained favorable judgment, so trustee could not show that impact of settlements of third-party litigation on trustee's fraudulent conveyance actions would be "immediate"

so as to warrant injunctive relief. *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 59 Bankr. Ct. Dec. (LRP) 247, Bankr. L. Rep. (CCH) ¶ 82679, 72 Collier Bankr. Cas. 2d (MB) 87, 2014 U.S. App. LEXIS 15274 (2d Cir. 2014).

Trustee was properly granted summary judgment in his action to recover transfers of fictitious profits that customers received from debtor brokerage in excess of their principal investments pursuant to fraudulent transfer provisions of Bankruptcy Code because to extent [11 USCS § 548\(c\)](#) applied in liquidation under Securities Investor Protection Act, transfers were not “for value” for purposes of that provision, and recovery would not violate two-year limitation. *Picard v. Gettinger (In re Bernard L. Madoff Inv. Sec. LLC)*, 976 F.3d 184, 69 Bankr. Ct. Dec. (LRP) 77, Bankr. L. Rep. (CCH) ¶ 83572, 2020 U.S. App. LEXIS 30464 (2d Cir. 2020), cert. denied, 141 S. Ct. 2603, 209 L. Ed. 2d 736, 2021 U.S. LEXIS 2261 (2021).

In claim by investors in limited real estate syndication partnership objecting to trustee’s disallowance of their claims in bankruptcy, claimants received their limited partnership interests and therefore broker-dealer did not receive, acquire, or hold securities owned by them at time of alleged misappropriation of funds, where title to investment properties was officially held by limited partnership at time of alleged misappropriation; therefore, allegation that general partner failed to meet payment to seller of partnership property states claim of misrepresentation against general partner and does not state claim of preferred status customer claim under [15 USCS § 78aaa](#). *Securities Investor Protection Corp. v. I.E.S. Management Group, Inc.*, 612 F. Supp. 1172, Fed. Sec. L. Rep. (CCH) ¶ 92500, 1985 U.S. Dist. LEXIS 17964 (D.N.J. 1985), aff’d, 791 F.2d 921, 1986 U.S. App. LEXIS 25518 (3d Cir. 1986), aff’d, 791 F.2d 921 (3d Cir. 1986).

Shareholders received money market fund (MMF) share purchase confirmations and monthly account statements, which gave shareholders legitimate expectations that they held securities in their accounts; consequently, shareholders’ objections to Securities Investor Protection Corporation (SIPC) trustee’s claims determinations were sustained under [15 USCS § 78fff-3\(a\)-\(a\)\(1\)](#), and shareholders were entitled to have SIPC satisfy their dividend reinvestment claims as well. *SEC v. Goren*, 206 F. Supp. 2d 344, 2002 U.S. Dist. LEXIS 11103 (E.D.N.Y. 2002).

Where Securities Investor Protection Corporation (SIPC) trustee has no customer name securities to deliver and cannot purchase securities of same class and series of issuer with which to satisfy shareholders’ claims, SIPC trustee must satisfy shareholders’ net equity claims with cash based on number and value of money market fund shares. *SEC v. Goren*, 206 F. Supp. 2d 344, 2002 U.S. Dist. LEXIS 11103 (E.D.N.Y. 2002).

Under Securities Investor Protection Act of 1970 liquidation, where creditor had posted cash collateral with debtor broker-dealer in exchange for loaned securities, debtor’s commingled cash was not subject to constructive trust; all of debtor’s cash was property of estate under [11 USCS § 541](#), was customer property as defined by [15 USCS § 78III\(4\)](#), and creditor’s security interest could be avoided by trustee under [11 USCS § 544\(a\)](#), which was applicable to bankruptcy case under [15 USCS § 78fff\(b\)](#). *Ferris, Baker, Watts, Inc. v. Stephenson (In re MJK Clearing)*, 286 B.R. 109, 49 U.C.C. Rep. Serv. 2d (CBC) 11, 2002 Bankr. LEXIS 1618 (Bankr. D. Minn. 2002), aff’d, [49 Collier Bankr. Cas. 2d \(MB\) 1722, 2003 U.S. Dist. LEXIS 5954 \(D. Minn. 2003\)](#).

Because advances to bankrupt partnership’s customers were made by Securities Investor Protection Corporation during direct payment proceeding, customers were entitled to full effect in subsequent liquidation and partner was precluded from challenging amount of those claims. *Sec. Investor Prot. Corp. v. Murphy (In re Selheimer & Co.)*, 319 B.R. 395, 53 Collier Bankr. Cas. 2d (MB) 1097, 2005 Bankr. LEXIS 194 (Bankr. E.D. Pa. 2005).

With respect to what was likely largest and most expedited sale of assets in bankruptcy history, sale of debtor’s large investment banking business to buyer under [11 USCS § 363](#) during height of financial crisis of 2008, clarification letter was binding and enforceable agreement even though it was not completed and executed until after entry of Sale Order and parties did not return to bankruptcy court to obtain specific approval of various changes to transaction reflected in clarification letter; interpreting relevant provisions of clarification letter in light of evidence concerning negotiating and drafting of this agreement and record of Sale Hearing, buyer was not entitled to compel delivery of assets in relation to reserves required by [15 USCS § 78fff\(a\)\(1\)\(B\)](#) and [17 CFR § 240.15c3-3](#) based on conditional language used in clarification letter or margin assets related to exchange traded derivatives,

but was entitled to delivery of Clearance Box Assets. [*In re Lehman Bros. Holdings, 445 B.R. 143, 2011 Bankr. LEXIS 539 \(Bankr. S.D.N.Y. 2011\)*](#), aff'd in part and rev'd in part, [*473 B.R. 34, 2012 U.S. Dist. LEXIS 78293 \(S.D.N.Y. 2012\)*](#), aff'd in part and rev'd in part, [*478 B.R. 570, 2012 U.S. Dist. LEXIS 158022 \(S.D.N.Y. 2012\)*](#).

Record supported entry of order approving motions filed by trustee who was appointed to conduct liquidation under Securities Investor Protection Act of assets that belonged to brokerage firm that was in Chapter 11 bankruptcy, and business that was acting as plan administrator for firm's bankruptcy estate, which proposed to sell firm's assets to plan administrator in exchange for waiver by administrator of future distributions on over \$1.16 billion in unsecured claims; trustee had power under 11 USCS § 363 to sell firm's assets, and to abandon assets that were of inconsequential value under [11 USCS § 554](#), and sale allowed trustee to make final, cumulative distribution of 94% on all other non-subordinated allowed unsecured claims. [*In re MF Global Ltd., 535 B.R. 596, 61 Bankr. Ct. Dec. \(LRP\) 128, 2015 Bankr. LEXIS 2760 \(Bankr. S.D.N.Y. 2015\)*](#).

Although lack of diligence does not defeat claim under Securities Investor Protection Act, willful ignorance on claimant's part in face of clear indications that investment scheme is suspect may preclude finding that claimant intended to purchases "securities" covered by Act. [*Focht v. Heebner \(In re Old Naples Sec., Inc.\), 223 F.3d 1296, 13 Fla. L. Weekly Fed. C 1033, 36 Bankr. Ct. Dec. \(LRP\) 172, Fed. Sec. L. Rep. \(CCH\) ¶ 91052, 2000 U.S. App. LEXIS 21280 \(11th Cir. 2000\)*](#).

Trustee who was appointed under Securities Investor Protection Act to liquidate assets that belonged to securities business stated valid claims seeking recovery under [11 USCS §§ 544, 547, 548, 550, and 551](#) and *N.Y. Debt. & Cred. Law* § 276 of over \$198 million that business paid to brother, sons, and niece of person who was convicted of operating business as Ponzi scheme, by alleging that brother, sons, and niece breached their fiduciary duties as employees of business when they did not discover and report fact that business was Ponzi scheme and accepted millions of dollars from business; although some of claims trustee filed did not meet pleading requirements of [Fed. R. Civ. P. 8](#) and [9\(b\)](#), court found that those claims could be pled in manner that stated valid claims for relief, and it allowed trustee to file amended complaint. [*Picard v. Madoff \(In re Bernard L. Madoff Inv. Sec. LLC\), 458 B.R. 87, 55 Bankr. Ct. Dec. \(LRP\) 139, 2011 Bankr. LEXIS 3578 \(Bankr. S.D.N.Y. 2011\)*](#), adversary proceeding, dismissed, [*2021 Bankr. LEXIS 2101 \(Bankr. S.D.N.Y. Aug. 6, 2021\)*](#).

On reconsideration in liquidation action under Securities Investor Protection Act, private trust's customer claim was disallowed because its claim was based on balance shown on its final monthly statement prior to arrest of Ponzi scheme principal and consisted entirely of entirely fictitious entries showing trust had zero net equity. [*Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC, 2019 Bankr. LEXIS 2365 \(Bankr. S.D.N.Y. July 25, 2019\)*](#).

Securities Investor Protection Act (SIPA) trustee established that there was no genuine disputed issue of fact that debtor's LLC was Ponzi scheme and that it transferred its interest in \$174 million to or for benefit of transferee in furtherance of Ponzi scheme within two years of filing date and thus, trustee was entitled to rely on Ponzi scheme presumption and established as matter of law that two-year transfers were made with actual intent to defraud. However, court could not determine as matter of law date when Ponzi scheme began and thus, actual balance transferred was genuine issue of disputed fact. [*Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC, 603 B.R. 682, 2019 Bankr. LEXIS 1874 \(Bankr. S.D.N.Y. 2019\)*](#).

Research References & Practice Aids

Cross References:

This section is referred to in [15 USCS §§ 78fff-2, 78III](#).

Code of Federal Regulations:

Securities and Exchange Commission—Rules of the Securities Investor Protection Corporation, [17 CFR 300.100](#) et seq.

Am Jur:

69 Am Jur 2d, Securities Regulation—Federal §§ 839, 844, 858.

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Golumbic; Adams. The “Dominant Influence” Test: The FCPA’s “Instrumentality” and “Foreign Official” Requirements and the Investment Activity of Sovereign Wealth Funds. [39 Am J Crim L 1, Fall 2011](#).

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The Securities Investor Protection Act of 1970: An Early Assessment. 73 Colum L Rev 802, 1973.

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Dobbs; Anderson. Bankruptcy Law Changes Will Affect Business Cases Too: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. 11 Ga Bar J 32, October 2005.

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Bankruptcy:

6 Collier on Bankruptcy (Matthew Bender 16th ed.), ch 740, Overview of Stockbroker Liquidation Provisions ([Bankruptcy Code §§ 741–753](#)) ¶ 740.01.

[6 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 741, Definitions for This Subchapter ¶ 741.06](#).

[6 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 742, Effect of Section 362 of this Title in this Subchapter ¶ 742.01](#).

[6 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 744, Executory Contracts ¶ 744.01](#).

[6 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 746, Extent of Customer Claims ¶ 746.01](#).

[6 Collier on Bankruptcy \(Matthew Bender 16th ed.\), ch 752, Customer Property ¶¶ 752.01, 752.02](#).

Annotations:

Judicial Estoppel of Subsequent Action Based on Statements, Positions, or Omissions as to Claim or Interest in Bankruptcy Proceeding. 85 ALR5th 353.

Validity, construction, and application of Securities Investor Protection Act of 1970 ([15 USCS §§ 78aaa](#) et seq.). 23 ALR Fed 157.

Hierarchy Notes:

[15 USCS, Ch. 2B-1](#)

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12 USCS § 1821

Current through Public Law 118-106, approved October 4, 2024.

United States Code Service > TITLE 12. BANKS AND BANKING (Chs. 1 — 55) > CHAPTER 16. FEDERAL DEPOSIT INSURANCE CORPORATION (§§ 1811 — 1835a)

§ 1821. Insurance Funds

(a) Deposit insurance.

(1) Insured amounts payable.

(A) In general. The Corporation shall insure the deposits of all insured depository institutions as provided in this Act [[12 USCS §§ 1811](#) et seq.].

(B) Net amount of insured deposit. The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(C) Aggregation of deposits. For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 7(i) [[12 USCS § 1817\(i\)\(1\)](#) or (2)] or any funds described in section 7(i)(3) [[12 USCS § 1817\(i\)\(3\)](#)].

(D) Coverage for certain employee benefit plan deposits.

(i) Pass-through insurance. The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) Prohibition on acceptance of benefit plan deposits. An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) Definitions. For purposes of this subparagraph, the following definitions shall apply:

(I) Capital standards. The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 38 [[12 USCS § 18310](#)].

(II) Employee benefit plan. The term “employee benefit plan” has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in [section 457 of the Internal Revenue Code of 1986](#) [[26 USCS § 457](#)].

(III) Pass-through deposit insurance. The term “pass-through deposit insurance” means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

(E) Standard maximum deposit insurance amount defined. For purposes of this Act [[12 USCS §§ 1811](#) et seq.], the term “standard maximum deposit insurance amount” means \$250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of

law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) Inflation adjustment.

(i) In general. By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act [[12 USCS § 1787\(k\)](#)]) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) \$100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005 [effective Oct. 12, 2006]. The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) Rounding. If the amount determined under clause (ii) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(iii) Publication and report to the Congress. Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act [[12 USCS § 1787\(k\)\(3\)](#)], as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-month implementation period. Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) Inflation adjustment consideration. In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

- (I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;
- (II) potential problems affecting insured depository institutions; or
- (III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) Government depositors.

(A) In general. Notwithstanding any limitation in this Act [[12 USCS §§ 1811](#) et seq.] or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

- (i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and
- (ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) Government depositor. In this paragraph, the term “government depositor” means a depositor that is—

- (i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;
- (ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;
- (iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;
- (iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or
- (v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974 [[25 USCS § 1452\(c\)](#)]) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) Authority to limit deposits. The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank [depository institution] in terms of its assets: *Provided, however,* such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) Certain retirement accounts.

(A) In general. Notwithstanding any limitation in this Act [[12 USCS §§ 1811](#) et seq.] relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

- (i) any individual retirement account described in [section 408\(a\) of the Internal Revenue Code of 1986 \[26 USCS § 408\(a\)\]](#);
- (ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code [[26 USCS § 457](#)]; and
- (iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act [[29 USCS § 1002\(34\)](#)], and any plan described in [section 401\(d\) of the Internal Revenue Code of 1986 \[26 USCS § 401\(d\)\]](#), to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed \$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) Amounts taken into account. For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Deposit Insurance Fund.

(A) Establishment. There is established the Deposit Insurance Fund, which the Corporation shall—

- (i) maintain and administer;
- (ii) use to carry out its insurance purposes, in the manner provided by this subsection; and
- (iii) invest in accordance with section 13(a) [[12 USCS § 1823\(a\)](#)].

(B) Uses. The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) Limitation on use. Notwithstanding any provision of law other than section 13(c)(4)(G) [[12 USCS § 1823\(c\)\(4\)\(G\)](#)], the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

- (i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;
- (ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or
- (iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 [[12 USCS § 1823](#)] with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B) [[12 USCS § 1823\(f\)\(8\)\(B\)](#)]) another insured depository institution.

(D) Deposits. All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) Certain investment contracts not treated as insured deposits.

(A) In general. A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) Definitions. For purposes of subparagraph (A)—

(i) Benefit-responsive withdrawals or transfers. The term "benefit-responsive withdrawals or transfers" means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) Employee benefit plan. The term "employee benefit plan"—

(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 [[29 USCS § 1002\(3\)](#)]; and

(II) includes any plan described in [*section 401\(d\) of the Internal Revenue Code of 1986*](#) [[26 USCS § 401\(d\)](#)].

(b) **Liquidation as closing of depository institution.** For the purposes of this Act [[12 USCS §§ 1811](#) et seq.] an insured depository institution shall be deemed to have been closed on account or inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) **Appointment of Corporation as conservator or receiver.**

(1) In general. Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) Federal depository institutions.

(A) Appointment.

(i) Conservator. The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) Receiver. The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) Additional powers. In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) Corporation not subject to any other agency. When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision.

Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) Insured State depository institutions.

(A) Appointment by appropriate State supervisor. Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) Additional powers. In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) Corporation not subject to any other agency. When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision. Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) Appointment of Corporation by the Corporation. Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

- (i)** that—
 - (I)** a conservator, receiver, or other legal custodian has been appointed for such institution;
 - (II)** such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and
 - (III)** 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or
- (ii)** that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

- (i)** existed with respect to such institution at the time—
 - (I)** the conservator, receiver, or other legal custodian was appointed; or
 - (II)** such institution was closed; or
- (ii)** exist at any time—
 - (I)** during the appointment of the conservator, receiver, or other legal custodian; or
 - (II)** while such institution is closed.

(5) Grounds for appointing conservator or receiver. The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) Assets insufficient for obligations. The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) Substantial dissipation. Substantial dissipation of assets or earnings due to—

- (i)** any violation of any statute or regulation; or
- (ii)** any unsafe or unsound practice.

(C) Unsafe or unsound condition. An unsafe or unsound condition to transact business.

(D) Cease and desist orders. Any willful violation of a cease-and-desist order which has become final.

(E) Concealment. Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) Inability to meet obligations. The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) Losses. The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 38(b)) [[12 USCS § 1831o\(b\)](#)] without Federal assistance.

(H) Violations of law. Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) Consent. The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) Cessation of insured status. The institution ceases to be an insured institution.

(K) Undercapitalization. The institution is undercapitalized (as defined in section 38(b) [[12 USCS § 1831o\(b\)](#)]), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 38(f)(2)(A) [[12 USCS § 1831o\(f\)\(2\)\(A\)](#)];

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 38(e)(2)(D) [[12 USCS § 1831o\(e\)\(2\)\(D\)](#)]; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 38(e)(2) [[12 USCS § 1831o\(e\)\(2\)](#)].

(L) The institution—

(i) is critically undercapitalized, as defined in section 38(b) [[12 USCS § 1831o\(b\)](#)]; or

(ii) otherwise has substantially insufficient capital.

(M) Money laundering offense. The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under [section 1956](#) or [1957](#) of title 18, United States Code, or [section 5322](#) or [5324](#) of title 31, United States Code.

(6) Appointment by Comptroller of the Currency.

(A) Conservator. The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) Receiver. The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) Judicial review. If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an

action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) Replacement of conservator of State depository institution.

(A) In general. In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) Replacement treated as removal of incumbent. The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) Right of review of original appointment not affected. The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) Appropriate Federal banking agency may appoint corporation as conservator or receiver for insured state depository institution to carry out section 38 [12 USCS § 1831o].

(A) In general. The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38 [12 USCS § 1831o].

(B) Nondelegation. The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) Corporation may appoint itself as conservator or receiver for insured depository institution to prevent loss to Deposit Insurance Fund. The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) Appropriate federal banking agency shall not appoint conservator under certain provisions without giving corporation opportunity to appoint receiver. The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) Directors not liable for acquiescing in appointment of conservator or receiver. The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

- (A) the appointment of the Corporation as conservator or receiver for that institution; or
- (B) an acquisition or combination under section 38(f)(2)(A)(iii) [[12 USCS § 1831o\(f\)\(2\)\(A\)\(iii\)](#)].

(13) Additional powers. In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

- (A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and
- (B) the Corporation as receiver of the institution may—
 - (i) liquidate the institution in an orderly manner; and
 - (ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) Powers and duties of Corporation as conservator or receiver.

- (1) Rulemaking authority of Corporation. The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.
- (2) General powers.
 - (A) Successor to institution. The Corporation shall, as conservator or receiver, and by operation of law, succeed to—
 - (i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, account holder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and
 - (ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.
 - (B) Operate the institution. The Corporation may (subject to the provisions of section 40 [[12 USCS § 1831q](#)]), as conservator or receiver—
 - (i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;
 - (ii) collect all obligations and money due the institution;
 - (iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and
 - (iv) preserve and conserve the assets and property of such institution.
 - (C) Functions of institution's officers, directors, and shareholders. The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.
 - (D) Powers as conservator. The Corporation may, as conservator, take such action as may be—
 - (i) necessary to put the insured depository institution in a sound and solvent condition; and
 - (ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.
 - (E) Additional powers as receiver. The Corporation may (subject to the provisions of section 40 [[12 USCS § 1831q](#)]), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) Organization of new institutions. The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

(G) Merger; transfer of assets and liabilities.

(i) In general. The Corporation may, as conservator or receiver—

- (I)** merge the insured depository institution with another insured depository institution; or
- (II)** subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) Approval by appropriate Federal banking agency. No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

(H) Payment of valid obligations. The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act [[12 USCS §§ 1811 et seq.](#)].

(I) Subpoena authority.

(i) In general. The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 8(n) [[12 USCS § 1818\(n\)](#)], and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of board of directors. A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) Rule of construction. This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act [[12 USCS § 1820\(c\)](#)].

(J) Incidental powers. The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act [[12 USCS §§ 1811 et seq.](#)] and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act [[12 USCS §§ 1811 et seq.](#)], which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) Utilization of private sector. In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) Authority of receiver to determine claims.

- (A)** In general. The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).
- (B)** Notice requirements. The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—
- (i)** promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and
 - (ii)** republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).
- (C)** Mailing required. The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—
- (i)** at the creditor's last address appearing in such books; or
 - (ii)** upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.
- (4)** Rulemaking authority relating to determination of claims.
- (A)** In general. The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.
- (B)** Final settlement payment procedure.
- (i)** In general. In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.
 - (ii)** Final settlement payment. For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and
 - (iii)** Final settlement payment rate. For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.
 - (iv)** Corporation authority. The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.
- (5)** Procedures for determination of claims.
- (A)** Determination period.
- (i)** In general. Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

- (ii) Extension of time. The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.
 - (iii) Mailing of notice sufficient. The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—
 - (I) on the depository institution's books;
 - (II) in the claim filed by the claimant; or
 - (III) in documents submitted in proof of the claim.
 - (iv) Contents of notice of disallowance. If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—
 - (I) a statement of each reason for the disallowance; and
 - (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.
- (B)** Allowance of proven claims. The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.
- (C)** Disallowance of claims filed after end of filing period.
- (i) In general. Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.
 - (ii) Certain exceptions. Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—
 - (I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and
 - (II) such claim is filed in time to permit payment of such claim.
- (D)** Authority to disallow claims.
- (i) In general. The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.
 - (ii) Payments to less than fully secured creditors. In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—
 - (I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and
 - (II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the institution.
 - (iii) Exceptions. No provision of this paragraph shall apply with respect to—
 - (I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or
 - (II) any security interest in the assets of the institution securing any such extension of credit.
- (E)** No judicial review of determination pursuant to subparagraph (D). No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing.

(i) Statute of limitation tolled. For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions. Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for agency review or judicial determination of claims.

(A) In general. Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations. If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims.

(A) Administrative hearing. If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code [[5 USCS §§ 701](#) et seq.].

(B) Other review procedures.

(i) In general. The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria. In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures. The Corporation may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) Consideration of incentives. The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims.

- (A)** Establishment required. The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—
- (i)** allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and
 - (ii)** allege that irreparable injury will occur if the routine claims procedure is followed.
- (B)** Determination period. Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—
- (i)** determine—
 - (I)** whether to allow or disallow such claim; or
 - (II)** whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and
 - (ii)** notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.
- (C)** Period for filing or renewing suit. Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—
- (i)** the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or
 - (ii)** the date the Corporation denies the claim.
- (D)** Statute of limitations. If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.
- (E)** Legal effect of filing.
- (i)** Statute of limitation tolled. For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.
 - (ii)** No prejudice to other actions. Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.
- (9)** Agreement as basis of claim.
- (A)** Requirements. Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) [[12 USCS § 1823\(e\)](#)] shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.
- (B)** Exception to contemporaneous execution requirement. Notwithstanding section 13(e)(2) [[12 USCS § 1823\(e\)\(2\)](#)], any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).
- (10)** Payment of claims.

(A) In general. The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act [[12 USCS §§ 1811 et seq.](#)].

(B) Payment of dividends on claims. The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of corporation. The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) Depositor preference.

(A) In general. Subject to section 5(e)(2)(C) [[12 USCS § 1815\(e\)\(2\)\(C\)](#)], amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

- (i)** Administrative expenses of the receiver.
- (ii)** Any deposit liability of the institution.
- (iii)** Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).
- (iv)** Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).
- (v)** Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) Effect on State law.

- (i)** In general. The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.
- (ii)** Procedure for determination of inconsistency. Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.
- (iii)** Judicial review. The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code [[5 USCS §§ 701 et seq.](#)].

(C) Accounting report. Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) Suspension of legal actions.

(A) In general. After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such institution is or becomes a party.

(B) Grant of stay by all courts required. Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties.

(A) Prior final adjudication. The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) Rights and remedies of conservator or receiver. In the event of any appealable judgment, the Corporation as conservator or receiver shall—

- (i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

- (ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution. No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) Limitation on judicial review. Except as otherwise provided in this subsection, no court shall have jurisdiction over—

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

- (ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) Disposition of assets. In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 13(d)(1) [[12 USCS § 1823\(d\)\(1\)](#)], the Corporation shall conduct its operations in a manner which—

- (i) maximizes the net present value return from the sale or disposition of such assets;
- (ii) minimizes the amount of any loss realized in the resolution of cases;
- (iii) ensures adequate competition and fair and consistent treatment of offerors;
- (iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and
- (v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(14) Statute of limitations for actions brought by conservator or receiver.

(A) In general. Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

- (i) in the case of any contract claim, the longer of—

- (I) the 6-year period beginning on the date the claim accrues; or

- (II) the period applicable under State law; and
- (ii) in the case of any tort claim (other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act) [former [12 USCS § 1441a\(b\)\(14\)](#)], the longer of—
 - (I) the 3-year period beginning on the date the claim accrues; or
 - (II) the period applicable under State law.
- (B) Determination of the date on which a claim accrues. For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—
 - (i) the date of the appointment of the Corporation as conservator or receiver; or
 - (ii) the date on which the cause of action accrues.
- (C) Revival of expired State causes of action.
 - (i) In general. In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.
 - (ii) Claims described. A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.
- (15) Accounting and recordkeeping requirements.
 - (A) In general. The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.
 - (B) Annual accounting or report. With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.
 - (C) Availability of reports. Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.
 - (D) Recordkeeping requirement.
 - (i) In general. Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.
 - (ii) Old records. Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).
- (16) Contracts with State housing finance authorities.
 - (A) In general. The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [[12 USCS § 1441a-1](#)]) of any

depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) Factors to consider. In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

- (i)** the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;
- (ii)** the State housing finance authority's ability to further national housing policies;
- (iii)** the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;
- (iv)** the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;
- (v)** the minimization of future guaranties which may be required of the Federal Government;
- (vi)** the maximization of mortgage related asset values; and
- (vii)** the utilization of institutions currently established in mortgage related asset market activities.

(17) Fraudulent transfers.

(A) In general. The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) Right of recovery. To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i)** the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or
- (ii)** any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee. The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

- (i)** any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii)** any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph. The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(18) Attachment of assets and other injunctive relief. Subject to paragraph (19), any court of competent jurisdiction may, at the request of —

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired

or liability assumed by the Corporation under section 11, 12, or 13 [[12 USCS § 1821, 1822, or 1823](#)]); or

(B) any conservator appointed by the Comptroller of the Currency,

issue an order in accordance with [Rule 65 of the Federal Rules of Civil Procedure](#) [USCS Court Rules, Rules of Civil Procedure, Rule 65], including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) Standards.

(A) Showing. [Rule 65 of the Federal Rules of Civil Procedure](#) [USCS Court Rules, Rules of Civil Procedure, Rule 65] shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding. If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) Treatment of claims arising from breach of contracts executed by the receiver or conservator. Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) Provisions relating to contracts entered into before appointment of conservator or receiver.

(1) Authority to repudiate contracts. In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) Timing of repudiation. The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation.

(A) In general. Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages. For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

- (i) punitive or exemplary damages;
- (ii) damages for lost profits or opportunity; or
- (iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts. In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

- (i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and
- (ii) paid in accordance with this subsection and subsection (i) except as otherwise specifically provided in this section.

(4) Leases under which the institution is the lessee.

(A) In general. If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent. Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

- (i) be entitled to the contractual rent accruing before the later of the date—
 - (I) the notice of disaffirmance or repudiation is mailed; or
 - (II) the disaffirmance or repudiation becomes effective,unless the lessor is in default or breach of the terms of the lease;
- (ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and
- (iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i).

(5) Leases under which the institution is the lessor.

(A) In general. If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

- (i) treat the lease as terminated by such repudiation; or
- (ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession. If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

- (i) the lessee—
 - (I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property.

(A) In general. If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e) [[12 USCS § 1823\(e\)](#)]) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession. If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

- (I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
- (II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

- (I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);
- (II) deliver title to the purchaser in accordance with the provisions of the contract; and
- (III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed.

(i) In general. No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale. If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts.

(A) Services performed before appointment. In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

- (i) a claim to be paid in accordance with subsections (d) and (i); and
- (ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation. If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

- (i)** the other party shall be paid under the terms of the contract for the services performed; and
- (ii)** the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation. The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts.

(A) Rights of parties to contracts. Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this Act [[12 USCS §§ 1811](#) et seq.] (other than subsection (d)(9) of this section and section 13(e) [[12 USCS § 1823\(e\)](#)]), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

- (i)** any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;
- (ii)** any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); [or]
- (iii)** any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions. Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) Certain transfers not avoidable.

(i) In general. Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States [[12 USCS § 91](#)] or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) Exception for certain transfers. Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) Certain contracts and agreements defined. For purposes of this subsection, the following definitions shall apply:

(i) Qualified financial contract. The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and

any similar agreement that the Corporation determines by regulation, resolution or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract. The term "securities contract"—

- (I)** means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v));
- (II)** does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;
- (III)** means any option entered into on a national securities exchange relating to foreign currencies;
- (IV)** means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));
- (V)** means any margin loan;
- (VI)** means any extension of credit for the clearance or settlement of securities transactions;
- (VII)** means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;
- (VIII)** means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;
- (IX)** means any combination of the agreements or transactions referred to in this clause;
- (X)** means any option to enter into any agreement or transaction referred to in this clause;
- (XI)** means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and
- (XII)** means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract. The term “commodity contract” means—

- (I)** with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;
- (II)** with respect to a foreign futures commission merchant, a foreign future;
- (III)** with respect to a leverage transaction merchant, a leverage transaction;
- (IV)** with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;
- (V)** with respect to a commodity options dealer, a commodity option;
- (VI)** any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;
- (VII)** any combination of the agreements or transactions referred to in this clause;
- (VIII)** any option to enter into any agreement or transaction referred to in this clause;
- (IX)** a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or
- (X)** any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract. The term “forward contract” means—

- (I)** a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including[,] a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;
- (II)** any combination of agreements or transactions referred to in subclauses (I) and (III);
- (III)** any option to enter into any agreement or transaction referred to in subclause (I) or (II);
- (IV)** a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

- (V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.
- (v) Repurchase agreement. The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—
- (I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934 [[15 USCS §§ 78a](#) et seq.]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;
- (II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;
- (III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);
- (IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);
- (V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and
- (VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.
- For purposes of this clause, the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).
- (vi) Swap agreement. The term “swap agreement” means—
- (I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or

credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

- (II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
- (III) any combination of agreements or transactions referred to in this clause;
- (IV) any option to enter into any agreement or transaction referred to in this clause;
- (V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and
- (VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [[7 USCS §§ 27](#) et seq.], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [[15 USCS § 78c\(a\)\(47\)](#)]) and the Commodity Exchange Act [[7 USCS §§ 1](#) et seq.].

- (vii) Treatment of master agreement as one agreement. Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.
- (viii) Transfer. The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.
- (ix) Person. The term "person" includes any governmental entity in addition to any entity included in the definition of such term in [section 1 of title 1, United States Code](#).

(E) Certain protections in event of appointment of conservator. Notwithstanding any other provision of this Act [[12 USCS §§ 1811 et seq.](#)] (other than subsections (d)(9) and (e)(10) of this section, and section 13(e) of this Act [[12 USCS § 1323\(e\)](#)]), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

- (i)** any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;
- (ii)** any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); [or]
- (iii)** any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification. No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

(G) Walkaway clauses not effective.

- (i)** In general. Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [[12 USCS §§ 4403](#) and [4404](#)], no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.
- (ii)** Limited suspension of certain obligations. In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—
 - (I)** the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or
 - (II)** 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.
- (iii)** Walkaway clause defined. For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements. The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32 [[12 USCS § 1831j](#)]).

(9) Transfer of qualified financial contracts.

(A) In general. In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution. In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization. In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions. For purposes of this paragraph, the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term "clearing organization" has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [[12 USCS § 4402](#)].

(10) Notification of transfer.

(A) In general. If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable.

(i) Receivership. A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [[12 USCS § 4403](#) or [4404](#)], solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship. A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [[12 USCS § 4403](#) or [4404](#)], solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) Notice. For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge depository institutions. The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

(D) "Business day" defined. For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts. In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable. No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) Authority to enforce contracts.

(A) In general. The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) Certain rights not affected. No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(C) Consent requirement.

(i) In general. Except as otherwise provided by this section or section 15 [[12 USCS § 1825](#)], no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) Certain exceptions. No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ([12 U.S.C. 4401](#) et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of construction. Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.

(14) Exception for Federal Reserve and Federal home loan banks. No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) Selling credit card accounts receivable.

(A) Notification required. An undercapitalized insured depository institution (as defined in section 38 [[12 USCS § 1831o](#)]) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) Waiver by corporation. The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) Effect of waiver on successors.

- (i) In general. If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—
 - (I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and
 - (II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.
- (ii) Exception. Clause (i)(II) does not—
 - (I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;
 - (II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or
 - (III) apply to any transaction in which the acquirer acquires only insured deposits.
- (D) Waiver not actionable. The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.
- (E) Other authority not affected. This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) Certain credit card customer lists protected.

- (A) In general. If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 13 [[12 USCS § 1823](#)] from using the list, except as permitted under the agreement.
- (B) Fraudulent transactions excluded. Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) Savings clause. The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [[7 USCS §§ 27](#) et seq.], the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [[15 USCS § 78c\(a\)\(47\)](#)]), and the Commodity Exchange Act [[7 USCS §§ 1](#) et seq.].

(f) Payment of insured deposits.

- (1) In general. In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.
- (2) Proof of claims. The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.
- (3) Resolution of disputes. A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the

Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) Review of corporation determination. A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code [[5 USCS §§ 701 et seq.](#)], by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) Statute of limitations. Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) Subrogation of Corporation.

(1) In general. Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 13 [[12 USCS § 1823](#)], shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) Dividends on subrogated amounts. The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) Waiver of certain claims. With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) Applicability of State law. Subject to subsection (d)(11), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) Conditions applicable to resolution proceedings.

(1) Consideration of local economic impact required. The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) Actions to alleviate adverse economic impact to be considered. The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) Guidelines required. The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) Financial services industry impact analysis. After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 13 [[12 USCS § 1823](#)] in connection with the resolution of such institution, the Corporation shall—

- (A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and
- (B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) Valuation of claims in default.

(1) In general. Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c) [[12 USCS § 1823\(c\)](#)], this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) Maximum liability. The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13 [[12 USCS § 1823](#)].

(3) Additional payments authorized.

(A) In general. The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment. The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) Limitation on court action. Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) Liability of directors and officers. A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

- (1) acting as conservator or receiver of such institution,
- (2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or
- (3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13 [[12 USCS § 1823](#)],

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(l) Damages. In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the

imprudent or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) New depository institutions.

- (1)** Organization authorized. As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.
- (2)** Articles of association. The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.
- (3)** Capital stock. No capital stock need be paid in by the Corporation.
- (4)** Executive officer. The new depository institution shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.
- (5)** Subject to laws relating to national banks. In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.
- (6)** New deposits. The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.
- (7)** Insured status. The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.
- (8)** Investments. Funds of the new depository institution shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.
- (9)** Conduct of business. The new depository institution, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this Act [[12 USCS §§ 1811 et seq.](#)] and as may be incidental to its organization.
- (10)** Exempt status. Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.
- (11)** Transfer of deposits.
 - (A)** Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.
 - (B)** Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

- (12) Earnings. Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.
- (13) Losses. If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.
- (14) Payment of insured deposits.
- (A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.
- (B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.
- (15) Issuance of stock.
- (A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.
- (B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.
- (16) Issuance of certificate. Upon proof that an adequate amount of capital stock in the new depository institution has been subscribed and paid for in cash, the Comptroller of the Currency, shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency, shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.
- (17) Transfer to other institution. If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.
- (18) Winding up. Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency[,] may require, and shall certify to the Comptroller of the Currency[,] the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.
- (19) Applicability of certain laws. The provisions of sections 5220 and 5221 of the Revised Statutes [[12 USCS §§ 181](#) and [182](#)] shall not apply to a new depository institution under this subsection.

(n) Bridge depository institutions.

(1) Organization.

(A) Purpose. When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured banks or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings associations, as applicable, subject to the provisions of this subsection, to be referred to as "bridge depository institutions".

(B) Authorities. Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

- (i)** assume such deposits of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;
- (ii)** assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;
- (iii)** purchase such assets (including assets associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and
- (iv)** perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act [[12 USCS §§ 1811 et seq.](#)].

(C) Articles of association. The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) Interim directors. A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) National bank or Federal savings association. A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) Chartering.

(A) Conditions. A national bank or Federal savings association may be chartered by the Comptroller of the Currency as a bridge depository institution only if the Board of Directors determines that—

- (i)** the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;
- (ii)** the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or
- (iii)** the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is in the

best interest of the depositors of such depository institution or institutions in default or in danger of default or the public.

(B) Insured national bank or Federal savings association. A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) Bridge bank treated as being in default for certain purposes. A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) Management. A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) Bylaws. The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

(3) Transfer of assets and liabilities.

(A) In general.

(i) Transfer upon grant of charter. Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) Subsequent transfers. At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) Treatment of trust business. For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) Effective without approval. The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) Intent of Congress regarding continuing operations. It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) Powers of bridge banks [depository institutions]. Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

- (i) remove the interim directors and directors of a bridge depository institution;
 - (ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge depository institution; and
 - (iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes [[12 USCS § 71](#), [72](#), [73](#), [74](#), or [75](#)] (relating to directors of national banks) or section 31 of the Banking Act of 1933 [[12 USCS § 71a](#)] which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);
- (B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;
- (C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;
- (D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;
- (E)
- (i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and
 - (ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;
- (F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;
- (G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;
- (H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;
- (I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—
- (i) is in writing,
 - (ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,
 - (iii) was approved by the board of directors of such insured depository institution in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and
 - (iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

- (J)** notwithstanding section 13(e)(2) [[12 USCS § 1823\(e\)\(2\)](#)], any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and
- (K)** except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) Capital.

- (A)** No capital required. The Corporation shall not be required to—
- (i)** issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or
 - (ii)** purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.
- (B)** Operating funds in lieu of capital. Upon the organization of a bridge depository institution, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.
- (C)** Authority to issue capital stock. Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.
- (D)** Capital levels. A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 10B(b) of the Federal Reserve Act [[12 USCS § 347b\(b\)](#)].

(6) No Federal status.

- (A)** Agency status. A bridge depository institution is not an agency, establishment, or instrumentality of the United States.
- (B)** Employee status. Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge depository institution are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge depository institution shall not—
- (i)** solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or
 - (ii)** receive any salary or benefits for service in any such capacity with respect to a bridge depository institution in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) Assistance authorized. The Corporation may, in its discretion, provide assistance under section 13(c) [[12 USCS § 1823\(c\)](#)] to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph

(10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) Acquisition.

(A) In general. The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 18(c) [[12 USCS § 1828\(c\)](#)] and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) By out-of-State holding company. Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the bridge depository institution at any time had assets aggregating \$500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner and to the same extent as such entity may acquire an insured depository institution in default under section 13(f)(2) [[12 USCS § 1823\(f\)\(2\)](#)].

(9) Duration of bridge depository institution. Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) Termination of bridge depository institution status. The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) Effect of termination events.

(A) Merger or consolidation. A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a

Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion. Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be,[.] with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Sale of stock. Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be,[.] with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) Assumption of liabilities and sale of assets. Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) Effect on holding companies. A depository institution holding company acquiring a bridge depository institution under section 13(f) [[12 USCS § 1823\(f\)](#)], paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f) [[12 USCS § 1823\(f\)](#)].

(F) Amendments to charter. Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) Dissolution of bridge depository institution.

(A) In general. Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) Procedures. The Comptroller of the Currency shall appoint the Corporation as receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) Multiple bridge depository institutions. Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(o) Supervisory records. In addition to the requirements of section 7(a)(2) [[12 USCS § 1817\(a\)\(2\)](#)] to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) Certain sales of assets prohibited.

(1) Persons who engaged in improper conduct with, or caused losses to, depository institutions. The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed \$1,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) Convicted debtors. Except as provided in paragraph (3), any person who—

(A) has been convicted of an offense under [section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343](#), or [1344](#) of title 18, United States Code, or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, the Deposit Insurance Fund, or the Corporation,

may not purchase any asset of such institution from the conservator or receiver.

(3) Settlement of claims. Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution or the Corporation.

(4) "Default" defined. For purposes of this subsection, the term "default" means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) Expedited procedures for certain claims.

(1) Time for filing notice of appeal. The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling. Consistent with section 1657 of title 18 [28], United States Code, a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) Judicial discretion. The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) Foreign investigations. The Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v) [[12 USCS § 1818\(v\)](#)]; and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) Prohibition on entering secrecy agreements and protective orders. The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) Agencies may share information without waiving privilege.

(1) In general. A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in [section 6 of title 18, United States Code](#)).

(2) Definitions. For purposes of this subsection:

(A) Covered agency. The term "covered agency" means any of the following:

(i) Any Federal banking agency.

(ii) The Farm Credit Administration.

(iii) The Farm Credit System Insurance Corporation.

(iv) The National Credit Union Administration.

(v) The General Accounting Office [Government Accountability Office].

(vi) The Bureau of Consumer Financial Protection.

(vii) [The] Federal Housing Finance Agency.

(B) Privilege. The term "privilege" includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) Rule of construction. Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) Purchase rights of tenants.

(1) Notice. Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) Preference. In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) Exceptions. Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 40(p) [[12 USCS § 1831q\(p\)](#)]); or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) Preference for sales for homeless families. Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p) [[12 USCS § 1831q\(p\)](#)]) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act [McKinney-Vento Homeless Assistance Act] [[42 USCS § 11302](#)]) or homeless families.

(w) Preferences for sales of certain commercial real properties.

(1) Authority. In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act [McKinney-Vento Homeless Assistance Act] [[42 USCS § 11302](#)]) or homeless families.

(2) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) Eligible commercial real property. The term "eligible commercial real property" means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) Nonprofit organization and public agency. The terms "nonprofit organization" and "public agency" have the same meanings as in section 40(p) [[12 USCS § 1831q](#)].

History

HISTORY:

Sept. 21, 1950, ch 967, § 2(11), [64 Stat. 884](#); Oct. 16, 1966, [P. L. 89-695](#), Title III, § 301(c), (d), [80 Stat. 1055](#); Dec. 23, 1969, [P. L. 91-151](#), Title I, § 7(a)(3), (4), [83 Stat. 375](#); Oct. 28, 1974, [P. L. 93-495](#), Title I, §§ 101(a)(3), 102(a)(3), (4), [88 Stat. 1500](#), 1502; Sept. 17, 1978, [P. L. 95-369](#), § 6(c)(17)–(22), [92 Stat. 619](#); Nov. 10, 1978, [P. L. 95-630](#), Title XIV, § 1401(a), [92 Stat. 3712](#); Dec. 21, 1979, [P. L. 96-153](#), Title III, § 323(a), [93 Stat. 1120](#); Mar 31, 1980, [P. L. 96-221](#), Title III, § 308(a)(1)(C), (D), [94 Stat. 147](#); Dec. 26, 1981, [P. L. 97-110](#), Title I, § 103(c), [95 Stat. 1514](#); Oct. 15, 1982, [P. L. 97-320](#), Title I, Part A, § 113(j), (k), [96 Stat. 1474](#); Aug. 10, 1987, [P. L. 100-86](#), Title V, §§ 503(a), 507, [101 Stat. 629](#), 634; Aug. 9, 1989, P. L. 101-73, Title II, §§ 201(a)(1), (b), 211-214, Title IX, Subtitle A, § 909, [103 Stat. 187](#), 188, 218, 477; Nov. 29, 1990, P. L. 101-647, Title XXV, Subtitle B, §§ 2521(a)(1), 2526(a), 2527(a), 2528(a), Subtitle C, §§ 2532(b), 2534(a), [104 Stat. 4863](#), 4875, 4877, 4880, 4882; Dec. 12, 1991, P. L. 102-233, Title I, § 102, Title II, § 202(a), (b), [105 Stat. 1761](#), 1766; Dec. 19, 1991, P. L. 102-242, Title I, Subtitle C, § 123(a), Subtitle D § 133(a), (e), Subtitle E, § 141(b), (d), Subtitle G, § 161(a), (e), Title II, Subtitle D, § 241(c)(1), Title III, Subtitle B, § 311(a)(1), (b)(1), (2), (5)(B), (C), Title IV, Subtitle C, § 416, Subtitle E, § 426, Subtitle H, § 446, [105 Stat. 2252](#), 2270, 2272, 2277, 2285, 2286, 2331, 2363, 2364, 2366, 2376, 2378, 2382; Oct. 28, 1992, P. L. 102-550, Title XV, Subtitle A, § 1501(a), Subtitle D, § 1544, Title XVI, Subtitle A, §§ 1603(e)(1), 1604(c)(2), 1606(c), Subtitle B, § 1611(b)(1), (2), [106 Stat. 4044](#), 4069, 4081, 4083, 4088, 4090; Aug. 10, 1993, P. L. 103-66, Title III, § 3001(a), (b), [107 Stat. 336](#); Dec. 17, 1993, P. L. 103-204, §§ 3(d), 4(b), 8(a)–(f), (i), 11, 15(b), 16(b), 17(b), 20, 27(b), 38(b), [107 Stat. 2379](#), 2380, 2384, 2388, 2390, 2399, 2400, 2401, 2404, 2410, 2416; Sept. 23, 1994, P. L. 103-325, Title III, § 325, Title IV, § 411(c)(2)(A), Title VI, § 602(a)(21)–(33), [108 Stat. 2228](#), 2253, 2289; Sept. 29, 1994, P. L. 103-328, Title II, § 201(a), [108 Stat. 2368](#); Oct. 22, 1994, P. L. 103-394, Title V, § 501(c)(2), [108 Stat. 4143](#); Sept. 30, 1996, P. L. 104-208, Div A, Title II, Subtitle F, § 2602, Subtitle G, §§ 2704(d)(1)–(4), (6)(C), (14)(H), (I), 2705, [110 Stat. 3009-469](#), 3009-487, 3009-488, 3009-492, 3009-495; Oct. 19, 1996, P. L. 104-316, Title I, § 106(i), [110 Stat. 3831](#); Nov. 12, 1999, P. L. 106-102, Title I, Subtitle B, § 117, Title VII, Subtitle C, § 736(a), (b)(2), [113 Stat. 1372](#), 1479; Dec. 27, 2000, P. L. 106-569, Title XII, Subtitle C, § 1222, [114 Stat. 3036](#); Oct. 30, 2004, P. L. 108-386, § 8(a)(4), [118 Stat. 2231](#); April 20, 2005, P. L. 109-8, Title IX, §§ 901(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), 902(a), 903(a), 904(a), 905(a), 908(a), [119 Stat. 146](#), 147, 149, 151, 152, 155, 157, 158, 159, 160, 165, 166, 183; Feb. 8, 2006, P. L. 109-171, Title II, Subtitle B, §§ 2102(b), 2103(a)–(c), [120 Stat. 9](#); Feb. 15, 2006, P. L. 109-173, §§ 2(a), (c)(1), 8(a)(11)–(14), [119 Stat. 3601](#), 3602, 3611; Oct. 13, 2006, P. L. 109-351, Title VII, §§ 701(b), 718(a), 721(a), 722(a), 724, [120 Stat. 1985](#), 1997, 1998, 1999, 2001; Dec. 12, 2006, P. L. 109-390, §§ 2(a)(1), (b)(1), (c)(1), 3(a), 6(a), [120 Stat. 2692](#), 2693, 2694, 2698; July 30, 2008, P. L. 110-289, Div A, Title I, Subtitle E, § 1161(i), Title VI, § 1604(a), (c), (d), [122 Stat. 2781](#), 2826, 2829; July 21, 2010, P. L. 111-203, Title III, Subtitle C, § 335(a), Subtitle D, § 343(a)(1), (3), Subtitle E, § 363(5), [124 Stat. 1540](#), 1544, 1552; Dec. 29, 2010, P. L. 111-343, § 1(a), [124 Stat. 3609](#); Dec. 20, 2012, P. L. 112-215, § 1(1), [126 Stat. 1589](#).

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Explanatory notes:

Amendment Notes

1966.

1969.

1974.

1978.

1979.

1980.

1981.

1982.

1987.

1989.

1990.

1991.

1992.

1993.

1994.

1996.

1999.

2000.

2004.

2005.

2006.

2008.

2010.

2012.

Other provisions:

References in text:

"This Act", referred to in subsec. (a)(4)(B), is Act Sept. 21, 1950, ch 967, popularly known as the Federal Deposit Insurance Act, which appears generally as [12 USCS §§ 1811](#) et seq. For full classification of such Act, consult USCS Tables volumes.

With respect to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, referred to in subsec. (a)(6)(H), § 1(a)(2) of Act June 3, 1995, *P. L. 104-14*, which appears as a note preceding [2 USCS § 21](#), provides that any reference to such Committee in any provision of law enacted before January 4, 1995, shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives. Further, the Committee on Banking and Financial Services of the House of Representatives was abolished and its functions and jurisdiction over matters relating to securities and exchanges and insurance transferred to the Committee on Financial Services of the House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

The "Gramm-Leach-Bliley Act", referred to in this section, is Act Nov. 12, 1999, *P. L. 106-102*. For full classification of such Act, consult USCS Tables volumes.

The "Thrift Depositor Protection Oversight Board", referred to in this section, was abolished by § 14(a)-(d) of Act July 29, 1998, *P. L. 105-216*, *112 Stat. 908*, subject to savings provisions. See former [12 USCS § 1441a](#) note.

"Section 21A(b)(4)", referred to in subsec. (d)(2)(I)(ii), is probably a reference to § 21A(b)(4) of Act July 22, 1932, ch 522, which appears as former [12 USCS § 1441a\(b\)\(4\)](#).

"Section 13(e)(2)", referred to in subsec. (d)(9)(B), appeared as [12 USCS § 1823\(e\)\(2\)](#) prior to its redesignation as [12 USCS § 1823\(e\)\(1\)\(B\)](#) by Act Sept. 23, 1994, *P. L. 103-325*.

"Section 5138 of the Revised Statutes", referred to in subsecs. (m)(15)(A) and (n)(4)(C), appeared as [12 USCS § 51](#) prior to repeal by § 1233(c) of Act Dec. 27, 2000, *P.L. 106-569*.

"Section 1008 of Title 18", referred to in subsec. (p)(2)(A), was repealed by Act Aug. 9, 1989, *P. L. 101-73*, Title IX, § 961(g)(1), *103 Stat. 500*.

Explanatory notes:

The bracketed words "depository institution" have been inserted in subsec. (a)(2)(C) to indicate the words probably intended by Congress.

The bracketed word "or" has been inserted in subsec. (e)(8)(A)(ii) to indicate the probable intent of Congress to include it.

The comma has been enclosed in brackets in subsec. (e)(8)(D)(iv)(I) to indicate the probable intent of Congress to delete such punctuation.

The bracketed word "or" has been inserted in subsec. (e)(8)(E)(ii) to indicate the probable intent of Congress to include it.

Two commas in subsec. (m)(18) have been enclosed in brackets to indicate the probable intent of Congress to delete such punctuation.

The bracketed word "depository institutions" has been inserted in subsec. (n)(4) to indicate the word probably intended by Congress.

Commas have been enclosed in brackets in subsec. (n)(11)(B) and (C) to indicate the probable intent of Congress to delete such punctuation.

The bracketed Title number “28” has been inserted in subsec. (q)(2) as the title of the United States Code probably intended by Congress.

“Government Accountability Office” has been inserted in brackets in subsec. (t)(2)(A)(v) on the authority of § 8 of Act July 7, 2004, P. L. 108-271 ([31 USCS § 702](#) note), which redesignated the General Accounting Office as the Government Accountability Office, and provided that any reference to the General Accounting Office in any law in force on July 7, 2004, shall be considered to refer and apply to the Government Accountability Office.

The bracketed word “The” has been inserted in the subsec. (t)(2)(A)(vii) to indicate the probable intent of Congress to include it.

“McKinney-Vento Homeless Assistance Act” has been inserted in brackets in subsecs. (v) and (w)(1)(B) pursuant to § 2 of Act Oct. 30, 2000, P. L. 106-400 ([42 USCS § 11301](#) note), which provides that any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the “McKinney-Vento Homeless Assistance Act”.

This section is derived from former [12 USC § 264\(l\)](#). See [12 USCS § 1811](#) note.

Amendment Notes

1966.

Act Oct. 16, 1966, in subsec. (a), substituted “\$15,000” for “\$10,000”, and deleted “: *And provided further*, That in the case of banks closing prior to the effective date of this amendment, the maximum amount of the insured deposit of any depositor shall be \$5,000” following “of any depositor shall be \$10,000”; and in subsec. (i), substituted \$15,000” for “\$10,000”.

1969.

Act Dec. 23, 1969, in subsecs. (a) and (i), substituted “\$20,000” for “\$15,000”.

1974.

Act Oct. 28, 1974 (effective on the 30th day beginning after 10/28/74, as provided by §§ 101(g), 102(c) of such Act, which appear as [12 USCS §§ 1813](#) note), redesignated existing provisions as subsec. (a)(1), in para. (1), as so redesignated, substituted “Except as provided in paragraph (2), the” for “The”, and “40,000” for “20,000”, and added para. (2); and in subsec. (i) substituted “40,000” for “20,000”.

1978.

Act Sept. 17, 1978, in subsec. (c), inserted “, insured Federal branch of a foreign bank,”; in subsec. (e), inserted “or any insured branch (other than a Federal branch) of a foreign bank” and “or insured bank of a foreign bank”; in subsec. (f), inserted “or insured branch of a foreign bank”; and in subsec. (g), inserted “, insured branch of a foreign bank,”, and substituted “In the case of any closed insured bank or closed insured branch of a foreign bank,” for “In the case of any closed insured bank.”

Act Nov. 10, 1978 (effective 11/10/78, as provided by § 1402 of such Act, which appears as [12 USCS § 1728](#) note), added subsec. (a)(3).

1979.

Act Dec. 21, 1979, in subsec. (a)(2)(A), in subpara. (iii), deleted "or" after the semicolon, in subpara. (iv), inserted "or" after the semicolon, and added subpara. (v).

1980.

Act March 31, 1980 (effective 3/31/80, as provided by § 308(e) of such Act, which appears as 12 USCS § 1817 note), in subsec. (a)(1) and subsec. (i), substituted "\$100,000" for "\$40,000".

1981.

Act Dec. 26, 1981, in subsec. (a)(2)(A)(iv), inserted "of the Trust Territory of the Pacific Islands," and "the Trust Territory of the Pacific Islands,".

1982.

Act Oct. 15, 1982, in subsec. (c), added the sentence beginning "Notwithstanding any other provision of law, whenever the Federal Home Loan Bank . . ."; and, in subsec. (g), inserted "or closed insured Federal savings bank,".

1987.

Act Aug. 10, 1987 redesignated the existing provisions of subsec. (h) as subsec. (h)(1); redesignated subsecs. (i)–(l) as subsecs. (h)(2)–(5); and added new subsecs. (i) and (j).

1989.

Act Aug. 9, 1989, § 201, in subsecs. (a)(1), (2)(A)(i)–(v), (B), (3), (b), (f), and (g), substituted "insured depository institution" and "insured depository institutions", for "insured bank" and "insured banks", respectively, wherever appearing; and, in subsec. (c), substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

Sections 211–214 of such Act, in subsec. (a), substituted para. (1) for one which read: "(1) The Temporary Federal Deposit Insurance Fund and the Fund For Mutuals heretofore created pursuant to the provisions of section 12B of the Federal Reserve Act, as amended, are hereby consolidated into a Permanent Insurance Fund for insuring deposits, and the assets therein shall be held by the Corporation for the uses and purposes of the Corporation: *Provided*, That the obligations to and rights of the Corporation, depositors, banks, and other persons arising out of any event or transaction prior to the effective date of this amendment shall remain unimpaired. On and after August 23, 1935, the Corporation shall insure the deposits of all insured depository institutions as provided in this Act: *Provided further*, That the insurance shall apply only to deposits of insured depository institutions which have been made available since March 10, 1933, for withdrawal in the usual course of the banking business: *Provided further*, That if any insured depository institution shall, without the consent of the Corporation, release or modify restrictions on or deferrals of deposits which had not been made available for withdrawal in the usual course of the banking business on or before August 23, 1935, such deposits shall not be insured. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be \$100,000.", in para. (2)(B), deleted "time and savings" preceding "deposits", and added paras. (4)–(7); substituted subsecs. (c)–(j) for ones which read:

"(c) Notwithstanding any other provision of law, whenever the Comptroller of the Currency shall appoint a receiver other than a conservator of any insured national bank, insured Federal branch of a foreign bank, or insured District bank, or of any noninsured national bank or District bank hereafter closed, he shall appoint the Corporation receiver for such closed bank. Notwithstanding any other provision of law, whenever the Director of the Office of Thrift Supervision shall appoint a receiver, other than a conservator, of any insured Federal savings bank hereafter closed, it shall appoint the Corporation receiver for such closed insured Federal savings bank.

"(d) Notwithstanding any other provision of law, it shall be the duty of the Corporation as such receiver to cause notice to be given, by advertisement in such newspapers as it may direct, to all persons having claims against such

closed bank pursuant to section 5235 of the Revised Statutes (U. S. C., title 12, sec. 193); to realize upon the assets of such closed bank, having due regard to the condition of credit in the locality; to enforce the individual liability of the stockholders and directors thereof; and to wind up the affairs of such closed bank in conformity with the provisions of law relating to the liquidation of closed national banks, except as herein otherwise provided. The Corporation as such receiver shall pay to itself for its own account such portion of the amounts realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of depositors, and it shall pay to depositors and other creditors the net amounts available for distribution to them. The Corporation as such receiver, however, may, in its discretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to the aforesaid section of the Revised Statutes, and no liability shall attach to the Corporation itself or as such receiver by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment. With respect to any such closed bank, the Corporation as such receiver shall have all the rights, powers, and privileges now possessed by or hereafter granted by law to a receiver of a national bank or District bank and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of the Secretary of the Treasury or the Comptroller of the Currency.

"(e) Whenever any insured State bank (except a District bank) or any insured branch (other than a Federal branch) of a foreign bank shall have been closed by action of its board of directors or by the authority having supervision of such bank, as the case may be, on account of inability to meet the demands of its depositors, the Corporation shall accept appointment as receiver thereof, if such appointment is tendered by the authority having supervision of such bank and is authorized or permitted by State law. With respect to any such insured State bank or insured branch of a foreign bank, the Corporation as such receiver shall possess all the rights, powers and privileges granted by State law to a receiver of a State bank.

"(f) Whenever an insured depository institution or insured branch of a foreign bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of subsection(g) of this section either (1) by cash or (2) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor: *Provided*, That the Corporation, in its discretion, may require proof of claims to be filed before paying the insured deposits, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determination of a court of competent jurisdiction before paying such claim.

"(g) In the case of a closed national bank, insured branch of a foreign bank, or District bank, or closed insured Federal savings bank, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section, shall be subrogated to all rights of the depositor against the closed bank to the extent of such payment. In the case of any other closed insured depository institution, the Corporation shall not make any payment to any depositor until the right of the Corporation to be subrogated to the rights of such depositor on the same basis as provided in the case of a closed national bank under this Act shall have been recognized either by express provision of State law, by allowance of claims by the authority having supervision of such bank, by assignment of claims by depositors, or by any other effective method. In the case of any closed insured depository institution or closed insured branch of a foreign bank, such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such closed bank and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain his claim for any uninsured portion of his deposit: *Provided*, That, with respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon his stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated: *Provided further*, That the rights of depositors and other creditors of any State bank shall be determined in accordance with the applicable provisions of State law.

"(h)(1) Organization of new bank. As soon as possible after the closing of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the closed bank or the public, shall organize a new

national bank to assume the insured deposits of such closed bank and otherwise to perform temporarily the functions hereinafter provided for. The new bank shall have its place of business in the same community as the closed bank.

"(2) New bank; articles of association and organization certificate; management; acceptance of deposits; funds on deposit with Federal Reserve bank; transaction of business; exemption from taxation. The articles of association and the organization certificate of the new bank shall be executed by representatives designated by the Corporation. No capital stock need be paid in by the Corporation. The new bank shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions. In all other respects the new bank shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations. The new bank may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new bank is the only bank in the community, shall not exceed \$100,000 from any depositor. The new bank, without application to or approval by the Corporation, shall be an insured bank and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank. Funds of the new bank shall be kept on hand in cash, invested in obligations of the United States, or in obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, with a Federal Reserve bank, or, to the extent of the insurance coverage thereon, with an insured bank. The new bank, unless otherwise authorized by the Comptroller of the Currency, shall transact no business except that authorized by this Act and as may be incidental to its organization. Notwithstanding any other provision of law the new bank, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

"(3) Availability of Corporation's funds to new bank; earnings; losses; assumption of deposits of closed bank. Upon the organization of a new bank, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such closed bank plus the estimated amount of the expenses of operating the new bank, and shall determine as soon as possible the amount due each depositor for his insured deposit in the closed bank, and the total expenses of operation of the new bank. Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined. Earnings of the new bank shall be paid over or credited to the Corporation in such adjustment. If any new bank, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured bank, the Corporation shall furnish to it additional funds in the amount of such losses. The new bank shall assume as transferred deposits the payment of the insured deposits of such closed bank to each of its depositors. Of the amounts so made available, the Corporation shall transfer to the new bank, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new bank on demand.

"(4) New bank; issuance of capital stock. Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new bank to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new bank on a sound basis, but in no event less than that required by section 5138 of the Revised Statutes, as amended (U. S. C., title 12, sec. 51), for the organization of a national bank in the place where such new bank is located. The stockholders of the closed insured bank shall be given the first opportunity to purchase any shares of common stock so offered. Upon proof that an adequate amount of capital stock in the new bank has been subscribed and paid for in cash, the Comptroller of the Currency shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank, and thereafter, when the requirements of law with respect to the organization of a national bank have been complied with, he shall issue to the bank a certificate of authority to commence business, and thereupon the bank shall cease to have the status of a new bank, shall be managed by directors elected by its own shareholders and may exercise all the powers granted by law, and it shall be subject to all the

provisions of law relating to national banks. Such bank shall thereafter be an insured national bank, without certification to or approval by the Corporation.

“(5) New bank; termination. If the capital stock of the new bank is not offered for sale, or if an adequate amount of capital for such new bank is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured bank in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new bank to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided. Unless the capital stock of the new bank is sold or its assets are taken over and its liabilities are assumed by an insured bank as above provided within two years from the date of its organization, the Corporation shall wind up the affairs of such bank, after giving such notice, if any, as the Comptroller of the Currency may require, and shall certify to the Comptroller of the Currency the termination of the new bank. Thereafter the Corporation shall be liable for the obligations of such bank and shall be the owner of its assets. The provisions of sections 5220 and 5221 of the Revised Statutes (U. S. C., title 12, secs. 181 and 182) shall not apply to such new banks.

“(i)(1) Establishment. When an insured bank is closed, the Corporation, in the Corporation’s discretion and subject to the conditions established in paragraph (2), may establish a bridge bank to—

“(A) assume the deposits of the closed bank;

“(B) assume such other liabilities of the closed bank as the Corporation, in the Corporation’s discretion, may determine to be appropriate;

“(C) purchase such assets of the closed bank as the Corporation, in the Corporation’s discretion, may determine to be appropriate; and

“(D) perform any other temporary function which the Corporation may prescribe in accordance with this Act.

“(2) Conditions. A bridge bank may be established under paragraph (1) only if the Board of Directors determines that—

“(A) the amount which is reasonably necessary to organize and operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, the closed bank or banks;

“(B) the continued operation of such insured bank is essential to provide adequate banking services in the community where such bank is located; or

“(C) that the continued operation of such insured bank is in the best interest of the depositors of the closed bank and the public.

“(3) Transfer of assets and liabilities.

“(A) In general. Upon the organization of a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to the closed insured bank may, subject to the approval of any such transfer by a court of competent jurisdiction, transfer any assets and liabilities of the closed insured bank to the bridge bank.

“(B) Intent of Congress relating to continuing operations. It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of the closed bank with respect to which a bridge bank is established, especially creditworthy farmers, small businesses, and households, the Corporation should—

“(i) continue to honor commitments made by the closed bank to creditworthy customers, and

“(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

“(4) Organization.

“(A) Articles of association. The articles of association and the organization certificate of a bridge bank shall be executed by representatives designated by the Corporation.

“(B) Insured national bank. Each bridge bank shall be a national bank and shall be insured from the time of the organization of the bridge bank.

“(C) Management. Each bridge bank shall be under the management of a board of directors consisting of 5 members appointed by the Board of Directors of the Corporation.

“(5) Powers of bridge banks. Each bridge bank established under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

“(A) the Corporation may—

“(i) remove the directors of any bridge bank;

“(ii) fix the compensation of members of the board of directors of any bridge bank; and

“(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (4)(B);

“(B) the Corporation may indemnify the directors of a bridge bank on such terms as the Corporation determines to be appropriate;

“(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to any bridge bank;

“(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to any bridge bank without regard to the amount of the bank’s capital or surplus;

“(E) the board of directors of the bridge bank shall elect a chairperson who shall also serve in the position of chief executive officer;

“(F) no bridge bank shall be required to purchase stock of any Federal reserve bank; and

“(G) the Comptroller of the Currency may waive any requirement for a fidelity bond.

“(6) Capital.

“(A) No capital required. The Corporation shall not be required to—

“(i) issue capital stock on behalf of any bridge bank established under this subsection; or

“(ii) purchase any capital stock of any bridge bank.

“(B) Operating funds in lieu of capital. Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate.

“(C) Authority to issue capital stock. Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of any bridge bank to be issued and offered for sale on such terms and conditions as the Corporation determines to be appropriate and in an amount sufficient (in the discretion of the Corporation) to make possible the conduct of the business of the bridge bank on a sound basis.

“(7) No Federal status.

“(A) Agency status. A bridge bank is not an agency, establishment, or instrumentality of the United States.

“(B) Employee status. Directors, officers, employees, or agents of the bridge bank are not officers or employees of the United States for purposes of title 5, United States Code, or any other provision of law.

“(8) Assistance authorized. The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate the sale or merger of the bridge bank with another insured depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to a closed insured bank.

“(9) Acquisition by out-of-state bank holding company. Any depository institution, including an out-of-State bank, or any out-of-State holding company may acquire and retain the shares or assets of, or otherwise acquire and retain a bridge bank which has assumed the insured deposits of one or more closed banks which had total assets aggregating \$500,000,000 or more (determined in the manner provided in section 13(f)(11) at the time such insured bank was closed) in the same manner and to the same extent as such depository institution or such out-of-State holding company may acquire a closed insured bank under section 13(f)(2).

“(10) Termination of bridge bank.

“(A) In general. A bridge bank shall terminate upon the occurrence of the earliest of the following:

“(i) The bridge bank merges or consolidates with another bank that is not a bridge bank.

“(ii) The bridge bank sells all or substantially all of the stock of the bridge bank other than to the Corporation or to another bridge bank.

“(iii) A holding company or another bank that is not a bridge bank assumes all, or substantially all of the deposits or other liabilities of a bridge bank.

“(iv) A period of 2 years following the date the bridge bank was organized expires without any other disposition of the assets and liabilities of the bank having occurred.

“(B) Extension allowed for 1 year. If the Board of Directors finds, after consultation with the Comptroller of the Currency, that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank and the public, the Corporation may extend the time period specified in subparagraph (A)(iv) for not to exceed one year.

“(11) 2 or more banks. The Corporation, in the Corporation’s discretion, may establish a bridge bank under this subsection to assume the deposits of, assume any other liabilities of, and purchase any assets of 2 or more closed banks.

“(j)(1) Consideration of local economic impact required. The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a closed bank.

“(2) Actions to alleviate adverse economic impact to be considered. The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

“(3) Guidelines required. The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.”.

Such Act further added subsecs. (k)–(o).

1990.

Act Nov. 29, 1990, in subsec. (d), in para. (2), redesignated former subpara. (I) as subpara. (J), and added a new subpara. (I), added paras. (17)–(19); and added subsecs. (p)–(s).

1991.

Act Dec. 12, 1991, § 102, in subsec. (c)(6), substituted subpara. (B) for one which read:

“(B) Receiver. Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of section 5(d)(2)(C) of the Home Owners’ Loan Act for the purpose of liquidation or winding up any savings association’s affairs—

“(i) before October 1, 1993, the Resolution Trust Corporation shall be appointed;

“(ii) after September 30, 1993, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time on or before such date; and

“(iii) after September 30, 1993, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).”.

Section 202(a), (b) of such Act further, in subsec. (a)(6), in subpara. (E), substituted “1993” for “1992” and “2000” for “1999” and, in subpara. (J), in cl. (i), substituted “1992” for “1991” and “1993” for “1992” and, in cl. (ii), substituted “1992” for “1991” and “2000” for “1999”.

Act Dec. 19, 1991, in subsec. (a), substituted para. (1) for one which read: “(1) The Corporation shall insure the deposits of all insured depository institutions as provided in this Act. The maximum amount of the insured deposit of any depositor shall be \$100,000.”, in para. (2), in subpara. (A), substituted “such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed \$100,000 per account” for “his deposit shall be insured”, and redesignated subpara. (b) as subpara. (B); in subsec. (d), in para. (2), in subparas. (B) and (D), inserted “(subject to the provisions of section 42)” and added subpara. (K), in para. (3)(A), substituted “(4)” for “(4)(A)”, substituted para. (4) for one which read: “The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.”, substituted para. (5)(D) for one which read: “The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.”, in para. (11), substituted “(15)(B)” for “(14)(C)”, in para. (13), added subpara. (E); in subsec. (e), in paras. (3)(C)(ii) and (4)(B)(iii), substituted “subsection (i)” for “subsection (k)”, in para. (8), in subparas. (A) and (E), substituted “subsection (d)(9)” for “subsections (d)(9) and (i)(4)(I)”; in subsec. (h), in the subsec. heading, substituted “resolution” for “liquidation”, and added para. (4); in subsec. (i)(3)(A), substituted “Notwithstanding any other provision of Federal or State law, or the constitution of any State, the” for “The”; in subsec. (n), in para. (9), substituted “(12)” for “(13)”, and, in para. (11)(D), substituted “(9)” for “(8)”; and added subsec. (s).

Such Act further (effective at the end of the 2-year period beginning on the date of enactment and applicable as provided by § 311(c) of such Act, which appears as a note to this section), in subsec. (a), substituted para. (3) for one which read: “(3) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured depository institution made pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue Code of 1954, as amended, or made in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue Code of 1954, as amended, shall be insured in the amount of \$100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, the term ‘per account’ means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.”, and added para. (8).

Such Act further (effective 1 year after the date of enactment, as provided by § 133(g) of such Act, which appears as 12 USCS § 191 note), in subsec. (c), substituted para. (5) for one which read:

“(5) Grounds for paragraph (4) Appointment. The grounds referred to in paragraph (4)(B) for the appointment of the Corporation as conservator or receiver for any insured State depository institution are as follows:

“(A) Insolvency in that the assets of the institution are less than the institution’s obligations to its creditors and others, including members of the institution.

“(B) Substantial dissipation of assets or earnings due to—

“(i) any violation of any law or regulation; or

“(ii) any unsafe or unsound practice.

“(C) An unsafe or unsound condition to transact business, including substantially insufficient capital or otherwise.

“(D) Any willful violation of a cease-and-desist order which has become final.

“(E) Any concealment of books, papers, records, or assets of the institution or any refusal to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

“(F) The likelihood that the institution will not be able to meet the demands of its depositors or pay its obligations in the normal course of business.

“(G) The incurrence or likely incurrence of losses by the institution that will deplete all or substantially all of its capital with no reasonable prospect for the replenishment of the capital of the institution without Federal assistance.

“(H) Any violation of any law or regulation, or an unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the institution or otherwise seriously prejudice the interests of its depositors.”,

and substituted paras. (9)–(13) for para. (9) which read:

“(9) Additional powers. In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6)—

“(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured State depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

“(B) the Corporation as receiver of any insured State depository institution may—

“(i) liquidate such institution in an orderly manner; and

“(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation.”.

1992.

Act Oct. 28, 1992 (effective as if included in Act Dec. 12, 1991 on enactment of such Act, as provided by § 1618 of Act Oct. 28, 1992, which appears as 12 USCS § 1441 note), in subsec. (c)(6)(B), substituted “subparagraph (C) or (F) of section 5(d)(2)” for “section 5(d)(2)(C)”.

Such Act further (effective 1 year after enactment of Act Dec. 19, 1991, as provided by § 1611(b)(2) of Act Oct. 28, 1992), in subsec. (c)(6)(B), substituted “subparagraph (A) or (C) of section 5(d)(2)” for “subparagraph (C) or (F) of section 5(d)(2)”.

Such Act further (effective 12/20/92 as provided by § 1501(c) of such Act), in subsec. (c)(5), added subsec. (M).

Such Act further (effective on the effective date of the amendment made by Act Dec. 19, 1991, as provided by § 1609(b) of Act Oct. 28, 1992, which appears as 12 USCS § 191 note), in subsec. (d), in para. (2), in subparagraphs. (B) and (E), substituted “section 40” for “section 42”, in para. (4)(A), substituted “determination” for “determinations” and, in para. (5)(D), in cl. (iii)(I), substituted “insured depository institution” for “institution described in paragraph (3)(A)”.

Such Act further (effective and applicable on enactment, as provided by § 2 of such Act, which appears as 42 USCS § 5301 note) added subsec. (t).

1993.

Act Aug. 10, 1993 (applicable as provided by § 3001(c) of such Act, which appears as a note to this section), in subsec. (c)(13), in subpara. (A), deleted “subject to subparagraph (B),” preceding “this section shall apply”, and inserted “and” following the concluding semicolon, deleted subpara. (B), which read: “(B) the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and”, and redesignated subpara. (C) as new subpara. (B); in subsec. (d), substituted para. (11) for one which read:

“(11) Distribution of assets.

“(A) Subrogated claims; claims of uninsured depositors and other creditors. The receiver shall—

“(i) retain for the account of the Corporation such portion of the amounts realized from any liquidation as the Corporation may be entitled to receive in connection with the subrogation of the claims of depositors; and

“(ii) pay to depositors and other creditors the net amounts available for distribution to them.

“(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses.

In any case in which funds remain after all depositors, creditors, other claimants, and administrative expenses are paid, the receiver shall distribute such funds to the depository institution’s shareholders or members together with the accounting report required under paragraph (15)(B).”;;

and, in subsec. (g)(4), substituted “Subject to subsection (d)(11), if the Corporation” for “If the Corporation”.

Act Dec. 17, 1993, in subsec. (a), in para. (1)(C), substituted “paragraph (1) or (2) of section 7(i) or any funds described in section 7(i)(3)” for “section 7(i)(1)”, and substituted para. (4) for one which read:

“(4) General provision relating to funds. The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

“(A) maintained and administered by the Corporation;

“(B) maintained separately and not commingled; and

“(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.”.

Such Act further, in subsec. (a)(6), substituted a new subpara. (D) for one which read:

“(D) Availability of funds for administrative expenses.

“(i) In general. The FSLIC Resolution Fund shall deposit in the Savings Association Insurance Fund such amounts as the Corporation determines are needed during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on September 30, 1991, to pay the administrative and supervisory expenses of such Fund.

“(ii) Priority. The Savings Association Insurance Fund shall have priority over other obligations of the FSLIC Resolution Fund with respect to such amounts.”.

