THE MARSHALL CHRONICLES
DECEMBER 2007

2007 Case Synopses

§910 And Hanging Paragraph

Claims – "Based upon the Ezell and Steakley decisions, which are controlling in this court on this issue, §506(a) does not apply to DaimlerChrysler's claims, the Anti-Cramdown Provision solidifies its position as a fully secured creditor of the Debtor without regard to whether the proposed treatment is retention or surrender, and there is no avenue by which DaimlerChrysler may bifurcate its fully secured claim and file a deficiency claim." In re Knox, 2007 WL 4126011 (Bankr. E.D.Tenn. Nov 20, 2007). 2007 WL 4126011

Hanging Paragraph – "A creditor does not have a purchase money security interest in connection with financing it provides for the acquisition of a vehicle to the extent that the financing secures the negative equity the creditor paid off on the debtor's trade-in vehicle. Applying the dual status rule, the Court concludes that a debtor may bifurcate such a claim only to the extent that it secures the non-purchase money portion of the financing." In re Lavigne, 2007 WL 3469454 (Bankr. E.D.Va. Nov 14, 2007). 2007 WL 3469454

Hanging Paragraph – "§506(a) does not apply to [creditor's] claims, the Anti-Cramdown Provision solidifies its position as a fully secured creditor of the Debtor without regard to whether the proposed treatment is retention or surrender, and there is no avenue by which [creditor] may bifurcate its fully secured claim and file a deficiency claim." In re Dyer, 2007 WL 3286795 (Bankr. E.D.Tenn. Nov 05, 2007). 2007 WL 3286795

Hanging Paragraph – "This court agrees with Pajot that the dual status rule is a compromise between the two extremes of either 'rendering the hanging paragraph almost meaningless through the transformation rule or equipping the hanging paragraph with power beyond its intent by finding negative equity included in the definition of purchase-money security interest.'" In re Conyers, 2007 WL 3244106 (Bankr. M.D.N.C. Nov 02, 2007). 2007 WL 3244106

Hanging Paragraph – The creditors were protected from having their claims bifurcated only to the extent of the debtors' remaining obligations for repayment of the sums advanced toward the purchase price of the new vehicles, less any amounts charged for insurance policies or for payoff of the negative trade-in equity. Additionally, the debtors' pre-petition payments would be allocated pro rata in accordance with the provision of the Tennessee Uniform Commercial Code (UCC) and the terms of the parties' contracts. In re Hayes, 2007 WL 3244010 (Bankr. M.D.Tenn. Nov 01, 2007). 2007 WL 3244010

Hanging Paragraph – Creditor's "entire claim, including that portion of the claim attributable to negative equity and costs associated with the purchase of the vehicle, qualifies as a purchase money security interest. Accordingly, the hanging paragraph of §1325(a) applies, and the Debtor cannot 'cram down' [creditor's] claim pursuant to §506." In re Burt, 2007 WL 3143319 (Bankr. D.Utah Oct 24, 2007). 2007 WL 3143319

Hanging Paragraph – "The plain language of the hanging paragraph of section 1325(a) clearly and unambiguously calls for an all-or-nothing rule protecting [creditor's] claim only if [creditor's] purchase money security interest secures all of the debt that is the subject of [creditor's] claim. However, because [creditor's] claim includes monies attributable to paying off negative equity from the old vehicle (which is a non-purchase money debt), [creditor's] claim does not meet this requirement. Therefore, [creditor's] claim does not qualify for protection under the 910-day provision of section 1325(a)(*)." In re Sanders, 2007 WL 3047233 (Bankr. W.D.Tex. Oct 18, 2007). 2007 WL 3047233

Hanging Paragraph – "Applying the Solis standard in this case leads to the conclusion that the [vehicle] was not acquired for the debtor's personal use. At the time of the acquisition, the car was acquired solely for the wife's use. The Debtor has testified that he has never driven the vehicle or used it for his own purposes." In re Beasley, 2007 WL 2986124 (Bankr. M.D.Ga. Oct 09, 2007). 2007 WL 2986124

Hanging Paragraph – Even though the debtor, at time of his purchase of his 910 vehicle, could not use the vehicle due to his military deployment, he failed to establish that it was not anticipated that his use of vehicle would be significant and material, given that the vehicle was later driven by both himself and his non-debtor wife as a family vehicle on weekends because it was only vehicle large enough to transport their entire family. In re Cross, 2007 WL 2823671 (Bankr. S.D.Ohio Sep 27, 2007). 2007 WL 2823671

Hanging Paragraph – In regard to a 910 claim, "a debtor must pay the full amount of the claim, plus interest at the 'prime-plus' rate prescribed by Till v. SCS Credit Corp." In re Gallagher, 2007 WL 2745808 (10th Cir. BAP Sep 21, 2007) (unpublished). 2007 WL 2745808

