# JUDGES' PANEL
# CONSUMER BANKRUPTCY ISSUES

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# Cool Your Jets

## Cases to Consider Before Pursuing Debtor Liability to Support Insurance or other Recovery

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Chief U.S. Bankruptcy Judge for the Northern District of Alabama[1]

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***Owaski v. Jet Florida Systems, Inc. (In re Jet Florida Systems, Inc.)***, 883 F.2d 970 (11th Cir. 1989).

- Context: claimant who asserted defamation claim against the debtor wanted to proceed with suit against the debtor (nominally) and the debtor's insurer post-discharge.
- Eleventh Circuit affirms for the reasons stated by the District Court and appends the District Court's opinion (then-District Judge Marcus).
- Discharge injunction did not bar determination of debtor's liability for defamation so that the defamation plaintiff could pursue recovery from the debtor's insurer when the cost of defending the suit was the only prejudice to the debtor-defendant and would likely (although not certainly) be covered by the insurer, who had an incentive to do so.
- § 524(a) voids judgments for "the personal liability of the debtor" but does not bar a determination of the debtor's liability when the damages would be owed by the debtor's insurer.
- § 524(e) allows a creditor to pursue "any other entity" who may be secondarily liable along with the debtor such as a surety.
- Read together, these provisions prevent collection of a debt from the debtor personally but allow an action against the debtor to establish liability as a "prerequisite to recovery from the insurer." Id. at 974 (citing cases).
- There is no risk to the debtor or the debtor's property or the debtor's fresh start when the "practical and economic realities compel the insurance company to defend" but the court stopped short of premising its ruling on the issue of who would ultimately fund the defense, to avoid incentivizing both insurance companies and debtors to put the cost of defense onto the debtor as a liability-escape mechanism.
- Even if the insurer and the debtor disagree over whose duty it is to pay for defense, the debtor is free to avoid that expense and instead default because the debtor and the debtor's property are recovery-proof post-discharge, and thus the fresh start is not

[1] Judge Robinson thanks his law clerk, Alyssa Ross, for preparing these materials.

impaired by allowing the suit to go forward against the debtor and the insurer to establish the debtor's liability as a prerequisite to recovering from the insurer.

***Suvicmon Development, Inc. v. Morrison***, 991 F.3d 1213 (11th Cir. Mar. 25, 2021) (affirming Judge Jessup and Judge Coogler).

- Context: nondischargeable judgment holders wanted to file Alabama Uniform Fraudulent Transfer Act ("AUFTA") claim against debtor as a means of collecting on the nondischargeable judgment debt.
- Judge Jessup did not abuse his discretion in finding that a fraudulent transfer action by nondischargeable judgment creditors against the debtor was more than an execution proceeding or a collection device for the nondischargeable debt (procedural context: creditor sought declaration from Judge Jessup that proceeding with the claims against the debtor under the AUFTA would not be a discharge violation).
- Fraudulent transfer action was a distinct cause of action (separate from the predicate claim, which here was a nondischargeable claim for violation of securities law) and required an independent determination of liability under the statutory framework of the AUFTA while not requiring a pre-existing judgment (only an existing claim).
- The possibility of compensatory damages or punitive damages in addition to avoidance or execution under the AUFTA impaired debtor's fresh start.
- By contrast, execution-type actions are usually in rem only and are ancillary to an existing judgment (not just an existing claim) with no requirement for alleged wrongdoing (unlike a claim under the AUFTA which requires an allegation of wrongdoing).
- Nondischargeability of the predicate judgment did not equate to nondischargeability of the fraudulent transfer claim.
- The Eleventh Circuit interprets *In re Jet Florida* as imposing 2 requirements before a debtor may be sued nominally post-discharge in pursuit of recovery from a third party:
    1. Debtor's presence as a party defendant must be a true prerequisite to recovery against the third party (here, the creditor could have sued the transferee directly without the debtor in the suit); and
    2. It must be "sufficiently certain" that the suit will not place any economic burden on the debtor so the fresh start is not impaired.
- Because the second prong (economic burden avoidance) is a case-specific fact finding and is discretionary with the bankruptcy court, as a matter of first impression, the Eleventh Circuit established the "abuse of discretion" standard as the benchmark for appellate review of a bankruptcy court's decision on whether suit should go forward against the debtor under the *In re Jet Florida* doctrine.