Such Act further, in subsec. (a)(6), substituted a new subpara. (E) for one which read: "Treasury payments to Fund. To provide sufficient funding for the Savings Association Insurance Fund to carry out the purposes of this Act, the Secretary of the Treasury shall pay to such Fund, for each of the fiscal years 1993 through 2000, the amount, if any, by which \$2,000,000,000 exceeds the amount deposited in such Fund (during such fiscal year) pursuant to subparagraph (C).", and a new subpara. (F) for one which read:

"(F) Treasury payments to maintain net worth of Fund. The Secretary of the Treasury shall pay to the Savings Association Insurance Fund, for each fiscal year described in the following table, any additional amount which may be necessary, as determined by the Corporation and the Secretary of the Treasury to ensure that such Fund has the minimum net worth referred to in such table throughout each such fiscal year:

For the fiscal year minimum net worth beginning October 1 of: (in billions)	"The amount of
1991	0.0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8"

Such Act further, in subsec. (a)(6), in subpara. (G), in the subpara. heading and in the text, substituted "subparagraph (D)" for "subparagraphs (E) and (F)", substituted a new subpara. (H) for one which read: "Discretionary RTC payments. If amounts available to the Savings Association Insurance Fund for purposes other than the payment of administrative expenses are insufficient for the Savings Association Insurance Fund to carry out the purposes of this Act, the Corporation may request the Resolution Trust Corporation to provide, and the Oversight Board of the Resolution Trust Corporation (in the discretion of the Oversight Board) may pay, such amount as may be needed for such purposes.", and, in subpara. (J), substituted "Subject to subparagraph (E), there are" for "There are", and "of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed \$8,000,000,000." for "of this paragraph, except that—

- "(i) the annual amount appropriated under subparagraph (F) shall not exceed \$2,000,000,000 in either fiscal year 1992 or fiscal year 1993; and
- "(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1992 through 2000 shall not exceed \$16,000,000,000."

Such Act further, in subsec. (a)(6), added subpara. (K); in subsec. (c)(6)(B), in cl. (i), substituted "such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act" for "October 1, 1993", in cl. (ii), substituted "on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act" for "after September 30, 1993" and "before" for "on or before", and, in cl. (iii), substituted "on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act" for "after September 30, 1993"; in subsec. (d), in para. (2)(K), inserted "legal," and substituted "only if" for "if" and "the most practicable" for "practicable", in para. (14)(A)(ii), inserted "(other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act)"; in subsec. (p), substituted the subsec. heading for one which read: "Certain convicted debtors prohibited from purchasing assets.", redesignated paras. (1) and (2) as paras. (2) and (3), respectively, and added a new para. (1),

in para. (2), as so redesignated, substituted "paragraph (3)" for "paragraph (2)" and "person" for "individual", and, in para. (3), as so redesignated, substituted "Paragraphs (1) and (2)" for "Paragraph (1)", and substituted "person" for "individual" in three places, and added para. (4); and added subsecs. (u), (v), and (w).

1994.

Act Sept. 23, 1994, in subsec. (a)(4), in the heading, made a technical correction which did not affect the text of such heading; in subsec. (c)(5)(M), substituted "section 5322 or 5324 of title 31" for "section 5322 of title 31"; in subsec. (d), in para. (2)(B)(iii), substituted "are" for "is", in para. (8)(B)(ii), inserted "provide", in para. (14)(B), substituted "statute of limitations" for "statute of limitation" and, in para. (16)(B)(iv), substituted "disposition" for "dispositions"; in subsec. (e), in para. (8)(D)(v)(I), inserted a closing parenthesis following "1934", in para. (12)(B), substituted "director's or officer's" for "directors or officers", and added paras. (14), (15); in subsec. (f)(3)(B), in the heading, substituted "with" for "to"; in subsec. (i)(3)(A), substituted "other claimant or category of claimants" for "other claimant or category or claimants"; in subsec. (n), in para. (4)(E)(i), added "and" after the semicolon and, in para. (12)(A), substituted "subparagraph" for "subparagraphs"; in subsec. (q)(1), substituted "held" for "decided"; and, in subsec. (u)(3)(B), substituted "section 40(p)" for "subsection (c)(9)".

Act Sept. 29, 1994, added subsec. (d)(14)(C).

Act Oct. 22, 1994 (effective on enactment and inapplicable with respect to cases commenced prior to enactment as provided by § 702 of such Act, which appears as 11 USCS § 101 note), in subsec. (e)(8)(D), in cl. (ii)(I), substituted "section 741" for "section 741(7)", in cl. (iii), substituted "section 761" for "section 761(4)", in cl. (iv), substituted "section 101" for "section 101(24)", in cl. (v)(I), substituted "section 101" for "section 101(41)", and, in cl. (viii), substituted "section 101" for "section 101(50)".

1996.

Act Sept. 30, 1996, § 2704(d)(1)–(4), (6)(C), (14)(H), (I), as amended by § 736(a), (b) of Act Nov. 12, 1999, provided for amendment of subsec. (a)(4) by redesignating subpara. (B) as subpara. (C), deleting subpara. (A) and inserting the following:

"(A) Establishment. There is established the Deposit Insurance Fund, which the Corporation shall—

- "(i) maintain and administer;
- "(ii) use to carry out its insurance purposes in the manner provided by this subsection; and
- "(iii) invest in accordance with section 13(a).

"(B) Uses. The Deposit Insurance Fund shall be available to the Corporation for use with respect to Deposit Insurance Fund members."

substituting "(4) Establishment of the deposit insurance fund." for "(4) General provisions relating to funds.", substituting "Deposit Insurance Fund" for "Bank Insurance Fund and the Savings Association Insurance Fund" in subpara. (C) as redesignated, and adding at the end the following new subparagraph: "(D) Deposits. All amounts assessed against insured depository institutions by the Corporation shall be deposited in the Deposit Insurance Fund."; it further provided for amendment of subsec. (a) by striking paras. (5), (6), and (7) and redesignating para. (8) as para. (5); it further provided for amendment of subsec. (f)(1) by striking ", except that—" and all that follows through the end of the paragraph and inserting a period; and it further provided for amendment of subsec. (i)(3) by striking subpara. (B), redesignating subpara. (C) as subpara. (B), substituting "subparagraph (A)" for "subparagraphs (A) and (B)" in subpara. (B) as redesignated. However, these amendments (effective Jan. 1, 1999, if no insured depository institution was a savings association on that date, as provided by § 2704(c) of such Act (former 12 USCS § 1821 note)) were not executed, and were repealed by § 2102(b) of Act Feb. 8, 2006, which appears as 12 USCS § 1821 note.

Such Act further, in subsec. (a)(6), added subpara. (L); and, in subsec. (d), added para. (20).

Act Oct. 19, 1996 (effective on enactment, as provided by § 101(e) of such Act, which appears as 2 USCS § 130c note), in subsec. (t)(2)(A), added cl. (vi).

1999.

Act Nov. 12, 1999 (effective 120 days after enactment, as provided by § 161 of such Act, which appears as 12 USCS § 24 note), in subsec. (a)(4)(B), in the introductory matter, substituted “to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of” for “to benefit any shareholder of”.

Such Act further (effective on enactment, as provided by § 736(c) of such Act, which appears as a note to this section), in subsec. (a)(6), deleted subpara. (L), which read:

“(L) Establishment of SAIF Special Reserve.

“(i) Establishment. If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

“(ii) Amounts in special reserve. If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

“(iii) Limitation. The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

“(iv) Emergency use of special reserve. Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

“(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

“(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

“(v) Exclusion of special reserve in calculating reserve ratio. Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.”;

and amended the directory language of § 2704(d) of Act Sept. 30, 1996.

2000.

Act Dec. 27, 2000, in subsec. (d)(10), added subpara. (C).

2004.

Act Oct. 30, 2004 (effective on enactment, as provided by § 8(i) of such Act, which appears as 12 USCS § 321 note), in subsec. (c), in para. (2)(A), in cl. (i), deleted “or District bank” following “institution”, in cl. (ii), deleted “or District bank” following “institution”, and deleted “or the code of law for the District of Columbia” following “Bank Act”, and, in para. (3)(A), deleted “(other than a District depository institution)” preceding “appoints”.

2005.

Act April 20, 2005 (effective 180 days after enactment and inapplicable to cases commenced before the effective date, as provided by § 1501 of such Act, which appears as 11 USCS § 101 note), in subsec. (e), in para. (8), in

subpara. (A), in the introductory matter, substituted “paragraphs (9) and (10)” for “paragraph (10)”, in cl. (i), substituted “such person has to cause the termination, liquidation, or acceleration” for “to cause the termination or liquidation”, and substituted cl. (ii) for one which read: “(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or”, in subpara. (C)(i), inserted “section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,”, in subpara. (D), in the introductory matter, substituted “subsection, the following definitions shall apply:” for “subsection—”, in cl. (i), inserted “, resolution, or order”, substituted cls. (ii)–(viii) for ones which read:

“(ii) Securities contract. The term ‘securities contract’—

“(I) has the meaning given to such term in section 741 of title 11, United States Code, except that the term ‘security’ (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

“(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

“(iii) Commodity contract. The term ‘commodity contract’ has the meaning given to such term in section 761 of title 11, United States Code.

“(iv) Forward contract. The term ‘forward contract’ has the meaning given to such term in section 101 of title 11, United States Code.

“(v) Repurchase agreement. The term ‘repurchase agreement’—

“(I) has the meaning given to such term in section 101 of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934), any mortgage loan, and any interest in any mortgage loan; and

“(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

“(vi) Swap agreement. The term ‘swap agreement’—

“(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

“(II) includes any combination of such agreements and any option to enter into any such agreement.

“(vii) Treatment of master agreement as 1 swap agreement. Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

“(viii) Transfer. The term ‘transfer’ has the meaning given to such term in section 101 of title 11, United States Code.”,

in subpara. (E), in the introductory matter, substituted “other than subsections (d)(9) and (e)(10)” for “other than paragraph (12) of this subsection, subsection (d)(9)”, and substituted cl. (ii) for one which read: “(ii) any right under any security arrangement relating to such qualified financial contracts; or”, and added subparas. (F)–(H), substituted para. (9) for one which read:

“(9) Transfer of qualified financial contracts. In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(A) transfer to 1 depository institution (other than a depository institution in default)—

“(i) all qualified financial contracts between—

“(I) any person or any affiliate of such person; and

“(II) the depository institution in default;

“(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

“(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

“(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

“(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).”,

in para. (10), in subpara. (A), substituted the concluding matter for matter which read: “the conservator or receiver shall use such conservator’s or receiver’s best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.”, redesignated subpara. (B) as subpara. (D), and inserted new subparas. (B) and (C), and, in para. (12)(A), inserted “or the exercise of rights or powers by”.

Such Act further (effective as above), in subsec. (e), redesignated paras. (11)–(15) as paras. (12)–(16), respectively, inserted new para. (11), and added para. (17).

2006.

Act Feb. 8, 2006 (effective as provided by § 2102(c) of such Act, which appears as 12 USCS § 1821 note), repealed § 2704 of Act Sept. 30, 1996, which provided for amendment of this section but was not executed.

Such Act further (effective 10/12/2006, pursuant to § 2103(d) of such Act, which appears as a note to this section), in subsec. (a), in para. (1), substituted subpara. (B) for one which read: “(B) Net amount of insured deposit. The net amount due to any depositor at an insured depository institution shall not exceed \$100,000 as determined in accordance with subparagraphs (C) and (D).”, substituted subpara. (D) for one which read:

“(D) Coverage on pro rata or ‘pass-through’ basis.

“(i) In general. Except as provided in clause (ii), for the purpose of determining the amount of insurance due under subparagraph (B), the Corporation shall provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or ‘pass-through’ basis to a participant in or beneficiary of an employee benefit plan (as defined in section 11(a)(8)(B)(ii)), including any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

“(ii) Exception. After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Corporation shall not provide insurance coverage on a pro rata or “pass-through” basis pursuant to clause (i) with respect to deposits accepted by any insured depository institution which, at the time such deposits are accepted, may not accept brokered deposits under section 29.

“(iii) Coverage under certain circumstances. Clause (ii) shall not apply with respect to any deposit accepted by an insured depository institution described in such clause if, at the time the deposit is accepted—

“(I) the institution meets each applicable capital standard; and

"(II) the depositor receives a written statement from the institution that such deposits at such institution are eligible for insurance coverage on a pro rata or 'pass-through' basis.",

and added subparas. (E) and (F), and, in para. (3)(A), in the concluding matter, substituted "\$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph)" for "\$100,000".

Act Feb. 15, 2006 (effective 3/31/2006, pursuant to § 8(b) of such Act, which appears as 12 USCS § 1813 note), in subsec. (a), substituted para. (4) for one which read:

"(4) General provisions relating to Funds.

"(A) Maintenance and use of Funds. The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

"(i) maintained and administered by the Corporation;

"(ii) maintained separately and not commingled; and

"(iii) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.

"(B) Limitation on use. Notwithstanding any provision of law other than section 13(c)(4)(G), the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

"(i) any insured depository institution for which the Corporation or the Resolution Trust Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation;

"(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation; or

"(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.",

deleted paras. (5)–(7), which read:

"(5) Bank Insurance Fund.

"(A) Establishment. There is established a fund to be known as the Bank Insurance Fund.

"(B) Transfer to Fund. On the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Permanent Insurance Fund shall be dissolved and all assets and liabilities of the Permanent Insurance Fund shall be transferred to the Bank Insurance Fund.

"(C) Uses. The Bank Insurance Fund shall be available to the Corporation for use with respect to Bank Insurance Fund members.

"(D) Deposits. All amounts assessed against Bank Insurance Fund members by the Corporation shall be deposited into the Bank Insurance Fund.

"(6) Savings Association Insurance Fund.

"(A) Establishment. There is established a fund to be known as the Savings Association Insurance Fund.

"(B) Uses. The Savings Association Insurance Fund shall be available to the Corporation for use with respect to Savings Association Insurance Fund members.

"(C) Deposits. All amounts assessed against Savings Association Insurance Fund members which are not required for the Financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund shall be deposited in the Savings Association Insurance Fund.

"(D) Treasury payments to Fund. To the extent of the availability of amounts provided in appropriation Acts and subject to subparagraphs (E) and (G), the Secretary of the Treasury shall pay to the Savings Association Insurance Fund such amounts as may be needed to pay losses incurred by the Fund in fiscal years 1994 through 1998.

"(E) Certification conditions on availability of funding. No amount appropriated for payments by the Secretary of the Treasury in accordance with subparagraph (D) for any fiscal year may be expended unless the Chairperson of the Board of Directors certifies to the Congress, at any time before the beginning of or during such fiscal year, that—

“(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

“(ii) the Board of Directors has determined that—

“(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

“(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

“(iii) the Board of Directors has determined that—

“(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

“(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

“(iv) as of the date of certification, the Corporation has in effect procedures designed to ensure that the activities of the Savings Association Insurance Fund and the affairs of any Savings Association Insurance Fund member for which a conservator or receiver has been appointed are conducted in an efficient manner and the Corporation is in compliance with such procedures;

“(v) with respect to the most recent audit of the Savings Association Insurance Fund by the Comptroller General of the United States before the date of the certification—

“(I) the Corporation has taken or is taking appropriate action to implement any recommendation made by the Comptroller General; or

“(II) no corrective action is necessary or appropriate;

“(vi) the Corporation has provided for the appointment of a chief financial officer who—

“(I) does not have other operating responsibilities;

“(II) will report directly to the Chairperson of the Corporation; and

“(III) will have such authority and duties of chief financial officers under section 902 of title 31, United States Code, as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;

“(vii) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;

“(viii) the Corporation is implementing the minority outreach provisions mandated by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

“(ix) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and

“(x) the Corporation has improved the management of legal services by—

“(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

“(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.

“(F) Availability of RTC funding. At any time before the end of the 2-year period beginning on the date of the termination of the Resolution Trust Corporation, the Secretary of the Treasury shall provide, out of funds appropriated to the Resolution Trust Corporation pursuant to section 21A(i)(3) of the Federal Home Loan Bank Act and not expended by the Resolution Trust Corporation, to the Savings Association Insurance Fund, for any year such amounts as are needed by the Fund and are not needed by the Resolution Trust Corporation, if the Chairperson of the Board of Directors has certified to the Congress that—

“(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

“(ii) the Board of Directors has determined that—

“(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

“(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

“(iii) the Board of Directors has determined that—

“(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 7(b) at the assessment rates which would be required in order to meet the repayment schedule required under section 14(c) for any amount borrowed under section 14(a) to cover losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain such members' assessment base; and

“(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

“(iv) the Corporation has provided for the appointment of a chief financial officer who—

- "(I) does not have other operating responsibilities;
 - "(II) will report directly to the Chairperson of the Corporation; and
 - "(III) will have such authority and duties of chief financial officers under section 902 of title 31, United States Code, as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;
 - "(v) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;
 - "(vi) the Corporation is implementing the minority outreach provisions mandated by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;
 - "(vii) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and
 - "(viii) the Corporation has improved the management of legal services by—
 - "(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and
 - "(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.
- "(G) Exception to subparagraph (D). Notwithstanding subparagraph (D), no payment may be made pursuant to such subparagraphs after the Savings Association Insurance Fund achieves a reserve ratio of 1.25 percent.
- "(H) Appearance upon request. The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives or the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the committee, to report on any certification made to the Congress under subparagraph (E) or (F).
- "(I) Borrowing authority.
 - "(i) In general. The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Savings Association Insurance Fund.
 - "(ii) Terms and conditions. Any loan from any Federal home loan bank under clause (i) to the Savings Association Insurance Fund shall—
 - "(I) bear a rate of interest of not less than such bank's current marginal cost of funds, taking into account the maturities involved;
 - "(II) be adequately secured, as determined by the Federal Housing Finance Board;
 - "(III) be a direct liability of such Fund; and
 - "(IV) be subject to the limitations of section 15(c).
- "(J) Authorization of appropriations. Subject to subparagraph (E), there are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed \$8,000,000,000.
- "(K) Return to Treasury. If the aggregate amount of funds transferred to the Savings Association Insurance Fund under subparagraph (D) or (F) exceeds the amount needed to cover losses incurred by the Fund, such excess amount shall be deposited in the general fund of the Treasury.

"(7) Provisions applicable to maintenance of accounts.

"(A) Corporation's authority. Any provision of this Act forbidding the commingling of the Bank Insurance Fund with the Savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the Savings Association Insurance Fund, is not intended—

"(i) to limit or impair the authority of the Corporation to use the same facilities and resources in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

"(ii) to limit or impair the Corporation's power to combine assets or liabilities belonging to banks and savings associations in conservatorship or receivership for managerial purposes, or to limit or impair the Corporation's power to dispose of such assets or liabilities on an aggregate basis.

"(B) Accounting requirements.

"(i) Accounting for use of facilities and resources. The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (A)(i) and shall allocate, in the manner provided in subparagraph (C), any such costs and expenses incurred by the Corporation—

"(I) with respect to Bank Insurance Fund members to the Bank Insurance Fund; and

"(II) with respect to Savings Association Insurance Fund members to the Savings Association Insurance Fund.

"(ii) Accounting for holding and managing assets and liabilities. The Corporation shall keep a full and complete accounting of all costs and expenses associated with the holding and management of any asset or liability specified in subparagraph (A)(ii).

"(iii) Accounting for disposition of assets and liabilities. The Corporation shall keep a full and complete accounting of all expenses and receipts associated with the disposition of any asset or liability specified in subparagraph (A)(ii).

"(iv) Allocation of cost, expenses and receipts. The Corporation shall allocate any cost, expense, and receipt described in clause (ii) or clause (iii) which is associated with any asset or liability belonging to—

"(I) any Bank Insurance Fund member to the Bank Insurance Fund; and

"(II) any Savings Association Insurance Fund member to the Savings Association Insurance Fund.

"(C) Allocation of administrative expenses. Any personnel, administrative, or other overhead expense of the Corporation shall be allocated—

"(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Bank Insurance Fund members;

"(ii) fully to the Savings Association Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Savings Association Insurance Fund members;

"(iii) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of Bank Insurance Fund and Savings Association Insurance Fund members; or

"(iv) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of Bank Insurance Fund members and Savings Association Insurance Fund members, to the extent that the Board of Directors is unable to make a determination under clause (i), (ii), or (iii).",

and redesignated para. (8) as para. (5); in subsec. (f)(1), substituted the concluding period for “, except that—

“(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

“(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.”;

in subsec. (i)(3), deleted subpara. (B), which read: “(B) Source of funds. If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a Savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.”, redesignated subpara. (C) as subpara. (B), and, in such subparagraph (B) as redesignated, substituted “subparagraph (A)” for “subparagraphs (A) and (B)”; and, in subsec. (p)(2)(B), substituted “institution, the” for “institution, any”.

Such Act further (effective as above) substituted “Deposit Insurance Fund” for “deposit insurance fund” wherever appearing.

Such Act further (effective 10/12/2006, pursuant to § 2(e) of such Act, which appears as 12 USCS § 1785 note), in subsec. (a), in para. (2), inserted the paragraph heading, redesigned subparas. (A) and (B) as subparas. (B) and (C), respectively, inserted new subpara. (A), in subpara. (B) as redesignated, inserted the subparagraph heading, substituted the introductory matter for text which read: “(B) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, in the case of a depositor who is—”, in cl. (v), substituted the concluding period for a semicolon, and deleted the concluding matter, which read: “such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed \$100,000 per account [in an amount not to exceed \$100,000 per account].”, and in subpara. (C) as redesignated, inserted the subparagraph heading, and substituted “government depositor or member” for “depositor or member referred to in subparagraph (A)” in two places; and, in subsec. (m)(6), substituted “an amount equal to the standard maximum deposit insurance amount” for “\$100,000”.

Act Oct. 13, 2006 (applicable to conservators or receivers appointed on or after enactment, as provided by § 701(c) of such Act, which appears as 12 USCS § 191 note), in subsec. (c), substituted para. (7) for one which read: “(7) Judicial review. If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.”.

Such Act further, in subsec. (d)(15)(D), substituted “(i) In general. Except as provided in clause (ii), after the end” for “After the end”, and added cl. (ii); in subsec. (e)(13), added subpara. (C); in subsec. (f), substituted paras. (3)–(5) for ones which read:

“(3) Resolution of disputes.

“(A) Resolutions in accordance with Corporation regulations. In the case of any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit, the Corporation may resolve such disputed claim in accordance with regulations prescribed by the Corporation establishing procedures for resolving such claims.

“(B) Adjudication of claims. If the Corporation has not prescribed regulations establishing procedures for resolving disputed claims, the Corporation may require the final determination of a court of competent jurisdiction before paying any such claim.

“(4) Review of Corporation’s determination. Final determination made by the Corporation shall be reviewable in accordance with chapter 7 of title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the principal place of business of the depository institution is located.

“(5) Statute of limitations. Any request for review of a final determination by the Corporation shall be filed with the appropriate circuit court of appeals not later than 60 days after such determination is ordered.”;

and, in subsec. (t), in para. (1), in the introductory matter, inserted “, in any capacity,”, and in para. (2)(A), in cl. (i), deleted “appropriate” preceding “Federal”, deleted cl. (ii), which read: “(ii) The Resolution Trust Corporation.”, and redesignated cls. (iii)–(vi) as cls. (ii)–(v), respectively.

Act Dec. 12, 2006 (applicable as provided by § 7 of such Act, which appears as 11 USCS § 101 note), in subsec. (e)(8), in subpara. (D), in cl. (ii), in subcl. (I), deleted “or” preceding “any interest”, and inserted “(whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))”, in subcl. (IV), inserted “(including by novation)” and “(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)))”, redesignated subcls. (VI)–(X) as subcls. (VIII)–(XII), respectively, and inserted new subcls. (VI) and (VII), and, in subcl. (XI) as redesignated, substituted “(VIII), (IX), or (X)” for “or (VIII)” in two places, in cl. (iv)(I), substituted “or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))” for “transaction, reverse repurchase transaction”, in cl. (vi), in subcl. (I), substituted “, precious metals, or other commodity” for “or precious metals”, and substituted “weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement” for “or a weather swap, weather derivative, or weather option”, in subcl. (II), inserted “or other derivatives”, and substituted “future, option, or spot transaction” for “future, or option”, and, in the concluding matter, substituted “the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act” for “the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000”, and added cl. (ix), and, in subpara. (G), substituted cls. (ii) and (iii) for former cl. (ii), which read: “(ii) Walkaway clause defined. For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party’s status as a nondefaulting party.”.

2008.

Act July 30, 2008 (effective on, and applicable beginning on, the date of enactment, as provided by § 1163 of such Act, which appears as 5 USCS § 3132 note), in subsec. (t)(2)(A), added cl. (vii).

Such Act further, in subsec. (d)(2), in subpara. (F), substituted “as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).” for “as receiver—

“(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

“(ii) with respect to any insured bank, organize a new national bank under subsection (m) or a bridge bank under subsection (n).”,

and in subpara. (G), substituted “new depository institution or a bridge depository institution” for “new bank or a bridge bank”; in subsec. (e)(10)(C), in the heading, substituted “bridge depository institutions” for “bridge banks”, and in cl. (i), substituted “bridge depository institution” for “bridge bank”; in subsec. (m), in the subsection heading,

substituted "depository institutions" for "banks", in para. (1), inserted "or Federal savings association", in para. (6), substituted "only depository institution" for "only bank", in para. (9), inserted "or the Director of the Office of Thrift Supervision, as appropriate", in para. (15), deleted ", but in no event less than that required by section 5138 of the Revised Statutes for the organization of a national bank in the place where such new bank is located" following "basis", in para. (16), inserted "or the Director of the Office of Thrift Supervision, as appropriate," in two places, substituted "the depository institution" for "the bank" wherever appearing, inserted "or Federal savings association" in three places, inserted "or Federal savings associations", and substituted "Such depository institution" for "Such bank", and in para. (18), inserted "or the Director of the Office of Thrift Supervision, as appropriate," in two places, and substituted "insured depository institution" for "insured bank", "new depository institution" for "new bank", "such depository institution" for "such bank", and "the insured depository institution" for "the bank" wherever appearing in the subsection; in subsec. (n), in the subsection heading, substituted "depository institutions" for "banks", in para. (1), in subpara. (A), inserted ", with respect to 1 or more insured banks, or the Director of the Office of Thrift Supervision, with respect to 1 or more insured savings associations,", "or Federal savings associations, as appropriate,", and "or Federal savings associations, as applicable,", and substituted "as 'bridge depository institutions'" for "as bridge banks", in subpara. (B)(i), deleted "of a bank" following "any insured deposits", and deleted "of that bank" following "all insured deposits", in subpara. (E), in the heading, inserted "or Federal savings association", and in the text, inserted ", in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations", in para. (2), in the introductory matter, inserted "or Federal savings association", and "or the Director of the Office of Thrift Supervision", in subpara. (A)(i), substituted "such depository institution" for "such bank", in subpara. (B), inserted "or Federal savings association" in the heading and text, in para. (4), in the introductory matter, inserted "or Federal savings association, as appropriate", in subpara. (C), substituted "under any" for "under section 5138 of the Revised Statutes or any other", in subpara. (D) inserted "and the Director of the Office of Thrift Supervision, as appropriate," and substituted "depository institution's" for "bank's", in subpara. (G) inserted "and the Director of the Office of Thrift Supervision, as appropriate,", and in subpara. (H), substituted "a depository institution in default" for "a bank in default", in para. (3)(A)(i), substituted "such depository institution" for "such bank", in para. (8), in subpara. (A), substituted "the depository institutions" for "the banks", and in subpara. (B), substituted "depository institution's" for "bank's", in para. (11), in subparas. (A), (B), and (C), inserted "or a Federal savings association, as the case may be,", in para. (12)(B), inserted "or the Director of the Office of Thrift Supervision, as appropriate," in two places, and inserted "or Federal savings associations, as appropriate", in para. (13), substituted "single depository institution" for "single bank", and substituted "bridge depository institution" for "bridge bank", "bridge depository institutions" for "bridge banks", "bridge depository institution's" for "bridge bank's", "insured depository institution" for "insured bank", "insured depository institutions" for "insured banks", "the depository institution" for "the bank", and "depository institution or institutions" for "bank or banks" wherever appearing in the subsection, in text and headings.

Such Act further, in subsec. (n), in para. (1)(B)(i), deleted ", except that if any insured deposits are assumed, all insured deposits bank shall be assumed by the bridge depository institution or another insured depository institution", following "appropriate", and in para. (5), added subpara. (D).

2010.

Act July 21, 2010 (effective 1 day after enactment, as provided by § 4 of such Act, which appears as 12 USCS § 5301 note), in subsec. (a)(1)(E), substituted "\$250,000" for "\$100,000", and added the sentences beginning "Notwithstanding any other provision . . .", "The Corporation shall take . . .", and "In implementing . . .".

Such Act further (effective 12/31/2010, as provided by § 343(a)(2) of such Act, which appears as a note to this section), in subsec. (a)(1), in subpara. (B), designated the existing provisions as cl. (i), inserted the clause heading, and substituted "Subject to clause (ii), the net amount" for "The net amount", and added cls. (ii) and (iii), and in subpara. (C), substituted "subparagraph (B)(i)" for "subparagraph (B)".

Act Dec. 29, 2010 (effective on 12/31/2010, as provided by § 1(b) of such Act, which appears as a note to this section), in subsec. (a)(1)(B)(iii), substituted.

"means—

"(I) a deposit"

for "means a deposit", redesignated former subcls. (I)–(III) as items (aa)–(cc), respectively, in item (cc) as so designated, substituted ";" and" for a concluding period, and added subcl. (II).

Such Act further (effective on the transfer date (as such date is defined in § 311 of such Act, which appears as 12 USCS § 5411), as provided by § 351 of such Act, which appears as 2 USCS § 906 note), in subsec. (c), in para. (2)(A)(ii), deleted "(other than section 21A of the Federal Home Loan Bank Act)" following "law", in para. (4), substituted "Notwithstanding" for "Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and notwithstanding", in para. (6), in the heading, substituted "Comptroller of the Currency" for "Director of the Office of Thrift Supervision", in subpara. (A), deleted "or the Resolution Trust Corporation" following "The Corporation", and substituted "Comptroller of the Currency" for "Director of the Office of Thrift Supervision", and substituted subpara. (B) for one which read:

"(B) Receiver. Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of subparagraph (A) or (C) of section 5(d)(2) of the Home Owners' Loan Act for the purpose of liquidation or winding up any savings association's affairs—

"(i) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed;

"(ii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time before such date; and

"(iii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, 1993, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).",

and in para. (12)(A), deleted "or the Resolution Trust Corporation" following "Corporation"; in subsec. (d), in paras. (17)(A) and (18)(B), deleted "or the Director of the Office of Thrift Supervision" following "Currency"; in subsec. (m), in paras. (9), (16), and (18), deleted "or the Director of the Office of Thrift Supervision, as appropriate" following "Currency" wherever appearing; in subsec. (n), in para. (1)(A), substituted "or" for ", or the Director of the Office of Thrift Supervision, with respect to", and deleted a second comma following "applicable", in para. (2)(A), in the introductory matter, deleted "or the Director of the Office of Thrift Supervision" following "Currency", in para. (4), in subparas. (D) and (G), deleted "and the Director of the Office of Thrift Supervision, as appropriate," following "Currency", and in para. (12)(B), inserted "as" after "shall appoint the Corporation", and deleted "or the Director of the Office of Thrift Supervision, as appropriate," following "Currency" wherever appearing; in subsec. (p), in para. (2)(B), substituted "or the Corporation," for "the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,", and in para. (3)(B), deleted ", the FSLIC Resolution Fund, the Resolution Trust Corporation," following "institution"; and in subsec. (r), in the introductory matter, deleted "and the Resolution Trust Corporation" following "Corporation".

Such Act further (effective 1/1/2013, as provided by § 343(a)(3) of such Act), in subsec. (a)(1), substituted subpara. (B) for one which read:

"(B) Net amount of insured deposit.

"(i) In general. Subject to clause (ii), the net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

"(ii) Insurance for noninterest-bearing transaction accounts. Notwithstanding clause (i), the Corporation shall fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such depositor under clause (i).

“(iii) Noninterest-bearing transaction account defined. For purposes of this subparagraph, the term ‘noninterest-bearing transaction account’ means—

“(I) a deposit or account maintained at an insured depository institution—

“(aa) with respect to which interest is neither accrued nor paid;

“(bb) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

“(cc) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

“(II) a trust account established by an attorney or law firm on behalf of a client, commonly known as an ‘Interest on Lawyers Trust Account’, or a functionally equivalent account, as determined by the Corporation.”,

and in subpara. (C), substituted “subparagraph (B)” for “subparagraph (B)(i)”.

2012.

Act Dec. 20, 2012, in subsec. (t)(2)(A), inserted cl. (vi).

Other provisions:

Termination of Trust Territory of the Pacific Islands. For termination of Trust Territory of the Pacific Islands, see note preceding [48 USCS § 1681](#).

Applicability of Oct. 16, 1966 amendments. Act Oct. 16, 1966, [P. L. 89-695](#), § 301(e), [80 Stat. 1055](#), which appears as [12 USCS § 1813](#) note, provided that the amendments to subsecs. (a) and (i) of this section shall not be applicable to any claims arising prior to Oct. 16, 1966, with respect to the closing of a bank.

Limitation on applicability of Dec. 23, 1969 amendment. Act Dec. 23, 1969, [P. L. 91-151](#), Title I, § 7(b), [83 Stat. 375](#), which appears as [12 USCS § 1813](#) note, provided that the amendments to subsecs. (a) and (i) of this section are not applicable to any claim arising prior to Dec. 23, 1969, with respect to the closing of a bank.

Limitation on application of Oct. 28, 1974 amendment. Act. Oct. 28, 1974, [P. L. 93-495](#), Title I, § 102(b), [88 Stat. 1502](#), which appears as [12 USCS § 1813](#) note, provided that the amendments to subsecs. (a) and (i) of this section, are not applicable to any claim arising prior to Oct. 28, 1974, with respect to the closing of a bank.

Applicability of Dec. 21, 1979 amendments. Act Dec. 21, 1979, [P. L. 96-153](#), Title III, § 323(e), [93 Stat. 1120](#), which appears as former [12 USCS § 1728](#) note, provided that the amendment to subsec. (a) of this section is not applicable to any claim arising prior to Dec. 21, 1979, but shall be applicable to any such claim arising on or after such date, with respect to the closing of a bank, savings and loan association, or credit union.

Applicability of March 31, 1980 amendments; exemptions. Act March 31, 1980, [P. L. 96-221](#), Title III, § 308(a)(2), [94 Stat. 147](#), which appears as [12 USCS § 1813](#) note, provided that the amendments to subsecs. (a) and (i) of this section are not applicable to any claim arising prior to March 31, 1980, with respect to the closing of a bank.

Oversight Board renamed the Thrift Depositor Protection Oversight Board. Act Dec. 12, 1991, P. L. 102-233, Title III, § 302(a), [105 Stat. 1767](#) (effective Feb. 1, 1992, as provided by § 318 of such Act, which appears as [12 USCS § 1441](#) note), provides for redesignation of the Oversight Board, established by § 21A(a)(1) of the Federal Home Loan Bank Act ([12 U.S.C. 1441a\(a\)\(1\)](#)), as the Thrift Depositor Protection Oversight Board. The Thrift

Depositor Protection Oversight Board was abolished by § 14(a)–(d) of Act July 29, 1998, *P. L. 105-216*, *112 Stat. 908*, subject to savings provisions; see [12 USCS § 1441a](#) note.

Expanded coverage by regulation. Act Dec. 19, 1991, *P. L. 102-242*, Title III, Subtitle B, § 311(b)(4), *105 Stat. 2365*, provides:

“(A) Review of coverage. For the purpose of prescribing regulations, during the 1-year period beginning on the date of the enactment of this Act, the Board of Directors shall review the capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation.

“(B) Regulations. After the end of the 1-year period referred to in subparagraph (A), the Board of Directors may prescribe regulations that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with—

- “(i) the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage; and
- “(ii) the insurance provisions of the Federal Deposit Insurance Act.

“(C) Delayed effective date for regulations. No regulation prescribed under subparagraph (B) may take effect before the 2-year period beginning on the date of the enactment of this Act.”.

Effective date and application of Act Dec. 19, 1991 amendments. Act Dec. 19, 1991, *P. L. 102-242*, Title III, Subtitle B, § 311(c), *105 Stat. 2366*, provides:

“(1) In general. Except as provided in paragraph (2), the amendments made by subsection (a) and paragraphs (2) and (3) of subsection (b) [adding subsec. (a)(8) of this section and amending subsec. (a)(3) of this section and [12 USCS § 1817\(b\)\(6\)](#) and (i)] shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

“(2) Application to time deposits.

“(A) Certain deposits excluded. Except with respect to the amendment referred to in paragraph (3), the amendments made by subsections (a) and (b) [adding subsec. (a)(8) and amending subsecs. (a)(1)–(3) of this section and [12 USCS §§ 1813\(m\)\(1\)](#) and [1817\(b\)\(6\)](#) and (i)] shall not apply to any time deposit which—

- “(i) was made before the date of enactment of this Act; and
- “(ii) matures after the end of the 2-year period referred to in paragraph (1).

“(B) Rollovers and renewals treated as new deposit. Any renewal or rollover of a time deposit described in subparagraph (A) after the date of the enactment of this Act shall be treated as a new deposit which is not described in such subparagraph.

“(3) Effective date for amendment relating to certain employee plans.

“(A) Section 11(a)(1)(B) of the Federal Deposit Insurance Act [subsec. (a)(1)(B) of this section] (as amended by subsection (b)(1) of this section) shall take effect on the earlier of—

- “(i) the date of the enactment of this Act; or
- “(ii) January 1, 1992.

“(B) Section 11(a)(3)(A) of the Federal Deposit Insurance Act [subsec. (a)(3)(A) of this section] (as amended by subsection (b)(2) of this section) shall take effect on the earlier of the dates described in clauses (i) and (ii) of subparagraph (A) with respect to plans described in clause (ii) of such section.”.

Informational study. Act Dec. 19, 1991, *P. L. 102-242*, Title III, Subtitle B, § 311(d), *105 Stat. 2366*, provides:

"(1) In general. The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure, under any Act of Congress or any regulation of any appropriate Federal banking agency, of the Federal Government with respect to all insured depository institutions.

"(2) Analysis of costs and benefits. The study under paragraph (1) shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system.

"(3) Specific factors to be studied. As part of the study under paragraph (1), the Corporation shall investigate, review, and evaluate—

- "(A) the data systems that would be required to track deposits in all insured depository institutions;
- "(B) the reporting burdens of such tracking on individual depository institutions;
- "(C) the systems which exist or which would be required to be developed to aggregate such data on an accurate basis;
- "(D) the implications such tracking would have for individual privacy; and
- "(E) the manner in which systems would be administered and enforced.

"(4) Federal reserve board survey. As part of the informational study required under paragraph (1), the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held, and the type of financial institutions in which the deposit accounts are held.

"(5) Analysis by FDIC. The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act for analysis and inclusion in the informational study.

"(6) Report to Congress. Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.".

Continuation of health plan coverage in cases of failed financial institutions. Act Dec. 19, 1991, P. L. 102-242, Title IV, Subtitle I, § 451, 105 Stat. 2382; Oct. 28, 1992, P. L. 102-550, Title XVI, Subtitle A, § 1606(g)(1), 106 Stat. 4088 (effective as if included in Act Dec. 19, 1991 on enactment of such Act, as provided by § 1609(a) of Act Oct. 28, 1992, which appears as [12 USCS § 191](#) note), provides:

"(a) Continuation coverage. The Federal Deposit Insurance Corporation—

"(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 [[29 USCS § 1162](#)] (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

"(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

"(b) Definitions. For purposes of this section—

"(1) Successor. An entity is a successor of a failed depository institution during any period if—

"(A) such entity holds substantially all of the assets or liabilities of such institution, and

"(B) such entity is—

“(i) the Federal Deposit Insurance Corporation,

“(ii) any bridge bank, or

“(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

"(2) Failed depository institution. The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act [[12 USCS § 1813\(c\)](#)]) for which a receiver has been appointed.

"(3) Bridge bank. The term 'bridge bank' has the meaning given such term by section 3(i)(2) of the Federal Deposit Insurance Act [[12 USCS § 1813\(i\)\(2\)](#)].

"(c) No premium costs imposed on FDIC. Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

"(d) Effective date. This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 [[29 USCS § 1163](#)] occurred before, on, or after such date.”.

Applicability of Aug. 10, 1993 amendments. Act Aug. 10, 1993, *P. L. 103-66*, Title III, § 3001(c), *107 Stat. 337*, provides: “The amendments made by this section [amending subsecs. (c), (d), and (g) of this section] shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act.”.

GAO report evaluating certification of need for funds. Act Dec. 17, 1993, *P. L. 103-204*, § 8(g), *107 Stat. 2388*, provides: “Not later than 60 days after receipt of any certification submitted pursuant to subparagraph (E) or (F) of section 11(a)(6) of the Federal Deposit Insurance Act [subsec. (a)(6)(E), (F) of this section], the Comptroller General shall transmit a report to the Congress evaluating any such certification.”.

Feasibility study for single agency disposition of real property. Act Dec. 17, 1993, *P. L. 103-204*, § 26(b), *107 Stat. 2409*, provides:

"(1) Study. The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such single agency to efficiently carry out such disposition activities.

"(2) Report. Not later than 12 months after the date of enactment of this Act, the Comptroller General shall submit a report to the Congress on the study required under paragraph (1), which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency.”.

Exceptions to subsec. (a)(4)(B) of this section for certain transactions. Act Dec. 17, 1993, *P. L. 103-204*, § 37, *107 Stat. 2416*, provides:

"(a) Transactions involving certain institutions. Section 11(a)(4)(B) of the Federal Deposit Insurance Act [subsec. (a)(4)(B) of this section] shall not prohibit assistance from the Bank Insurance Fund that otherwise meets all the criteria established in section 13(c) of such Act [[12 USCS § 1823\(c\)](#)] from being provided to an insured depository institution that became wholly-owned, either directly or through a wholly-owned subsidiary, by an entity or

instrumentality of a State government during the period beginning on January 1, 1992, and ending on the date of enactment of this Act.

"(b) Transactions involving the FDIC as receiver. Notwithstanding the extension, pursuant to section 27 [[12 USCS § 1831d](#)], of the Resolution Trust Corporation's jurisdiction to be appointed conservator or receiver of certain savings associations after September 30, 1993, no provision of this Act or any amendment made by this Act [for full classification, consult USCS Tables volumes] shall invalidate or otherwise affect—

"(1) any appointment of the Federal Deposit Insurance Corporation as receiver for any savings association that became effective before the date of enactment of this Act; or

"(2) any action taken by the Federal Deposit Insurance Corporation as such receiver before, on, or after such date of enactment."

Repeal of provisions relating to merger of BIF AND SAIF. Act Sept. 30, 1996, *P. L. 104-208*, Div A, Title II, Subtitle G, § 2704(a), (b), *110 Stat. 3009-486*; Nov. 12, 1999, *P. L. 106-102*, Title VII, Subtitle C, § 736(b)(1), *113 Stat. 1479* (effective on enactment, as provided by § 736(c) of such Act), which formerly appeared as a note to this section, was repealed by Act Feb. 8, 2006, *P. L. 109-171*, Title II, Subtitle B, § 2102(b), *120 Stat. 9* (effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on Feb. 8, 2006, pursuant to § 2102(c) of such Act, which appears as a note to this section). The repealed note provided that effective Jan. 1, 1999, if no insured depository institution was a savings association on that date, the Bank Insurance Fund and the Savings Association Insurance Fund were to be merged into the Deposit Insurance Fund, that all assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund were to be transferred to the Deposit Insurance Fund, and that the separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund was to cease.

Repeal of provision relating to effective date of § 2704 of Act Sept. 30, 1996. Act Sept. 30, 1996, *P. L. 104-208*, Div A, Title II, Subtitle G, § 2704(c), *110 Stat. 3009-487*, which formerly appeared as a note to this section, was repealed by Act Feb. 8, 2006, *P. L. 109-171*, Title II, Subtitle B, § 2102(b), *120 Stat. 9* (effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on Feb. 8, 2006, pursuant to § 2102(c) of such Act, which appears as a note to this section). The repealed note provided that § 2704 of Act Sept. 30, 1996 (for full classification, consult USCS Tables volumes) was to become effective on January 1, 1999, if no insured depository institution was a savings association on that date.

Definitions relating to deposit insurance funds. Act Sept. 30, 1996, *P. L. 104-208*, Div A, Title II, Subtitle G, § 2710, *110 Stat. 3009-498*, provides:

"For purposes of this subtitle [for full classification, consult USCS Tables volumes], the following definitions shall apply:

"(1) Bank Insurance Fund. The term 'Bank Insurance Fund' means the fund established pursuant to section (11)(a)(5)(A) of the Federal Deposit Insurance Act [subsec. (a)(5)(A) of this section], as that section existed on the day before the date of enactment of this Act.

"(2) BIF member, SAIF member. The terms 'Bank Insurance Fund member' and 'Savings Association Insurance Fund member' have the same meanings as in section 7(l) of the Federal Deposit Insurance Act [[12 USCS § 1817\(l\)](#)].

"(3) Various banking terms. The terms 'bank', 'Board of Directors', 'Corporation', 'deposit', 'insured depository institution', 'Federal savings association', 'savings association', 'State savings bank', and 'State depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act [[12 USCS § 1813](#)].

"(4) Deposit insurance fund. The term 'Deposit Insurance Fund' means the fund established under section 11(a)(4) of the Federal Deposit Insurance Act [subsec. (a)(4) of this section] (as amended by section 2704(d) of this subtitle).

“(5) Depository institution holding company. The term ‘depository institution holding company’ has the same meaning as in section 3 of the Federal Deposit Insurance Act [[12 USCS § 1813](#)].

“(6) Designated reserve ratio. The term ‘designated reserve ratio’ has the same meaning as in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act [[12 USCS § 1817\(b\)\(2\)\(A\)\(iv\)](#)].

“(7) SAIF. The term ‘Savings Association Insurance Fund’ means the fund established pursuant to section 11(a)(6)(A) of the Federal Deposit Insurance Act [subsec. (a)(6)(A) of this section], as that section existed on the day before the date of enactment of this Act.

“(8) SAIF-assessable deposit. The term ‘SAIF-assessable deposit’—

“(A) means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act [[12 USCS §§ 1811](#) et seq., generally; for full classification, consult USCS Tables volumes] (including a deposit that is treated as insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act [[12 USCS § 1815\(d\)\(3\)](#)]); and

“(B) includes any deposit described in subparagraph (A) which is assumed after March 31, 1995, if the insured depository institution, the deposits of which are assumed, is not an insured depository institution when the special assessment is imposed under section 2702(a) [[12 USCS § 1817](#) note].”.

Effective date of § 736 of Act Nov. 12, 1999. Act Nov. 12, 1999, P. L. 106-102, Title VII, Subtitle C, § 736(c), 113 Stat. 1479, provides: “This section and the amendments made by this section [amending this section and note to this section] shall become effective on the date of the enactment of this Act.”.

Merging the BIF and SAIF. Act Feb. 8, 2006, P. L. 109-171, Title II, Subtitle B, § 2102, 120 Stat. 9, provides:

“(a) In general.

“(1) Merger. The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

“(2) Disposition of assets and liabilities. All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

“(3) No separate existence. The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

“(b) Repeal of outdated merger provision. Section 2704 of the Deposit Insurance Funds Act of 1966 ([12 U.S.C. 1821](#) note) is repealed.

“(c) Effective date. This section shall take effect no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act.”.

Effective date of amendments made by § 2103 of Act Feb. 8, 2006. Act Feb. 8, 2006, P. L. 109-171, Title II, Subtitle B, § 2103(d), 120 Stat. 12, provides: “This section and the amendments made by this section [amending subsec. (a) of this section] shall take effect on the date final regulations required under section 9(a)(2) [2109(a)(2)] [[12 USCS § 1817](#) note] take effect.”. Such regulations ([71 Fed. Reg. 53547](#)) took effect October 12, 2006.

Effective date of amendments made by § 343(a)(1) of Act July 21, 2010. Act July 21, 2010, P. L. 111-203, Title III, Subtitle D, § 343(a)(2), 124 Stat. 1544, provides: “The amendments made by paragraph (1) [amending subsec. (a)(1) of this section] shall take effect on December 31, 2010.”.

Effective date of Dec. 29, 2010 amendments. Act Dec. 29, 2010, P. L. 111-343, § 1(b), 124 Stat. 3609, provides: “The amendments made by subsection (a) [amending subsec. (a)(1)(B)(iii) of this section] shall take effect on December 31, 2010.”.

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I. IN GENERAL

1. Generally

Intent of statutory and regulatory schemes is that FDIC move with dispatch in order to maintain going concern value of failed bank and to avoid significant disruptions in banking services. [Jones v. Federal Deposit Ins. Corp., 748 F.2d 1400, 1984 U.S. App. LEXIS 16531 \(10th Cir. 1984\)](#).

Reasoning applied in cases under [12 USCS § 1823\(e\)](#) is applicable to cases involving FSLIC, even though § 1823(e) has not been extended to protect FSLIC. [Olney Sav. & Loan Asso. v. Trinity Banc Sav. Asso., 885 F.2d 266, 1989 U.S. App. LEXIS 15548 \(5th Cir.\)](#), reh'g denied en banc 892 F.2d 78, 1989 U.S. App. LEXIS 19506 (5th Cir. 1989).

Insurance provided for by FDIC does not include coverage for funds lost through bank robberies; accordingly, counsel's employment by FDIC does not give rise to conflict of interest when counsel is subsequently employed by criminal defendant charged with bank robbery. [United States v. Soto Rivera, 581 F. Supp. 561, 1984 U.S. Dist. LEXIS 19004 \(D.P.R. 1984\)](#).

Virtual elimination of federal deposit insurance on funds placed by deposit brokers in insured financial institutions is unlawful, since statutory grant to Federal Deposit Insurance Corporation and Federal Home Loan Bank Board of power to define and clarify insurance coverage did not grant agencies any new power, but was intended merely to allow agencies to prevent single depositor from exceeding statutory ceilings through devious means. [FAIC Secur., Inc. v. United States, 595 F. Supp. 73, 1984 U.S. Dist. LEXIS 15700 \(D.D.C. 1984\)](#), aff'd, [753 F.2d 166, 243 U.S. App. D.C. 348 \(D.C. Cir. 1985\)](#), aff'd, [753 F.2d 166, 243 U.S. App. D.C. 348 \(D.C. Cir. 1985\)](#).

Because bank's nerve center was its Illinois corporate headquarters office where bank's board of directors meetings were held and many corporate departments were located, its principal place of business was not in instant judicial district; accordingly under [12 USCS § 1821\(d\)](#), court did not have jurisdiction and motion of receiver and bank to dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) was granted. [Augienello v. FDIC, 310 F. Supp. 2d 582, 2004 U.S. Dist. LEXIS 4744 \(S.D.N.Y. 2004\)](#).

"Covered agency" is limited to "appropriate Federal banking agency," which is defined as "the Federal Deposit Insurance Corporation in case of State nonmember insured Bank;" institution was thrift, not state nonmember insured bank, and Federal Deposit Insurance Corporation, therefore, was not covered agency; Council on Environmental Quality was not covered agency either. [FDIC v. Hurwitz, 384 F. Supp. 2d 1039, 2005 U.S. Dist. LEXIS 17907 \(S.D. Tex. 2005\)](#), rev'd in part, vacated, remanded, [523 F.3d 566, 2008 U.S. App. LEXIS 7221 \(5th Cir. 2008\)](#).

In case filed in United States District Court for District of Columbia arising from alleged wrongful foreclosure in which former homeowner had essentially duplicate case filed in another federal district court and Federal Deposit Insurance Company (FDIC) filed Fed. R. Civ. P. 12(b)(1) motion to dismiss present case for lack of subject matter jurisdiction, under [12 USCS § 1821\(d\)\(6\)](#), United States District Court for District of Columbia had subject matter jurisdiction over case. By time that homeowner filed present case, FDIC had already been appointed as receiver, and, in such post-receivership cases, other federal district court would not have had subject matter jurisdiction over case; instead, under Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, FIRREA, only United States District Court for District of Columbia or district court in district where

failed financial institution's principal place of business was located would have jurisdiction over homeowner's claims. [Poku v. FDIC, 752 F. Supp. 2d 23, 2010 U.S. Dist. LEXIS 123887 \(D.D.C. 2010\).](#)

In case filed in United States District Court for District of Columbia arising from alleged wrongful foreclosure in which former homeowner had essentially duplicate case filed in another federal district court and Federal Deposit Insurance Company (FDIC) filed *Fed. R. Civ. P.* 12(b)(3) motion to dismiss present case for improper venue, nothing in [18 USCS § 1821\(d\)\(6\)\(A\)](#) indicated that United States District Court for District of Columbia became improper venue under circumstances of case. [Poku v. FDIC, 752 F. Supp. 2d 23, 2010 U.S. Dist. LEXIS 123887 \(D.D.C. 2010\).](#)

[12 USCS § 1821\(j\)](#) withholds court's ability to hear equitable claims that seek to inhibit, in preemptive manner, FDIC's exercise of its powers, including future use of those powers. [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

Court order which operates against third party is precluded by [12 USCS § 1821\(j\)](#) if order would have same effect from Federal Deposit Insurance Corporation's perspective as direct action against it precluded by § 1821(j). [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

[12 USCS §§ 1823\(e\)](#) and [1821\(d\)\(9\)\(A\)](#) are both limited to conventional loan activities, rather than other banking transactions. [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

Financial Institutions Reform Recovery and Enforcement Act of 1989 applied retroactively because statute merely clarified existing law rather than altering substantive rights, and in light of amendments, FDIC, in its corporate capacity as acquirer of assets of failed bank from FDIC in its capacity as receiver for failed bank, was entitled to assert attorney-client privilege with respect to communications between bank and its attorney in corporate FDIC's accounting malpractice action relating to assets of bank which it had acquired. [Federal Deposit Ins. Corp. v. Cherry, Bekaert & Holland, 129 F.R.D. 188, 1989 U.S. Dist. LEXIS 16846 \(M.D. Fla. 1989\)](#), reconsideration granted in part, [131 F.R.D. 202, 1990 U.S. Dist. LEXIS 6046 \(M.D. Fla. 1990\).](#)

2. Valuation of claims in default

Maximum liability of FDIC is limited to amount claimant would have received in liquidation under federal priority regulations. [First Indiana Federal Sav. Bank v. Federal Deposit Ins. Corp., 964 F.2d 503, 1992 U.S. App. LEXIS 14926 \(5th Cir. 1992\).](#)

Developer promised loan cannot recover from FDIC as successor receiver of failed savings and loan, where FHLBB determined that assets of savings and loan were not sufficient to satisfy its deposit and secured liabilities, because [12 USCS § 1821\(i\)\(2\)](#) does not permit court to disregard FHLBB's determination under which unsecured developer may take nothing. [Village South Joint Venture v. Federal Deposit Ins. Corp., 733 F. Supp. 50, 1990 U.S. Dist. LEXIS 3189 \(N.D. Tex. 1990\).](#)

Investment group's usury and contract claims against FDIC as successor receiver are summarily dismissed, where [12 USCS § 1821\(i\)\(2\)](#), providing for direct judicial review of FHLBB's determinations, is constitutional and merely preserves status quo with respect to amount of recovery available to unsecured creditors of failed institution. [Triland Inv. Group v. Federal Deposit Ins. Corp., 735 F. Supp. 698, 1990 U.S. Dist. LEXIS 4888 \(N.D. Tex. 1990\).](#)

Financial Institutions Reform, Recovery, and Enforcement Act provision, [12 USCS § 1821\(i\)\(2\)](#), could not be given retroactive effect to limit FDIC's maximum liability in bank creditors' action alleging purchase and assumption agreements entered into between FDIC and subsidiary banks discriminated between unsecure non-subordinated creditors within same class violating ratable distribution requirements of [12 USCS § 194](#), where (1) [12 USCS § 1821\(i\)\(2\)](#) should be applied prospectively absent unequivocal congressional intent, and (2) [12 USCS § 1821\(i\)\(2\)](#) operates to displace existing interpretations of National Bank Act with respect to FDIC and its authority to deal with

creditors of failed banks. [*Senior Unsecured Creditors' Comm. of First Republicbank Corp. ex rel. First Republicbank Corp. v. FDIC, 749 F. Supp. 758, 1990 U.S. Dist. LEXIS 13956 \(N.D. Tex. 1990\).*](#)

Judgment on asserted counterclaims may not legally or prudentially be entered against FDIC as receiver for insolvent financial institution, where receiver will never possess any of failed institution's assets in future from which counterclaimant could collect, because [12 USCS § 1821\(i\)\(2\)](#) caps liability for this type of claim at amount counterclaimant would have received in liquidation, which here is nothing. [*Federal Deposit Ins. Corp. v. Browning, 757 F. Supp. 772, 1989 U.S. Dist. LEXIS 16193 \(N.D. Tex. 1989\).*](#)

RTC will be substituted for bank in its capacity as receiver, even though borrower, who sued bank prior to receivership alleging fraud and negligence involving \$14 million in loans for financially irresponsible ventures, contends that principle underlying former ratable distribution requirement of [12 USCS § 94](#) prevents substitution prior to determination that sufficient assets are held for payment of his claims, because former ratable distribution requirement has been effectively overruled by [12 USCS § 1821\(i\)\(2\)](#). [*Vinton v. Trustbank Sav., F.S.B., 798 F. Supp. 1055, 1992 U.S. Dist. LEXIS 10301 \(D. Del. 1992\).*](#)

Holders of certificates of deposits ("CDs") in failed bank may not recover against FDIC for interest lost on CDs after FDIC assumed failed bank's assets, where FDIC transferred assets and liabilities of failed bank to another bank pursuant to purchase and assumption agreement, and transferee bank announced that it would reduce amount of interest offered on CDs, because under [12 USCS § 1821\(i\)\(2\)](#), CD holders are only entitled to amount which they would have received in liquidation of failed bank, which would have included interest at contract rate only to date of failed bank's insolvency. [*Lawson v. Fleet Bank, 807 F. Supp. 136, 1992 U.S. Dist. LEXIS 18202 \(D. Me. 1992\), aff'd sub nom. Lawson v. FDIC, 3 F.3d 11, 1993 U.S. App. LEXIS 21199 \(1st Cir. 1993\).*](#)

Unsecured creditor's claims against FDIC as receiver for failed savings and loan (S&L) are dismissed, where FSLIC, previous receiver of S&L, approved sale of defunct S&L to another bank, purchaser bank assumed secured liabilities, but did not assume unsecured liabilities, and unsecured creditor sought to recover tort, contract, and statutory claims against FDIC as successor to FSLIC, because [12 USCS § 1821\(i\)\(2\)](#) limits FDIC's liability to amount that would have been available had S&L been liquidated, and since unsecured creditors' claims would have been worthless had S&L been liquidated, claims are dismissed. [*McNeily v. United States, 839 F. Supp. 426, 1992 U.S. Dist. LEXIS 21874 \(N.D. Tex. 1992\).*](#)

3. Damages

Prejudgment interest cannot be awarded under [12 USCS § 1821\(l\)](#) when conduct upon which judgment is based occurred before enactment of that statutory provision. [*FDIC v. UMIC, Inc., 136 F.3d 1375, 1998 Colo. J. C.A.R. 930, 1998 U.S. App. LEXIS 2628 \(10th Cir.\), cert. denied, 525 U.S. 962, 119 S. Ct. 404, 142 L. Ed. 2d 328, 1998 U.S. LEXIS 6872 \(1998\).*](#)

Claim for damages, which arises under [12 USCS § 1821\(e\)](#) when FDIC as receiver repudiates contract of insolvent financial institution, is subject to payment scheme outlined in § 1821(d), including distribution priority established in § 1821(d)(11); no separate right to payment is created. [*Battista v. FDIC, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. \(BNA\) 2139, 1999 U.S. App. LEXIS 28138 \(9th Cir. 1999\), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 \(2000\).*](#)

Court does not require letter-of-credit beneficiaries to be prescient of impending conservatorship in order to recover damages nor does it require that letter of credit be drawn on before Federal Deposit Insurance Corporation in its Receiver capacity (FDIC-R's) appointment. In accordance with statute, what court does require, however, is that actual direct compensatory damages be realized on or before appointment date; [12 U.S.C.S. § 1821\(e\)\(3\)\(A\)-\(B\)](#). [*Lexon Ins. Co. v. FDIC, 7 F.4th 315, 2021 U.S. App. LEXIS 22846 \(5th Cir. 2021\).*](#)

In action brought by FDIC arising from fraudulent financing of purchases of four properties, district court did not err in denying prejudgment interest to FDIC under § 1821(l) after it won verdict against title insurance company because statute gave district court authority to exercise its discretion and to look to state law for guidance, which

did not require prejudgment interest in fiduciary case. [*FDIC v. Chi. Title Ins. Co., 12 F.4th 676, 2021 U.S. App. LEXIS 26234 \(7th Cir. 2021\).*](#)

Federal Deposit Insurance Corporation, as receiver of failed federal bank, is not liable for punitive damages in suit against failed bank as matter of law; to award punitive damages against receiver would be contrary to principle imposing punitive damages only to punish wrongdoer and to deter others; award of punitive damages against receiver would not punish failed bank, but instead would punish innocent creditors and uninsured depositors. [*Professional Asset Management, Inc. v. Penn Square Bank, N.A., 566 F. Supp. 134, 1983 U.S. Dist. LEXIS 16536 \(W.D. Okla. 1983\).*](#)

Jury will not be permitted to hear any evidence relating solely to prejudgment interest, but such evidence will be admitted to inform court as to appropriateness and amount of prejudgment interest, because court has discretionary authority to award prejudgment interest to FDIC in litigation arising from insolvency of savings association pursuant to "appropriate interest" language of [12 USCS § 1821\(I\)](#). [*Comeau v. Rupp, 810 F. Supp. 1172, 1992 U.S. Dist. LEXIS 20247 \(D. Kan. 1992\).*](#)

RTC's action against law firm seeking lost profits on junk bond investment firm allegedly misrepresented is denied due to uncertainty in measurement of damages, where RTC actually made money on investment but claims it would have made more on alternative investment, because RTC's alternative argument that return in form of interest should not be taken into account in determining its "loss" on bonds is based on irrational interpretation of [12 USCS § 1821\(I\)](#) that will not be adopted. [*Resolution Trust Corp. v. Stroock & Stroock & Lavan, 853 F. Supp. 1422, 8 Fla. L. Weekly Fed. D 209, 1994 U.S. Dist. LEXIS 7404 \(S.D. Fla. 1994\).*](#)

RTC's claim, as receiver for defunct financial corporation, for punitive damages is not dismissed, where it is unclear whether corporation had been dissolved at time of receivership, because critical time for determining RTC's rights is time of receivership, at which point RTC steps into shoes of insolvent corporation and acquires all rights it had under state law, so dissolution of corporation after receivership would not be governed by state law regarding punitive damages. [*Resolution Trust Corp. v. S & K Chevrolet Co., 923 F. Supp. 135, 1996 U.S. Dist. LEXIS 5597 \(C.D. Ill. 1996\).*](#)

Bank's contractual obligation was not preempted by cap on FDIC's liability under [12 USCS § 1821\(i\)\(2\)](#), where FDIC had conveyed to bank assets of insolvent financial institution, including contractual obligation to perform "without limitation" all obligations arising under assigned loan participation and servicing agreements, because statute, by its terms, applied only to liability of FDIC. [*City & Suburban Mgmt. Corp. v. First Bank, 959 F. Supp. 660, 1997 U.S. Dist. LEXIS 4190 \(D. Del. 1997\).*](#)

Punitive or exemplary damages, damages for loss profits or opportunity, and damages for pain and suffering are expressly excluded by statute, [12 USCS § 1821\(e\)\(3\)\(B\)](#), but not prejudgment interest. [*Waterview Mgmt. Co. v. FDIC, 257 F. Supp. 2d 31, 2003 U.S. Dist. LEXIS 5035 \(D.D.C. 2003\).*](#)

[12 USCS § 1821\(e\)\(3\)\(A\)](#) provides that damages arising out of repudiation of contracts are to be determined as of date of appointment of receiver, which is also date of default as used in language establishing priority six. [*Waterview Mgmt. Co. v. FDIC, 257 F. Supp. 2d 31, 2003 U.S. Dist. LEXIS 5035 \(D.D.C. 2003\).*](#)

Trustees' request for interest payments related to unpaid custodial fees failed as matter of law under Financial Institutions Reform, Recovery and Enforcement Act, [12 USCS § 1821](#), because trustees failed to identify any provision in operative agreements (custodial agreement and either pooling and servicing agreement or indenture agreement) which entitled them to interest in any amount. [*U.S. Bank Nat'l Ass'n v. First Nat'l Bank, 394 F. Supp. 2d 829, 2005 U.S. Dist. LEXIS 34016 \(S.D. W. Va. 2005\).*](#)

Unpublished decision: "Appropriate interest" in [12 USCS § 1821\(1\)](#) meant "interest, if appropriate" or "interest, in appropriate case" or "interest, if otherwise appropriate," and nothing in statute suggested that "appropriate" referred to rate or amount of interest, and, district court correctly looked to applicable state law, [W. Va. Code § 56-6-31](#), to determine whether prejudgment interest was "appropriate" in case brought by plaintiff Federal Deposit Insurance

Corporation, as receiver for failed bank, against defendant, bank's accounting firm, for professional malpractice in performing audit. [Grant Thornton, LLP v. FDIC, 435 Fed. Appx. 188, 2011 U.S. App. LEXIS 12286 \(4th Cir. 2011\)](#).

4. Bridge banks

FDIC had authority under former [12 USCS § 1821\(i\)](#) [now § 1821(n)], to transfer to bridge bank, following FDIC's appointment as receiver for failed bank, both assets of trust for which failed bank acted as trustee and authority to act in fiduciary capacity with respect to such assets, without limitations by either state law regulating transfer of fiduciary appointments or language in originating document. [NCNB Texas Nat'l Bank v. Cowden, 895 F.2d 1488, 1990 U.S. App. LEXIS 2848 \(5th Cir. 1990\)](#).

Mechanic's lien claim is entitled to priority over that of bridge bank holding various acquired instruments evidencing debts owed by developers, even though imposition of lien required consent of owner and no written consent existed. [Bateman v. Federal Deposit Ins. Corp., 970 F.2d 924, 1992 U.S. App. LEXIS 15077 \(1st Cir.\)](#), corrected, No. 91-1832 (1st Cir. 1992).

Bridge bank, created by FDIC pursuant to [12 USCS § 1821\(n\)](#), is temporary institution which serves as vehicle to smooth transition of failed institution so that FDIC need not immediately put institution into receivership and pay out on insured deposits if there is possibility that buyer for assets may emerge. [Jones v. Resolution Trust Corp., 7 F.3d 1006, 7 Fla. L. Weekly Fed. C 1016, 1993 U.S. App. LEXIS 30123 \(11th Cir. 1993\)](#), vacated sub nom., reh'g, en banc, granted, [Resolution Trust Corp. v. Dunmar Corp., 20 F.3d 397, 8 Fla. L. Weekly Fed. C 164, 1994 U.S. App. LEXIS 10120 \(11th Cir. 1994\)](#), sub. op. en banc sub nom. [Resolution Trust Corp. v. Dunmar Corp., 43 F.3d 587, 8 Fla. L. Weekly Fed. C 989, 1995 U.S. App. LEXIS 1630 \(11th Cir. 1995\)](#).

Both [12 USCS § 1821\(n\)\(4\)](#) and [§ 1823\(e\)](#) are codifications of "D'Oench, Duhme" doctrine, and authorities construing one statutory section may be applied to other section. [Hanson v. FDIC, 13 F.3d 1247, 1994 U.S. App. LEXIS 476 \(8th Cir. 1994\)](#), app. after remand, [113 F.3d 866, 1997 U.S. App. LEXIS 11100 \(8th Cir. 1997\)](#).

Under [12 USCS § 1821\(n\)\(6\)\(A\)](#), RTC regulators cannot be held vicariously liable for acts of bridge bank's employees. [Resolution Trust Corp. v. Dunmar Corp., 43 F.3d 587, 8 Fla. L. Weekly Fed. C 989, 1995 U.S. App. LEXIS 1630 \(11th Cir.\)](#), cert. denied, 516 U.S. 817, 116 S. Ct. 74, 133 L. Ed. 2d 33, 1995 U.S. LEXIS 5446 (1995).

Worker Adjustment and Retraining Notification Act ([29 USCS §§ 2101 et seq.](#)) does not apply when Federal Deposit Insurance Corporation (FDIC), pursuant to [12 USCS § 1821\(n\)](#), organizes bridge bank and then sells assets of that bridge bank to healthy successor bank. [Buck v. FDIC, 75 F.3d 1285, 11 I.E.R. Cas. \(BNA\) 554, 131 Lab. Cas. \(CCH\) ¶ 11507, 1996 U.S. App. LEXIS 1752 \(8th Cir. 1996\)](#).

There is no automatic transfer provided by federal law of assets of FDIC as receiver of failed bank to bridge bank, nor is there automatic transfer from bridge bank back to FDIC upon termination of bridge bank. [FDIC v. Houde, 90 F.3d 600, 30 U.C.C. Rep. Serv. 2d \(CBC\) 549, 1996 U.S. App. LEXIS 18908 \(1st Cir. 1996\)](#).

State trust and probate law relating to fiduciary succession in circumstances of FDIC-assisted bridge bank transaction is preempted under Supremacy Clause by [12 USCS § 1821\(i\)\(3\)\(B\)](#). [NCNB Texas Nat'l Bank v. Cowden, 712 F. Supp. 1249, 1989 U.S. Dist. LEXIS 5391 \(W.D. Tex. 1989\)](#), aff'd, [895 F.2d 1488, 1990 U.S. App. LEXIS 2848 \(5th Cir. 1990\)](#).

In action by borrower against bank, which was declared insolvent pending action, such that FDIC was appointed receiver for bank and FDIC organized bridge bank to assume all assets of former bank, including counterclaims and cross-claims in action, bridge bank will be granted relief from stay issued pursuant to [12 USCS § 1821\(d\)\(13\)\(D\)\(i\)](#) so as to recover on its counterclaims against plaintiff, since FDIC is not party in bridge bank's action to recover on loan taken by plaintiff. [Levine v. Federal Deposit Ins. Corp., 136 F.R.D. 544, 1991 U.S. Dist. LEXIS 14135 \(D. Conn. 1991\)](#).

5. Supervisory records

RTC has absolute and unrestricted ability to obtain OTS documents on demand ([12 USCS § 1821\(o\)](#)); thus, RTC has custody, possession or control of OTS documents within meaning of [FRCP 34](#) for purposes of discovery, notwithstanding OTS regulation ([12 CFR § 510.5](#)) by which OTS retains ownership of any regulatory documents provided to other entities and agencies, and prohibits disclosure to third parties of any information or documents obtained from OTS. [Resolution Trust Corp. v. Deloitte & Touche, 145 F.R.D. 108, 25 Fed. R. Serv. 3d \(Callaghan\) 167, 1992 U.S. Dist. LEXIS 20883 \(D. Colo. 1992\)](#).

II. CORPORATION AS RECEIVER, GENERALLY

6. Generally

California law, rather than federal common law, determined questions concerning law firm's defense to tort claims by FDIC as insolvent savings and loan's receiver. [O'Melveny & Myers v. FDIC, 512 U.S. 79, 114 S. Ct. 2048, 129 L. Ed. 2d 67, 8 Fla. L. Weekly Fed. S 240, 94 Cal. Daily Op. Service 4360, 94 D.A.R. 8030, 94 D.A.R. 8305, 1994 U.S. LEXIS 4446 \(1994\)](#), remanded, [61 F.3d 17, 95 Cal. Daily Op. Service 5839, 1995 U.S. App. LEXIS 19609 \(9th Cir. 1995\)](#).

Derivative suit by shareholders should not be precluded merely because bank is in receivership of FDIC pursuant to [12 USCS § 1821](#), and same principles which apply to any derivative suit apply to one brought on behalf of closed bank in receivership of FDIC; principle that stockholder's derivative action, whether involving corporate refusal to bring antitrust suits or some other controversial decision concerning conduct of corporate affairs, can be maintained only if stockholder shall allege and prove that directors of corporation are personally involved or interested in alleged wrongdoing in way calculated to impair their exercise of business judgment on behalf of corporation, or that their refusal to sue reflects bad faith or breach of trust in some other way, applies with equal force to national bank represented by receiver mandated by congressional statute. [Landy v. Federal Deposit Ins. Corp., 486 F.2d 139, 17 Fed. R. Serv. 2d \(Callaghan\) 769, Fed. Sec. L. Rep. \(CCH\) ¶ 94094, 1973 U.S. App. LEXIS 8557 \(3d Cir. 1973\)](#), cert. denied, 416 U.S. 960, 94 S. Ct. 1979, 40 L. Ed. 2d 312, 1974 U.S. LEXIS 3863 (1974).

Federal holder in due course protection extends to FDIC not only in its corporate capacity, in which it is obliged to protect depositors of failed bank, but also in its capacity as receiver, in which capacity it must, pursuant to [12 USCS § 1821](#), protect bank's creditors and shareholders, and FDIC and subsequent note holders enjoy holder in due course status whether or not they satisfied technical requirements of state law. [Campbell Leasing, Inc. v. Federal Deposit Ins. Corp., 901 F.2d 1244, 12 U.C.C. Rep. Serv. 2d \(CBC\) 138, 1990 U.S. App. LEXIS 8335 \(5th Cir. 1990\)](#).

Relief in form of specific performance is not available under [12 USCS § 1821\(j\)](#); thus, district court does not have jurisdiction over action brought against RTC in its capacity as receiver of failed financial institution which seeks specific performance. [RPM Invs. v. Resolution Trust Corp., 75 F.3d 618, 9 Fla. L. Weekly Fed. C 860, 1996 U.S. App. LEXIS 2402 \(11th Cir. 1996\)](#).

Receivers, and only receivers, incur expenses of liquidation, as only receivers have power to liquidate failed thrift. [McAllister v. RTC, 201 F.3d 570, 24 Employee Benefits Cas. \(BNA\) 1016, 2000 U.S. App. LEXIS 835 \(5th Cir. 2000\)](#).

Receiver, not conservator, has authority to liquidate assets and pay obligations of insured institution on behalf of depositors and creditors. [McAllister v. RTC, 201 F.3d 570, 24 Employee Benefits Cas. \(BNA\) 1016, 2000 U.S. App. LEXIS 835 \(5th Cir. 2000\)](#).

Equitable relief from effects of national bank's failure and alleged misconduct antecedent to bank's demise, and removal of FDIC and appointment of independent receiver to manage assets of national bank, will be denied; FDIC was exclusive statutory receiver of insolvent bank pursuant to [12 USCS § 1821\(c\)](#), and appointment of independent receiver to administer "each and every asset" of bank would constitute removal of FDIC as receiver in contravention of that section. [British Columbia Inv. Co. v. Federal Deposit Ins. Corp., 420 F. Supp. 1217, 1976 U.S. Dist. LEXIS 13236 \(S.D. Cal. 1976\)](#).

FDIC is entitled to appointment of receiver to manage property securing loan made by failed bank/predecessor, where FDIC, acting as receiver for failed bank, has shown that debtors have paid nothing of \$5.525 million loan, that value of property is probably inadequate to secure debt now approaching \$8 million and that debtor's financial condition is at least suspect, because FDIC's right to venerable equitable device of receivership to provide independent, prudent management of assets is clear under [12 USCS § 1821\(d\)](#), [FRCP 66](#), and federal common law. [Brill & Harrington Inv. v. Vernon Sav. & Loan Ass'n, 787 F. Supp. 250, 1992 U.S. Dist. LEXIS 3517 \(D.D.C. 1992\)](#).

Law firm may assert affirmative defenses against RTC's legal malpractice claims, despite development of "immunity" rule by some courts based on public policy requiring rapid and efficient conversion of failed banking institution's assets to cash, because those public policy considerations are irrelevant to actions involving third-party professionals and should not bar third-party professionals from asserting affirmative defenses against RTC. [Resolution Trust Corp. v. Holland & Knight, 832 F. Supp. 1532, 1993 U.S. Dist. LEXIS 13624 \(S.D. Fla. 1993\)](#).