Plan – The language in a plan that wrongfully provided that the motor vehicle, which had already been repossessed and sold prior to the confirmation hearing, would be surrendered to the lender in full satisfaction of their secured claim was of no talismanic significance and could not, pursuant to the hanging paragraph, prevent the lender from asserting an unsecured deficiency claim. In re Gay, 2007 WL 2746778 (Bankr. E.D.Tex. Sep 18, 2007). 2007 WL 2746778

910 Vehicle – "The financing of a motor vehicle that includes negative equity in a trade-in vehicle may constitute a 'purchase money security interest' that is not subject to modification by the debtors' Chapter 13 Plan." In re Wall, 2007 WL 2967235 (Bankr. W.D.N.C. Sep 17, 2007). 2007 WL 2967235

Hanging Paragraph – In a case where a creditor held a "910 claim," "debtor must pay the full amount of [creditor's] claim plus interest as required by Till." In re Davis, 2007 WL 2710459 (Bankr.M.D.Ga. Sep 12, 2007) 2007 WL 2710459

Hanging Paragraph – "The more appropriate standard for interpreting the term 'personal use' in the 'hanging paragraph' should flow from its settled meaning from common law, and therefore is twofold, that is, (1) whether the individual is using the vehicle to travel to and from work, or (2) whether the vehicle is actually utilized in the performance of the individual's job duties." Toyota Motor Credit Corp. v. Johnston, 2007 WL 2702193 (W.D.La. Sep 11, 2007). 2007 WL 2702193

Hanging Paragraph – Because the Debtor's predominate use of the vehicle was for a home cleaning service and they owned 4 vehicles, "Debtors' acquired the [vehicle] for business purposes, and thus, the hanging paragraph of §1325 does not apply." In re Counts, 2007 WL 2669204 (Bankr.D.Mont. Sep 06, 2007). 2007 WL 2669204

Hanging Paragraph – "Upon post-confirmation destruction and surrender of the vehicle securing a 910-lender's claim, when there is no suggestion that the Debtors did not act in good faith, a plan may be amended to terminate the payments on the 910-claim as a secured claim and to pay the 910-creditor's deficiency as an unsecured claim. The total amount of the claim as of the petition date has not changed, but any deficiency remaining after the credit for payments pursuant to the plan and the insurance proceeds is no longer payable as a 910-claim." In re Lane, 2007 WL 2479317 (Bankr.D.Kan. Aug 28, 2007) 2007 WL 2479317

Hanging Paragraph – The hanging paragraph did not affect the 910 creditor's right to a deficiency claim if the surrendered motor vehicle securing it could not be sold for a sum sufficient to satisfy the debtor's total debt to the creditor. In re Rodriguez, 2007 WL 2701295 (9th Cir. BAP Aug 28, 2007). 2007 WL 2701295

Hanging Paragraph – The hanging paragraph permits the Chapter 13 debtors to surrender a motor vehicle in full satisfaction of a debt owed to a 910 creditor, and requires the creditor to forego an unsecured deficiency claim should the property be liquidated for less than the amount of the debt. In re Vanduyn, 2007 WL 2484089 (Bankr.M.D.Fla. Aug 30, 2007). 2007 WL 2484089

910 Claims – "[T]here is no basis under §502 for disallowance of [a] deficiency claim" subsequent to surrender and sale of a 910 vehicle. In re Leffingwell, 2007 WL 2469575 (Bankr.E.D.Cal. Aug 29, 2007) (unpublished). 2007 WL 2469575

Hanging Paragraph – "[F]or purposes of a Chapter 13 plan, the allowed claim of a creditor holding an obligation secured by a purchase money lien in a vehicle purchased within 910 days before filing of the petition for the personal use of the debtor is an allowed secured claim in the amount of the loan balance on the date of filing the petition and §1325(a)(5)(B)(ii) requires that interest be paid at the Till rate." In re Thomas, 2007 WL 2462664 (Bankr.D.Kan. Aug 27, 2007). 2007 WL 2462664

Hanging Paragraph – The hanging paragraph does not affect the rights of a purchase-money motor vehicle lender holding a 910 claim to assert a deficiency claim when the debtor elects to surrender the vehicle. In re Stalica, 2007 WL 2417385 (Bankr.W.D.N.Y. Aug 24, 2007). 2007 WL 2417385

Hanging Paragraph – The hanging paragraph does not affect the status of a creditor holding a 910 claim, as the secured creditor is entitled to interest at the Till rate under the "present value" language in the cramdown provision. In re Wilson, 2007 WL 2405284 (10th Cir. BAP Aug 24, 2007). 2007 WL 2405284

Hanging Paragraph– The fact that the amounts financed by the Chapter 13 debtor-borrowers in connection with their purchase of motor vehicles for their personal use also included amounts sufficient to pay off negative equity that the debtors possessed in the trade-in vehicles did not affect the lenders' status as "purchase-money" lenders, that were protected by the hanging paragraph. General Motors Acceptance Corp. v. Peaslee, 2007 WL 2318071 (W.D.N.Y. Aug 15, 2007) 2007 WL 2318071