***Sellers v. Nationwide Mutual Fire Ins. Co.,*** 2016 WL 5390564 (N.D. Ala. 2016) (Bowdre, J.).

- Context: Judge Cohen granted limited stay relief to allow some claimants to proceed in state court against the debtor and others for claims related to an allegedly faulty foundation and construction defects; if judgment were entered against the debtor, collection efforts could be taken against insurance benefits only and the stay remained in place as to any bankruptcy estate asset.
- The parties entered a consent judgment against the debtor post-discharge, and the plaintiffs then sued the debtor's insurer under Alabama's direct action statute (Ala. Code § 27-23-2), which requires a final judgment against the insured before the direct action against the insurer may be pursued.
- In defending the direct action, the insurer argued that the underlying consent judgment was void as having been entered in violation of the discharge injunction of § 524(a), but Judge Bowdre disagreed and ruled that the discharge injunction did not preclude suit against the debtor nominally to establish the insurer's liability.
- *In re Jet Florida* did not require that the bankruptcy court first vacate the injunction; to the contrary, *In re Jet Florida* establishes that the injunction *does not apply* to a nominal claim against the debtor that is pursued to establish a third party's liability.
- "Why then do some creditors seek relief from the stay or injunction to nominally pursue the debtor to establish the liability of a third-party? Out of an abundance of caution. *See In re Patterson*, 297 B.R. 110, 114–16 (Bankr. E.D. Tenn. 2003) (noting that bankruptcy courts often grant such motions 'to provide the moving party with the security of an order'). Seeking relief from the stay or injunction in the bankruptcy court may provide a party desired assurance, but it is not, as Nationwide suggests, a procedural prerequisite to proceeding nominally against a debtor to establish the liability of a third-party." *Sellers*, 2016 WL 5390564 at *5.

***Jones v. Pilgrim's Pride, Inc.,*** 741 F. Supp. 2d 1272 (N.D. Ala. 2010) (Hopkins, J.).

- Context: prepetition ADA claim against the debtor corporation was stayed by bankruptcy.
- Plaintiff failed to file a claim (and the willful and malicious injury exception to dischargeability under § 523(a)(6) did not apply to the corporate debtor). The debtor had no primary insurance that would cover the claim and its employment practices liability policy had a self-insured retention endorsement whereby the debtor was liable for fees and costs defending the suit up to one million dollars, before triggering excess coverage.

- After the debtor's chapter 11 plan was confirmed, the ADA case resumed and the defendant-former-debtor moved for summary judgment.
- The ADA claimant opposed summary judgment and unsuccessfully argued that the insurance exception of § 524(e) as explained in *In re Jet Florida* authorized its suit post-discharge, but Judge Hopkins found that the *In re Jet Florida* interpretation of that statute did not allow the suit because it was the self-insured and discharged debtor, not a third-party insurance company, who actually (not just potentially) bore significant economic exposure for defending the suit under these facts.
- Requiring the self-insured debtor to spend up to another $980,000.00 beyond what it had already spent defending the ADA claim, which would be required before the insurance coverage was triggered, would impermissibly infringe on the fresh start and the discharge.

***In re Carraway Methodist Health Systems***, 355 B.R. 853 (Bankr. N.D. Ala. 2006) (Mitchell, Bankr. J.).

- Context: stay relief motion filed by medical negligence and tort claimants against chapter 11 debtor.
- Judge Mitchell distinguished this case from *In re Jet Florida* and refused to lift the stay (which would have allowed the suit to proceed) in part because the record did not establish the availability of insurance coverage, and most importantly, because movant had not requested that the relief be limited to collecting from available insurance proceeds, if any.
- Judge Mitchell also pointed out that *In re Jet Florida* was a discharge injunction case and therefore did not provide direct guidance on the stay relief issue.
- Instead, the court examined the factors in *In re Marvin Johnson's Auto Serv., Inc.,* 192 B.R. 1008 (Bankr. N.D. Ala. 1996) to balance the potential prejudice to the debtor from allowing the suit to go forward against the hardship to the creditor if the suit remains stayed:

    (1) trial readiness,

    (2) judicial economy,

    (3) resolution of preliminary bankruptcy issues,

    (4) costs of defense or other potential burden to the estate,

    (5) creditor's chances of success on the merits,

(6) specialized expertise of non-bankruptcy forum,

(7) whether damages are subject to equitable subordination,

(8) extent to which trial in state court will interfere with the bankruptcy case,

(9) anticipated impact on creditor if stay is lifted, and

(10) presence of third parties over which bankruptcy court lacks jurisdiction.

*In re Carraway Methodist Health Systems,* 355 B.R. at 854.

- Other factors against lifting the stay despite presence of an insurer: relatively new chapter 11 case, multitude of other similar lawsuits pending, and progress toward a chapter 11 plan that would deal with all such lawsuits uniformly.