Office of Comptroller of Currency (OCC) did not wrongfully seize national bank and appoint FDIC as receiver even though bank was solvent, and, thus, FDIC could not be estopped from asserting that trusts were revocable for purposes of determining deposit insurance coverage, where there was no evidence that OCC acted outside its authority and [12 USCS § 1821\(c\)\(5\)](#) provided other grounds on which receiver may be appointed besides bank's insolvency. [Suzan Tantleff Trusts v. FDIC, 938 F. Supp. 14, 1996 U.S. Dist. LEXIS 9963 \(D.D.C. 1996\)](#).

Owner of savings bank in Winstar-related litigation could proceed against FDIC on claim for failure to properly administer receivership of savings bank, resulting in loss of value to owner. [Ambase Corp. v. United States, 61 Fed. Cl. 794, 2004 U.S. Claims LEXIS 229 \(Fed. Cl. Aug. 31, 2004\)](#).

FDIC must accept appointment as receiver in situations covered by [12 USCS § 1821. Slay v. Berry, 27 Mich. App. 271, 183 N.W.2d 436, 1970 Mich. App. LEXIS 1325 \(Mich. Ct. App. 1970\)](#).

7. Constitutionality

Application of [12 USCS § 1821\(e\)\(12\)\(A\)](#) so as to thwart preexisting termination-upon-insolvency clause in tenant bank's lease does not violate takings clause of Fifth Amendment. [McAndrews v. Fleet Bank of Massachusetts, N.A., 989 F.2d 13, 1993 U.S. App. LEXIS 5194 \(1st Cir. 1993\)](#).

Actions of Comptroller of Currency in declaring national bank insolvent and appointing FDIC as receiver do not constitute taking for which bank's holding company and its shareholders are entitled to compensation under Fifth Amendment. [Golden Pac. Bancorp v. United States, 15 F.3d 1066, 94 D.A.R. 3975, 1994 U.S. App. LEXIS 2050 \(Fed. Cir. 1994\)](#), reh'g, en banc, denied, [1994 U.S. App. LEXIS 9347 \(Fed. Cir. Apr. 19, 1994\)](#), cert. denied, 513 U.S. 961, 115 S. Ct. 420, 130 L. Ed. 2d 335, 1994 U.S. LEXIS 7552 (1994).

Administrative claims procedures under [12 USCS § 1821\(d\)\(2\)](#) are constitutional with respect to attorneys who provided services to insolvent trust company, notwithstanding argument that attorneys should be able to enforce retaining or charging liens in court; conflicting procedures would delay prompt resolution of all claims, and attorneys can urge their lien theories upon FDIC. [In re First City Nat'l Bank & Trust Co., 759 F. Supp. 1048, 1991 U.S. Dist. LEXIS 4012 \(S.D.N.Y. 1991\)](#).

Resolution Trust Corporation's repudiation of lease pursuant to [12 USCS § 1821\(e\)\(11\)](#) does not constitute taking of private property for public use without just compensation or due process in violation of Fifth Amendment, where prior to receivership, bank had agreed to lease data-processing equipment and pledge certain securities as security for performance under lease, because lease creditor had only expectation of future profits in lease since RTC was not in arrears on lease payments at time of repudiation. [LB Credit Corp. v. Resolution Trust Corp., 796 F. Supp. 358, 1992 U.S. Dist. LEXIS 11887 \(N.D. Ill. 1992\)](#).

RTC administrative subpoenas seeking private financial papers of former directors of failed savings and loan are proper, where RTC has statutory authority to avoid certain transfers by former directors and to seek asset freezes

pursuant to [12 USCS § 1821\(d\)\(17\)](#) and (d)(18), and information sought is relevant to RTC's investigation and not solely for purpose of assessing directors' net worth, because court follows D.C. Circuit precedent that RTC is not required to make any showing of wrongdoing or suspected wrongdoing to obtain enforcement of administrative subpoena to procure information regarding liability, asset transfers, or attachment of assets. *Resolution Trust Corp. v. Greif*, 906 F. Supp. 1446, 1995 U.S. Dist. LEXIS 16641 (D. Kan. 1995).

Administrative subpoena duces tecum issued to former chairman of failed savings and loan is statutorily authorized, where his personal financial information is relevant to RTC's authority to investigate whether he may have transferred assets in attempt to put any beyond reach of RTC, because RTC is afforded broad deference with respect to identification of avoidable asset transfers or attachable assets of former directors under [12 USCS §§ 1821\(d\)\(17\)](#) and (d)(18). *Resolution Trust Corp. v. Greif*, 906 F. Supp. 1457, 1995 U.S. Dist. LEXIS 16653 (D. Kan. 1995).

Government's appointment of conservator and then receiver, and receiver's transfer of S & L's assets to new institution, did not constitute Fifth Amendment taking of stockholders' property. [American Continental Corp. v. United States](#), 22 Cl. Ct. 692, 1991 U.S. Cl. Ct. LEXIS 90 (Cl. Ct. Mar. 22, 1991).

8. Relationship with other laws

Language of savings clause under [12 USCS § 1821\(k\)](#), in providing that nothing in section shall impair or affect any right under other applicable law, suggests interpretation broad enough to save rights provided by other state or federal law, and does not compel restrictive reading to effect that "any right" means only right created elsewhere in same act of Congress. *Atherton v. FDIC*, 519 U.S. 213, 117 S. Ct. 666, 136 L. Ed. 2d 656, 10 Fla. L. Weekly Fed. S 249, 97 Cal. Daily Op. Service 335, 97 D.A.R. 522, 1997 U.S. LEXIS 461 (1997).

Borrowers from bank in Puerto Rico had no standing to raise as defense, in action on their obligations by FDIC, in its corporate capacity as purchaser of some assets of bank from FDIC as receiver for bank, allegation that takeover of bank by FDIC pursuant to [12 USCS § 1821](#) was unlawful because FDIC did not comply with hearing requirement imposed by law of Puerto Rico. [Federal Deposit Ins. Corp. v. Marina](#), 892 F.2d 1522, 29 Fed. R. Evid. Serv. (CBC) 1330, 1990 U.S. App. LEXIS 990 (11th Cir. 1990).

When FDIC takes over insolvent national bank, legal issues concerning ownership, priority and adjustment of claims by stockholders against bank or its officers and directors, are not governed by state law; rather, local law is preempted by federal common law of uniform application. [Gaff v. FDIC](#), 919 F.2d 384, 1990 U.S. App. LEXIS 20227 (6th Cir. 1990), modified, on reh'g, [933 F.2d 400, 1991 U.S. App. LEXIS 10687](#) (6th Cir. 1991).

FIRREA's statutory exhaustion requirement ([12 USCS § 1821\(d\)\(13\)\(D\)](#)), to extent that it conflicts with provision of ERISA granting district court jurisdiction, prevails with respect to subject matter jurisdiction of district court. [Rosa v. Resolution Trust Corp.](#), 938 F.2d 383, 13 Employee Benefits Cas. (BNA) 2425, 14 Employee Benefits Cas. (BNA) 2425, 1991 U.S. App. LEXIS 13256 (3d Cir.), cert. denied, 502 U.S. 981, 112 S. Ct. 582, 116 L. Ed. 2d 608, 14 Employee Benefits Cas. (BNA) 1952, 1991 U.S. LEXIS 6920 (1991).

[12 USCS § 1821\(d\)\(17\)](#)–(19) does not exempt FDIC from operation of bankruptcy automatic stay ([11 USCS § 362](#)). [In re Colonial Realty Co.](#), 980 F.2d 125, 23 Bankr. Ct. Dec. (LRP) 1143, Bankr. L. Rep. (CCH) ¶ 75283, 28 Collier Bankr. Cas. 2d (MB) 28, 1992 U.S. App. LEXIS 30905 (2d Cir. 1992).

In enacting FIRREA, Congress did not impliedly amend Securities Exchange Act so as to subordinate latter to former; thus, FIRREA is not violated by permitting stockholder of bank (currently under RTC's receivership) to recover on direct fraud claim under [15 USCS § 78j\(b\)](#) against bank's officers and directors. [Hayes v. Gross](#), 982 F.2d 104, Fed. Sec. L. Rep. (CCH) ¶ 97384, 1992 U.S. App. LEXIS 33699 (3d Cir. 1992).

Worker Adjustment and Retraining Notification Act ([29 USCS §§ 2101](#) et seq.) does not apply when Federal Deposit Insurance Corporation (FDIC), pursuant to [12 USCS § 1821\(n\)](#), organizes bridge bank and then sells

assets of that bridge bank to healthy successor bank. [Buck v. FDIC, 75 F.3d 1285, 11 I.E.R. Cas. \(BNA\) 554, 131 Lab. Cas. \(CCH\) ¶ 11507, 1996 U.S. App. LEXIS 1752 \(8th Cir. 1996\)](#).

[FRCP 6\(a\)](#), which provides that day of act, event or default from which designated period of time begins to run is not to be included in computing period of time, is not applicable to statute of limitations provided in [12 USCS § 1821\(d\)\(14\)\(A\)](#), because [12 USCS § 1821\(d\)\(14\)\(B\)](#) specifically provides that statute of limitations begins to run on date FDIC is appointed conservator or receiver or date cause of action accrues, whichever is later. [FDIC v. Enventure V, 77 F.3d 123, 34 Fed. R. Serv. 3d \(Callaghan\) 469, 1996 U.S. App. LEXIS 4233 \(5th Cir.\)](#), reh'g, en banc, denied, 91 F.3d 142, 1996 U.S. App. LEXIS 17706 (5th Cir. 1996).

District court did not have jurisdiction over former bank employee's claim under Worker Adjustment and Retraining Notification Act ([29 USCS §§ 2101](#) et seq.) against FDIC in its capacity as receiver for failed bank, since employee, who did not file claim, either implicitly or explicitly, with FDIC before bringing court action, failed to exhaust his administrative remedies as required by [12 USCS § 1821](#). [McMillian v. FDIC, 81 F.3d 1041, 9 Fla. L. Weekly Fed. C 1029, 1996 U.S. App. LEXIS 9292 \(11th Cir. 1996\)](#).

Because Federal Deposit Insurance Corporation (FDIC) memorandum contained extensive legal analyses as to bond claim arising out of appellant inmate's fraudulent loan scheme, it was properly withheld under [5 USCS § 552\(b\)\(5\)](#) as attorney work product and summary judgment to appellee FDIC official was upheld, and further, under [12 USCS § 1821\(t\)](#), FDIC's provision of information to another federal agency did not waive any privileges. [Martin v. DOJ, 488 F.3d 446, 376 U.S. App. D.C. 293, 2007 U.S. App. LEXIS 12636 \(D.C. Cir. 2007\)](#), reh'g denied, [2007 U.S. App. LEXIS 18714 \(D.C. Cir. Aug. 3, 2007\)](#), reh'g, en banc, denied, [2007 U.S. App. LEXIS 18712 \(D.C. Cir. Aug. 3, 2007\)](#).

Court upheld ruling of Court of Federal Claims that Federal Deposit Insurance Corporation's (FDIC's) asserted charges for administering bank after its seizure should not be charged to damages award, for these charges were consequence of FDIC's breach; this ruling did not "restrain or affect exercise of powers or functions of (FDIC) as conservator or receiver" under [12 USCS § 1821\(j\)](#), but was directed at assuring integrity of judgment for breach of contract. [Slattery v. United States, 583 F.3d 800, 2009 U.S. App. LEXIS 21402 \(Fed. Cir. 2009\)](#), vacated, reh'g denied, review or reh'g granted en banc [369 Fed. Appx. 142, 2010 U.S. App. LEXIS 5987 \(Fed. Cir. 2010\)](#), modified in part, reaff'd, remanded en banc [635 F.3d 1298, 2011 U.S. App. LEXIS 1759 \(Fed. Cir. 2011\)](#).

Limited liability company's (LLC) Fifth Amendment takings claim should have been construed as illegal exaction claim and dismissed for lack of jurisdiction; complaint alleged that FDIC acted under its receivership powers to take control of cattle proceeds which otherwise would have gone directly to LLC, and thus, claim was best seen as illegal exaction claim subject to Tucker Act jurisdiction. [ECCO Plains, LLC v. United States, 728 F.3d 1190, 2013 U.S. App. LEXIS 18403 \(10th Cir. 2013\)](#), cert. denied, 571 U.S. 1176, 134 S. Ct. 1034, 188 L. Ed. 2d 122, 2014 U.S. LEXIS 930 (2014).

Although [12 USCS § 1821](#) vests discretion in Federal Deposit Insurance Corporation as receiver for failed bank, it does not insulate FDIC from state-law affirmative defenses regarding FDIC's postreceivership conduct. [Resolution Trust Corp. v. Massachusetts Mut. Life Ins. Co., 93 F. Supp. 2d 300, 2000 U.S. Dist. LEXIS 4846 \(W.D.N.Y. 2000\)](#).

Federal Deposit Insurance Corporation (FDIC) may be 2 separate entities for purpose of [11 USCS § 303\(b\)\(1\)](#) requiring 3 or more entities file petition in order for involuntary case to be commenced where FDIC is one entity in its corporate capacity and second entity in capacity of insolvent banks' receiver under [12 USCS § 1821](#). [In re Butcher, 32 B.R. 572, 10 Bankr. Ct. Dec. \(LRP\) 1197 \(BC ED Tenn 1983\)](#).

Tax refund IRS paid to Federal Deposit Insurance Corporation ("FDIC") after FDIC was appointed as receiver for savings bank that was owned by corporation that declared Chapter 11 bankruptcy was property of corporation's bankruptcy estate under [11 USCS § 541](#) and had to be turned over to estate pursuant to [11 USCS § 542](#); refund was owed to corporation under Tax Sharing Agreement it entered with bank and other subsidiaries before it declared bankruptcy, and FDIC violated [11 USCS § 362\(a\)](#) when it attempted to disaffirm Tax Sharing Agreement

pursuant to [12 USCS § 1821\(e\)](#) and obtain refund. *Zucker v. FDIC (In re NetBank, Inc.)*, 459 B.R. 801, 2010 Bankr. LEXIS 6322 (Bankr. M.D. Fla. 2010), aff'd, [2012 U.S. Dist. LEXIS 87332 \(M.D. Fla. June 25, 2012\)](#).

Financing company's claim against United States that Federal Deposit Insurance Corporation (FDIC) was responsible for breach of contract that financing company had with newly-established federal savings bank was dismissed for lack of jurisdiction under Tucker Act, [28 USCS § 1491](#), because FDIC, acting in its capacity as receiver of failed bank and as conservator of new bank, was not U.S. and claim was between two non-governmental parties; rather, pursuant to [12 USCS § 1821\(d\)\(2\)\(B\)\(iv\)](#), FDIC's role as conservator was to preserve and conserve assets of newly-established bank acquired from failed bank. [Ameristar Fin. Servicing Co., LLC v. United States](#), 75 Fed. Cl. 807, 2007 U.S. Claims LEXIS 97 (Fed. Cl. Mar. 30, 2007).

Assignment of Claims Act did not apply to Federal Deposit Insurance Corporation acting in its capacity as receiver (FDIC-R) because FDIC-R has independent statutory authority to resolve banks. [Anchor Sav. Bank v. United States](#), 121 Fed. Cl. 296, 2015 U.S. Claims LEXIS 612 (Fed. Cl. May 18, 2015).

9. —[12 USCS §§ 191 et seq](#)

Regulatory interests of Congress as expressed in [12 USCS § 194](#) are not modified by or secondary to provisions of Federal Deposit Insurance Act ([12 USCS §§ 1811 et seq.](#)). [Federal Deposit Ins. Corp. v. United States Nat'l Bank](#), 685 F.2d 270, 1982 U.S. App. LEXIS 16427 (9th Cir. 1982).

Summary judgment dismissal of bank owner's claims against Federal Deposit Insurance Corporation (FDIC), challenging FDIC's receivership of its bank and disbursement of bank funds by FDIC, was affirmed where FDIC's action was required by statute. [Golden Pac. Bancorp v. FDIC](#), 375 F.3d 196, 2004 U.S. App. LEXIS 14394 (2d Cir. 2004), cert. denied, 546 U.S. 1012, 126 S. Ct. 621, 163 L. Ed. 2d 522, 2005 U.S. LEXIS 8363 (2005).

Mandatory appointment of FDIC as receiver of insured national bank under [12 USCS § 1821\(c\)](#) subjects it to provisions of [12 USCS §§ 191](#) et seq. with regard to liquidation or rehabilitation of insolvent banks; questions concerning exercise of power and authority to administer closed bank's affairs are federal questions. [In re Anjopa Paper & Board Mfg. Co.](#), 269 F. Supp. 241, Bankr. L. Rep. (CCH) ¶ 62166, 1967 U.S. Dist. LEXIS 9218 (S.D.N.Y. 1967).

[12 USCS § 1821\(c\)](#) requires appointment of FDIC as receiver where Comptroller of Currency acts pursuant to [12 USCS § 191](#) in certifying bank to be insolvent; authority of receivers to sell assets is found at [12 USCS § 192](#). [In re Franklin Nat'l Bank](#), 381 F. Supp. 1390, 1974 U.S. Dist. LEXIS 6404 (E.D.N.Y. 1974).

Action of Comptroller of Currency in appointing FDIC as receiver pursuant to [12 USCS §§ 191, 1821\(c\)](#) was final unless it clearly appeared that action was arbitrary and taken in bad faith. [In re American City Bank & Trust Co., N.A.](#), 402 F. Supp. 1229, 1975 U.S. Dist. LEXIS 15669 (E.D. Wis. 1975).

10. Receiver of state depositories

Federal Deposit Insurance Corporation (FDIC) was authorized by [12 USCS § 1821\(e\)](#) to accept appointment by state as receiver of defunct, insured state bank, with power to sell assets of such bank. [Federal Deposit Ins. Corp. v. Ashley](#), 585 F.2d 157, 1978 U.S. App. LEXIS 8628 (6th Cir. 1978).

When FDIC is appointed receiver by state banking authority, that agency acts in two separate capacities, as receiver and as corporate insurer of deposits in failed bank; in neither role does FDIC act as agent of state comptroller responsible for its appointment as liquidator. [Bayshore Executive Plaza Partnership v. Federal Deposit Ins. Corp.](#), 943 F.2d 1290, 1991 U.S. App. LEXIS 23046 (11th Cir. 1991).

Federal Deposit Insurance Corporation (FDIC), in its corporate capacity, has standing to sue Puerto Rican debtors, where FDIC accepted appointment as receiver of creditor bank ordered closed by Treasury Secretary of Puerto Rico under [12 USCS § 1821](#), and FDIC acting in its corporate capacity under [12 USCS § 1823\(e\)](#) purchased from

FDIC acting as bank receiver certain unpaid notes of debtors, because procedure followed by FDIC is legislatively authorized and judicially sanctioned. [Federal Deposit Ins. Corp. v. Martinez Almodovar, 671 F. Supp. 851, 1987 U.S. Dist. LEXIS 9093 \(D.P.R. 1987\).](#)

No conflict exists between [12 USCS §§ 1819](#)(ninth) and 1821; FDIC must accept appointment as receiver in situations covered by § 1821, and may act as receiver of state bank in other situations, under § 1819; hence, FDIC may be appointed receiver under state law even though state bank has not closed. [Slay v. Berry, 27 Mich. App. 271, 183 N.W.2d 436, 1970 Mich. App. LEXIS 1325 \(Mich. Ct. App. 1970\).](#)

11. Conflict of interest

FDIC, as major creditor of closed bank of which Corporation is receiver, does not have conflict of interest which could be prejudicial to interests of shareholders of closed bank because (1) Congress has explicitly authorized FDIC to act as receiver, [12 USCS §§ 1819, 1821\(c\)](#), (2) [12 USCS § 1821\(d\)](#) manifests recognition by Congress that FDIC would be functioning in dual role of receiver and creditor, (3) there are no factual allegations to support presumption that FDIC will not carry out statutory duties as receiver, obligations as receiver transcending interests of both creditors and stockholders, (4) nothing in record intimates that recovery against defendant bank, which FDIC insures, would in any way threaten solvency or have adverse impact upon FDIC, (5) mere presence under these circumstances on Board of Directors of FDIC of Comptroller of Currency does not per se constitute inhibiting conflict of interests with reference to fact that Federal Reserve Bank is one defendant, (6) and mere fact that both FDIC and defendant Reserve Bank are “quasi-governmental agencies” is not sufficient. [Landy v. Federal Deposit Ins. Corp., 486 F.2d 139, 17 Fed. R. Serv. 2d \(Callaghan\) 769, Fed. Sec. L. Rep. \(CCH\) ¶ 94094, 1973 U.S. App. LEXIS 8557 \(3d Cir. 1973\)](#), cert. denied, 416 U.S. 960, 94 S. Ct. 1979, 40 L. Ed. 2d 312, 1974 U.S. LEXIS 3863 (1974).

There is “conflict of interests” exception which, in certain circumstances, allows person/entity other than FDIC (when acting as conservator or receiver) to have standing to bring judicial action on behalf of depository institution. [Delta Sav. Bank v. United States, 265 F.3d 1017, 2001 Cal. Daily Op. Service 5843, 2001 D.A.R. 7229, 2001 U.S. App. LEXIS 15564 \(9th Cir. 2001\)](#), cert. denied, 534 U.S. 1082, 122 S. Ct. 816, 151 L. Ed. 2d 700, 2002 U.S. LEXIS 273 (2002).

FDIC's interest as insurer does not disqualify it from being appointed receiver of insolvent state bank under state law. [Slay v. Berry, 27 Mich. App. 271, 183 N.W.2d 436, 1970 Mich. App. LEXIS 1325 \(Mich. Ct. App. 1970\).](#)

12. Attorney-client privilege

Resolution Trust Corporation (RTC), as conservator, controls attorney-client privileges associated with communications of preconservatorship management of savings and loan, despite former management's claim that loss of control of such privileges emasculates its right to challenge conservatorship pursuant to [12 USCS § 1464\(d\)\(6\)](#). [In re American Continental Corp., 741 F. Supp. 1368, 30 Fed. R. Evid. Serv. \(CBC\) 1213 \(D. Ariz. 1990\).](#)

Financial Institutions Reform Recovery and Enforcement Act of 1989 applied retroactively because statute merely clarified existing law rather than altering substantive rights, and in light of amendments, FDIC, in its corporate capacity as acquirer of assets of failed bank from FDIC in its capacity as receiver for failed bank, was entitled to assert attorney-client privilege with respect to communications between bank and its attorney in corporate FDIC's accounting malpractice action relating to assets of bank which it had acquired. [Federal Deposit Ins. Corp. v. Cherry, Bekaert & Holland, 129 F.R.D. 188, 1989 U.S. Dist. LEXIS 16846 \(M.D. Fla. 1989\)](#), reconsideration granted in part, [131 F.R.D. 202, 1990 U.S. Dist. LEXIS 6046 \(M.D. Fla. 1990\).](#)

FDIC, as receiver, was empowered to determine which assets and liabilities of failed bank should be sold and transferred and which it should keep; in retaining certain specified interests, including claims and causes of action against former employees, FDIC could potentially claim any attorney-client privilege not transferred to successor

bank. [Settlers' Hous. Serv., Inc. v. Schaumburg Bank & Trust Co., N.A. \(In re Settlers' Hous. Serv., Inc.\), 558 B.R. 285, 2016 Bankr. LEXIS 3737 \(Bankr. N.D. Ill. 2016\).](#)

13. Miscellaneous

Corporate shareholder was not entitled to reimbursement of attorney's fees and costs from Federal Deposit Insurance Corporation (FDIC), as receiver, in connection with unsuccessful appeal because shareholder failed to establish that FDIC breached any fiduciary or statutory obligation to shareholders under [12 USCS § 1821](#), part of Financial Institutions Reform, Recovery and Enforcement Act of 1989, [12 USCS §§ 1811 et seq.](#) [Suess v. FDIC, 770 F. Supp. 2d 32, 2011 U.S. Dist. LEXIS 25914 \(D.D.C. 2011\).](#)

Insurer's counterclaims for rescission of financial institution bond and management and professional liability policy would "restrain or affect" FDIC's authority as receiver; accordingly, [12 USCS § 1821\(j\)](#) barred those claims. [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

Unpublished decision: Prejudice to other parties to contract may be considered in determination of what is reasonable period of time under [12 USCS § 1821\(e\)\(2\)](#) for cancellation of failed bank's contract. [Bldg. Four Shady Oaks Mgmt. L.P. v. FDIC, 504 Fed. Appx. 292, 2012 U.S. App. LEXIS 26296 \(5th Cir. 2012\).](#)

Unpublished decision: District court did not err by considering plaintiff's lack of prejudice in deciding whether FDIC repudiated lease "within reasonable period" under [12 USCS § 1821\(e\)\(2\)](#); only way to determine whether action's timing was reasonable was to consider it in light of surrounding circumstances. [Bldg. Four Shady Oaks Mgmt. L.P. v. FDIC, 504 Fed. Appx. 292, 2012 U.S. App. LEXIS 26296 \(5th Cir. 2012\).](#)

Unpublished decision: If plaintiff was completely unable to rent its property for eleven months after FDIC's repudiation, it was reasonable to infer that it could not have rented property in two months preceding FDIC's repudiation, and district court did not err by considering such evidence in its prejudice analysis. [Bldg. Four Shady Oaks Mgmt. L.P. v. FDIC, 504 Fed. Appx. 292, 2012 U.S. App. LEXIS 26296 \(5th Cir. 2012\).](#)

Unpublished decision: District court's opinion demonstrated that it considered number of factors, including length of delay, necessary bureaucratic hurdles in FDIC, and unprecedented state of banking industry in 2008; giving district court's complete opinion fair reading, court was satisfied that it did not consider proof of prejudice to lessor prerequisite to establishing plaintiff's [12 USCS § 1821\(e\)\(2\)](#) claim. [Bldg. Four Shady Oaks Mgmt. L.P. v. FDIC, 504 Fed. Appx. 292, 2012 U.S. App. LEXIS 26296 \(5th Cir. 2012\).](#)

Insurer had not met its burden of establishing that Insured v. Insured Exclusion precluded coverage of Federal Deposit Insurance Corporation's (FDIC's) claims, given presence of shareholders' suit exemption and fact that FDIC, in its unique statutory role, succeeds to all rights, powers, and privileges of shareholders by operation of law. [FDIC v. BancInsure, Inc., 99 F. Supp. 3d 1084, 2014 U.S. Dist. LEXIS 82892 \(C.D. Cal. 2014\)](#), rev'd, remanded, [675 Fed. Appx. 666, 2017 U.S. App. LEXIS 452 \(9th Cir. 2017\).](#)

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 was sufficiently central to insured versus insured dispute in case that parties' claims and defenses were reasonably "based on" that statute; also, it could fairly be said that Federal Deposit Insurance Corporation "administers" that statute (court referenced [12 USCS § 1821\(d\)](#)). [Sec. Nat'l Ins. Co. v. Amchin, 309 F.R.D. 217, 2015 U.S. Dist. LEXIS 112856 \(E.D. Pa. 2015\)](#), dismissed in part, [2016 U.S. Dist. LEXIS 47539 \(E.D. Pa. Apr. 7, 2016\).](#)

Where Office of Thrift Supervision closed debtor's banking and business operations and transferred those assets to FDIC as receiver, pursuant to Federal Deposit Insurance Act, [12 USCS § 1821\(c\)\(5\)](#) and Home Owners Loan Act, [12 USCS § 1464\(d\)\(2\)\(A\)](#), receiver had right to intervene in chapter 7 trustee's tax refund case. [Claybrook ex rel. Downey Fin. Corp. v. United States, 104 Fed. Cl. 680, 109 A.F.T.R.2d \(RIA\) 2012-1838, 2012 U.S. Claims LEXIS 394 \(Fed. Cl. Apr. 18, 2012\).](#)

Savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)](#), where it had experienced significant losses due to required provisions for allowance for loan losses, asset valuation adjustments and write-downs, and operating losses, where losses resulted in bank being critically undercapitalized, and where bank's problems maintaining its financial records and its internal reporting difficulties created material uncertainty as to accuracy of its financial condition. [Receivership of Federal Savings Association, 2009 OTS DD LEXIS 7 \(Office of Thrift Supervision, 2009\)](#).

Savings bank was in unsafe and unsound condition to transact business, for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where inaccurate, false, untimely and missing entries caused its books and records to be misstated, masking its actual condition. [Receivership of a Federal Savings Association, 2009 OTS DD LEXIS 16 \(Office of Thrift Supervision, 2009\)](#).

For purposes of [12 USCS § 1821\(c\)\(5\)\(G\)](#), savings bank had incurred or was likely to incur losses that would deplete all or substantially all of its capital, and there was no reasonable prospect for adequate capitalization without Federal assistance, where, inter alia, bank reported negative net income in 2006, 2007, and 2008, losses had depleted all of its regulatory capital, and despite Office of Thrift Supervision's approval of application to acquire bank, it was unclear whether acquisition would be consummated because it was subject to contingencies beyond control of either bank or acquirer. [Receivership of a Federal Savings Association, 2009 OTS DD LEXIS 16 \(Office of Thrift Supervision, 2009\)](#).

Savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where it was undergoing severe liquidity strain, deteriorating asset quality, and negative operating earnings with no realistic prospects for raising capital quickly enough to ensure that it could repay all of its liabilities, including deposits. [Receivership of a Federal Savings Association, 2009 OTS DD LEXIS 18 \(Office of Thrift Supervision, 2009\)](#).

Savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where rapid deterioration in its option ARMs portfolio resulted in increasing level of delinquent loans and large loan loss provisions, savings bank recognized significant provisions for its allowance for loan and lease losses, and there was no indication that affected real estate markets would significantly improve in foreseeable future. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 20 \(Office of Thrift Supervision, 2009\)](#).

Due to capital deficiency, lack of core profitability, and very poor asset quality, savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where savings bank had experienced significant losses due to required provisions for allowance for loan and lease losses, asset valuation adjustments and write-downs, and operating losses, and where additional declines in asset values were likely. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 39 \(Office of Thrift Supervision, Oct. 23, 2009\)](#).

Savings bank's increasing operating losses, deteriorating asset quality, deteriorating capital position, lack of realistic prospects for raising capital, lack of acceptable business plan to operate independently, and inadequate management supported conclusion that savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where, inter alia, there was trend of increasing classified assets over previous six quarters, and there was likelihood of further asset quality deterioration due to concentration of loans made in unstable market areas. [Receivership of a Federal Savings Association, 2009 OTS DD LEXIS 36 \(Office of Thrift Supervision, Sept. 18, 2009\)](#).

Savings bank had substantially insufficient capital for purposes of [12 USCS § 1821\(c\)\(5\)\(L\)\(ii\)](#), where it was not "one" rated and had leverage capital ratio of negative 5.55 percent, its risk-based capital was negative 7.28 percent, and both its leverage capital ratio and its risk-based capital ratio were less than two-thirds of applicable capital requirements. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 41 \(Office of Thrift Supervision, Nov. 13, 2009\)](#).

Savings bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#) where, inter alia, its operations had suffered due to declining values of its loan portfolio and loan delinquencies that

required significant provisions for loan losses, its classified assets represented 29.8 percent of total assets, and its nonperforming assets had increased to 21.3 percent of total assets over past year. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 41 \(Office of Thrift Supervision, Nov. 13, 2009\).](#)

Savings bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#) due to its inadequate books and records, poor internal controls, deteriorating capital position, deteriorating asset quality, continued negative earnings, insufficient capital position with no realistic prospects for generating capital internally, lack of an acceptable business plan, and inadequate management. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 40 \(Office of Thrift Supervision, Nov. 6, 2009\).](#)

Savings bank failed to timely submit capital restoration plan for purposes of [12 USCS § 1821\(c\)\(5\)\(K\)\(iii\)](#) where, although it indicated that it had a plan consisting of four key initiatives: (A) operating expense control and reduction, (B) equity infusion through bank's wholly owned service corporation, (C) equity infusion through reorganization of bank structure into mutual holding company, and (D) revenue enhancement through increased loan volume, to be accomplished through purchase of mortgage-backed loans, and it provided some brief qualitative statements on these initiatives, bank's submission lacked substantive qualitative detail, salient quantitative information and information showing how each initiative would be achieved. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 40 \(Office of Thrift Supervision, Nov. 6, 2009\).](#)

Savings bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where, inter alia, because local economy had experienced difficulties, its commercial loan and mortgage loan portfolios had experienced increased delinquencies and losses, its operations had suffered due to declining values of its loan portfolio caused by loan delinquencies that required significant provisions for loan losses, and its loan portfolio continued to experience high amount of delinquent loans that would likely require additional provisions for loan losses. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 43 \(Office of Thrift Supervision, Dec. 4, 2009\).](#)

Savings bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where, inter alia, its operations had suffered due to declining values of its loan portfolio caused by loan delinquencies that required significant provisions for loan losses, losses in 2008 and 2009 had depleted its equity and regulatory capital, its loan portfolio continued to experience high amount of delinquent loans and would likely require additional provisions for loan losses, and it was experiencing high cost of funds based on reliance on certificates of deposit and Federal Home Loan Bank advances as main sources of funds. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 44 \(Office of Thrift Supervision, Dec. 4, 2009\).](#)

Grounds existed for appointment of receiver for savings bank under [12 USCS § 1821\(c\)\(5\)](#) where, inter alia, financial conditions in U.S. and in significant portions of bank's market and resulting foreclosures and delinquencies on loans in those markets had resulted in significant losses, operations had suffered due to declining value of bank's loan portfolio caused by delinquencies, and, as of September 30, 2009, bank had 26.16 percent loan delinquency rate. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 45 \(Office of Thrift Supervision, Dec. 18, 2009\).](#)

Savings Bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where, inter alia, bank's mortgage loan portfolio had experienced increased delinquencies and losses on account of local economic difficulties, which eliminated most of bank's equity and regulatory capital, bank had experienced significant deposit outflows for account payments and other scheduled payments, and it was expected that bank would retain only 31 percent of maturing CDs because of publicity regarding bank's financial condition and because its deposit interest rates were not competitive. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 46 \(Office of Thrift Supervision, Dec. 18, 2009\).](#)

Grounds existed for appointment of receiver for savings bank under [12 USCS § 1821\(c\)\(5\)](#) where, as result of option ARM lending, bank faced serious problems stemming from single family residential loan portfolio, including approximately \$3.6 billion of option ARMs made with reduced documentation requirements, as loan-to-value ratios

on loans had vastly increased due to negative amortization on loans and significant decline in property values in bank's market areas, and where problems affected all aspects of bank's operations, including asset quality, earnings and capital, and ability to raise new capital. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 47 \(Office of Thrift Supervision, Dec. 18, 2009\).](#)

Grounds existed for appointment of receiver for savings bank under 12 USCS §§ d1464(d)(2) and 1821(c)(5), where, notwithstanding bank's assertion that Office of Thrift Supervision required it to take too large an allowance for loan and lease losses in 3rd quarter of preceding year, it was nevertheless undercapitalized, if not critically undercapitalized, with core capital of 3.63 percent, and where, given bank's lack of success in raising capital over preceding and its deteriorating financial position, it was unlikely that bank would be able to raise additional capital through outside sources. [Receivership of a Federal Savings Bank, 2010 OTS DD LEXIS 1 \(Office of Thrift Supervision, Jan. 22, 2010\).](#)

Grounds for appointment of receiver for savings bank existed under [12 USCS §§ 1464\(d\)\(2\)](#) and [1821\(c\)\(5\)\(C\)](#), (G), (H), (I), (L)(i) and (L)(ii), where, inter alia, savings bank's reliance on concentration of highly speculative commercial real estate loans for land acquisition and development resulted in significant losses, which losses depleted substantially all of its equity and regulatory capital, and where its loan portfolio continued to experience high amount of delinquent loans and would likely require additional provisions for loan losses. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 30 \(Office of Thrift Supervision, Aug. 28, 2009\).](#)

Grounds for appointment of receiver for savings association existed under [12 USCS §§ 1464\(d\)\(2\)](#) and [1821\(c\)\(5\)\(A\)](#), (C), (I), (L)(i) and (L)(ii), and such appointment was necessary to carry out purposes of prompt corrective action provisions of Federal Deposit Insurance Act in accordance with [12 USCS § 1821\(c\)\(9\)](#), where association had recently suffered substantial losses as result of fraudulent activity, association was insolvent and had negative tangible, core and risk-based capital, and association's earnings were insufficient to recapitalize institution within foreseeable future. [Receivership of a State-Chartered Savings Association, 2009 OTS DD LEXIS 29 \(Office of Thrift Supervision, Aug. 14, 2009\).](#)

Grounds for appointment of receiver for savings bank existed under [12 USCS §§ 1464\(d\)\(2\)](#) and [1821\(c\)\(5\)\(C\)](#), (I), (L)(i) and (L)(ii), where bank's problem assets were deteriorating, it had high level of classified assets to core capital, it had suffered significant losses on loan sales, its capital was severely depleted, and it had negative earnings, and where bank was critically undercapitalized with tangible capital ratio of 1.81 percent, had substantially insufficient capital with leverage ratio of 1.81 percent, and had risk-based capital of 4.15 percent. [Receivership of a Federal Savings Bank, 2009 OTS DD LEXIS 35 \(Office of Thrift Supervision, July 31, 2009\).](#)

Savings Bank was in unsafe and unsound condition to transact business, for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where, inter alia, during 2009 its nonperforming loans increased from 1.85 to 20.29 percent of total assets and its classified assets increased from 1.75 to 23.55 percent of total assets; in its larger lending relationships, management relied on knowledge of borrower and borrower's stated net worth rather than updated documentation of borrower's financial condition; loan modifications were not well documented or prudently underwritten; and Savings Bank's Internal Asset Review department lacked independence and expertise necessary to properly evaluate effectiveness of loan policies, procedures and internal controls, or to appropriately assess credit quality of portfolio. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 9 \(Office of Thrift Supervision, Feb. 19, 2010\).](#)

Savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#) due to its capital deficiency, lack of core profitability, and poor asset quality, where it had experienced significant losses due in part to required provisions for allowance for loan and lease losses, asset valuation adjustments and write-downs, and operating losses, these losses and write-downs had significantly depleted capital, and additional declines in asset values were likely. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 12 \(Office of Thrift Supervision, Mar. 26, 2010\).](#)

Savings bank had substantially insufficient capital for purposes of [12 USCS § 1821\(c\)\(5\)\(L\)\(ii\)](#), where it was not "one" rated and had leverage capital ratio of negative 4.69 percent, its total risk-based capital ratio was negative 7.73 percent, and both its leverage capital ratio and its total risk-based capital ratio were less than two-thirds of applicable capital requirements. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 10 \(Office of Thrift Supervision, Mar. 5, 2010\)](#).

Due to capital deficiency, lack of core profitability, and poor asset quality, savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#) where, over preceding year, bank had experienced significant losses due in part to required provisions for allowance for loan and lease losses, asset valuation adjustments and write-downs, and operating losses, bank's tangible capital ratio was negative 0.81 percent, and additional declines in asset values were likely, thereby further depleting capital and jeopardizing operations. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 13 \(Office of Thrift Supervision, 2010\)](#).

For purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), savings bank was in unsafe and unsound condition to transact business due to its capital deficiency, lack of core profitability, and poor asset quality where, over preceding year, it had experienced significant losses due in part to required provisions for allowance for loan and lease losses, asset valuation adjustments and write-downs, and operating losses, which had significantly depleted capital, and where additional declines in asset values were likely, thereby further depleting capital and jeopardizing bank's operations. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 24 \(Office of Thrift Supervision, July 16, 2010\)](#).

Savings bank was undercapitalized and had no reasonable prospect of becoming adequately capitalized, for purposes of [12 USCS § 1821\(c\)\(5\)\(K\)\(i\)](#), where, although several parties had expressed interest in savings bank, none had demonstrated financial capacity to execute recapitalization transaction or had otherwise been approvable as merger candidate, and where savings bank was unable to return to adequately capitalized status through internal means such as generation of earnings, asset sales, or shrinkage. [Receivership of Federal Savings Bank, 2010 OTS DD LEXIS 26 \(Office of Thrift Supervision, July 16, 2010\)](#).

Savings bank was in unsafe and unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where it was undercapitalized as defined in OTS's Prompt Corrective Action Regulations, it had high concentration of high-risk assets located in geographic areas severely impacted by declining real estate prices, it recorded significant net loss in previous calendar year, its' investment portfolio had sustained significant losses and substantial portion of portfolio consisted of securities rated below investment grade, and it had repeatedly failed to properly identify and classify its problem loans and recognize losses. [Receivership of a Federal Savings Bank, 2010 OTS DD LEXIS 32 \(Office of Thrift Supervision, Aug. 20, 2010\)](#).

Pursuant to [12 USCS § 1821\(c\)\(5\)\(A\)](#) and (L)(i), grounds existed for appointment of receiver for savings bank, where it's equity capital was negative \$8.3 million, and it reported tangible capital ratio of negative 12.13 percent. [Receivership of a Federal Savings Bank, 2010 OTS DD LEXIS 47 \(Office of Thrift Supervision, Dec. 17, 2010\)](#).

Savings bank was in unsafe or unsound condition to transact business for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where (1) its reliance on small number of institutional depositors rendered it vulnerable to significant outflow of deposits with minimal notice and inadequate funds to meet demand, (2) it was operating without adequate liquidity, adequate liquidity plan, or proper regard for funds management, and (3) it was facing potential severe liquidity strain, excessive amount of classified assets, continuing significant operating losses, insufficient capital, and no realistic prospects for raising capital in short term. [Receivership of a Federal Savings Bank, 2011 OTS DD LEXIS 3 \(Office of Thrift Supervision, Jan. 21, 2011\)](#).

Undercapitalized savings association failed to submit acceptable capital restoration plan for purposes of [12 USCS § 1821\(c\)\(5\)\(K\)\(iii\)](#), where plan depended on two capital infusions but did not identify any specific investors or acquisition candidates as source of funds. [Receivership of a Federal Savings Association, 2011 OTS DD LEXIS 10 \(Office of Thrift Supervision, Feb. 18, 2011\)](#).

Grounds existed under [12 USCS § 1821\(c\)\(5\)\(K\)\(iv\)](#), (L)(i), and (L)(ii) for appointment of receiver for Savings Bank, where institution was not "1" rated and had tier 1 (core) capital ratio and total risk-based capital ratio of 1.37 percent

and 3.21 percent, respectively, which ratios were both less than two-thirds of applicable capital requirements. [Receivership of a Federal Savings Association, 2011 OTS DD LEXIS 30 \(Office of Thrift Supervision, June 3, 2011\).](#)

Savings association had substantially insufficient capital for purposes of [12 USCS § 1821\(c\)\(5\)\(L\)\(ii\)](#), where it was not "1" rated and had core capital ratio and total risk-based capital ratio of 1.41 percent and 3.49 percent, respectively, both of which were less than two-thirds of applicable capital requirements. [Receivership of a Federal Savings Association, 2011 OTS DD LEXIS 19 \(Office of Thrift Supervision, Apr. 15, 2011\).](#)

Savings association was in unsafe and unsound condition to transact business, for purposes of [12 USCS § 1821\(c\)\(5\)\(C\)](#), where it had tangible, tier 1 (core) and total risk-based capital of 1.41 percent, 1.41 percent and 3.49 percent, respectively, total adversely classified assets equaled 19.92 percent of total assets, and 589.8 percent of tier 1 (core) capital plus allowance for loan and lease losses, it had high concentration of high-risk assets located in geographic areas severely impacted by declining real estate prices, and its deteriorating loan portfolio had resulted in operating losses. [Receivership of a Federal Savings Association, 2011 OTS DD LEXIS 19 \(Office of Thrift Supervision, Apr. 15, 2011\).](#)

Savings association was critically undercapitalized for purposes of [12 USCS § 1821\(c\)\(5\)\(L\)\(i\)](#) where its ratio of tangible equity to total assets was 1.06 percent, and it had substantially insufficient capital for purposes of § 1821(c)(5)(L)(ii) where its tier 1 (core) capital ratio and total risk-based capital ratio both were less than two-thirds of applicable capital requirements. Receivership of a Federal Savings Association (Office of Thrift Supervision, May 6, 2011) 2011 OTS DD 25.

III. CORPORATION POWERS AND DUTIES

A. In General

14. Generally

Where foreclosure was within statutorily authorized powers of RTC as conservator, district court properly refused to enjoin RTC from conducting foreclosure. [281-300 Joint Venture v. Onion, 938 F.2d 35, 1991 U.S. App. LEXIS 15980 \(5th Cir. 1991\)](#), cert. denied, 502 U.S. 1057, 112 S. Ct. 933, 117 L. Ed. 2d 105, 1992 U.S. LEXIS 401 (1992).

When FDIC is clearly acting outside scope of its statutory powers, district court may enjoin FDIC, irrespective of [12 USCS § 1821\(j\)](#), provided that party seeking injunction is able to demonstrate that standards for injunctive relief are otherwise met. [Telematics Int'l, Inc. v. NEMLC Leasing Corp., 967 F.2d 703, 1992 U.S. App. LEXIS 14217 \(1st Cir. 1992\).](#)

District Court lacks jurisdiction to enjoin Resolution Trust Corporation, acting as conservator of failed thrift, from assuming control of thrift's subsidiaries that are under Chapter 11 protection by restraining RTC from calling or initiating shareholders' meeting which might result in change of management, directors, officers, personnel, or procedures or from exercising any right as shareholder to make such changes; comprehensive scheme of Financial Institutions Reform, Recovery, and Enforcement Act ([12 USCS § 1821](#)) indicates Congress's intent to allow RTC full rein to exercise its statutory authority without injunctive restraints imposed by Bankruptcy Courts or District Courts in other proceedings; because anti-injunction provision specifically precludes equitable interference, District Court may not prevent RTC from exercising its lawful ownership rights based on court's determination that current management is best suited to rehabilitate thrift's bankrupt subsidiaries. [In re Landmark Land Co., 973 F.2d 283, 23 Bankr. Ct. Dec. \(LRP\) 556, Bankr. L. Rep. \(CCH\) ¶ 74812, 1992 U.S. App. LEXIS 19277 \(4th Cir. 1992\).](#)

There is nothing in [12 USCS § 1821\(e\)\(13\)\(A\)](#) that premises unenforceability on explicit reference to insolvency or conservatorship or receivership; any entity that enters into lease with bank, or accepts assignment of such lease, is on notice that, should bank fail, Federal Deposit Insurance Corporation will have power to enforce lease. [Iberiabank v. Beneva 41-I, LLC, 701 F.3d 916, 23 Fla. L. Weekly Fed. C 1702, 2012 U.S. App. LEXIS 24696 \(11th Cir. 2012\).](#)

Federal Deposit Insurance Corporation (FDIC), in its corporate capacity, could not sue accounting firm for accounting malpractice and fraud in auditing failed federal savings and loan to recover on behalf of insurance fund absent purchase and assumption transaction or assignment of claims; accordingly, district court dismissed claim because FDIC lacked standing. [FDIC v. Ernst & Young, LLP, 256 F. Supp. 2d 798, 2003 U.S. Dist. LEXIS 6520 \(N.D. Ill. 2003\)](#), aff'd, [374 F.3d 579, 2004 U.S. App. LEXIS 14089 \(7th Cir. 2004\)](#).

15. Successor to institution

Substitution of Federal Deposit Insurance Corporation does not affect underlying merits of claim brought by insolvent bank for wrongful dishonor of draft under letter of credit; as receiver, Federal Deposit Insurance Corporation stands in shoes of bank and possesses all rights, powers, and privileges of receiver. [Tosco Corp. v. Federal Deposit Ins. Corp., 723 F.2d 1242, 37 U.C.C. Rep. Serv. \(CBC\) 1660, 1983 U.S. App. LEXIS 14202 \(6th Cir. 1983\)](#).

Where former employee won case against bank for age discrimination, but before damages were determined, bank was declared insolvent, Resolution Trust Corporation (RTC) became receiver, and RTC transferred bank's assets and liabilities (but not plaintiff's judgment) to another bank, RTC is successor to employee's judgment, not second bank. [Payne v. Security Sav. & Loan Assn., F.A., 924 F.2d 109, 55 Empl. Prac. Dec. \(CCH\) ¶ 40581, 55 Fair Empl. Prac. Cas. \(BNA\) 96, 18 Fed. R. Serv. 3d \(Callaghan\) 870, 1991 U.S. App. LEXIS 1580 \(7th Cir. 1991\)](#).

After bank, defendant in consolidated class actions alleging illegal home equity lending scheme, was declared to be unsafe and unsound, and FDIC was appointed as bank's receiver, FDIC asked to be substituted for bank in class actions as true party in interest; although bank was not named defendant in one of consolidated class actions, after consolidation, class counsel filed amended complaint listing bank as defendant; thus, pursuant to [12 USCS § 1821\(d\)\(2\)](#), FDIC succeeded to all rights, titles, powers, and privileges of bank, and its motion to be substituted for bank as true party in interest was granted. [In re Cmt. Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Loan Litig., 418 F.3d 277, 2005 U.S. App. LEXIS 17471 \(3d Cir. 2005\)](#).

In action in which depositors appealed from judgment of district court dismissing their claims under federal Racketeer Influenced and Corrupt Organizations Act (RICO), [18 USCS §§ 1961](#) et seq., Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. ⁵⁰⁵/1 et seq., and Illinois Public Accounting Act, 225 Ill. Comp. Stat. ⁴⁵⁰/0.01 et seq., district court was correct in substance to conclude that depositors were not parties entitled by statute to pursue any potential RICO claim; where harm had been suffered by all depositors equally and plaintiffs had not suffered any distinct individual injury, claim belonged to institution (or its successor, Federal Deposit Insurance Corporation). [Courtney v. Halloran, 485 F.3d 942, 2007 U.S. App. LEXIS 10789 \(7th Cir. 2007\)](#), reh'g denied, reh'g, en banc, denied, [2007 U.S. App. LEXIS 17607 \(7th Cir. July 12, 2007\)](#), cert. denied, 552 U.S. 1184, 128 S. Ct. 1256, 170 L. Ed. 2d 67, 2008 U.S. LEXIS 1249 (2008).

FDIC's argument that condition requiring timely and complete proof of loss violated public policy failed, as both federal and Colorado law expressly permitted provision that limited otherwise broad powers of receivers; further, while FDIC stood in shoes of bank, it had no right to enforce coverage claim against surety that bank did not have. Proof of loss, duly sworn, with full particulars and complete documentation was condition precedent to coverage and such proof was never furnished to surety prior to FDIC's takeover. [FDIC v. Kan. Bankers Sur. Co., 840 F.3d 1167, 2016 U.S. App. LEXIS 19622 \(10th Cir. 2016\)](#).

Under this provision, the FDIC succeeded to the bankruptcy plan administrator's claims alleging negligence and breach of fiduciary duties, because the administrator's claims asserted rights of a stockholder of the bank with respect to the bank and the assets of the bank, and the FDIC as receiver succeeded to those claims by operation of law under this provision. [Zucker v. Rodriguez, 919 F.3d 649, 2019 U.S. App. LEXIS 9125 \(1st Cir. 2019\)](#).

Where Federal Deposit Insurance Corporation was under duty simply to replace assets of insured bank no matter how loss occurred and it had no specific responsibility for fidelity of bank's employee, when it carried out its obligation by replacing assets embezzled by such employee it acquired right of bank against employee. [Brown v.](#)

[New York Life Ins. Co., 58 F. Supp. 252, 1944 U.S. Dist. LEXIS 1697 \(D. Or. 1944\)](#), aff'd, [152 F.2d 246, 1945 U.S. App. LEXIS 3371 \(9th Cir. 1945\)](#).

FDIC is substituted as defendant for failed bank and action is stayed for 180 days or until completion of applicable administrative claims procedure, because FDIC has succeeded to all rights, titles, powers, and privileges of bank under [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), and principal hallmark of most sweeping thrift reform law in history—codified largely at § 1821(d)—was creation of comprehensive system for handling claims against failed banks as prerequisite to district court jurisdiction. [Estate of Harding v. Bell, 817 F. Supp. 1186, 1993 U.S. Dist. LEXIS 4645 \(D.N.J. 1993\)](#).

Claims of Chapter 7 successor trustee of holding company against former officers and directors of bank which was wholly owned subsidiary of holding company relating to (1) lending practices of holding company's subsidiaries, understatement of its loan loss reserves, and substandard loans, (2) effect of Tax Reform Act on company's and subsidiaries' real estate loans, and (3) alleged overstatement of company's assets, equity, and capital, are dismissed, because these claims are derivative claims belonging to Federal Deposit Insurance Corporation as successor in interest to bank. [Brandt v. Bassett \(In re Southeast Banking Corp.\), 855 F. Supp. 353, 8 Fla. L. Weekly Fed. D 168, 1994 U.S. Dist. LEXIS 6551 \(S.D. Fla. 1994\)](#), aff'd in part and rev'd in part, remanded, [69 F.3d 1539, 9 Fla. L. Weekly Fed. C 654, 33 Fed. R. Serv. 3d \(Callaghan\) 960, 1995 U.S. App. LEXIS 33422 \(11th Cir. 1995\)](#).

RTC succeeds to failed bank's claim for punitive damages against former director, officer, and general counsel of bank, now deceased, despite California rule against transfer of punitive damages claims, because California law is preempted by [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), under which RTC succeeds to "all rights, title, powers, and privileges of insured depository institution." [Resolution Trust Corp. v. Liebert, 871 F. Supp. 370, 95 D.A.R. 347, 1994 U.S. Dist. LEXIS 17547 \(C.D. Cal. 1994\)](#).

Borrower's claims against successor bank related to his mortgage loan were dismissed where agreement that transferred lender's liabilities to successor expressly provided that successor had not assumed liabilities of predecessor bank associated with claims of borrowers, and thus, property party in interest for such claims was Federal Deposit Insurance Corporation. [Rosenfeld v. JPMorgan Chase Bank, N.A., 732 F. Supp. 2d 952, 2010 U.S. Dist. LEXIS 81087 \(N.D. Cal. 2010\)](#).

Subprime mortgage borrower's claims against Federal Deposit Insurance Corporation (FDIC) that alleged FDIC acted as receiver for bankrupt company that engaged in discriminatory lending, servicing, and foreclosure practices were dismissed because FDIC was not successor or receiver for company under [12 USCS § 1821\(d\)\(2\)\(A\)](#) since company was not FDIC-insured depository institution; furthermore, even if successor liability applied and FDIC was proper defendant, court lacked jurisdiction because borrower had not shown that borrower had properly exhausted administrative remedies under § 1821(d) by filing proof of claim with FDIC-receiver. [Molina v. FDIC, 870 F. Supp. 2d 123, 2012 U.S. Dist. LEXIS 89330 \(D.D.C. 2012\)](#), aff'd, [545 Fed. Appx. 1, 2013 U.S. App. LEXIS 23849 \(D.C. Cir. 2013\)](#).

Insured v. insured exclusion in directors and officers liability policy barred suit by FDIC as receiver for bank against two bank officers, because FDIC stepped into shoes of bank and whatever claims would have been good against bank were also good against FDIC; if bank had sued its officers, exclusion would have applied. [St. Paul Mercury Ins. Co. v. Miller, 968 F. Supp. 2d 1236, 2013 U.S. Dist. LEXIS 116877 \(N.D. Ga. 2013\)](#), rev'd, remanded, [774 F.3d 702, 25 Fla. L. Weekly Fed. C 718, 2014 U.S. App. LEXIS 23720 \(11th Cir. 2014\)](#).

Unpublished decision: District court erred in remanding case to state court that had been removed by FDIC, because 90-day time for removal provided in [12 USCS § 1819\(b\)\(2\)\(B\)](#) did not begin to run until FDIC's motion to intervene in action was granted; this was unlike cases in which FDIC was automatically substituted as party for failed institution under [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), in which 90 days would run from date of notice of substitution. [Flagler Inv. Marietta, LLC v. Multibank, 2009-1 CRE Venture, LLC, 633 Fed. Appx. 747, 2015 U.S. App. LEXIS 21207 \(11th Cir. 2015\)](#).

Inclusion of "shareholders" in [12 USCS §§ 1441a](#), [1464\(d\)\(2\)\(E\)\(i\)](#), and [1821\(d\)\(2\)\(A\)\(i\)](#), which provide authority for FDIC and RTC conservatorship and receivership of failing thrifts, does not prohibit shareholder derivative actions after conservator or receiver has been appointed. [Suess v. United States, 33 Fed. Cl. 89, 1995 U.S. Claims LEXIS 52 \(Fed. Cl. Mar. 17, 1995\)](#).

16. Operation of institution

Federal Deposit Insurance Corporation, as receiver for mortgagee bank, is awarded interest on its judgment of strict foreclosure after default for period after it was appointed receiver, where note set interest rate at 3 percent above failed bank's prime rate, because FDIC's authority under [12 USCS § 1821\(d\)\(2\)\(B\)\(ii\)](#) includes right to establish prime rate called for under failed bank's note, so rate is not 3 percentage points over zero, but rather can be set based on rate of other institution. [FDIC v. M.F.P. Realty Assocs., 870 F. Supp. 451, 1994 U.S. Dist. LEXIS 19843 \(D. Conn. 1994\)](#).

17. Transfer of assets and liabilities

Federal Deposit Insurance Corporation (FDIC), as receiver for insolvent bank is, pursuant to [12 USCS § 1821\(d\)](#), in position of insolvent bank, so that FDIC was entitled to payment under letters of credit by which borrowers from insolvent bank had secured loans upon which they had subsequently defaulted, notwithstanding that draft was submitted by FDIC and by assistant liquidator of FDIC, instead of officer of now insolvent bank as required by letters of credit, since drafts made clear that FDIC was seeking payment as receiver for bank. [Kelley v. First Westroads Bank, 840 F.2d 554, 5 U.C.C. Rep. Serv. 2d \(CBC\) 1439, 1988 U.S. App. LEXIS 1538 \(8th Cir. 1988\)](#).

Financial institution failed to meet its burden of showing that preliminary injunction factors weighed heavily in its favor as necessary to be entitled to requested preliminary injunction requiring manufacture and delivery of numerous charge cards to institution; delivery of cards would alter status quo which required clear showing that threatened injury outweighed whatever damage proposed injunction might cause. [SCFC ILC, Inc. v. VISA USA, Inc., 936 F.2d 1096, 1991-1 Trade Cas. \(CCH\) ¶ 69465, 1991 U.S. App. LEXIS 12346 \(10th Cir. 1991\)](#).

[12 USCS § 1821\(d\)\(2\)\(G\)\(i\)](#), which empowers RTC to organize thrift institutions to take over such assets or such liabilities as RTC may determine to be appropriate, contemplates that RTC will determine which assets and liabilities of failed thrift should be sold and transferred, and which it should keep. [Nashville Lodging Co. v. Resolution Trust Corp., 59 F.3d 236, 313 U.S. App. D.C. 240, 1995 U.S. App. LEXIS 17474 \(D.C. Cir. 1995\)](#).

Once receivership of failed bank takes place, transfer of failed bank's assets to FDIC occurs by operation of law. [FDIC v. Houde, 90 F.3d 600, 30 U.C.C. Rep. Serv. 2d \(CBC\) 549, 1996 U.S. App. LEXIS 18908 \(1st Cir. 1996\)](#).

Pre-receivership purchase option and marketing contracts create valid state law rights that are not inconsistent with RTC's power as conservator or receiver under [12 USCS § 1821\(d\)\(2\)\(G\)\(i\)\(II\)](#) to transfer assets of failed institution without consent; RTC can repudiate such contracts under [12 USCS § 1821\(e\)\(1\)](#), but it cannot simply claim that they are preempted. [Waterview Mgmt. Co. v. FDIC, 105 F.3d 696, 323 U.S. App. D.C. 82, 1997 U.S. App. LEXIS 1634 \(D.C. Cir. 1997\)](#), app. after remand, 203 F.3d 54, 340 U.S. App. D.C. 184, 1999 U.S. App. LEXIS 37952 (D.C. Cir. 1999).

One who purchases obligation owned by FDIC as conservator or receiver is entitled to take advantage of special six-year statute of limitations; however, such assignee does not get this benefit where obligation is transferred by FDIC before it is in default. [Beckley Capital Ltd. Pshp. v. DiGeronimo, 184 F.3d 52, 1999 U.S. App. LEXIS 16667 \(1st Cir. 1999\)](#).

Because [12 USCS § 1821\(d\)\(14\)](#) is silent with respect to its application to assignees of RTC, courts must look to state law to determine statute of limitations governing rights of such assignees. [National Enters. v. Barnes, 201 F.3d 331, 2000 U.S. App. LEXIS 99 \(4th Cir. 2000\)](#).

Former officer of failed bank stated claim under [12 USCS § 1821\(d\)\(6\)](#), part of Financial Institution Reform, Recovery, and Enforcement Act (FIRREA), [12 USCS §§ 1821](#) et seq., for compensation under two contracts with failed bank for severance and retirement compensation; rights of officer under deferred compensation agreements were vested when Office of Thrift Supervision (OTS) closed bank and appointed Federal Deposit Insurance Corporation (FDIC) as receiver. [Navarro v. FDIC, 371 F.3d 979, 2004 U.S. App. LEXIS 11691 \(7th Cir. 2004\)](#).

In suit filed against credit card issuer prior to its receivership, Federal Deposit Insurance Corporation (FDIC) was and remained appropriate party in interest under [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#) because, although another bank acquired many assets of issuer, its agreement with FDIC retained for FDIC any liability associated with borrower claims for payment or any liability to any borrower for monetary relief. [Yeomalakis v. FDIC, 562 F.3d 56, 2009 U.S. App. LEXIS 6924 \(1st Cir. 2009\)](#).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor; while insurer argued alternatively that FDIC Corporate was obligated under § 1821(m)(13) to fund failed bank's losses, § 1821(m) was inapplicable because charter for successor bank was approved pursuant to § 1821(d)(2)(F)(i), which made no reference to obligations in § 1821(m), and nothing suggested that new Federal savings association organized pursuant to § 1821(d)(2)(F)(i) triggered FDIC Corporate's loss-funding obligation under § 1821(m). [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

As mortgage was assigned by operation of law under Financial Institutions Reform, Recovery, and Enforcement Act, there was no need for specific written assignment otherwise required by state law. [Demelo v. U.S. Bank Nat'l Ass'n, 727 F.3d 117, 2013 U.S. App. LEXIS 17056 \(1st Cir. 2013\)](#).

Assignment of a debt owned by a defunct bank from the FDIC to an assignee was valid because the FDIC was authorized under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to use the services of a private entity to dispose of the bank's assets. [Radiance Capital Receivables Eighteen, LLC v. Concannon, 920 F.3d 552, 2019 U.S. App. LEXIS 9912 \(8th Cir. 2019\)](#).

Transfer of licensed computer software packages from insolvent savings and loans to federally assisted purchasers of those institutions is upheld, despite antiassignment clauses in licensing agreements, even though transfers occurred months before enactment of [12 USCS § 1821\(d\)\(2\)\(G\)\(II\)](#) authorizing such transfers without approval of software licensors, because § 1821(d)(2)(G)(II) should be applied retroactively since no manifest injustice will occur and there is almost no legitimate private expectation which outweighs public interest in enforcing new legislation dealing with orderly disposition of widespread failure of financial institutions. [First Nationwide Bank v. Florida Software Services, Inc., 770 F. Supp. 1537, 1991 U.S. Dist. LEXIS 13045 \(M.D. Fla. 1991\)](#).

Proposed amended answer of mortgagors in foreclosure action will not be allowed, where mortgages passed from failed state bank to county trust company to FDIC to corporation to limited partnership now suing, even though mortgagors recently discovered that previous director of corporation was discharged of certain FDIC debts, because mortgages were never assigned to director and answer fails to state special defense under [12 USCS § 1821\(p\)\(1\)\(A\), \(B\) or \(D\)](#). [CME Group v. Grant, 916 F. Supp. 148, 1996 U.S. Dist. LEXIS 5848 \(D. Conn. 1996\)](#).

Tax sale of property must be annulled, even though tax collector argues that, as government agency, FDIC does not have any due process rights, where FDIC became receiver of mortgagee having recorded collateral mortgage and recorded judicial mortgage on property, because FDIC succeeded to "all rights, titles, powers, and privileges" of mortgagee pursuant to [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), including right to actual notice of tax sale. [FDIC v. Lee, 933 F. Supp. 577, 1996 U.S. Dist. LEXIS 10164 \(E.D. La. 1996\)](#), aff'd, [130 F.3d 1139, 1997 U.S. App. LEXIS 36439 \(5th Cir. 1997\)](#).

Purchase and assumption agreement attached to purchasing bank's motion to dismiss former officer's complaint was considered as part of officer's pleading; agreement was essentially basis of officer's claim under [12 USCS §](#)

[1821\(d\)\(6\)](#), part of Financial Institution Reform, Recovery, and Enforcement Act (FIRREA), [12 USCS §§ 1821](#) et seq., for compensation under two contracts with failed bank. [Navarro v. FDIC, 254 F. Supp. 2d 1013, 2003 U.S. Dist. LEXIS 5053 \(N.D. Ill. 2003\)](#), rev'd, remanded, [371 F.3d 979, 2004 U.S. App. LEXIS 11691 \(7th Cir. 2004\)](#).

As long as loss is discovered prior to termination of depository institution bond, liability is not terminated by [12 USCS § 1821\(e\)\(13\)\(A\)](#) when Federal Deposit Insurance Corporation acts as bank's receiver. [FDIC v. St. Paul Cos., 634 F. Supp. 2d 1213, 2008 U.S. Dist. LEXIS 63208 \(D. Colo. 2008\)](#).

In action brought by plaintiff Federal Deposit Insurance Corporation (FDIC), as receiver for bank, alleging gross negligence under Financial Institutions Reform, Recovery and Enforcement Act and various state law claims, affirmative defense of waiver and estoppel based in pre-receivership conduct were stricken because conduct of FDIC during its pre-receivership regulation of bank could not be grounds for affirmative defense as regulatory conduct of FDIC fell into discretionary conduct exception to Federal Tort Claims Act; affirmative defenses of mitigation of damages, comparative fault, and intervening/superseding cause of conduct of Federal Tort Claims Act were stricken because they improperly challenged discretionary power of FDIC to maintain and dispose of bank's assets post-receivership under [12 USCS § 1821\(d\)\(2\)\(G\)\(i\)\(II\)](#); defendants' affirmative defenses of lack of proximate cause and intervening/superseding cause of general market downturn were stricken because causation was element of FDIC's case in chief; affirmative defenses that purported to reserve right to add affirmative defenses at later date were stricken because they were improper reservations under Federal Rules. [FDIC v. Mahajan, 923 F. Supp. 2d 1133, 2013 U.S. Dist. LEXIS 18344 \(N.D. Ill. 2013\)](#).

18. Subpoenas and searches

In proceeding to enforce administrative subpoena duces tecum issued by Resolution Trust Corporation under [12 USCS § 1821\(d\)\(2\)\(I\)](#) (as made applicable by [12 USCS § 1441a\(b\)](#)), federal law, rather than state law, applies to determination of attorney-client privilege claim. [Linde Thomson Langworthy Kohn & Van Dyke, P.C. v. Resolution Trust Corp., 5 F.3d 1508, 303 U.S. App. D.C. 316, 26 Fed. R. Serv. 3d \(Callaghan\) 1330, 37 Fed. R. Evid. Serv. \(CBC\) 1119, 1993 U.S. App. LEXIS 25279 \(D.C. Cir. 1993\)](#), reh'g, en banc, denied sub nom. [Resolution Trust Corp. v. Miller Nelson Vohland & Assocs., 1993 U.S. App. LEXIS 37046 \(D.C. Cir. Dec. 20, 1993\)](#).

RTC has authority to subpoena material reasonably relevant to issue of liability of officers and directors of failed savings and loan, and RTC is not required to make preliminary determination of liability before subpoenaing information relevant to attachment of assets or avoidance of asset transfers; however, RTC, as conservator for failed savings and loan, is not authorized to serve subpoena on each former officer and director for sole purpose of determining whether that individual has sufficient net worth to warrant suing. [Resolution Trust Corp. v. Walde, 18 F.3d 943, 305 U.S. App. D.C. 183, 1994 U.S. App. LEXIS 5161 \(D.C. Cir. 1994\)](#).

Resolution Trust Corporation does not have statutory authority ([12 USCS § 1821\(d\)\(2\)\(I\)](#)) to subpoena financial documents solely to ascertain cost-effectiveness of pursuing litigation once such litigation commences. [Resolution Trust Corp. v. Thornton, 41 F.3d 1539, 309 U.S. App. D.C. 384, 1994 U.S. App. LEXIS 35496 \(D.C. Cir. 1994\)](#).

Only statutory restriction on FDIC's power to issue subpoenas ([12 USCS §§ 1818\(n\)](#) and [1821\(d\)\(2\)\(I\)\(i\)](#)) is that they be issued for purposes of carrying out any power, authority or duty with respect to insured depository institution; any limitation beyond that on FDIC's subpoena power must be found, if at all, in Constitution, particularly in Fourth and Fifth Amendments. [McVane v. FDIC \(In re McVane\), 44 F.3d 1127, 1995 U.S. App. LEXIS 1001 \(2d Cir. 1995\)](#).

FDIC's sweeping power to subpoena personal financial records of former directors and officers of failed savings and loans is limited by Fourth Amendment's prohibition of unreasonable searches, and by requirement that FDIC make preliminary showing of suspicion of liability of subpoena respondent for certain inquiries; absent one of these limitations, FDIC need only satisfy statutory standard for enforcement of administrative subpoenas (i.e. FDIC must show that its investigation is being conducted pursuant to legitimate purpose, that inquiry is relevant to that purpose, that information is not already within FDIC's possession, and that proper procedures have been followed).

[Gimbel v. FDIC \(In re Gimbel\), 77 F.3d 593, 1996 U.S. App. LEXIS 2766 \(2d Cir.\)](#), cert. denied, 519 U.S. 814, 117 S. Ct. 62, 136 L. Ed. 2d 24, 1996 U.S. LEXIS 4714 (1996).

Federal Deposit Insurance Corporation's (FDIC) warrantless search of bank president's law office was proper under [12 USCS § 1821\(d\)](#), where (1) office also was sole office used by president and (2) FDIC was appointed receiver for bank, because search was pursuant to FDIC's statutory duty; president voluntarily reduced expectation of law firm's privacy in its premises by operating firm out of same offices from which he ran bank. [United States v. Chuang, 696 F. Supp. 910, 1988 U.S. Dist. LEXIS 14112 \(S.D.N.Y. 1988\)](#), aff'd, [897 F.2d 646, 1990 U.S. App. LEXIS 3178 \(2d Cir. 1990\)](#).

Resolution Trust Corporation's ("RTC") subpoenas served on insurance companies under [12 USCS § 1821\(d\)\(2\)\(I\)\(i\)](#) will be enforced where RTC seeks extensive information regarding possible insurance coverage for former officers and directors of failed savings associates to determine whether they may be liable for losses as result of acts or omissions, because RTC is conducting investigation pursuant to legitimate purpose, information sought in subpoenas may be relevant to that purpose, and RTC's subpoena power extends to all those necessary to comply with its mandate. [Resolution Trust Corp. v. American Casualty Co., 787 F. Supp. 5, 1992 U.S. Dist. LEXIS 3655 \(D.D.C. 1992\)](#).

RTC's petition to enforce administrative subpoenas was granted, where agency sought financial statements and tax returns from former directors of failed institution under FIRREA ([12 USCS §§ 1811 et seq.](#)), since requests were relevant to investigation which may be defined very generally in administrative context and agency is entitled to broad deference. [Resolution Trust Corp. v. Burke, 869 F. Supp. 15, 1994 U.S. Dist. LEXIS 16849 \(D.D.C. 1994\)](#).

19. Prior final adjudication

Judgment creditor's money judgment for \$38,903.59 against insolvent bank is satisfied under [FRCP 60\(b\)\(5\)](#), where FDIC, acting as receiver, appears to have substantially complied with [12 USCS § 1821\(d\)](#) procedures by reviewing creditor's proof of claim, issuing receiver's certificate for full amount, and extending 50 percent advance payment pending determination of pro rata share due creditor in liquidation of bank, because FDIC has "abided by" money judgment within meaning of § 1821(d)(13)(A), creditor has been given its due statutory process, and it could not and cannot take further action against insolvent bank's assets after FDIC was appointed receiver, under § 1825(b)(2). [Midlantic Nat'l Bank/North v. Federal Reserve Bank, 814 F. Supp. 1195, 1993 U.S. Dist. LEXIS 2002 \(S.D.N.Y. 1993\)](#).

20. Attachment or execution upon Corporation assets

Garnishment action to recover proceeds from sale of oil and gas that were paid to FDIC is barred by [12 USCS §§ 1821\(d\)\(13\)\(C\)](#) and [1825\(b\)\(2\)](#), which preclude liens from attaching to property of FDIC. [GWN Petroleum Corp. v. OK-TEX Oil & Gas, 998 F.2d 853, 26 Fed. R. Serv. 3d \(Callaghan\) 1414, 126 Oil & Gas Rep. 283, 1993 U.S. App. LEXIS 17076 \(10th Cir. 1993\)](#).

RTC's elevation to receiver in possession of bank's assets seven days before management company (which was general partner of borrower that had entered into loan restructuring transaction with bank) recorded its judgment made company's action ineffective, since [12 USCS § 1821\(d\)\(13\)\(C\)](#) bars company from registering its judgment against RTC. [Resolution Trust Corp. v. Cheshire Mgmt. Co., 18 F.3d 330, 1994 FED App. 0041P, 1994 U.S. App. LEXIS 2054 \(6th Cir. 1994\)](#).

FDIC can use [12 USCS § 1821\(d\)\(18\)](#) and (19) in absence of either § 1821(d)(17) or other allegations of fraud. [FDIC v. Garner, 125 F.3d 1272, 97 Cal. Daily Op. Service 7317, 97 D.A.R. 11810, 1997 U.S. App. LEXIS 23818 \(9th Cir. 1997\)](#), cert. denied, 523 U.S. 1020, 118 S. Ct. 1299, 140 L. Ed. 2d 466, 1998 U.S. LEXIS 1848 (1998).

[12 USCS § 1821\(d\)\(13\)\(C\)](#) applies only while assets are in possession of FDIC/RTC; it does not create assignable rights. [FDIC v. McFarland, 243 F.3d 876, 150 Oil & Gas Rep. 195, 2001 U.S. App. LEXIS 2892 \(5th Cir. 2001\)](#).

[12 USCS § 1821\(d\)\(13\)\(C\)](#) is not jurisdictional provision. [FDIC v. McFarland, 243 F.3d 876, 150 Oil & Gas Rep. 195, 2001 U.S. App. LEXIS 2892 \(5th Cir. 2001\)](#).

Judgment holder is entitled to no more than its pro rata share of receivership assets, where: (1) holder filed breach-of-contract suit against financial institution in 1988; (2) RTC succeeded FSLIC by operation of law as conservator for institution on August 9, 1989 and was substituted for institution as party defendant on August 28, 1989; (4) RTC removed suit to federal court which entered judgment in favor of holder against RTC as conservator on January 17, 1990; (5) OTS replaced RTC as conservator with RTC as receiver on May 17, 1990; and (6) holder registered its judgment as required by state law for lien to attach on May 24, 1990, because [12 USCS § 1821\(d\)\(13\)\(C\)](#) prohibits creation of judgment lien against RTC after its appointment as receiver. [Resolution Trust Corp. v. Cheshire Management Co., 842 F. Supp. 295, 1992 U.S. Dist. LEXIS 22093 \(W.D. Tenn. 1992\)](#).

21. Fraudulent transfers

Resolution Trust Corporation (RTC), when seeking preliminary injunction in suit to void potential fraudulent conveyance, may use fair ground for litigation standard even when it need not show irreparable injury pursuant to [12 USCS § 1821\(d\)\(19\)](#); RTC must nonetheless show potential injury when seeking preliminary injunction. [Resolution Trust Corp. v. Cruce, 972 F.2d 1195, 1992 U.S. App. LEXIS 18752 \(10th Cir. 1992\)](#).

[12 USCS § 1821\(d\)\(17\)](#)–(19) does not exempt FDIC from operation of bankruptcy automatic stay ([11 USCS § 362](#)). [In re Colonial Realty Co., 980 F.2d 125, 23 Bankr. Ct. Dec. \(LRP\) 1143, Bankr. L. Rep. \(CCH\) ¶ 75283, 28 Collier Bankr. Cas. 2d \(MB\) 28, 1992 U.S. App. LEXIS 30905 \(2d Cir. 1992\)](#).