Hanging Paragraph – "In the absence of a purchase-money security interest, [creditor's] claim is not a '910 claim.'" In re Huddle, 2007 WL 2332390 (Bankr.E.D.Va. Aug 13, 2007) (unpublished) 2007 WL 2332390

Business Purpose – Larger motor vehicle that Chapter 13 debtors acquired with purchase-money financing obtained within 910 days of petition date was acquired for "business purpose" of debtors. In re LaDeaux, 2007 WL 2163088 (Bankr.S.D.Ohio Jul 26, 2007) 2007 WL 2163088

Hanging Paragraph – Debtors' "surrender of the 910 collateral in a Chapter 13 plan will satisfy the claim of the 910 creditor in full and will not result in an unsecured deficiency claim." In re Williams, 2007 WL 2122131 (Bankr.E.D.Va. Jul 19, 2007) (unpublished) 2007 WL 2122131

Hanging Paragraph – "Since compliance with §1325(a)(5)(B)(ii) is mandatory and the Creditor objected to the Plan prior to confirmation, the bankruptcy court was not permitted to confirm the Plan over Creditor's objection." Sparks v. HSBC Auto Finance, 2007 WL 2080289 (S.D.Ohio Jul 18, 2007) (unpublished) 2007 WL 2080289

Hanging Paragraph – "[T]he portion of the claim corresponding to rolled-in negative equity may be bifurcated because it is not a purchase-money security interest, but the hanging paragraph applies to the remaining purchase-money portion, which cannot be bifurcated as proposed by debtors' plans." In re Pajot, 2007 WL 2109892 (Bankr.E.D.Va. Jul 17, 2007) (unpublished) 2007 WL 2109892

Hanging Paragraph – The BAPCPA's "§1325(a) (hanging, unnumbered paragraph at the end of the subsection) … effectively eliminates the debtor's ability to unilaterally bifurcate a qualifying claim into secured and unsecured components." In re Barrett, 2007 WL 2081702 (Bankr.M.D.Ala. Jul 17, 2007) (unpublished) 2007 WL 2081702

'910 Claim' – The provision added by the BAPCPA requiring that a secured creditor must retain its lien until the earlier of the debtor's discharge or "payment of the underlying debt determined under nonbankruptcy law," did not affect the purchase-money motor vehicle lender's right to interest on it "910 claim," not at the contract rate of 20.95%, but only at the lesser rate of 10% calculated using Till's "prime plus risk" approach. In re Hopkins, 2007 WL 2028799 (Bankr.N.D.Ill. Jul 10, 2007) 2007 WL 2028799

Hanging Paragraph – "[A] chapter 13 debtor may no longer apply 11 U.S.C. §506(a) to cram down the claim of a secured creditor that meets the parameters of the hanging paragraph." Horr v. Jake Sweeney Smartmart, Inc., 2007 WL 1989611 (S.D.Ohio Jul 06, 2007) (unpublished) 2007 WL 1989611

Adequate Protection – "Although the provision of adequate protection is appropriate in Chapter 13 and is even required for claims secured by personal property, a plan that proposes adequate protection payments to a creditor secured by non-depreciating collateral for a 35 month period and then a lump sum to pay off the balance of the claim in the 36th month violates the equal monthly payment requirement of §1325(a)(5)(B)(iii)(I)." In re Luckett, 2007 WL 3125278 (Bankr. E.D.Wis. Oct 24, 2007). 2007 WL 3125278

Monthly Payments – "The equal payment provision, directed at debtors and not Chapter 13 trustees, does not require a trustee's monthly payments to secured creditors to be perfectly equal in amount. Trustees may continue to pay debtors' attorney fees on an accelerated basis despite the resulting increase in secured creditor payments once the attorney is fully paid." In re Erwin, 2007 WL 2907998 (Bankr. C.D.Ill. Oct 01, 2007). 2007 WL 2907998

Protection Payments – The "court [may] order a debtor to make pre-confirmation adequate protection payments to the Chapter 13 Trustee instead of to the secured creditor." In re Jones, 2007 WL 2609790 (N.D.N.Y. Sep 04, 2007). 2007 WL 2609790

Disposable Income, Etc...