***Easterling v. Progressive Specialty Insurance Co.***, 251 So. 3d 767 (Ala. 2017).

- Context: Injured insured driver sued other driver and sued insurer for UIM benefits; other driver filed bankruptcy and insurer then argued that the discharge of the other driver's liability meant that the insured was not "legally entitled to recover" from that other driver as required by Ala. Code § 32-7-23(a), so that the injured driver would therefore not be entitled to UIM benefits.
- Trial court agreed with the insurance company and the injured driver appealed, with the Supreme Court of Alabama reversing and remanding.
- State supreme court pointed out that the discharge does not extinguish debt; it prevents collection of damages but does not eliminate liability and does not prevent the establishment of the discharged debtor's liability for purposes of establishing the right to UIM benefits.
- The supreme court cited a full page of case authority, including *In re Jet Florida*, discussing the scope of the § 524 discharge and distinguishing the legal entitlement to recover damages based on the establishment of the tortfeasor's liability from the ability to then collect the damages to which the claimant is legally entitled (in other words, distinguishing the establishment of the legal obligation from the ability to then collect the obligation).
- The discharge would be a procedural defense available to the uninsured motorist, not a substantive defense available to the UIM insurer in a direct action against the UIM insurer (in which the UIM insurer may raise any substantive defense that the uninsured motorist could raise).

***In re Grayson***, 2018 WL 10345323 (Bankr. S.D. Ala. 2018) (Callaway, C. Bankr. J.).

- Context: motion for relief from stay filed seeking to go forward with prepetition auto accident lawsuit against the debtor who was driving, the third-party who owned the car driven by the debtor, and the movant's UIM carrier.
- Facts that mattered in distinguishing the routine case where the stay is lifted to allow suit against debtor and collection only from insurance coverage: this debtor had no liability insurance and did not have the means to defend himself.
- Judge Callaway discussed the *Easterling* case; pointed out that the debtor did not have the means to defend himself.
- Expanding on the *Easterling* discussion of UIM coverage, Judge Callaway says that under Alabama law, a UIM carrier can choose not to participate in the trial (thus keeping its identity and existence from the jury) and if it opts out, may then hire an attorney to represent the uninsured defendant.
- Granted the motion for relief conditioned upon the UIM carrier hiring an attorney to represent and defend the debtor, in which case the state court suit could proceed to settlement or judgment but no collection against the debtor, the debtor's assets, or the estate's assets without coming to bankruptcy court first (such as filing a claim, perhaps, as there is no mention of nondischargeability being an issue).
- If the UIM did not hire an attorney for the debtor, then the suit against the debtor could not proceed during the pendency of the case, but the suit as against the UIM could proceed.
- Would this same reasoning apply *after* the pendency of the case concluded, or the stay otherwise expired as a matter of law, as a § 524 issue?

Consumer Bankruptcy Panel, September 2021
Chief Judge Henry Callaway
Career law clerk Jennifer Morgan
United States Bankruptcy Court
Southern District of Alabama

# Recent Consumer and Bankruptcy Opinions from the Alabama Bankruptcy and District Courts

## Chapter 7

In re Weldy, Case No. 21-10325 (Bankr. S.D. Ala. May 20, 2021) (Callaway, J.)

The court denied the chapter 7 debtor's motion asking the court to value her homestead and determine that there was no equity for creditors. In exercising her responsibilities under the Bankruptcy Code, the trustee was entitled to market the property to see if it could be sold for enough to create a distribution for creditors. The court declined to set a hypothetical value or interfere with the liquidation process.

In re Ellard, Case No. 18-4971 (Bankr. S.D. Ala. Aug. 4, 2020) (Callaway, J.)

Chapter 7 debtors generally do not have standing to object to claims unless there will be a surplus that will inure to the debtor's benefit or where a claim will not be discharged. In any event, the chapter 7 debtor's objection was premature because the trustee had collected no assets for distribution to creditors. The court thus overruled the debtor's objection to a claim without prejudice.

In re Trapp, 2019 WL 6869630 (Bankr. N.D. Ala. Dec. 16, 2019) (Mitchell, J.)

The court granted a creditor's motion to extend deadline to object to discharge based on the creditor's diligence in investigating the debtors' file, and considering the special circumstances in which the creditor delayed filing a nondischargeability complaint based on the health issues of one of the debtors.

## Section 727

In re Jones, 2021 WL 2946107 (Bankr. N.D. Ala. July 13, 2021) (Jessup, J.)

The court denied the debtors a discharge under Bankruptcy Code § 727(a)(4)(A) based on the cumulative nature of various false oaths made by the debtors in connection with their bankruptcy case. These included underreporting their income and inflating their expenses on their original schedules, falsifying their means test, failing to list multiple assets, and failing o disclosure withdrawals from their 401(k) and a credit union account, as well as payments to creditors on their original statement of financial affairs. The court found that the repeated nature of omissions and improper disclosures in the debtors' original schedules and amended schedules was clear evidence of the debtor's fraudulent intent.

In re Kessler, 2021 WL 2429495 (Bankr. N.D. Ala. June 14, 2021) (Mitchell, J.)