FDIC can use [12 USCS § 1821\(d\)\(18\)](#) and (19) in absence of either § 1821(d)(17) or other allegations of fraud. [FDIC v. Garner, 125 F.3d 1272, 97 Cal. Daily Op. Service 7317, 97 D.A.R. 11810, 1997 U.S. App. LEXIS 23818 \(9th Cir. 1997\)](#), cert. denied, 523 U.S. 1020, 118 S. Ct. 1299, 140 L. Ed. 2d 466, 1998 U.S. LEXIS 1848 (1998).

Up to \$18 million in assets of debtor are temporarily restrained and placed under management of trustee, where debtor owes FDIC, as receiver for national bank, approximately \$18 million and recently transferred \$760,000 cash and 8 1/3 percent interest in \$7 million trust to his wife for no consideration, and transferred \$1.5 million to law firm as retainer fee for future legal services in case of bankruptcy, because there is substantial likelihood that FDIC could convince court that transfers were fraudulent under [12 USCS § 1821\(d\)\(17\)](#)–(19). [Federal Deposit Ins. Corp. v. Cafritz, 762 F. Supp. 1503, 1991 U.S. Dist. LEXIS 5586 \(D.D.C. 1991\)](#).

Resolution Trust Corporation (RTC), as receiver, may avoid transfers of assets by former bank officer to family members where all transfers occurred after officer was terminated from bank as result of bank bribery scheme and after he became aware that scam had been uncovered, where 2 transfers were made after termination and 5 were made after FBI informed officer he had been videotaped, where all transfers were made to close family members and none to independent creditors, and where much of money transferred had been funneled back to officer by "loans" from family members to whom transfers had been made, because transfers were designed to hinder, delay, or defraud RTC. [Resolution Trust Corp. v. Spagnoli, 811 F. Supp. 1005, 1993 U.S. Dist. LEXIS 364 \(D.N.J. 1993\)](#).

Action by Federal Deposit Insurance Corporation (FDIC) as receiver for failed bank against defendants seeking to set aside transfer of property from defendants jointly to defendant wife individually is not dismissed, because statute of limitations began to run when FDIC was appointed as receiver, and because, measured from either 6-year period for contract claims or 3-year period for tort claims, fraudulent transfer action was timely. [FDIC v. Zibolis, 856 F. Supp. 57, 1994 U.S. Dist. LEXIS 8786 \(D.N.H. 1994\)](#).

Assignee's fraudulent conveyance cause of action against loan guarantor, initially brought by FDIC as appointed receiver of bank, accrued when FDIC discovered alleged wrongdoing and, thus, complaint was timely filed pursuant to 3-year statute of limitations of [12 USCS § 1821\(d\)\(14\)](#). [Joslin v. Grossman, 107 F. Supp. 2d 150, 2000 U.S. Dist. LEXIS 6619 \(D. Conn. 2000\)](#).

Motion to dismiss was granted because under [12 USCS § 1821\(d\)\(17\)](#) Federal Deposit Insurance Corporation (FDIC) could avoid intentionally fraudulent transfer of any person who FDIC determined was debtor of institution and transfers were made with intent to hinder, delay, or defraud bank; accordingly, FDIC had ability to avoid transfers, among other fraudulent steps in integrated fraudulent transaction. [Jahn v. FDIC, 828 F. Supp. 2d 305, 2011 U.S. Dist. LEXIS 144412 \(D.D.C. 2011\)](#).

22. Injunctive relief

Resolution Trust Corporation (RTC), when seeking preliminary injunction in suit to void potential fraudulent conveyance, may use fair ground for litigation standard even when it need not show irreparable injury pursuant to [12 USCS § 1821\(d\)\(19\)](#); RTC must nonetheless show potential injury when seeking preliminary injunction. [Resolution Trust Corp. v. Cruce, 972 F.2d 1195, 1992 U.S. App. LEXIS 18752 \(10th Cir. 1992\)](#).

[12 USCS § 1821\(d\)\(17\)–\(19\)](#) does not exempt FDIC from operation of bankruptcy automatic stay ([11 USCS § 362](#)). [In re Colonial Realty Co., 980 F.2d 125, 23 Bankr. Ct. Dec. \(LRP\) 1143, Bankr. L. Rep. \(CCH\) ¶ 75283, 28 Collier Bankr. Cas. 2d \(MB\) 28, 1992 U.S. App. LEXIS 30905 \(2d Cir. 1992\)](#).

General rule limiting injunctions to those cases where equitable, rather than legal, remedy is sought to be protected, necessarily follows from traditional equitable requirement that applicant for injunction show irreparable injury; thus, since preliminary injunction provisions of Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 ([12 USCS § 1821\(d\)\(18\)](#), (19)) remove equitable requirement of irreparable injury, there is no reason to apply corresponding equitable principle that injunction may not issue to protect legal remedy. [FDIC v. Faulkner, 991 F.2d 262, 1993 U.S. App. LEXIS 12080 \(5th Cir. 1993\)](#), reh'g denied, [1993 U.S. App. LEXIS 17585 \(5th Cir. June 30, 1993\)](#).

Appointment of trustee under [12 USCS § 1821\(d\)\(18\)](#) is governed by standards and precedents applicable to issuance of injunctive relief under [FRCP 65](#) (except that there is no need for plaintiff FDIC to show that injury, loss or damage will be irreparable or immediate), rather than by [FRCP 66](#), irrespective of fact that trustee is analogous to receiver, since statute is clear in its repeated designation of [FRCP 65](#) as source of governing standard. [FDIC v. Elio, 39 F.3d 1239, 1994 U.S. App. LEXIS 31455 \(1st Cir. 1994\)](#).

Although [12 USCS § 1821\(j\)](#) generally bars courts from enjoining RTC's exercise of its statutory powers or functions as conservator or receiver, it does not immunize RTC from all injunctions; because Congress could not authorize RTC to act unconstitutionally, enjoining RTC from doing so cannot infringe on its statutorily granted powers. [Elmco Props. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 1996 U.S. App. LEXIS 23164 \(4th Cir. 1996\)](#).

FDIC can use [12 USCS § 1821\(d\)\(18\)](#) and (19) in absence of either § 1821(d)(17) or other allegations of fraud. [FDIC v. Garner, 125 F.3d 1272, 97 Cal. Daily Op. Service 7317, 97 D.A.R. 11810, 1997 U.S. App. LEXIS 23818 \(9th Cir. 1997\)](#), cert. denied, 523 U.S. 1020, 118 S. Ct. 1299, 140 L. Ed. 2d 466, 1998 U.S. LEXIS 1848 (1998).

Up to \$18 million in assets of debtor are temporarily restrained and placed under management of trustee, where debtor owes FDIC, as receiver for national bank, approximately \$18 million and recently transferred \$760,000 cash and 8 1/3 percent interest in \$7 million trust to his wife for no consideration, and transferred \$1.5 million to law firm as retainer fee for future legal services in case of bankruptcy, because there is substantial likelihood that FDIC could convince court that transfers were fraudulent under [12 USCS § 1821\(d\)\(17\)–\(19\)](#). [Federal Deposit Ins. Corp. v. Cafritz, 762 F. Supp. 1503, 1991 U.S. Dist. LEXIS 5586 \(D.D.C. 1991\)](#).

FDIC's petition to restrain funds to cover amount due under \$240,000 promissory note is denied, where funds repatriated from foreign country are now held in registry of court pursuant to order in underlying criminal action, but underlying lawsuit does not allege fraudulent activity, because petition for preliminary injunction under [12 USCS § 1821\(d\)\(18\)–\(19\)](#) must show some potential injury evidenced by clear nexus between past fraudulent conduct and property for which restraint is sought under facts of underlying suit. [FDIC v. Floyd, 827 F. Supp. 409, 1993 U.S. Dist. LEXIS 10157 \(N.D. Tex. 1993\)](#).

23. Miscellaneous

District Court is deprived of jurisdiction to enjoin Resolution Trust Company from disposing of mortgages owned by failed depository, even if sale would violate postreceivership contract entered into between Resolution Trust Company and mortgagor, since sale is in furtherance of Resolution Trust Company's function as receiver and is expressly authorized. [Voges v. Resolution Trust Corp., 32 F.3d 50, 1994 U.S. App. LEXIS 21402 \(2d Cir. 1994\)](#), cert. denied, 515 U.S. 1162, 115 S. Ct. 2618, 132 L. Ed. 2d 860, 1995 U.S. LEXIS 4348 (1995).

[12 USCS § 1821\(d\)\(2\)\(H\)](#), which assumes that claims in question are valid and addresses only manner in which valid claims are to be paid, does not indicate congressional intent to displace "D'Oench" doctrine. [Motorcity, Ltd. by & Through Motorcity, Inc. v. Southeast Bank N.A., 120 F.3d 1140, 11 Fla. L. Weekly Fed. C 343, 1997 U.S. App. LEXIS 22195 \(11th Cir. 1997\)](#), cert. denied, 523 U.S. 1093, 118 S. Ct. 1559, 140 L. Ed. 2d 791, 1998 U.S. LEXIS 2825 (1998).

Shareholders of failed financial institution do not have private right of enforcement of FDIC's duty to maximize gain and minimize loss in its disposition of institution's assets ([12 USCS § 1821\(d\)\(13\)\(E\)](#)). [Hindes v. FDIC, 137 F.3d 148, 39 Fed. R. Serv. 3d \(Callaghan\) 1406, 1998 U.S. App. LEXIS 2709 \(3d Cir. 1998\)](#).

Shareholders of failed financial institution do not have private right of action to enforce FDIC's duty to provide accounting ([12 USCS § 1821\(d\)\(15\)](#)). [Hindes v. FDIC, 137 F.3d 148, 39 Fed. R. Serv. 3d \(Callaghan\) 1406, 1998 U.S. App. LEXIS 2709 \(3d Cir. 1998\)](#).

FDIC has all of stockholders' rights and powers to bring any derivative action. [Pareto v. FDIC, 139 F.3d 696, 98 Cal. Daily Op. Service 1912, 98 D.A.R. 2691, 1998 U.S. App. LEXIS 5021 \(9th Cir. 1998\)](#).

Receivers, and only receivers, incur expenses of liquidation, as only receivers have power to liquidate failed thrift. [McAllister v. RTC, 201 F.3d 570, 24 Employee Benefits Cas. \(BNA\) 1016, 2000 U.S. App. LEXIS 835 \(5th Cir. 2000\)](#).

Expenses of liquidation cannot be incurred by conservator as matter of law, as liquidation is not function of conservator. [McAllister v. RTC, 201 F.3d 570, 24 Employee Benefits Cas. \(BNA\) 1016, 2000 U.S. App. LEXIS 835 \(5th Cir. 2000\)](#).

Receiver, not conservator, has authority to liquidate assets and pay obligations of insured institution on behalf of depositors and creditors. [McAllister v. RTC, 201 F.3d 570, 24 Employee Benefits Cas. \(BNA\) 1016, 2000 U.S. App. LEXIS 835 \(5th Cir. 2000\)](#).

[12 USCS § 1821\(d\)\(15\)](#) gives shareholder of bank in receivership private right of action against FDIC to compel FDIC to provide financial accounting in conformity with FDIC's own accounting and reporting practices and procedures. [First Pac. Bancorp, Inc. v. Helfer, 224 F.3d 1117, 2000 Cal. Daily Op. Service 6573, 2000 D.A.R. 8701, 2000 U.S. App. LEXIS 18962 \(9th Cir. 2000\)](#).

It was not error for district court to decline to add bank as party to civil action involving director and officer insurer as named defendant because bank was in receivership and bank had ceded all of its rights to Federal Deposit Insurance Corporation. [McAninch v. Winternmute, 491 F.3d 759, 2007 U.S. App. LEXIS 15237 \(8th Cir. 2007\)](#).

By virtue of [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#) Federal Deposit Insurance Corporation is automatically substituted for failed institution as matter of federal law moment that it files notice of substitution in court, and 90-day removal period set forth in [12 USCS § 1819\(b\)\(2\)\(B\)](#) begins to run from filing of that notice. [FDIC v. N. Savannah Props., LLC, 686 F.3d 1254, 23 Fla. L. Weekly Fed. C 1299, 2012 U.S. App. LEXIS 14324 \(11th Cir. 2012\)](#).

Where Federal Deposit Insurance Corporation (FDIC) took over assets of failed bank and transferred sublease containing termination clause to asset purchaser, sublease remained in effect because (1) FDIC had power to enforce lease notwithstanding clauses to contrary, and (2) termination clause fell within language of [12 USCS §](#)

[1821\(e\)\(13\)\(A\)](#) and was therefore unenforceable against FDIC as receiver of failed bank. [Iberiabank v. Beneva 41-I, LLC, 701 F.3d 916, 23 Fla. L. Weekly Fed. C 1702, 2012 U.S. App. LEXIS 24696 \(11th Cir. 2012\)](#).

Four counts of complaint were properly dismissed because Federal Deposit Insurance Corporation rather than holding company and its trustee owned any legal claim that depended on acts managers took in their roles at banks because theory behind counts, that managers owed duty to company to protect it from their own behavior at banks, was veneer over derivative claim based on harm managers' choices caused to banks and transmitted to company through decline in value of shares it held. [Levin v. Miller, 763 F.3d 667, 59 Bankr. Ct. Dec. \(LRP\) 259, 2014 U.S. App. LEXIS 15644 \(7th Cir. 2014\)](#).

Count that concerned only what managers did at holding company, both with respect to supporting financial distributions and with respect to information they gave company about banks' loan portfolios, was not properly dismissed because if it was dismissed, claim would have disappeared because Federal Deposit Insurance Corporation could not have pursued it as banks' successor. [Levin v. Miller, 763 F.3d 667, 59 Bankr. Ct. Dec. \(LRP\) 259, 2014 U.S. App. LEXIS 15644 \(7th Cir. 2014\)](#).

Count that maintained that two managers injured holding company by causing it to invest more money in banks even after they failed was not properly dismissed because it was based on injury that company sustained in its own right, claim that Federal Deposit Insurance Corporation could not have pursued it as banks' successor. [Levin v. Miller, 763 F.3d 667, 59 Bankr. Ct. Dec. \(LRP\) 259, 2014 U.S. App. LEXIS 15644 \(7th Cir. 2014\)](#).

Where Federal Deposit Insurance Corporation, as receiver for bank, brought separate lawsuit against former bank officers for gross negligence, and insurance policy excluded from coverage actions brought "by or on behalf of" any "insured" or "company," summary judgment was inappropriate regarding coverage because "insured-versus-insured" exclusion was ambiguous and extrinsic evidence may have been necessary to determine parties' intent. [St. Paul Mercury Ins. Co. v. FDIC, 774 F.3d 702, 25 Fla. L. Weekly Fed. C 718, 2014 U.S. App. LEXIS 23720 \(11th Cir. 2014\)](#).

Under terms of participation certificates lead bank retained sufficient mutuality to warrant exercise by receiver of lead bank of its statutory right to setoff borrower's deposit account in insolvent bank against balance due on its loans; lead bank's right to offset survives its insolvency and is incorporated into receiver's duty to martial bank's assets. [Northern Trust Co. v. Federal Deposit Ins. Corp., 619 F. Supp. 1340, 1985 U.S. Dist. LEXIS 14937 \(W.D. Okla. 1985\)](#).

Insurer is entitled to declaratory judgment establishing that insurance policy does not cover action against officers and directors by Resolution Trust Corporation, where RTC sought to recover against officers and directors of failed savings and loan, and insurance policy covering officers and directors specifically excluded coverage for statutory liability, because enforcement of contractual exclusion is not inconsistent with regulatory scheme, [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), and Congress was careful to make FIRREA neutral on question of validity of contractual exclusions of insurance coverage. [American Casualty Co. v. Resolution Trust Corp., 839 F. Supp. 282, 1993 U.S. Dist. LEXIS 17139 \(D.N.J. 1993\)](#).

Savings and loan association receiver lacked standing to bring claims against insurance agent under provision making it unlawful to use money derived from pattern of racketeering activity to invest in enterprise, under provision making it unlawful for person to acquire control of enterprise through pattern of racketeering activity, and for conspiracy premised on violations of those provisions, where complaint failed to allege injury stemming from use or investment of racketeering activity or arising from acquisition or maintenance of enterprise through racketeering activity. [Resolution Trust Corp. v. S & K Chevrolet Co., 918 F. Supp. 1235, RICO Bus. Disp. Guide ¶ 9054, 1996 U.S. Dist. LEXIS 2390 \(C.D. Ill.\)](#), vacated in part, [923 F. Supp. 135, 1996 U.S. Dist. LEXIS 5597 \(C.D. Ill. 1996\)](#).

In action in which employee asserted claims that were based on bank's failure to make severance payment, Federal Deposit Insurance Corporation (FDIC) was substituted for bank pursuant to [Fed. R. Civ. P. 25\(c\)](#) because FDIC had been appointed as receiver for bank and [12 USCS § 1821\(d\)\(3\)](#) provided that FDIC succeeded to

resolution of outstanding claims against bank. [*Hollensteiner v. Waterfield Group, 793 F. Supp. 2d 730, 2010 U.S. Dist. LEXIS 143297 \(D. Md. 2010\).*](#)

Motion to dismiss was granted because Alabama Department of Revenue (ADOR) failed to allege that bank expressly assumed tax liens; under federal law, bank that entered into purchase and assumption agreement did not step into failed bank's shoes, Federal Deposit Insurance Corporation (FDIC) did, and allowing ADOR to state claim without alleging that bank expressly assumed tax liens would contravene [*12 USCS § 1821\(d\)\(2\)\(G\)\(i\)\(II\). Ala. Dep't of Revenue v. FDIC, 840 F. Supp. 2d 1305, 2012 U.S. Dist. LEXIS 5260 \(M.D. Ala. 2012\).*](#)

B. Determination of Claims

24. Generally

FIRREA's claims procedure in [*12 USCS § 1821\(d\)*](#) is exclusive, since Congress expressly withdrew jurisdiction from all courts over any claim to failed bank's assets that are made outside procedure set forth in § 1821. [*Federal Deposit Ins. Corp. v. Shain, Schaffer & Rafanello, 944 F.2d 129, 1991 U.S. App. LEXIS 20566 \(3d Cir. 1991\).*](#)

Participation in administrative claims review process ([*12 USCS § 1821\(d\)*](#)) is mandatory for all parties asserting claims against failed institutions; thus, failure to participate in such process is jurisdictional bar to judicial review. [*Heno v. FDIC, 20 F.3d 1204, 1994 U.S. App. LEXIS 8373 \(1st Cir. 1994\).*](#)

Claim procedures articulated in [*12 USCS § 1821\(d\)\(5\)–\(11\)*](#) are predicated on FDIC's possession of property in question; when FDIC relinquishes ownership, procedures governing its role as receiver no longer apply to property. [*FDIC v. McFarland, 243 F.3d 876, 150 Oil & Gas Rep. 195, 2001 U.S. App. LEXIS 2892 \(5th Cir. 2001\).*](#)

Administrative claims procedures under [*12 USCS § 1821\(d\)\(2\)*](#) are constitutional with respect to attorneys who provided services to insolvent trust company, notwithstanding argument that attorneys should be able to enforce retaining or charging liens in court; conflicting procedures would delay prompt resolution of all claims, and attorneys can urge their lien theories upon FDIC. [*In re First City Nat'l Bank & Trust Co., 759 F. Supp. 1048, 1991 U.S. Dist. LEXIS 4012 \(S.D.N.Y. 1991\).*](#)

Creditor of liquidated Federal Asset Disposition Association (FADA) was required to comply with mandatory administrative process for filing claims with federal receiver, where creditor contended that FADA owed it money for telephone leasing services and that it was not required to follow administrative procedures in that FADA was acting as federal agency rather than as private depository institution when it incurred debt, because FADA falls within [*12 USCS § 1821\(d\)\(3\)\(B\)\(i\)*](#) definition of depository institution. [*United States Leasing Corp. v. Resolution Trust Corp., 825 F. Supp. 336, 1993 U.S. Dist. LEXIS 7641 \(D.D.C. 1993\).*](#)

FDIC's motion for summary judgment is denied, where borrower from defunct savings and loan (S&L) filed claim with FDIC, alleging that it had repaid S&L more than it owed after S&L gave borrower inflated payoff figure for loan, borrower's claim was timely under [*12 USCS § 1821\(d\)*](#), FDIC denied claim, and borrower sued for amount in excess of amount stated in administrative claim, because [*12 USCS § 1821\(d\)*](#) does not limit court claim to amount claimed in administrative proceeding, and goal of expeditious and fair disposition of claims supports flexibility in statement of amount of claim. [*Interlease Corp. v. FDIC, 837 F. Supp. 1, 1993 U.S. Dist. LEXIS 19151 \(D.D.C. 1993\).*](#)

FDIC is entitled to summary judgment on landlord's claim of Fifth Amendment taking of its rental property, where property had been premises of insolvent bank, FDIC repudiated lease in accordance with [*12 USCS § 1821\(e\)*](#), and landlord filed proof of claim meeting requirements of administrative claims review process, because statutory scheme covering receivership, although not without economic effects, provides due process of law. [*Plymouth Mills v. FDIC, 876 F. Supp. 439, 1995 U.S. Dist. LEXIS 1936 \(E.D.N.Y. 1995\).*](#)

In action by Federal Deposit Insurance Corporation, as receiver of insolvent bank, to enforce debtors' promissory note, debtors may not raise Equal Credit Opportunity Act defense, because even if general statute of limitations had

not run on claim, debtors' failure to raise defense as administrative claim in receivership proceeding as required by [12 USCS § 1821\(d\)\(3\)\(B\)](#), (C) precludes them from raising it in present action. [FDIC v. Skotzke, 881 F. Supp. 364, 1994 U.S. Dist. LEXIS 20076 \(S.D. Ind. 1994\)](#).

Whereas [12 USCS § 1821](#) forces plaintiffs to file claims with Federal Deposit Insurance Corporation before suing failed banks in receivership, FIRREA does not extend this protection to persons related to failed bank, but not themselves in receivership; this is true even if related person is corporate parent being sued derivatively for acts of failed bank. [Cassese v. Wash. Mut., Inc., 743 F. Supp. 2d 148, 2010 U.S. Dist. LEXIS 110512 \(E.D.N.Y. 2010\)](#).

In mortgagor's fraud suit against his mortgage's assignee, mortgagor's complaint was dismissed for failure to state cause of action because complaint failed to provide sufficient factual detail for district court to conclude whether any alleged agreements forming basis of mortgagor's claims, made subsequent to initial mortgage closing but prior to assignee's purchase and assumption of defunct original mortgagee's assets complied with case law doctrines as codified in four requirements enumerated in [12 USCS § 1823\(e\)](#). [Caires v. JP Morgan Chase Bank, 745 F. Supp. 2d 40, 2010 U.S. Dist. LEXIS 103542 \(D. Conn. 2010\)](#), dismissed, [880 F. Supp. 2d 288, 2012 U.S. Dist. LEXIS 101920 \(D. Conn. 2012\)](#), dismissed, [298 F. Supp. 3d 79, 2018 U.S. Dist. LEXIS 21426 \(D.D.C. 2018\)](#).

FDIC's Texas Securities Act claim was time-barred by statute of repose, and Financial Institutions Reform, Recovery & Enforcement Act of 1989's extender provision did not preempt Texas statute; because FIRREA's extender provision did not preempt state law, FDIC lost right to sue on all eight certificates before FDIC filed action, and cause of action was time-barred. [Federal Deposit Ins. Corp. v. Countrywide Secs. Corp. \(In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig.\), 966 F. Supp. 2d 1018, 2013 U.S. Dist. LEXIS 125016 \(C.D. Cal. 2013\)](#), dismissed in part, [2013 U.S. Dist. LEXIS 180587 \(C.D. Cal. Aug. 26, 2013\)](#).

25. Notice to present claims

RTC's alleged failure to comply with mailing requirement of [12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#) did not relieve plaintiffs who filed suit against insolvent bank of obligation to exhaust administrative remedies. [Meliezer v. Resolution Trust Co., 952 F.2d 879, 1992 U.S. App. LEXIS 1321 \(5th Cir. 1992\)](#).

Although notice is critical factor of FIRREA statutory scheme, and RTC must comply with statutory requirements, when RTC knows that claimant is represented by counsel with regard to claim (and especially when litigation is pending), it is entirely proper for RTC to notify claimant of receivership ([12 USCS § 1821\(d\)\(3\)\(C\)\(i\)](#)) via her attorney; to do otherwise might be improper communication with represented party and could well be breach of professional ethics ([FRCP 5\(b\)](#)). [Bueford v. Resolution Trust Corp., 991 F.2d 481, 61 Empl. Prac. Dec. \(CCH\) ¶ 42189, 61 Fair Empl. Prac. Cas. \(BNA\) 881, 1993 U.S. App. LEXIS 7885 \(8th Cir. 1993\)](#).

In case involving former president and CEO of savings and loan association which became insolvent after his retirement, who had deferred compensation agreement with S & L as part of retirement plan, notice sent by RTC to trustee of trust that contained former president's deferred compensation funds, which stated that S & L had been declared insolvent, that RTC had been appointed receiver, and that creditors had right to file claim, could not be imputed to former president. [Rejerson v. Resolution Trust Corp., 16 F.3d 889, 1994 U.S. App. LEXIS 2434 \(8th Cir. 1994\)](#).

Claimant with suit pending against failed institution when FDIC is appointed receiver must, based on due process considerations, be given notice by mail of FDIC's appointment and claims deadline ([12 USCS § 1821\(d\)\(3\)\(C\)](#)); notice by publication ([12 USCS § 1821\(d\)\(3\)\(B\)](#)) in such cases is not sufficient. [Greater Slidell Auto Auction v. American Bank & Trust Co., 32 F.3d 939, 1994 U.S. App. LEXIS 26599 \(5th Cir.\)](#), reh'g, en banc, denied, [42 F.3d 639, 1994 U.S. App. LEXIS 36120 \(5th Cir. 1994\)](#).

FDIC's failure to mail notice to creditor of claims bar date as required by [12 USCS § 1821\(d\)\(3\)\(C\)](#) does not toll claims bar date for such creditor. [Intercontinental Travel Mktg. v. FDIC, 45 F.3d 1278, 94 Cal. Daily Op. Service 9762, 94 D.A.R. 18162, 1994 U.S. App. LEXIS 36449 \(9th Cir. 1994\)](#).

FDIC's failure to provide proper notice does not relieve claimant of obligation to exhaust administrative remedies, because statute does not provide for waiver or exception under such circumstances. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\).](#)

Only exception to exhaustion of remedies requirement is where claimant does not receive notice of appointment of receiver in time to file his claim; exception does not apply to claimants who are aware of appointment of receiver but who do not receive notice of filing deadline. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\).](#)

Assuming Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) administrative claims procedure applied to case commenced by lender prior to Resolution Trust Corporation's receivership, defendant-lienors' claims in case were properly "presented" to RTC under FIRREA; lienors' claims were in lender's hands, and subsequently in hands of RTC, from beginning of controversy, and lien claims, in lender's possession and attached to its complaint, were sworn to, amount claimed by each lienor was stated, and nature of work done was identified, though tersely. [FDIC v. LaCentra Trucking, Inc., 157 F.3d 1292, 12 Fla. L. Weekly Fed. C 161, 1998 U.S. App. LEXIS 26781 \(11th Cir. 1998\)](#), reh'g, en banc, denied, 170 F.3d 190, 1999 U.S. App. LEXIS 7908 (11th Cir. 1999), cert. dismissed, 526 U.S. 1083, 119 S. Ct. 1493, 143 L. Ed. 2d 575, 1999 U.S. LEXIS 3168 (1999).

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\).](#)

Notice by publication to mortgagors of failure of their mortgagee bank and receivership was sufficient under Financial Institutions Reform, Recovery, and Enforcement Act because their claims were inchoate, and they failed to invoke statutory remedy afforded them upon receiving such notice. [Demelo v. U.S. Bank Nat'l Ass'n, 727 F.3d 117, 2013 U.S. App. LEXIS 17056 \(1st Cir. 2013\).](#)

FDIC is entitled to dismissal of claims initiated against now-failed bank for allegedly wrongfully inducing group of buyers to breach purchase and sale agreement, despite doubt as to procedural propriety of FDIC's removal of action and giving of notice, because it is undisputed that claimants were aware of FDIC's appointment as receiver and, having not filed administrative claim with FDIC in timely manner, are without remedy under [12 USCS § 1821\(d\)\(5\)\(C\)\(i\)](#) even if FDIC failed to comply with [12 USCS § 1821\(d\)\(3\)\(C\). Espinosa v. DeVasto, 818 F. Supp. 438, 1993 U.S. Dist. LEXIS 4119 \(D. Mass. 1993\).](#)

FDIC's motion to dismiss property damage claim by tenant of building next to bank is denied without prejudice, where tenant's property was damaged by oil seepage from bank's property, FDIC took over bank when it became insolvent, FDIC notified creditors of deadline to present claims, and tenant admits she received notice of FDIC's takeover with respect to her checking account but denies that she received notice of filing deadline for administrative claims such as property damage claims, because additional facts are required to determine if FDIC complied with notice provisions of 12 USCS § 1921(d)(3)(B) and (C). [Palumbo v. Roberti, 834 F. Supp. 46, 1993 U.S. Dist. LEXIS 14257 \(D. Mass.\), adopted, 834 F. Supp. 46 \(D. Mass. 1993\).](#)

Tort claims by tenants of neighboring building against FDIC as receiver for bank are barred, where tenants' property was damaged by oil leakage from bank, bank became insolvent after leakage occurred, FDIC did not notify tenants of claims deadline, and tenants failed to file administrative claim as required by [12 USCS § 1821\(d\)\(13\)\(D\)](#), because tenants are not creditors of bank, FDIC was not required to give them notice under [12 USCS § 1821\(d\)\(3\)](#) and (5), and tenants are not excused from jurisdictional requirement of filing administrative claim. [Palumbo v. Roberti, 839 F. Supp. 80, 1993 U.S. Dist. LEXIS 19443 \(D. Mass. 1993\).](#)

Guarantor's counterclaim is dismissed, where guarantor filed administrative claim with FDIC well past "bar date" established for receipt of claims and FDIC rejected request to late-file claim, because guarantor never established

or even alleged that she did not receive notice of appointment of receiver, and is not entitled to have her late-filed claim considered by court pursuant to exception noted in [12 USCS § 1821\(d\)\(5\)\(C\)\(ii\). FDIC v. Atchison & Keller, 913 F. Supp. 19, 1996 U.S. Dist. LEXIS 1184 \(D.D.C. 1996\)](#), dismissed, [1997 U.S. App. LEXIS 6016 \(D.C. Cir. Feb. 10, 1997\)](#).

Because class allegation and proposed class definition in consumers' complaint were insufficient to transform unknown potential claimants into "known" creditors that had to receive notice under Financial Institutions Reform, Recovery and Enforcement Act of 1989, [12 USCS § 1821\(d\)\(3\)-\(13\)](#), consumers were unable to maintain class action. [Davito v. AmTrust Bank, 743 F. Supp. 2d 114, 2010 U.S. Dist. LEXIS 99765 \(E.D.N.Y. 2010\)](#).

Federal Deposit Insurance Corporation's (FDIC) notice of removal in action originally filed by bank against defendants made defendants aware of fact that FDIC had been appointed as receiver for failed bank, and therefore, defendants would have been obligated to file claims with FDIC prior to claims bar date even if FDIC had not sent defendants notice letter regarding bar date. [FDIC v. Estrada-Colon, 848 F. Supp. 2d 206, 2012 U.S. Dist. LEXIS 39622 \(D.P.R. 2012\)](#).

Where debtors failed to present their claims to receiver by date specified in notice, not less than 90 days after date of publication of notice of FDIC takeover, as required under [12 USCS § 1821\(d\)\(3\)\(B\)](#), bankruptcy court lacked jurisdiction to hear claims and dismissed them under Fed. R. Civ. P. 12(b)(1). [Shirk v. JPMorgan Chase Bank, N.A. \(In re Shirk\), 437 B.R. 592, 2010 Bankr. LEXIS 3231 \(Bankr. S.D. Ohio 2010\)](#).

26. Filing of claims

Mortgagor's failure to submit proof of its claims against mortgagee within 90 days of receipt of RTC's notice to creditors bars its counterclaims against RTC in its capacity as receiver of mortgagee, since FIRREA's claim procedures cannot be ignored, even though mortgagee had suit pending against mortgagor at time RTC was appointed receiver. [Resolution Trust Corp. v. Mustang Partners, 946 F.2d 103, 1991 U.S. App. LEXIS 18684 \(10th Cir. 1991\)](#).

Notice of receivership of failed savings and loan given to trustee of trust into which S & L's former president's deferred compensation was paid could not be imputed to former president for purposes of determining whether his claim was timely. [Reierson v. Resolution Trust Corp., 16 F.3d 889, 1994 U.S. App. LEXIS 2434 \(8th Cir. 1994\)](#).

Claimant's failure to timely file its claims against financial institution with RTC, as required by [12 USCS § 1821\(d\)\(3\)\(B\)](#), results in waiver of claims, unless claimant did not receive notice of appointment of receiver in time to file its claims before bar date. [Tillman v. Resolution Trust Corp., 37 F.3d 1032, 1994 U.S. App. LEXIS 22916 \(4th Cir. 1994\)](#).

Time bar for filing administrative claims ([12 USCS § 1821\(d\)](#)) is essentially statute of limitations, subject to waiver, estoppel and equitable tolling. [Freeman v. FDIC, 56 F.3d 1394, 312 U.S. App. D.C. 324, 1995 U.S. App. LEXIS 14479 \(D.C. Cir. 1995\)](#).

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\)](#).

There is "conflict of interests" exception which, in certain circumstances, allows person/entity other than FDIC (when acting as conservator or receiver) to have standing to bring judicial action on behalf of depository institution. [Delta Sav. Bank v. United States, 265 F.3d 1017, 2001 Cal. Daily Op. Service 5843, 2001 D.A.R. 7229, 2001 U.S. App. LEXIS 15564 \(9th Cir. 2001\)](#), cert. denied, 534 U.S. 1082, 122 S. Ct. 816, 151 L. Ed. 2d 700, 2002 U.S. LEXIS 273 (2002).

Federal Deposit Insurance Corporation, as assignee of unacceptable assets of bank, was entitled to file action against cashier of bank for paying checks of depositors, who did not have sufficient funds, since assignment of assets carried with it power to file any action based on assets. [Federal Deposit Ins. Corp. v. Rectenwall, 97 F. Supp. 273, 1951 U.S. Dist. LEXIS 4285 \(D. Ind. 1951\)](#).

Claimant who filed late claim with FDIC is not entitled to exemption from filing deadline pursuant to [12 USCS § 1821\(d\)\(5\)\(C\)\(ii\)](#), where FDIC published required notices of filing deadline pursuant to [12 USCS § 1821\(d\)\(3\)\(B\)](#) and sent notices to claimant and her attorney at their last known addresses, and claimant claimed that while he was aware that bank was in receivership, he did not receive notices or become aware of deadline until after it had passed, because exception under § 1821(d)(5)(C)(ii) only applies to claimants who do not receive notice of receivership, not to those who knew about receivership but did not receive notice of filing deadline. [McLaughlin v. Federal Deposit Ins. Corp., 796 F. Supp. 47, 1992 U.S. Dist. LEXIS 12931 \(D. Mass. 1992\)](#).

FDIC is entitled to dismissal of claims initiated against now-failed bank for allegedly wrongfully inducing group of buyers to breach purchase and sale agreement, despite doubt as to procedural propriety of FDIC's removal of action and giving of notice, because it is undisputed that claimants were aware of FDIC's appointment as receiver and, having not filed administrative claim with FDIC in timely manner, are without remedy under [12 USCS § 1821\(d\)\(5\)\(C\)\(i\)](#) even if FDIC failed to comply with [12 USCS § 1821\(d\)\(3\)\(C\)](#). [Espinosa v. DeVasto, 818 F. Supp. 438, 1993 U.S. Dist. LEXIS 4119 \(D. Mass. 1993\)](#).

Challenge to FDIC's decision to disallow claims to funds failed bank was to have placed in escrow was unsuccessful, where complainant never achieved status of depositor due to bank's failure to create account, since claimant was on notice of problem and did not file claim before FDIC deadline. [FDIC v. Fedders Air Conditioning, Inc., 821 F. Supp. 50, 1993 U.S. Dist. LEXIS 6502 \(D. Mass. 1993\)](#).

Depositor's action against FDIC is dismissed for lack of subject-matter jurisdiction, where depositor sued bank to determine property rights prior to receivership, depositor filed timely claim in existing suit with FDIC, but did not state claims for conversion or breach of contract, FDIC denied depositor's claim, and depositor brought suit against FDIC on new theories after time for filing of administrative claims had run, because [12 USCS § 1821](#) requires timely filing of notice of claims, and depositor's prior lawsuit, on different theories, will not insulate depositor from result of failure to file timely claim. [Brown Leasing Co. v. FDIC, 833 F. Supp. 672, 1993 U.S. Dist. LEXIS 11111 \(N.D. Ill. 1993\)](#), aff'd sub nom. [Brown Leasing Co. v. Cosmopolitan Bancorp, 42 F.3d 1112, 1994 U.S. App. LEXIS 35990 \(7th Cir. 1994\)](#).

FDIC is granted summary judgment as to claims of individual and his realty corporation for failure to file administrative claims under [12 USCS § 1821\(d\)](#), where FDIC offered (1) account officer's affidavit that he mailed notice to all listed creditors of insolvent bank, (2) creditor list with claimants' names on it, and (3) FDIC staff attorney's affidavit that mailing conformed to procedures used in ordinary course of placing bank into receivership, because claimants' simple statement that they never received notice is insufficient to deprive FDIC of presumption of receipt based on proof of proper mailing. [Betancourt v. FDIC, 851 F. Supp. 126, 1994 U.S. Dist. LEXIS 5469 \(S.D.N.Y. 1994\)](#).

Customers of failed bank have claim for \$620,650 dismissed for lack of subject-matter jurisdiction, where customers failed to file timely administrative claim with FDIC, and evidence does not show that FDIC was obligated to mail notice of filing deadline to customers or that customers had no knowledge of FDIC receivership, because [12 USCS § 1821\(d\)\(5\)\(C\)\(ii\)](#) exception allowing review of untimely claims is discretionary and not applicable where claimants received notification of receivership. [Sapp v. FDIC, 876 F. Supp. 249, 1995 U.S. Dist. LEXIS 2555 \(D. Kan. 1995\)](#).

Claim seeking payment from FDIC as receiver for failed bank was not timely filed and is dismissed, even though claimants assert that defects in construction and design of condominiums underlying their claim were not discovered until after initial bar date for claims against bank, and that only statutory restriction on such post-bar-date claims is that they be filed "in time to permit payment" under [12 USCS § 1821\(d\)\(5\)\(C\)\(ii\)](#), because FDIC's practice of subjecting post-bar-date claims to administrative review and imposing 90-day time limit for filing them is

consistent with statutory scheme and object and policy of optimizing prospects for expeditious resolution of claims against failed banks. [Carlyle Towers Condo. Ass'n v. FDIC, 982 F. Supp. 181, 1997 U.S. Dist. LEXIS 17341 \(E.D.N.Y. 1997\)](#), vacated, remanded, [170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\)](#).

Slip-and-fall tort claim against FDIC must be denied summarily as untimely, even though claimant alleges she "filed notice of claim via fax transmission and by overnight express mail" on last day, where claim apparently was not received by FDIC until next day, because (1) FDIC has never authorized filing by facsimile transmission for claims under [12 USCS § 1821\(d\)](#), and (2) attempted filing by overnight courier was not completed in time. [Nickols v. FDIC, 9 F. Supp. 2d 137, 1998 U.S. Dist. LEXIS 8746 \(D. Conn. 1998\)](#).

Even if [12 USCS § 1821\(d\)\(13\)\(D\)](#) was ambiguous, Resolution Trust Corporation's regulation permitting it to consider postreceivership claims that arose after bar date for filing claims had passed was not reasonable interpretation of that provision. [Lopez-Flores v. RTC, 93 F. Supp. 2d 834, 2000 U.S. Dist. LEXIS 7331 \(E.D. Mich. 2000\)](#).

27. 180-day determination period

180-day administrative review period of [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#), and optional 90-day stay period of § 1821(d)(12)(A)(ii), are not mutually exclusive. [Brady Dev. Co. v. Resolution Trust Corp., 14 F.3d 998, 1994 U.S. App. LEXIS 1370 \(4th Cir. 1994\)](#).

[12 USCS § 1821\(d\)\(6\)\(A\)](#), which provides that one whose claim RTC denies on its merits or fails to rule on within 180 days may seek judicial or administrative review of that claim, and [12 USCS § 1821\(d\)\(13\)\(D\)](#), which provides that no court has jurisdiction over claim unless it is first presented to RTC for resolution, combine to create exhaustion requirement that is absolute and unwaivable; waiver of exhaustion requirement is not allowed even for claimants to whom RTC failed to mail required notice of claims process and bar date. [Elmco Props. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 1996 U.S. App. LEXIS 23164 \(4th Cir. 1996\)](#).

Action by condominium association against RTC and others is not dismissed on ground of failure to exhaust administrative remedies, where association made no administrative claim with RTC prior to filing lawsuit, but filed proof of claim with RTC in accordance with administrative procedures under FIRREA after RTC filed motion to dismiss on which RTC took no action, because 180 days elapsed since administrative filing, so court has subject-matter jurisdiction under [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#) and (6)(A). [28 Cliff St. Condo. Ass'n v. Resolution Trust Corp., 920 F. Supp. 535, 1996 U.S. Dist. LEXIS 4059 \(S.D.N.Y. 1996\)](#).

28. —Stay pending determination

Borrowers' action against bank in receivership is stayed for 180 days for administrative proceedings under [12 USCS § 1821\(d\)\(5\)-\(7\)](#), where receiver was appointed shortly before action was brought, because Congress has determined that administration procedures are most efficient way to resolve claims against receiver. [Tuxedo Beach Club Corp. v. City Federal Sav. Bank, 737 F. Supp. 18, 1990 U.S. Dist. LEXIS 12151 \(D.N.J. 1990\)](#).

Limited partnership's case against bank for which RTC is now receiver will be stayed pending administrative presentation of claim, even though suit was filed prior to receivership, because [12 USCS § 1821\(d\)](#) scheme clearly contemplates presentation of claim before resort to District Court "or continuation of action commenced before appointment of receiver." [Rexam Ltd. Partnership v. Resolution Trust Corp., 754 F. Supp. 245, 1990 U.S. Dist. LEXIS 18152 \(D.P.R. 1990\)](#).

Insolvent bank's action against FDIC is stayed pending exhaustion of administrative remedies under [12 USCS § 1821\(d\)](#), where no judicial action was taken prior to removal from state court, notwithstanding that action was filed prior to insolvency and thus before FDIC's involvement. [Bank of New England, N.A. v. Callahan, 758 F. Supp. 61, 1991 U.S. Dist. LEXIS 3075 \(D.N.H. 1991\)](#).

Stay of claims against FDIC, acting as receiver for insolvent bank, is extended to affirmative claims of bank that were assigned to bridge bank under [12 USCS § 1821\(d\)](#), because to stay only some claims would lead to wasteful piecemeal litigation, multiply burden on court's docket, and inevitably cause some substantive unfairness to parties opposed to bridge bank's claims. [In re Federal Deposit Ins. Corp., 762 F. Supp. 1002, 1991 U.S. Dist. LEXIS 6379 \(D. Mass. 1991\)](#).

Fraud/breach of fiduciary duty claim against lender is stayed 180 days or until disallowed by FDIC, where employees of borrower sued lender in state court, then FDIC became receiver for lender and removed action to federal court, because [12 USCS § 1821\(d\)\(13\)\(D\)](#) expresses Congress's intention to insulate FDIC's administrative review process from judicial review in all cases until that process is completed, and under § 1821(d)(5)(A)(i) FDIC has 180 days from date claim is filed with FDIC to allow or deny claim. [Coston v. Gold Coast Graphics, Inc., 782 F. Supp. 1532, 1991 U.S. Dist. LEXIS 20131 \(S.D. Fla. 1991\)](#).

RTC is granted stay of insolvent bank customers' tort and contract claims until earlier of date of determination by RTC of customer's proof of claim, or February 11, 1992, such date being 180 days following date of filing of proof of claim, where customers commenced action against bank more than year before RTC was appointed receiver, because proof of claim submitted administratively closely tracks claims in this judicial action so that granting 180-day period to allow for administrative determination of claim, with judicial resolution or review to follow pursuant to [12 USCS § 1821\(d\)\(6\)](#), eliminates duplication and promotes efficiency. [Cohen v. Resolution Trust Corp., 784 F. Supp. 197, 1992 U.S. Dist. LEXIS 806 \(E.D. Pa. 1992\)](#).

Case involving claims against assets of bank under RTC receivership is stayed 180 days or until RTC renders decision on administrative claim, where claimants filed their fraudulent inducement claim against bank and others involved in real property purchase more than one year before bank was declared insolvent, because prereceivership claims against assets should not be dismissed but simply held in abeyance pending [12 USCS § 1821\(d\)\(3\)](#) proof of claim process. [Simms v. Biondo, 785 F. Supp. 322, 1992 U.S. Dist. LEXIS 2841 \(E.D.N.Y. 1992\)](#).

Counterclaim will be stayed pending administrative ruling on claim filed with RTC following its placement as receiver for financial institution, despite RTC's position that counterclaim should be dismissed, because [12 USCS § 1821\(d\)\(5\)\(F\)\(ii\)](#) and other provisions dealing with continuation of actions filed prior to receivership should not be simply ignored or read out of statutory scheme. [Resolution Trust Corp. v. Cotten, 790 F. Supp. 649, 1992 U.S. Dist. LEXIS 5065 \(E.D. La. 1992\)](#).

Pre-receivership lawsuit is stayed until RTC completes its administrative review of plaintiff's claim, although regrettably puzzling provisions in [12 USCS § 1821](#) make adherence to statutory scheme difficult, because only result that makes some sense is to stay judicial claim asserted originally against failed financial institution until RTC can perform its function of promptly determining claim administratively. [Guidry v. Resolution Trust Corp., 790 F. Supp. 651, 1992 U.S. Dist. LEXIS 5924 \(E.D. La. 1992\)](#).

Action against bank in receivership is stayed pending administrative proceedings, where car purchaser filed suit against bank when it failed to release to him clear title after he made last payment, because court is not divested of jurisdiction under [12 USCS § 1821\(d\)\(13\)\(D\)](#) over action since suit was commenced before bank was declared insolvent and FDIC appointed as receiver. [Solano v. Southeast Bank, N.A., 796 F. Supp. 506, 6 Fla. L. Weekly Fed. D 333, 1992 U.S. Dist. LEXIS 12374 \(S.D. Fla. 1992\)](#).

FDIC is granted 180-day stay in action it is defending as receiver for failed bank, even though it already has been granted unopposed 90-day stay, because 180-day stay is authorized under [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#) in conjunction with plaintiff's lodging of administrative claim with FDIC and clear intent of Congress for efficient, administrative processing of claims against failed banks. [Proctor-Smith v. Red Bird Bank, 806 F. Supp. 129, 1992 U.S. Dist. LEXIS 17146 \(N.D. Tex. 1992\)](#).

RTC is granted stay of counterclaims brought by parties seeking transfer of property pursuant to sale contract, where RTC proposes to dispose of property in marketplace, because 180-day stay so that counterclaimants can

have recourse to RTC's administrative processes is contemplated by [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#) and (d)(6)(A). [Resolution Trust Corp. v. Clarke, 812 F. Supp. 48, 1992 U.S. Dist. LEXIS 21946 \(E.D. Pa. 1992\)](#).

Litigation arising out of financing agreement between now-insolvent savings and loan and apartment complex developers is stayed pending completion of administrative process but need not be dismissed or transferred, where savings and loan commenced foreclosure action in state court, and it was subsequently removed to federal court by RTC as appointed receiver, because it is inconceivable that Congress intended by [12 USCS § 1821\(d\)\(6\)\(A\)](#) to give RTC power to substitute into previously commenced private litigation only to sever out certain claims thereby necessitating separate litigation in another district court—parenthetical phrase in section about continuing prereceivership actions must represent separate alternative process unaffected by conditional language following parenthetical. [Resolution Trust Corp. v. J.F. Assocs., 813 F. Supp. 951, 1993 U.S. Dist. LEXIS 2253 \(N.D.N.Y. 1993\)](#).

Motion to dismiss for lack of subject-matter jurisdiction denied, where defamation and wrongful discharge action against bank was removed to federal court by RTC, which became bank's receiver after initial filing; RTC moved for stay of proceeding pending administrative review; and employees exhausted administrative process but did not take action to continue case in court, as required by [12 USCS § 1821\(d\)\(6\)\(A\)](#) and (B), because no court ruled on RTC's motion for stay, and employees may not be required to move to restore case to active status where case was never inactive. [Rey v. Oak Tree Sav. Bank, S.S.B., 817 F. Supp. 634, 1993 U.S. Dist. LEXIS 3057 \(E.D. La. 1993\)](#).

FDIC is substituted as defendant for failed bank and action is stayed for 180 days or until completion of applicable administrative claims procedure, because FDIC has succeeded to all rights, titles, powers, and privileges of bank under [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), and principal hallmark of most sweeping thrift reform law in history—codified largely at § 1821(d)—was creation of comprehensive system for handling claims against failed banks as prerequisite to district court jurisdiction. [Estate of Harding v. Bell, 817 F. Supp. 1186, 1993 U.S. Dist. LEXIS 4645 \(D.N.J. 1993\)](#).

In action brought by commercial tenant against its landlord and successor holder of assignment of rents, landlord's remand motion was granted because with Federal Deposit Insurance Corporation's (FDIC) dismissal from case, court no longer had jurisdiction under [12 USCS § 1819\(b\)\(2\)](#); thus, its jurisdiction was limited to supplemental jurisdiction under [28 USCS § 1337\(c\)](#), and factors weighed against court retaining jurisdiction, especially when FDIC never should have been named as defendant in case in first instance. [Rogers Mantese & Assocs., P.C. v. Corp One, Inc., 929 F. Supp. 2d 731, 2013 U.S. Dist. LEXIS 35599 \(E.D. Mich. 2013\)](#).

29. Allowance or disallowance of claims

Although [12 USCS § 1821\(d\)\(5\)\(D\)](#) provides that RTC may disallow claim of preference, such should be construed to be limited to those situations in which claimant is creditor. [Parker N. Am. Corp. v. Resolution Trust Corp. \(In re Parker N. Am. Corp.\), 24 F.3d 1145, 94 Cal. Daily Op. Service 3589, 94 D.A.R. 6729, 25 Bankr. Ct. Dec. \(LRP\) 1083, Bankr. L. Rep. \(CCH\) ¶ 75889, 31 Collier Bankr. Cas. 2d \(MB\) 106, 1994 U.S. App. LEXIS 11035 \(9th Cir. 1994\)](#).

30. Timeliness of review request

[12 USCS § 1821\(d\)\(6\)\(A\)](#) places affirmative obligation on claimants to file suit at end of 180-day determination period, even in absence of notice of disallowance; neither receiver's failure to mail notice of its claim determination, nor claimant's failure to receive notification, tolls statute of limitations. [Capitol Leasing Co. v. FDIC, 999 F.2d 188, 1993 U.S. App. LEXIS 16079 \(7th Cir. 1993\)](#).

If RTC does not act within 180 days to allow or disallow administrative claim ([12 USCS § 1821\(d\)\(5\)\(A\)](#)), judicial review is foreclosed once additional 60 days has elapsed ([12 USCS § 1821\(d\)\(6\)](#)). [Astrup v. Resolution Trust Corp., 23 F.3d 1419, 1994 U.S. App. LEXIS 10183 \(8th Cir. 1994\)](#).

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\)](#).

Suit was properly dismissed because claimant learned of his claim against bank 12 days before filing deadline, but did not file claim until several months later and claim did not fit within statutory exception to this filing deadline. [Campbell v. FDIC, 676 F.3d 615, 2012 U.S. App. LEXIS 7608 \(7th Cir. 2012\)](#), reh'g denied, [2012 U.S. App. LEXIS 13508 \(7th Cir. June 22, 2012\)](#).

Because Financial Institutions Reform, Recovery, and Enforcement Act of 1989's 60-day time limit for seeking further administrative or judicial review of disallowed claims was jurisdictional, and claimant filed his complaint more than 60 days after Federal Deposit Insurance Corporation mailed notice to address he maintained at bank in receivership, his complaint was untimely, and district court correctly dismissed it for lack of subject-matter jurisdiction. [Miller v. FDIC, 738 F.3d 836, 2013 U.S. App. LEXIS 25706 \(7th Cir. 2013\)](#).

Home owners' assertion that requirement of administrative remedies exhaustion before bringing claim under Federal Institutions Reform, Recovery and Enforcement Act of 1989 violated their due process rights because subsequent threat of foreclosure by successor entity was years after "bar date" to submit their administrative claims lacked merit, as they had actual notice that failed lender was in receivership prior to "bar date," and their claims were functionally pleaded against that lender. [Willner v. Dimon, 849 F.3d 93, 2017 U.S. App. LEXIS 2737 \(4th Cir. 2017\)](#).

"Wrongful acceptance of deposit" claim asserted against bank now under FDIC receivership must be dismissed, where it is undisputed that plaintiffs did not file administrative claim before commencing this action and that more than 90 days have elapsed since FDIC provided notice to insolvent bank's creditors of their right to file administrative claims, because plaintiffs may not now maintain their claims in this or any other judicial forum under [12 USCS § 1821\(d\)\(5\)\(C\)\(i\)](#). [Adoue v. Federal Deposit Ins. Corp., 779 F. Supp. 852, 1991 U.S. Dist. LEXIS 19033 \(N.D. Tex. 1991\)](#).

FDIC's successor is entitled to dismissal of claims of debtors, where FDIC disaffirmed original lender's lease with debtors on July 19, 1991, debtors filed claim with FDIC on October 16, 1991, FDIC denied claim on November 20, 1991, and debtors filed court claim on January 21, 1992, because time limitations in [12 USCS § 1821\(d\)\(6\)](#) are jurisdictional prerequisites, court may not apply [FRCP 6\(a\)](#) to extend such limitations, and claim was thus filed beyond statutory period of 60 days, as prescribed under § 1821(d)(6)(A), (B). [Cardente v. Fleet Bank of Maine, Inc., 796 F. Supp. 603, 1992 U.S. Dist. LEXIS 9373 \(D. Me. 1992\)](#).

Depositor's suit against RTC acting as receiver for failed savings bank is not untimely, where RTC's denial of administrative claim was dated August 26, 1992, 60 days from that date was Sunday, October 25, 1992, and depositor filed suit on Monday, October 26, 1992, because court will interpret statutorily prescribed 60-day filing period of [12 USCS § 1821\(d\)\(6\)](#) in light of [FRCP 6\(a\)](#). [Doshi v. Resolution Trust Corp., 815 F. Supp. 837, 1993 U.S. Dist. LEXIS 3236 \(E.D. Pa. 1993\)](#).

Borrower's counterclaims against insolvent bank now in FDIC receivership must be dismissed, regardless of whether FDIC disallowed administrative claims on May 1 or July 15, because counterclaimants did not prosecute their suit or in any way correspond with court until December 7, and thus ran afoul of limitations provision of [12 USCS § 1821\(d\)\(6\)\(B\)](#) which requires action to renew prereceivership action within 60 days of denial of claims. [First Union Nat'l Bank v. Royal Trust Tower, 827 F. Supp. 1564, 1993 U.S. Dist. LEXIS 14742 \(S.D. Fla. 1993\)](#), rev'd in part, vacated, [87 F.3d 1328, 1996 U.S. App. LEXIS 14696 \(11th Cir. 1996\)](#).

Claimant's action filed September 22 was timely, where notice of denial was dated July 8, envelope was postmarked July 20, and claimant claimed to receive notice on July 24, because [12 USCS § 1821\(d\)\(5\)\(A\)\(iii\)](#) does

not state when 60 days allowed for bringing suit after denial begins to run and it would be absurd to have time begin to run before notice was received. [Laurenzano v. Crossland Sav. Bank, FSB, 837 F. Supp. 514, 1993 U.S. Dist. LEXIS 16681 \(E.D.N.Y. 1993\).](#)

Initial negative determination by FDIC-receiver is final, and borrower's counterclaims are forever barred by administrative denial, even though correspondence between counsel documents fact that settlement negotiations were being pursued immediately following that determination, because settlement negotiations did not constitute "continuing action" as required under [12 USCS § 1821\(d\)\(6\)\(A\)\(ii\)](#), and borrower needed to take more formal affirmative action within 60-day window such as motion to renew or reactivate. [First Union Nat'l Bank v. North Beach Professional Office Complex, 841 F. Supp. 399, 1993 U.S. Dist. LEXIS 19540 \(M.D. Fla. 1993\).](#)

31. Judicial review

Union has standing to bring suit on behalf of its members, who were former employees of bank now in receivership, against FDIC for benefits that were allegedly denied such employees when FDIC shut down bank. [Office & Professional Employees Int'l Union, Local 2 v. Federal Deposit Ins. Corp., 962 F.2d 63, 295 U.S. App. D.C. 254, 140 L.R.R.M. \(BNA\) 2124, 121 Lab. Cas. \(CCH\) ¶ 10133, 1992 U.S. App. LEXIS 7591 \(D.C. Cir. 1992\).](#)

[12 USCS § 1821\(d\)\(6\)\(A\)](#), which expressly confers jurisdiction upon federal courts to entertain suits based upon disallowed claims, is jurisdictional limitation, rather than venue provision that can be waived. [Lloyd v. FDIC, 22 F.3d 335, 1994 U.S. App. LEXIS 16772 \(1st Cir. 1994\).](#)

Federal Deposit Insurance Corporation (FDIC), as receiver for failed bank, may assert D'Oench for first time on appeal in District Court of Bankruptcy Court's entry of judgment against bank on Chapter 7 trustee's complaint for common-law fraud, wrongful dishonor of checks, and intentional interference with advantageous business relationship, notwithstanding its knowledge of outstanding judgment at time of takeover, where judgment of Bankruptcy Court is not final, unappealable judgment under [12 USCS § 1821\(d\)\(13\)\(B\)](#) and is still subject to examination and correction on appeal. [FDIC v. Govaert \(In re Geri Zahn, Inc.\), 25 F.3d 1539, 8 Fla. L. Weekly Fed. C 367, 1994 U.S. App. LEXIS 17306 \(11th Cir. 1994\).](#)

Relief in form of specific performance is not available under [12 USCS § 1821\(j\)](#); thus, district court does not have jurisdiction over action brought against RTC in its capacity as receiver of failed financial institution which seeks specific performance. [RPM Invs. v. Resolution Trust Corp., 75 F.3d 618, 9 Fla. L. Weekly Fed. C 860, 1996 U.S. App. LEXIS 2402 \(11th Cir. 1996\).](#)

[12 USCS § 1821\(d\)\(6\)\(A\)](#), which provides that one whose claim RTC denies on its merits or fails to rule on within 180 days may seek judicial or administrative review of that claim, and [12 USCS § 1821\(d\)\(13\)\(D\)](#), which provides that no court has jurisdiction over claim unless it is first presented to RTC for resolution, combine to create exhaustion requirement that is absolute and unwaivable; waiver of exhaustion requirement is not allowed even for claimants to whom RTC failed to mail required notice of claims process and bar date. [Elmco Props. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 1996 U.S. App. LEXIS 23164 \(4th Cir. 1996\).](#)

[12 USCS § 1821\(d\)\(6\)](#) does not permanently deprive federal court of all jurisdiction in any case filed before plaintiff receives response to her administrative claim. [Buckholz v. FDIC, 129 F.3d 868, 1997 FED App. 0342P, 21 Employee Benefits Cas. \(BNA\) 2097, 1997 U.S. App. LEXIS 32783 \(6th Cir. 1997\).](#)

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\).](#)

Intervention by Federal Deposit Insurance Corporation (FDIC) following its removal of state law suit between nondiverse uninsured depositors of defunct bank and state bank that had assumed defunct bank's insured deposits did not create federal question jurisdiction over suit, under statutes deeming suits to which FDIC is party to arise under federal law and granting FDIC power to remove state actions filed against FDIC or in which FDIC is substituted as party, as FDIC had not been party in state court prior to removal. [Vill. of Oakwood v. State Bank & Trust Co., 481 F.3d 364, 2007 FED App. 0108P, 2007 U.S. App. LEXIS 6596 \(6th Cir. 2007\)](#).

Claim against Federal Deposit Insurance Corporation in its capacity as receiver of insolvent bank, which challenged disallowance of claims filed by principals of bank, was barred because disallowance was never administratively reviewed. [Pethinaidu Veluchamy v. FDIC, 706 F.3d 810, 2013 U.S. App. LEXIS 2408 \(7th Cir. 2013\)](#).

Mortgagors' state consumer protection law claims which arose out of and related exclusively to pre-receivership acts or omissions of their failed mortgagee were not within court's jurisdiction, as mortgagors failed to abide by claims-processing regime of Financial Institutions Reform, Recovery, and Enforcement Act of 1989. [Demelo v. U.S. Bank Nat'l Ass'n, 727 F.3d 117, 2013 U.S. App. LEXIS 17056 \(1st Cir. 2013\)](#).

Mechanic's lien action and claim of unjust enrichment asserted against failed bank now in FDIC receivership are dismissed without prejudice for lack of subject-matter jurisdiction, regardless of plaintiff's exhaustion of administrative claims procedure, because [12 USCS § 1821\(d\)\(6\)\(A\)](#) allows suit to be brought only "in district within which depository institution's principal place of business is located" or in Washington, D.C. [Perkins v. Farrah, 791 F. Supp. 24, 1992 U.S. Dist. LEXIS 6384 \(D. Me. 1992\)](#).

Case involving failed New Hampshire bank must be dismissed from district court in Maine, where bank customer disputes over loan agreement were commenced in Maine state court, then removed to district court by FDIC as bank receiver, because [12 USCS § 1821\(d\)\(6\)\(A\)](#) clearly provides that alternative forums for customer claims are D.C. and district within which failed bank's principal place of business is located. [Federal Deposit Ins. Corp. v. Satter Cos., 791 F. Supp. 26, 1992 U.S. Dist. LEXIS 6385 \(D. Me. 1992\)](#).

Third-party action against FDIC by mortgagee whose property had been foreclosed by bank is not barred by [12 USCS § 1821\(d\)\(6\)](#), where mortgagee had filed third-party action prior to disallowance of his administrative claim and mortgagee did not file new lawsuit or file notice of continuance or take any other action with court, because no action was necessary because third-party claim remains alive during administrative process. [New Bank of New England, N.A. v. Callahan, 798 F. Supp. 73, 1992 U.S. Dist. LEXIS 13256 \(D.N.H. 1992\)](#).

Court would transfer action to Eastern District of Virginia pursuant to [28 USCS § 1404\(a\)](#), where, under [12 USC § 1821\(d\)\(6\)](#) venue was proper both there and in District of Columbia, because Eastern District of Virginia was more convenient for parties to action against receiver of failed financial institution, since no parties or witnesses reside in District of Columbia. [Geris v. Piedmont Fed. Corp., 826 F. Supp. 165, 1993 U.S. Dist. LEXIS 9712 \(W.D. Va. 1993\)](#).

Loan participant has improperly brought action in New Jersey, and it will be transferred to Connecticut in interests of justice under [28 USCS § 1406\(a\)](#), where venue provision of [12 USCS § 1821\(d\)\(6\)\(A\)](#) allows venue only in D.C. or Connecticut (i.e., principal place of business of depository institution in receivership) because § 1821(d)(6)(A) must be read in conjunction with §§ 1821(d)(5) and (13) to cover claims against both insolvent institution and FDIC acting as its receiver. [Hudson United Bank v. Chase Manhattan Bank, NA, 832 F. Supp. 881, 1993 U.S. Dist. LEXIS 13345 \(D.N.J. 1993\)](#), aff'd, [43 F.3d 843, 1994 U.S. App. LEXIS 36538 \(3d Cir. 1994\)](#).

Court will consider as evidence letter confirming telephone conversation between bank manager and collections attorney, in which they had agreed upon terms of payment for legal services, in attorney's action against FDIC to recover legal fees and costs for collection work for now-failed bank, because court must conduct de novo judicial determination of claim under [12 USCS § 1821\(d\)\(5\)](#) and (6) and is not at all affected by fact that attorney did not submit letter with his proof of claim sent to FDIC for administrative determination. [Nants v. FDIC, 864 F. Supp. 1211, 8 Fla. L. Weekly Fed. D 418, 1994 U.S. Dist. LEXIS 14415 \(S.D. Fla. 1994\)](#).

Where note holder brought action against trust company for payment on notes that had been unsecured subordinated liabilities of failed bank and had been inadvertently transferred to trust company, transfer of case to another federal district under [12 USCS § 1821\(d\)\(13\)\(D\)](#) was not precluded merely due to erroneous possession of notes by trust company, rather than by FDIC in its capacity as receiver, at time suit commenced, so that case fell within ambit of [12 USCS § 1821\(d\)\(13\)\(D\)](#). *Family Realty & Constr. Co. v. Manufacturers & Traders Trust Co.*, [931 F. Supp. 141, 1996 U.S. Dist. LEXIS 10302 \(N.D.N.Y. 1996\)](#).

When mortgagor alleged that mortgagee violated Truth in Lending Act, [15 USCS §§ 1601 et seq.](#), and Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, federal court had jurisdiction to grant mortgagor relief under [12 USCS § 1821\(d\)\(6\)\(A\)\(ii\)](#) because mortgagor was properly seeking judicial review of FDIC's denial of mortgagor's claim. *King v. Long Beach Mortg. Co.*, [672 F. Supp. 2d 238, 2009 U.S. Dist. LEXIS 115121 \(D. Mass. 2009\)](#).

Under express language of [12 USCS § 1821\(d\)\(5\)\(E\)](#), court could not have reviewed Federal Deposit Insurance Corporation's (FDIC) decision to disallow claims underlying plaintiff's 2007 and 2008 cases because plaintiff's allegations made clear that he was seeking judicial review of FDIC's decision to disallow his claims, rather than de novo determination of his claims, because plaintiff sought to have court declare that his claims in 2007 case were valid and asserted that FDIC improperly disallowed plaintiff's 2008 claims against bank. *Muhammad v. FDIC*, [751 F. Supp. 2d 114, 2010 U.S. Dist. LEXIS 121581 \(D.D.C. 2010\)](#), aff'd, [448 Fed. Appx. 74, 2012 U.S. App. LEXIS 385 \(D.C. Cir. 2012\)](#).

Receiver's motion for change of venue was granted because, even though federal law allowed pre-receivership case to continue after appointment of receiver, venue was only proper in District of Columbia or district court of financial institution's principal place of business under [12 USCS § 1821\(d\)\(6\)\(A\)\(ii\)](#) once receiver was appointed; because institution's principal place of business was in Colorado, lawsuit in Nebraska was improper. *Adams Bank & Trust v. Firstier Bank*, [836 F. Supp. 2d 929, 2011 U.S. Dist. LEXIS 148386 \(D. Neb. 2011\)](#), transferred, [2012 U.S. Dist. LEXIS 64867 \(D. Colo. May 8, 2012\)](#).

Certain plaintiffs' RESPA and FIRREA claims were dismissed, as they failed to join their spouses and did not identify why joinder was not feasible. *In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig.*, [954 F. Supp. 2d 360, 2013 U.S. Dist. LEXIS 90283 \(W.D. Pa. 2013\)](#).

32. Administrative review

Participation in administrative claim review process is mandatory, regardless of whether claims were filed before or after RTC was appointed receiver of failed institution; however, when claims for monetary damages are brought before RTC is appointed receiver, court continues to have subject matter jurisdiction over those claims. *Carney v. Resolution Trust Co.*, [10 F.3d 1164, 1994 U.S. App. LEXIS 550 \(5th Cir.\)](#), op. withdrawn, sub. op., remanded, [19 F.3d 950, 1994 U.S. App. LEXIS 7469 \(5th Cir. 1994\)](#).

Review of mortgagor's counterclaims against FDIC is barred, where FDIC sent him notice of disallowance of claim on July 5, 1991 which set forth "sole available procedure" for contesting—to file suit within 60 days—yet mortgagor instead requested administrative review of disallowance of his claim pursuant to [12 USCS § 1821\(d\)\(7\)\(A\)](#) on August 30, 1991, because, although § 1821(d)(7)(A) sets forth procedure for administrative review, FDIC has not chosen to implement that procedure and mortgagor was properly informed of judicial review avenue of appeal which he failed to select. *FDIC v. Hanson*, [799 F. Supp. 954, 1992 U.S. Dist. LEXIS 14429 \(D. Minn. 1992\)](#), dismissed without op., [995 F.2d 228, 1992 U.S. App. LEXIS 38032 \(8th Cir. 1992\)](#), rev'd, remanded, [13 F.3d 1247, 1994 U.S. App. LEXIS 476 \(8th Cir. 1994\)](#).

Failed bank customer's claim will not be dismissed for lack of submission to [12 USCS § 1821\(d\)](#) administrative review process, because (1) customer's attorney's January 1994 letter can be deemed proof of claim and customer thus properly filed suit when, after 180 days, it was denied by inaction, or alternatively (2) if letter is read simply as request for action, FDIC should have been alerted to existence of claim, and its failure to send customer claims notice within 30 days amounted to administrative error for which customer should not be penalized. *Hachikian v.*

FDIC, 914 F. Supp. 14, 1996 U.S. Dist. LEXIS 1930 (D. Mass.), aff'd, 96 F.3d 502, 1996 U.S. App. LEXIS 23919 (1st Cir. 1996).

33. Agreement as basis of claim

12 USCS § 1821(d)(9), which provides that any agreement that does not meet requirements set forth in 12 USCS § 1823(e) may not form basis of, or substantially comprise, claim against receiver or FDIC, does not apply retroactively. *Murphy v. FDIC*, 38 F.3d 1490, 94 Cal. Daily Op. Service 8139, 94 D.A.R. 15066, 24 U.C.C. Rep. Serv. 2d (CBC) 1224, 1994 U.S. App. LEXIS 29711 (9th Cir. 1994).

12 USCS § 1823(e) applies only to conventional loan activities, and cannot be read to cover agreements relating to sale of assets in non-loan transaction; similarly, only sensible reading of 12 USCS § 1821(d)(9)(A) must limit its scope to loan-related transactions covered by § 1823(e). *John v. Resolution Trust Corp.*, 39 F.3d 773, 1994 U.S. App. LEXIS 31234 (7th Cir. 1994).

In enacting 12 USCS §§ 1821(d)(9)(A) and 1823(e)(1), Congress did not intend to eliminate entire body of federal common law known as "D'Oench" doctrine. *Motorcity, Ltd. by & Through Motorcity, Inc. v. Southeast Bank N.A.*, 120 F.3d 1140, 11 Fla. L. Weekly Fed. C 343, 1997 U.S. App. LEXIS 22195 (11th Cir. 1997), cert. denied, 523 U.S. 1093, 118 S. Ct. 1559, 140 L. Ed. 2d 791, 1998 U.S. LEXIS 2825 (1998).

Judgment for Federal Deposit Insurance Corporation on plaintiff's claims to recover benefits earned under two deferred compensation agreements with bank was reversed and remanded because plaintiff's rights under agreements actually "vested" every day she worked on job. *Navarro v. FDIC*, 371 F.3d 979, 2004 U.S. App. LEXIS 11691 (7th Cir. 2004).

Borrower's action for loan increase must be dismissed, where FDIC has taken over as receiver for lender, which apparently internally approved increase but never closed and executed extension due to receivership, because 12 USCS § 1821(d)(9)(A) bars actions against FDIC-Receiver based on agreements not in compliance with 12 USCS § 1823(e) requirements. *Franklin Asaph Ltd. Partnership v. Federal Deposit Ins. Corp.*, 794 F. Supp. 402, 1992 U.S. Dist. LEXIS 5968 (D.D.C. 1992).

FDIC is not entitled to statutory summary dismissal of claims based on commercial paper bought as investment vehicle from insolvent bank, where claims do not refer to loan or other specific, identifiable asset, and statutory definition of "asset" does not include money funneled through bank for investment purposes, because 12 USCS §§ 1821(d)(9)(A) and 1823(e) are not applicable to claims not involving "asset." *In re NBW Commercial Paper Litig.*, 826 F. Supp. 1448, 1992 U.S. Dist. LEXIS 2842 (D.D.C. 1992).

Partnership involved in failed land deal may pursue only claims for interference with contract and economic relationships against RTC as receiver for failed bank, which allegedly agreed to lend money to complete deal but reneged, because claims for breach of contract, negligent performance of contract, fraud, and negligent misrepresentation are all based on agreement documented only by letter which does not meet all 4 requirements of 12 USCS § 1823(e), and thus cannot form basis of claim against RTC under 12 USCS § 1821(d)(9)(A). *Fairfield Six/Hidden Valley Partnership v. Resolution Trust Corp.*, 860 F. Supp. 1085, 1994 U.S. Dist. LEXIS 12109 (D. Md. 1994).

Claim of real estate broker against Resolution Trust Corporation (RTC) as receiver for savings and loan, seeking payment of real estate brokerage commission, is denied summarily, where brokerage agreement had not been approved by board of savings and loan, nor was letter containing terms of agreement reflected in board's minutes or maintained upon books and official records of savings and loan, because under 12 USCS § 1821(d)(9)(A), contract claim against RTC may arise only from agreement that meets requirements of regularity sufficient to appear on bank's books, and brokerage agreement was not sufficient to meet this requirement. *Fox & Lazo-Atlantic Commercial Group v. Resolution Trust Corp.*, 862 F. Supp. 1233, 1994 U.S. Dist. LEXIS 12969 (D.N.J. 1994).

Borrower's claim against FDIC that failed bank breached credit facility agreement was not barred by [12 USCS § 1823\(e\)](#) because written agreement, which memorialized agreement that borrower was seeking to enforce, was found within bank's files and was available to FDIC when it examined bank's records. [YNN Holding Corp. v. FDIC, 354 F. Supp. 2d 1334, 18 Fla. L. Weekly Fed. D 228, 2005 U.S. Dist. LEXIS 1423 \(S.D. Fla. 2005\)](#).

In mortgagor's fraud suit against his mortgage's assignee, mortgagor's complaint was dismissed for lack of subject matter jurisdiction because complaint failed to properly delineate timing of alleged statements and agreements made by original mortgagee and assignee's employees and how any of those subsequent communications altered terms of his mortgage despite existence of written mortgage agreement, and more importantly whether such communications or subsequent agreements complied with requirements of [12 USCS § 1823\(e\)](#). [Caires v. JP Morgan Chase Bank, 745 F. Supp. 2d 40, 2010 U.S. Dist. LEXIS 103542 \(D. Conn. 2010\)](#), dismissed, [880 F. Supp. 2d 288, 2012 U.S. Dist. LEXIS 101920 \(D. Conn. 2012\)](#), dismissed, [298 F. Supp. 3d 79, 2018 U.S. Dist. LEXIS 21426 \(D.D.C. 2018\)](#).

34. Payment of claims

Claim for damages, which arises under [12 USCS § 1821\(e\)](#) when FDIC as receiver repudiates contract of insolvent financial institution, is subject to payment scheme outlined in § 1821(d), including distribution priority established in § 1821(d)(11); no separate right to payment is created. [Battista v. FDIC, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. \(BNA\) 2139, 1999 U.S. App. LEXIS 28138 \(9th Cir. 1999\)](#), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 (2000).

Because trustee for mortgage securitization trusts created by bank was quintessential creditor, its claims against FDIC, as bank's receiver, were third-tier general unsecured liabilities, and district court properly held that trustee's claims were prudentially moot as there were insufficient funds in estate to pay unsecured claims to satisfy general unsecured liabilities. [Deutsche Bank Nat'l Trust Co. v. FDIC, 744 F.3d 1124, 2014 U.S. App. LEXIS 4536 \(9th Cir. 2014\)](#).