Disposable Income – "Because §707(b)(2)(A)(iii)(I) permits above-median income debtors to deduct secured debt payments in determining disposable income, the Court is precluded from reviewing the reasonableness or necessity of those payments...[However,] the good faith standards set forth in §§1325(a)(3) and (7) still apply after enactment of BAPCPA and allow the Court to review the debtors' plan and petition to determine if they are fundamentally fair to creditors and comply with the spirit of the Bankruptcy Code." In re Sallee, 2007 WL 3407738 (Bankr. S.D.Ill. Nov 15, 2007). 2007 WL 3407738

Good Faith – Debtors were allowed to deduct their mortgage payment on a property they intended to surrender when calculating their disposable income. Additionally, "Lack of good faith is not a proper basis for objecting to a miscalculation of disposable income. 'Disposable income is determined under section 1325(b) rather than as an element of good faith under section 1325(a)(3).'" In re Burmeister, 2007 WL 4052368 (Bankr. N.D.Ill. Nov 16, 2007). 2007 WL 4052368

Disposable Income – Debtor's historically-based "disposable income" is merely the starting point in determining the "projected disposable income" that debtor will have to devote to payment of unsecured creditors, in order to obtain confirmation of any plan that which result in less than a 100% distribution on creditor claims over the objection of trustee or unsecured creditor. In re Pak, 2007 WL 4126749 (9th Cir. BAP Nov 07, 2007). 2007 WL 4126749

Disposable Income – The term "unsecured creditors," as used in Section 1325(b)(1)(B) does not entitle a Debtor to pay priority unsecured claims from their projected disposable income if the priority unsecured claims have already been deducted pursuant to 11 U.S.C. §707(b)(2)(A) and Form B22C. In re Echeman, 2007 WL 3348436 (Bankr. S.D.Ohio Nov 07, 2007). 2007 WL 3348436

Means Test – "Social Security benefits (including supplemental security income benefits for a disabled person)...is not a component of projected disposable income, and that...retaining all or part of these benefits while paying less than 100% of general unsecured creditors' claims does not constitute bad faith in proposing the plan. In all events, it is not per se bad faith." In re Barfknecht, 2007 WL 3376134 (Bankr. W.D.Tex. Nov 07, 2007). 2007 WL 3376134

Means Test – "In this case, the Vehicles are not owned by the Debtor, she is not obligated to make the payments on the Vehicles, and she does not in fact make the payments. There is no basis upon which to find that the Debtor is the owner of these Vehicles or is financially impacted by them. Therefore, the Debtor cannot take the Transportation Ownership Expense." In re Sale, 2007 WL 3028390 (Bankr. M.D.N.C. Oct 15, 2007). 2007 WL 3028390

Means Test – "It is appropriate for Debtor to deduct payments on debt secured by the Residence for purposes of the means test, notwithstanding Debtor's stated intention to surrender the property." In re Chang, 2007 WL 3034679 (Bankr. N.D.Cal. Oct 16, 2007). 2007 WL 3034679

Tax Liability – "Income tax withholding is not the same as actual tax liability, and can be manipulated by taxpayers to produce excess withholding and a refund." Therefore, a presumption of abuse arose where debtors reported the tax withholding on the means test form instead of their actual tax liability. In re Hale, 2007 WL 2990760 (Bankr. N.D.Ohio Oct 10, 2007). 2007 WL 2990760

Means Test – "Neither the Loan Repayment nor the Voluntary Contribution [to the debtor's Thrift Savings Plan] are expenses that Debtor can utilize to reduce her monthly income for purposes of the means testing analysis of §707(b)(2)(A)(i)." In re Mordis, 2007 WL 2962903 (Bankr. E.D.Mo. Oct 09, 2007). 2007 WL 2962903

Disposable Income – "In determining 'current monthly income' under 11 U.S.C. §101(10)(A) and disposable income under 11 U.S.C. §1325(b), this Court will follow the longstanding definitions of 'income' and of 'gross income' as including 'gains derived from dealings in property' and permit debtors to deduct basis and allowable expenses under the IRC as though they were preparing their Form 1040, with related schedules and forms." In re Warren, 2007 WL 2916563 (Bankr. D.Mont. Oct 05, 2007). 2007 WL 2916563

Means Test – "Debtors are entitled to claim vehicle ownership expenses even though Debtors do not have liens or leases that encumber their cars." In re Thomas, 2007 WL 2903201 (Bankr. D.Kan. Oct 02, 2007). 2007 WL 2903201

Projected Disposable Income – The word "projected" must be given some independent significance. In calculating the "projected disposable income," the bankruptcy court could not rely solely upon the debtors' schedules, but it must reflect all of the income that the debtors anticipated receiving over their applicable five-year commitment period minus any disposable income exclusions. In re McCarty, 2007 WL 2937126 (Bankr. N.D.Ohio Sep 28, 2007). 2007 WL 2937126

Means Test – Above-median-income Chapter 13 debtors, in performing means test calculation to determine the projected disposable income that they would be required to devote to payment of unsecured creditors under their plan, were entitled to take a vehicle ownership expense deduction for a motor vehicle that they owned free and clear of liens. In re Moorman, 2007 WL 2822917 (Bankr. C.D.Ill. Sep 28, 2007). 2007 WL 2822917

Means Test – In performing "means test" calculation, the debtors were entitled to deduct the monthly average of the mortgage payments which they were contractually obligated to make on the date the petition was filed over the next 60 months, without regard to whether the debtors intended to surrender the mortgaged property or whether they would actually make these payments post-petition. In re Hayes, 2007 WL 2815983 (Bankr. D.Mass. Sep 26, 2007). 2007 WL 2815983