The court granted summary judgment to the plaintiffs and denied the debtor a discharge under Bankruptcy Code §§ 727(a)(2) and 727(a)(4)(A). There was no genuine issue of material fact that the debtor transferred or concealed equity in her home to put it out of the reach of the plaintiffs. Likewise, there was no genuine issue of material fact that the debtor acted knowingly and with fraudulent intent in failing to disclose her ownership of certain property and her use of her husband's bank account on her bankruptcy schedules.

**Administrative expenses**

In re Hall, Case No. 20-20132 (Bankr. S.D. Ala. Dec. 22, 2020) (Callaway, J.)

The former chapter 7 trustee filed an application for administrative expenses after the debtor converted her case to chapter 13. The Bankruptcy Code is unclear on how a chapter 7 trustee should be compensated when a case is converted. The court found it unfair to award either no compensation or compensation based on a percentage of estimated non-exempt assets. However, a chapter 7 trustee in a case converted to chapter 13 is entitled to compensation for reasonable and necessary services which benefited the bankruptcy estate. The court held that it would thus award the former chapter 7 trustee a quantum meruit administrative expense based on a lodestar time and hourly rate basis. The court reset the hearing on the application for administrative expenses to allow the chapter 7 trustee to submit time records.

**Lien avoidance**

Carden v. Ditech Financial, LLC, 2020 WL 768585 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson, J.)

Although state law precluded issuing a new certificate of title for the debtor's mobile home because of its age, the law did not invalidate security interests properly perfected on an existing certificate of title. The court thus granted the defendant's motion for summary judgment as to the avoidance of its lien under Bankruptcy Code § 544(a).

**Rule 3002.1 determination of mortgage fees and expenses**

In re Lane, Case No. 19-10828 (Bankr. S.D. Ala. Feb. 10, 2021) (Callaway, J.)

The court denied the debtor's motion to determine postpetition mortgage fees and expenses filed under Bankruptcy Rule 3002.1(e) because it was filed more than one year after the creditor served its notice of postpetition mortgage fees and expenses under Rule 3002.1(c). Even though the creditor did not respond, the rule specifically requires that the motion be filed within one year of service of the Rule 3002.1 notice and does not state that the one-year limitation applies only if raised by the creditor.

In re Fletcher, Case No. 19-01154 (Bankr. N.D. Ala. July 20, 2020) (Mitchell, J.)

The court denied the debtor's motion to determine under Rule 3002.1(e) because the mortgage did not provide in clear and unambiguous language that the fees could be collected from the debtor.

**Schedules**

In re Allen, Case No. 19-12304 (Bankr. S.D. Ala. Jan. 14, 2021) (Callaway, J.)

The chapter 13 trustee moved to reopen a dismissed and closed case in order to administer a products liability suit settlement. The debtor had never listed the claim in his schedules, so the trustee did not know about it when he moved to dismiss. The court granted the motion to reopen in large part because the debtor had not revealed the claim.

**Dismissal of chapter 13 case by debtor**

In re Price, 2021 WL 2939867 (Bankr. N.D. Ala. July 12, 2021) (Robinson, J.)

The co-debtor wife received a settlement of a TVM mesh claim. She then moved to dismiss herself from the chapter 13 case with her husband. The court granted the dismissal, but exercised its discretion under Bankruptcy Code § 349(b)(3) to limit the re-vesting of property in the debtor post-dismissal. The court held that the mesh lawsuit proceeds would remain property of the bankruptcy estate to be paid to the trustee once the settlement was approved.

**Vesting of property/debtor's retention of assets in chapter 13**

In re Perine, Case No. 16-4446 (Bankr. S.D. Ala. June 28, 2021) (Callaway, J.)

Where the insurance proceeds for a wrecked vehicle were less than the total of the secured claim and the amount that the debtor could exempt, the court ordered that the net insurance funds be paid to the debtor after paying the small balance left on the secured claim. The value of the vehicle and associated proceeds had already been factored into calculating plan payments, and the plan met the liquidation analysis of Code § 1325(a)(4) both at confirmation and at the time of the insurance settlement. The insurance proceeds did not represent new assets or value coming into the estate that had not already been accounted for in the liquidation analysis.

In re Elmore, Case No. 20-20229 (Bankr. S.D. Ala. Dec. 30, 2020) (Callaway, J.)

The chapter 13 trustee filed a motion for turnover of nonexempt funds in debtors' bank accounts. Possession of estate property under Code § 1306(b) and vesting of rights in property under § 1327(b) are different concepts. The required plan form in this district addresses vesting but not possession and does not affect a debtor's right of possession under § 1306(b). The debtors therefore are entitled to possession of the funds under § 1306(b), although under the plan the property remains vested in the bankruptcy estate until discharge or dismissal. The plan provision on unliquidated claims did not apply to the bank funds. The court thus denied the trustee's motion for turnover.

