**A FEW SUPREME COURT BANKRUPTCY DECISIONS THAT MAY BE HELPFUL TO KNOW BY NAME**

By John P. Gustafson

**Ransom v. FIA Card Servs., N.A.**, 562 U.S. 61, 131 S.Ct. 716, 178 L.Ed.2d 603 (2011). "For a debtor whose income is above the median for his State, the means test identifies which expenses qualify as 'amounts reasonably necessary to be expended.' The test supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis, which led to varying and often inconsistent determinations." The *Ransom* case holds that there is no Means Test deduction for vehicles that are owned free and clear of liens.

The case also contains the statement: "’Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA or Act) to correct perceived abuses of the bankruptcy system.’ *Milavetz, Gallop & Milavetz, P. A. v. United States*, 559 U.S. 229, 231-232, 130 S.Ct. 1324, 1329, 176 L.Ed.2d 79, 84 (2010)). In particular, Congress adopted the means test -- "[t]he heart of [BAPCPA's] consumer bankruptcy reforms," H. R. Rep. No. 109-31, pt. 1, p. 2 (2005) (hereinafter H. R. Rep.), and the home of the statutory language at issue here -- to help ensure that debtors who can pay creditors do pay them. *See*, *e.g.*, *ibid*. (under BAPCPA, "debtors [will] repay creditors the maximum they can afford").”

**Milavetz, Gallop & Milavetz, P.A. v. U.S.**, 559 U.S. 229, 130 S.Ct. 1324, 176 L.Ed.2d 79 (2010). Attorneys who provide bankruptcy assistance are debt relief agencies within the meaning of BAPCPA. However, the court read the restrictions on attorneys giving advice to clients about incurring debt narrowly, thereby avoiding the Constitutional “free speech” issues. Disclosure requirements in advertising – i.e., the “debt relief agency” language – were reasonably related to the state’s interest in preventing deception of consumers, and the disclosure requirement did not prevent debt relief agencies from conveying any additional information.

**United Student Aid Funds, Inc. v. Espinosa**, 559 U.S.260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010).  Order confirming plan discharging student loan debt without “undue hardship” finding, or adversary proceeding, was not void.  Supports the binding effect of confirmation of Chapter 13 Plans, and the need for creditors to not sleep on their rights in seeking relief under Rule 60(b).  There is also language in the majority opinion about the obligation of bankruptcy judges to review Chapter 13 Plan language and not confirm Plans that do not comply with the Code.

**Taylor v. Freeland & Kronz**, 503 U. S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992). A Chapter 7 trustee could not contest the validity of claimed exemption after the 30 day period for objections had expired, and no extension had been obtained, even though debtor had no colorable basis for claiming exemption. The Supreme Court clarified the *Taylor* rule in **Schwab v. Reilly**, 560 U.S. 770, 130 S.Ct. 2652, 177 L.Ed.2d 234 (2010). Where a Chapter 7 debtor claimed exemptions in business equipment that equaled the maximum allowed under 11 U.S.C.S. §522(d) and also equaled the debtor's estimated market value for the equipment, the trustee was not required to object under §522(l) in order to preserve the estate's right to retain any value beyond the claimed amount.

**Law v. Siegel**, 571 U.S. 415, 134 S.Ct. 1188, 1194, 188 L.Ed.2d 146 (2014). The holding was that bankruptcy courts have no power to equitably surcharge administrative expenses against a debtor's claimed exemptions on the grounds that the debtor had engaged in fraudulent conduct. The case also supports two important propositions: 1) equity/Section 105(a) cannot be used to take an action prohibited by another provision of the Bankruptcy Code; and 2) disallowance of exemptions is limited to federal statutory grounds, or state law limitations.

**Hamilton v. Lanning**, 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010). "Forward looking" approach could be used in calculating "projected disposable income" under §1325(b)(1)(B) as courts had discretion to account for known or virtually certain changes in a debtor's income. The use of Chapter 13 debtor's current income, not an inflated figure due to a prior one-time employer buyout, was affirmed.

**Butner v. United States**, 440 U.S. 48, 55, 99 S.Ct. 914, 918 59 L.Ed.2d 136, 141-142 (1979). “Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”

**Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). Everything we do in bankruptcy is premised on due process based upon “notice and the opportunity for a hearing.” *Mullane* is the case to know by name on the constitutional requirements for notice: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

**United States v. Whiting Pools, Inc.**, 462 U.S. 198, 203, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). Stands for the proposition that the IRS is no better than any other creditor and has to follow the bankruptcy laws like everyone else. One of the IRS’s arguments was that it was exempt from the Bankruptcy Code's provision that related to other secured creditors. *Whiting Pools* also held that a debtor’s estate includes property that has already been seized by a creditor.

**BFP v. Resolution Trust Corp.**, 511 U.S. 531, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994). A non-collusive and regularly conducted nonjudicial foreclosure sale could not be challenged as a fraudulent conveyance because the consideration received in such a sale established reasonably equivalent value as a matter of law. This case set the old *Madrid* rule in stone.

**Nobleman v. American Savings Bank**, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993). The protection of §1322(b)(2) prevents the use of 11 U.S.C. §506(a) to "strip down" the lien of a mortgage to the value of the mortgaged real estate when the creditor's claim is secured only by a lien on the debtor's principal residence. The holding in *Nobleman* is what courts must distinguish in allowing the stripping of wholly unsecured second and third mortgages in Chapter 13 cases – and until that issue gets to the U.S. Supreme Court, there is still some uncertainty, in some jurisdictions, surrounding the allowance of mortgage strips in Chapter 13.