Disposable Income – "The calculation of [debtor's] projected disposable income is governed by the information [he] provided in his Schedules I (Income) and J (Expenses), and that [he] is not entitled to a fixed allowance of any expense that is in excess of his actual expense even if such a fixed allowance might be included in the 'means test' under §707(b)." In re Bateman, 2007 WL 2781119 (Bankr. N.D.Cal. Sep 21, 2007). 2007 WL 2781119

Special Circumstances – "As a threshold matter, a circumstance must have existed prior to or on the petition date in order to be considered a possible Special Circumstance under §707(b)(2)(B)." In re Reis, 2007 WL 2746794 (Bankr. D.N.H. Sep 18, 2007). 2007 WL 2746794

Disposable Income – Due to BAPCPA's newly added definition of "current monthly income," the contribution demanded of a non-filing spouse is limited to actual household expenses paid by that non-filing spouse for the benefit of the debtor or the debtor's dependents. In re Charles, 2007 WL 2746779 (Bankr. E.D.Tex. Sep 18, 2007). 2007 WL 2746779

Means Test – In applying the means test to calculate the projected disposable income, an above-median-income Chapter 13 debtor was entitled to deduct from her current monthly income the full payment which she was obligated to make each month on loans from her retirement plan, rather than just a prorated amount, even though her obligations on these loans would terminate prior to completion of plan. In re Lasowski, 2007 WL 2683640 (Bankr.E.D.Ark. Sep 14, 2007). 2007 WL 2683640

Means Test– "The debtor may claim the deduction specified in the Internal Revenue Service Local Transportation Expense Standards for a motor vehicle she owns that is not encumbered by any debt, pursuant to 11 U.S.C. §707(b)(2)(A)(ii)(I)." In re Megginson, 2007 WL 2609783 (Bankr.D.Md. Sep 04, 2007). 2007 WL 2609783

Means Test – "401k loan repayments are not a deductible expense under section 707(b)(2)(A), but such repayments are deductible in Chapter 13." In re Turner, 2007 WL 2669737 (Bankr.D.N.H. Sep 06, 2007). 2007 WL 2669737

Disposable Income – The debtor's proposed 100% repayment plan did not also have to satisfy the projected disposable income test in order to be confirmed. In re Jones, 2007 WL 2589442 (Bankr.D.N.H. Sep 07, 2007). 2007 WL 2589442

Disposable Income – In calculating the "projected disposable income" that Chapter 13 debtors would have to devote to payment of unsecured creditors under their plan, the court would not blindly rely on a historical snapshot provided by the debtors' statutorily-defined "disposable income," as based on their average income over the six months immediately preceding the petition date, during the time in which the debtor-husband was unemployed. In re Mancl, 2007 WL 2695240 (Bankr.W.D.Wis. Aug 24, 2007). 2007 WL 2695240

Disposable Income – "For above-median debtors, their expenses are drawn, not from the debtor's Schedule J, but from certain Internal Revenue Service standards found in §707(b)(2)(A)(ii)(I). Schedule J has no place in the post-BAPCPA expense calculus." In re Austin, 2007 WL 2264062 (Bankr.D.Vt. Aug 07, 2007) 2007 WL 2264062

Projected Disposable Income – "Projected disposable income, … is calculated based on a Debtor's current projected income, not the historical average income for the six months prior to filing the petition." In re Purdy, 2007 WL 2276271 (Bankr.N.D.Fla. Aug 06, 2007) 2007 WL 2276271

Means Test – "Debtor is allowed the Local Standards deduction for a mortgage/rental expense, notwithstanding the fact he pays no mortgage payment or rental obligation." In re Morgan, 2007 WL 2298010 (Bankr.S.D.Fla. Aug 08, 2007) (unpublished) 2007 WL 2298010

Means Test – "Expenses for the college education and living expenses of Debtors' child are not includable as deductions from income." In re Goins, 2007 WL 2229047 (Bankr.D.S.C. Aug 01, 2007) 2007 WL 2229047

Means Test – "Nothing contained in Form B22C or 11 U.S.C. §707(b)(2)(A)(ii)(I) requires that the Debtors must have current automobile ownership expense as a prerequisite to claiming the Local Standard deduction amount specified by the IRS." In re Wilson, 2007 WL 2199021 (Bankr.W.D.Ark. Jul 30, 2007) 2007 WL 2199021

Means Test – "Section 707(b) applies in cases converted from Chapter 13 to Chapter 7 and … each debtor in these cases is … required to file a Form B22A." In re Kerr, 2007 WL 2119291 (Bankr.W.D.Wash. Jul 18, 2007) (unpublished) 2007 WL 2119291