**Disposable income**

In re Kapua, 2020 WL 7345740 (Bankr. S.D. Ala. Dec. 14, 2020) (Oldshue, J.)

The court allowed an above-median income debtor to deduct from disposable income the contractual payment amount necessary to retain a 2019 Toyota Camry even though it exceeded the IRS Standard. The court found, consistent with *In re Green* (Case No. 17-01993 (Callaway, J.)), that Bankruptcy Code § 707(b)(2)(A)(iii) allows an above-median debtor to deduct amounts contractually due to secured creditors during the term of the 60-month plan to maintain possession of a primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents – regardless of whether the payment exceeds the IRS Standard. The court overruled the trustee's objection to confirmation because it found that retention of the Camry, the debtor's sole vehicle, was necessary for the debtor's support, the Camry was not a luxury item, and the trustee had not alleged bad faith or other basis to deny confirmation.

**Chapter 13 confirmation**

In re Hickey, 618 B.R. 314 (Bankr. N.D. Ala. 2020) (Mitchell, J.)

No special circumstances existed of kind sufficient to warrant entry of order confirming direct payment plan under which chapter 13 debtor would make payments on secured motor vehicle loan outside the plan. The court thus sustained the chapter 13 trustee's objection to confirmation.

In re Wilson, 2021 WL 2447304 (Bankr. N.D. Ala. June 15, 2021) (Robinson, J.)

The court denied confirmation of a chapter 13 plan of homeowners who defaulted on their short-term mortgage that proposed to resume contractual payments, including a final balloon payment. The court found that Bankruptcy Code § 1325 required the entire debt, including the balloon payment, be paid in equal installments through the plan.

**Bad faith in chapter 13**

In re Holifield, Case No. 20-12097 (Bankr. S.D. Ala. Dec. 11, 2020) (Callaway, J.)

The court sustained objections to confirmation of a chapter 13 plan under Bankruptcy Code § 1325(b)(1) and based on bad faith. The debtor testified that his girlfriend and 22-year old daughter shared his second vehicle. However, the debtor did not list any dependents on his sworn schedules, so the court found that the cost of the second vehicle was not reasonably necessary for the maintenance and support of a dependent. The court also found that the cost of the second expensive vehicle was not reasonably necessary for the debtor's food truck business. Finally, the court found that the debtor had failed to meet his burden to show that the plan was proposed in good faith in proposing to retain two relatively expensive, "upside-down" vehicles which would cost more than $52,000 over the life of the plan.

In re Major, Case No. 20-11723 (Bankr. S.D. Ala. Nov. 23, 2020) (Callaway, J.)

The court overruled a creditor's objection to confirmation of a chapter 13 plan based on bad faith. The creditor focused on only one of the *Kitchens* factors – dealings with creditors – and the evidence on whether the debtor had lied to the creditor about owning a shed which she put up as collateral was not clear cut. After review of the other relevant *Kitchens* factors, the court found that denial of confirmation for bad faith was unwarranted.

In re Lassiter, Case No. 19-12705 (Bankr. S.D. Ala. Aug. 6, 2020) (Oldshue, J.)

The court overruled a creditor's objection to chapter 13 confirmation because the creditor failed to present sufficient evidence that the debtor filed the bankruptcy in bad faith under the *Kitchens* factors. The debtor agreed to increase plan payments to account for his retention of nonessential property and satisfactorily explained the status of the creditor's collateral.

In re Jones, Case No. 20-10704 (Bankr. S.D. Ala. June 16, 2020) (Callaway, J.)

The court denied confirmation of a chapter 13 plan that proposed to retain and pay for a vehicle driven by the debtor's 31-year old son. Although the son promised to contribute to his mother's plan payments, the court found that the plan was not proposed in good faith because it exposed the debtor and creditors to unnecessary risks and expenses unrelated to the debtor's rehabilitation.

In re Powe, 2020 WL 6065178 (Bankr. S.D. Ala. May 1, 2020) (Callaway, J.)

The trustee objected to the debtor's chapter 13 plan for lack of good faith because the plan was essentially a "fee-only" or "fee-centric" chapter 13. The court found that it was not bad faith for the debtor to file the chapter 13 case based on her attorney's preference to be paid postpetition through a chapter 13 plan rather than directly. After reviewing recent fees charged for chapter 7 cases, the court overruled the trustee's objection to confirmation with the condition that the attorney's fees in the chapter 13 case were limited to $1,500.

In re Turner, Case No. 19-11330 (Bankr. S.D. Ala. Aug. 1, 2019) (Callaway, J.)