Judgment creditor's money judgment for \$38,903.59 against insolvent bank is satisfied under [FRCP 60\(b\)\(5\)](#), where FDIC, acting as receiver, appears to have substantially complied with [12 USCS § 1821\(d\)](#) procedures by reviewing creditor's proof of claim, issuing receiver's certificate for full amount, and extending 50 percent advance payment pending determination of pro rata share due creditor in liquidation of bank, because FDIC has "abided by" money judgment within meaning of § 1821(d)(13)(A), creditor has been given its due statutory process, and it could not and cannot take further action against insolvent bank's assets after FDIC was appointed receiver, under § 1825(b)(2). [Midlantic Nat'l Bank/North v. Federal Reserve Bank, 814 F. Supp. 1195, 1993 U.S. Dist. LEXIS 2002 \(S.D.N.Y. 1993\)](#).

Bank is not entitled to retain \$90,000 in post-receivership insurance proceeds, or to offset that amount against remaining balance of its approved claim against insolvent bank, even though it has received only \$304,934.81 of approved claim for \$441,876.87, where FDIC provided Certificate of Proof of Claim for full amount, because payment by certificate was acceptable "manner" of payment chosen by FDIC under [12 USCS § 1821\(d\)\(10\)\(A\)](#). [Franklin Bank v. FDIC, 850 F. Supp. 845, 94 D.A.R. 6237, 1994 U.S. Dist. LEXIS 5595 \(N.D. Cal. 1994\)](#).

Enactment of [12 USCS § 1821\(i\)](#) has not barred award of prejudgment interest to creditors of failed savings bank, where FDIC has paid other creditors almost 96 cents on dollar on claims granted over last 5 years while denying plaintiffs' claims, because fundamental purpose of ratable distribution system is equality among unsecured creditors, and ratable distribution rule does not bar plaintiffs' recovery of postinsolvency interest from time and to extent that FDIC made ratable distributions to other unsecured creditors. [Condus v. Howard Sav. Bank, 999 F. Supp. 594, 1998 U.S. Dist. LEXIS 11236 \(D.N.J. 1998\)](#).

Distribution from receivership of federally insured depository institution to current shareholders of institution was proper under [12 USCS § 1821\(d\)\(11\)](#), since former shareholders who held shares at time receivership was initiated but subsequently transferred shares also transferred right to receive distribution. [Slattery v. United States, 102 Fed.](#)

[Cl. 27, 2011 U.S. Claims LEXIS 2198 \(Fed. Cl. Nov. 18, 2011\)](#), aff'd, [710 F.3d 1336, 2013 U.S. App. LEXIS 5540 \(Fed. Cir. 2013\)](#).

35. Distribution priorities

[12 USCS § 1821\(d\)\(11\)](#) does not preclude federal courts from granting injunctive or declaratory relief if Comptroller of Currency improperly appointed FDIC as receiver of national bank. [James Madison Ltd. by Hecht v. Ludwig, 82 F.3d 1085, 317 U.S. App. D.C. 281, 1996 U.S. App. LEXIS 10162 \(D.C. Cir. 1996\)](#), amended, reh'g denied, [1996 U.S. App. LEXIS 16394 \(D.C. Cir. July 3, 1996\)](#), cert. denied, 519 U.S. 1077, 117 S. Ct. 737, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 309 (1997).

Claim for damages, which arises under [12 USCS § 1821\(e\)](#) when FDIC as receiver repudiates contract of insolvent financial institution, is subject to payment scheme outlined in § 1821(d), including distribution priority established in § 1821(d)(11); no separate right to payment is created. [Battista v. FDIC, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. \(BNA\) 2139, 1999 U.S. App. LEXIS 28138 \(9th Cir. 1999\)](#), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 (2000).

In action in which depositors appealed from judgment of district court dismissing their claims under federal Racketeer Influenced and Corrupt Organizations Act, [18 USCS §§ 1961 et seq.](#), Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. ^{505/1} et seq., and Illinois Public Accounting Act, 225 Ill. Comp. Stat. ^{450/0.01} et seq., district court correctly rejected depositors request for declaratory relief, injunctive relief, and other equitable relief against several investors and Federal Deposit Insurance Corporation (FDIC), seeking declaratory and injunctive relief designed to enforce depositors' priority under [12 USCS § 1821\(d\)\(11\)\(A\)](#) over any assets recovered on behalf of bank; FDIC had general power to settle with alleged wrongdoers under § 1821(p)(3)(A), which must operate independently of § 1821(d)(11)(A) if it was to mean anything at all. [Courtney v. Halleran, 485 F.3d 942, 2007 U.S. App. LEXIS 10789 \(7th Cir. 2007\)](#), reh'g denied, reh'g, en banc, denied, [2007 U.S. App. LEXIS 17607 \(7th Cir. July 12, 2007\)](#), cert. denied, 552 U.S. 1184, 128 S. Ct. 1256, 170 L. Ed. 2d 67, 2008 U.S. LEXIS 1249 (2008).

Where principals of insolvent bank sought to redeem bank notes they had purchased at request of Federal Deposit Insurance Corporation and convert proceeds into personal deposit accounts so that they could obtain higher, depositor-level priority in post-insolvency distribution scheme, they did not have meritorious claim because their alleged entitlement to depositor status was not actually claim against bank. [Pethinaidu Veluchamy v. FDIC, 706 F.3d 810, 2013 U.S. App. LEXIS 2408 \(7th Cir. 2013\)](#).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor. [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor; reference to § 1821(n), regarding bridge banks and formal approval by FCIC, did not address administrative expense priority much less demonstrate that § 1821(d)(20)'s "approved" was "clear on its face," and approval by FCIC was what FDIC's interpretation contemplated when it acts as conservator or receiver. [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor; plain text of § 1821(e)(7) showed Congress did not confer

administrative priority whenever FDIC accepted “benefits” from counterparties, but rather limited priority status to acceptance of “services performed” for FDIC post-appointment. [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank’s mortgage securitizations, plaintiff insurer of securitizations was general creditor; while insurer urged that payment by FDIC as receiver to FDIC Corporate (of amounts if recovered by selling failed bank) did not fall within definition of dividend as contemplated by 1821(d)(10)(B), it relied principally on information about dividend accessed from FDIC’s website and under *Fed. R. App. 10(a), (d)*, that information was not part of record properly before court, and, insurer had not alleged sufficient facts to determine that FDIC as receiver paid FDIC Corporate on basis of unproven claims, or that such payment otherwise ought not to constitute dividend payment, and thus, there was no basis to conclude that § 1821(d)(10)(B)’s preclusion of liability for payment of dividends was inapplicable to receiver’s distribution of funds to FDIC Corporate. [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

Resolution Trust Corporation (RTC) did not exceed its authority under [12 USCS § 1821\(c\)\(13\)\(B\)](#) in applying provisions of state depositor reference statute when determining distribution priorities of failed financial institution, including placing depositors over other general creditors including employees who were owed substantial sums of money from failed institution’s retirement fund, where RTC acted as receiver of failed financial institution and disaffirmed savings institution’s Retirement Benefit Agreement, to which former employees were members, after Florida legislator enacted Depositor Preference Statute, because Florida’s statute applies to distributions in this case and § 1821(c)(13)(B) permits RTC to apply state’s depositor preference laws to prioritize claims against both state- and federally chartered institutions. [Stattin v. Resolution Trust Corp., 883 F. Supp. 678, 1995 U.S. Dist. LEXIS 6036 \(M.D. Fla.\)](#), aff’d, 74 F.3d 1252, 1995 U.S. App. LEXIS 37677 (11th Cir. 1995).

Although defendant Federal Deposit Insurance Corporation (FDIC), as receiver for defendants bank and its successor, argued that plaintiff employees’ claims to recover severance, deferred compensation, and bonuses, was not live case or controversy due to FDIC’s insufficient asset determination, because FDIC’s insufficient assets determination did not explicitly declare that bank and successor’s receiverships had insufficient funds to pay any general, senior, or deposit liability, under [12 USCS § 1821\(d\)\(11\)\(A\)](#), and it was not shown that employees claims had no priority, dismissal of those claims was not warranted. [Landwehr v. FDIC, 734 F. Supp. 2d 161, 2010 U.S. Dist. LEXIS 91854 \(D.D.C. 2010\)](#).

Pursuant to [12 U.S.C. § 1821\(e\)\(7\)\(B\)](#), whether debt collector’s claims were entitled to prioritized payment turned in part on whether Federal Deposit Insurance Corporation’s attempted repudiation of debt collector’s contract with failed credit card issuer was effective. [NCB Mgmt. Servs. v. FDIC, 843 F. Supp. 2d 62, 2012 U.S. Dist. LEXIS 18464 \(D.D.C. 2012\)](#).

Unpublished decision: Loan purchaser’s breach-of-contract claim under participation agreement constituted administrative expense within meaning of federal regulations, but it did not qualify as administrative expense under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 because FDIC’s activities were collection activities that did not constitute approval, and there was no evidence of FDIC approval in writing. [Federated Bank v. FDIC, 645 Fed. Appx. 853, 2016 U.S. App. LEXIS 4364 \(11th Cir. 2016\)](#).

36. Particular claims

In case involving failed bank that had collective bargaining agreement with employees, union had standing, under [29 USCS § 185](#), to file, with FDIC which had been appointed receiver after bank’s failure, group claims for contractual severance and vacation pay due discharged employees, despite FDIC’s contention that union had to follow claim processing procedure of [12 USCS § 1821](#). [Office & Professional Employees Int’l Union, Local 2 v.](#)

[Federal Deposit Ins. Corp., 962 F.2d 63, 295 U.S. App. D.C. 254, 140 L.R.R.M. \(BNA\) 2124, 121 Lab. Cas. \(CCH\) ¶ 10133, 1992 U.S. App. LEXIS 7591 \(D.C. Cir. 1992\).](#)

In case involving unionized bank that had been put into receivership under FIRREA, union lacking powers of attorney from individual employees had standing to file group claims with FDIC as receiver for severance benefits and vacation pay due employees, since union, as collective bargaining representative and contract signatory on behalf of all unit members, has standing to assert employee compensation rights arising out of contract union obtained. [Office & Professional Employees Int'l Union, Local 2 v. Federal Deposit Ins. Corp., 962 F.2d 63, 295 U.S. App. D.C. 254, 140 L.R.R.M. \(BNA\) 2124, 121 Lab. Cas. \(CCH\) ¶ 10133, 1992 U.S. App. LEXIS 7591 \(D.C. Cir. 1992\).](#)

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\).](#)

Claim for damages, which arises under [12 USCS § 1821\(e\)](#) when FDIC as receiver repudiates contract of insolvent financial institution, is subject to payment scheme outlined in § 1821(d), including distribution priority established in § 1821(d)(11); no separate right to payment is created. [Battista v. FDIC, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. \(BNA\) 2139, 1999 U.S. App. LEXIS 28138 \(9th Cir. 1999\), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 \(2000\).](#)

Regardless of whether FDIC was necessary party, it failed to satisfy case or controversy requirement; for FDIC to have standing, total amount of its claims was to exceed amount failing thrift, for which it stood as receiver, owed U.S.; FDIC's presence in matter represented no more than intergovernmental dispute which did not rise to requisite level of constitutional case or controversy. [Anderson v. United States, 344 F.3d 1343, 2003 U.S. App. LEXIS 19795 \(Fed. Cir. 2003\), reh'g denied, reh'g, en banc, denied, 2003 U.S. App. LEXIS 26542 \(Fed. Cir. Dec. 5, 2003\).](#)

Where Federal Deposit Insurance Corporation-Corporate (FDIC-Corporate), instead of Federal Deposit Insurance Corporation-Receiver (FDIC-Receiver), sued failed bank's accounting firm for fraud and negligence, seeking to avoid arbitration agreement and waiver of punitive damages in contract between bank and accounting firm, FDIC-Corporate had standing, but suit was dismissed because FDIC-Receiver was correct entity to pursue any claim against accounting firm. [FDIC v. Ernst & Young LLP, 374 F.3d 579, 2004 U.S. App. LEXIS 14089 \(7th Cir. 2004\).](#)

There was no equal protection violation from distinguishing between claims arising before bar date and those arising after bar date because there was rational reason for treating these claims differently. [Campbell v. FDIC, 676 F.3d 615, 2012 U.S. App. LEXIS 7608 \(7th Cir. 2012\), reh'g denied, 2012 U.S. App. LEXIS 13508 \(7th Cir. June 22, 2012\).](#)

Statutory language clearly indicated that it applied to periods outside of failed bank's receivership and to consumer claims as well as creditors' claims. [Demelo v. U.S. Bank Nat'l Ass'n, 727 F.3d 117, 2013 U.S. App. LEXIS 17056 \(1st Cir. 2013\).](#)

Claim of former chairman of failed savings bank against Resolution Trust Corporation (RTC) as receiver for bank to collect consulting fee under employment agreement between chairman and bank is denied summarily, where agreement provided that chairman was to receive fee only if his employment was terminated without cause by bank or chairman, but where chairman was terminated by operation of law when bank was placed into receivership, because chairman's right to consulting fee did not vest prior to date of receivership. [Crocker v. Resolution Trust Corp., 839 F. Supp. 1291, 1993 U.S. Dist. LEXIS 17669 \(N.D. Ill. 1993\).](#)

Application of [12 USCS § 1821](#) to former bank director's claims for vested pension benefits did not violate equal protection, even though other claimants were allowed to file claims after bar date, since application to directors did

not have discriminatory effect and was not motivated by discriminatory purpose. [Feigel v. FDIC, 935 F. Supp. 1090, 1996 U.S. Dist. LEXIS 19570 \(S.D. Cal. 1996\).](#)

City challenging decision of Federal Deposit Insurance Company disallowing its claims for taxes, based on city's failure to timely file claims or to timely appeal from denial of claims, could not be excused from complying with jurisdictional requirements of [12 USCS § 1821\(d\)](#) merely because requirements were complicated. [City of New York v. FDIC, 40 F. Supp. 2d 153, 1999 U.S. Dist. LEXIS 2663 \(S.D.N.Y. 1999\).](#)

[12 USCS § 1821\(e\)\(3\)\(A\)\(i\)](#) cannot be read to exclude prejudgment interest. [Waterview Mgmt. Co. v. FDIC, 257 F. Supp. 2d 31, 2003 U.S. Dist. LEXIS 5035 \(D.D.C. 2003\).](#)

Since Federal Deposit Insurance Corporation's (FDIC) only objection to paying post-judgment interest rested on its assertion that post-judgment was priority seven and that there is no money in receivership to pay priority seven claims, and FDIC had not established that preference was granted by payment of sum that represented only time value of money, management company's motion for post-judgment interest was granted. [Waterview Mgmt. Co. v. FDIC, 257 F. Supp. 2d 31, 2003 U.S. Dist. LEXIS 5035 \(D.D.C. 2003\).](#)

Since [12 USCS § 1821](#) could not be read as excluding payment of prejudgment interest, court granted management company's motion for payment of prejudgment interest. [Waterview Mgmt. Co. v. FDIC, 257 F. Supp. 2d 31, 2003 U.S. Dist. LEXIS 5035 \(D.D.C. 2003\).](#)

There was no indication that court's loss of jurisdiction over valid substantive claim asserted against subsidiary based on [12 USCS § 1821](#) precluded court from nevertheless hearing that otherwise-valid claim as asserted against parent under alter-ego theory; therefore, corporation's objection was not valid basis for decertifying class. [Cassese v. Wash. Mut., Inc., 743 F. Supp. 2d 148, 2010 U.S. Dist. LEXIS 110512 \(E.D.N.Y. 2010\).](#)

Payments made by insurer to investors arising out of failed bank's securitized mortgage loans were not necessary to Federal Deposit Insurance Corporation's liquidation of bank; thus, they were not administrative expenses entitled to priority over claims of bank's general creditors. [MBIA Ins. Corp. v. FDIC, 816 F. Supp. 2d 81, 2011 U.S. Dist. LEXIS 115573 \(D.D.C. 2011\), aff'd, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\).](#)

Financial Institutions Reform, Recovery and Enforcement Act of 1989, [12 USCS §§ 1821](#) et seq., barred insurer's claims for declaratory judgment against FDIC with respect to management and professional liability policy because of dearth of authority permitting claims for declaratory relief against FDIC, and in light of persuasive reasoning in [Radian Ins., Inc. v. Deutsche Bank Nat'l Trust Co., Civil Action No. 08-2993, 2009 U.S. Dist. LEXIS 92197 \(E.D. Pa. Oct. 1, 2009\)](#) and fact that [12 USCS § 1821\(i\)](#) had been broadly construed. [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

Change in plaintiff bank's financial condition during financial crisis justified Office of Thrift Supervision's (OTS) concern about concentration in institutional investors and, in light of changing economic environment, and agency's reasoned explanations for its concerns, court could not agree with bank's contention that OTS "suddenly" and arbitrarily reversed its policy concerning institutional depositors shortly before seizure. [United West Bank v. Office of the Comptroller of the Currency, 928 F. Supp. 2d 70, 2013 U.S. Dist. LEXIS 29492 \(D.D.C. 2013\).](#)

In case arising from foreclosure action in which mortgage was transferred to bank by Federal Deposit Insurance Corporation, homeowners unsuccessfully argued that bank failed to supply mortgage assignment; there was no such requirement under [12 USCS § 1821\(d\)\(2\)\(G\)\(i\)\(II\)](#) or [810 ILCS -205\(b\), 810 ILCS -313\(a\), or 810 ILCS -203\(g\).](#) [Drobny v. JP Morgan Chase Bank, 929 F. Supp. 2d 839, 2013 U.S. Dist. LEXIS 32051 \(N.D. Ill. 2013\).](#)

Where Federal Deposit Insurance Corporation (FDIC) was receiver and was successor-in-interest to failed savings and loan (S&L), FDIC represented S&L in all legal proceedings brought against it, and was charged with administering its debt reduction; thus, shareholders that brought claim against government did not allege any claims available to S&L that would not be adequately represented by FDIC and, as result, shareholders did not have

standing as derivative shareholders under general derivative claims theory or [12 USCS § 1821. Smith v. United States, 58 Fed. Cl. 374, 2003 U.S. Claims LEXIS 301 \(Fed. Cl. Oct. 22, 2003\)](#), aff'd, 110 Fed. Appx. 898, 2004 U.S. App. LEXIS 22024 (Fed. Cir. 2004).

C. Stay of Legal Actions

37. Generally

180-day administrative review period of [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#), and optional 90-day stay period of § 1821(d)(12)(A)(ii), are not mutually exclusive. [Brady Dev. Co. v. Resolution Trust Corp., 14 F.3d 998, 1994 U.S. App. LEXIS 1370 \(4th Cir. 1994\)](#).

Court's order granting 90-day stay to Resolution Trust Corporation as receiver for savings association will not be reconsidered, even though some courts have found circumstances where stay is not mandatory, because plain language of [12 USCS § 1821\(d\)\(12\)](#) makes granting of relief obligatory. [Prince George Joint Venture v. Sunbelt Sav., F.S.B., 744 F. Supp. 133, 1990 U.S. Dist. LEXIS 16310 \(N.D. Tex. 1990\)](#).

FDIC is granted 180-day stay in action it is defending as receiver for failed bank, even though it already has been granted unopposed 90-day stay, because 180-day stay is authorized under [12 USCS § 1821\(d\)\(5\)\(A\)\(i\)](#) in conjunction with plaintiff's lodging of administrative claim with FDIC and clear intent of Congress for efficient, administrative processing of claims against failed banks. [Proctor-Smith v. Red Bird Bank, 806 F. Supp. 129, 1992 U.S. Dist. LEXIS 17146 \(N.D. Tex. 1992\)](#).

38. Particular circumstances

Plaintiff in pre-receivership lawsuit need not file administrative claim with federal receiver of failed financial institution when receiver does not stay action within ninety days of its appointment, and thus, does not timely require exhaustion of administrative remedies. [Damiano v. FDIC, 104 F.3d 328, 72 Fair Empl. Prac. Cas. \(BNA\) 1709, 1997 U.S. App. LEXIS 1445 \(11th Cir. 1997\)](#).

FDIC is denied 90-day stay of proceedings under [12 USCS § 1821\(d\)\(12\)](#), where state court judgment against bank was entered 2/27/89, FDIC was appointed bank's receiver 3/28/89, FDIC removed case 4/26/89 and FDIC moved for stay in September 1989, because new 90-day stay provision was enacted to allow FDIC receiver "breathing room" immediately upon appointment and not to give FDIC power to stay proceedings at any point, regardless of length of its involvement. [Federal Deposit Ins. Corp. v. Taylor, 727 F. Supp. 326, 1989 U.S. Dist. LEXIS 15288 \(S.D. Tex. 1989\)](#).

Resolution Trust Corporation is not entitled to 90-day stay upon appointment as receiver under [12 USCS § 1821\(d\)\(12\)](#), notwithstanding statute's apparent guarantee of stay, where it has had time to familiarize itself with case and plaintiff borrower's half-built condominium project was vulnerable to weather and could be harmed by undue delay. [Tuxedo Beach Club Corp. v. City Federal Sav. Bank, 729 F. Supp. 1508, 1990 U.S. Dist. LEXIS 1490 \(D.N.J. 1990\)](#), disapproved, [Praxis Properties, Inc. v. Colonial Sav. Bank, S.L.A., 947 F.2d 49, 1991 U.S. App. LEXIS 23248 \(3d Cir. 1991\)](#).

FDIC is not entitled to 90-day stay of mortgagors' action seeking to prevent foreclosure, despite FDIC's presence in action for nearly 12 months as receiver for insolvent bank holding mortgage. [Hunter's Run, I, Ltd. v. Arapahoe County Public Trustee, 741 F. Supp. 207, 1990 U.S. Dist. LEXIS 9195 \(D. Colo. 1990\)](#).

Principal claim brought by FDIC as receiver for bank against debtors is granted summarily, despite debtors' argument that court is required to stay action pursuant to [12 USCS § 1821\(d\)\(12\)\(A\)](#) and (B), because FDIC sought and court is required to grant stay only as to counterclaim brought by debtors against FDIC. [New Maine Nat'l Bank v. Reef, 765 F. Supp. 27, 1991 U.S. Dist. LEXIS 8437 \(D. Me.\)](#), dismissed in part, [765 F. Supp. 763, 1991 U.S. Dist. LEXIS 8514 \(D. Me. 1991\)](#).

Litigation between FDIC and couple will not be dismissed but merely stayed 90 days pursuant to [12 USCS § 1821\(d\)\(12\)\(A\)\(ii\)](#), despite FDIC's argument that jurisdiction over claims against insolvent bank it has taken over is precluded by broad wording of § 1821(d)(13)(D), because §§ 1821(d)(5)(F)(ii) and (d)(6)(A) contemplate that lawsuits predating receivership are intended to continue without prejudice except for optional 90-day stay. [Marquis v. Federal Deposit Ins. Corp., 779 F. Supp. 6, 1991 U.S. Dist. LEXIS 17848 \(D.N.H. 1991\)](#), aff'd, 965 F.2d 1148, 1992 U.S. App. LEXIS 10896 (1st Cir. 1992).

RTC is granted but is not entitled to 90-day stay of transfer pursuant to [12 USCS § 1821\(d\)\(12\)](#), where RTC has already removed case and practice has been to transfer such cases to appropriate federal court encompassing area in which action would be most expeditiously, conveniently, and properly handled under [28 USCS § 1404](#), because § 1821(d)(12) stay "to give RTC enough time to orient itself to litigation" should be requested either before removal or after full removal—including transfer to most appropriate venue—is complete. [Resolution Trust Corp. v. Davis, 779 F. Supp. 181, 1991 U.S. Dist. LEXIS 17542 \(D.D.C. 1991\)](#).

RTC is denied stay, where RTC was appointed receiver for plaintiff on November 7, 1991 and more than 90 days passed before it moved for stay, because intention of [12 USCS § 1821\(d\)](#) was to provide receiver with 90 days of breathing room after its appointment, and interpretation that statute mandates stay whenever requested by RTC is too literal and too inconsistent with clear purpose of stay provision. [St. Bernard Sav. & Loan Ass'n v. Robin Seafood, Inc., 785 F. Supp. 80, 1992 U.S. Dist. LEXIS 1615 \(E.D. La. 1992\)](#).

Resolution Trust Corporation is not entitled to 90-day stay of proceedings under [12 USCS § 1821\(d\)\(12\)](#), where RTC was sued in state court, as conservator of savings bank, removed action to federal court, and was then appointed receiver of savings bank, because while § 1821(d)(12) entitles RTC to 90-day stay at any time after its appointment as receiver for insured depository institution, this stay is measured from date of RTC's appointment as receiver; so that while RTC is entitled to stay any time within first 90 days after appointment, stay automatically ends after 90th day after appointment. [Nation v. Resolution Trust Corp., 791 F. Supp. 1152, 1992 U.S. Dist. LEXIS 8257 \(N.D. Tex. 1992\)](#).

Resolution Trust Corporation (RTC) is not entitled to stay of action against federal savings bank under RTC receivership, where action against bank had been filed prior to date bank was placed in receivership, because under [12 USCS § 1821\(d\)\(5\)\(F\)\(ii\)](#) and (6)(A), exhaustion of administrative remedies is not prerequisite to court's subject-matter jurisdiction in suits filed prior to appointment of receivership. [McNeily v. United States, 798 F. Supp. 395, 1992 U.S. Dist. LEXIS 10401 \(N.D. Tex. 1992\)](#).

FDIC was not entitled to emergency stay of action brought by creditors challenging disallowance of administrative claims made against insolvent bank for which FDIC was receiver because under [12 USCS § 1821\(d\)\(12\)](#), stay was inapplicable when bank was not made party and FDIC did not request stay within 90 days of appointment. [Napa Valley I, LLC v. FDIC, 651 F. Supp. 2d 1210, 2009 U.S. Dist. LEXIS 70149 \(D. Nev. 2009\)](#).

D. Limitation on Judicial Review

39. Generally

FIRREA's statutory exhaustion requirement ([12 USCS § 1821\(d\)\(13\)\(D\)](#)), to extent that it conflicts with provision of ERISA granting district court jurisdiction, prevails with respect to subject matter jurisdiction of district court. [Rosa v. Resolution Trust Corp., 938 F.2d 383, 13 Employee Benefits Cas. \(BNA\) 2425, 14 Employee Benefits Cas. \(BNA\) 2425, 1991 U.S. App. LEXIS 13256 \(3d Cir.\)](#), cert. denied, 502 U.S. 981, 112 S. Ct. 582, 116 L. Ed. 2d 608, 14 Employee Benefits Cas. (BNA) 1952, 1991 U.S. LEXIS 6920 (1991).

Individual who filed notice of claim with FSLIC, and had complied with administrative rules in effect when notice was filed, did not have to refile notice of claim so as to comply with new FIRREA procedures ([12 USCS § 1821\(d\)\(13\)\(D\)](#)) before it could sue FDIC (as FSLIC's successor in interest). [American Int'l Enters. v. FDIC, 3 F.3d 1263, 93 Cal. Daily Op. Service 6503, 93 D.A.R. 11158, 1993 U.S. App. LEXIS 21897 \(9th Cir. 1993\)](#).

Phrase "any action seeking a determination of rights" in [12 USCS § 1821\(d\)\(13\)\(D\)\(i\)](#) includes declaratory judgment actions. [National Union Fire Ins. Co. v. City Sav., F.S.B., 28 F.3d 376, 29 Fed. R. Serv. 3d \(Callaghan\) 550, 1994 U.S. App. LEXIS 16423 \(3d Cir. 1994\)](#).

[12 USCS § 1821\(d\)\(11\)](#) does not preclude federal courts from granting injunctive or declaratory relief if Comptroller of Currency improperly appointed FDIC as receiver of national bank. [James Madison Ltd. by Hecht v. Ludwig, 82 F.3d 1085, 317 U.S. App. D.C. 281, 1996 U.S. App. LEXIS 10162 \(D.C. Cir. 1996\)](#), amended, reh'g denied, [1996 U.S. App. LEXIS 16394 \(D.C. Cir. July 3, 1996\)](#), cert. denied, 519 U.S. 1077, 117 S. Ct. 737, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 309 (1997).

All claims subject to jurisdictional bar of [12 USCS § 1821\(d\)\(13\)\(D\)](#), including both claims against receiver and against assets of failed financial institution, and both pre-receivership and post-receivership claims, must comply with administrative claims review procedure established in [12 USCS § 1821\(d\)](#), including time limitations for filing in district court provided in [12 USCS § 1821\(d\)\(6\)\(A\)](#). [Home Capital Collateral v. FDIC, 96 F.3d 760, 1996 U.S. App. LEXIS 24344 \(5th Cir. 1996\)](#).

Shareholders of failed financial institution do not have private right of enforcement of FDIC's duty to maximize gain and minimize loss in its disposition of institution's assets ([12 USCS § 1821\(d\)\(13\)\(E\)](#)). [Hindes v. FDIC, 137 F.3d 148, 39 Fed. R. Serv. 3d \(Callaghan\) 1406, 1998 U.S. App. LEXIS 2709 \(3d Cir. 1998\)](#).

Shareholders of failed financial institution do not have private right of action to enforce FDIC's duty to provide accounting ([12 USCS § 1821\(d\)\(15\)](#)). [Hindes v. FDIC, 137 F.3d 148, 39 Fed. R. Serv. 3d \(Callaghan\) 1406, 1998 U.S. App. LEXIS 2709 \(3d Cir. 1998\)](#).

[12 USCS § 1821\(d\)\(15\)](#) gives shareholder of bank in receivership private right of action against FDIC to compel FDIC to provide financial accounting in conformity with FDIC's own accounting and reporting practices and procedures. [First Pac. Bancorp, Inc. v. Helfer, 224 F.3d 1117, 2000 Cal. Daily Op. Service 6573, 2000 D.A.R. 8701, 2000 U.S. App. LEXIS 18962 \(9th Cir. 2000\)](#).

In interpleader action involving competing claims to funds arising from failed securitization of credit card debt brought by trustee against Federal Deposit Insurance Corporation (FDIC), who was receiver for defunct internet-only bank at issue, and certain noteholders, New York federal district court did not abuse its discretion by denying FDIC's motion to transfer action to United States District Court for District of Columbia, pursuant to [12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#); Section 1821(d)(13)(D)(ii) did not bar any claim involving FDIC but, rather, only barred claims brought under administrative procedures of that statutory provision; thus, New York district court had subject matter jurisdiction and was not improper venue for interpleader action. [Bank of N.Y. v. First Millennium, Inc., 607 F.3d 905, 2010 U.S. App. LEXIS 11036 \(2d Cir. 2010\)](#).

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) made clear that landowner's recourse to sue for unpaid rent or other damages as result of alleged breach of lease was against FDIC, not bank; permitting landowner to proceed against bank would risk significantly curtailing FDIC's extensive power and discretion to manage affairs of failed bank, as well as its authority to repudiate leases with respect to which failed bank was lessee. [Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, 747 F.3d 44, 2014 U.S. App. LEXIS 2087 \(2d Cir. 2014\)](#), cert. denied, 574 U.S. 1152, 135 S. Ct. 1399, 191 L. Ed. 2d 360, 2015 U.S. LEXIS 1370 (2015).

Insurer's declaratory judgment action seeking rescission of \$7 million directors' and officers' liability policy issued to failed bank is reinstated, even though insurer did not properly exhaust claim administratively, because administrative claims procedure in [12 USCS § 1821\(d\)](#) applies only to claims of financial institution's creditors, and neither procedure nor jurisdictional bar of § 1821(d)(13)(D) applies to insurer's action. [National Union Fire Ins. Co. v. Midland Bancor, 869 F. Supp. 880, 1994 U.S. Dist. LEXIS 17372 \(D. Kan. 1994\)](#).

In action by mortgagors against mortgagee and assignee of mortgagee that alleged violation of [15 USCS § 1601](#) with regard to disclosures on origination of mortgage, summary judgment was granted for defendants because property subject to mortgage was previously sold and discharged pursuant to short sale; any bank liability arising

from origination or execution of mortgage loan remained with FDIC, and mortgagors' remedy lay against that entity; thus, [12 USCS § 1821\(d\)\(13\)\(D\)](#)'s limitation on judicial review applied. [Lutz v. Stewart Mich. Title, 781 F. Supp. 2d 526, 2011 U.S. Dist. LEXIS 21952 \(E.D. Mich. 2011\).](#)

Where plaintiffs filed for bankruptcy but failed to list their Financial Industry Reform and Recovery Act (FIRREA) claims as asset of their estate, then their claims were dismissed because they were not real party in interest. [In re Cnty. Bank of N. Va. Mortg. Lending Practices Litig., 954 F. Supp. 2d 360, 2013 U.S. Dist. LEXIS 90283 \(W.D. Pa. 2013\).](#)

District courts do not have jurisdiction over claims against FDIC as receiver of failed financial institution until those claims have either been denied by FDIC or 180-day period for administrative review has expired. [Connecticut Bank & Trust Co., N.A. v. CT Partners, Inc., 136 F.R.D. 347, 1991 U.S. Dist. LEXIS 11982 \(D. Conn. 1991\).](#)

Unpublished decision: District court's jury instruction was plainly erroneous because it incorrectly left open possibility that loan servicer that had obtained assets of failed bank from FDIC could be held liable for actions taken by FDIC, which liability was squarely foreclosed by judicial precedent, and error affected servicer's substantial rights as critical theme of borrower's presentation to jury was that servicer was responsible for actions of FDIC. [Citrus El Dorado, LLC v. Stearns Bank, 552 Fed. Appx. 625, 2014 U.S. App. LEXIS 344 \(9th Cir.\), cert. denied, 574 U.S. 826, 135 S. Ct. 166, 190 L. Ed. 2d 50, 2014 U.S. LEXIS 4952 \(2014\).](#)

40. Exhaustion of administrative remedies

FIRREA's statutory exhaustion requirement ([12 USCS § 1821\(d\)\(13\)\(D\)](#)), to extent that it conflicts with provision of ERISA granting district court jurisdiction, prevails with respect to subject matter jurisdiction of district court. [Rosa v. Resolution Trust Corp., 938 F.2d 383, 13 Employee Benefits Cas. \(BNA\) 2425, 14 Employee Benefits Cas. \(BNA\) 2425, 1991 U.S. App. LEXIS 13256 \(3d Cir.\), cert. denied, 502 U.S. 981, 112 S. Ct. 582, 116 L. Ed. 2d 608, 14 Employee Benefits Cas. \(BNA\) 1952, 1991 U.S. LEXIS 6920 \(1991\).](#)

If RTC has already been appointed receiver of depository institution, claimant must first comply with FIRREA's statutory procedures as prerequisite to federal jurisdiction, no matter when claim arose; thus, claimant against failed thrift must exhaust FIRREA's administrative remedies before commencing judicial action. [Praxis Properties, Inc. v. Colonial Sav. Bank, S.L.A., 947 F.2d 49, 1991 U.S. App. LEXIS 23248 \(3d Cir. 1991\).](#)

Claimant must first present its case to RTC under administrative procedure erected by FIRREA before seeking relief in federal courts. [Resolution Trust Corp. v. Elman, 949 F.2d 624, 1991 U.S. App. LEXIS 28174 \(2d Cir. 1991\).](#)

RTC's alleged failure to comply with mailing requirement of § 1821(d)(3)(C)(ii) did not relieve plaintiffs who filed suit against insolvent bank of obligation to exhaust administrative remedies. [Meliezer v. Resolution Trust Co., 952 F.2d 879, 1992 U.S. App. LEXIS 1321 \(5th Cir. 1992\).](#)

Defendant's claim arising out of litigation pursued by RTC is not subject to FIRREA's exhaustion requirements ([12 USCS § 1821\(d\)\(13\)\(D\)](#)) if prior to that litigation defendant was not creditor of RTC or its predecessor in interest, and defendant had no independent basis for filing claim against RTC or its predecessor in interest. [Resolution Trust Corp. v. Titan Fin. Corp., 22 F.3d 923, 94 Cal. Daily Op. Service 2841, 94 D.A.R. 5458, 1994 U.S. App. LEXIS 8437 \(9th Cir.\), amended, reh'g denied, 94 Cal. Daily Op. Service 4462, 94 D.A.R. 8244 \(9th Cir. 1994\).](#)

RTC does not have to exhaust administrative remedies before bringing action in federal court; exhaustion is prerequisite only for action against RTC. [Hedges v. Resolution Trust Corp., 32 F.3d 1360, 94 Cal. Daily Op. Service 5400, 94 D.A.R. 9907, 25 Bankr. Ct. Dec. \(LRP\) 1475, Bankr. L. Rep. \(CCH\) ¶ 75988, 31 Collier Bankr. Cas. 2d \(MB\) 726, 1994 U.S. App. LEXIS 17150 \(9th Cir. 1994\), cert. denied, 514 U.S. 1082, 115 S. Ct. 1792, 131 L. Ed. 2d 721, 1995 U.S. LEXIS 2885 \(1995\).](#)

Exhaustion of administrative remedies requirement of [12 USCS § 1818\(d\)](#) is absolute and unwaivable jurisdictional requirement for judicial review. [Tillman v. Resolution Trust Corp., 37 F.3d 1032, 1994 U.S. App. LEXIS 22916 \(4th Cir. 1994\)](#).

Compliance with administrative claims process ([12 USCS § 1821\(d\)](#)) is strict jurisdictional prerequisite to claim in federal district court against receiver. [Maher v. Harris Trust & Sav. Bank, 75 F.3d 1182, 1996 U.S. App. LEXIS 1551 \(7th Cir. 1996\)](#), reh'g, en banc, denied, [1996 U.S. App. LEXIS 11678 \(7th Cir. May 20, 1996\)](#).

Judicial review of claims is contingent on completion of administrative review process specified in [12 USCS § 1821\(d\)](#). [Tri-State Hotels v. FDIC, 79 F.3d 707, 1996 U.S. App. LEXIS 4938 \(8th Cir. 1996\)](#).

[12 USCS § 1821\(d\)\(6\)\(A\)](#), which provides that one whose claim RTC denies on its merits or fails to rule on within 180 days may seek judicial or administrative review of that claim, and [12 USCS § 1821\(d\)\(13\)\(D\)](#), which provides that no court has jurisdiction over claim unless it is first presented to RTC for resolution, combine to create exhaustion requirement that is absolute and unwaivable; waiver of exhaustion requirement is not allowed even for claimants to whom RTC failed to mail required notice of claims process and bar date. [Elmco Props. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 1996 U.S. App. LEXIS 23164 \(4th Cir. 1996\)](#).

Statutory exhaustion requirement ([12 USCS § 1821\(d\)](#)) generally applies to post-receivership as well as pre-receivership claims. [Stamm v. Paul, 121 F.3d 635, 11 Fla. L. Weekly Fed. C 565, 1997 U.S. App. LEXIS 23622 \(11th Cir. 1997\)](#).

[12 USCS § 1821\(d\)\(6\)](#) does not permanently deprive federal court of all jurisdiction in any case filed before plaintiff receives response to her administrative claim. [Buckholz v. FDIC, 129 F.3d 868, 1997 FED App. 0342P, 21 Employee Benefits Cas. \(BNA\) 2097, 1997 U.S. App. LEXIS 32783 \(6th Cir. 1997\)](#).

Prospective claimant's failure to exhaust its administrative remedies under [12 USCS § 1821\(d\)](#) deprives court of subject matter jurisdiction. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\)](#).

Exhaustion requirement applies to claims against bank and not to claims by bank against those indebted to it; such debtors, who need not submit their defenses to administrative process, are entitled to await attempt by receiver to collect and then assert any available defenses to collection in court. [Bolduc v. Beal Bank, SSB, 167 F.3d 667, 1999 U.S. App. LEXIS 1102 \(1st Cir. 1999\)](#).

Purpose of exhaustion requirement is to make persons with claims against bank funds or property submit them promptly in single administrative forum. [Bolduc v. Beal Bank, SSB, 167 F.3d 667, 1999 U.S. App. LEXIS 1102 \(1st Cir. 1999\)](#).

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\)](#).

[12 USCS § 1821\(d\)\(13\)\(D\)](#) merely requires claimants to assets in possession of FDIC to exhaust administrative remedies prior to filing in court. [FDIC v. McFarland, 243 F.3d 876, 150 Oil & Gas Rep. 195, 2001 U.S. App. LEXIS 2892 \(5th Cir. 2001\)](#).

Relying on failed bank's (FB) alleged wrongdoing, plaintiff investor's successor liability claims against defendant purchasing bank related to acts or omission of FB for which Federal Deposit Insurance Corporation had been appointed receiver, and for failure to exhaust administrative remedies under [12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#), those

claims were jurisdictionally barred. [*Benson v. JPMorgan Chase Bank, N.A., 673 F.3d 1207, 2012 U.S. App. LEXIS 5752 \(9th Cir. 2012\).*](#)

Financial Institutions Reform, Recovery, and Enforcement Act of 1989's, *Pub. L. No. 101-73, 103 Stat. 183* (1989), administrative exhaustion requirement is based not on entity named as defendant but on actor responsible for alleged wrongdoing. [*Farnik v. FDIC, 707 F.3d 717, 2013 U.S. App. LEXIS 2469 \(7th Cir.\)*](#), cert. denied, *571 U.S. 974, 134 S. Ct. 481, 187 L. Ed. 2d 319, 2013 U.S. LEXIS 7758 (2013)*.

District court lacked authority to hear trustees' claims against bank because bank was placed into receivership of Federal Deposit Insurance Corporation, and trustees failed to exhaust administrative remedies provided by Financial Institutions Reform, Recovery, and Enforcement Act of 1989, *Pub. L. No. 101-73, 103 Stat. 183.* [*Rundgren v. Wash. Mut. Bank, FA, 760 F.3d 1056, 2014 U.S. App. LEXIS 14622 \(9th Cir. 2014\)*](#), cert. denied, *575 U.S. 914, 135 S. Ct. 1560, 191 L. Ed. 2d 639, 2015 U.S. LEXIS 2095 (2015)*.

FIRREA's administrative exhaustion requirement applied to plaintiff's TILA claim because there was claim that related to any act or omission of institution for which FDIC had been appointed receiver. [*Shaw v. Bank of Am. Corp., 946 F.3d 533, 105 Fed. R. Serv. 3d \(Callaghan\) 811, 2019 U.S. App. LEXIS 38549 \(9th Cir. 2019\).*](#)

Debtor could not amend complaint to add additional claims, where additional claims raised factual allegations not addressed through FDIC administration claim process, because under [*12 USCS § 1821\(d\)\(6\)*](#) court lack jurisdiction over claims not first submitted to FDIC administrative claim process. [*Coleman v. FDIC, 826 F. Supp. 31, 1993 U.S. Dist. LEXIS 10048 \(D. Mass. 1993\).*](#)

Requiring each class member to exhaust claim procedures under Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), *Pub. L. No. 101-73, 103 Stat. 183* (1989) may not be most convenient or efficient method of resolving parties' dispute; however, total exhaustion is required under [*12 USCS § 1821. Taylor v. ANB Bancshares, Inc., 682 F. Supp. 2d 970, 2009 U.S. Dist. LEXIS 124988 \(W.D. Ark. 2009\).*](#)

Lessor's claim related to FDIC's repudiation of lease of storage facility between failed bank and lessor involved determination of rights with respect to assets of failed banking institution under receivership of FDIC; consequently, lessor was required to file receivership claim with FDIC and to exhaust receivership claims process before bringing suit pursuant to [*12 USCS § 1821\(d\). 1500 Range Way Partners, LLC v. JPMorgan Chase Bank, N.A., 800 F. Supp. 2d 716, 2011 U.S. Dist. LEXIS 73965 \(D.S.C. 2011\).*](#)

In analyzing its jurisdiction over claims against Federal Deposit Insurance Corporation for its conduct as receiver, United States District Court for District of Columbia adopts majority rule that such claims must be exhausted. [*BHC Interim Funding II, L.P. v. FDIC, 851 F. Supp. 2d 131, 2012 U.S. Dist. LEXIS 45152 \(D.D.C. 2012\).*](#)

[*12 USCS § 1821\(d\)\(13\)\(D\)*](#) plainly states that any claim or action that asserts right to assets of failed institution is subject to exhaustion; there is no limitation to creditors, or exclusion of debtors. [*FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).*](#)

Failure to begin and to exhaust administrative remedy process of [*12 USCS § 1821*](#) with respect to claims deprives federal court of jurisdiction over affirmative claims against FDIC in its capacity as receiver. [*Peoples State Bank v. Garrett, 142 F.R.D. 438, 1991 U.S. Dist. LEXIS 20359 \(N.D. Tex. 1991\).*](#)

Unpublished decision: Because plaintiff developer pursued its claim for termination of its loan documents with failed bank in defendant FDIC's administrative process, and timely sought judicial review upon that denial, district court had jurisdiction over developer's declaratory relief claim under [*12 USCS § 1821\(d\)\(6\). Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\).*](#)

Unpublished decision: Because plaintiff developer pursued its claim for termination of its loan documents with failed bank in defendant FDIC's administrative process, and timely sought judicial review upon that denial, district court

had jurisdiction over developer's declaratory relief claim under [12 USCS § 1821\(d\)\(6\)](#). [Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\)](#).

FDIC and creditors were entitled to dismissal of debtors' federal suit because debtors failed to exhaust mandatory administrative claims process as to a new claim in their amended complaint, and court declined to retain supplemental jurisdiction because the FIRREA did not indicate what would happen to jurisdiction when the FDIC was no longer a party. [Rivera-Alvarado v. FDIC, 2017 U.S. Dist. LEXIS 140535 \(D.P.R. Aug. 29, 2017\)](#).

Bankruptcy debtor's claim for setoff against claim of successor to bank in receivership for directing debtor's tenants to send rent to successor was not barred by debtor's failure to exhaust administrative remedies, since claim was based on alleged misconduct of successor itself rather than bank. [Settlers' Hous. Serv. v. Schaumburg Bank & Trust Co. \(In re Settlers' Hous. Serv.\), 540 B.R. 624, 2015 Bankr. LEXIS 3720 \(Bankr. N.D. Ill. 2015\)](#).

State district court properly dismissed creditors' claims against insolvent bank and granted summary judgment to its receiver because they had actual notice of claims review process, their failure to exhaust their administrative remedies deprived state district court of subject matter jurisdiction but did not deprive them of due process of law, receiver was not required to stay any pending litigation nor substitute itself as party to creditors' pre-receivership lawsuit. [Summerhaze Co., L.C. v. FDIC, 2014 UT 28, 332 P.3d 908, 2014 Utah LEXIS 90 \(Utah 2014\)](#).

41. —Lack of subject matter jurisdiction

District court did not have jurisdiction over former bank employee's claim under Worker Adjustment and Retraining Notification Act ([29 USCS §§ 2101](#) et seq.) against FDIC in its capacity as receiver for failed bank, since employee, who did not file claim, either implicitly or explicitly, with FDIC before bringing court action, failed to exhaust his administrative remedies as required by [12 USCS § 1821](#). [McMillian v. FDIC, 81 F.3d 1041, 9 Fla. L. Weekly Fed. C 1029, 1996 U.S. App. LEXIS 9292 \(11th Cir. 1996\)](#).

Where creditor alleged that failed bank wrongfully refused to return mortgage loans and their proceeds to which creditor had legal [title](#), [12 USCS § 1821\(j\)](#) stripped district court of its jurisdiction to enter preliminary injunction after Federal Deposit Insurance Corporation (FDIC) was appointed as receiver for failed bank because FDIC's proposed actions with respect to loans and loan proceeds at issue fell squarely within its statutory receivership powers and functions. [Bank of Am. Nat'l Ass'n v. Colonial Bank, 604 F.3d 1239, 22 Fla. L. Weekly Fed. C 722, 2010 U.S. App. LEXIS 8596 \(11th Cir. 2010\)](#).

Jurisdictional bar under [12 USCS § 1821\(d\)\(13\)\(D\)\(i\)](#) and (2) did not apply to bondholders' state law claims against purchaser of assets of bank that was placed in Federal Deposit Insurance Corporation receivership; Section 1821(d)(13)(D)(ii) did not apply because suit was against purchaser, not against failed bank; § 1821(d)(13)(D)(i) did not apply because purchaser's acquisition of bank's assets did not transform suit into one seeking determination of rights with respect to assets. [Am. Nat'l Ins. Co. v. FDIC, 642 F.3d 1137, 395 U.S. App. D.C. 316, 2011 U.S. App. LEXIS 12787 \(D.C. Cir. 2011\)](#), dismissed, [164 F. Supp. 3d 104, 2016 U.S. Dist. LEXIS 27639 \(D.D.C. 2016\)](#).

District court lacked jurisdiction to enter judgment declaring that Federal Deposit Insurance Corporation (FDIC) owed no damages to lessor in connection with lease to failed bank, as lessor had not submitted claim against FDIC through administrative claims process under Financial Institutions Reform, Recovery, and Enforcement Act of 1989. [Interface Kanner, LLC v. JPMorgan Chase Bank, N.A., 704 F.3d 927, 23 Fla. L. Weekly Fed. C 1805, 2013 U.S. App. LEXIS 715 \(11th Cir.\)](#), cert. denied, 571 U.S. 941, 134 S. Ct. 175, 187 L. Ed. 2d 256, 2013 U.S. LEXIS 6705 (2013).

District court lacked subject matter jurisdiction over borrowers' claim for rescission of their mortgage loan with failed bank that was subsequently taken over by Federal Deposit Insurance Corporation because claim was not claim of independent misconduct by successor lender; rather, it related to act or omission of bank, and was jurisdictionally barred under [12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#). [Tellado v. IndyMac Mortg. Servs., 707 F.3d 275, 2013 U.S. App. LEXIS 2817 \(3d Cir. 2013\)](#).

In borrowers' suit against lender's successor, courts lacked subject matter jurisdiction because borrowers failed to exhaust their administrative remedies under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), *Pub. L. No. 101-73, 103 Stat. 183* (1989), since (1) Federal Deposit Insurance Corporation (FDIC), as lender's receiver, was proper defendant, and (2) there was no evidence that FDIC transferred liability for claims to successor. [*Farnik v. FDIC, 707 F.3d 717, 2013 U.S. App. LEXIS 2469 \(7th Cir.\)*](#), cert. denied, 571 U.S. 974, 134 S. Ct. 481, 187 L. Ed. 2d 319, 2013 U.S. App. LEXIS 7758 (2013).

Because plaintiff former employees of failed bank had not followed [12 USCS § 1821\(d\)](#)'s statutory claims process, by either failing to file severance claims with intervenor defendant FDIC or not seeking review in federal court of denial of those claims within § 1821(d)(6)(B)'s 60-day requirement, there was no subject-matter jurisdiction over any of claims; nor could employees avoid jurisdictional bar by naming only defendant successor bank and failing to name FDIC as defendant. [*Acosta-Ramírez v. Banco Popular de Puerto Rico, 712 F.3d 14, 20 Wage & Hour Cas. 2d \(BNA\) 810, 2013 U.S. App. LEXIS 6813 \(1st Cir. 2013\)*](#).

Borrowers' claim for declaratory relief that repudiation of their loan agreement by Federal Deposit Insurance Corporation (FDIC) erased borrowers' duty to pay was claim that was functionally against FDIC, although brought against purchaser bank, and therefore had to be routed through administrative review process before judicial review could occur; thus, district court properly dismissed action for lack of subject matter jurisdiction. [*Westberg v. FDIC, 741 F.3d 1301, 408 U.S. App. D.C. 246, 2014 U.S. App. LEXIS 1884 \(D.C. Cir. 2014\)*](#).

Venue provision in statute was jurisdictional limitation on federal court review; Congress vested two federal district courts with jurisdiction over lawsuit: United States District Court for Western District of Arkansas, where failed bank's principal place of business was located, and United States District Court for District of Columbia, and bank filed complaint in United States District Court for District of Idaho, and because that court lacked subject matter jurisdiction, case had to be dismissed. [*MTB Enters. v. ADC Venture 2011-2, LLC, 780 F.3d 1256, 2015 U.S. App. LEXIS 4719 \(9th Cir. 2015\)*](#).

Bankruptcy court lacked subject-matter jurisdiction over bankruptcy trustee's preference claims because he failed to exhaust administrative remedies with regard to assertion of ownership of tax refunds collected by FDIC as receiver before filing preference action. [*Waldron v. FDIC, 935 F.3d 844, 124 A.F.T.R.2d \(RIA\) 2019-5669, 67 Bankr. Ct. Dec. \(LRP\) 179, 104 Fed. R. Serv. 3d \(Callaghan\) 1333, 2019 U.S. App. LEXIS 25983 \(9th Cir. 2019\)*](#).

Bankruptcy court lacked subject-matter jurisdiction over bankruptcy trustee's preference claims because he failed to exhaust administrative remedies; Parker exhaustion exception was not applicable because preference action did not arise incident to FDIC's collection efforts against debtor. [*Waldron v. FDIC, 935 F.3d 844, 124 A.F.T.R.2d \(RIA\) 2019-5669, 67 Bankr. Ct. Dec. \(LRP\) 179, 104 Fed. R. Serv. 3d \(Callaghan\) 1333, 2019 U.S. App. LEXIS 25983 \(9th Cir. 2019\)*](#).

District court properly dismissed TILA claim for lack of subject matter jurisdiction based on jurisdiction-stripping provisions of FIRREA because plaintiff did not exhaust his remedies with FDIC before filing suit and FIRREA's exhaustion requirement did not contain futility exception. [*Shaw v. Bank of Am. Corp., 946 F.3d 533, 105 Fed. R. Serv. 3d \(Callaghan\) 811, 2019 U.S. App. LEXIS 38549 \(9th Cir. 2019\)*](#).

District court lacked jurisdiction over the borrowers' 735 ILCS 5/2-1401 petition where their claims related to a failed bank's alleged failure to fulfill its duties with respect to service of process in a foreclosure action and resulting void orders, as a result, they were required to exhaust the FIRREA administrative claim process, and they had not done so within the time permitted. [*Seaway Bank & Trust Co. v. J&A Series I, LLC, 962 F.3d 926, 2020 U.S. App. LEXIS 19098 \(7th Cir. 2020\)*](#).

Borrowers' argument that the claims did not implicate [12 U.S.C.S. § 1821\(d\)\(13\)\(D\)\(ii\)](#) was rejected where their ultimate goal was not simply to quash service or void orders in the abstract, but to get their property back in the form of possession or financial compensation, they sought relief because of the failed bank's act or omission for which the FDIC served as the receiver, and the relief sought was within the FDIC's power to provide through the

mandatory administrative claims process. [*Seaway Bank & Trust Co. v. J&A Series I, LLC, 962 F.3d 926, 2020 U.S. App. LEXIS 19098 \(7th Cir. 2020\).*](#)

District court properly found that it lacked jurisdiction under Financial Institutions Reform, Recovery, and Enforcement Act because plaintiff had not exhausted its administrative remedies because plaintiff's claims were claims relating to act or omission by failed bank for which FDIC was appointed receiver, and claims were subject to administrative exhaustion, because plaintiff's breach of contract claims arose when failed bank informed plaintiff that failed bank would no longer honor participation agreement, which was anticipatory breach that provided plaintiff with immediate cause of action for breach of contract. [*SunSouth Bank v. First NBC Bank, 678 Fed. Appx. 811, 2017 U.S. App. LEXIS 1570 \(11th Cir. 2017\).*](#)

District court properly dismissed complaint by home owners, seeking declaration that lender could not foreclose on their home, as it lacked subject matter jurisdiction over claims based on Financial Institutions Reform, Recovery and Enforcement Act of 1989 because owners functionally alleged that failed lender had engaged in misconduct and misrepresentations with respect to note and deed of trust, but they failed to submit claims underlying those counts to administrative review. [*Willner v. Dimon, 849 F.3d 93, 2017 U.S. App. LEXIS 2737 \(4th Cir. 2017\).*](#)

Subcontractor's action against insolvent bank is dismissed for lack of subject-matter jurisdiction where subcontractor failed to exhaust his administrative remedies under Financial Institutions Reform, Recovery and Enforcement Act, [12 USCS § 1821\(d\)](#), for asserting his claim against Resolution Trust Corporation, receiver of insolvent bank. [*Circle Industries, Div. of Nastasi-White, Inc. v. City Federal Sav. Bank, 749 F. Supp. 447, 1990 U.S. Dist. LEXIS 14228 \(E.D.N.Y. 1990\)*](#), aff'd, [*931 F.2d 7, 1991 U.S. App. LEXIS 7574 \(2d Cir. 1991\).*](#)

Claim against RTC as receiver for federal savings and loan is dismissed for lack of subject-matter jurisdiction, where partnership's claims fall within confines of [12 USCS § 1821\(d\)\(13\)\(D\)](#) but it has not exhausted administrative claims procedures, because § 1821(d) provides for District Court jurisdiction only after filing of claim with and initial processing of claim by RTC under § 1821(d)(5) and (6)(A). [*Marketplace/Ken Caryl Partners, Ltd. v. Victorio Inv. Co., 778 F. Supp. 29, 1991 U.S. Dist. LEXIS 17076 \(D. Colo. 1991\).*](#)

Claims against insolvent bank must be dismissed, where RTC was appointed conservator of bank 4 days prior to filing of complaint, because court lacks subject-matter jurisdiction since claimant has failed to exhaust administrative procedures for bringing claims against RTC as established in [12 USCS § 1821\(d\)](#). [*Orchard Hills Coop. Apartments, Inc. v. Resolution Trust Corp., 779 F. Supp. 104, 1991 U.S. Dist. LEXIS 18526 \(C.D. Ill. 1991\).*](#)

Resolution Trust Corporation (RTC) is entitled to dismissal of realty company's action for damages for breach of contract, misrepresentation, fraud, and deceptive trade practice, and for rescission of wrap-around promissory notes, where realty company did not comply with procedures outlined in [12 USCS § 1821\(d\)\(13\)\(D\)](#) and thereby failed to exhaust its administrative remedies, since federal district courts' jurisdiction is limited to claims of those who have complied with these procedures and since, although [12 USCS § 1821\(d\)\(13\)\(D\)](#) expressly refers to Federal Deposit Insurance Corporation (FDIC), RTC has same powers and rights to carry out its duties as FDIC. [*Z & S Realty Co. v. Resolution Trust Corp., 811 F. Supp. 251, 1992 U.S. Dist. LEXIS 21138 \(S.D. Tex. 1992\).*](#)

Borrower's claim against RTC as receiver for lender must be dismissed for lack of subject-matter jurisdiction, where RTC complied with notice requirements of [12 USCS § 1821\(d\)\(3\)\(B\)](#) and (C), yet borrower never submitted claims to RTC pursuant to mandatory statutory administrative review process, because borrower is clearly seeking determination of its rights with respect to asset of failed lender and claimants who fail to adhere to statutory procedure forfeit their right to judicial review under § 1821(d)(13)(D). [*Deera Homes, Inc. v. Metrobank for Sav., FSB, 812 F. Supp. 375, 1993 U.S. Dist. LEXIS 1727 \(E.D.N.Y. 1993\).*](#)

Residential loan applicant's claim against insolvent bank must be dismissed for lack of jurisdiction, where she asserts several causes of action arising out of failure to fund promised loan but has not presented administrative claim to RTC acting as receiver, because jurisdictional bar of [12 USCS § 1821\(d\)\(13\)\(D\)](#) precludes judicial action on claim filed after receiver is appointed but before exhaustion of administrative claims process. [*Feise v. Resolution Trust Corp., 815 F. Supp. 344, 93 D.A.R. 4319, 1993 U.S. Dist. LEXIS 2580 \(E.D. Cal. 1993\).*](#)

Claims of makers of promissory note against Federal Deposit Insurance Corporation (FDIC) in its capacity as liquidating agent of bank are denied summarily, where makers proffered no evidence that they filed proof of claim with respect to their claims with FDIC as required by [12 USCS § 1821\(d\)](#), because makers failed to exhaust administrative remedies and court therefore lacks jurisdiction over their claims. [Grillo v. FDIC, 831 F. Supp. 4, 1993 U.S. Dist. LEXIS 13336 \(D. Mass. 1993\)](#).

Depositor's action against FDIC is dismissed for lack of subject-matter jurisdiction, where depositor sued bank to determine property rights prior to receivership, depositor filed timely claim in existing suit with FDIC, but did not state claims for conversion or breach of contract, FDIC denied depositor's claim, and depositor brought suit against FDIC on new theories after time for filing of administrative claims had run, because [12 USCS § 1821](#) requires timely filing of notice of claims, and depositor's prior lawsuit, on different theories, will not insulate depositor from result of failure to file timely claim. [Brown Leasing Co. v. FDIC, 833 F. Supp. 672, 1993 U.S. Dist. LEXIS 11111 \(N.D. Ill. 1993\)](#), aff'd sub nom. [Brown Leasing Co. v. Cosmopolitan Bancorp, 42 F.3d 1112, 1994 U.S. App. LEXIS 35990 \(7th Cir. 1994\)](#).

Tenants' claims against FDIC acting as their landlord as receiver for failed bank/mortgagee must be dismissed, even though FDIC denied their administrative claims by letters in August 1993, where tenants had already filed this action in state court 3 months before, because tenants should have exhausted their administrative claims before they filed this action under [12 USCS § 1821\(d\)\(6\)\(A\)](#) and (d)(13)(D). [Forbes v. FDIC, 850 F. Supp. 94, 1994 U.S. Dist. LEXIS 8682 \(D. Mass. 1994\)](#).

Claim of purchasers of home against Resolution Trust Corporation as receiver for savings and loan association for reformation of contract to purchase home or for damages or rescission is denied summarily, where purchasers failed to submit any of claims asserted against RTC for determination pursuant to administrative claim procedure, because court lacks subject-matter jurisdiction to grant any relief, monetary or nonmonetary, in light of purchasers' failure to comply with claim procedure. [Hill v. Imperial Sav., 852 F. Supp. 1354, 1992 U.S. Dist. LEXIS 22184 \(W.D. Tex. 1992\)](#).

Landlord's fraud claim against FDIC as receiver for bank that was former tenant is denied summarily, where landlord never submitted claim to FDIC that was denominated fraud claim but rather notified FDIC only of breach-of-contract claim, because FDIC was not on notice of fraud claim and landlord failed to comply with [12 USCS § 1821\(d\)](#), so court is without jurisdiction over fraud claim. [Aljaf Assocs. Ltd. Partnership v. FDIC, 879 F. Supp. 515, 1995 U.S. Dist. LEXIS 3785 \(E.D. Pa. 1995\)](#).

Court found case law persuasive which held that mandatory withdrawal is not required merely because bankruptcy court may have to consider Financial Institutions, Reform, Recovery and Enforcement Act of 1989 and whether to apply jurisdictional bar of [12 USCS § 1821\(d\)\(13\)\(D\)](#); further, court rejected Federal Deposit Insurance Corporation's (FDIC's) assertion that withdrawal was mandatory because "asset" of FDIC was involved, no matter what was outcome of adversary proceeding. [In re Temecula Valley Bancorp, Inc., 523 B.R. 210, 2014 U.S. Dist. LEXIS 172305 \(C.D. Cal. 2014\)](#).

Jurisdiction did not exist under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) over mortgagors' claims that mortgagee made misrepresentations regarding mortgage documents because mortgagors had not exhausted administrative remedies as required under [12 USCS § 1821\(d\)\(13\)\(D\)](#) of FIRREA; contacting mortgagee's "help line" for assistance was not enough to exhaust claims where mortgagors were required to submit their claims to Federal Deposit Insurance Corporation; additionally, mortgagors did not file suit in proper forum under § 1821(d)(6)(A). [Friederichs v. Gorz, 624 F. Supp. 2d 1058, 2009 U.S. Dist. LEXIS 48052 \(D. Minn. 2009\)](#).

Borrowers' claim of wrongful foreclosure under [Tex. Prop. Code Ann. § 51.002](#) was dismissed for lack of subject matter jurisdiction because the FDIC complied with the notice requirements of [12 USCS § 1821](#) of the FIRREA by addressing the borrowers' notice at their last address appearing on the books of the predecessor bank and the borrowers failed to exhaust their administrative remedies. [Punzalan v. FDIC, 633 F. Supp. 2d 406, 2009 U.S. Dist. LEXIS 57829 \(W.D. Tex. 2009\)](#).

Claim of one of class members was insufficient to exhaust participants' administrative remedies, and Federal Deposit Insurance Corporation's (FDIC) failure to provide proper notice did not relieve claimant of obligation to exhaust administrative remedies because statute did not provide for waiver or exception under those circumstances, and employee stock ownership plan participants did not fit into statutory exception for failing to file by Claims Bar Date as they had not shown they were unaware of FDIC's appointment as Receiver; accordingly, participants' failure to timely present Proof of Claim form prevented court from exercising subject matter jurisdiction over claims against FDIC in its capacity as receiver under Financial Institutions Reform, Recovery and Enforcement Act of 1989, *Pub. L. No. 101-73, 103 Stat. 183 (1989)*. [*Taylor v. ANB Bancshares, Inc., 682 F. Supp. 2d 970, 2009 U.S. Dist. LEXIS 124988 \(W.D. Ark. 2009\)*](#).

Court lacked subject matter jurisdiction to consider wage and hour claims of former employees against successor in interest of their former employer because these claims directly related to acts or omissions of employer, as failed banking institution, and employees failed to exhaust their administrative remedies prior to commencing litigation. [*Aber-Shukofsky v. JPMorgan Chase & Co., 755 F. Supp. 2d 441, 2010 U.S. Dist. LEXIS 132726 \(E.D.N.Y. 2010\)*](#).

Plain language of [12 USCS § 1821\(d\)\(13\)\(D\)](#) barred judicial review of any claim relating to any act of failed lending institution; because consumer's claims against bank related to act of bank where fraudulent account was allegedly opened, they were subject to administrative exhaustion requirement of § 1821(d), and because consumer had not submitted those claims to Federal Deposit Insurance Corporation, court lacked subject-matter jurisdiction to adjudicate them. [*Lazarre v. JPMorgan Chase Bank, N.A., 780 F. Supp. 2d 1320, 2011 U.S. Dist. LEXIS 40604 \(S.D. Fla. 2011\)*](#).

Creditor's claim against failed financial institution was dismissed pursuant to [12 USCS § 1821](#), because creditor's claim was untimely filed with Federal Deposit Insurance Corporation, and therefore, district court lacked subject matter jurisdiction. [*Miguelachuli v. FDIC, 799 F. Supp. 2d 141, 2011 U.S. Dist. LEXIS 83265 \(D.P.R. 2011\)*](#).

District court lacked subject matter jurisdiction to consider counterclaims defendants filed because defendants had not filed any new action and had failed to take any steps to continue counterclaims they had filed before Federal Deposit Insurance Corporation was appointed as receiver for failed bank against which counterclaims were originally brought. [*FDIC v. Estrada-Colon, 848 F. Supp. 2d 206, 2012 U.S. Dist. LEXIS 39622 \(D.P.R. 2012\)*](#).

Court lacked subject matter jurisdiction, under [12 USCS § 1821\(d\)\(13\)\(D\)](#), over four claims against Federal Deposit Insurance Corporation (FDIC) as receiver for bank because claims were not submitted to administrative claims process because claims were all distinct from claim that plaintiffs presented to FDIC because that claim did not, as four claims did, require FDIC to assess value of transferred contract rights, and it did not require FDIC to determine scope and validity of plaintiffs' security interest in those rights, as at least some of four claims did. [*BHC Interim Funding II, L.P. v. FDIC, 851 F. Supp. 2d 131, 2012 U.S. Dist. LEXIS 45152 \(D.D.C. 2012\)*](#).

In Financial Institutions Reform, Recovery & Enforcement Act action, defendant's motion to dismiss was granted because plaintiff did not exhaust its non-Last-in First-out (LIFO) breach of contract where plaintiff did not explain how and in what amount plaintiff was damaged by each of alleged non-LIFO breaches of contract. [*Firstier Bank v. FDIC, 935 F. Supp. 2d 1109, 2013 U.S. Dist. LEXIS 41311 \(D. Colo. 2013\)*](#).

In Financial Institutions Reform, Recovery & Enforcement Act action, defendant's motion to dismiss was granted; Homeland Stores jurisdictional exception did not apply to facts of this case and thus plaintiff was required to administratively exhaust its breach of contract claims against Federal Deposit Insurance Corporation (FDIC); because plaintiff failed to exhaust these claims, all of its claims concerning post-receiver conduct by FDIC were dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1). [*Firstier Bank v. FDIC, 935 F. Supp. 2d 1109, 2013 U.S. Dist. LEXIS 41311 \(D. Colo. 2013\)*](#).

Plaintiffs failed to exhaust administrative remedies as required by Financial Industry Reform and Recovery Act (FIRREA) where, after disallowance of their claims by FDIC, they did not take affirmative action to continue their pre-receivership lawsuits. [*In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig., 954 F. Supp. 2d 360, 2013 U.S. Dist. LEXIS 90283 \(W.D. Pa. 2013\)*](#).

District court lacked jurisdiction over indenture trustee's claims against FDIC because trustee only asserted general unsecured claims, FDIC's no-value determination was final agency action that was not subject to collateral attack through individual lawsuits against FDIC, and granting trustee relief in form of set off would violate Congress's clear mandate and would allow trustee to jump in front of higher-priority creditors. [Bank of Am., N.A. v. FDIC, 962 F. Supp. 2d 165, 2013 U.S. Dist. LEXIS 120764 \(D.D.C. 2013\)](#).

Unpublished decision: Court lacked jurisdiction to consider plaintiff's claims against defendant bank (and, by extension, against Federal Deposit Insurance Corporation (FDIC) as receiver for bank) because she failed to raise them in administrative claims process; bank was "depository institution" for which FDIC had been appointed receiver, plaintiff's action sought payment from those assets, and plaintiff did not contend that she complied with FDIC's administrative process with respect to claims asserted in case, and she did not attempt to invoke statutory provision for judicial review of claims denied by FDIC. [Duraney v. FDIC, 388 Fed. Appx. 102, 2010 U.S. App. LEXIS 15982 \(3d Cir. 2010\)](#).

Unpublished decision: Court lacked jurisdiction to consider plaintiff's claims against defendant bank (and, by extension, against Federal Deposit Insurance Corporation (FDIC) as receiver for bank) because she failed to raise them in administrative claims process; nothing in [12 USCS § 1821](#) precluded application of jurisdictional bar where district court's judgment predicated bank's entry into receivership and FDIC had notice of her claims as result of litigation in district court. [Duraney v. FDIC, 388 Fed. Appx. 102, 2010 U.S. App. LEXIS 15982 \(3d Cir. 2010\)](#).

Unpublished decision: Jurisdiction was lacking over claims brought by bankruptcy debtor's wife and farming entities against creditor because claims were not first filed with Federal Deposit Insurance Corporation (FDIC), which was required under [12 USCS § 1821\(d\)\(13\)\(D\)](#) because creditor was failed financial institution in FDIC receivership. [Love v. FDIC \(In re George Love Farming, LC\), 420 Fed. Appx. 788, 2011 U.S. App. LEXIS 5032 \(10th Cir. 2011\)](#).

Unpublished decision: District court properly granted dismissal of claims under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by loan purchaser, arising from settlement by FDIC as receiver for failed loan seller with loan borrower and others, as district court lacked subject matter jurisdiction over three claims because purchaser did not submit those claims to FDIC before bringing suit, such that it did not exhaust its administrative remedies. [Federated Bank v. FDIC, 645 Fed. Appx. 853, 2016 U.S. App. LEXIS 4364 \(11th Cir. 2016\)](#).

Court lacked jurisdiction over borrowers' claims against bank that purchased assets of failed bank, relating to acts or omissions of failed bank or Federal Deposit Insurance Corporation, because claims were subject to jurisdictional bar imposed by [12 USCS § 1821\(d\)\(13\)\(D\)](#) and had to be asserted through administrative claims process. [Stewart v. JPMorgan Chase Bank, N.A. \(In re Stewart\), 473 B.R. 612, 2012 Bankr. LEXIS 2242 \(Bankr. W.D. Pa. 2012\)](#), aff'd, [2013 U.S. Dist. LEXIS 111516 \(W.D. Pa. Aug. 7, 2013\)](#).

Even if bankruptcy trustee prevailed in establishing that bankruptcy debtor's alleged capital maintenance guaranty was avoidable as fraudulent transfer, non-frivolous claim was asset of debtor for purposes of jurisdictional bar of claims and actions which were not exhausted administratively, regardless of whether claim was ultimately allowed. [Bloom v. FDIC \(In re First State Bancorporation\), 498 B.R. 322, 2013 Bankr. LEXIS 3891 \(Bankr. D.N.M. 2013\)](#).

Bankruptcy court did not have jurisdiction to hear Chapter 11 debtor's adversary proceeding claiming that he was entitled to set off losses he sustained when FDIC assumed control of failed financial institution against claims that were filed against his bankruptcy estate by bank that purchased failed institution; debtor's claims were, in essence, claims against FDIC, and those claims were barred under [12 USCS § 1821](#) because he had not exhausted remedies he had under Financial Institutions Reform, Recovery and Enforcement Act of 1989 to seek payment of his claims. [Prior v. Tri Counties Bank \(In re Prior\), 521 B.R. 353, 2014 Bankr. LEXIS 4567 \(Bankr. E.D. Cal. 2014\)](#).

Requirement for timely exhaustion of administrative remedies for claims against bank in receivership was jurisdictional bar rather than claims processing scheme since statutory language clearly indicated that requirement was jurisdictional. [Settlers' Hous. Serv. v. Schaumburg Bank & Trust Co. \(In re Settlers' Hous. Serv.\), 540 B.R. 624, 2015 Bankr. LEXIS 3720 \(Bankr. N.D. Ill. 2015\)](#).

Bankruptcy debtor's claims against successor to bank in receivership for bank's alleged misconduct were jurisdictionally barred since debtor which did not receive written notice nonetheless had actual notice of receivership and failed timely to exhaust administrative remedies prior to asserting claims. [Settlers' Hous. Serv. v. Schaumburg Bank & Trust Co. \(In re Settlers' Hous. Serv.\), 540 B.R. 624, 2015 Bankr. LEXIS 3720 \(Bankr. N.D. Ill. 2015\).](#)

Exhaustion requirement under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 did not apply to action filed by trustee in bankruptcy court to recover preferential transfers where receiver had filed proof of claim which matched amount sought by trustee. [Waldron v. FDIC \(In re Venture Fin. Grp. Inc.\), 558 B.R. 386, 2016 Bankr. LEXIS 3303 \(Bankr. W.D. Wash. 2016\)](#), aff'd, [587 B.R. 542, 121 A.F.T.R.2d \(RIA\) 2018-1103, 2018 U.S. Dist. LEXIS 42887 \(W.D. Wash. 2018\).](#)

Property owner who filed am action in state court against bank that was later placed in receivership had to exhaust administrative remedies established in Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), [12 USCS § 1821\(d\)](#), before continuing action in state court; where owner received proper notice yet failed to comply with them, FIRREA withdrew jurisdiction over pre-receivership claim. [Thomas v. FDIC, 255 P.3d 1073, 2011 Colo. LEXIS 475 \(Colo. 2011\)](#), reh'g denied, [2011 Colo. LEXIS 640 \(Colo. Aug. 1, 2011\).](#)

Debtor's adversary proceeding seeking to strip mortgage lien against his property was dismissed because claim was subject to mandatory administrative claim procedure established by Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), which debtor had not exhausted. [Aksal v. Trinity Fin. Servs., LLC \(In re Aksal\), 2020 Bankr. LEXIS 3399 \(Bankr. D.N.J. Dec. 4, 2020\).](#)

42. —Other particular circumstances

Fact that notice provisions in [12 USCS § 1821\(d\)](#) apply only to creditors does not mean that exhaustion requirement contained in [12 USCS § 1821\(d\)\(13\)\(D\)](#) is limited to creditors bringing claims; debtors as well as creditors must undergo administrative review process. [Tri-State Hotels v. FDIC, 79 F.3d 707, 1996 U.S. App. LEXIS 4938 \(8th Cir. 1996\).](#)

Plaintiff in pre-receivership lawsuit need not file administrative claim with federal receiver of failed financial institution when receiver does not stay action within ninety days of its appointment, and thus, does not timely require exhaustion of administrative remedies. [Damiano v. FDIC, 104 F.3d 328, 72 Fair Empl. Prac. Cas. \(BNA\) 1709, 1997 U.S. App. LEXIS 1445 \(11th Cir. 1997\).](#)

Post-receivership claims, which statutory exhaustion requirement ([12 USCS § 1821\(d\)](#)) generally applies to, include claims based on RTC's actions as receiver. [Stamm v. Paul, 121 F.3d 635, 11 Fla. L. Weekly Fed. C 565, 1997 U.S. App. LEXIS 23622 \(11th Cir. 1997\).](#)

FIRREA's exhaustion requirement applied to bank debtors as well as creditors, and to claims that arose out of acts by receiver as well as by failed institution. [McCarthy v. FDIC, 348 F.3d 1075, 2003 Cal. Daily Op. Service 9598, 2003 D.A.R. 12101, 2003 U.S. App. LEXIS 22707 \(9th Cir. 2003\).](#)

Plaintiff investor's claims against defendant purchasing bank that related to acts or omission of purchased failed bank for which Federal Deposit Insurance Corporation had been appointed receiver were barred for failure to exhaust administrative remedies under [12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#), and while claims against purchasing bank based on purchasing bank's own actions after acquisition were not subject to § 1821(d)(13)(D), those claims failed to state claim for relief because sole allegation as to those claims was that unidentified "practices continued" after acquisition and no single specific act taken by purchasing bank was alleged. [Benson v. JPMorgan Chase Bank, N.A., 673 F.3d 1207, 2012 U.S. App. LEXIS 5752 \(9th Cir. 2012\).](#)

In debtor's suit seeking injunction to stop debt collection activity, although debtor did not pursue any available administrative remedies, FIRREA did not bar review of claims because disputed conduct occurred after financial institution was placed into receivership, and FIRREA exhaustion requirement did not apply to post-receivership

conduct. *John J. Pembroke Living Trust v. U.S. Bank N.A.*, 732 Fed. Appx. 678, 2018 U.S. App. LEXIS 10754 (10th Cir. 2018).