Current Monthly Income – Individual Chapter 7 debtor, in performing the "means test" calculation was entitled to take two vehicle ownership expense deductions, one for the vehicle that she owned and another for the vehicle owned by her 18-year-old son, though both vehicles were owned free and clear. In re Vesper, 2007 WL 1864117 (Bankr.D.Alaska Jun 28, 2007) 2007 WL 1864117

Plan Length – Adopting the Ewers opinion, the court held that the mere fact that above median income Chapter 13 debtors had to initially propose a five-year plan in order to obtain confirmation over objection of the trustee did not mean that the debtors could not subsequently modify their plan to reduce its term. In re Howell, 2007 WL 4124476 (Bankr. W.D.La. Nov 19, 2007). 2007 WL 4124476

Plan – The applicable commitment period is the period of time that a Chapter 13 debtor must pay his or her disposable income to the trustee for payment to unsecured creditors, and if the debtor has no disposable income, then there is no applicable commitment period. Therefore, the debtor may obtain confirmation of a plan that, in a case involving an above-median-income debtor, is shorter than five years. In re Frederickson, 2007 WL 2752769 (8th Cir. BAP Sep 24, 2007). 2007 WL 2752769

Plan – The plan does not have to extend for 60 months, as long as it provides for payment of allowed unsecured claims in full. Additionally, the debtor only had to make payments to each unsecured creditor over time whose sum totaled the full amount of creditor's allowed claim, without interest. In re Ross, 2007 WL 2683676 (Bankr.N.D.Ill. Sep 13, 2007). 2007 WL 2683676

Applicable Commitment Period – The debtors' applicable commitment period was a period of time, and not simply a multiplier, and prevented the debtors from obtaining confirmation of the plan whose duration was less than 60 months, unless the plan provided for payment of unsecured creditors in full. In re Hylton, 2007 WL 2669458 (Bankr.W.D.Va. Aug 22, 2007). 2007 WL 2669458

Plan – "The provisions in the proposed plans purporting to delay vesting of all of the estates' property in the debtors beyond plan confirmation and until the case is closed, dismissed or converted, do not comply with chapter 13 of the Code and Section 362(a)." In re Jemison, 2007 WL 2669222 (Bankr.N.D.Ala. Sep 06, 2007). 2007 WL 2669222

Good Faith – "[C]onfirmation of the [bankruptcy] Plan precludes [the creditor] from now causing dismissal of Debtor's chapter 13 case based upon non-compliance with section 109(g)(2) or lack of good faith in filing the petition." In re Rosetti, 2007 WL 2669265 (Bankr.N.D.Tex. Sep 06, 2007). 2007 WL 2669265

Modification – "The debt owed to [creditor] by the Debtor, which is secured by a perfected security interest in the Mobile Home but not by the real property upon which the Mobile Home is located, is [not] protected from modification under §1322(b)(2) of the Bankruptcy Code." In re Fuller, 2007 WL 3244113 (Bankr. M.D.N.C. Nov 02, 2007). 2007 WL 3244113

Modification – "The lien retention provision added by BAPCPA to Section 1325(a)(5)(B)(i) [does not prevent] a Chapter 13 debtor who is not entitled to a discharge from modifying the interest rate on a [910] secured claim...However, the debtor remains liable for, and the collateral continues to secure, the remaining balance determined with interest at the contract rate, after she exits bankruptcy." In re Lilly, 2007 WL 3231422 (Bankr. C.D.Ill. Oct 30, 2007). 2007 WL 3231422

Modification – "Considering the combination of the revision of 11 U.S.C. §101(13A), the reasoning of In re Shepherd line of cases, Congress' recognition of the practical reality of mobile home use, and Louisiana exemption law, this court concludes that a lien on a mobile home that constitutes the debtor's principal residence as defined in 11 U.S.C. §101(13A) is not subject to modification under 11 U.S.C. §1322(b)(2)." In re Fells, 2007 WL 3120113 (Bankr. W.D.La. Oct 23, 2007). 2007 WL 3120113

Modification – "A debt secured only by a perfected security interest in a manufactured home, but not by the real property upon which such home is situated, is [not] protected from modification under 11 U.S.C. §1322(b)(2)." In re Oliviera, 2007 WL 3001654 (Bankr. E.D.Tex. Oct 11, 2007). 2007 WL 3001654

Modification – BAPCPA's amendment of the term "debtor's principal residence" to include mobile or manufactured homes does not alter the fact that, in order to be protected by the anti-modification provision of Chapter 13, the creditor had to demonstrate that the unattached mobile home that secured its claim qualified as "real property" under state law. Herrin v. Greentree—Al, LLC, 2007 WL 2791603 (S.D.Ala. Sep 24, 2007). 2007 WL 2791603 7 WL 2807750

Modification – Although a mobile home may be a debtor's "principal residence," it does not qualify as "real property" and therefore "the claim of [the creditor] secured by the mobile home is not protected from modification by 11 U.S.C. §1322(b)(2)." In re Bartolome, 2007 WL 2774467 (Bankr. M.D.Ala. Sep 21, 2007). 2007 WL 2774467