After analyzing the *Kitchens* factors, the court found that the debtor's chapter 13 plan proposing to pay for two vehicles through the plan was not filed in good faith. The debtor was a home health care RN and proved the need for her Jeep Wrangler for work, which required her to travel on dirt roads and sometimes off road. But the debtor also proposed to retain a relatively late-model BMW which she drove for personal use. Although the percentage to unsecured creditors had not yet been determined, the debtor had sizeable tax debt and it did not appear that much, if anything, would be paid on unsecured claims. The debtor's desire to keep the BMW for personal use was not enough under those circumstances to override the interest of unsecured creditors.

**Claims in a chapter 13 case**

In re Bozeman, 616 B.R. 407 (Bankr. M.D. Ala. 2020) (Sawyer, J.) (affirmed by the district court and currently on appeal to the Eleventh Circuit)

Mortgagee that erroneously assumed that the debtor's chapter 13 plan was a cure-and-maintain plan, rather than a full payment plan, filed a proof of claim for prepetition arrearage only. After the mortgagee received a notice of completion of plan payments, the mortgagee tried to amend its proof of claim to assert a much larger claim. The debtor objected and the court sustained the objection and held that the debtor was entitled to be discharged of the mortgage debt upon completion of the plan payments. The mortgagee, having failed to read or object to the plan prior to confirmation, was bound by the confirmed plan.

In re Wall, 2020 WL 6065767 (Bankr. S.D. Ala. Aug. 8, 2020) (Callaway, J.)

The court found it appropriate to estimate a creditor's unliquidated business tort claim under Code § 502(c) because it would take years to get to trial by jury in district court and the debtor's chapter 13 case could not move forward to confirmation in the meantime. The court multiplied the plaintiff's probability of success by the estimated damages to value the claim.

In re Diamond, Case No. 19-14161 (Bankr. S.D. Ala. June 9, 2020) (Callaway, J.)

The trustee objected to a claim based on an Alabama state court judgment that was more than ten years old and had not been revived. The court found that the creditor overcame the presumption of satisfaction under Alabama Code § 6-9-191 because the debtor's sworn schedules did not dispute the claim and showed that the judgment had not been satisfied. The creditor thus still had a "claim" under the broad definition in 11 U.S.C. § 105 because the creditor's right to payment is not extinguished under Alabama law until twenty years after entry of the judgment.

In re Ward, Case No. 19-13537 (Bankr. S.D. Ala. Apr. 2, 2020) (Callaway, J.)

Rule 3001(c), while eliminating the requirement to attach the underlying credit card agreement, does not eliminate the requirement of Rule 3001(d) that the creditor provide evidence of perfection if claiming a security interest in property of the debtor. Because the credit card company did not attach documentation that its alleged security interest had been either created or perfected, the court sustained the debtor's objection and reclassified the claim as unsecured.

In re Smith, Case No. 19-12463 (Bankr. S.D. Ala. Dec. 30, 2019) (Callaway, J.)

A description of collateral in a security agreement is sufficient if it reasonably identifies what is described, even though it is not specific. The court found that the description of "purchased goods" on sales slips, coupled with itemized receipts issued at the same time, was sufficient. The underlying debt was a credit card account, so Rule 3001(c)(3) applied, not Rule 3001(c)(1). Because the creditor attached the required Rule 3001(c)(3) information to its proof of claim, the claim was entitled to prima facie validity without additional documentation.

In re Pettway, Case No. 19-12599 (Bankr. S.D. Ala. Dec. 23, 2019) (Callaway, J.)

Federal Rule of Bankruptcy Procedure 3001(c)(1), when read in light of Rule 3001(e), does not require a prepetition transferee of a debt to include with the proof of claim evidence of the assignment if no prior proof of claim has been filed. The court thus found that the creditor complied with the rules by attaching the writing evidencing the underlying car deficiency balance, even though it did not attach evidence of assignment of the debt.

**Late-filed claims**

In re Baum, Case No. 19-11083 (Bankr. M.D. Ala. Jan. 13, 2021) (Creswell, J.)

The debtor objected to the creditor's claim before confirmation. The court sustained the objection and disallowed the claim but granted the creditor's request for 90 days leave to file a deficiency claim. The court then confirmed the plan. Before expiration of the deadline to file a deficiency claim, the creditor sought and was granted an extension. Seven days after the deadline, the creditor filed an amended claim. The trustee objected to the claim, the creditor did not respond to the objection, and the court sustained the objection. The creditor moved to reconsider and the court vacated the order and allowed the parties to brief the issues. The court ultimately disallowed the deficiency claim, however, stating that it must insist on finality at some point and adding that creditor knew how to seek timely extensions of the deadline as it had done so previously.

In re Dorminey, Case No. 16-10767 (Bankr. M.D. Ala. Aug. 17, 2020) (Creswell, J.)