Slip-and-fall plaintiff's negligence claim against RTC as receiver for motel franchisee must be dismissed for failure to exhaust administrative remedies under [12 USCS § 1821\(d\)](#), even though franchise agreement required franchisee to maintain insurance to cover this type of claim, because statutory language, legislative history, and common sense dictate that § 1821(d) "claims" cannot be defined arbitrarily to exclude claims covered by insurance. *Decrosta v. Red Carpet Inns Int'l, Inc.*, 767 F. Supp. 694, 1991 U.S. Dist. LEXIS 8868 (E.D. Pa. 1991).

Corporation's mortgage claim against FDIC as receiver for insolvent bank is dismissed summarily, where FDIC proved that it fulfilled mail and publication notice to creditor requirements of [12 USCS § 1821\(d\)\(3\)\(B\)](#) and (C), because corporation's conclusory assertion that it never received mailed notice cannot overcome its noncompliance with § 1821(d) streamlined administrative claim procedures, which harshly bars both administrative and judicial review of mortgage claim. *Capital Data Corp. v. Capital Nat'l Bank*, 778 F. Supp. 669, 1991 U.S. Dist. LEXIS 15975 (S.D.N.Y. 1991).

Tenant's suit seeking declaratory judgment and other relief for alleged breaches of terms of lease must be dismissed for failure to exhaust administrative procedures, despite argument that RTC/receiver's service of Landlord's Five-Day Notice is tantamount to rejection of tenant's claim, thus obviating formal task of submitting claim to RTC, because notice was served after suit was filed and perhaps in response to it, and [12 USCS § 1821\(d\)\(13\)\(D\)](#) leaves no doubt that tenant was required first to comply with statutory procedures detailed in § 1821. *Chisim v. Resolution Trust Corp.*, 783 F. Supp. 361, 1991 U.S. Dist. LEXIS 18397 (N.D. Ill. 1991).

Partnership's claims against RTC as receiver for lender/co-venturer in business park project must be dismissed, where partnership does not contest that claims have not been timely submitted for administrative review, but alleges that RTC did not send them requisite notice of receivership, because exhaustion of administrative remedies is required before claim can be brought in federal district court against RTC under [12 USCS § 1821\(d\)\(6\)\(B\)](#), regardless of RTC's noncompliance with mailing of written notice to out-of-state creditors under § 1821(d)(3)(C). *Glenborough New Mexico Assoc. v. Resolution Trust Corp.*, 802 F. Supp. 387, 1992 U.S. Dist. LEXIS 13603 (D.N.M. 1992).

FDIC is entitled to summary judgment on claim by former president of failed bank, where record shows without dispute that president has not administratively exhausted his claim based on noncompete provisions of employment contract, because participation in administrative claims review process is mandatory for all parties asserting claims against failed institutions under [12 USCS § 1821](#). *Hibyan v. Federal Deposit Ins. Corp.*, 812 F. Supp. 271, 1993 U.S. Dist. LEXIS 1654 (D. Me. 1993).

Claims filed with FDIC receiver for bank's failed subsidiaries by bank's bankruptcy trustee were sufficient to exhaust administrative remedies for all transactions listed in suit, where trustee filed timely administrative claims, FDIC denied claims on general ground that bankruptcy and federal law did not allow recovery, and trustee sued receiver, listing transactions named in claims, plus 7 additional transactions not named in claims, because original claims were sufficient to give FDIC notice and enable it to take fair action, even though not all transactions were specified in claims. *Branch v. FDIC*, 833 F. Supp. 56, 1993 U.S. Dist. LEXIS 13005 (D. Mass. 1993).

Resolution Trust Corporation's (RTC) motion to dismiss contract action by purchaser of assets of failed S&L from RTS as receiver is denied, where purchaser amended original complaint to allege exhaustion of administrative remedies as required by [12 USCS § 1821](#), and purchaser claimed rescission and exemplary damages, because rescission request is merely request for alternative measure of damages under contract and is not barred by [12 USCS § 1821\(j\)](#), while exemplary damage claim in complaint is not stated against RTC, but against other defendants. *Haney v. Castle Meadows, Inc.*, 839 F. Supp. 753, 38 Env't Rep. Cas. (BNA) 1508, 1993 U.S. Dist. LEXIS 17196 (D. Colo. 1993).

Action against failed banks for negligence in "carrying out their fiduciary duties in regard to handling of vehicle titles and dealer accounts" must be dismissed for lack of subject-matter jurisdiction, where pro se plaintiff has never filed

proof of claim against banks, because he has failed to avail himself of administrative process specifically established by Congress in [12 USCS § 1821](#) for determination of claims against failed financial institutions. *Confreda v. Fleet Fin. Group*, 847 F. Supp. 266, 1993 U.S. Dist. LEXIS 20248 (D.R.I.), accepted, adopted, 847 F. Supp. 266, 1993 U.S. Dist. LEXIS 19870 (D.R.I. 1993).

Debtors' action against RTC for release of mortgage is dismissed for failure to exhaust administrative remedies, where mortgagors claim they paid off mortgage with cashier's check to servicing agency, which endorsed check but failed to mark mortgage as "satisfied," even though they received no notice of RTC takeover or administrative claims procedure since they are debtors and not creditors, because Congress clearly made administrative exhaustion of this type of claim mandatory under [12 USCS § 1821\(d\)\(13\)\(D\)](#), and statute of limitation for filing such claim applicable under § 1821(d)(5) and (6), yet provided for notice only to creditors under § 1821(d)(3). [United Steelworkers v. J.D. Eckman, Inc.](#), 858 F. Supp. 56, 147 L.R.R.M. (BNA) 2382, 129 Lab. Cas. (CCH) ¶ 11259, 1994 U.S. Dist. LEXIS 6846 (E.D. Pa. 1994).

Insurer's declaratory judgment action seeking rescission of \$7 million directors' and officers' liability policy issued to failed bank is reinstated, even though insurer did not properly exhaust claim administratively, because administrative claims procedure in [12 USCS § 1821\(d\)](#) applies only to claims of financial institution's creditors, and neither procedure nor jurisdictional bar of § 1821(d)(13)(D) applies to insurer's action. [National Union Fire Ins. Co. v. Midland Bancor](#), 869 F. Supp. 880, 1994 U.S. Dist. LEXIS 17372 (D. Kan. 1994).

Borrower's action for damages against RTC arising out of insolvent bank's management of 2 residential mortgage loans is dismissed, where borrower did not submit claims against bank to RTC for administrative review, and where claims arose both before and after RTC had been appointed receiver, because claims review provisions of FIRREA manifest Congress's intent that RTC should have ability to dispose of bulk of claims against failed financial institutions expeditiously and fairly, so [12 USCS § 1821\(d\)\(13\)\(D\)](#) is properly read to require exhaustion of administrative remedies for both pre- and postreceivership claims. [Prieto v. Standard Fed. Sav. Bank](#), 903 F. Supp. 670, 1995 U.S. Dist. LEXIS 17185 (S.D.N.Y. 1995).

Fact that former bank employee did not assert her Family and Medical Leave Act ([29 USCS §§ 2601](#) et seq.) claims against temporary services agency until after administrative claims deadline had passed did not exempt temporary services agency from requirement that it exhaust its administrative remedies under [12 USCS § 1821\(d\)](#) before filing cross-claim against FDIC, where FDIC had promulgated internal forms that permitted filing of late claims, and temporary services agency did not attempt to file administrative claim even after it was on notice of former bank employee's claims. [Ladd v. Second Nat'l Bank](#), 941 F. Supp. 87, 4 Wage & Hour Cas. 2d (BNA) 1790, 1996 U.S. Dist. LEXIS 14512 (N.D. Ohio 1996).

Federal Deposit Insurance Corporation's (FDIC's) motion for summary judgment on trustees' claims for failure to exhaust remedies under Financial Institutions Reform, Recovery and Enforcement Act, [12 USCS § 1821\(d\)\(6\)](#), was denied where both trustees' and FDIC's affidavits included with reports and correspondences between parties showing that FDIC was aware of trustees' claims, and in some instances even made partial payments to trustees for servicing loans written by lenders. [U.S. Bank Nat'l Ass'n v. First Nat'l Bank](#), 394 F. Supp. 2d 829, 2005 U.S. Dist. LEXIS 34016 (S.D. W. Va. 2005).

Because entities' injuries depended on Federal Deposit Insurance Corporation (FDIC)-Receiver's sale of bank's assets to company, entities could not sue only company since U.S. Const. art. III required that federal court act only to redress injury that fairly could be traced to challenged action of defendant, and not injury that resulted from independent action of some third party not before court; FDIC-Receiver was necessary party because entities' injuries depended on independent intervening sale by FDIC-Receiver; that being case, entities were required to pursue their claims against FDIC-Receiver administratively through exclusive receivership claims process that Congress provided in Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 83 (1989); therefore, because Act's exclusive claims process applied to any claim related to any act or omission of FDIC as receiver for failed bank, [12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#), and entities' claims against company directly related to FDIC-Receiver's "fire sale" of bank's assets, having failed to exhaust that administrative process,

entities' claims were barred by Act. [Am. Nat'l Ins. Co. v. JPMorgan Chase & Co., 705 F. Supp. 2d 17, 2010 U.S. Dist. LEXIS 36487 \(D.D.C. 2010\)](#), rev'd, remanded, [642 F.3d 1137, 395 U.S. App. D.C. 316, 2011 U.S. App. LEXIS 12787 \(D.C. Cir. 2011\)](#).

Motion to decertify class was granted because [Fed. R. Civ. P. 23](#) provided named plaintiffs no power to file administrative "class claim" with Federal Deposit Insurance Corporation (FDIC), and administrative "class claim" did not exhaust administrative remedies of absent class members. [Cassese v. Wash. Mut., Inc., 711 F. Supp. 2d 261, 2010 U.S. Dist. LEXIS 47371 \(E.D.N.Y. 2010\)](#).

Plaintiffs were not excused from exhaustion requirement under FIRREA by FDIC's failure to give individual notice after it took over failed bank as receiver, as statute requiring notice to creditors did not provide penalty for failure to comply, and remedy provided by other provision required only actual notice of receivership, rather than mailed individual notice; further, notice was given to class counsel for then-certified class, and individual notice to each class member was not required under FIRREA or Rules of Professional Conduct. [In re Cnty. Bank of N. Va. Mortg. Lending Practices Litig., 954 F. Supp. 2d 360, 2013 U.S. Dist. LEXIS 90283 \(W.D. Pa. 2013\)](#).

Requirement for exhaustion of administrative remedies prior to seeking judicial relief applied to claim of debtor of failed financial institution, even though debtor was not entitled to notice of administrative claims bar date. [Bloom v. FDIC \(In re First State Bancorporation\), 498 B.R. 322, 2013 Bankr. LEXIS 3891 \(Bankr. D.N.M. 2013\)](#).

43. Exception to exhaustion requirement

Only exception to exhaustion of remedies requirement is where claimant does not receive notice of appointment of receiver in time to file his claim; exception does not apply to claimants who are aware of appointment of receiver but who do not receive notice of filing deadline. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\)](#).

FDIC's failure to provide proper notice does not relieve claimant of obligation to exhaust administrative remedies, because statute does not provide for waiver or exception under such circumstances. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\)](#).

Only exception to exhaustion of remedies requirement is where claimant does not receive notice of appointment of receiver in time to file his claim; exception does not apply to claimants who are aware of appointment of receiver but who do not receive notice of filing deadline. [RTC Mortg. Trust 1994-N2 v. Haith, 133 F.3d 574, 1998 U.S. App. LEXIS 49 \(8th Cir. 1998\)](#).

Unpublished decision: [12 USCS § 1821\(d\)\(13\)\(A\)](#) was not triggered because there was no "unappealable judgment" rendered before Federal Deposit Insurance Corporation's appointment. [Duraney v. FDIC, 388 Fed. Appx. 102, 2010 U.S. App. LEXIS 15982 \(3d Cir. 2010\)](#).

Unpublished decision: [12 USCS § 1821\(d\)\(5\)\(F\)\(ii\)](#) was inapplicable because Federal Deposit Insurance Corporation (FDIC) did not base its jurisdictional argument on fact that plaintiff filed unrelated claim with FDIC. [Duraney v. FDIC, 388 Fed. Appx. 102, 2010 U.S. App. LEXIS 15982 \(3d Cir. 2010\)](#).

44. "Claims" and "actions"

"Claim," as used in [12 USCS § 1821\(d\)\(13\)\(D\)](#), does not include claim which arises from management actions of RTC after taking over depository institution. [Homeland Stores v. Resolution Trust Corp., 17 F.3d 1269, 1994 U.S. App. LEXIS 3126 \(10th Cir.\)](#), cert. denied, 513 U.S. 928, 115 S. Ct. 317, 130 L. Ed. 2d 279, 1994 U.S. LEXIS 7106 (1994).

Words "claim" and "action" as used in [12 USCS § 1821\(d\)\(13\)\(D\)](#) do not encompass affirmative defenses; thus, district court has jurisdiction over affirmative defenses to claim by RTC that were not first presented to RTC for determination. [Resolution Trust Corp. v. Love, 36 F.3d 972, 1994 U.S. App. LEXIS 27000 \(10th Cir. 1994\)](#).

Phrase “any action seeking a determination of rights” contained in [12 USCS § 1821\(d\)\(13\)\(D\)](#) includes complaints requesting declaratory relief; thus, plaintiff’s request for declaratory relief does not render exhaustion requirement inapplicable. [Tri-State Hotels v. FDIC, 79 F.3d 707, 1996 U.S. App. LEXIS 4938 \(8th Cir. 1996\)](#).

[12 USCS § 1821\(d\)\(13\)\(D\)\(ii\)](#) bars only claims that relate to act or omission of failed bank of Federal Deposit Insurance Corporation (FDIC)-as-receiver; in Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), word “claim” is term-of-art that refers only to claims that are resolvable through FIRREA administrative process, and only claims that are resolvable through administrative process are claims against depository institution for which FDIC is receiver. [Am. Nat'l Ins. Co. v. FDIC, 642 F.3d 1137, 395 U.S. App. D.C. 316, 2011 U.S. App. LEXIS 12787 \(D.C. Cir. 2011\)](#), dismissed, [164 F. Supp. 3d 104, 2016 U.S. Dist. LEXIS 27639 \(D.D.C. 2016\)](#).

When shareholders of failed bank’s holding company sued company and company’s officers and directors, and Federal Deposit Insurance Corporation (FDIC) intervened, most claims belonged to FDIC because Financial Institutions Reform, Recovery, and Enforcement Act of 1989 gave FDIC all holding company’s rights in claims, as claims were derivative, under Utah law, since no harm to holding company distinct from harm to bank was alleged. [Barnes v. Harris, 783 F.3d 1185, 2015 U.S. App. LEXIS 6629 \(10th Cir. 2015\)](#).

Home owners’ assertion that their claims could not be resolved through administrative process of Financial Institutions Reform, Recovery and Enforcement Act of 1989, such that their failure to exhaust those remedies was not bar to their judicial claims, lacked merit because claims for declaratory judgment were accommodated by administrative process under Act. [Willner v. Dimon, 849 F.3d 93, 2017 U.S. App. LEXIS 2737 \(4th Cir. 2017\)](#).

Debtor’s affirmative defenses to RTC’s suit to collect on note must be stricken, despite debtor’s contention that its affirmative defenses addressing defects with loan at its inception are not “claims” subject to administrative exhaustion requirements of [12 USCS § 1821\(d\)](#), because all these defenses could have been affirmatively asserted and are “claims” consistent with specific language of § 1821(d)(13)(D) and legislative purpose behind enactment of exhaustion requirement. [Resolution Trust Corp. v. Tri-State Realty Investors, 838 F. Supp. 1448, 1993 U.S. Dist. LEXIS 17263 \(D. Kan. 1993\)](#).

Neither Financial Industry Reform and Recovery Act (FIRREA) nor Federal Rule of Civil Procedure pertaining to class actions authorized claims against FDIC to be filed on class-wide basis; further, Rules Enabling Act prohibited Federal Rules from expanding substantive rights. [In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig., 954 F. Supp. 2d 360, 2013 U.S. Dist. LEXIS 90283 \(W.D. Pa. 2013\)](#).

Bankruptcy debtor’s claim for equitable subordination of claim of successor to bank in receivership was not barred by debtor’s failure to exhaust administrative remedies, since equitable subordination was not issue which could be resolved in administrative process. [Settlers' Hous. Serv. v. Schaumburg Bank & Trust Co. \(In re Settlers' Hous. Serv.\), 540 B.R. 624, 2015 Bankr. LEXIS 3720 \(Bankr. N.D. Ill. 2015\)](#).

45. Counterclaims

[12 USCS § 1821\(d\)\(13\)\(D\)](#) divests district courts of jurisdiction over both claims and counterclaims against Resolution Trust Corporation until claimants have exhausted administrative procedures created by FIRREA; thus, fact that pleading is labeled counterclaim does not avoid jurisdictional limitations imposed by FIRREA. [Resolution Trust. Corp. v. Midwest Fed. Sav. Bank, 36 F.3d 785, 94 Cal. Daily Op. Service 7273, 94 D.A.R. 13381, 1993 U.S. App. LEXIS 38148 \(9th Cir. 1993\)](#).

Counterclaimant may not press claims in interpleader action against FDIC as receiver for bank holding savings account, where counterclaimant never filed claim with FDIC pursuant to administrative process described in [12 USCS § 1821\(d\)](#), because failure to exhaust administrative remedies deprives court of jurisdiction. [United Bank of Waco, N.A. v. First Republic Bank, N.A., 758 F. Supp. 1166, 1991 U.S. Dist. LEXIS 5558 \(W.D. Tex. 1991\)](#).

Affirmative defenses/counterclaims of former officers and directors of failed federal bank are dismissed at behest of FDIC, where claims of contributory negligence, failure to mitigate damages, and estoppel all relate to post-takeover

actions of federal banking agencies and regulators, because claimants must first present claims to RTC through administrative scheme under [12 USCS § 1821\(d\). Federal Sav. & Loan Ins. Corp. v. Shelton, 789 F. Supp. 1367, 1992 U.S. Dist. LEXIS 5581 \(M.D. La. 1992\)](#).

Limited partners' counterclaim against Resolution Trust Corporation for breach of contract and breach of covenant of good faith and fair dealing is dismissed pursuant to [12 USCS § 1821\(d\)\(13\)\(D\)](#), where RTC, as receiver for savings association, filed suit against limited partners after partnership failed to comply with demand for payment on letter of credit issued by savings association, because failed negotiations between RTC and limited partners does not satisfy limited partners' duty to exhaust their administrative remedies. [Resolution Trust Corp. v. Wayne Coliseum Ltd. Partnership, 793 F. Supp. 900, 1992 U.S. Dist. LEXIS 6794 \(D. Minn. 1992\)](#).

Affirmative defenses and counterclaims by owners of realty sought to be foreclosed upon by FDIC must be dismissed for lack of jurisdiction in Maine, where all relate to acts or omissions of depository institution for which FDIC has been appointed receiver within meaning of [12 USCS § 1821\(d\)\(13\)\(D\)](#), because jurisdictional exclusions of § 1821(d)(6)(A) make jurisdiction over these claims proper only in D.C. District or district in which depository institution was located—Massachusetts. [FDIC v. Rusconi, 796 F. Supp. 581, 1992 U.S. Dist. LEXIS 8667 \(D. Me.\)](#), vacated, remanded, [808 F. Supp. 30, 1992 U.S. Dist. LEXIS 18323 \(D. Me. 1992\)](#).

Borrowers' counterclaims are barred by their failure to exhaust administrative remedies, regardless of fact that counterclaims were interposed against lender before FDIC was appointed receiver for lender, because claims were not presented to FDIC for review in timely fashion pursuant to [12 USCS § 1821\(d\)\(3\). Federal Deposit Ins. Corp. v. Vernon Real Estate Invest., Ltd., 798 F. Supp. 1009, 1992 U.S. Dist. LEXIS 11097 \(S.D.N.Y. 1992\)](#).

District court lacks jurisdiction to hear counterclaims for indemnification for against Resolution Trust Corporation (RTC), where RTC, as receiver for failed savings and loan, had sued to recover damages against savings and loan's former officers and directors, because pursuant to [12 USCS § 1821\(d\)\(13\)\(D\)](#) court may not hear claims for payment from institution under RTC receivership or claims relating to acts or omissions of RTC as receiver unless claimant has first completed administrative process. [Resolution Trust Corp. v. Youngblood, 807 F. Supp. 765, 1992 U.S. Dist. LEXIS 20815 \(N.D. Ga. 1992\)](#).

Affirmative defenses and counterclaims asserted by borrowers are not properly before court, where borrowers have not yet presented claims administratively to FDIC, because [12 USCS § 1821\(d\)\(13\)\(D\)](#) constitutes mandatory exhaustion requirement/jurisdictional bar, and FDIC does not waive such requirement by failing to provide notice in accordance with § 1821(d)(3)(B)-(C). [FDIC v. Updike Bros., 814 F. Supp. 1035, 1993 U.S. Dist. LEXIS 2168 \(D. Wyo. 1993\)](#).

Tenant's counterclaims against Federal Deposit Insurance Corporation (FDIC) acting as receiver for landlord are dismissed, where FDIC sued tenant to recover unpaid rents and tenant counterclaimed for cost incurred to clean, repair, and maintain parking and common areas, where tenant did not exhaust mandatory administrative review process as required by [12 USCS § 1821\(d\)\(3\)\(13\)](#), because court lacked subject-matter jurisdiction over counterclaims; matter is put on court's suspense docket until administrative review procedure is concluded. [FDIC v. Wilson's Famous Blue Ribbon Meats, 835 F. Supp. 245, 1993 U.S. Dist. LEXIS 14421 \(E.D. Pa. 1993\)](#).

FDIC is not entitled to dismissal of counterclaim by president of failed S&L, where FDIC was receiver for bank which lent president money to buy building for his S&L, S&L became insolvent, Resolution Trust Corporation became its receiver, FDIC demanded rent payments, RTC insisted on placing rents in escrow, FDIC foreclosed on building, and president claims that conflict between FDIC and RTC deprived him of chance to cure default, because FDIC's decision to sue president is de facto denial of president's claim, and president's counterclaim is not subject to jurisdictional bar for failure to file administrative claim. [FDIC v diStefano 839 F. Supp. 110 \(DC RI 1993\)](#).

Guarantors may not raise Equal Credit Opportunity Act (ECOA), [15 USCS §§ 1691 et seq.](#), as defense to action to enforce loan guarantee, where bank made business loan to partnership, partners signed guarantee of loan, and wife of one partner, who was uninvolved in business, also signed as guarantor, bank became insolvent, Resolution Trust Company (RTC) became receiver, and guarantors did not make claim against RTC for ECOA violation within

time limit, and RTC sued guarantors to recover loan, because ECOA claim, whether counterclaim or affirmative defense, is subject to exhaustion requirement of [12 USCS § 1821\(d\)\(13\)\(D\). Resolution Trust Corp. v. Laskin, 843 F. Supp. 1008, 1994 U.S. Dist. LEXIS 4086 \(D. Md. 1994\).](#)

Fraud and breach-of-contract counterclaims against FDIC are dismissed without prejudice for lack of federal subject-matter jurisdiction, where claims have not been presented for administrative resolution, because exhaustion of administrative remedies is required and stay is not warranted for claim filed after receivership. [FDIC v. James J. Madden, Inc., 847 F. Supp. 374, 1994 U.S. Dist. LEXIS 4382 \(D. Md. 1994\).](#)

Assertion of setoff as affirmative defense against FDIC must fail, where setoff, properly considered under New Jersey law, is not affirmative defense but rather counterclaim, because debtor failed to follow administrative claims procedures mandated by [12 USCS § 1821\(d\)](#), despite receiving proper notice from FDIC. [FDIC v. Modular Homes, 859 F. Supp. 117, 30 Fed. R. Serv. 3d \(Callaghan\) 901, 1994 U.S. Dist. LEXIS 10626 \(D.N.J. 1994\).](#)

Counterclaim filed against FDIC, alleging misrepresentation and fraudulent inducement in connection with indemnification agreement executed by counterclaimants in favor of bank for whom FDIC was appointed receiver, is dismissed, where underlying lawsuit and counterclaim were filed prior to receivership, because counterclaimants did not stay court proceedings and file administrative claim and because they had no valid excuse for failure to exhaust administrative remedies, so court lacks jurisdiction over claim. [Guglielmi v. FDIC, 863 F. Supp. 54, 1994 U.S. Dist. LEXIS 13979 \(D.R.I. 1994\).](#)

Defendants' counterclaim against Resolution Trust Corporation (RTC) as receiver of failed savings and loan is dismissed, where defendants were notified of RTC's appointment as receiver and of RTC administrative claim review processes but failed to comply with requirement in [12 USCS § 1821\(d\)\(13\)\(D\)](#) that claims be submitted to administrative process, because such failure divests court of subject-matter jurisdiction. [Resolution Trust Corp. v. Kolea, 866 F. Supp. 197, 1994 U.S. Dist. LEXIS 14471 \(E.D. Pa. 1994\).](#)

Court lacks jurisdiction under [12 USCS § 1821\(d\)\(13\)\(D\)](#) to hear borrower's allegations of Equal Credit Opportunity Act (ECOA) ([15 USCS §§ 1691](#) et seq.) violations by failed bank, where preprinted proof of loss with counterclaim attached was submitted to RTC in timely manner but failed to mention ECOA violation, because allegations of ECOA violations, even if presented as affirmative defenses, are within scope of § 1821(d)(13)(D)'s mandatory administrative claim requirements. [Resolution Trust Corp. v. A.W. Assocs., 869 F. Supp. 1503, 27 U.C.C. Rep. Serv. 2d \(CBC\) 478, 1994 U.S. Dist. LEXIS 17377 \(D. Kan. 1994\).](#)

In case arising from foreclosure in which homeowner had asserted counterclaims and Federal Deposit Insurance Corporation (FDIC), as receiver for failed bank, filed motion to dismiss counterclaims, while Federal Institutions Reform, Recovery and Enforcement Act of 1989 did not contain exception that applied to owner's counterclaims in case, dismissal would be without prejudice; if owner filed his claims with FDIC, even after statutory period for filing had run, district court could ultimately exercise subject matter jurisdiction over claims since statutory time limit for administrative filing served only as statute of limitations type of defense. [IndyMac Bank, F.S.B. v. MacPherson, 672 F. Supp. 2d 313, 2009 U.S. Dist. LEXIS 112448 \(E.D.N.Y. 2009\).](#)

46. Affirmative defenses

[12 USCS § 1821\(d\)\(13\)\(D\)](#) does not divest district court of jurisdiction over affirmative defenses, such as mutual mistake; thus, district court has subject matter jurisdiction over affirmative defenses raised by defendant who, prior to being sued by RTC, was not creditor of RTC and who had no independent basis for filing claim against RTC, even though defendant had not exhausted administrative procedures established by FIRREA. [Resolution Trust Corp. v. Midwest Fed. Sav. Bank, 36 F.3d 785, 94 Cal. Daily Op. Service 7273, 94 D.A.R. 13381, 1993 U.S. App. LEXIS 38148 \(9th Cir. 1993\).](#)

Newly discovered creditors (i.e. those discovered after bar date) having knowledge of appointment of FDIC as receiver, who fail to file their claims with FDIC within time specified in notice regarding presentation of claims that must be sent to such creditors within thirty days of their discovery ([12 USCS § 1821\(d\)\(3\)\(C\)\(ii\)](#)), are not barred

from bringing suit in district court to challenge FDIC's disallowance of their claims, since filing period established in notice is not jurisdictional; however, noncompliance with filing period may be raised as affirmative defense. [Carlyle Towers Condo. Ass'n. v. FDIC, 170 F.3d 301, 1999 U.S. App. LEXIS 4021 \(2d Cir. 1999\)](#).

Affirmative defense (i.e. response to plaintiff's claim which attacks plaintiff's legal right to bring action) is not subject to administrative exhaustion requirement of [12 USCS § 1821\(d\)\(13\)\(D\)](#). *American First Fed., Inc. v. Lake Forest Park, Inc.*, 198 F.3d 1259, 13 Fla. L. Weekly Fed. C 330, 1999 U.S. App. LEXIS 33623 (11th Cir. 1999).

Affirmative defense (i.e. response to plaintiff's claim which attacks plaintiff's legal right to bring action) is not subject to administrative exhaustion requirement of [12 USCS § 1821\(d\)\(13\)\(D\)](#). *American First Fed., Inc. v. Lake Forest Park, Inc.*, 198 F.3d 1259, 13 Fla. L. Weekly Fed. C 330, 1999 U.S. App. LEXIS 33623 (11th Cir. 1999).

Home owners' assertions that they had asserted affirmative defenses rather than claims that were outside ambit of exhaustion requirement under Financial Institutions Reform, Recovery and Enforcement Act of 1989 lacked merit, as each request for declaratory judgment was claim rather than affirmative defense. [Willner v. Dimon, 849 F.3d 93, 2017 U.S. App. LEXIS 2737 \(4th Cir. 2017\)](#).

Affirmative defenses/counterclaims of former officers and directors of failed federal bank are dismissed at behest of FDIC, where claims of contributory negligence, failure to mitigate damages, and estoppel all relate to post-takeover actions of federal banking agencies and regulators, because claimants must first present claims to RTC through administrative scheme under [12 USCS § 1821\(d\)](#). *Federal Sav. & Loan Ins. Corp. v. Shelton, 789 F. Supp. 1367, 1992 U.S. Dist. LEXIS 5581 (M.D. La. 1992)*.

Affirmative defenses and counterclaims by owners of realty sought to be foreclosed upon by FDIC must be dismissed for lack of jurisdiction in Maine, where all relate to acts or omissions of depository institution for which FDIC has been appointed receiver within meaning of [12 USCS § 1821\(d\)\(13\)\(D\)](#), because jurisdictional exclusions of § 1821(d)(6)(A) make jurisdiction over these claims proper only in D.C. District or district in which depository institution was located—Massachusetts. [FDIC v. Rusconi, 796 F. Supp. 581, 1992 U.S. Dist. LEXIS 8667 \(D. Me.\)](#), vacated, remanded, [808 F. Supp. 30, 1992 U.S. Dist. LEXIS 18323 \(D. Me. 1992\)](#).

Attorney for failed savings and loan may not maintain affirmative defenses against FDIC based on FDIC's conduct first as regulator then as receiver of savings and loan, where attorney claimed that FDIC's negligence caused failure of institution, was guilty of contributory negligence as receiver, and failed to mitigate damages from attorney's alleged misconduct, because attorney must first exhaust administrative remedies before bringing counterclaim pursuant to [12 USCS § 1821\(d\)\(13\)\(D\)](#). *Federal Sav. & Loan Ins. Corp. v. McGinnis, Juban, Bevan Mullins & Patterson, P.C., 808 F. Supp. 1263, 1992 U.S. Dist. LEXIS 17925 (M.D. La. 1992)*.

Former directors and officers of savings and loan are not entitled to defense of failure to mitigate damages in action by Resolution Trust Corporation (RTC), where assertion of defense would violate public policy by distracting factfinder's attention from deeds of directors and officers of failed financial institution to actions of institution's receiver, because, under [12 USCS § 1821\(d\)\(13\)\(D\)](#), court may not entertain any claim with respect to assets of institution for which RTC is receiver, or any claim relating to RTC's actions as receiver. [Resolution Trust Corp. v. Scaletty, 810 F. Supp. 1505, 1992 U.S. Dist. LEXIS 15424 \(D. Kan. 1992\)](#).

Affirmative defenses and counterclaims asserted by borrowers are not properly before court, where borrowers have not yet presented claims administratively to FDIC, because [12 USCS § 1821\(d\)\(13\)\(D\)](#) constitutes mandatory exhaustion requirement/jurisdictional bar, and FDIC does not waive such requirement by failing to provide notice in accordance with § 1821(d)(3)(B)–(C). [FDIC v. Updike Bros., 814 F. Supp. 1035, 1993 U.S. Dist. LEXIS 2168 \(D. Wyo. 1993\)](#).

Defendants' affirmative defenses against Resolution Trust Corporation in its corporate capacity are not stricken for lack of subject-matter jurisdiction, because affirmative defenses are not "claims" as term is used in [12 USCS § 1821\(D\)\(13\)\(D\)](#), since affirmative defense is not action seeking determination of rights. *Resolution Trust Corp. v. Conner, 817 F. Supp. 98, 1993 U.S. Dist. LEXIS 15067 (W.D. Okla. 1993)*.

RTC is granted partial summary judgment as to affirmative defenses of contributory negligence or failure to mitigate, where RTC, as receiver for failed savings association, is suing former directors and shareholders, because those defenses are based upon conduct of federal banking agencies, and defendants have failed to exhaust administrative remedies regarding those claims. [Resolution Trust Corp. v. Vestal, 838 F. Supp. 305, 1993 U.S. Dist. LEXIS 16139 \(E.D. Tex. 1993\).](#)

Debtor's affirmative defenses to RTC's suit to collect on note must be stricken, despite debtor's contention that its affirmative defenses addressing defects with loan at its inception are not "claims" subject to administrative exhaustion requirements of [12 USCS § 1821\(d\)](#), because all these defenses could have been affirmatively asserted and are "claims" consistent with specific language of § 1821(d)(13)(D) and legislative purpose behind enactment of exhaustion requirement. [Resolution Trust Corp. v. Tri-State Realty Investors, 838 F. Supp. 1448, 1993 U.S. Dist. LEXIS 17263 \(D. Kan. 1993\).](#)

Claim of FDIC, as receiver for insolvent bank, against guarantor of debt is granted summarily, where guarantor raised several affirmative defenses to bank's original counterclaim, but where guarantor failed to comply with requirements of administrative claims procedure of [12 USCS § 1821\(d\)](#), because court lacks subject matter jurisdiction over affirmative defenses. [FDIC v. Barnaby, 839 F. Supp. 935, 1993 U.S. Dist. LEXIS 17954 \(D. Me. 1993\).](#)

Guarantors may not raise Equal Credit Opportunity Act (ECOA), [15 USCS §§ 1691](#) et seq., as defense to action to enforce loan guarantee, where bank made business loan to partnership, partners signed guarantee of loan, and wife of one partner, who was uninvolved in business, also signed as guarantor, bank became insolvent, Resolution Trust Company (RTC) became receiver, and guarantors did not make claim against RTC for ECOA violation within time limit, and RTC sued guarantors to recover loan, because ECOA claim, whether counterclaim or affirmative defense, is subject to exhaustion requirement of [12 USCS § 1821\(d\)\(13\)\(D\)](#). [Resolution Trust Corp. v. Laskin, 843 F. Supp. 1008, 1994 U.S. Dist. LEXIS 4086 \(D. Md. 1994\).](#)

Loan guarantors' affirmative defenses are dismissed in part and allowed in part, where lender sued guarantors, Resolution Trust Company became receiver for insolvent lender, and guarantors asserted affirmative defenses of lack of consideration and violation of Equal Credit Opportunity Act, because guarantors did not file [12 USCS § 1821\(d\)\(13\)\(D\)](#) claim with RTC, defenses are independent actions, and so are subject to administrative filing requirement; defenses of waiver, estoppel, and failure to join parties or to state claim are not independent causes of action and are not subject to [12 USCS § 1821\(d\)\(13\)\(D\)](#). [Resolution Trust Corp. v. Schonacher, 844 F. Supp. 689, 1994 U.S. Dist. LEXIS 2241 \(D. Kan. 1994\).](#)

Assertion of setoff as affirmative defense against FDIC must fail, where setoff, properly considered under New Jersey law, is not affirmative defense but rather counterclaim, because debtor failed to follow administrative claims procedures mandated by [12 USCS § 1821\(d\)](#), despite receiving proper notice from FDIC. [FDIC v. Modular Homes, 859 F. Supp. 117, 30 Fed. R. Serv. 3d \(Callaghan\) 901, 1994 U.S. Dist. LEXIS 10626 \(D.N.J. 1994\).](#)

In action by FDIC, as receiver, against debtor and guarantor to collect on promissory notes, defendants' UCC-based defenses are not barred by [12 USCS § 1821\(d\)\(13\)\(D\)](#), because this jurisdictional limitation applies only to creditors bringing claims against FDIC, not to debtors being sued by FDIC. [FDIC v. Wrapwell Corp., 922 F. Supp. 913, 1996 U.S. Dist. LEXIS 4627 \(S.D.N.Y. 1996\).](#)

[12 USCS § 1821](#) did not prevent note maker and guarantors from invoking defense in assignee's suit to recover on lost note, where FDIC no longer held note, because court's recognition of defense would not impair FDIC's functions, and statute was not intended to prevent defendants from raising affirmative defenses to suits brought by FDIC or those purporting to stand in its shoes. [Dennis Joslin Co., LLC v. Robinson Broadcasting Corp., 977 F. Supp. 491, 33 U.C.C. Rep. Serv. 2d \(CBC\) 1170, 1997 U.S. Dist. LEXIS 14725 \(D.D.C. 1997\).](#)

Insurer's Third Affirmative Defense was not barred by [12 USCS § 1821\(d\)\(13\)\(D\)](#); true "response" in defense to FDIC claim was permissible. [FDIC v. Onebeacon Midwest Ins. Co., 883 F. Supp. 2d 754, 2012 U.S. Dist. LEXIS 94922 \(N.D. Ill. 2012\).](#)

Although jurisdictional bar of claims not exhausted administratively in bankruptcy debtor's federal receivership as financial institution applied to affirmative monetary claim of fraudulent transfer against receiver based on debtor's obligations under alleged capital maintenance guaranty, bar did not apply to bankruptcy trustee's non-monetary claim to avoid liability asserted defensively in response to claim filed by receiver against bankruptcy estate. [Bloom v. FDIC \(In re First State Bancorporation\)](#), 498 B.R. 322, 2013 Bankr. LEXIS 3891 (Bankr. D.N.M. 2013).

Bankruptcy debtor's claims against successor to bank in receivership for bank's alleged misconduct related to fraud were not barred by debtor's failure to exhaust administrative remedies, since claims were akin to affirmative defenses to successor's claim against bankruptcy estate. [Settlers' Hous. Serv. v. Schaumburg Bank & Trust Co. \(In re Settlers' Hous. Serv.\)](#), 540 B.R. 624, 2015 Bankr. LEXIS 3720 (Bankr. N.D. Ill. 2015).

While [12 USCS § 1821](#) jurisdictional bar divested district court of jurisdiction to consider claims and counterclaims against successor in interest to FDIC, it did not apply to defenses or affirmative defenses raised by debtor in response to lender's claim for collection; debtor may be able to demonstrate that he was entitled to recoup against any amount awarded lender on its claims, up to amount awarded. [Schettler v. RalRon Capital Corp.](#), 128 Nev. 209, 275 P.3d 933, 2012 Nev. LEXIS 55 (Nev. 2012).

47. Suits filed prior to receivership

When party has filed suit against depository institution before RTC is appointed receiver, party may not pursue his administrative and judicial remedies concurrently; rather, stay should be granted to allow claimant to exhaust his administrative remedies. [Carney v. Resolution Trust Co.](#), 10 F.3d 1164, 1994 U.S. App. LEXIS 550 (5th Cir.), op. withdrawn, sub. op., remanded, [19 F.3d 950, 1994 U.S. App. LEXIS 7469 \(5th Cir. 1994\)](#).

There are differences between pre-receivership and post-receivership claims, and because subject matter jurisdiction is tested as of time of filing of complaint, district courts presiding over actions properly filed prior to appointment of RTC as receiver continue to be vested with jurisdiction; however, situation differs when RTC is appointed as receiver before filing of action against failed financial institution, as FIRREA contains no provision granting federal jurisdiction to claims filed after receiver is appointed but before administrative exhaustion. [Whatley v. Resolution Trust Corp.](#), 32 F.3d 905, 1994 U.S. App. LEXIS 24467 (5th Cir.), reh'g, en banc, denied, [38 F.3d 760, 1994 U.S. App. LEXIS 31600 \(5th Cir. 1994\)](#).

Federal courts do not have exclusive jurisdiction over suits against RTC as receiver for failed savings and loan, where suits were filed in state court prior to RTC's appointment as receiver; thus, state courts retain concurrent jurisdiction to hear and determine claims filed against savings and loan prior to RTC's appointment as receiver. [Holmes Fin. Assocs. v. Resolution Trust Corp.](#), 33 F.3d 561, 1994 FED App. 0289P, 1994 U.S. App. LEXIS 22294 (6th Cir. 1994).

In suit filed against credit card issuer prior to its receivership, credit card holder's claims were either barred, unpreserved, or unpersuasive; thus, it made no sense to return his case to Federal Deposit Insurance Corporation for administrative proceedings under [12 USCS § 1821\(d\)\(3\)](#) to (13), followed by review in federal court once again, pursuant to [12 USCS § 1821\(d\)\(7\)\(A\)](#). [Yeomalakis v. FDIC](#), 562 F.3d 56, 2009 U.S. App. LEXIS 6924 (1st Cir. 2009).

Where plaintiff borrowers' appealed district court's rejection of their federal and state claims against defendant federal savings association lender and after appellate briefing was closed Federal Deposit Insurance Corporation (FDIC) was appointed as receiver for lender, jurisdiction-stripping provisions of [12 USCS § 1821\(d\)\(6\)\(B\)\(ii\)](#), (13)(D), did not apply because FDIC had requested and received stay of limited duration, borrowers timely filed their administrative claims, and stay expired of its own terms; no further action was required by rule or order of court to "continue" appeal. [Molosky v. Wash. Mut., Inc.](#), 664 F.3d 109, 2011 FED App. 0322N, 2011 U.S. App. LEXIS 25436 (6th Cir. 2011).

Action against insolvent bank will be dismissed without prejudice, where FDIC has been substituted as receiver for bank, because [12 USCS § 1821\(d\)\(13\)\(D\)](#) expressly divests court of jurisdiction over "any claim or action for

payment from, or any action seeking determination of rights with respect to, assets of any depository institution for which FDIC has been appointed receiver" until mandated administrative process has been exhausted. [Everett N. Dobson & Sons, Inc. v. Dictar Assoc. II, 764 F. Supp. 1, 1991 U.S. Dist. LEXIS 6973 \(D. Me. 1991\)](#).

Officers of developer who claimed that bank employee forged their signatures on personal guarantees may bring action against FDIC as receiver of bank without first complying with administrative claims procedures established by [12 USCS § 1821\(d\)\(5\)](#), where officers filed suit against bank one month prior to FDIC's appointment as receiver, because congressional scheme as outlined in § 1821(d) allows claimant to pursue either exclusively or simultaneously administrative claims process and court process. [Federal Deposit Ins. Corp. v. Grillo, 788 F. Supp. 641, 1992 U.S. Dist. LEXIS 10943 \(D.N.H. 1992\)](#).

Borrower's action for loan increase must be dismissed, where FDIC has taken over as receiver for lender, which apparently internally approved increase but never closed and executed extension due to receivership, because [12 USCS § 1821\(d\)\(9\)\(A\)](#) bars actions against FDIC-Receiver based on agreements not in compliance with [12 USCS § 1823\(e\)](#) requirements. [Franklin Asaph Ltd. Partnership v. Federal Deposit Ins. Corp., 794 F. Supp. 402, 1992 U.S. Dist. LEXIS 5968 \(D.D.C. 1992\)](#).

Negligence suit against bank which allowed allegedly unauthorized withdrawal of some \$72,000 from decedent's bank accounts is dismissed without prejudice, where OTS appointed RTC receiver for bank 4 days after filing of suit, because [12 USCS § 1821\(d\)\(13\)\(D\)](#) divested court of subject matter jurisdiction over claim once bank entered federal receivership, pending exhaustion of administrative remedies. [Green v. Resolution Trust Corp., 794 F. Supp. 409, 1992 U.S. Dist. LEXIS 11171 \(D.D.C. 1992\)](#).

Mechanics' lien actions against bank whose principal place of business is outside state will not be dismissed under [12 USCS § 1821\(d\)\(6\)](#), where during pendency of action bank went into receivership by FDIC which removed actions to federal court, because language in § 1821(d) limiting venue for newly filed claims does not apply to previously filed actions continued after exhaustion of administrative process. [Aliberti, Larochelle & Hodson Engineering Corp. v. First Meridian Group, 795 F. Supp. 42, 1992 U.S. Dist. LEXIS 11350 \(D. Me. 1992\)](#).

Claims against insolvent bank will not be dismissed upon motion of FDIC, now acting as bank's receiver, where claims were pending long before FDIC was substituted for bank and FDIC's notice to claimants about filing administrative claims was misleading or at least ambiguous, because [12 USCS § 1821\(d\)\(5\)](#), (6), and (13) do not require dismissal of pre-filed cases for failure to file later redundant claim with FDIC. [Wilson v. FDIC, 827 F. Supp. 120, 1993 U.S. Dist. LEXIS 9816 \(E.D.N.Y. 1993\)](#).

Guarantors' claim to prohibit FDIC from collecting on loan guarantee will not be dismissed for lack of subject-matter jurisdiction, despite FDIC's argument that [12 USCS § 1821\(d\)\(13\)\(D\)](#) strips court of jurisdiction over asserted claim that was pending before FDIC took over as receiver for lender, because § 1821(d) also gives court jurisdiction to hear "continued" case after claimant timely files administrative claim with FDIC. [United States v. Chorice, 857 F. Supp. 672, 1994 U.S. Dist. LEXIS 9880 \(W.D. Mo. 1994\)](#).

Although bank filed action against defendants before Federal Deposit Insurance Corporation (FDIC) was appointed as receiver for bank, defendants forfeited their right to pursue any counterclaims against failed bank's assets in any court because defendants received proper notice of receivership through published notices in local newspapers and notices sent to their homes and their counsel, and defendants failed to exhaust mandatory administrative claims process set forth in [12 USCS § 1821\(d\)\(13\)\(D\)](#). [FDIC v. Ben. Mortg. Corp., 858 F. Supp. 2d 196, 2012 U.S. Dist. LEXIS 58892 \(D.P.R. 2012\)](#).

Bankruptcy court lacked jurisdiction under [12 USCS § 1821\(d\)\(13\)\(D\)](#) to hear Chapter 7 trustee's claims against Federal Deposit Insurance Corporation (FDIC), alleging that bank that was in receivership was used by individual to facilitate fraudulent transfers Chapter 7 debtor made to LLC, in violation of [11 USCS § 548](#); although trustee filed adversary proceeding against LLC before bank was placed into receivership, he did not file amended complaint which named FDIC as defendant until after bank was placed into receivership, and under Sixth Circuit precedent amended complaint did not relate back to date of original complaint under [Fed. R. Civ. P. 15\(c\)](#); as such, trustee

had to seek recovery from FDIC in federal district court under [12 USCS § 1821\(d\)\(6\)\(A\). Jahn v. Bedford Consulting Group, LLC \(In re U.S. Ins. Group, LLC\), 441 B.R. 294, 53 Bankr. Ct. Dec. \(LRP\) 196, 2010 Bankr. LEXIS 2904 \(Bankr. E.D. Tenn. 2010\)](#).

Statutory administrative claims procedure is not jurisdictional bar to pre-receivership litigation; statute provides separate scheme with respect to litigation pending at time receivership is initiated. [Coast-To-Coast Fin. Corp. v. United States, 51 Fed. Cl. 358, 2002 U.S. Claims LEXIS 1 \(Fed. Cl. Jan. 7, 2002\)](#).

E. Statute of Limitations

48. Generally

FIRREA's six-year statute of limitations for filing of contract claims may be applied retroactively. [Federal Deposit Ins. Corp. v. New Hampshire Ins. Co., 953 F.2d 478, 91 D.A.R. 16157, 1991 U.S. App. LEXIS 30071 \(9th Cir. 1991\)](#), reported in full, [92 Cal. Daily Op. Service 1518, 92 D.A.R. 2473, 1992 U.S. App. LEXIS 2372 \(9th Cir. 1992\)](#).

Even if [12 USCS § 1821\(k\)](#) provides federal source for gross negligence cause of action by RTC against former officers and directors of failed bank, state limitation and tolling rules must still be consulted before determining whether § 1821(d)(14)(A)'s limitation applies. [Resolution Trust Corp. v. Artley, 28 F.3d 1099, 8 Fla. L. Weekly Fed. C 742, 1994 U.S. App. LEXIS 21327 \(11th Cir. 1994\)](#).

Statute of limitations provided in [12 USCS § 1821\(d\)\(14\)](#) does not revive claims which are already barred by state statute of limitations when they are acquired by RTC. [Resolution Trust Corp. v. Armbruster, 52 F.3d 748, 1995 U.S. App. LEXIS 8058 \(8th Cir. 1995\)](#).

[FRCP 6\(a\)](#), which provides that day of act, event or default from which designated period of time begins to run is not to be included in computing period of time, is not applicable to statute of limitations provided in [12 USCS § 1821\(d\)\(14\)\(A\)](#), because [12 USCS § 1821\(d\)\(14\)\(B\)](#) specifically provides that statute of limitations begins to run on date FDIC is appointed conservator or receiver or date cause of action accrues, whichever is later. [FDIC v. Enventure V, 77 F.3d 123, 34 Fed. R. Serv. 3d \(Callaghan\) 469, 1996 U.S. App. LEXIS 4233 \(5th Cir.\)](#), reh'g, en banc, denied, 91 F.3d 142, 1996 U.S. App. LEXIS 17706 (5th Cir. 1996).

[12 USCS § 1821\(d\)\(14\)](#) establishes six-year limitations period for suit by FDIC to collect on note, regardless of otherwise applicable state statute of limitations. [Cadle Co. v. 1007 Joint Venture, 82 F.3d 102, 1996 U.S. App. LEXIS 9663 \(5th Cir. 1996\)](#).

Statute of limitations applicable to RTC when it acts as receiver ([12 USCS § 1821\(d\)\(14\)](#)) does not apply to RTC's assignees. [Federal Fin. Co. v. Hall, 108 F.3d 46, 1997 U.S. App. LEXIS 3768 \(4th Cir.\)](#), cert. denied, 522 U.S. 858, 118 S. Ct. 157, 139 L. Ed. 2d 102, 1997 U.S. LEXIS 5305 (1997).

Tolling provision of [28 USCS § 2415\(a\)](#), which provides six-year limitations period for actions on contracts brought by United States or its agencies, should be construed with limitations period provided in [12 USCS § 1821\(d\)\(14\)](#), which provides six-year limitations period for contractual claims held by FDIC when appointed as receiver or conservator of failed bank. [SMS Fin., Ltd. Liab. Co. v. ABCO Homes, Inc., 167 F.3d 235, 42 Fed. R. Serv. 3d \(Callaghan\) 1214, 37 U.C.C. Rep. Serv. 2d \(CBC\) 1200, 1999 U.S. App. LEXIS 2462 \(5th Cir. 1999\)](#).

Although [12 USCS § 1821\(d\)\(14\)](#) refers to FDIC, it is also applicable to RTC, since Congress gave RTC all of receivership and conservatorship powers it granted to FDIC. [UMLIC-Nine Corp. v. Lipan Springs Dev. Corp., 168 F.3d 1173, 1999 U.S. App. LEXIS 2299 \(10th Cir.\)](#), cert. denied, 528 U.S. 1005, 120 S. Ct. 499, 145 L. Ed. 2d 385, 1999 U.S. LEXIS 7546 (1999).

One who purchases obligation owned by FDIC as conservator or receiver is entitled to take advantage of special six-year statute of limitations; however, such assignee does not get this benefit where obligation is transferred by

FDIC before it is in default. [*Beckley Capital Ltd. Pshp. v. DiGeronimo, 184 F.3d 52, 1999 U.S. App. LEXIS 16667 \(1st Cir. 1999\).*](#)

Judgment dismissing Federal Deposit Insurance Corporation's tort and contract claims against defendants as time barred was reversed and remanded, since, pursuant to [12 USCS § 1821\(d\)\(14\)\(A\)](#), district court should have applied choice-of-law principles of forum state (Illinois) in determining which limitations periods applied. [*FDIC v. Wabick, 335 F.3d 620, 2003 U.S. App. LEXIS 13841 \(7th Cir. 2003\)*](#), reh'g denied, reh'g, en banc, denied, [2003 U.S. App. LEXIS 16377 \(7th Cir. Aug. 8, 2003\)](#).

Contract claims brought by Federal Deposit Insurance Corporation (FDIC) as receiver in connection with alleged fraudulent scheme to obtain defaulted real estate loans in sealed bid auction were timely under Illinois' ten-year limitations period. [*FDIC v. Wabick, 335 F.3d 620, 2003 U.S. App. LEXIS 13841 \(7th Cir. 2003\)*](#), reh'g denied, reh'g, en banc, denied, [2003 U.S. App. LEXIS 16377 \(7th Cir. Aug. 8, 2003\)](#).

Federal statute of limitations has not run on FDIC action against debtor, where state limitations period had not run on date FDIC was appointed receiver of bank holding debt and statute of limitations under FIRREA had not become effective, since FDIC obtained extension of statute of limitations due to retroactive applicability of statute of limitations under § 1821. [*Davidson v. Mills, 821 F. Supp. 1176, 1993 U.S. Dist. LEXIS 7351 \(W.D. Tex. 1993\)*](#), aff'd sub nom. [*Davidson v. FDIC, 44 F.3d 246, 1995 U.S. App. LEXIS 1492 \(5th Cir. 1995\)*](#).

Action by Federal Deposit Insurance Corporation (FDIC) as receiver for failed bank against defendants seeking to set aside transfer of property from defendants jointly to defendant wife individually is not dismissed, because statute of limitations began to run when FDIC was appointed as receiver, and because, measured from either 6-year period for contract claims or 3-year period for tort claims, fraudulent transfer action was timely. [*FDIC v. Zibolis, 856 F. Supp. 57, 1994 U.S. Dist. LEXIS 8786 \(D.N.H. 1994\)*](#).

Action by assignee of Resolution Trust Corporation (RTC) as receiver of failed savings bank against makers of promissory note is dismissed, where action was brought more than 5 years but less than 6 years from breach, because 6-year statute of limitations in FIRREA applies only to actions brought by RTC in its status as receiver, so statute of limitations is personal to RTC and is not applicable to assignees of RTC, so assignee's action was governed by state statute of limitations and was time barred. [*WAMCO, III v. First Piedmont Mortgage Corp., 856 F. Supp. 1076, 24 U.C.C. Rep. Serv. 2d \(CBC\) 943, 1994 U.S. Dist. LEXIS 8895 \(E.D. Va. 1994\)*](#).

Financial Institutions Reform, Recovery and Enforcement Act of 1989's six-year limitations period, [12 USCS § 1821\(d\)\(14\)\(A\)\(i\)\(I\)](#), is federal statute of limitations, to which federal accrual doctrines then apply; in that respect, federal common law incorporates "discovery rule" into statutes of limitations in federal question cases unless there is contrary directive from Congress. [*FDIC v. Wabick, 214 F. Supp. 2d 864, 2002 U.S. Dist. LEXIS 14250 \(N.D. Ill. 2002\)*](#), remanded, [335 F.3d 620, 2003 U.S. App. LEXIS 13841 \(7th Cir. 2003\)](#).

Limitations began running from moment of supposed breach, when thrift made decisions affecting portfolio; because thrift failed on December 30, 1988, breach had to have occurred on or after January 1, 1987, for Federal Deposit Insurance Corporation to have been able to sue on this claim, where two year statute of limitations of [Tex. Civ. Prac. & Rem. Code Ann. § 16.003](#) applied; though federal law extends limitations period of viable claims when Federal Deposit Insurance Corporation (FDIC) takes over thrift, no law revives claims that are stale when FDIC acquires them. [*FDIC v. Hurwitz, 384 F. Supp. 2d 1039, 2005 U.S. Dist. LEXIS 17907 \(S.D. Tex. 2005\)*](#), rev'd in part, vacated, remanded, [523 F.3d 566, 2008 U.S. App. LEXIS 7221 \(5th Cir. 2008\)](#).

Preemption was proper framework for analyzing Financial Institutions Reform, Recovery and Enforcement Act of 1989's extender provision; where, as here, party alleged that federal law superseded conflicting state law, courts must employ requisite preemption analysis to be certain of Congress's intent before overriding delicate balance between state and federal law. [*FDIC v. Countrywide Sec. Corp. \(In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.\), 966 F. Supp. 2d 1031, 2013 U.S. Dist. LEXIS 180222 \(C.D. Cal. 2013\)*](#), dismissed in part, [2014 U.S. Dist. LEXIS 120614 \(C.D. Cal. June 18, 2014\)](#), dismissed in part, [2014 U.S. Dist. LEXIS 102197 \(C.D. Cal. July 14, 2014\)](#).

Limitations period contained in [12 USCS § 1821\(d\)\(14\)](#) applies to causes of action which accrued prior to passage of FIRREA, and also applies even if FDIC became aware of cause of action before receivership. [FDIC v. Daniel, 158 F.R.D. 101, 1994 U.S. Dist. LEXIS 14705 \(E.D. Tex. 1994\)](#).

49. Tort actions

Three-year statute of limitations contained in [12 USCS § 1821\(d\)\(14\)\(A\)](#) for tort claims does not revive claims that were barred by state statutes of limitations when RTC was appointed conservator. [Resolution Trust Corp. v. Seale, 13 F.3d 850, 1994 U.S. App. LEXIS 1255 \(5th Cir. 1994\)](#), reh'g denied, [1994 U.S. App. LEXIS 4821 \(5th Cir. Mar. 2, 1994\)](#).

Only those claims that were still live under state 2-year limitations period when federal regulators took over failed bank—torts that occurred after April 5, 1987—may be raised in this suit, where RTC has complied with federal limitations period for bringing tort claims by beginning conservatorship on April 5, 1989 and filing suit April 1, 1992, just before expiration of [12 USCS § 1821\(d\)\(14\)\(B\)](#) 3-year period, because RTC lost its argument for later accrual of claims under state law. [Resolution Trust Corp. v. Acton, 844 F. Supp. 307, 1994 U.S. Dist. LEXIS 1750 \(N.D. Tex. 1994\)](#), aff'd, [49 F.3d 1086, 1995 U.S. App. LEXIS 7519 \(5th Cir. 1995\)](#).

50. Actions against directors and officers

FDIC's action against savings and loan association's former officers and directors is timely under [12 USCS § 1821\(d\)\(14\)](#), where applicable state limitations period had not expired when FDIC acquired claim from private party and action was filed within 6 years of claim's accrual, notwithstanding that FDIC is acting in its corporate capacity and new limitations period is being applied retroactively. [Federal Deposit Ins. Corp. v. Howse, 736 F. Supp. 1437, 1990 U.S. Dist. LEXIS 6067 \(S.D. Tex. 1990\)](#).

RTC's motion to strike limitations defenses asserted by former officers and directors of defunct savings and loan is denied, even though no possibility exists that applicable federal limitation period in [12 USCS § 1821\(d\)\(14\)](#) expired, because some or all of state-law claims asserted may have been prescribed under state law by time FSLIC first was appointed conservator in May 1989 and could not be revived. [Resolution Trust Corp. v. International Ins. Co., 770 F. Supp. 300, 19 U.S.P.Q.2d \(BNA\) 1372, 1991 U.S. Dist. LEXIS 9320 \(E.D. La. 1991\)](#).

Statute of limitations defense of former bank director and legal counsel charged by FDIC with legal malpractice must fail, where state law limitations period had not expired prior to time FDIC was appointed receiver on September 8, 1988, because action brought on September 6, 1991 was within 3 years of date FDIC was appointed receiver and was timely tort claim under [12 USCS § 1821\(d\)\(14\)\(A\)](#). [FDIC v. Benjes, 815 F. Supp. 1415, 1993 U.S. Dist. LEXIS 2913 \(D. Kan. 1993\)](#).

Resolution Trust Corporation's action against officers of failed savings and loan is not time-barred, where claims, which accrued at earliest on date of approval of loans, were not time-barred under 4-year state statute of limitations when FSLIC, predecessor of RTC, was appointed receiver for S&L, and where RTC filed action within 4 years of FSLIC's appointment, because FSLIC did not "restart" stale claim, and under FIRREA, [12 USCS § 1821\(d\)\(14\)](#), cause of action accrued and statute of limitations began to run anew when FSLIC was appointed receiver. [Resolution Trust Corp. v. Foley, 829 F. Supp. 352, 1993 U.S. Dist. LEXIS 18900 \(D.N.M. 1993\)](#).

Affirmative defense of statute of limitation asserted by former directors and officers of failed thrift in action by Resolution Trust Corporation for negligence and breach of fiduciary duty is stricken, because (1) claims asserted by RTC were viable when thrift was placed in receivership; and (2) RTC filed action within 3 years of date claims accrued. [RTC v. Heiserman, 839 F. Supp. 1457, 1993 U.S. Dist. LEXIS 15829 \(D. Colo. 1993\)](#).

Claim of Resolution Trust Corporation (RTC) as receiver for failed savings association against its former directors, officers, and controlling shareholders and against individual partners of partnership in dissolution is denied summarily, where contract tolling statute of limitation was signed by RTC, administrative partner on behalf of partnership, and one former party in his individual capacity, because individual partners were not included in class

of agents and attorneys that were bound by tolling contract and because, absent contract, RTC's action was time-barred. [Resolution Trust Corp. v. Bonner, 848 F. Supp. 96, 1994 U.S. Dist. LEXIS 4525 \(S.D. Tex. 1994\)](#).

FDIC's claims of gross negligence, breach of fiduciary duty, and breach of contract may proceed, even though [12 USCS § 1821\(d\)\(14\)](#) does not revive claims barred by state statutes of limitations, and it would seem that claims accruing by end of 1985 were barred by governing Texas 2-year statutes when FSLIC/FDIC entered picture in 1988, because FDIC will be entitled to tolling protection of adverse domination theory if it can prove that majority of directors of failed banks were guilty of at least gross negligence or breach of fiduciary duty up until 2 years before FSLIC's appointment as receiver. [FDIC v. Henderson, 849 F. Supp. 495, 1994 U.S. Dist. LEXIS 10516 \(E.D. Tex. 1994\)](#), aff'd, [61 F.3d 421, 1995 U.S. App. LEXIS 23380 \(5th Cir. 1995\)](#).

Former officers and directors of insolvent savings and loan are entitled to dismissal of suit against them, because (1) all counts other than one alleging gross negligence are preempted under [12 USCS § 1821\(k\)](#), and (2) gross negligence claim was filed 3 days too late by RTC under § 1821(d)(14)(A)(ii)(I)'s applicable 3-year statute of limitations. [Resolution Trust Corp. v. Zimmerman, 853 F. Supp. 1016, 1994 U.S. Dist. LEXIS 7282 \(N.D. Ohio 1994\)](#).

Negligence action by Resolution Trust Corporation, as receiver for failed bank, against bank's former officers, directors, and counsel is not dismissed as untimely, because issue of fact existed as to whether culpable directors controlled bank prior to receivership, because if such control existed statute of limitations would be tolled by adverse domination doctrine. [Resolution Trust Corp. v. Farmer, 865 F. Supp. 1143, 1994 U.S. Dist. LEXIS 13205 \(E.D. Pa. 1994\)](#).

Former bank directors' statute of limitations defenses are stricken, where RTC sued directors April 1, 1992 in connection with misdeeds allegedly occurring from 1982 until federal regulators took over bank on April 5, 1989, because state limitations period was tolled until 1989 under Texas' "adverse domination" rule since defendant directors constituted majority of board, and suit was then filed within 3 years of conservatorship as required by [12 USCS § 1821\(d\)\(14\)\(A\)\(ii\)](#). [Resolution Trust Corp. v. Acton, 866 F. Supp. 981, 1993 U.S. Dist. LEXIS 20363 \(N.D. Tex. 1993\)](#).

FDIC's simple negligence claims against former bank officers and directors are time-barred as to all acts which occurred prior to March 8, 1988, where bank was declared insolvent and receiver was appointed on March 8, 1990, and FDIC in its corporate capacity acquired claims from receiver through purchase and assumption agreement and brought suit March 8, 1993, because Texas law controls prereceivership tolling and does not extend "very narrow doctrine" of adverse domination to cases in which wrongdoing consists of mere negligence. [FDIC v. Benson, 867 F. Supp. 512, 1994 U.S. Dist. LEXIS 4730 \(S.D. Tex. 1994\)](#).

Resolution Trust Corporation's action, as conservator of bank, against bank's officers and directors for breach of fiduciary duty is denied summarily, where RTC was appointed conservator in 1989 and filed action in 1992, because applicable statute of limitation was one year, and because RTC failed to show fraudulent concealment by defendants so as to toll statute of limitation since it failed to plead due diligence on its part. [Resolution Trust Corp. v. Wood, 870 F. Supp. 797, 1994 U.S. Dist. LEXIS 20199 \(W.D. Tenn. 1994\)](#).

RTC's [12 USCS § 1821\(k\)](#) gross negligence claim against former bank directors based on federal law is time-barred, where court has already held that RTC's claim for gross negligence was barred by limitations under state law prior to date FSLIC was appointed as bank's conservator, because Congress did not intend § 1821(k) to create gross negligence cause of action that effectively revived time-barred state-law gross negligence claims. [Resolution Trust Corp. v. Bright, 872 F. Supp. 1551, 1995 U.S. Dist. LEXIS 273 \(N.D. Tex. 1995\)](#).

FDIC's breach of fiduciary duty of care and loyalty claim against former director of failed bank is not time-barred, where FDIC was appointed receiver on December 8, 1989 and it filed this lawsuit on December 7, 1992, one day shy of end of 3-day period described in [12 USCS § 1821\(d\)\(14\)\(A\)\(ii\)\(I\)](#), because 10-year Louisiana prescriptive period for personal actions applied and claim had not prescribed before appointment of FDIC. [FDIC v. Caplan, 874 F. Supp. 741, 1995 U.S. Dist. LEXIS 471 \(W.D. La. 1995\)](#).

Inside officers and/or directors of failed federal savings and loan are not entitled to dismissal of claims against them, where material questions of fact exist as to what breaches of duty caused harm to savings and loan for particular loan, when those breaches occurred, and when harm caused by those breaches was certain to occur, because it is not at all certain that all claims against defendants were barred by state statutes of limitations by time FDIC was appointed conservator, and FDIC may be entitled to benefit of [12 USCS § 1821\(d\)\(14\)](#)'s longer statute of limitations. *FDIC v. Grant*, 8 F. Supp. 2d 1275, 1997 U.S. Dist. LEXIS 23018 (N.D. Okla. 1997).

Loan claim accrued under New Mexico law upon approval by savings and loan director because that was when injury arose, and because claim was not filed within four-year statute of limitations and it was not revived when receiver was appointed, it was time-barred; jury's finding of no adverse domination became law of case, and neither it nor theories of continuing wrongful conduct or fraudulent concealment tolled statute of limitations. [FDIC v. Schuchmann](#), 224 F. Supp. 2d 1332, 2002 U.S. Dist. LEXIS 18244 (D.N.M. 2002).

51. Malpractice actions

Accounting firm being sued by FDIC, in its corporate capacity as purchaser of assets of failed bank, for negligent audit of failed bank may assert affirmative defense that statute of limitations bars portion of FDIC's claims, where [12 USCS § 1821\(d\)\(14\)](#) almost certainly does not apply retroactively to this litigation pending when it was enacted, because even if claims as brought by FDIC would be timely under [28 USCS §§ 2415](#) and [2416](#), it appears they may have been barred by 2-year state professional malpractice statute of limitations prior to bank's receivership. [Federal Deposit Ins. Corp. v. Cherry, Bekaert & Holland](#), 742 F. Supp. 612, 1990 U.S. Dist. LEXIS 7428 (M.D. Fla. 1990).

RTC's legal malpractice claim against law firm that represented failed savings association in loan transactions of July and October 1984 is time-barred, where association did not enter conservatorship until July 1989, applicable state 2-year limitations period on legal malpractice claims had already expired, yet RTC filed claim nonetheless in March 1992, because statute of limitations provided in [12 USCS § 1821\(d\)\(14\)](#) cannot function so as to revive claim already barred under state law. *Resolution Trust Corp. v. Boyar, Norton & Blair*, 796 F. Supp. 1010, 1992 U.S. Dist. LEXIS 20627 (S.D. Tex. 1992).

52. Other particular actions

With respect to FDIC (as receiver for failed bank) suit on promissory note and guarantee, FDIC claim that is barred by statute of limitations contained in [28 USCS § 2415\(a\)](#), is not revived by [12 USCS § 1821\(d\)\(14\)](#), where claim expired before 8/9/89 (effective date of FIRREA). [FDIC v. Belli](#), 981 F.2d 838, 1993 U.S. App. LEXIS 1188 (5th Cir.), reh'g, en banc, denied, 990 F.2d 628, 1993 U.S. App. LEXIS 8397 (5th Cir. 1993).

Where debtor executed promissory note and unconditional guaranty in 5/83, note matured in 5/84 and debtor defaulted, lender savings and loan became insolvent in 12/85 and FSLIC was appointed receiver, FSLIC entered into purchase and assumption agreement (which included promissory note) with another savings and loan, second savings and loan became insolvent in 8/88 and FSLIC was appointed receiver, and note (after enactment of FIRREA) was transferred in 8/89 as FSLIC asset to FDIC, action brought by FDIC in 12/91 to recover from debtor under terms of guaranty was not barred by statute of limitations, since six-year statute of limitations contained in [28 USCS § 2415](#) applied up to point when FIRREA was passed (including assignment to second S & L), at which time limitations period began to run changed to date at which FSLIC first became receiver (12/85). [FDIC v. Bledsoe](#), 989 F.2d 805, 1993 U.S. App. LEXIS 9962 (5th Cir. 1993), reh'g denied, 1993 U.S. App. LEXIS 14500 (5th Cir. June 7, 1993).

Assignee of FDIC can invoke six-year period of limitations provided in [12 USCS § 1821\(d\)\(14\)](#) only if note at issue was in default either before FDIC acquired it or while FDIC owned it; period of limitations, which attaches only to accrued claim, and not to performing note, has no significance independent of claim to which it applies. [Cadle Co. v. 1007 Joint Venture](#), 82 F.3d 102, 1996 U.S. App. LEXIS 9663 (5th Cir. 1996).

All claims subject to jurisdictional bar of [12 USCS § 1821\(d\)\(13\)\(D\)](#), including both claims against receiver and against assets of failed financial institution, and both pre-receivership and post-receivership claims, must comply

with administrative claims review procedure established in [12 USCS § 1821\(d\)](#), including time limitations for filing in district court provided in [12 USCS § 1821\(d\)\(6\)\(A\)](#). *Home Capital Collateral v. FDIC*, 96 F.3d 760, 1996 U.S. App. LEXIS 24344 (5th Cir. 1996).

Tolling provision of [28 USCS § 2415\(a\)](#), which provides six-year limitations period for actions on contracts brought by United States or its agencies, should be construed with limitations period provided in [12 USCS § 1821\(d\)\(14\)](#), which provides six-year limitations period for contractual claims held by FDIC when appointed as receiver or conservator of failed bank. *SMS Fin., Ltd. Liab. Co. v. ABCO Homes, Inc.*, 167 F.3d 235, 42 Fed. R. Serv. 3d (Callaghan) 1214, 37 U.C.C. Rep. Serv. 2d (CBC) 1200, 1999 U.S. App. LEXIS 2462 (5th Cir. 1999).

Because [12 USCS § 1821\(d\)\(14\)](#) is silent with respect to its application to assignees of RTC, courts must look to state law to determine statute of limitations governing rights of such assignees. *National Enters. v. Barnes*, 201 F.3d 331, 2000 U.S. App. LEXIS 99 (4th Cir. 2000).

Limitations period on borrower's claim under Fair Debt Collection Practices Act, [15 USCS §§ 1692](#) et seq., was not equitably tolled during period between stays granted to Federal Deposit Insurance Corporation (FDIC) for claims review under Financial Institutions Reform, Recovery, and Enforcement Act of 1989; jurisdictional bar under [12 USCS § 1821\(d\)](#) did not apply to borrower's claim against attorney and law firm, which was brought before FDIC's receivership began. *Glover v. FDIC*, 698 F.3d 139, 83 Fed. R. Serv. 3d (Callaghan) 481, 2012 U.S. App. LEXIS 18628 (3d Cir. 2012).

Six-year Financial Institutions Reform Recovery and Enforcement Act (FIRREA) limitations period applied because case involved contract claim brought by FDIC as receiver; FIRREA limitations period overrode 24-month contractual limitations period under indemnification bond. *FDIC v. RLI Ins. Co.*, 784 F.3d 1104, 2015 U.S. App. LEXIS 7210 (7th Cir. 2015).

District court erred in holding that FDIC Extender Statute preempted only state statutes of limitations, not state statutes of repose, in particular, limitations period in Texas Securities Act, [Tex. Rev. Civ. Stat. Ann. art. 581-33\(H\)\(2\)\(b\)](#), because Extender Statute preempted all limitations periods, whether characterized as statutes of limitations or as statutes of repose. *FDIC v. RBS Secs., Inc.*, 798 F.3d 244, 2015 U.S. App. LEXIS 13985 (5th Cir. 2015), cert. denied, 577 U.S. 1235, 136 S. Ct. 1492, 194 L. Ed. 2d 586, 2016 U.S. LEXIS 2224 (2016).

Based on existing Second Circuit precedent, FDIC Extender Statute displaced Securities Act of 1933's statute of repose; intervening U.S. Supreme Court decision that [42 USCS § 9658](#) did not preempt state statutes of repose did not implicitly overrule Second Circuit's prior decision, as Extender Statute and § 9658 were fundamentally different. *FDIC v. First Horizon Asset Sec.*, 821 F.3d 372, Fed. Sec. L. Rep. (CCH) ¶ 99094, 2016 U.S. App. LEXIS 9204 (2d Cir. 2016), cert. denied, 580 U.S. 1049, 137 S. Ct. 628, 196 L. Ed. 2d 518, 2017 U.S. LEXIS 321 (2017), dismissed in part, 291 F. Supp. 3d 364, 100 Fed. R. Serv. 3d (Callaghan) 94, Fed. Sec. L. Rep. (CCH) ¶ 100033, 2018 U.S. Dist. LEXIS 34596 (S.D.N.Y. 2018).

RTC's claims against future commission merchant and broker, brought as conservator for investor, are not time-barred, because claims accrued on date of last trade, April 29, 1988, FSLIC became conservator on March 15, 1989 before one-year contractual limitations period ran, RTC eventually succeeded FSLIC as conservator, and [12 USCS § 1821\(d\)\(14\)](#) 3- and 6-year limitations periods apply retroactivity to March 15, 1989, making second amended complaint timely filed on October 4, 1990. *Resolution Trust Corp. v. Krantz*, 757 F. Supp. 915, 1991 U.S. Dist. LEXIS 1074 (N.D. Ill. 1991).