Anti-Modification Provision – A mobile home which was not permanently affixed to the real property on which it sat, but simply rested on bricks and was tied to the land with standard tie-downs, and which was not shown to be attached to a well, septic system or any other permanent type of fixture, was not real property. Therefore, the creditor was not protected by the Chapter 13 anti-modification provision In re Coleman, 2007 WL 2376722 (Bankr. W.D.Mo. Aug 02, 2007). 2007 WL 2376722

Security Interest – A "mobile home is personal property under Alabama law. Because it is personal property it cannot be considered real property under 11 U.S.C. §1322(b)(2). Consequently, [creditor] does not hold a secured interest in real property that is the debtor's principal residence, so its claim can be modified under §1322(b)(2)." In re Manning, 2007 WL 2220454 (Bankr.N.D.Ala. Aug 02, 2007) (unpublished) 2007 WL 2220454

Attorney Fees – "After examining Section 1326(b) and the cases which have interpreted it, this court reaches the conclusion that the statute does require the Trustee to pay in full any allowed and outstanding administrative claim [including attorney fees] as a part of any distribution, before distributions may be made to other claimants, except possibly holders of domestic support obligations entitled to priority under Section 507(a)(1)." In re Bellamy, 2007 WL 4233106 (Bankr. D.Md. Nov 28, 2007). 2007 WL 4233106

Attorneys Fees – "Adequate protection payments to automobile lenders have priority over claims for attorneys fees made by counsel for Chapter 13 debtors." In re Dispirito, 2007 WL 2084882 (Bankr.D.N.J. Jul 17, 2007) (unpublished) 2007 WL 2084882

Credit Counseling – The credit-counseling requirement added by BAPCPA pertains only to an individual who is the subject of voluntary bankruptcy case and does not apply to putative debtors who are the subject of involuntary petitions. In re Allen, 2007 WL 3355648 (Bankr. N.D.Tex. Nov 07, 2007). 2007 WL 3355648

Dismissal – "A bankruptcy court must dismiss a bankruptcy petition at the debtor's own urging for failure to file schedules and other information requested by 11 U.S.C. §521(a), even if the evidence suggests that the debtor is acting with the goal of evading his financial obligations." Warren v. Wirum, 2007 WL 3461951 (N.D.Cal. Nov 14, 2007). 2007 WL 3461951

Payment Advices – The bankruptcy court had no discretion, when the debtors failed to file certain payment advices within the time specified in the bankruptcy statute or to request an extension of time for them to do so, to thereafter excuse the debtors' noncompliance with this statutory requirement, but had to dismiss the case, upon the debtors' request and over the objection of both the United States Trustee (UST) and the Chapter 7 trustee. Rivera v. Miranda, 2007 WL 2993611 (D.Puerto Rico Oct 12, 2007). 2007 WL 2993611

Credit Counseling – "The debtor is judicially estopped from benefiting by obtaining dismissal of his case for non-compliance with §109(h)(1). The debtor's certification under penalty of perjury that he completed credit counseling within 180 days before filing his bankruptcy petition, a requirement to commence his case, is adequate, unless challenged, to satisfy the credit counseling requirement. He may not now disavow that statement because creditors will be prejudiced if the case is dismissed...Because the debtor is judicially estopped from denying that he completed the requisite credit counseling, it is not necessary that a credit counseling certificate be filed." In re Lilliefors, 2007 WL 2903803 (Bankr. E.D.Va. Oct 03, 2007) (unpublished). 2007 WL 2903803

Credit Counseling – A bankruptcy court, upon determining that the debtor is ineligible for bankruptcy relief due to the failure to comply with the literal terms of the credit counseling requirement, need not necessarily dismiss case, but has discretion as to whether to allow case to proceed. In re Enloe, 2007 WL 2543727 (Bankr.D.Colo. Aug 23, 2007). 2007 WL 2543727

Discharge – "While the Court agrees that a Chapter 7 discharge is not a per se bar to a debtor's ability to proceed under Chapter 13, the Court finds the reasoning of those courts that disallow a debtor to receive two discharges in the same case to be highly persuasive…The Debtors should not be allowed to do indirectly, through conversion, what they cannot do directly by filing a new Chapter 13. Therefore, as a condition to granting the Motion to Convert, the Debtors must file a Motion to Revoke the Chapter 7 Discharge that was granted." In re Godwin, 2007 WL 4191729 (Bankr. M.D.N.C. Nov 21, 2007). 2007 WL 4191729

Discharge – "[Section] 1325(b) does not allow a debtor to propose a plan that will allow the debtor to pay off a plan early, and receive a discharge before the expiration of the applicable commitment period, unless all unsecured claims are paid in full." In re Kidd, 2007 WL 2461684 (Bankr.D.Kan. Aug 27, 2007) 2007 WL 2461684