Before confirmation, the court granted stay relief to the creditor who sold its collateral, a vehicle. Approximately a month later, with no amendments to its claim or objection to confirmation from the creditor, the court confirmed the debtor's plan. Three years later, the creditor filed a deficiency claim. The trustee objected to the claim and the court sustained the objection. The court found that such a late claim was an indication of negligence with no excuse of justification and disallowed the claim.

In re Axtell, Case No. 19-12064 (Bankr. M.D. Ala. July 27, 2020) (Creswell, J.)

A creditor timely filed two proofs of claims in the debtor's case. After the bar date, the creditor filed one more claim and the debtor objected to the late-filed claim. The court sustained the objection and disallowed the claim as untimely. The creditor then filed another claim stating that it was not a mere amendment of the previously disallowed claim and that the court should allow the claim as a "new theory of recovery" based on the cross-collateralization language in the note supporting the claim. The court found that, because the creditor had timely filed two proofs of claims and did not object to confirmation, the late claim was more akin to an "end around" to the court's prior order disallowing the claim. The court thus disallowed the second late claim.

**Chapter 13 confirmation**

In re Harris, Case No. 19-11203 and In re Murrill, Case No. 19-11212 (Bankr. S.D. Ala. July 11, 2019) (Callaway, J.)

Creditor objected to chapter 13 plan because prepetition arrearage in creditor's proof of claim was greater than the amount listed in the debtor's plan. The court overruled the objection as unnecessary based on the language of the plan that stated that the arrearage amount on the proof of claim governs over any contrary amount in the plan. The court also prohibited the creditor from charging the debtor the attorney's fees and costs incurred in connection with the unnecessary objection.

**Settlement of prepetition claims**

In re Merry, 2019 WL 7041862 (Bankr. M.D. Ala. Dec. 20, 2019) (Sawyer, J.)

The bankruptcy court sustained the chapter 13 trustee's objection to the settlement of the debtor's prepetition claims for damages caused by an automobile accident. The court found no reason to allow the holder of an unsecured claim arising out of the accident – a chiropractor – to be paid in full while the debtor's other unsecured creditors received nothing through his plan.

**910 claims**

In re Butler, 609 B.R. 895 (Bankr. M.D. Ala. Dec. 2019) (Sawyer, J.)

A vehicle is not "acquired for the personal use of the debtor" as required for 910 treatment if the vehicle was acquired for the use of another party. The bankruptcy court held that a vehicle that the debtor bought less than 910 days prepetition so that his girlfriend who was not a member of the debtor's household could have means of transportation was not subject to the antimodification provision of § 1325. Thus, the debtor could modify or cramdown the secured claim of the vehicle lender.

**DSO**

In re Toche, 620 B.R. 671 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

Debtor's divorce decree required him to pay half his monthly pension to his ex-wife. State courts have concurrent jurisdiction with bankruptcy courts to determine whether a debt is non-dischargeable as alimony, maintenance, or support under 11 U.S.C. §523(a)(5). It was not clear from the divorce decree whether the pension obligation was DSO or a property settlement, so the court granted limited relief from the automatic stay to obtain a ruling from the state court.

In re Lane, Case No. 19-13490 (Bankr. S.D. Ala. May 11, 2020) (Callaway, J.)

Even though the debtor was not current on postpetition DSO, the court overruled the trustee's objection to confirmation of the debtor's chapter 13 plan based on 11 U.S.C. § 1328(a)

because the DSO creditor had expressly consented to the inclusion of the debtor's postpetition preconfirmation DSO in the plan. However, the court conditioned its ruling on the plan payments being increased to the amount necessary for the unsecured creditors to receive what they would have received had the postpetition preconfirmation DSO not been included in the plan.

Tabb v. Lambert, 2019 WL 7667626 (Bankr. S.D. Ala. Aug. 27, 2019) (Callaway, J.)

A new non-DSO obligation created by a divorce degree is not dischargeable in chapter 7 under 11 U.S.C. § 523(a)(15), although it is in chapter 13. The chapter 7 debtor's obligation under a divorce decree to refinance her ex-husband's student loan was thus not dischargeable.

**Title pawns**

In re Deakle, 617 B.R. 709 (Bankr. S.D. Ala. 2020) (Callaway, J.) (currently on appeal to the Eleventh Circuit)

A title pawn lender's failure to object to a chapter 13 plan constituted waiver of the vehicle's forfeiture under the Alabama Pawnshop Act, even though the redemption period expired prepetition. The lender was thus bound by the terms of the confirmed plan.