Limitations defense asserted against FDIC's claim for payment under fidelity bond must fail, where bond was issued in March 1986, discovery of loan orchestrations by bank president was made in July 1987, FDIC was appointed receiver for bank in March 1988, FIRREA became law in 1989, and FDIC sued on bond in January 1991, because 6-year limitations period of FIRREA in [12 USCS § 1821\(d\)\(14\)\(A\)](#) applies instead of 2-year contractual period in bond since claim was not barred by 2-year period at time of FDIC's appointment, which allowed 6-year period to be applied retroactively. *FDIC v. Bancinsure, Inc.*, 770 F. Supp. 496, 1991 U.S. Dist. LEXIS 11696 (D. Minn. 1991).

Collection action is timely, where bank which held promissory notes originally failed August 20, 1987, FDIC was appointed receiver thereafter, FDIC assigned notes to plaintiff, and plaintiff brought this action on June 7, 1991, because general assignment principles and strong public policy require that FDIC's assignee acquire 6-year limitations period provided by [12 USCS § 1821\(d\)\(14\)\(A\)](#), which began to run only when FDIC became receiver. [Mountain States Financial Resources Corp. v. Agrawal, 777 F. Supp. 1550, 1991 U.S. Dist. LEXIS 19220 \(W.D. Okla. 1991\)](#).

FDIC-Corporate's action to collect on promissory notes, demand note, and guaranty is not time-barred, where claims were all acquired on or after August 22, 1984 and action was commenced August 21, 1990, because FDIC-Corporate under [12 USCS § 1823\(d\)\(3\)\(A\)](#) has same rights and powers as FDIC-Receiver, which includes 6-year limitations period from date of acquisition of claim under § 1821(d)(14). [Federal Deposit Ins. Corp. v. Thayer Ins. Agency, Inc., 780 F. Supp. 745, 1991 U.S. Dist. LEXIS 17735 \(D. Kan. 1991\)](#).

Resolution Trust Corporation (RTC) is not precluded by [12 USCS § 1821\(d\)\(14\)\(B\)](#) from bringing action against former lawyer for failed savings and loan, where lawyer received \$1.5 million over year and one-half period beginning more than 3 years prior to receiver's appointment, because while passage of FIRREA did not revive claims, RTC may prove continuing injury or equitable tolling. [Resolution Trust Corp. v. Gardner, 788 F. Supp. 26, 1992 U.S. Dist. LEXIS 3618 \(D.D.C. 1992\)](#).

FDIC may pursue its acquired rights to collect debt against property, where cause of action accrued to bank on April 4, 1984, FDIC was appointed receiver for bank on June 4, 1987, state law limitations period on cause of action expired on April 4, 1988, and suit commenced in early 1992, because cause of action was not time-barred under state law when acquired by FDIC, and [28 USCS § 2415\(a\)](#) 6-year limitations period, made applicable upon FDIC's appointment as receiver under [12 USCS § 1821\(d\)\(14\)](#), had not run by time suit was brought. [William C. Davidson, P.C. v. Mills, 789 F. Supp. 845, 1992 U.S. Dist. LEXIS 6118 \(W.D. Tex. 1992\)](#).

Guarantors' defense of untimeliness of action by FDIC as successor to/receiver for lender must fail, regardless of running of original statute of limitations on initial note which was later set up as collateral for subsequent loan, because when lender failed and FDIC became receiver in 1991, federal statute of limitations applicable to FDIC became effective, extending time for any right of action by FDIC as receiver to 6 years from date of claim accrual. [Freeman v. FDIC, 842 F. Supp. 2, 23 U.C.C. Rep. Serv. 2d \(CBC\) 983, 1993 U.S. Dist. LEXIS 16932 \(D.D.C. 1993\)](#), aff'd, [56 F.3d 1394, 312 U.S. App. D.C. 324, 1995 U.S. App. LEXIS 14479 \(D.C. Cir. 1995\)](#).

FDIC's action as judgment creditor to set aside certain trusts and partnerships as shams that were created by or for benefit of judgment debtor is not denied summarily on statute of limitations grounds, where all claims in complaint require FDIC to prove fraudulent transfer, because essence of this type of action is that of creditor seeking payment from debtor, so 6-year contract statute of limitations, rather than 3-year tort one, applies, and action was timely filed under [12 USCS § 1821\(d\)\(14\)\(B\)](#). [FDIC v. Hinch, 879 F. Supp. 1099, 1995 U.S. Dist. LEXIS 8110 \(N.D. Okla. 1995\)](#).

Action to collect on note evidencing loan given by failed bank is not time-barred, even though more than 6 years have passed since note was executed, where not more than 10 years have passed, because [12 USCS § 1821\(d\)\(14\)\(A\)](#) provides for period of limitation which is longer of 6 years or applicable state period, which in Wyoming is 10 years. [S & S Diversified Servs., L.L.C. v. Arguello, 911 F. Supp. 498, 29 U.C.C. Rep. Serv. 2d \(CBC\) 242, 1995 U.S. Dist. LEXIS 19764 \(D. Wyo. 1995\)](#).

Federal statute of limitations applied to claim on defaulted note, where plaintiff was assignee of note and FDIC was assignor, because FDIC's assignee should be entitled to benefit of federal statute of limitations in enforcing notes from failed banks. [Remington Invs. v. Kadenacy, 930 F. Supp. 446, 1996 U.S. Dist. LEXIS 14718 \(C.D. Cal. 1996\)](#).

Assignee may enforce note against maker, where original lending bank failed, RTC became receiver on December 12, 1991, and thereafter note was assigned twice until current holder sued for enforcement on May 17, 1996, even though maker argues that state statute of limitations has run, because 6-year statute of limitation contained in [12](#)

USCS § 1821(d)(14) extends to assignees of RTC and has not yet run. *National Enters. v. Moore*, 948 F. Supp. 567, 1996 U.S. Dist. LEXIS 18685 (E.D. Va. 1996).

Extended statute of limitations of 12 USCS § 1821(d)(14) applied to action by assignee of Resolution Trust Corporation (RTC), where assignee brought action to recover on defaulted mortgage and note, because note was in default when assignee acquired it; extended statute of limitations did not confer benefit independent of asset to which it related, so as to create right personal to RTC; and extending statute of limitations accorded with clear legislative purposes of statute by facilitating sale of defaulted note. *Bruin Holdings v. Moderski*, 960 F. Supp. 62 (M.D. Pa. 1996).

FDIC's assignee was entitled to stand in shoes of its assignor for purpose of action to enforce notes, where promissory notes already were in default when FDIC obtained them as receiver for failed bank and FDIC received them under 12 USCS § 1821(d)(14). *General Fin. Servs. v. Thompson*, 987 F. Supp. 505, 1997 U.S. Dist. LEXIS 19937 (M.D. La. 1997), aff'd, 149 F.3d 1178, 1998 U.S. App. LEXIS 19885 (5th Cir. 1998).

Action on assigned note and deed of trust is not time-barred, where previous holder of note failed on April 25, 1991 and Resolution Trust Corporation was appointed its receiver same day, because, after consideration of legislative history of 12 USCS § 1821(d)(14) and (e), court concludes that 6-year statute of limitations is reset each time FDIC or RTC is appointed receiver or conservator, advancing overriding goal of stability of banking system. *UMLIC-Nine Corp. v. Lipan Springs Dev. Corp.*, 5 F. Supp. 2d 1152, 1998 U.S. Dist. LEXIS 7253 (D. Colo. 1998), aff'd, 168 F.3d 1173, 1999 U.S. App. LEXIS 2299 (10th Cir. 1999).

Federal Deposit Insurance Corporation's (FDIC) claims under Nevada Securities Act, Nev. Rev. Stat. § 90.570, were timely pursuant to Nev. Rev. Stat. § 90.670 and 12 USCS § 1821, and could proceed as claims were timely when FDIC became receiver and FDIC filed its complaint within three years of that date, but Nevada Securities Act claim against nonresident defendant was dismissed because Nevada would not have personal jurisdiction over it as plaintiff offered no facts or allegations to support its proposition that nonresident defendant aimed its activities at Nevada or that it knew securities would be sold in Nevada. *FDIC v. Banc of Am. Secs. LLC (In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig.)*, 934 F. Supp. 2d 1219, 2013 U.S. Dist. LEXIS 40726 (C.D. Cal. 2013), dismissed in part, *2013 U.S. Dist. LEXIS 180586* (C.D. Cal. Mar. 21, 2013).

Defendants' motion to dismiss Federal Deposit Insurance Corporation's (FDIC) § 11, 12(a)(2), and 15 of Securities Act of 1933 claims was granted in part because claims were time-barred under statutes of repose and limitations set forth in § 13 of Act as limitations period had expired prior to FDIC becoming receiver, and American Pipe tolling did not save those claims; however, one of § 11 claims would not be dismissed because it was timely when FDIC became receiver, and FDIC filed its claim within three years of that date pursuant to 12 USCS § 1821(d)(14). *FDIC v. Banc of Am. Secs. LLC (In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig.)*, 934 F. Supp. 2d 1219, 2013 U.S. Dist. LEXIS 40726 (C.D. Cal. 2013), dismissed in part, *2013 U.S. Dist. LEXIS 180586* (C.D. Cal. Mar. 21, 2013).

IV. REPUDIATION OF PRE-APPOINTMENT CONTRACTS

53. Generally

Reasoning applied in cases under 12 USCS § 1823(e) is applicable to cases involving FSLIC, even though § 1823(e) has not been extended to protect FSLIC. *Olnay Sav. & Loan Asso. v. Trinity Banc Sav. Asso.*, 885 F.2d 266, 1989 U.S. App. LEXIS 15548 (5th Cir.), reh'g denied en banc 892 F.2d 78, 1989 U.S. App. LEXIS 19506 (5th Cir. 1989).

12 USCS § 1821(e) provides both conservators and receivers with right to repudiate, even where receiver previously served same institution as conservator. *1185 Ave. of the Ams. Assocs. v. Resolution Trust Corp.*, 22 F.3d 494, 1994 U.S. App. LEXIS 8732 (2d Cir. 1994).

[12 USCS § 1823\(e\)](#) applies only to conventional loan activities, and cannot be read to cover agreements relating to sale of assets in non-loan transaction; similarly, only sensible reading of [12 USCS § 1821\(d\)\(9\)\(A\)](#) must limit its scope to loan-related transactions covered by § 1823(e). [John v. Resolution Trust Corp., 39 F.3d 773, 1994 U.S. App. LEXIS 31234 \(7th Cir. 1994\)](#).

[12 USCS § 1821\(e\)\(1\)](#) is express grant of federal power exercisable in derogation of all contrary state law. [Resolution Trust Corp. v. Diamond, 45 F.3d 665, 1995 U.S. App. LEXIS 1299 \(2d Cir.\)](#), cert. denied, 515 U.S. 1158, 115 S. Ct. 2609, 132 L. Ed. 2d 853, 1995 U.S. LEXIS 4298 (1995).

[12 USCS § 1821\(e\)](#), which authorizes RTC to repudiate burdensome contracts, provides for separate rights of repudiation for RTC as conservator and RTC as receiver, and separate reasonable periods to make repudiation decision. [Franklin Fin. v. Resolution Trust Corp., 53 F.3d 268, 95 Cal. Daily Op. Service 2976, 95 D.A.R. 5172, 1995 U.S. App. LEXIS 9151 \(9th Cir.\)](#), corrected, 95 Cal. Daily Op. Service 3238, 95 D.A.R. 5576 (9th Cir. 1995).

FDIC's power to repudiate contracts pursuant to [12 USCS § 1821\(e\)](#) is not limited to executory contracts. [Hennessy v. FDIC, 58 F.3d 908, 19 Employee Benefits Cas. \(BNA\) 2970, 95 TNT 132-8, 1995 U.S. App. LEXIS 16018 \(3d Cir. 1995\)](#), reh'g, en banc, denied, [66 F.3d 659, 1995 U.S. App. LEXIS 27621 \(3d Cir. 1995\)](#), cert. dismissed, 516 U.S. 1035, 116 S. Ct. 688, 133 L. Ed. 2d 593, 1995 U.S. LEXIS 8695 (1995), cert. denied, 517 U.S. 1103, 116 S. Ct. 1318, 134 L. Ed. 2d 471, 1996 U.S. LEXIS 1967 (1996).

[12 USCS § 1821\(e\)\(1\)](#) expressly grants FDIC power to abrogate valid contracts and leases where FDIC has determined that they are burdensome. [Westport Bank & Trust Co. v. Geraghty, 90 F.3d 661, 1996 U.S. App. LEXIS 18306 \(2d Cir. 1996\)](#).

FDIC, as receiver for failed financial institution, has broad discretion to determine what contract or lease is burdensome, and court's review of decision by FDIC to repudiate contract or lease is narrowly circumscribed. [McCarron v. FDIC, 111 F.3d 1089, 1997 U.S. App. LEXIS 9566 \(3d Cir. 1997\)](#), cert. denied, 522 U.S. 1046, 118 S. Ct. 689, 139 L. Ed. 2d 635, 1998 U.S. LEXIS 56 (1998).

Repudiation pursuant to [12 USCS § 1821\(e\)\(1\)](#) is treated as breach of contract giving rise to ordinary contract claim for damages; however, [12 USCS § 1821\(e\)\(3\)](#) and (4) expressly limit damages that may be assessed by courts for FDIC's repudiation of contract. [WRH Mortg., Inc. v. S.A.S. Assocs., 214 F.3d 528, 2000 U.S. App. LEXIS 12103 \(4th Cir. 2000\)](#).

Letters of credit are repudiable contracts for purposes of [12 U.S.C.S. § 1821\(e\)\(1\)](#). [Lexon Ins. Co. v. FDIC, 7 F.4th 315, 2021 U.S. App. LEXIS 22846 \(5th Cir. 2021\)](#).

FDIC is not entitled to statutory summary dismissal of claims based on commercial paper bought as investment vehicle from insolvent bank, where claims do not refer to loan or other specific, identifiable asset, and statutory definition of "asset" does not include money funneled through bank for investment purposes, because [12 USCS §§ 1821\(d\)\(9\)\(A\)](#) and [1823\(e\)](#) are not applicable to claims not involving "asset." [In re NBW Commercial Paper Litig., 826 F. Supp. 1448, 1992 U.S. Dist. LEXIS 2842 \(D.D.C. 1992\)](#).

Partnership involved in failed land deal may pursue only claims for interference with contract and economic relationships against RTC as receiver for failed bank, which allegedly agreed to lend money to complete deal but reneged, because claims for breach of contract, negligent performance of contract, fraud, and negligent misrepresentation are all based on agreement documented only by letter which does not meet all 4 requirements of [12 USCS § 1823\(e\)](#), and thus cannot form basis of claim against RTC under [12 USCS § 1821\(d\)\(9\)\(A\)](#). [Fairfield Six/Hidden Valley Partnership v. Resolution Trust Corp., 860 F. Supp. 1085, 1994 U.S. Dist. LEXIS 12109 \(D. Md. 1994\)](#).

Commercial building owner's equitable claims against FDIC were properly dismissed as relief sought was disallowed under [12 USCS § 1821\(j\)](#). [BKWSpokane, LLC v. FDIC, 663 Fed. Appx. 524, 2016 U.S. App. LEXIS 16766 \(9th Cir. 2016\)](#).

54. Timing of repudiation

[12 USCS § 1821\(e\)](#), which authorizes RTC to repudiate burdensome contracts, provides for separate rights of repudiation for RTC as conservator and RTC as receiver, and separate reasonable periods to make repudiation decision. [Franklin Fin. v. Resolution Trust Corp., 53 F.3d 268, 95 Cal. Daily Op. Service 2976, 95 D.A.R. 5172, 1995 U.S. App. LEXIS 9151 \(9th Cir.\)](#), corrected, 95 Cal. Daily Op. Service 3238, 95 D.A.R. 5576 (9th Cir. 1995).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor; insurer's request for injunctive and declaratory relief based on untimely repudiation, in turn, was barred by § 1821(j) as, even assuming that "reasonable time" clause in § 1821(e)(2) limited repudiation power, no facts were alleged showing FDIC's repudiation of Agreements eight months after assuming contract was not within reasonable period in light of financial crisis and other circumstances that led to liquidation of failed bank's assets and liabilities. [MBIA Ins. Corp. v. FDIC, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 \(D.C. Cir. 2013\)](#).

Federal Deposit Insurance Corporation in its Receiver capacity (FDIC-R) repudiated letters of credit within "reasonable period" under [12 U.S.C.S. § 1821\(e\)\(2\)](#) where, inter alia, (i) during 153 days between FDIC-R's appointment and its repudiation of letters of credit, it was engaged in extensive negotiations with oil company about its problematic \$100 million loan portfolio—part of which was \$9,985,500 letters of credit, (ii) there were ongoing e-mails and meetings on daily basis about potential settlement with oil company, and (iii) this process involved costly valuation reports and multi-tiered approval process within FDIC-R for any proposals. [Lexon Ins. Co. v. FDIC, 7 F.4th 315, 2021 U.S. App. LEXIS 22846 \(5th Cir. 2021\)](#).

Lessor's action seeking declaratory judgment that FDIC failed to repudiate insolvent bank's lease within reasonable time of FDIC's becoming receiver will not be dismissed, where (1) FDIC accepted appointment to receivership of bank by state comptroller on December 15, 1989, (2) FDIC entered into agreement with solvent bank allowing it to purchase certain assets of failed bank, (3) solvent bank paid monthly rent installments under lease from December 15, 1989 through June 1990, (4) solvent bank on May 1, 1990 advised FDIC that it would not assume lease, (5) FDIC on May 9, 1990 appointed itself receiver pursuant to [12 USCS §§ 1821\(c\)\(4\)](#) and (5)(A), and (6) FDIC on June 11, 1990 repudiated lease, because § 1821(e)(2) "reasonable period" within which FDIC had to exercise its repudiation right began upon 1989 original appointment as receiver by state pursuant to § 1821(c)(3)(A). [701 NPB Assoc. v. Federal Deposit Ins. Corp., 779 F. Supp. 1336, 1991 U.S. Dist. LEXIS 17793 \(S.D. Fla. 1991\)](#).

Resolution Trust Corporation did not unreasonably delay in disaffirming lease agreement, where it disaffirmed lease 7 months after its appointment as conservator and 3 and one-half months after its appointment as receiver, because [12 USCS § 1821\(e\)\(2\)](#) does not set time limit for disaffirmance and lessor failed to show RTC acted in bad faith or unreasonably. [Monument Square Assoc., Inc. v. Resolution Trust Corp., 792 F. Supp. 874, 1991 U.S. Dist. LEXIS 18386 \(D. Mass. 1991\)](#).

RTC failed to repudiate 5 leases between failed bank and landlord within "reasonable period" under [12 USCS § 1821\(e\)](#), even though RTC claims it was in midst of largest and most complex liquidation of multistate bank that it had ever undertaken and could not move operations from leased premises without considerable inconvenience, because 181 days after RTC's appointment as receiver was too long, and RTC could have much sooner prepaid rent for some period or entered into negotiation with landlord about terms of extension. [Central Buffalo Project Corp. v. FDIC, 29 F. Supp. 2d 164, 1998 U.S. Dist. LEXIS 19405 \(W.D.N.Y. 1998\)](#).

It was not clear whether Federal Deposit Insurance Corporation (FDIC), as receiver, timely repudiated contract under [12 USCS § 1821\(e\)\(2\)](#) because it first attempted to formally repudiate collection agreement more than six-and-a-half months after its appointment as receiver and more than two months after it had already told other party to contract that it intended to wind-down collection agreement according to terms of agreement. [NCB Mgmt. Servs. v. FDIC, 843 F. Supp. 2d 62, 2012 U.S. Dist. LEXIS 18464 \(D.D.C. 2012\)](#).

FDIC was properly granted summary judgment on commercial building owner's breach of contract claim where decision to wait until bank's lease negotiations with owner broke down to begin repudiation process was reasonable, and thus, repudiation of master lease was timely under [12 USCS § 1812\(e\)\(2\)](#). *BKWSpokane, LLC v. FDIC*, 663 Fed. Appx. 524, 2016 U.S. App. LEXIS 16766 (9th Cir. 2016).

55. Claims for damages

Necessary corollary to limitation that damage claims are to be determined as of date of insolvency ([12 USCS § 1821\(e\)\(3\)\(A\)\(ii\)](#)) is that all claims existing on that date are preserved. *Office & Professional Employees Int'l Union, Local 2 v. FDIC*, 27 F.3d 598, 307 U.S. App. D.C. 148, 18 Employee Benefits Cas. (BNA) 1905, 146 L.R.R.M. (BNA) 2720, 128 Lab. Cas. (CCH) ¶ 11125, 1994 U.S. App. LEXIS 16385 (D.C. Cir. 1994).

Resolution Trust Corporation (RTC), as receiver for failed bank, is liable to nonbreaching parties to repudiated contracts for damages resulting from its repudiation; however, in interest of maximizing number of creditors who can recover some portion of what they are owed, receiver's liability on individual contract is limited to actual direct compensatory damages and is subject to other qualifications. *Nashville Lodging Co. v. Resolution Trust Corp.*, 59 F.3d 236, 313 U.S. App. D.C. 240, 1995 U.S. App. LEXIS 17474 (D.C. Cir. 1995).

Lost profits should not be limited to only those that are overly remote, speculative or indirect; thus, party is not entitled to reasonable expectation measure of damages. *ALLTEL Info. Servs. v. FDIC*, 194 F.3d 1036, 99 Cal. Daily Op. Service 8490, 99 D.A.R. 10873, 1999 U.S. App. LEXIS 26563 (9th Cir. 1999).

Repudiation of contract by FDIC as receiver gives rise to ordinary contract claim for damages. *Battista v. FDIC*, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. (BNA) 2139, 1999 U.S. App. LEXIS 28138 (9th Cir. 1999), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 (2000).

Claim for damages, which arises under [12 USCS § 1821\(e\)](#) when FDIC as receiver repudiates contract of insolvent financial institution, is subject to payment scheme outlined in § 1821(d), including distribution priority established in § 1821(d)(11); no separate right to payment is created. *Battista v. FDIC*, 195 F.3d 1113, 99 Cal. Daily Op. Service 8799, 99 D.A.R. 11239, 23 Employee Benefits Cas. (BNA) 2139, 1999 U.S. App. LEXIS 28138 (9th Cir. 1999), cert. denied, 531 U.S. 812, 121 S. Ct. 44, 148 L. Ed. 2d 15, 2000 U.S. LEXIS 4895 (2000).

Repudiation pursuant to [12 USCS § 1821\(e\)\(1\)](#) is treated as breach of contract giving rise to ordinary contract claim for damages; however, [12 USCS § 1821\(e\)\(3\)](#) and (4) expressly limit damages that may be assessed by courts for FDIC's repudiation of contract. *WRH Mortg., Inc. v. S.A.S. Assocs.*, 214 F.3d 528, 2000 U.S. App. LEXIS 12103 (4th Cir. 2000).

[12 USCS § 1821\(d\)\(20\)](#) required formal, written approval by defendant Federal Deposit Insurance Corporation (FDIC) to qualify contract damages for priority as administrative expenses under § 1821(d)(11)(A), and absent formal, written sanction by FDIC of Pooling and Servicing Agreements for failed bank's mortgage securitizations, plaintiff insurer of securitizations was general creditor; insurer's reliance on contract repudiation provisions of § 1821(e) and it being modeled on parallel provisions of [11 USCS § 365](#) did not advance its cause because reading of two sections showed they had little in common because Congress omitted from § 1821(e) key language in § 365, whereby trustee could assume or reject executory contracts or unexpired lease of debtor, instead speaking only of FDIC's authority to repudiate. *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234, 404 U.S. App. D.C. 156, 2013 U.S. App. LEXIS 4707 (D.C. Cir. 2013).

In interpreting meaning of "shareholder" for purposes of awarding damages for Federal Deposit Insurance Corporation's breach of goodwill recognition agreement, in conjunction with former [12 USCS § 1821\(d\)\(11\)](#) and [12 USCS § 1813\(c\)\(1\)](#), simple definition of current shareholders was proper. *Slattery v. Roth*, 710 F.3d 1336, 2013 U.S. App. LEXIS 5540 (Fed. Cir. 2013), cert. denied, 571 U.S. 1196, 134 S. Ct. 1276, 188 L. Ed. 2d 297, 2014 U.S. LEXIS 1464 (2014).

Where FDIC transferred closed bank's interest in loan in contravention of underlying agreement's consent and right of first refusal provisions, district court did not err in rejecting FDIC's claimed statutory defense and entering judgment against FDIC for its breach of agreement because FDIC was not immunized from breach of pre-receivership contract claims. [Bank of Manhattan, N.A. v. FDIC, 778 F.3d 1133, 2015 U.S. App. LEXIS 3472 \(9th Cir. 2015\).](#)

RTC's liability to heating and air conditioning contractor is limited by [12 USCS § 1821\(e\)\(3\)](#) to "actual direct compensatory damages" which do not include "damages for lost profits or opportunity," where RTC, as receiver for insolvent savings bank, repudiated multi-year preventive maintenance contract at cost of \$16,560 per year in lieu of new one-year contract costing \$3,440 but including fewer inspections, because RTC did not abuse discretion in repudiating burdensome maintenance contract pursuant to § 1821(e)(1) authority to promote orderly administration of bank's affairs. [Atlantic Mechanical, Inc. v. Resolution Trust Corp., 772 F. Supp. 288, 1991 U.S. Dist. LEXIS 13077 \(E.D. Va. 1991\), aff'd, 953 F.2d 637, 1992 U.S. App. LEXIS 5910 \(4th Cir. 1992\).](#)

RTC is liable for damages flowing from its default on lease entered into by federal savings bank that became insolvent, where original decision by RTC not to repudiate lease thereafter bound it to terms and conditions of lease, because, in any case, 16 to 17 months from initial appointment of RTC as conservator of bank until its filing of letter of repudiation as receiver for successor bank—when deal to find purchaser for lease ultimately fell through—was unreasonable under [12 USCS § 1821\(e\)\(2\). Resolution Trust Corp. v. United Trust Fund, Inc., 775 F. Supp. 1465, 1991 U.S. Dist. LEXIS 18402 \(S.D. Fla. 1991\).](#)

Landlord may not recover against Resolution Trust Corporation ("RTC") as receiver of insolvent bank for damages under lease of office space, where lease provided for bank's default upon appointment of receiver to take possession of substantially all bank's assets or interest in lease for more than 60 days, and RTC negotiated with landlord within first 7 months of its receivership concerning lease and then assigned lease, because pursuant to [12 USCS § 1821\(e\)\(12\)](#) such default clauses are unenforceable and RTC acted within reasonable time in determining whether to assign or repudiate lease. [Hawke Assoc. v. City Federal Sav. Bank, 787 F. Supp. 423, 1991 U.S. Dist. LEXIS 19923 \(D.N.J. 1991\).](#)

Trustee of state land trust may maintain action for rehabilitation costs against Resolution Trust Corporation as receiver of savings and loan, where savings and loan had leased property from trust and then defaulted on its lease obligations to keep property in good repair, and after RTC repudiated lease it disallowed trustee's claim for rehabilitation costs, because [12 USCS § 1821\(e\)\(4\)](#) does not bar trustee's action since rehabilitation costs accrued prior to repudiation. [Pioneer Bank & Trust Co. v. Resolution Trust Corp., 793 F. Supp. 828, 1992 U.S. Dist. LEXIS 10197 \(N.D. Ill. 1992\), dismissed, 1995 U.S. Dist. LEXIS 7277 \(N.D. Ill. May 24, 1995\).](#)

Bank customers cannot recover claimed damages of \$160,005.79 from FDIC, which became receiver for bank upon insolvency after bank made mortgage commitment to customers, which commitment FDIC disaffirmed causing customers to have to obtain mortgage financing at higher rate elsewhere, because customers had not yet expended funds on alternative financing at time FDIC became receiver, and FDIC's liability for disaffirmance of contracts does not include damages for lost profits or opportunity under [12 USCS § 1821\(e\)\(3\)\(B\)\(ii\). Gertner v. FDIC, 814 F. Supp. 177, 1992 U.S. Dist. LEXIS 21328 \(D. Mass. 1992\).](#)

Former president of failed thrift institution was entitled to recover damages for repudiated payments under settlement agreement, where president had resigned and entered agreement before failure, and federal receiver sought to repudiate agreement under which president received annual cash fee for 4 years, because "actual direct compensatory damages" are recoverable under [12 USCS § 1821\(e\)\(3\)\(A\)\(i\). Marsa v. Metrobank for Sav., F.S.B., 825 F. Supp. 658, 1993 U.S. Dist. LEXIS 8384 \(D.N.J. 1993\), aff'd, 26 F.3d 122, 1994 U.S. App. LEXIS 12561 \(3d Cir. 1994\).](#)

Bank is entitled to damages under [12 USCS § 1821\(e\)\(3\)](#), where bank purchased assets of other banks' credit card businesses, other bank then became insolvent, FDIC was named receiver, and FDIC repudiated noncompete agreement that was signed by insolvent bank in conjunction with credit card assets sale, because noncompete

provision was valuable contractual right that was fully paid for and operative on date of receivership, and difficulties in valuating such intangible asset should not preclude recovery of actual compensatory damages. [Citibank \(South Dakota\), N.A. v. FDIC, 827 F. Supp. 789, 1993 U.S. Dist. LEXIS 4848 \(D.D.C. 1993\)](#), corrected, [857 F. Supp. 976, 1994 U.S. Dist. LEXIS 10523 \(D.D.C. 1994\)](#).

Retirement agreement of former president of now-insolvent savings and loan association was properly repudiated and no damages awarded under [12 USCS § 1821\(e\)](#), where insolvent association had no need to make ongoing monthly payments for retired president's consulting services, and president has already received more under agreement than he gave up in consideration for it, because agreement clearly was executory contract subject to repudiation under [12 USCS § 1821\(e\)\(1\)](#). [Morton v. Arlington Heights Fed. Sav. & Loan Ass'n, 836 F. Supp. 477, 1993 U.S. Dist. LEXIS 18854 \(N.D. Ill. 1993\)](#).

RTC must pay bondholders fair market value of repudiated bonds as of date of re-repudiation, where initial repudiation of bonds, although warranted by statute, was void due to lack of authority of official performing repudiation but re-repudiation was performed in timely and authorized manner, because valid re-repudiation of secured bonds entitled bondholders to "actual direct compensatory damages" under [12 USCS § 1821\(e\)](#). [Employees' Retirement Sys. v. Resolution Trust Corp., 840 F. Supp. 972, 1993 U.S. Dist. LEXIS 18228 \(S.D.N.Y. 1993\)](#).

FDIC is granted reconsideration of its position that bank can only recover those actual damages caused by its [12 USCS § 1821\(e\)](#) repudiation of noncompete provision in failed banks' sale of credit card business to bank, where FDIC breached duty to bank to pass noncompete obligation to purchasers of failed banks' assets, but no damage can result from breach unless purchasers can compete against bank for credit card business, because determination of damages requires further factual inquiry into whether and to what extent failed banks were transferred to purchasers as "going concerns" whose noncompetition bank sought to ensure. [Citibank \(South Dakota\), N.A. v. FDIC, 857 F. Supp. 976, 1994 U.S. Dist. LEXIS 10523 \(D.D.C. 1994\)](#).

Limited partnership is denied any recovery for RTC's failure to honor its right of first refusal on 175-acre business park, where RTC, acting as receiver for park owner, through Purchase and Sale Agreement, sold property as part of group package of loans and parcels of real estate, because [12 USCS § 1821\(d\)\(2\)\(G\)\(i\)\(II\)](#) preempts right by giving RTC power to transfer "any asset of failed institution without any approval, assignment, or consent," and law of preemption provides for abrogation of damages. [NVMercure Ltd. Partnership v. Resolution Trust Corp., 871 F. Supp. 488, 1994 U.S. Dist. LEXIS 18956 \(D.D.C. 1994\)](#).

Company with contract to provide data processing services for failed bank cannot recover full amount it would have earned under 5-year agreement, where FDIC was appointed receiver for bank and properly repudiated contract pursuant to [12 USCS § 1821\(e\)](#), because FDIC's liability for damages resulting from repudiation is limited to actual direct compensatory damages amount of outstanding accounts receivable. [Alltel Info. Servs. v. FDIC, 970 F. Supp. 775, 1997 U.S. Dist. LEXIS 14900 \(C.D. Cal. 1997\)](#), aff'd, [194 F.3d 1036, 99 Cal. Daily Op. Service 8490, 99 D.A.R. 10873, 1999 U.S. App. LEXIS 26563 \(9th Cir. 1999\)](#).

In lessor's action under [12 USCS § 1821\(e\)](#) to recover damages for allegedly unreasonable repudiation, lessor would be allowed to offer expert testimony in support of its position that it was prejudiced by receiver's delay in repudiation, where lessor brought action against FDIC as successor receiver for failed bank, challenging validity of original receiver's repudiation of failed bank's lease, because actual prejudice was indicia of reasonableness or unreasonableness of timing of original receiver's repudiation. [Central Buffalo Project Corp. v. FDIC, 975 F. Supp. 226, 47 Fed. R. Evid. Serv. \(CBC\) 1282, 1997 U.S. Dist. LEXIS 11530 \(W.D.N.Y. 1997\)](#).

Where plaintiffs' complaint alleged only that Federal Deposit Insurance Corporation (FDIC) repudiated contract and that they suffered compensatory damages, but included no factual allegations to support inference that alleged damages were compensable under Financial Institutions Reform, Recovery and Enforcement Act or that FDIC's repudiation of contract actually caused alleged damages, claim was dismissed under *Fed. R. Civ. P. 12(b)(6)*.

[Westberg v. FDIC, 759 F. Supp. 2d 38, 2011 U.S. Dist. LEXIS 327 \(D.D.C. 2011\)](#), dismissed, [926 F. Supp. 2d 61, 2013 U.S. Dist. LEXIS 11570 \(D.D.C. 2013\)](#).

If Federal Deposit Insurance Corporation's attempt to repudiate collection agreement on October 5, 2010 was effective, under [12 U.S.C. § 1821\(e\)\(3\)\(A\)](#), collector's potential recovery would be limited to "actual direct compensatory damages" measured as of March 19, 2010, date of Federal Deposit Insurance Corporation's appointment as receiver. [NCB Mgmt. Servs. v. FDIC, 843 F. Supp. 2d 62, 2012 U.S. Dist. LEXIS 18464 \(D.D.C. 2012\)](#).

Unpublished decision: Permitting plaintiff developer to setoff its repudiation damages against monies owed to defendant FDIC was error, as that setoff violated [12 USCS § 1821\(d\)\(11\)\(A\)](#)'s distribution scheme, as repudiation damages were subject to that distribution scheme, and under § 1821(i)(2), developer was entitled to only pro rata share of failed bank's liquidated assets to satisfy its money judgment for repudiation damages; allowing dollar-for dollar setoff would provide developer full payment, in excess of its pro rata share, in front of higher-priority creditors. [Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\)](#).

Unpublished decision: Permitting plaintiff developer to setoff its repudiation damages against monies owed to defendant FDIC was error, as that setoff violated [12 USCS § 1821\(d\)\(11\)\(A\)](#)'s distribution scheme, as repudiation damages were subject to that distribution scheme, and under § 1821(i)(2), developer was entitled to only pro rata share of failed bank's liquidated assets to satisfy its money judgment for repudiation damages; allowing dollar-for dollar setoff would provide developer full payment, in excess of its pro rata share, in front of higher-priority creditors. [Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\)](#).

56. —Severance payments

FDIC, as receiver, is liable for severance payments under collective bargaining agreement, between failed bank and its employees, which FDIC repudiates. [Office & Professional Employees Int'l Union, Local 2 v. FDIC, 27 F.3d 598, 307 U.S. App. D.C. 148, 18 Employee Benefits Cas. \(BNA\) 1905, 146 L.R.R.M. \(BNA\) 2720, 128 Lab. Cas. \(CCH\) ¶ 11125, 1994 U.S. App. LEXIS 16385 \(D.C. Cir. 1994\)](#).

Severance payments can comprise actual direct compensatory damages for purposes of [12 USCS § 1821\(e\)\(3\)](#). [McMillian v. FDIC, 81 F.3d 1041, 9 Fla. L. Weekly Fed. C 1029, 1996 U.S. App. LEXIS 9292 \(11th Cir. 1996\)](#).

Former employees of failed bank are denied severance payments and damages, where employees were not terminated prior to appointment of FDIC as receiver, and FDIC repudiated bank's severance pay program, retroactively to date of its appointment, as "burdensome" under [12 USCS § 1821\(e\)](#), because repudiation of contract was proper, and employees' unvested rights to severance pay had no present compensable value at time of repudiation since bank reserved right to terminate program at will. [Hennessey v. FDIC, 858 F. Supp. 483, 1994 U.S. Dist. LEXIS 10672 \(E.D. Pa. 1994\)](#).

57. —Medical and life insurance benefits

FDIC is liable to early retiree for value of standard medical and life insurance benefits, where FDIC, upon becoming receiver of insolvent bank, repudiated bank's "Enhanced Retirement Program" agreement with former bank employee under which she was promised benefits, because retiree is entitled to actual direct compensatory damages caused by FDIC's repudiation under [12 USCS § 1821\(e\)\(3\)\(A\)\(i\)](#). [Fresca v. FDIC, 818 F. Supp. 664, 16 Employee Benefits Cas. \(BNA\) 2584, 1993 U.S. Dist. LEXIS 5072 \(S.D.N.Y. 1993\)](#).

58. Leases

Company that leased computer equipment to bank under five-year lease, which had perfected security interest in securities that bank had pledged to secure its obligations under lease, has no entitlement to satisfy its claim, out of those pledged securities, for future rent that it lost when RTC, which was appointed receiver for bank when it became insolvent, repudiated lease, since lessor's claim is dead by operation of § 1821(e), and when it died,

securities pledged to its satisfaction became unencumbered assets of receiver bank. [Unisys Finance Corp. v. Resolution Trust Corp., 979 F.2d 609, 1992 U.S. App. LEXIS 29816 \(7th Cir. 1992\)](#), reh'g, en banc, denied, [1992 U.S. App. LEXIS 33341 \(7th Cir. Dec. 21, 1992\)](#).

New York's statutory tenancies, whether under rent stabilization or rent control, are contract-based leaseholds; thus, they fall within express language of [12 USCS § 1821\(e\)](#), and are subject to RTC's statutory power to repudiate. [Resolution Trust Corp. v. Diamond, 18 F.3d 111, 1994 U.S. App. LEXIS 3992 \(2d Cir. 1994\)](#), vacated, remanded sub nom. *Solomon v. Resolution Trust Corp.*, 513 U.S. 801, 115 S. Ct. 43, 130 L. Ed. 2d 5, 1994 U.S. LEXIS 5404 (1994), reinstated in part, modified, remanded, [45 F.3d 665, 1995 U.S. App. LEXIS 1299 \(2d Cir. 1995\)](#).

Meaning of word "term" in [12 USCS § 1821\(e\)\(5\)\(A\)\(ii\)](#), which provides that once RTC repudiates lease, tenant may choose to remain in possession of leasehold interest for balance of term of lease, is matter of contract provisions or state law. [Resolution Trust Corp. v. Diamond, 45 F.3d 665, 1995 U.S. App. LEXIS 1299 \(2d Cir.\)](#), cert. denied, 515 U.S. 1158, 115 S. Ct. 2609, 132 L. Ed. 2d 853, 1995 U.S. LEXIS 4298 (1995).

Federal statute authorizing Resolution Trust Corporation (RTC) to repudiate contracts or leases of failed financial institution, [12 USCS § 1821\(e\)\(1\)](#), preempted New York's antieviction provisions to extent that such provisions would have prevented RTC, following its repudiation of rent-subsidized leases of failed savings and loan association (S&L), from evicting any tenant who proffered monthly rent payments in timely fashion; antieviction provisions stood as obstacle to accomplishment and execution of full purposes and objectives of Congress. [Resolution Trust Corp. v. Diamond, 45 F.3d 665, 1995 U.S. App. LEXIS 1299 \(2d Cir.\)](#), cert. denied, 515 U.S. 1158, 115 S. Ct. 2609, 132 L. Ed. 2d 853, 1995 U.S. LEXIS 4298 (1995).

Conservator, as well as subsequently appointed receiver, of failed financial institution each have independent right to repudiate lease under [12 USCS § 1821\(e\)](#). [Resolution Trust Corp. v. United Trust Fund, 57 F.3d 1025, 9 Fla. L. Weekly Fed. C 257, 1995 U.S. App. LEXIS 16922 \(11th Cir. 1995\)](#).

[12 USCS § 1821\(e\)\(4\)\(B\)](#) governs receiver's overall liability for damages when it repudiates lease. [First Bank Nat'l Ass'n v. FDIC, 79 F.3d 362, 2 Accom. Disabilities Dec. \(CCH\) ¶2-211, 15 Am. Disabilities Dec. 40, 1996 U.S. App. LEXIS 5152 \(3d Cir. 1996\)](#).

Federal Deposit Insurance Corporation did not, pursuant to its appointment as receiver of insolvent national banking association by Comptroller of Currency under [12 USCS § 1821\(c\)](#), have power, by sending post-insolvency notification of disaffirmance of lease, to alter or effect rights of other creditors by creating claim in favor of landlord which did not theretofore exist. [80 Pine, Inc. v. European American Bank, 424 F. Supp. 908, 1976 U.S. Dist. LEXIS 11594 \(E.D.N.Y. 1976\)](#).

FDIC's termination of insolvent bank's executory lease agreements is upheld, where 1989 amended version of [12 USCS § 1821\(e\)](#) was in effect when lessor sued and should apply to repudiation of lease entered into prior to its enactment, because § 1821(e)(4)(A) grants receiver, such as FDIC, authority to repudiate lease at its discretion. [Bayshore Executive Plaza Partnership v. Federal Deposit Ins. Corp., 750 F. Supp. 507, 1990 U.S. Dist. LEXIS 14599 \(S.D. Fla. 1990\)](#), aff'd, [943 F.2d 1290, 1991 U.S. App. LEXIS 23046 \(11th Cir. 1991\)](#).

RTC is entitled to dismissal of complaint seeking lease payments for computer equipment provided to bank now in receivership, where RTC became receiver on May 29, 1990 and RTC timely informed lessor that it was repudiating lease on August 23, 1990, even though bank had pledged marketable securities as security for its monthly payments and other lease obligations, because lessor's claim, based on [12 USCS § 1821\(e\)\(11\)](#), would permit recovery of future rent payments in contravention of express limitation of damages in § 1821(e)(4)(B). [First Nat'l Bank v. Unisys Finance Corp., 779 F. Supp. 85, 1991 U.S. Dist. LEXIS 15391 \(N.D. Ill. 1991\)](#), aff'd, [979 F.2d 609, 1992 U.S. App. LEXIS 29816 \(7th Cir. 1992\)](#).

FDIC may not prevent beneficiary from obtaining payment under irrevocable letter of credit issued on behalf of now insolvent bank to which FDIC had been appointed receiver, where bank had agreed to lease certain equipment

from beneficiary and have third party issue letter of credit for amount of rent beneficiary would recover under lease if bank defaults on lease, which lease FDIC disaffirmed, because [12 USCS § 1821\(e\)\(12\)\(A\)](#) does not void default clause in lease but instead permits receiver to enforce contracts containing default clause. [Federal Deposit Ins. Corp. v. United States Trust Co., 793 F. Supp. 368, 18 U.C.C. Rep. Serv. 2d \(CBC\) 270, 1992 U.S. Dist. LEXIS 8000 \(D. Mass. 1992\)](#).

Resolution Trust Corporation's repudiation of lease pursuant to [12 USCS § 1821\(e\)\(11\)](#) does not constitute taking of private property for public use without just compensation or due process in violation of Fifth Amendment, where prior to receivership, bank had agreed to lease data-processing equipment and pledge certain securities as security for performance under lease, because lease creditor had only expectation of future profits in lease since RTC was not in arrears on lease payments at time of repudiation. [LB Credit Corp. v. Resolution Trust Corp., 796 F. Supp. 358, 1992 U.S. Dist. LEXIS 11887 \(N.D. Ill. 1992\)](#).

Secured creditor of bank is not entitled to liquidate its secured interest, where creditor lent money to realty trust ("Trust"), Trust built headquarters for bank, bank and Trust were subsidiaries of same corporation, bank leased headquarters from Trust, bank gave creditor security interest in bonds to guarantee rent payments, bank became insolvent, FDIC, as receiver, repudiated leases, and at time of repudiation, no rent was unpaid, because written agreement between bank and creditor limited secured obligation to obligation under lease, and bank cannot be held liable for Trust's underlying debt. [Fleet Nat'l Bank v. FDIC, 843 F. Supp. 787, 1994 U.S. Dist. LEXIS 1178 \(D. Mass. 1994\)](#).

Purchaser of bank property under sale and lease-back arrangement is not liable to FDIC as receiver for now-failed bank on note and guaranty executed as part of arrangement, where FDIC has disaffirmed lease part of arrangement pursuant to [12 USCS § 1821\(e\)](#) and ceased making rent payments to purchaser, because facts require finding that lease, note, and guaranty were all parts of single, integrated transaction under state law; note expressly makes performance by bank (now FDIC) under lease condition precedent to recovery under note; and liability under guaranty is triggered only if purchaser defaults under note—disaffirmance of lease necessarily repudiated entire arrangement, making note and guaranty unenforceable. [Hackel v. FDIC, 858 F. Supp. 289, 1994 U.S. Dist. LEXIS 10120 \(D. Mass. 1994\)](#).

Landlord of bank in default is only owed \$21,323.30 by RTC, which timely and properly repudiated lease 90 days after it became receiver, where \$10,515.23 of \$31,838.53 in back rent asserted is for late fees designated in lease as "Late Payment Penalty," because lessor may not recover "damages under any acceleration clause or other penalty provision in lease" under [12 USCS § 1821\(e\)\(4\)\(B\)\(ii\)](#). [New Hampshire Assocs. Ltd. Pshp. v. FDIC, 978 F. Supp. 650, 1997 U.S. Dist. LEXIS 14595 \(D. Md. 1997\)](#).

Bank branch lessor is not obligated to pay off mortgage on property, where branch was built and operated in accordance with loan/lease agreement until bank became insolvent and RTC repudiated lease in 1992, because repudiation of lease portion of agreement pursuant to [12 USCS § 1821\(e\)](#) thereby discharged obligation of lessor to repay loan arising from same agreement. [FDIC v. S.A.S. Assocs., 44 F. Supp. 2d 781, 1999 U.S. Dist. LEXIS 5808 \(E.D. Va. 1999\)](#), aff'd, [214 F.3d 528, 2000 U.S. App. LEXIS 12103 \(4th Cir. 2000\)](#).

In case in which lessor sued FDIC, as receiver for failed institution, for breach of contract and FDIC filed *Fed. R. Civ. P. 12(c)* motion for judgment on pleadings, lessor's claim that FDIC improperly breached lease agreement lacked merit under Financial Institutions Reform, Recovery and Enforcement Act of 1989; under [12 USCS § 1821\(e\)\(1\)](#), FDIC was authorized FDIC to repudiate or disaffirm any lease to which failed institution was party. [Qi v. FDIC, 755 F. Supp. 2d 195, 78 Fed. R. Serv. 3d \(Callaghan\) 349, 2010 U.S. Dist. LEXIS 134419 \(D.D.C. 2010\)](#).

In case in which FDIC, as receiver for failed institution repudiated lease, and lessor sued, asserting claims for: (1) return of unamortized portion of brokerage commission he paid to failed institution's broker, (2) unamortized portion of tenant improvement credit he paid to failed institution, (3) loss of income for vacancy period and amount of property taxes paid during vacancy, (4) proper penalty payment, and (5) estimated cost of restoring mezzanine, none of those claims could not be deemed back rents under Financial Institutions Reform, Recovery and

Enforcement Act of 1989 (FIRREA); under FIRREA, contractual rent should be narrowly construed as only those sums that are fixed, regular, periodic charges. [Qi v. FDIC, 755 F. Supp. 2d 195, 78 Fed. R. Serv. 3d \(Callaghan\) 349, 2010 U.S. Dist. LEXIS 134419 \(D.D.C. 2010\)](#).

Agreement between FDIC and successor bank to failed bank provided that successor would assume failed bank's lease obligations but excluded "Bank Premises," and "appurtenant" property, which included records storage facility leased from lessor; lease therefore was not one of liabilities assumed by successor bank under [12 USCS § 1821\(e\)](#). [1500 Range Way Partners, LLC v. JPMorgan Chase Bank, N.A., 800 F. Supp. 2d 716, 2011 U.S. Dist. LEXIS 73965 \(D.S.C. 2011\)](#).

59. Other contracts

Purchasers under contract for deed could not sue Federal Deposit Insurance Corporation (FDIC) in its role as corporate purchaser where seller had mortgaged land to bank and as signed purchase contract to it with neither transaction being recorded, seller subsequently went bankrupt and bankruptcy trustee conveyed deed to third person, bank subsequently became insolvent and FDIC was appointed receiver, FDIC (pursuant to [12 USCS §§ 1821\(e\)](#) and [1823\(e\)](#)) split itself into FDIC as receiver and FDIC as corporation, and FDIC as receiver sold contract for purchase to corporate FDIC pursuant to contract stipulating that corporate FDIC did not assume obligations of bank, since there was no contract between purchasers and corporate FDIC which could be rescinded, controlling federal common law did not permit purchasers to assert offensively obligations of bilateral contract against corporate FDIC, and corporate FDIC was not estopped from denying obligation since once it became aware that it could not deliver title to land it advised purchasers to stop payments and admitted liability for payments made directly to corporate FDIC. [Trigo v. Federal Deposit Ins. Corp., 847 F.2d 1499, 1988 U.S. App. LEXIS 8589 \(11th Cir. 1988\)](#).

Bank employees had valid legal claim for severance pay based on Federal Deposit Insurance Corporation's (FDIC) repudiation of collective bargaining agreement even though, at time FDIC was appointed receiver for bank, employees had not been terminated; although right to severance pay was contingent on date of appointment, right was vested at that time in that it was part of their compensation package and had real present value. [Office & Professional Employees Int'l Union, Local 2 v. FDIC, 27 F.3d 598, 307 U.S. App. D.C. 148, 18 Employee Benefits Cas. \(BNA\) 1905, 146 L.R.R.M. \(BNA\) 2720, 128 Lab. Cas. \(CCH\) ¶ 11125, 1994 U.S. App. LEXIS 16385 \(D.C. Cir. 1994\)](#).

For purposes of [12 USCS § 1821\(e\)\(1\)](#), employment contracts of two bank officials, which set up trusts to ensure payment of their wages and benefits upon failure of bank, fell within term "any contract or lease." [Westport Bank & Trust Co. v. Geraghty, 90 F.3d 661, 1996 U.S. App. LEXIS 18306 \(2d Cir. 1996\)](#).

Conservator for bank property repudiated bid agreement bank had entered into with savings and loan participating in note and mortgage, where conservator was appointed 4/6/89, [12 USCS § 1821](#) amendment giving conservator repudiation power became effective 8/9/89, and formal repudiation was timely communicated 8/24/89, because conservator sufficiently alleged contract "burdensome" by citing probability that purchase and resale of foreclosure property contemplated under agreement would bring about no return to bank on underlying debt. [Union Bank v. Federal Sav. & Loan Ins. Corp., 724 F. Supp. 468, 1989 U.S. Dist. LEXIS 13562 \(E.D. Ky. 1989\)](#).

Contract to provide and pay for future legal services of former officers and directors was burdensome and properly repudiated as exercise of RTC's discretion under [12 USCS § 1821\(e\)](#), where future legal fees fund contained in excess of \$11 million of assets of insolvent savings and loan, because contract was not trust and it was not non-executory, and law firm had no security interest in fund. [Gibson v. Resolution Trust Corp., 750 F. Supp. 1565, 13 U.C.C. Rep. Serv. 2d \(CBC\) 1298, 1990 U.S. Dist. LEXIS 16891 \(S.D. Fla. 1990\)](#), aff'd, [51 F.3d 1016, 9 Fla. L. Weekly Fed. C 31, 26 U.C.C. Rep. Serv. 2d \(CBC\) 547, 1995 U.S. App. LEXIS 10469 \(11th Cir. 1995\)](#).

FDIC must pay former bank executive \$160,000 severance benefits, where, shortly after being appointed receiver of bank and before expiration of executive's employment agreement, FDIC terminated him without cause, triggering lump-sum severance payment under agreement, because promise for severance benefits vested when employment

agreement was finalized and not when executive was terminated, so that contract obligation was nonexecutory at time FDIC became receiver and could not be repudiated under [12 USCS § 1821\(e\). LaMagna v. FDIC, 828 F. Supp. 1, 1993 U.S. Dist. LEXIS 9433 \(D.D.C. 1993\)](#).

FDIC cannot recover \$3.5 million mortgage-servicing company “netted out” when FDIC, acting as receiver for failed bank, disaffirmed its 1986 servicing agreement with company, where company simply stood on its contractual rights after FDIC delayed effective date of disaffirmance for more than 2 months and continued to act as if contract was in effect, because deduction of contractual fees by company did not amount to “claim” subject to mandatory administrative claims process under [12 USCS § 1821\(d\)](#) and when FDIC continues to obtain fruits of contract with another party it should not be heard to complain when contracting party likewise seeks to exercise its rights under agreement. [FDIC v. Source One Mortgage Servs. Corp., 844 F. Supp. 40, 1994 U.S. Dist. LEXIS 7123 \(D. Mass. 1994\)](#).

Developer cannot avoid liability on note now in hands of new bank pursuant to purchase and assumption agreement, even though it claims that FDIC wrongfully transferred to new bank its power to repudiate contracts of failed institution under [12 USCS § 1821\(e\)\(1\)](#), because purchase and assumption agreement effectively repudiated contract when it declined to oblige new bank to pay previously promised interest rate on CD contract connected to developer’s note as part of bond-funded construction of low- and moderate-income apartment complex. [FDIC v. Widefield Homes, 916 F. Supp. 1074, 1996 U.S. Dist. LEXIS 2851 \(D. Colo. 1996\)](#).

Summary judgment was denied as to trustees’ request for custodial fees under Financial Institutions Reform, Recovery and Enforcement Act, [12 USCS § 1821](#), because moving defendants failed to identify with specificity what portion of trustees’ fee request represented unperformed and/or undocumented work. [U.S. Bank Nat'l Ass'n v. First Nat'l Bank, 394 F. Supp. 2d 829, 2005 U.S. Dist. LEXIS 34016 \(S.D. W. Va. 2005\)](#).

Federal Deposit Insurance Corporation (FDIC), as receiver, was not entitled to dismissal of action brought by debt collector, which had contract with failed credit card issuer, because whether FDIC effectively repudiated debt collection contract under [12 USCS § 1821\(e\)\(1\)](#)—after collector had continued to carry out its contractual duties—could not be resolved without further development of factual record. [NCB Mgmt. Servs. v. FDIC, 843 F. Supp. 2d 62, 2012 U.S. Dist. LEXIS 18464 \(D.D.C. 2012\)](#).

60. Authority to enforce contracts

Application of [12 USCS § 1821\(e\)\(12\)\(A\)](#) so as to thwart preexisting termination-upon-insolvency clause in tenant bank’s lease does not violate takings clause of Fifth Amendment. [McAndrews v. Fleet Bank of Massachusetts, N.A., 989 F.2d 13, 1993 U.S. App. LEXIS 5194 \(1st Cir. 1993\)](#).

For purposes of [12 USCS § 1821\(e\)\(12\)\(A\)](#), credit card bank “entered into” master indenture in receivables securitization transaction by agreeing to undertake rights and obligations, though credit card bank did not sign master indenture on line designating it party, but rather signed on line marked “Acknowledged and Accepted”; accordingly, Federal Deposit Insurance Corporation validly enforced that contract notwithstanding ipso facto clause that provided that payment of interest and principal on notes would be accelerated if credit card bank went into receivership. [Bank of N.Y. v. FDIC, 508 F.3d 1, 390 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 26310 \(D.C. Cir. 2007\)](#), reh’g, en banc, denied, [2008 U.S. App. LEXIS 1586 \(D.C. Cir. Jan. 18, 2008\)](#), reh’g denied, [2008 U.S. App. LEXIS 1582 \(D.C. Cir. Jan. 18, 2008\)](#).

Failed bank’s landlord had no enforceable rights under purchase agreement entered into between Federal Deposit Insurance Corporation as receiver and purchaser of bank’s assets; landlord was not intended third-party beneficiary of agreement, and allowing third-party enforcement would have been contrary to intent of Financial Institutions Reform, Recovery, and Enforcement Act of 1989. [GECCMC 2005-C1 Plummer St. Office Ltd. P'ship v. JP Morgan Chase Bank, N.A., 671 F.3d 1027, 2012 U.S. App. LEXIS 1866 \(9th Cir. 2012\)](#).

Suit by former officers and directors of bank challenging personal exclusion in insurance policy for actions by FDIC fails under [12 USCS § 1821\(e\)\(12\)\(A\)](#), where grounds for suit is violation of public policy, because Congress

obviously has adopted contrary public policy. [*Powell v. American Cas. Co., 772 F. Supp. 1188, 1991 U.S. Dist. LEXIS 9910 \(W.D. Okla. 1991\).*](#)

Regulatory exclusion set forth in director's and officer's liability policy issued to failed bank by insurer is valid and enforceable, despite FDIC argument that exclusion for loss in connection with "any action or proceeding brought by or on behalf of FDIC" is violative of public policy, because Congress's reluctance to regulate or affect director and officer liability policies is manifest in [12 USCS § 1821\(e\)\(12\)\(A\)](#). [*Federal Sav. & Loan Ins. Corp. v. Shelton, 789 F. Supp. 1355, 1992 U.S. Dist. LEXIS 3527 \(M.D. La. 1992\).*](#)

Regulatory exclusion in directors' and officers' liability insurance policy issued to now-failed bank bars claims by FDIC, where plain language of policy excludes from coverage losses incurred in connection with any action or proceeding brought by FDIC, because enforcement of exclusion would not violate public policy, since [12 USCS § 1821\(e\)\(12\)\(A\)](#) provides for receiver's enforcement of any contract, except directors' or officers' liability insurance contract. [*FDIC v. Continental Casualty Co., 796 F. Supp. 1344, 1991 U.S. Dist. LEXIS 18994 \(D. Or. 1991\).*](#)

Landlord's effort to terminate leasing arrangement must fail, where his predecessor entered into long term lease with bank's predecessor, bank eventually was declared insolvent and FDIC was appointed receiver, and landlord sought to invoke clause providing for termination upon appointment of receiver for lessee, because [12 USCS § 1821\(e\)\(12\)\(A\)](#) specifically gives FDIC right to enforce lease, and landlord's alleged right to terminate lease did not mature until 1991 receivership, making application of 1990 law prospective. [*McAndrews v. New Bank of New England, N.A., 796 F. Supp. 613, 1992 U.S. Dist. LEXIS 12932 \(D. Mass. 1992\), aff'd, 989 F.2d 13, 1993 U.S. App. LEXIS 5194 \(1st Cir. 1993\).*](#)

Claim of Resolution Trust Corporation (RTC) as receiver for holder of 3 promissory notes for purchase of 3 single-family condominium units against condominium association for declaratory judgment is granted, where association attempted to exercise right of first refusal to purchase units contained in association's condominium declaration, because Financial Institutions Reform, Recovery, and Enforcement Act preempted and rendered unenforceable association's contractual right of first refusal, and RTC is entitled to declaratory judgment to that effect. [*Resolution Trust Corp. v. Charles House Condominium Ass'n, 853 F. Supp. 226, 1994 U.S. Dist. LEXIS 12729 \(E.D. La. 1994\).*](#)

Borrowers' claim against RTC for compensatory damages under [12 USCS § 1821\(e\)\(3\)\(A\)\(i\)](#), based on RTC's alleged failure to properly repudiate loan agreement, is denied summarily, where RTC did not exercise option to repudiate agreement, because § 1821(e)(1) permits but does not mandate RTC to repudiate agreement, and failure to repudiate results in continuation of contractual obligation and application of contract principles to dispute. [*Country Club Assocs. Ltd. Partnership v. FDIC, 918 F. Supp. 429, 1996 U.S. Dist. LEXIS 1870 \(D.D.C. 1996\).*](#)

Although defendant Federal Deposit Insurance Corporation (FDIC) dishonored ipso facto clause contained in indenture agreement between plaintiff indenture trustee for investors who bought securitized notes from defunct credit card issuer's trust and trust, FDIC paid trustee's noteholders under regular schedule, thus, it did not repudiate contract under [12 USCS § 1821\(e\)\(1\)](#), but rather, FDIC properly ignored clause under former § 1821(e)(12)(A), concluding issuer "entered into" agreement even though issuer signed indenture agreement on special signature block which did not designate issuer as party and agreement was only accepted issuer's board on behalf of trust. [*Bank of N.Y. v. Fed. Deposit Ins. Co., 453 F. Supp. 2d 82, 2006 U.S. Dist. LEXIS 69130 \(D.D.C. 2006\), aff'd, 508 F.3d 1, 390 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 26310 \(D.C. Cir. 2007\).*](#)

Because federal court had previously held that [12 USCS § 1821\(e\)\(13\)\(A\)](#) voided indenture agreement's ipso facto clause, and that plaintiff Federal Deposit Insurance Corporation (FDIC) could stop making accelerated payments to trust, defendant indentured trustee for investors who bought securitized notes from defunct credit card issuer's trust violated that prior judgment by making accelerated payments to noteholders and by filing state interpleader action. [*FDIC v. Bank of New York, 479 F. Supp. 2d 1, 67 Fed. R. Serv. 3d \(Callaghan\) 672, 2007 U.S. Dist. LEXIS 5811 \(D.D.C.\), aff'd, 508 F.3d 1, 390 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 26310 \(D.C. Cir. 2007\).*](#)

V. PAYMENT OF INSURED DEPOSITS

61. Generally

FDIC did not abuse its discretion in denying individual deposit insurance ([12 USCS § 1821](#)) on amount of money that had been withdrawn from her account without her authorization, which at time bank became insolvent had not been recrated to her account and which was subject of state court action, since amount in dispute, which had not been recrated, did not constitute "deposit" as defined in [12 USCS § 1813\(l\)\(1\)](#), furthermore, Electronic Fund Transfer Act ([15 USCS §§ 1693](#) et seq.), which only supplies cause of action to customer seeking to have money recrated after unauthorized withdrawal, does not stand for proposition that money withdrawn without authorization remains, in effect, on deposit with bank. [Raine v. Reed, 14 F.3d 280, 1994 U.S. App. LEXIS 2657 \(5th Cir. 1994\)](#).

Failure of bank to keep record of deposit will not defeat recovery by depositor who otherwise establishes that deposit was made. [Jones v. Federal Deposit Ins. Corp., 24 F. Supp. 985, 1938 U.S. Dist. LEXIS 1824 \(D. Okla. 1938\)](#).

Fact that executor of estate in his settlement in probate court sets up that there is balance due estate which is on deposit in given bank is no proof against Federal Deposit Insurance Corporation that there is or was such deposit, in absence of any entry either upon books of bank or upon some passbook indicating such deposit had been made. [Fed. Deposit Ins v. Records, 34 F. Supp. 600, 1940 U.S. Dist. LEXIS 2611 \(D. Mo. 1940\)](#).

FIRREA jurisdictional provision at [12 USCS § 1821\(f\)\(4\)](#) applies retroactively and employee's counterclaim for deposit insurance is dismissed for proper adjudication in Fifth Circuit, even though FDIC brought action against employee of failed bank in District Court, because applying statute to present case will not deprive any party of its day in court, and procedural amendments generally are applied retroactively. [FDIC v. Adam, 818 F. Supp. 1019, 1993 U.S. Dist. LEXIS 14211 \(S.D. Tex. 1993\)](#), aff'd, [1994 U.S. App. LEXIS 10425 \(5th Cir. Apr. 26, 1994\)](#).

Federal Deposit Insurance Corporation cannot become liable to pay interest until in default and obligation to pay insured deposit becomes past due. [Connor v. FDIC, 113 Vt. 379, 34 A.2d 368, 1943 Vt. LEXIS 187 \(1943\)](#).

62. Bank closing as prerequisite

When capital of insured bank becomes impaired, Federal Deposit Insurance Corporation may protect depositors by paying claims of depositors if bank is placed in receivership, or by advancing cash to insured bank, through medium of loan, or by purchase of assets to replace substandard assets. [Brown v. New York Life Ins. Co., 152 F.2d 246, 1945 U.S. App. LEXIS 3371 \(9th Cir. 1945\)](#).

Whenever banking institution is not closed, motion for order of dismissal on ground that Federal Deposit Insurance Corporation has no personal liability under statute is meritorious and should be granted. [Jones v. Citizens & Southern Nat'l Bank, 262 F. Supp. 506, 1967 U.S. Dist. LEXIS 11626 \(D.S.C. 1967\)](#).

Under [12 USCS § 1821\(f\)](#), no claim for payment of insured deposits may be made unless bank has been closed for insolvency. [Crockett v. Citizens & Southern Financial Corp., 349 F. Supp. 1104, 1972 U.S. Dist. LEXIS 11801 \(N.D. Ga. 1972\)](#).

Federal Deposit Insurance Corporation had no personal liability under [12 USCS § 1821](#) for failure of federally insured bank to return amount deposited to depositor where bank in question is not closed. [Ehrlich v. Federal Deposit Ins. Corp., 357 F. Supp. 196, 1973 U.S. Dist. LEXIS 14046 \(N.D. Ill. 1973\)](#).

63. Owner of deposit

Trustee on 3 bank accounts in institution covered by Federal Deposit Insurance Act ([12 USCS §§ 1811–1831d](#)) who brought action under [12 USCS § 1821\(f\)](#) seeking judicial determination of amount due under Act was entitled to two insured accounts in sum of \$100,000 each pursuant to [12 CFR § 330.3](#) which provides for insurance up to \$100,000 as to each beneficiary, separately from any other accounts of owner, where funds are owned by individual and are deposited in revocable trust account which evidences intention that on owner's death funds shall belong to

his spouse, child, or grandchild, since, although interests of depositor-trustee's children were too contingent to meet requirements of § 330.3 because funding of trusts in their name depended on trustee pre-deceasing his wife, it was clear under trust agreement that trust in name of husband or wife would be funded upon death of other, and both husband and wife were settlers of trust accounts. [*Lambert v. Federal Deposit Ins. Corp., 847 F.2d 604, 1988 U.S. App. LEXIS 7220 \(9th Cir. 1988\).*](#)

In applying limitations on FDIC insurance under [12 USCS § 1813\(m\)\(1\)](#) to deposit of bank for which it had become receiver, FDIC did not err, in performing its duty to determine extent of coverage available to bank's depositors under [12 USCS § 1821\(a\)\(1\)](#), in denying depositor request that \$136,122.22 in particular account be regarded as separate insured deposit held by named depositor as agent for another, since [12 USCS § 1822\(c\)](#) provides that FDIC may recognize ownership of deposit accounts only when held by persons whose name or interest is disclosed on deposit account record. [*Abdulla Fouad & Sons v. Federal Deposit Ins. Corp., 898 F.2d 482, 1990 U.S. App. LEXIS 6199 \(5th Cir. 1990\).*](#)

Where brother and sister each had CD in amount of \$100,000, and each listed other sibling on CD as depositor, each may be entitled to receive \$100,000 from FDIC when bank becomes insolvent, where CDs, although styled as joint tenancy with right of survivorship, were in fact accounts separately owned by siblings and separately insured by FDIC. [*Spawn v. Western Bank-Westheimer, 925 F.2d 885, 1991 U.S. App. LEXIS 3914 \(5th Cir. 1991\),*](#) app. after remand, [989 F.2d 830, 1993 U.S. App. LEXIS 10271 \(5th Cir. 1993\).](#)

Successor bank that assumed liability for deposits of failed bank through Federal Deposit Insurance Corporation (FDIC) was improperly granted summary judgment of no liability for cashier's check that had been negotiated but not cashed for 20 years, as record contained no evidence whether FDIC mailed notice required under [12 USCS § 1822\(e\).](#) [*Acevedo v. First Union Nat'l Bank, 357 F.3d 1244, 17 Fla. L. Weekly Fed. C 187, 2004 U.S. App. LEXIS 1126 \(11th Cir. 2004\).*](#)

In broker's action against FDIC, as receiver for bank, alleging that FDIC wrongfully seized funds from account to which broker had legal title, broker's motion for summary judgment was granted, as custodial account established under agreement with bank was not general deposit, but was special deposit creating trust and entitled broker to full recovery from FDIC, which succeeded bank's obligations under agreement for account. [*Merrill Lynch Mortg. Capital, Inc. v. FDIC, 293 F. Supp. 2d 98, 2003 U.S. Dist. LEXIS 20358 \(D.D.C. 2003\),*](#) dismissed, [2004 U.S. App. LEXIS 15657 \(D.C. Cir. July 28, 2004\).](#)

Where mother exchanged certificate of deposit for \$12,500 for deposits in names of her three children, children were actual owners and their claims under Federal Deposit Insurance policy were valid. [*Ghent v. Cliffside Park Title Guarantee & Trust Co., 16 N.J. Misc. 308, 199 A. 416 \(N.J. Sup. Ct. 1938\).*](#)

64. Review of payment determinations

Court of appeals had subject matter jurisdiction over suit brought by Attorney General of New York and various not-for-profit corporations seeking review of determination by FDIC that New York's not-for-profit corporations neither hold their assets in trust for charitable beneficiaries nor maintain separate accounts in different capacities or for different rights, and are therefore not entitled to more than \$100,000 per depositor in federal deposit insurance. [*Abrams v. Federal Deposit Ins. Corp., 938 F.2d 22, 1991 U.S. App. LEXIS 13705 \(2d Cir. 1991\),*](#) overruled in part, [*Department of Envtl. Resources v. FDIC, 78 F.3d 97, 1996 U.S. App. LEXIS 4614 \(2d Cir. 1996\).*](#)

Court of appeals does not have jurisdiction over action brought by depositors which seeks review of determinations of RTC as to amounts federally insured; such action must be brought in district court, where proceeding would be de novo. [*Callejo v. Resolution Trust Corp., 17 F.3d 1497, 305 U.S. App. D.C. 144, 1994 U.S. App. LEXIS 4891 \(D.C. Cir. 1994\).*](#)

Irrespective of use of "may" in [12 USCS § 1821\(f\)\(2\)](#) and (3), deposit insurance claim is not ripe for federal court review until claim has been presented to FDIC in its corporate capacity and until FDIC has made final determination thereon. [*DeCell & Assocs. v. FDIC, 36 F.3d 464, 1994 U.S. App. LEXIS 30389 \(5th Cir. 1994\),*](#) reh'g denied, [1994](#)

[U.S. App. LEXIS 36125 \(5th Cir. Dec. 2, 1994\)](#), cert. denied, 515 U.S. 1121, 115 S. Ct. 2275, 132 L. Ed. 2d 279, 1995 U.S. LEXIS 3803 (1995).

Because FDIC has chosen not to adopt regulations establishing procedures for resolving claims to insured deposits or insurance coverage, direct court of appeals review under [12 USCS § 1821\(f\)\(4\)](#) is not available; rather, such disputes must first be resolved in court of general jurisdiction, which normally is federal district court. [Massachusetts v. FDIC, 47 F.3d 456, 1995 U.S. App. LEXIS 2310 \(1st Cir. 1995\)](#), transferred, dismissed, [916 F. Supp. 54, 1996 U.S. Dist. LEXIS 5276 \(D. Mass. 1996\)](#).

Where FDIC has failed to establish procedures for resolving dispute over claim for deposit insurance, jurisdiction lies in district court rather than court of appeals. [Department of Envtl. Resources v. FDIC, 78 F.3d 97, 1996 U.S. App. LEXIS 4614 \(2d Cir. 1996\)](#).

Defendant Federal Deposit Insurance Corporation (FDIC) reasonably determined that accounts at issue were corporate accounts which were insured under [12 CFR § 330.11](#) up to total of \$200,000, rather than annuitant accounts which if insured under [12 CFR § 330.8](#) would have been covered for \$8,605,261.94, because annuity accounts were not exempt from maxim that FDIC insurance coverage was based on ownership rights and capacities in which accounts were maintained; no plausible reading of regulations supported contention of plaintiff insurers, who were depositors in bank in receivership, that depositor, simply by claiming that deposit account was intended to fund annuity payments, could evade [12 CFR § 330.5](#)'s requirement that intention had to be clearly and unambiguously indicated on account records. [Aviva Life & Annuity Co. v. FDIC, 654 F.3d 1129, 2011 U.S. App. LEXIS 16872 \(10th Cir. 2011\)](#).

Federal district court will proceed to hear and determine dispute over funds deposited in failed bank, where resolution must involve tracing of funds involved in real estate refinancings and diverted to trust account of suspended lawyer, before being transferred to successor institution and claimed by RTC, because [12 USCS § 1821\(f\)\(3\)](#) directs that court of competent jurisdiction may make final determination of such claim since RTC has not yet enacted regulations governing procedures to be followed in handling of disputes concerning insured deposits. [Chicago Title Ins. Co. v. Resolution Trust Corp., 868 F. Supp. 135, 1994 U.S. Dist. LEXIS 19597 \(D.S.C. 1994\)](#).

Creditor's insured deposit claim against FDIC is dismissed, where creditor failed to exhaust its administrative remedies under [12 USCS § 1821\(f\)](#), because, while statute does not specifically require party to submit insured deposit claims to FDIC as insurer before filing suit seeking insurance coverage, § 1821(f)(2) implies exhaustion requirement and such requirement is consistent with legislative purpose of statute which is to enable FDIC to function effectively as deposit insurer. [Pennsylvania v. FDIC, 881 F. Supp. 979, 1995 U.S. Dist. LEXIS 3920 \(E.D. Pa. 1995\)](#).

Depositors were denied further deposit insurance for their revocable trust accounts from Federal Deposit Insurance Corporation (FDIC) where application of [12 CFR § 330.10 \(2008\)](#) was in accordance with law, court accepted FDIC's interpretation that their accounts did not exist on date interim rule was adopted, and interim rule was not retroactive. [Henry v. FDIC, 695 F. Supp. 2d 1063, 2010 U.S. Dist. LEXIS 14022 \(C.D. Cal. 2010\)](#).

VI. SUBROGATION

65. Generally

When it paid insured deposits in bank, Federal Deposit Insurance Corporation was entitled to all rights which insured depositors themselves would have had, under state law, against assets of bank in hands of state liquidating officer. [Federal Deposit Ins. Corp. v. Wilhoit, 52 F. Supp. 308, 1943 U.S. Dist. LEXIS 2136 \(D. Ky.\)](#), aff'd, [143 F.2d 14, 1943 U.S. App. LEXIS 4039 \(6th Cir. 1943\)](#).

Six year statute of limitations under [28 USCS § 2415](#) for action for money damages brought by "United States" which is founded upon any contract applies to action brought by FDIC in its corporate capacity to enforce personal guarantees on notes executed by corporations in favor of Puerto Rican bank and purchased by FDIC in its

corporate capacity from receiver appointed after bank was closed due. [Federal Deposit Ins. Corp. v. Barrera, 595 F. Supp. 894, 1984 U.S. Dist. LEXIS 22857 \(D.P.R. 1984\).](#)

In provision that FDIC shall be subrogated to all rights of depositor whom it has paid to extent of such payment [12 USCS § 1821(g)], effect of phrase “to the extent of such payment” was to change previous temporary statute, which subrogated corporation to full deposit, requiring that it be reimbursed entirely before depositor should receive anything on deposit in excess of amount insured, and to provide ratable right. [Federal Deposit Ins. Corp. v. Wilhoit, 297 Ky. 339, 180 S.W.2d 72, 1943 Ky. LEXIS 177 \(Ky. 1943\).](#)

Depositor, having accepted benefits of deposit insurance statute, could not question constitutionality of subrogation features. [In re Liquidation of Anchor State Bank, 234 Wis. 261, 291 N.W. 329, 1940 Wisc. LEXIS 96 \(Wis. 1940\).](#)

66. Priority of subrogation claim

In case in which (1) bank whose deposits were insured by Federal Deposit Insurance Corporation borrowed money from Reconstruction Finance Corporation, issuing therefor income debentures subordinated to all obligations of bank to depositors and other creditors, (2) bank was taken into receivership, (3) Federal Deposit Insurance Corporation paid off depositors, and (4) bank's assets were liquidated for sum sufficient to reimburse Federal Deposit Insurance Corporation for amount it had paid depositors, claim of Federal Deposit Insurance Corporation for interest on its principal claim was not prior to claim of Reconstruction Finance Corporation for principal amount of subordinated debentures. [Jamison v. Federal Deposit Ins. Corp., 149 F.2d 199, 1945 U.S. App. LEXIS 3383 \(5th Cir. 1945\).](#)

After FDIC is appointed receiver of insolvent bank, its claims against officers and directors of bank take priority over stockholders' direct claims against such persons. [Gaff v. FDIC, 919 F.2d 384, 1990 U.S. App. LEXIS 20227 \(6th Cir. 1990\)](#), modified, on reh'g, [933 F.2d 400, 1991 U.S. App. LEXIS 10687 \(6th Cir. 1991\).](#)

Federal claims court properly granted summary judgment in favor of U.S. on bank shareholder's takings claims arising from breach of assistance agreements with Federal Savings and Loan Insurance Corporation because, although shareholder had cognizable property interest in any liquidation surplus, there was no such surplus where receivership deficit, which had to be paid first by operation of 12 USCS § 1821(d)(11)(A)(i)–(v), exceeded estimated damages award. [Bailey v. United States, 341 F.3d 1342, 2003 U.S. App. LEXIS 17902 \(Fed. Cir. 2003\)](#), reh'g denied, reh'g, en banc, denied, [2003 U.S. App. LEXIS 23816 \(Fed. Cir. Oct. 28, 2003\)](#), cert. denied, 541 U.S. 1072, 124 S. Ct. 2412, 158 L. Ed. 2d 981, 2004 U.S. LEXIS 3846 (2004).