Multiple Discharges – "[T]he six-year waiting period in §727(a)(8) is [not] a limitations period that the bankruptcy court should have equitably tolled during [debtor's] Chapter 13 proceedings." Tidewater Finance Co. v. Williams, 2007 WL 2325250 (4th Cir.(Md.) Aug 16, 2007) 2007 WL 2325250

Discharge – "[B]ased upon the wording of [the BAPCPA's] §524(i), a creditor that willfully fails to credit payments received under a confirmed Chapter 13 plan shall, to the extent that failure harms the debtor, be in violation of the discharge injunction." In re Collins, 2007 WL 2116416 (Bankr.E.D.Tenn. Jul 19, 2007) (unpublished) 2007 WL 2116416

Automatic Stay Extension – "Code §362(c)(3)(B) provides that the automatic stay may be extended after notice to creditors and a hearing. That hearing must be completed before expiration of the 30 days. Here, the Debtor's Motion was not set for hearing within 30 days after commencement of the case…This court's published calendar for setting expedited BAPCPA hearings specifically contemplates that such hearings in [satellite court] cases may be set on a [central court location] calendar." In re Moreno, 2007 WL 4166296 (Bankr. E.D.Cal. Nov 20, 2007). 2007 WL 4166296

Automatic Stay – "The court may consider the 'totality of the circumstances' in determining the debtor's good faith. It follows that I respectfully disagree with the Whitaker court's suggestion that the good faith analysis under §362(c)(4)(B) is limited solely to consideration of the factors set forth in §362(c)(4)(D)." In re Ferguson, 2007 WL 3036857 (Bankr. E.D.Pa. Oct 19, 2007). 2007 WL 3036857

Automatic Stay – Section of the Bankruptcy Code terminating automatic stay on the 30th day after commencement of successive bankruptcy case by certain repeat filers terminates the stay only with regard to debtor and property of debtor and not with regard to property of the estate. Therefore, the stay continued to protect a truck included in a repeat filer's Chapter 13 case, though the debtor's current case was filed less than one year after an entry of order dismissing prior case, and though debtor never moved to extend or impose the stay. In re Stanford, 2007 WL 2433387 (Bankr.E.D.Ark. Aug 03, 2007). 2007 WL 2433387

Imposition of Stay – "[B]ased on the good faith of the debtors, the lack of objection by an impaired party, the inadvertence of counsel, and the high likelihood of success of their chapter 13 plan[,] I find that imposing a stay, identical to the one described in §362(a), is in the best interests of justice and is necessary for the Debtors to be allowed to reorganize their affairs, keep their home, and pay off their secured lender in full." In re Franzese, 2007 WL 2083650 (Bankr.S.D.Fla. Jul 19, 2007) (unpublished) 2007 WL 2083650

Automatic Stay – "Because [debtor] only had one bankruptcy case pending within the previous year, 11 U.S.C. §362(c)(4) does not apply, and [debtor] can not avail himself of the stay provisions in §362(c)(4)(B)." In re Novack, 2007 WL 2060515 (D.Minn. Jul 16, 2007) (unpublished) 2007 WL 2060515

Curing Default – "§108(b) does not trump §1322(b)...When Debtors filed for chapter 13 relief, their equitable interest in the Property had not been terminated. This interest gave them the right to de-accelerate the Contract and cure any defaults related to it under §1322(b)(3) and maintain any payments pursuant to it under §1322(b)(5) through their chapter 13 plan." In re Frazer, 2007 WL 3086221 (9th Cir. BAP (Cal.) Sep 27, 2007). 2007 WL 3086221

Property of the Estate – While recording of the tax deed to the debtors' residence prior to commencement of their Chapter 13 case prevented the residence from becoming part of the bankruptcy estate, the debtors' state law statutory right to repurchase the residence was an interest in property that they held on the petition date, and that did become "property of the estate." In re Stevens, 2007 WL 2298243 (Bankr.D.N.H. Aug 09, 2007) 2007 WL 2298243

Claims – Proofs of claim filed by casinos had to be disallowed as violative policy against enforcement of gaming debts. In assessing the enforceability of casinos' claims against a Chapter 7 debtor, a Wisconsin resident who had gambled unsuccessfully in Nevada and the Bahamas prior to filing for bankruptcy in the Western District of Wisconsin, a bankruptcy court would apply Wisconsin law and not Nevada or New Jersey law as specified in the contracts between the parties. New Jersey had no connection with the underlying transactions. Moreover, while the markers underlying one casino's claims were executed in Nevada, and while the gambling itself took place in Nevada, the markers did not specify a place of repayment, and the casino had reached into Wisconsin to solicit the debtor and to offer him free travel and accommodations as an inducement to gamble in Nevada. Various choice-influencing factors also favored allowing a bankruptcy judge in Wisconsin to decide the issue based on Wisconsin law. Under Wisconsin law, the casinos' claims had to be disallowed, as violative of Wisconsin's strong public policy against the enforcement of gaming debts. In re Jafari, (Bkrtcy.W.D.Wis)

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