**Dewsnup v. Timm**, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992). A debtor's suit to "strip down" creditors' lien on the debtor's real property to equal the property's fair market value and declare the remainder void was dismissed because the creditors' claim had been "allowed" and was "secured." *Dewsnup* was followed in the recent “strip off” decision,**Bank of America, N.A. v. Caulkett**, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1995, 192 L.Ed.2d 52 (2015).

**Marrama v. Citizens Bank of Massachusetts**, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007). There is no ‘absolute right’ to convert a Chapter 7 case to a Chapter 13. Where there is fraud, §706(d) provides adequate authority for the denial of conversion, where there has been fraud. Further, nothing in the text of either §706 or §1307(c) (or the legislative history of either provision) limited the authority of a court to take appropriate action in response to fraudulent conduct by the atypical litigant who had demonstrated that the litigant was not entitled to the relief available to the typical debtor. The broad authority granted to bankruptcy judges in §105(a) was adequate to authorize an immediate denial of a §706(a) motion to convert. The impact of this decision on the debtor’s ‘absolute right to dismiss’ a Chapter 13 case is still a hot issue before the courts.

**Assocs. Commercial Corp. v. Rash**, 520 U.S. 953, 117 S.Ct. 1879, 138 L.Ed.2d (1997). In determining the value of a creditor’s secured claim in property subject to a debtor’s “cramdown” under §1325, courts must use a replacement value standard that depends on the type of debtor and the nature of the property and its intended use.

**Till v. SCS Credit Corp.**, 541 U.S. 465, 124 S.Ct. 1951, 158 L.Ed.2d 787 (2004). The controversy over the 4-4-1 split seems to have died down, and reductions in interest rates to “prime plus a risk factor” of 1% to 3% are being applied to all kinds of high interest rate loans (other than mortgages on the debtor’s primary residence), reducing the amount of interest that Chapter 13 debtors have to pay. The majority of courts allow the “*Till*-ing of interest” on 910 vehicle loans, and “*Till*-ing up” very low interest rate motor vehicle loans under certain circumstances.

**United Savings Association of Texas v. Timbers of Inwood Forest Associates**, 484 U.S. 365, 370-371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). When a motion for relief from stay is filed, once the movant shows that the debtor has no equity in the property, the burden shifts to the debtor to establish that the property is "necessary to an effective reorganization" and that there is "a reasonable possibility of a successful reorganization within a reasonable time." And, *Timbers* also held that when secured collateral is declining in value, the secured creditor is entitled to cash payments or additional security in the amount of the decline.

**Citizens Bank of Maryland v. Strumpf**, 516 U.S. 16, 166 S.Ct. 286, 133 L.Ed.2d 258 (1995). The Supreme Court held that bank accounts may be frozen, by the bank, to preserve their right to set off debts owed to them against the debtor's accounts. However, if the accounts are frozen, the creditor has move quickly to seek relief from stay to effectuate a setoff.

**Grogan v. Garner**, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991), the Supreme Court stated: "Because the preponderance-of-the-evidence standard results in a roughly equal allocation of the risk of error between litigants, we presume that this standard is applicable in civil actions between private litigants unless 'particularly important individual interests or rights are at stake.'" *Grogan*’s endorsement of the lower “preponderance” standard in dischargeability proceedings means that state and federal court judgments are more likely to be given preclusive effect, because the judgment-issuing court will have either used the preponderance standard, or a higher one.

**United States v. Ron Pair Enterprises, Inc.**, 489 U.S. 235, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). The law specifically allowed postpetition interest on a nonconsensual oversecured lien as well as on a consensual claim in light of the clear language of 11 U.S.C.S. §506(b). Congress intended that all oversecured claims be treated the same way for purposes of postpetition interest.

**Johnson v. Homestate Bank**, 501 U.S. 78, 111 S.Ct.2150, 115 L.Ed.2d 66 (1991). Held that the Code permits “Chapter 20” cases – a Chapter 13 following hard on the heels of a Chapter 7. Further, *Johnson* held that a creditor with an obligation secured by a lien on a debtor’s property that the debtor has no personal liability, due to a prior bankruptcy discharge, still has a claim against the subsequent Chapter 13 estate and that claim can be dealt with in the Chapter 13 case.

**Non-Article III Jurisdiction Cases**

**Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.**, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982). In addition to the important statutory changes made in response to *Marathon*, this decision set the boundaries of Bankruptcy Court authority. Without the consent of the parties, Bankruptcy Courts can issue final judgments only on “core proceedings”. For non-core related proceedings, a Bankruptcy Judge can only issue proposed findings of fact and conclusions of law, which are submitted to the District Court, which reviews them *de novo*. Much of *Marathon*’s holding appears to have been altered or superseded by later Supreme Court decisions like *Stern*, *Arkison*, and *Wellness*

**Exec. Benefits Ins. Agency v. Arkison**, \_\_\_ U.S. \_\_\_, 134 S.Ct. 2165, 189 L.Ed.2d 83 (2014). This case set forth the procedure under which bankruptcy courts are to render proposed findings of fact and conclusions of law with regards to *Stern* claims that are then reviewed by the district court, even if said claims are “core” under the Bankruptcy Code. The holding in *Wellness* suggests that the *Arkison* procedure ought to be used for *Stern* claims where parties have not consented to entry of final judgment by the bankruptcy court.

**Wellness Intern. Network, Ltd. v. Sharif**, \_\_\_U.S.\_\_\_, 135 S.Ct. 1932, 191 L.Ed.2d 1932 (2015). Held that a bankruptcy court may constitutionally enter final judgment on a *Stern* claim with the express or implied consent of the parties. This case, along with *Arkison*, appears to resolve many of the issues raised by the holding of**Stern v. Marshall**, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011).