Because Federal Savings and Loan Insurance Corporation Resolution Fund (Fund) had priority over other claims Federal Deposit Insurance Corporation (FDIC) was required to pay for failed savings and loan, pursuant to 12 USCS § 1821(d)(11), Fund's claim was over \$21 million, and FDIC's claim against government was for only \$3 million, FDIC's complaint against government failed to present case or controversy, as its claim did not affect any party other than government. [FDIC ex rel. Karnes County v. United States, 52 Fed. Cl. 503, 2002 U.S. Claims LEXIS 131 \(Fed. Cl. May 29, 2002\)](#), aff'd, [342 F.3d 1313, 2003 U.S. App. LEXIS 18374 \(Fed. Cir. 2003\).](#)

Version of 12 USCS § 1821(d)(11) which was in effect prior to 1993 amendment clearly did not establish “super-priority” for claim of Federal Deposit Insurance Corporation (FDIC) based on payments to insured depositors; rather, former § 1821(d)(11) provided that any money recouped by receiver on behalf of failed bank should be shared on pro-rata basis with FDIC and uninsured depositors and creditors in accordance with FDIC's regulation. [Am. Heritage Bancorp v. United States, 53 Fed. Cl. 723, 2002 U.S. Claims LEXIS 243 \(Fed. Cl. Sept. 11, 2002\).](#)

Where order allowing claim of Reconstruction Finance Corporation was entered upon proof of claim filed by such corporation in which it alleged that its claim was subordinate to claims of depositors and general creditors, order did not constitute adjudication that interest accruing after bank closed should be paid to Federal Deposit Insurance Corporation and other creditors before any payment should be made to Reconstruction Finance Corporation on its principal claim. [Federal Deposit Ins. Corp. v. Department of Financial Institutions, 113 Ind. App. 14, 44 N.E.2d 992, 1942 Ind. App. LEXIS 92 \(Ind. Ct. App. 1942\).](#)

67. Interest

Federal Deposit Insurance Corporation shall be entitled to collect, as part of its subrogation rights, such interest as is properly and ordinarily incident to payment of claims of depositors in bank liquidation, where there is surplus available for this purpose; in action by FDIC to obtain declaratory judgment concerning its right to interest upon its claim as subrogee of amount paid depositors pursuant to its insurance obligation, judgment should be entered that corporation is entitled to have paid to it as part of its subrogation rights such interest as is properly incident to payment of claims of depositors in bank liquidation under state law where there is surplus for this purpose, and with directions that complaint should be dismissed in respect to other questions raised without prejudice to right of corporation to file proper application in state court for assertion of its rights against closed bank and its receiver. [Federal Deposit Ins. Corp. v. Citizens State Bank, 130 F.2d 102, 1942 U.S. App. LEXIS 4684 \(8th Cir. 1942\).](#)

Where order of state court authorizing distribution of surplus funds to sole stockholder of state bank specifically left open question of Federal Deposit Insurance Corporation's right to interest on its allowed claims, as against escrow fund, pursuant to intent and agreement of parties, special statute of limitations governing claims filed but not approved by Commissioner was not applicable to action by corporation for determination of its right to interest during liquidation of bank on insured deposits. [Federal Deposit Ins. Corp. v. George-Howard, 153 F.2d 591, 1946 U.S. App. LEXIS 3124 \(8th Cir.\)](#), cert. denied, 329 U.S. 719, 67 S. Ct. 53, 91 L. Ed. 623, 1946 U.S. LEXIS 3025 (1946).

When it paid insured deposits in bank, among rights acquired by Federal Deposit Insurance Corporation was right, where there was surplus available for that purpose, to interest at rate of 6 per cent per annum from date on which bank suspended business until date on which aggregate of amount which corporation paid insured depositors was repaid to it by state liquidating official. [Federal Deposit Ins. Corp. v. Wilhoit, 52 F. Supp. 308, 1943 U.S. Dist. LEXIS 2136 \(D. Ky.\)](#), aff'd, [143 F.2d 14, 1943 U.S. App. LEXIS 4039 \(6th Cir. 1943\).](#)

Law implies promise to pay interest upon refusal of bank to pay demand deposit just as much to Federal Deposit Insurance Corporation as to depositor. [Federal Deposit Ins. Corp. v. Wilhoit, 297 Ky. 339, 180 S.W.2d 72, 1943 Ky. LEXIS 177 \(Ky. 1943\).](#)

Where bank suspended operations, but there was surplus left after payment of expenses of liquidation and claims of creditors, interest was properly allowed to Federal Deposit Insurance Corporation on its respective payments to depositors from date of such payments, but only while its funds were outstanding. [In re Liquidation of Badger State Bank, 70 S.D. 120, 15 N.W.2d 744, 1944 S.D. LEXIS 31 \(S.D. 1944\).](#)

In proceeding by Federal Deposit Insurance Corporation against state banking commission and directors of closed state bank to recover interest on deposits in bank insured by corporation and paid by it, interest being inherently incident to depositor's claims was allowable, and, no rate being fixed otherwise than by state statute providing for rate of interest upon loan or forbearance of any money, that is only rate that could be applied. [In re Oconto County State Bank, 241 Wis. 369, 6 N.W.2d 353, 1942 Wisc. LEXIS 235 \(Wis. 1942\)](#), modified, [241 Wis. 369, 7 N.W.2d 602, 1943 Wisc. LEXIS 167 \(Wis. 1943\).](#)

Federal Deposit Insurance Corporation, having promptly paid claims of depositors of insured bank when it closed, was entitled under its subrogation agreement to interest at legal rate of six per cent from date of closing of bank to date of repayment of principal amount on both demand and time deposits. [In re Oconto County State Bank, 245 Wis. 245, 14 N.W.2d 3, 1944 Wisc. LEXIS 317 \(Wis. 1944\).](#)

Where Federal Deposit Insurance Corporation took assignments from depositors of insured closed bank, and satisfied depositor but paid them no interest although there was some delay in paying depositors, corporation was entitled to interest on money it made available to depositors until it reimbursed that sum from assets. [Federal Deposit Ins. Corp. v. Farmers Bank of Newton, 238 Mo. App. 350, 180 S.W.2d 532, 1944 Mo. App. LEXIS 209 \(Mo. Ct. App. 1944\).](#)

In state bank liquidation proceedings, state statutes awarding interest on judgments do not apply in determining whether balance in hands of state department for distribution should be paid to Federal Deposit Insurance Corporation on its claim for interest on amounts paid to depositors by it or should be paid to Reconstruction Finance Corporation on its claim as creditor. [Federal Deposit Ins. Corp. v. Department of Financial Institutions, 113 Ind. App. 14, 44 N.E.2d 992, 1942 Ind. App. LEXIS 92 \(Ind. Ct. App. 1942\)](#).

VII. LIMITATION ON COURT ACTION

68. Generally

[12 USCS § 1821\(i\)](#) deprives district court of subject matter jurisdiction over claims for injunctive and declaratory relief brought against RTC by former officers of failed bank, who were third party defendants in state court action brought by RTC, since RTC's ability to seek damages from former officers for losses that they caused failed bank is within RTC's statutory powers, and claim for declaratory relief was merely attempt to restrain RTC's ability to exercise its authorized powers. [Carney v. Resolution Trust Corp., 19 F.3d 950, 1994 U.S. App. LEXIS 7469 \(5th Cir. 1994\)](#).

Relief in form of specific performance is not available under [12 USCS § 1821\(j\)](#); thus, district court does not have jurisdiction over action brought against RTC in its capacity as receiver of failed financial institution which seeks specific performance. [RPM Invs. v. Resolution Trust Corp., 75 F.3d 618, 9 Fla. L. Weekly Fed. C 860, 1996 U.S. App. LEXIS 2402 \(11th Cir. 1996\)](#).

[12 USCS § 1821\(i\)](#) does not preclude federal courts from granting injunctive or declaratory relief if Comptroller of Currency improperly appointed FDIC as receiver or conservator of national bank; statute prevents courts from interfering with FDIC only when agency acts within scope of its authorized powers, not when agency was improperly appointed in first place. [James Madison Ltd. by Hecht v. Ludwig, 82 F.3d 1085, 317 U.S. App. D.C. 281, 1996 U.S. App. LEXIS 10162 \(D.C. Cir. 1996\)](#), amended, reh'g denied, [1996 U.S. App. LEXIS 16394 \(D.C. Cir. July 3, 1996\)](#), cert. denied, 519 U.S. 1077, 117 S. Ct. 737, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 309 (1997).

[12 USCS § 1821\(j\)](#) bars restraint by courts on statutory powers of FDIC when it acts as receiver. [Sahni v. American Diversified Partners, 83 F.3d 1054, 96 Cal. Daily Op. Service 3216, 96 D.A.R. 5280, 1996 U.S. App. LEXIS 18247 \(9th Cir. 1996\)](#), cert. denied, 519 U.S. 1091, 117 S. Ct. 765, 136 L. Ed. 2d 712, 1997 U.S. LEXIS 533 (1997).

Decision by FDIC, as receiver for failed financial institution, to repudiate contract or lease, will not be overturned by reviewing court absent abuse of discretion. [McCarron v. FDIC, 111 F.3d 1089, 1997 U.S. App. LEXIS 9566 \(3d Cir. 1997\)](#), cert. denied, 522 U.S. 1046, 118 S. Ct. 689, 139 L. Ed. 2d 635, 1998 U.S. LEXIS 56 (1998).

[12 USCS § 1821\(j\)](#) effects sweeping ouster of courts' power to grant equitable remedies. [Hanson v. FDIC, 113 F.3d 866, 1997 U.S. App. LEXIS 11100 \(8th Cir. 1997\)](#).

There is "conflict of interests" exception which, in certain circumstances, allows person/entity other than FDIC (when acting as conservator or receiver) to have standing to bring judicial action on behalf of depository institution. [Delta Sav. Bank v. United States, 265 F.3d 1017, 2001 Cal. Daily Op. Service 5843, 2001 D.A.R. 7229, 2001 U.S. App. LEXIS 15564 \(9th Cir. 2001\)](#), cert. denied, 534 U.S. 1082, 122 S. Ct. 816, 151 L. Ed. 2d 700, 2002 U.S. LEXIS 273 (2002).

[12 USCS § 1821\(d\)\(13\)\(D\)](#) could not have been intended to foreclose review of all claims arising after seizure; that is, review may have been foreclosed of Federal Deposit Insurance Corporation's (FDIC's) resolution of existing claims against seized bank, but statute was not directed to FDIC's actions in liquidating bank; Intervenors challenged FDIC's apparent retention of proceeds of liquidation; although merits of this claim were not resolved by Court of Federal Claims, instant court agreed with Intervenors that issue was not within scope of § 1821(d)(13)(D). [Slattery v. United States, 583 F.3d 800, 2009 U.S. App. LEXIS 21402 \(Fed. Cir. 2009\)](#), vacated, reh'g denied, review or reh'g granted en banc [369 Fed. Appx. 142, 2010 U.S. App. LEXIS 5987 \(Fed. Cir. 2010\)](#), modified in part, reaff'd, remanded en banc [635 F.3d 1298, 2011 U.S. App. LEXIS 1759 \(Fed. Cir. 2011\)](#).

Claim under [12 USCS § 1821\(d\)](#) by principals of insolvent bank seeking second-level priority equal to that of ordinary depositors was not barred by § 1821(j) because priority upgrade would not impact Federal Deposit Insurance Corporation's function of distributing amounts pursuant to statutory priority scheme. [Pethinaidu Veluchamy v. FDIC, 706 F.3d 810, 2013 U.S. App. LEXIS 2408 \(7th Cir. 2013\)](#).

FDIC's alleged finagling of valuations of solvent banks by devaluing claims against insolvent banks held by same bank holding company is judicially reviewable, where holding company's action against FDIC was filed July 20, 1989, because (1) [12 USCS § 1821\(j\)](#), which bars judicial restraint of FDIC's exercise of powers, was enacted after commencement of this case and should not be retroactively applied, and (2) § 1821(j) does not bar creditor from adjudicating claims against receiver anyway. [Texas American Bancshares, Inc. v. Clarke, 740 F. Supp. 1243, 1990 U.S. Dist. LEXIS 8237 \(N.D. Tex. 1990\)](#), rev'd, [954 F.2d 329, 1992 U.S. App. LEXIS 2661 \(5th Cir. 1992\)](#).

Mortgagee's claim against FDIC must be dismissed, where mortgagee assigned mortgage to bank to secure loan, bank failed and was replaced by bridge bank, which discharged, instead of reassigning, mortgage when loan was repaid, and now FDIC has replaced bridge bank, because claim against bridge bank was required to be submitted to administrative claims process consistent with [12 USCS § 1821\(n\)\(12\)\(B\)](#). [Silva Bros. Inv. v. FDIC, 894 F. Supp. 42, 1995 U.S. Dist. LEXIS 11175 \(D. Mass. 1995\)](#).

Mortgagors' claims against FDIC for allegedly wrongfully assigning mortgages in breach of settlement agreement must be dismissed for lack of subject-matter jurisdiction, where mortgagors have not yet availed themselves of administrative claims process outlined in [12 USCS § 1821\(d\)](#), because mere meeting with FDIC officials could not constitute presentation of tort and contract claims, and § 1821(j)'s sweeping ouster of jurisdiction to grant remedies to parties like mortgagors is applicable. [Centennial Assocs. v. FDIC, 927 F. Supp. 806, 1996 U.S. Dist. LEXIS 7121 \(D.N.J. 1996\)](#).

Unpublished decision: Plaintiff holding company's (HC) bankruptcy trustee's claim that defendant bank officers impaired bank's capital and wasted assets, causing losses to HC, was classic derivative claim held by bank, and since Federal Deposit Insurance Corporation succeeded to bank's rights under [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#) trustee lacked standing to bring claims against bank's officers. [Lubin v. Skow, 382 Fed. Appx. 866, 53 Bankr. Ct. Dec. \(LRP\) 81, 2010 U.S. App. LEXIS 12140 \(11th Cir.\)](#), reh'g, en banc, denied, [408 Fed. Appx. 345, 2010 U.S. App. LEXIS 27195 \(11th Cir. 2010\)](#).

Statutory administrative claims procedure is not jurisdictional bar to pre-receivership litigation; statute provides separate scheme with respect to litigation pending at time receivership is initiated. [Coast-To-Coast Fin. Corp. v. United States, 51 Fed. Cl. 358, 2002 U.S. Claims LEXIS 1 \(Fed. Cl. Jan. 7, 2002\)](#).

Shareholder plaintiffs may have statutory standing to pursue "taking" claims as to any surplus in liquidation assets that may result from ruling in favor of Federal Deposit Insurance Corporation; however, plaintiffs, private investors in new acquisition thrift, had not framed their taking claims as such, nor had they alleged that their statutory interests were in any way compromised within statutory scheme, and they lacked standing as statutory beneficiaries. [AG Route Seven P'ship v. United States, 57 Fed. Cl. 521, 2003 U.S. Claims LEXIS 209 \(Fed. Cl. July 29, 2003\)](#), aff'd, [104 Fed. Appx. 184, 2004 U.S. App. LEXIS 14569 \(Fed. Cir. 2004\)](#).

69. Injunctions

When FDIC is clearly acting outside scope of its statutory powers, district court may enjoin FDIC, irrespective of [12 USCS § 1821\(j\)](#), provided that party seeking injunction is able to demonstrate that standards for injunctive relief are otherwise met. [Telematics Int'l, Inc. v. NEMLC Leasing Corp., 967 F.2d 703, 1992 U.S. App. LEXIS 14217 \(1st Cir. 1992\)](#).

As long as RTC is exercising judgment under one of its enumerated powers, courts may not enjoin activities of RTC ([12 USCS § 1821\(j\)](#)) merely because someone alleges that it is not running troubled institution's affairs in legal manner. [Ward v. Resolution Trust Corp., 996 F.2d 99, 1993 U.S. App. LEXIS 18509 \(5th Cir. 1993\)](#).

12 USCS § 1821(j) does not preclude federal courts from granting injunctive or declaratory relief if Comptroller of Currency improperly appointed FDIC as receiver or conservator of national bank; statute prevents courts from interfering with FDIC only when agency acts within scope of its authorized powers, not when agency was improperly appointed in first place. James Madison Ltd. by Hecht v. Ludwig, 82 F.3d 1085, 317 U.S. App. D.C. 281, 1996 U.S. App. LEXIS 10162 (D.C. Cir. 1996), amended, reh'g denied, 1996 U.S. App. LEXIS 16394 (D.C. Cir. July 3, 1996), cert. denied, 519 U.S. 1077, 117 S. Ct. 737, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 309 (1997).

Although 12 USCS § 1821(j) generally bars courts from enjoining RTC's exercise of its statutory powers or functions as conservator or receiver, it does not immunize RTC from all injunctions; because Congress could not authorize RTC to act unconstitutionally, enjoining RTC from doing so cannot infringe on its statutorily granted powers. Elmco Props. v. Second Nat'l Fed. Sav. Ass'n, 94 F.3d 914, 1996 U.S. App. LEXIS 23164 (4th Cir. 1996).

12 USCS § 1821(j) effects sweeping ouster of courts' power to grant equitable remedies. Hanson v. FDIC, 113 F.3d 866, 1997 U.S. App. LEXIS 11100 (8th Cir. 1997).

Bar imposed by 12 USCS § 1821(j) does not extend to situations in which FDIC as receiver asserts authority beyond that granted to it as receiver. Sharpe v. FDIC, 126 F.3d 1147, 97 Cal. Daily Op. Service 7482, 97 D.A.R. 12075, 1997 U.S. App. LEXIS 25265 (9th Cir. 1997), limited, Deutsche Bank Nat'l Trust Co. v. FDIC, 744 F.3d 1124, 2014 U.S. App. LEXIS 4536 (9th Cir. 2014).

Where bank loaned partnership money at behest of managing partner, Federal Deposit Insurance Corporation (FDIC) was appointed receiver of bank, and FDIC sold note to third-party purchaser, partnership interest holders' request for injunctive relief was barred by 12 USCS § 1821(j), even though FDIC was no longer holder of note, because relief requested, declaration that note was void as to partnership interest holders, affected FDIC's ability to function as receiver in case. Dittmer Props., L.P. v. FDIC, 708 F.3d 1011, 2013 U.S. App. LEXIS 4018 (8th Cir. 2013).

Car leasing company is not entitled to temporary restraining order against FDIC preventing acceleration and enforcement of notes signed in connection with line of credit/security agreement, even though court is not statutorily prohibited from granting injunctive relief against FDIC acting as conservator for financial institution under 12 USCS § 1821(j), because company's evidence at this point does not show reasonable probability of success on merits of its lease language interpretation. Central W. Rental Co. v. Horizon Leasing, Div. of Horizon Financial, F.A., 740 F. Supp. 1109, 1990 U.S. Dist. LEXIS 7130 (E.D. Pa. 1990).

FDIC is enjoined from removing automatic teller machine from premises formerly leased by failed bank, even though FDIC is acting as receiver for outgoing tenant and claims machine as trade fixture, because removal of machine could irreparably harm building owner and, although FDIC enjoys statutory shield against judicial restraint of its actions, 12 USCS § 1821(j) does not elevate FDIC to position of sacred cow which may graze upon rights of others at will, unchecked by courts. Cummings Properties Management, Inc. v. FDIC, 786 F. Supp. 144, 1992 U.S. Dist. LEXIS 3518 (D. Mass. 1992), vacated, 1992 U.S. App. LEXIS 38475 (1st Cir. Sept. 1, 1992).

Petition to enjoin RTC foreclosure must be denied, where RTC, acting as receiver for federal financial institution, is pursuing nonjudicial foreclosure on deed of trust pursuant to its 12 USCS § 1821(d)(2)(B)(ii) power to collect all obligations and money due institution, because no court may take any action to restrain exercise of powers of RTC as receiver under § 1821(j). Washington Properties Ltd. Partnership v. Resolution Trust Corp., 796 F. Supp. 541, 1992 U.S. Dist. LEXIS 11265 (D.D.C. 1992).

Plaintiff's action seeking order directing FDIC, as receiver for savings institution, to specifically perform agreement for purchase by plaintiff of former asset of savings institution is dismissed, because such order would affect FDIC in exercise of its powers as receiver to collect moneys due and to realize upon assets of failed institution, and is therefore prohibited by 12 USCS § 1821(j). Ferreira v. FDIC, 899 F. Supp. 35, 1995 U.S. Dist. LEXIS 19000 (D. Mass.), accepted, 899 F. Supp. 35, 1995 U.S. Dist. LEXIS 18999 (D. Mass. 1995).

Unpublished decision: Because plaintiff developer pursued its claim for termination of its loan documents with failed bank in defendant FDIC's administrative process, and timely sought judicial review upon that denial, district court had jurisdiction over developer's declaratory relief claim under [12 USCS § 1821\(d\)\(6\)](#), and, [§ 1821\(j\)](#)'s anti-injunction provision did not prevent review under § 1821(d)(6); to deprive developer of opportunity to be heard in proceeding, which was commenced after administrative claim was exhausted and while FDIC still owned loan, did not comport with due process. [Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\)](#).

Unpublished decision: Because plaintiff developer pursued its claim for termination of its loan documents with failed bank in defendant FDIC's administrative process, and timely sought judicial review upon that denial, district court had jurisdiction over developer's declaratory relief claim under [12 USCS § 1821\(d\)\(6\)](#), and, [§ 1821\(j\)](#)'s anti-injunction provision did not prevent review under § 1821(d)(6); to deprive developer of opportunity to be heard in proceeding, which was commenced after administrative claim was exhausted and while FDIC still owned loan, did not comport with due process. [Placida Prof'l Ctr., LLC v. FDIC, 512 Fed. Appx. 938, 2013 U.S. App. LEXIS 4999 \(11th Cir. 2013\)](#).

Anti-injunction provision of FIRREA ([12 USCS § 1821\(j\)](#)) deprives courts of power to grant both temporary and permanent injunctive relief. [Gross v. Resolution Trust Corp., 17 Employee Benefits Cas. \(BNA\) 1595, 1993 U.S. Dist. LEXIS 3791 \(E.D. Pa. Mar. 26, 1993\)](#).

70. Bankruptcy matters

[12 USCS § 1821\(j\)](#) does not exempt FDIC from operation of bankruptcy automatic stay ([11 USCS § 362](#)), since § 1821(j)'s ban upon "court" action to restrain or affect exercise of powers or functions of FDIC as conservator or receiver does not inhibit operation of automatic "statutory" stay imposed by § 362(a). [In re Colonial Realty Co., 980 F.2d 125, 23 Bankr. Ct. Dec. \(LRP\) 1143, Bankr. L. Rep. \(CCH\) ¶ 75283, 28 Collier Bankr. Cas. 2d \(MB\) 28, 1992 U.S. App. LEXIS 30905 \(2d Cir. 1992\)](#).

[12 USCS § 1821\(d\)\(17\)-\(19\)](#) does not exempt FDIC from operation of bankruptcy automatic stay ([11 USCS § 362](#)). [In re Colonial Realty Co., 980 F.2d 125, 23 Bankr. Ct. Dec. \(LRP\) 1143, Bankr. L. Rep. \(CCH\) ¶ 75283, 28 Collier Bankr. Cas. 2d \(MB\) 28, 1992 U.S. App. LEXIS 30905 \(2d Cir. 1992\)](#).

FDIC, when acting as receiver or conservator, is not exempt from operation of bankruptcy automatic stay ([11 USCS § 362](#)), and stay's curtailment of FDIC's powers does not run afoul of anti-injunction statute ([12 USCS § 1821\(j\)](#)). [Sunshine Dev. v. FDIC, 33 F.3d 106, 25 Bankr. Ct. Dec. \(LRP\) 1629, Bankr. L. Rep. \(CCH\) ¶ 76045, 1994 U.S. App. LEXIS 22719 \(1st Cir. 1994\)](#), app. after remand, [59 F.3d 164, 1995 U.S. App. LEXIS 23252 \(1st Cir. 1995\)](#).

Financial Institutions Reform, Recovery, and Enforcement Act, Pub. L. No. 101-73, 103 Stat. 183, did not divest bankruptcy court of jurisdiction in Chapter 7 bankruptcy trustee's adversary action to avoid bank's mortgage as preferential transfer pursuant to [11 USCS § 547](#); bank was placed in receivership six months after adversary action was filed and [12 USCS § 1821\(j\)](#) did not bar bankruptcy court's jurisdiction because there was no evidence that Federal Deposit Insurance Corporation sought to exercise any of its powers vis-a-vis debtor's property. [Superior Bank, FSB v. Boyd \(In re Lewis\), 398 F.3d 735, 2005 FED App. 0074P, Bankr. L. Rep. \(CCH\) ¶ 80522, 2005 U.S. App. LEXIS 2643 \(6th Cir. 2005\)](#).

Financial Institutions Reform, Recovery, and Enforcement Act, Pub. L. No. 101-73, 103 Stat. 183, did not divest bankruptcy court of jurisdiction in Chapter 7 bankruptcy trustee's adversary action to avoid bank's mortgage as preferential transfer pursuant to [11 USCS § 547](#); Congress did not intend to divest bankruptcy court of [28 USCS § 157\(b\)\(2\)](#) pre-receivership jurisdiction through [12 USCS § 1821\(d\)\(13\)\(D\)](#), and [§ 1821\(d\)\(12\)\(A\)](#) explicitly recognized continued jurisdiction of court in pre-receivership case. [Superior Bank, FSB v. Boyd \(In re Lewis\), 398 F.3d 735, 2005 FED App. 0074P, Bankr. L. Rep. \(CCH\) ¶ 80522, 2005 U.S. App. LEXIS 2643 \(6th Cir. 2005\)](#).

Review of [12 USCS § 1821\(d\)\(13\)\(D\)](#) and other provisions of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, convinces Court of Appeals for Sixth Circuit that

Congress did not intend to strip bankruptcy court of its jurisdiction in pre-receivership context; to interpret § 1821(d)(13)(d) as stripping court of jurisdiction in pre-receivership action would render § 1821(d)(12)(A) superfluous. [Superior Bank, FSB v. Boyd \(In re Lewis\)](#), 398 F.3d 735, 2005 FED App. 0074P, Bankr. L. Rep. (CCH) ¶ 80522, 2005 U.S. App. LEXIS 2643 (6th Cir. 2005).

71. Sales

Where FDIC acquired interest in environmentally sensitive tract of land when it became receiver of failed bank, FDIC sold bank's assets to another bank, second bank found buyer for land and FDIC approved sale, and environmental group filed action to enjoin sale claiming that FDIC violated National Environmental Policy Act by approving sale without considering environmental impact of sale, district court had jurisdiction to enjoin FDIC, despite FDIC's argument that [12 USCS § 1821\(j\)](#), in combination with [12 USCS §§ 1821a\(a\)\(4\)](#) and [1823\(d\)\(3\)\(A\)](#), bars court from enjoining it, since FDIC was acting in its corporate capacity when it approved sale. [Sierra Club, Lone Star Chapter v. FDIC](#), 992 F.2d 545, 1993 U.S. App. LEXIS 13300 (5th Cir.), reh'g, en banc, denied, 3 F.3d 441, 1993 U.S. App. LEXIS 23492 (5th Cir. 1993).

Although [12 USCS § 1821\(j\)](#) does not preclude courts from granting injunctive relief against FDIC whenever and however it purports to act as receiver, statute does not apply only to claims that are themselves subject to administrative claims procedures set out in § 1821(d); thus, plaintiff in action brought to enjoin FDIC, acting as liquidator with powers of receiver, from selling historic building, was not entitled to injunction, despite fact that contemplated sale would violate National Historic Preservation Act ([16 USCS §§ 470](#) et seq.). [National Trust for Historic Preservation v. FDIC](#), 21 F.3d 469, 305 U.S. App. D.C. 375, 1994 U.S. App. LEXIS 8337 (D.C. Cir.), cert. denied, [National Trust for Historic Preservation in the United States v. FDIC](#), 513 U.S. 1065, 115 S. Ct. 683, 130 L. Ed. 2d 615, 1994 U.S. LEXIS 8973 (1994).

Courts do not have subject matter jurisdiction to enjoin RTC from disposing of assets of failed institution under RTC's receivership when disposition arguably would violate post-receivership contract entered into by RTC, because such would violate anti-injunction provision ([12 USCS § 1821\(j\)](#)). [Volges v. Resolution Trust Corp.](#), 32 F.3d 50, 1994 U.S. App. LEXIS 21402 (2d Cir. 1994), cert. denied, 515 U.S. 1162, 115 S. Ct. 2618, 132 L. Ed. 2d 860, 1995 U.S. LEXIS 4348 (1995).

Because FDIC was neither party to state court lawsuit nor did it retain interest in previously assigned note, Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (1989) did not confer exclusive federal jurisdiction over assignees' claims. [Henrichs v. Valley View Dev.](#), 474 F.3d 609, 2007 U.S. App. LEXIS 864 (9th Cir.), cert. denied, 552 U.S. 1037, 128 S. Ct. 647, 169 L. Ed. 2d 507, 2007 U.S. LEXIS 12356 (2007).

Resolution Trust Corporation's (RTC) motion to dismiss contract action by purchaser of assets of failed S&L from RTS as receiver is denied, where purchaser amended original complaint to allege exhaustion of administrative remedies as required by [12 USCS § 1821](#), and purchaser claimed rescission and exemplary damages, because rescission request is merely request for alternative measure of damages under contract and is not barred by [12 USCS § 1821\(j\)](#), while exemplary damage claim in complaint is not stated against RTC, but against other defendants. [Haney v. Castle Meadows, Inc.](#), 839 F. Supp. 753, 38 Env't Rep. Cas. (BNA) 1508, 1993 U.S. Dist. LEXIS 17196 (D. Colo. 1993).

Disappointed and bankrupt potential investor is not entitled to force RTC to rescind its sale of real estate to successful and solvent investor, where potential investor, although bankrupt, attempted to purchase property at RTC's auction of assets of failed savings and loan and RTC sold property to another, solvent investor, because court lacks jurisdiction under FIRREA, [12 USCS § 1821\(j\)](#), to determine rights to S&L property of which RTC disposed pursuant to its duties as receiver. [Trinsey v. K. Hovnanian at Upper Merion](#), 841 F. Supp. 694, 1994 U.S. Dist. LEXIS 1342 (E.D. Pa. 1994).

Action by assignee of winning bidder for purchase of property from Resolution Trust Corporation (RTC) as receiver against purchaser who exercised right of first refusal is dismissed, where assignee sought injunction requiring

transfer of property to it, because injunction would affect RTC in performance of its statutory duties by rescinding sale, so, under anti-injunction provision of [12 USCS § 1821\(i\)](#), court lacks jurisdiction to grant injunctive relief requested. [Pyramid Constr. Co. v. Wind River Petroleum, 866 F. Supp. 513, 1994 U.S. Dist. LEXIS 13564 \(D. Utah 1994\)](#).

Purchaser had shown that it had right to intervene in action filed by two corporations against Federal Deposit Insurance Corporation (FDIC) under [12 USCS § 1821](#) because corporations sought to recover assets that they alleged that FDIC wrongfully transferred to purchaser when purchaser bought portions of receiver bank; purchaser's motion was timely, purchaser had interest in property that was not protected by other parties, and disposition of action would impair purchaser's ability to protect its interests. [Wash. Mut., Inc. v. FDIC, 659 F. Supp. 2d 152, 2009 U.S. Dist. LEXIS 92822 \(D.D.C. 2009\)](#).

VIII. LIABILITY OF DIRECTORS AND OFFICERS

72. Generally

As receiver for national bank appointed by Comptroller of Currency pursuant to [12 USCS § 1821\(c\)](#), FDIC has duty of enforcing directors' and officers' obligations. [Franklin Nat'l Bank Sec. Litigation v. Andersen, 532 F.2d 842, Fed. Sec. L. Rep. \(CCH\) ¶ 95476, 1976 U.S. App. LEXIS 12266 \(2d Cir. 1976\)](#).

[12 USCS § 1821\(d\)](#), which makes it duty of FDIC receiver to enforce individual liability of stockholders and directors of national bank, does not embrace liabilities owed directly by such stockholders and directors to other stockholders, and nothing in legislative history of provision suggests that it was intended to repeal or modify to any extent authority provided by [12 USCS § 93](#) for shareholders to bring direct causes of action against directors of insolvent national banks; liability which receiver is entitled to enforce is that owing to insolvent bank by individual stockholders and directors. [Harmsen v. Smith, 542 F.2d 496, 1976 U.S. App. LEXIS 7633 \(9th Cir. 1976\)](#), app. after remand, [693 F.2d 932, Fed. Sec. L. Rep. \(CCH\) ¶ 99010, 1982 U.S. App. LEXIS 23691 \(9th Cir. 1982\)](#).

FDIC was not entitled to absolute priority to assets of officers, directors, and other third parties who might have been responsible, for failure of bank which had entered into purchase and assumption transaction with FDIC, although FDIC was general creditor and assignee of any causes of action owned by bank. [Federal Deposit Ins. Corp. v. Jenkins, 888 F.2d 1537, 1989 U.S. App. LEXIS 17603 \(11th Cir. 1989\)](#).

73. Retroactivity of statute

FDIC's gross negligence claims against former directors and officers of bank must be dismissed, where parties agree that conduct at issue took place prior to enactment of statutory basis for claims in [12 USCS § 1821\(k\)](#), because language of § 1821(k) contains no indication that it is to be applied retroactively, and legislative history indicates intent to apply new provision only in prospective manner. [FDIC v. Haddad, 778 F. Supp. 1559, 1990 U.S. Dist. LEXIS 19354 \(S.D. Fla. 1990\)](#), adopted, [778 F. Supp. 1559 \(S.D. Fla. 1991\)](#).

Judgment notwithstanding multimillion dollar verdict against them will not be awarded failed bank directors whom jury found guilty of negligence with regard to loan files, because [12 USCS § 1821\(k\)](#) is not applicable to case which began 3 years before it became law, and, even if it were applicable, § 1821(k) does not impose gross negligence standard in all actions in which FDIC brings claims against bank officers since raising standard of negligence required in such actions is inconsistent with listed congressional reasons for enacting § 1821(k) and related statutory scheme. [F.D.I.C. v. Burrell, 779 F. Supp. 998, 1991 U.S. Dist. LEXIS 14959 \(S.D. Iowa 1991\)](#).

RTC's claim of gross negligence by directors of failed thrift in violation of Federal Deposit Insurance Act, [12 USCS § 1821\(k\)](#), is dismissed, where conduct serving as basis of allegation occurred before enactment of statute, since statutory section created new substantive law and could not be applied retroactively. [Resolution Trust Corp. v. Norris, 830 F. Supp. 351, 1993 U.S. Dist. LEXIS 3902 \(S.D. Tex. 1993\)](#).

Former bank officers and directors' motion to dismiss claims for breach of fiduciary duty, negligence, and negligence per se is denied, where Oklahoma statute purporting to raise standard for claims brought by RTC to "gross negligence" runs afoul of Oklahoma Constitution by retroactively affecting RTC lawsuits pending at time it became effective, because [12 USCS § 1821\(k\)](#), which also sets gross negligence as duty of care governing liability of bank officers and directors, has been interpreted to allow RTC to bring claims based on lower standard, including negligence, if otherwise provided by relevant state law. [Resolution Trust Corp. v. Wright, 868 F. Supp. 301, 1993 U.S. Dist. LEXIS 20740 \(W.D. Okla. 1993\)](#).

74. Pre-emption of state or federal law

There is no federal common law providing standard of care for officers and directors of federally insured savings institutions, and provision of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), [12 USCS § 1821\(k\)](#), setting forth gross negligence standard for directors or officers of federally insured savings institutions provides only floor, guarantee that officers and directors must meet at least gross negligence standard, and it does not stand in way of stricter state-law standard making directors and officers liable for conduct, such as simple negligence, that is less culpable than gross negligence. [Atherton v. FDIC, 519 U.S. 213, 117 S. Ct. 666, 136 L. Ed. 2d 656, 10 Fla. L. Weekly Fed. S 249, 97 Cal. Daily Op. Service 335, 97 D.A.R. 522, 1997 U.S. LEXIS 461 \(1997\)](#).

[12 USCS § 1821\(k\)](#), which provides that director or officer of insured depository institution may be held personally liable for monetary damages in civil action by FDIC for gross negligence, does not preempt state statute or common law actions against directors and officers for simple negligence; only those state statutes which require higher degree of culpability than gross negligence are preempted. [Federal Deposit Ins. Corp. v. Canfield, 967 F.2d 443, 1992 U.S. App. LEXIS 14304 \(10th Cir.\)](#), cert. dismissed, 506 U.S. 993, 113 S. Ct. 516, 121 L. Ed. 2d 527, 1992 U.S. LEXIS 7349 (1992).

[12 USCS § 1821\(k\)](#) establishes gross negligence as national standard of liability for directors and officers of federally insured depository institutions; federal common law did not survive passage of FIRREA, so that action against directors and officers of depository institutions based on simple negligence is not allowed. [Resolution Trust Corp. v. Miramon, 22 F.3d 1357, 1994 U.S. App. LEXIS 15160 \(5th Cir. 1994\)](#).

[12 USCS § 1821\(k\)](#), which provides that director or officer of insured depository institution may be held personally liable for monetary damages for gross negligence, supersedes federal common law which predicated liability upon simple negligence. [Resolution Trust Corp. v. Frates, 52 F.3d 295, 1995 U.S. App. LEXIS 7990 \(10th Cir. 1995\)](#).

Saving language in last sentence of [12 USCS § 1821\(k\)](#) enables claims under other applicable law (i.e. state law for simple negligence) to survive enactment of FIRREA. [FDIC v. Stahl, 89 F.3d 1510, 10 Fla. L. Weekly Fed. C 235, 1996 U.S. App. LEXIS 19011 \(11th Cir. 1996\)](#).

75. —Preemption found

Extensive statutory framework of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) implicitly excludes federal common law defenses not specifically mentioned therein; thus, FIRREA preempts federal common law rules that restricted claims and defenses which parties could raise against FDIC. [DiVall Insured Income Fund Ltd. Pshp. v. Boatmen's First Nat'l Bank, 69 F.3d 1398, 28 U.C.C. Rep. Serv. 2d \(CBC\) 589, 1995 U.S. App. LEXIS 31817 \(8th Cir. 1995\)](#), reh'g, en banc, denied, [1996 U.S. App. LEXIS 1262 \(8th Cir. Jan. 26, 1996\)](#).

Claim of Federal Deposit Insurance Corporation against former officers and directors of insured depository institution for simple negligence is dismissed, because federal common law standard of simple negligence is preempted by gross negligence standard in [12 USCS § 1821\(k\)](#). [FDIC v. Mintz, 816 F. Supp. 1541, 7 Fla. L. Weekly Fed. D 71, 1993 U.S. Dist. LEXIS 3559 \(S.D. Fla. 1993\)](#).

RTC's ordinary negligence counts against former officers and directors of insolvent bank must be dismissed, despite argument that "savings clause" saves cause of action under federal common law at time FIRREA was

enacted, because liability of officers and directors under [12 USCS § 1821\(k\)](#) is limited to gross negligence as defined by state law. *Resolution Trust Corp. v. Hecht*, 818 F. Supp. 894, 1992 U.S. Dist. LEXIS 19245 (D. Md.), reconsideration granted in part, [833 F. Supp. 529, 1992 U.S. Dist. LEXIS 21947 \(D. Md. 1992\)](#).

Motion by former officers and directors of failed savings and loan association to dismiss action by Resolution Trust Corporation (RTC) for failure to state cognizable cause of action is granted, where RTC alleged simple negligence and breach of fiduciary duty by officers and directors who engaged in speculative, unsound, and poorly documented lending practices, because [12 USCS § 1821\(k\)](#), which preempts federal common-law standard of simple negligence, establishes gross negligence or conduct demonstrating disregard of duty of care greater than gross negligence as standard for establishing personal liability of officers and directors. *Resolution Trust Corp. v. Farmer*, [823 F. Supp. 302, 1993 U.S. Dist. LEXIS 7674 \(E.D. Pa. 1993\)](#).

Motion by director of failed savings and loan to dismiss simple negligence count of complaint is granted, where Resolution Trust Corporation charged director with gross and simple negligence, because [12 USCS § 1821\(k\)](#) preempts prior federal common-law action for simple negligence, and state common law, which would survive under savings clause of [12 USCS § 1821\(k\)](#), does not permit action against directors for simple negligence. *Resolution Trust Corp. v. Vanderweele*, 833 F. Supp. 1383, 1993 U.S. Dist. LEXIS 13970 (N.D. Ind. 1993).

FDIC's suit against former officers and directors of federal savings bank, by failing to allege gross negligence or similar culpable conduct, fails to state claim upon which relief can be granted, because [12 USCS § 1821\(k\)](#) preempts federal common law and establishes gross negligence as national standard for director liability. *FDIC v. Bates*, [838 F. Supp. 1216, 1993 U.S. Dist. LEXIS 19514 \(N.D. Ohio 1993\)](#).

State law claims brought by RTC are preempted under [12 USCS § 1821\(k\)](#), where RTC acting as receiver sues former officers and directors of failed federally insured bank for negligence, breach of fiduciary duty, and breach of contract for involving bank in high-risk loans, because plain language and legislative history of statute indicate clear intent of Congress that liability of officers and directors of federally insured institutions be determined under federal law exclusively. *Resolution Trust Corp. v. O'Bear, Overholser, Smith & Huffer*, [840 F. Supp. 1270, 1993 U.S. Dist. LEXIS 17747 \(N.D. Ind. 1993\)](#).

Former officers and directors of insolvent savings and loan are entitled to dismissal of suit against them, because (1) all counts other than one alleging gross negligence are preempted under [12 USCS § 1821\(k\)](#), and (2) gross negligence claim was filed 3 days too late by RTC under § 1821(d)(14)(A)(ii)(I)'s applicable 3-year statute of limitations. *Resolution Trust Corp. v. Zimmerman*, [853 F. Supp. 1016, 1994 U.S. Dist. LEXIS 7282 \(N.D. Ohio 1994\)](#).

RTC succeeds to failed bank's claim for punitive damages against former director, officer, and general counsel of bank, now deceased, despite California rule against transfer of punitive damages claims, because California law is preempted by [12 USCS § 1821\(d\)\(2\)\(A\)\(i\)](#), under which RTC succeeds to "all rights, title, powers, and privileges of insured depository institution." *Resolution Trust Corp. v. Liebert*, [871 F. Supp. 370, 95 D.A.R. 347, 1994 U.S. Dist. LEXIS 17547 \(C.D. Cal. 1994\)](#).

Pain meaning of FDIC extender statute clearly mandated that its six-year time limitation governed timeliness of FDIC's deficiency-judgment action if that time limitation was longer than period applicable under State law; thus, FDIC extender statute expressly preempted Nevada statute regardless of whether state statute was statute of limitations or repose, and because FDIC filed its deficiency judgment action within six-year time limitation, district court erred in dismissing FDIC's deficiency-judgment action as untimely. *FDIC v. Rhodes*, [130 Nev. 893, 336 P.3d 961, 2014 Nev. LEXIS 112 \(Nev. 2014\)](#).

76. —Preemption not found

Dismissal of FDIC's action against former directors and officers of bank seeking \$7 million in damages for imprudent loans, waste of bank assets, and mismanagement is reversed, where FDIC asserts breaches of fiduciary duties and employment agreements, because analysis of public policy, [12 USCS § 1821\(k\)](#), and its legislative

history compel conclusion that § 1821(k) does not preempt state statutory or common law permitting actions for simple negligence. [Federal Deposit Ins. Corp. v. Canfield, 967 F.2d 443, 1992 U.S. App. LEXIS 14304 \(10th Cir.\)](#), cert. dismissed, 506 U.S. 993, 113 S. Ct. 516, 121 L. Ed. 2d 527, 1992 U.S. LEXIS 7349 (1992).

Dismissal of FDIC's action against former directors and officers of bank seeking \$7 million in damages for imprudent loans, waste of bank assets, and mismanagement is reversed, where FDIC asserts breaches of fiduciary duties and employment agreements, because analysis of public policy, [12 USCS § 1821\(k\)](#), and its legislative history compel conclusion that § 1821(k) does not preempt state statutory or common law permitting actions for simple negligence. [Federal Deposit Ins. Corp. v. Canfield, 967 F.2d 443, 1992 U.S. App. LEXIS 14304 \(10th Cir.\)](#), cert. dismissed, 506 U.S. 993, 113 S. Ct. 516, 121 L. Ed. 2d 527, 1992 U.S. LEXIS 7349 (1992).

FDIC-Corporate's negligence and breach of fiduciary duty claims against several former directors and officers of insolvent, federally-insured bank will not be dismissed, despite defense that claims are preempted by [12 USCS § 1821\(k\)](#), because § 1821(k) preempts state law only to extent that state law would prohibit director liability action based on at least gross negligence—it does not preempt state law which imposes higher standard of care, such as negligence or fiduciary duty. [Federal Deposit Ins. Corp. v. Isham, 777 F. Supp. 828, 1991 U.S. Dist. LEXIS 15699 \(D. Colo. 1991\)](#).

Former bank officers and directors are not entitled to dismissal of FDIC's claims against them for negligence, breach of contract, and breach of fiduciary duty, even though FDIC also asserts statutory "gross negligence" claim which some courts have determined preempts state-law remedies, because court is not persuaded that [12 USCS § 1821\(K\)](#) preempts state causes of action. [FDIC v. Williams, 779 F. Supp. 63, 1991 U.S. Dist. LEXIS 18733 \(N.D. Tex. 1991\)](#).

FDIC's simple negligence claims against former officers and directors of failed federal bank are dismissed summarily, even though Congress's provision of gross negligence cause of action under [12 USCS § 1821\(k\)](#) does not preclude state-law causes of action requiring only proof of conduct less blameworthy than gross negligence, because there is no claim under Louisiana law based on simple negligence against officers and directors. [Federal Sav. & Loan Ins. Corp. v. Shelton, 789 F. Supp. 1360, 1992 U.S. Dist. LEXIS 3526 \(M.D. La. 1992\)](#).

Applicable state and federal common-law claims against former directors of savings and loan are not preempted by [12 USCS § 1821\(k\)](#), where misconduct alleged by RTC all occurred while savings and loan was state-chartered institution, even though institution converted to federal charter in 1987, because Tenth Circuit clearly held that § 1821(k) does not set minimum federal liability standard of gross negligence and does not limit officer and director liability. [RTC v. Hess, 820 F. Supp. 1359, 26 Fed. R. Serv. 3d \(Callaghan\) 282, 1993 U.S. Dist. LEXIS 5605 \(D. Utah 1993\)](#).

Applicable state and federal common-law claims against former directors of savings and loan are not preempted by [12 USCS § 1821\(k\)](#), where misconduct alleged by RTC all occurred while savings and loan was state-chartered institution, even though institution converted to federal charter in 1987, because Tenth Circuit clearly held that § 1821(k) does not set minimum federal liability standard of gross negligence and does not limit officer and director liability. [RTC v. Hess, 820 F. Supp. 1359, 26 Fed. R. Serv. 3d \(Callaghan\) 282, 1993 U.S. Dist. LEXIS 5605 \(D. Utah 1993\)](#).

Resolution Trust Company's (RTC) action against officers and directors of failed savings and loan company ("officers") on state-law simple negligence claim survives motion to dismiss, because [12 USCS § 1821](#) preempts state law only to extent that state law exempts officers and directors from liability for gross negligence; state-law claim for gross negligence must be dismissed, because [12 USCS § 1821](#) adopts state-law definition of gross negligence and, in this case, state does not recognize separate action for gross negligence. [Resolution Trust Corp. v. Gershman, 829 F. Supp. 1095, 1993 U.S. Dist. LEXIS 10215 \(E.D. Mo. 1993\)](#).

Bank officers' motion to dismiss Resolution Trust Corporation's state-law claims for simple negligence and breach of fiduciary duty is denied, because [12 USCS § 1821\(k\)](#) does not preempt state-law claims for simple negligence and breach of fiduciary duty, but only preempts state law requiring disregard of duty greater than gross negligence

as condition of liability [*Resolution Trust Corp. v. Gibson, 829 F. Supp. 1103, 1993 U.S. Dist. LEXIS 8064 \(W.D. Mo. 1993\).*](#)

Motion to dismiss negligence count in FDIC's action against directors and officers of failed savings and loan is denied, where FDIC alleges only simple negligence, because although FIRREA, [12 USCS § 1821\(k\)](#), preempts federal common-law cause of action for simple negligence, it does not preempt state simple negligence claim, and Florida law permits action against bank officers and directors on grounds of simple negligence. [*FDIC v. Gonzalez-Gorrondona, 833 F. Supp. 1545, 7 Fla. L. Weekly Fed. D 83, 1993 U.S. Dist. LEXIS 5004 \(S.D. Fla. 1993\).*](#)

[12 USCS § 1821\(k\)](#) did not preempt state-law claim for negligent breach of fiduciary duty, where statute created a national, uniform gross negligence standard of liability for Savings and Loan Association officers and directors, because statute contains saving clause that would be virtually empty if all lesser state standards were preempted. [*Resolution Trust Corp. v. DiDomenico, 837 F. Supp. 623, 1993 U.S. Dist. LEXIS 16589 \(D.N.J. 1993\).*](#)

State law standard of negligence applies to action by FDIC, as manager of Federal Savings and Loan Insurance Corporation, against former officers of failed federal savings and loan, where gross negligence standard set out in [12 USCS § 1821\(k\)](#) was enacted after defendants committed act, because § 1821(k) does not preempt state law which applies higher standard of negligence. [*FDIC v. Stahl, 840 F. Supp. 124, 7 Fla. L. Weekly Fed. D 627, 1993 U.S. Dist. LEXIS 17689 \(S.D. Fla. 1993\).*](#)

State-law claims against former directors of failed savings and loan need not be dismissed, because [12 USCS § 1821\(k\)](#) does not preempt or make "gross negligence" overriding standard for such claims, but, rather, final sentence of § 1821(k) preserves any otherwise applicable state-law negligence claims. [*Resolution Trust Corp. v. Gregor, 872 F. Supp. 1140, 1994 U.S. Dist. LEXIS 20055 \(E.D.N.Y. 1994\).*](#)

RTC's federal law claims against former savings and loan directors and officers for negligence, breach of fiduciary duty, and breach of contract are not denied summarily, where proper application of doctrine of adverse domination leads to result that claims were all filed timely, even though other circuits have concluded that [12 USCS § 1821\(k\)](#) preempts such claims, because Ninth Circuit has decided that receiver's "rights to proceed against officers or directors for negligent breach of duty of care, whether under state or federal common law, are preserved by plain language of last sentence of § 1821(k)." [*Resolution Trust Corp. v. Smith, 872 F. Supp. 805, 1995 U.S. Dist. LEXIS 406 \(D. Or. 1995\),*](#) amended, [*879 F. Supp. 1059, 1995 U.S. Dist. LEXIS 2501 \(D. Or. 1995\),*](#) aff'd, [*189 F.3d 472, 1999 U.S. App. LEXIS 29097 \(9th Cir. 1999\).*](#)

Proper standard of care applicable to officers and directors of federally chartered bank is that they may be liable for simple negligence, gross negligence, and breach of fiduciary duty under state law where state recognizes claims against bank officers and directors for simple and gross negligence and for breach of fiduciary duty, because FIRREA ([12 USCS § 1821\(k\)](#)) only preempts state law to extent state law insulates directors and officers from liability. [*FDIC v. Raffa, 882 F. Supp. 1236, 1995 U.S. Dist. LEXIS 5422 \(D. Conn.\), adopted, 882 F. Supp. 1236, 1995 U.S. Dist. LEXIS 5419 \(D. Conn. 1995\).*](#)

State law should apply to determine contribution and indemnification rights resulting from [12 USCS § 1821\(k\)](#) claims, as no specific statutory provision dictates appropriate contribution and indemnification rules to apply, because court should apply state law unless judicial creation of special federal rule is justified by "significant conflict between some federal policy or interest and use of state law," and facts that one party to this suit is RTC and that bank in question is federally chartered does not raise kind of conflict sufficient to trigger creation of federal rule. [*Resolution Trust Corp. v. Young, 925 F. Supp. 164, 1996 U.S. Dist. LEXIS 5916 \(S.D.N.Y. 1996\).*](#)

77. Standard of liability

Where FDIC, as receiver, brought action against officers and directors of federally chartered and federally insured savings association for violation of their legal standard of care owed to association, [12 USCS § 1821\(k\)](#) was held to set "gross negligence floor," leaving state law to set standard of conduct as long as state standard, such as simple

negligence, is stricter than that of § 1821(k). [*Atherton v. FDIC, 519 U.S. 213, 117 S. Ct. 666, 136 L. Ed. 2d 656, 10 Fla. L. Weekly Fed. S 249, 97 Cal. Daily Op. Service 335, 97 D.A.R. 522, 1997 U.S. LEXIS 461 \(1997\).*](#)

[12 USCS § 1821\(k\)](#) establishes gross negligence as national standard of liability for directors and officers of federally insured depository institutions; federal common law did not survive passage of FIRREA, so that action against directors and officers of depository institutions based on simple negligence is not allowed. [*Resolution Trust Corp. v. Miramon, 22 F.3d 1357, 1994 U.S. App. LEXIS 15160 \(5th Cir. 1994\).*](#)

Even if [12 USCS § 1821\(k\)](#) provides federal source for gross negligence cause of action by RTC against former officers and directors of failed bank, state limitation and tolling rules must still be consulted before determining whether § 1821(d)(14)(A)'s limitation applies. [*Resolution Trust Corp. v. Artley, 28 F.3d 1099, 8 Fla. L. Weekly Fed. C 742, 1994 U.S. App. LEXIS 21327 \(11th Cir. 1994\).*](#)

[12 USCS § 1821\(k\)](#) indicates statutory purpose contrary to any federal common law standard of liability which allows suit based on simple negligence. [*FDIC v. Bates, 42 F.3d 369, 1994 FED App. 0411P, 31 Fed. R. Serv. 3d \(Callaghan\) 342, 1994 U.S. App. LEXIS 35116 \(6th Cir. 1994\), reh'g denied, 1995 U.S. App. LEXIS 1405 \(6th Cir. Jan. 13, 1995\).*](#)

FDIC's claims against insolvent bank's former directors and officers will not be dismissed, even though claims are based upon conduct amounting to less than gross negligence, because there is no clearly expressed legislative intent or history which conflicts with plain language of [12 USCS § 1821\(k\)](#), which does not preclude FDIC claims for alleged conduct amounting to less than gross negligence but simply permits suit for grossly negligent or intentional tortious conduct even if state law prohibits it. [*Federal Deposit Ins. Corp. v. Black, 777 F. Supp. 919, 1991 U.S. Dist. LEXIS 16708 \(W.D. Okla. 1991\).*](#)

FDIC action against former bank officers and directors will not be dismissed, where last sentence of [12 USCS § 1821\(k\)](#) states "Nothing in this paragraph shall impair or affect any right of corporation under other applicable law," because plain language of § 1821(k) is inconsistent with defendants' contentions that § 1821(k) limits their liability to actions established in gross negligence or higher degree of culpability. [*FDIC v. Fay, 779 F. Supp. 66, 1991 U.S. Dist. LEXIS 18735 \(S.D. Tex. 1991\).*](#)

FDIC's simple negligence claims against former officers and directors of failed federal bank are dismissed summarily, even though Congress's provision of gross negligence cause of action under [12 USCS § 1821\(k\)](#) does not preclude state-law causes of action requiring only proof of conduct less blameworthy than gross negligence, because there is no claim under Louisiana law based on simple negligence against officers and directors. [*Federal Sav. & Loan Ins. Corp. v. Shelton, 789 F. Supp. 1360, 1992 U.S. Dist. LEXIS 3526 \(M.D. La. 1992\).*](#)

Simple negligence claims against failed bank's former officers and directors must be dismissed, not because [12 USCS § 1821\(k\)](#) establishes gross negligence standard for bank officers and directors, but rather because, based on all circumstances, both D.C. law and federal common law hold these defendants to gross negligence standard for transactions at issue. [*Washington Bancorporation v. Said, 812 F. Supp. 1256, 1993 U.S. Dist. LEXIS 1697 \(D.D.C. 1993\).*](#)

Claim of Federal Deposit Insurance Corporation against former officers and directors of insured depository institution for simple negligence is dismissed, because federal common law standard of simple negligence is preempted by gross negligence standard in [12 USCS § 1821\(k\)](#). [*FDIC v. Mintz, 816 F. Supp. 1541, 7 Fla. L. Weekly Fed. D 71, 1993 U.S. Dist. LEXIS 3559 \(S.D. Fla. 1993\).*](#)

RTC's ordinary negligence counts against former officers and directors of insolvent bank must be dismissed, despite argument that "savings clause" saves cause of action under federal common law at time FIRREA was enacted, because liability of officers and directors under [12 USCS § 1821\(k\)](#) is limited to gross negligence as defined by state law. [*Resolution Trust Corp. v. Hecht, 818 F. Supp. 894, 1992 U.S. Dist. LEXIS 19245 \(D. Md.\), reconsideration granted in part, 833 F. Supp. 529, 1992 U.S. Dist. LEXIS 21947 \(D. Md. 1992\).*](#)

Resolution Trust Company's (RTC) action against officers and directors of failed savings and loan company ("officers") on state-law simple negligence claim survives motion to dismiss, because [12 USCS § 1821](#) preempts state law only to extent that state law exempts officers and directors from liability for gross negligence; state-law claim for gross negligence must be dismissed, because [12 USCS § 1821](#) adopts state-law definition of gross negligence and, in this case, state does not recognize separate action for gross negligence. [Resolution Trust Corp. v. Gershman, 829 F. Supp. 1095, 1993 U.S. Dist. LEXIS 10215 \(E.D. Mo. 1993\)](#).

FDIC's suit against former officers and directors of federal savings bank, by failing to allege gross negligence or similar culpable conduct, fails to state claim upon which relief can be granted, because [12 USCS § 1821\(k\)](#) preempts federal common law and establishes gross negligence as national standard for director liability. [FDIC v. Bates, 838 F. Supp. 1216, 1993 U.S. Dist. LEXIS 19514 \(N.D. Ohio 1993\)](#).

State law standard of negligence applies to action by FDIC, as manager of Federal Savings and Loan Insurance Corporation, against former officers of failed federal savings and loan, where gross negligence standard set out in [12 USCS § 1821\(k\)](#) was enacted after defendants committed act, because § 1821(k) does not preempt state law which applies higher standard of negligence. [FDIC v. Stahl, 840 F. Supp. 124, 7 Fla. L. Weekly Fed. D 627, 1993 U.S. Dist. LEXIS 17689 \(S.D. Fla. 1993\)](#).

FDIC's action against former officers and directors of 5 failed banks may proceed only with regard to gross negligence claims, and claims of negligence, negligence per se, and breach of fiduciary duty are dismissed with prejudice, where Congress created federal statutory standard of gross negligence in [12 USCS § 1821\(k\)](#) and that standard supersedes any previous federal common-law standard, because both Texas and federal law require showing of gross negligence or greater violations of duty of care. [FDIC v. Harrington, 844 F. Supp. 300, 1994 U.S. Dist. LEXIS 1738 \(N.D. Tex. 1994\)](#).

Proper standard of care applicable to officers and directors of federally chartered bank is that they may be liable for simple negligence, gross negligence, and breach of fiduciary duty under state law where state recognizes claims against bank officers and directors for simple and gross negligence and for breach of fiduciary duty, because FIRREA ([12 USCS § 1821\(k\)](#)) only preempts state law to extent state law insulates directors and officers from liability. [FDIC v. Raffa, 882 F. Supp. 1236, 1995 U.S. Dist. LEXIS 5422 \(D. Conn.\), adopted, 882 F. Supp. 1236, 1995 U.S. Dist. LEXIS 5419 \(D. Conn. 1995\)](#).

Receiver for failed savings and loan association sufficiently pleaded causation to maintain action against association's officers pursuant to [12 USCS § 1821\(k\)](#), where receiver alleged that officers failed to heed regulatory criticisms of association's options activities, that they relied on information from interested broker, that they relied on false assumption about private insurers, and that as direct and proximate result of their gross negligence, association suffered substantial damage and loss. [Resolution Trust Corp. v. Franz, 909 F. Supp. 1128, 1995 U.S. Dist. LEXIS 18892 \(N.D. Ill. 1995\)](#).

In context of what constitutes gross negligence under Illinois law, "very great negligence" is correct standard. [FDIC v. Giannoulias, 918 F. Supp. 2d 768, 2013 U.S. Dist. LEXIS 6648 \(N.D. Ill. 2013\)](#).

78. —Breach of fiduciary duty

FDIC action against former directors of failed savings and loan association is proper under [12 USCS § 1821](#), where action is for breach of fiduciary duty, because breach is discrete legal theory which may not be collapsed into barred claim of simple negligence, notwithstanding that breach is not characterized as gross default. [Federal Deposit Ins. Corp. v. McSweeney, 772 F. Supp. 1154, 91 D.A.R. 11357, 1991 U.S. Dist. LEXIS 12752 \(S.D. Cal. 1991\)](#), aff'd, [976 F.2d 532, 92 Cal. Daily Op. Service 8211, 92 D.A.R. 13373, 1992 U.S. App. LEXIS 24388 \(9th Cir. 1992\)](#).

FDIC's breach of fiduciary duty claim against former directors of insolvent bank must be dismissed, despite FDIC's reliance on last sentence of [12 USCS § 1821\(k\)](#) to allow it to bring causes of action under "other applicable law," including state law, because court construes "other applicable law" to mean applicable law other than state law and

finds that § 1821(k) establishes federal standard of liability for directors and officers of insured depository institutions precluding FDIC from maintaining actions against them based upon state law for conduct not amounting to gross negligence or greater disregard of duty of care. [Federal Deposit Ins. Corp. v. Swager, 773 F. Supp. 1244, 1991 U.S. Dist. LEXIS 13292 \(D. Minn. 1991\)](#).

FDIC is not barred by [12 USCS § 1821\(k\)](#) from proceeding against former officers of failed bank on causes of action requiring less than gross negligence for liability, where FDIC accused officers of breaches of fiduciary duty and of contract resulting from improper management and lending practices, because while federal liability under § 1821(k) requires showing of either gross negligence or greater violations of duty and would thus preempt any state law that would prevent FDIC from suing under this standard, it does not limit FDIC from proceeding under other applicable laws. [FDIC v. Barham, 794 F. Supp. 187, 1991 U.S. Dist. LEXIS 20384 \(W.D. La. 1991\)](#), aff'd, [995 F.2d 600, 1993 U.S. App. LEXIS 17466 \(5th Cir. 1993\)](#).

FDIC is not barred by [12 USCS § 1821\(k\)](#) from proceeding against former officers of failed bank on causes of action requiring less than gross negligence for liability, where FDIC accused officers of breaches of fiduciary duty and of contract resulting from improper management and lending practices, because while federal liability under § 1821(k) requires showing of either gross negligence or greater violations of duty and would thus preempt any state law that would prevent FDIC from suing under this standard, it does not limit FDIC from proceeding under other applicable laws. [FDIC v. Barham, 794 F. Supp. 187, 1991 U.S. Dist. LEXIS 20384 \(W.D. La. 1991\)](#), aff'd, [995 F.2d 600, 1993 U.S. App. LEXIS 17466 \(5th Cir. 1993\)](#).

Motion by former officers and directors of failed savings and loan association to dismiss action by Resolution Trust Corporation (RTC) for failure to state cognizable cause of action is granted, where RTC alleged simple negligence and breach of fiduciary duty by officers and directors who engaged in speculative, unsound, and poorly documented lending practices, because [12 USCS § 1821\(k\)](#), which preempts federal common-law standard of simple negligence, establishes gross negligence or conduct demonstrating disregard of duty of care greater than gross negligence as standard for establishing personal liability of officers and directors. [Resolution Trust Corp. v. Farmer, 823 F. Supp. 302, 1993 U.S. Dist. LEXIS 7674 \(E.D. Pa. 1993\)](#).

Bank officers' motion to dismiss Resolution Trust Corporation's state-law claims for simple negligence and breach of fiduciary duty is denied, because [12 USCS § 1821\(k\)](#) does not preempt state-law claims for simple negligence and breach of fiduciary duty, but only preempts state law requiring disregard of duty greater than gross negligence as condition of liability [Resolution Trust Corp. v. Gibson, 829 F. Supp. 1103, 1993 U.S. Dist. LEXIS 8064 \(W.D. Mo. 1993\)](#).

Resolution Trust Corporation may maintain an action for breach of fiduciary duty, but not for simple negligence, based on federal common law against officers of failed savings and loan association, because federal common law recognizes cause of action for breach of fiduciary duty, but not for simple negligence; savings clause of [12 USCS § 1821](#) states that "nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law," and both purpose and plain language of statute suggest that Congress intended to preserve common-law actions. [Resolution Trust Corp. v. Gibson, 829 F. Supp. 1110, 1993 U.S. Dist. LEXIS 12428 \(W.D. Mo. 1993\)](#).

[12 USCS § 1821\(k\)](#) did not preempt state-law claim for negligent breach of fiduciary duty, where statute created a national, uniform gross negligence standard of liability for Savings and Loan Association officers and directors, because statute contains saving clause that would be virtually empty if all lesser state standards were preempted. [Resolution Trust Corp. v. DiDomenico, 837 F. Supp. 623, 1993 U.S. Dist. LEXIS 16589 \(D.N.J. 1993\)](#).

Resolution Trust Corporation's (RTC) claims against former directors of failed savings and loan association, alleging negligence and breach of fiduciary duty under state law, are dismissed, where (1) [12 USCS § 1821\(k\)](#) establishes gross negligence as standard for civil damages actions by RTC, and (2) savings clause at end of § 1821(k) providing that nothing in section impairs or affects any right of RTC under other applicable law merely preserves RTC's other regulatory powers and does not preserve federal common law, because (1) § 1821(k) speaks directly to issue of standard of liability for directors and officers of federally insured financial institutions and

therefore preempts federal common law, and (2) since § 1821(k) established gross negligence as standard for director liability under federal law, counts of complaint alleging negligence and breach of fiduciary duty fail to state actionable claims. [Resolution Trust Corp. v. Camhi, 861 F. Supp. 1121, 1994 U.S. Dist. LEXIS 12161 \(D. Conn. 1994\)](#).

79. Determination of liability

Claims by FDIC as receiver (FDIC-R) against three ex-directors of bank were not covered by directors and officers liability policy because plain language of “insured v. insured” exclusion unambiguously barred coverage of claims by FDIC-R against directors; shareholder derivative action exception could not overcome exclusion’s plain language and policy endorsement clearly evinced parties’ intent not to “vary” or “waive” any other limitations of policy. [BankInsure, Inc. v. FDIC, 796 F.3d 1226, 2015 U.S. App. LEXIS 13764 \(10th Cir. 2015\)](#), cert. denied, 579 U.S. 902, 136 S. Ct. 2462, 195 L. Ed. 2d 800, 2016 U.S. LEXIS 3903 (2016).

RTC’s action against attorney to recover fees improperly paid to him by insolvent savings and loan is not time-barred, even though allegedly improper legal fees were paid in 1985, FSLIC was appointed conservator for savings and loan in April 1989, RTC took its place in March 1991 and brought this action later that year, and 3-year limitations period is applicable under [12 USCS § 1821\(d\)\(14\)\(A\)](#), because statute was tolled under adverse domination doctrine until agency takeover of institution, since undisputed evidence reveals that savings and loan was controlled by wrongdoers during all relevant time periods. [Resolution Trust Corp. v. Gardner, 798 F. Supp. 790, 1992 U.S. Dist. LEXIS 11351 \(D.D.C. 1992\)](#).

Resolution Trust Corporation (RTC), as receiver, may avoid transfers of assets by former bank officer to family members where all transfers occurred after officer was terminated from bank as result of bank bribery scheme and after he became aware that scam had been uncovered, where 2 transfers were made after termination and 5 were made after FBI informed officer he had been videotaped, where all transfers were made to close family members and none to independent creditors, and where much of money transferred had been funneled back to officer by “loans” from family members to whom transfers had been made, because transfers were designed to hinder, delay, or defraud RTC. [Resolution Trust Corp. v. Spagnoli, 811 F. Supp. 1005, 1993 U.S. Dist. LEXIS 364 \(D.N.J. 1993\)](#).

In RTC action charging former directors and officers of insolvent bank with negligence, gross negligence, breach of fiduciary duty, and other wrongful and improper conduct, damages will be apportioned under comparative fault settlement bar rule, where [12 USCS § 1821\(k\)](#) does not prescribe settlement bar rule, because adoption of comparative fault rule at this early stage of case not only encourages settlement by immunizing settling defendants from liability for contribution, but also eliminates need for fairness hearing for nonsettling defendants and leaves it to jury to resolve issue of defendants’ relative culpability. [Resolution Trust Corp. v. Gallagher, 815 F. Supp. 1107, 1993 U.S. Dist. LEXIS 1438 \(N.D. Ill. 1993\)](#).

In suit governed by Texas law, FDIC’s motion to strike affirmative defenses of former officers and directors of failed bank who were charged with negligence and breach of fiduciary duty was granted with respect to laches—which is available only in equity, not at law—and contributory negligence, but denied with respect to business judgment rule, for which facts remained to be determined at trial. [FDIC v. Niblo, 821 F. Supp. 441, 1993 U.S. Dist. LEXIS 6420 \(N.D. Tex. 1993\)](#).

Motion for summary judgment by officers of failed savings and loan (S&L) is denied, where Resolution Trust Corporation (RTC) stands in shoes of Federal Savings and Loan Insurance Corporation (FSLIC) for purposes of determining whether release of liability executed by S&L to officers in return for officers’ resignations bars RTC’s action against officers, because RTC is successor of FSLIC for purposes of enforcement proceedings against officers and directors ([12 USCS § 1821\(k\)](#)), but question of fact exists as to whether parties intended to release claims by FSLIC or only claims by S&L itself. [Resolution Trust Corp. v. Gibson, 829 F. Supp. 1121, 1993 U.S. Dist. LEXIS 13025 \(W.D. Mo. 1993\)](#).

RTC is entitled to summary judgment on indemnification counterclaims of former directors of failed savings and loan, where RTC is suing directors for wrongful conduct against institution, because (1) acquisition agreement

between failed savings and loan and association newly formed to accept some of its assets and liabilities clearly excluded any indemnification obligations, and (2) indemnification regulation, as subject to and qualified by [12 USCS § 1821\(k\)](#), makes indemnification unavailable. [Adams v. Resolution Trust Corp., 831 F. Supp. 1471, 1993 U.S. Dist. LEXIS 12003 \(D. Minn.\)](#), aff'd sub nom. [Adams v. Greenwood, 10 F.3d 568, 1993 U.S. App. LEXIS 31034 \(8th Cir. 1993\)](#).

Action by Resolution Trust Corporation (RTC) against former directors of failed savings association arising out of association's investments in Florida condominiums, alleging negligence, breach of fiduciary duty, and breach of contract, is not denied summarily, where RTC alleged and provided expert opinion in support of finding that defendants failed to (1) undertake necessary effort to ensure that they were sufficiently informed prior to making investment decisions, (2) get rudimentary understanding of condominium investment business in Florida, and (3) perform reasonably necessary monitoring of their investments in Florida, because genuine issue of fact existed concerning underwriting and administration of Florida investments and concerning whether significant monetary losses might have been avoided had defendants acted more prudently. [Resolution Trust Corp. v. Rahn, 854 F. Supp. 480, 1994 U.S. Dist. LEXIS 7932 \(W.D. Mich. 1994\)](#).

Claim of Resolution Trust Corporation, as conservator of failed savings and loan association, against former directors and officers, alleging gross negligence, is not dismissed, where complaint alleged that (1) defendants continued to approve speculative loans despite repeated warnings from federal regulators and accountants that information defendants relied on was inadequate, and in some instances approvals based on such inadequate information were unlawful, and (2) defendants approved loans without disclosing their conflicts of interest with borrowers, because complaint stated claim for gross negligence under state law. [Resolution Trust Corp. v. Dean, 854 F. Supp. 626, 1994 U.S. Dist. LEXIS 12759 \(D. Ariz. 1994\)](#).

Claims of Chapter 7 successor trustee of holding company against former officers and directors of bank which was wholly owned subsidiary of holding company relating to (1) lending practices of holding company's subsidiaries, understatement of its loan loss reserves, and substandard loans, (2) effect of Tax Reform Act on company's and subsidiaries' real estate loans, and (3) alleged overstatement of company's assets, equity, and capital, are dismissed, because these claims are derivative claims belonging to Federal Deposit Insurance Corporation as successor in interest to bank. [Brandt v. Bassett \(In re Southeast Banking Corp.\), 855 F. Supp. 353, 8 Fla. L. Weekly Fed. D 168, 1994 U.S. Dist. LEXIS 6551 \(S.D. Fla. 1994\)](#), aff'd in part and rev'd in part, remanded, [69 F.3d 1539, 9 Fla. L. Weekly Fed. C 654, 33 Fed. R. Serv. 3d \(Callaghan\) 960, 1995 U.S. App. LEXIS 33422 \(11th Cir. 1995\)](#).

RTC is granted summary judgment on [12 USCS § 1821\(k\)](#) gross negligence claim against president of former savings association, where evidence shows he pleaded guilty to 3 counts of willful misapplication of bank funds for loans totaling \$222 million, and admitted that those loans resulted in loss of \$80 million to failed association, because there is no genuine issue of material fact that his actions were grossly negligent. [Resolution Trust Corp. v. Lutz, 914 F. Supp. 1163, 1996 U.S. Dist. LEXIS 1471 \(E.D. Pa. 1996\)](#).

Affirmative defenses of failure to mitigate damages and contributory negligence are legally insufficient and are stricken in FDIC suit against 7 former directors and officers of insolvent bank, where officers try to use postreceivership conduct of FDIC as defense to their own culpability, because [12 USCS § 1821\(d\)](#) gives discretionary authority to FDIC acting as receiver such that discretionary function exception would bar federal tort claims against it, and state-law affirmative defenses that "second guess" postreceivership conduct of FDIC would interfere with objectives of federal program to clean up crisis of failed financial institutions. [FDIC v. Healey, 991 F. Supp. 53, 1998 U.S. Dist. LEXIS 364 \(D. Conn. 1998\)](#).

Claims of depositors which have been assigned to Federal Deposit Insurance Corporation are superior to rights of any stockholder until said claims have been paid in full. [Bates v. Farmers Sav. Bank, 231 Iowa 1151, 3 N.W.2d 517 \(Iowa 1942\)](#).

Federal Deposit Insurance Corporation, after it has paid depositors their insured losses, is entitled to share pro rata in assets of bank with depositors having deposits in excess of insured amounts, based on respective amount of

their claims. [*Withers v. D'Auria Bank & Trust Co., 122 N.J. Eq. 503, 195 A. 298, 1937 N.J. Ch. LEXIS 19 \(Ch. 1937\).*](#)

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Hierarchy Notes:

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