*** The district court affirmed and adopted Judge Callaway's opinion in TitleMax of Alabama, Inc. v. Deakle, Case No. 1:20-cv-00335-JB-N (S.D. Ala. Mar. 31, 2021)

In re Womack, 616 B.R. 420 (Bankr. M.D. Ala. 2020) (Sawyer, J.) (affirmed by district court and currently on appeal to the Eleventh Circuit)

When the debtor filed bankruptcy before the maturation date of her pawn contract, she had an ownership interest in her pawned vehicle, the lender was a lienholder, and the pawn contract could be modified under § 1322(b).

In re Cottingham, 618 B.R. 555 (Bankr. N.D. Ala. 2020) (Robinson, J.)

Pawnbroker waived its rights to assert ownership of vehicle that chapter 13 debtor pawned prepetition by failing to object to confirmation or to object to the claims filed on its behalf before confirmation, and accepting plan payments for the claim after confirmation.

In re Eldridge, 615 B.R. 657 (Bankr. S.D. Ala. 2020) (Callaway, J.) (currently on appeal to the Eleventh Circuit)

A pawnbroker is not prohibited from waiving the forfeiture provision of Alabama Code § 5-19A-6. Thus, a pawnbroker could elect to enter into a new pawn transaction with a debtor who had pawned title to his vehicle even though the debtor did not redeem the title by the pawn's maturity date or within the 30-day statutory grace period under Alabama law.

*** On appeal, the district court affirmed and adopted Judge Callaway's opinion in Eldridge v. Title Max of Alabama, Inc., Case No. 1:20-cv-00133-JB-B (S.D. Ala. Mar. 31, 2021)

In re Thompson, 609 B.R. 443 (Bankr. M.D. Ala. 2019) (Creswell, J.)

When a chapter 13 debtor enters into a prepetition pawn transaction and then defaults, and the redemption period expires prepetition, the pawned property does not become property of the estate.

In re Tesseneer, Case No. 19-11283 (Bankr. S.D. Ala. Oct. 2, 2019) (Callaway, J.)

The court sustained a pawnbroker's objection to confirmation of a chapter 13 plan that proposed to redeem the debtor's car title through the plan. The loan was in its first thirty days and the title pawn had not matured before the debtor filed bankruptcy. However, the court found that the clock keeps ticking under Alabama's Pawnshop Act; the redemption period is not frozen in time by the filing of the bankruptcy and the maturity date is still reached. When the debtor's redemption period lapsed under state law after the extension provided by 11 U.S.C. § 108, the debtor's car ceased to be property of the estate entirely.

**Automatic stay**

In re Byers, 621 B.R. 943 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

Debtors entered into a "lease agreement" for an RV which they used as their home. However, the lease did not require the debtors to return the RV at the end of the term, and the title listed the debtors as owners. Although the contract did not meet the "bright-line" test of Alabama Code § 7-1-203, the court found that the arrangement was a disguised security interest under both the "economic realities assessment" and "functional approach" analyses. The court thus denied the creditor's motion for relief from stay since the debtors proposed paying the secured claim through their chapter 13 plan.

Glenn v. Army & Air Force Exchange Services, 616 B.R. 429 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

The court limited an attorney's fee award under 11 U.S.C. § 362(k)(1) because the debtor's attorney made no effort to resolve the automatic stay violation prior to instituting litigation. The court explained that the standards prescribed in 11 U.S.C.§ 330(a)(1)(A) allow reasonable compensation for actual, necessary services. Absent any pre-suit attempt by the attorney to contact the creditor about the stay violation, the court was not convinced that the adversary proceeding was necessary. The court thus reduced the attorney's fee to an amount deemed reasonably necessary under the facts of the case to resolve the matter.

In re Johnson, 615 B.R. 919 (Bankr. N.D. Ala. 2020) (Mitchell, J.)

Chapter 13 debtor brought adversary proceeding asserting that mortgagee violated automatic stay by misappropriating insurance proceeds for commercial real property that was struck by a car. The court held that the debtor had no interest in the insurance proceeds paid to the mortgagee under the terms of the applicable insurance policy and thus granted the mortgagee's motion for summary judgment.

In re Mainous, 610 B.R. 916 (Bankr. S.D. Ala. 2019) (Oldshue, J.)

The court considered the factors set forth in *In re Cummings*, 221 B.R. 814 (Bankr. N.D. Ala. 2006) and balanced the equities in weighing the hardship to the creditor against the potential prejudice to the debtors, the estate, and other creditors in granting a creditor limited relief from stay to pursue claims against the debtors in state or federal courts in the Southern District of Alabama. Considering the totality of the circumstances, granting relief to allow litigation outside of courts in this district would be unduly burdensome to the debtors and harm the viability of the bankruptcy case. The court also estimated the creditor's proof of claim under 11 U.S.C. § 502(c) without prejudice pending the outcome of the litigation between the parties.

In re Lanier, 2019 WL 5833058 (Bankr. N.D. Ala. Oct. 18, 2019) (Robinson, J.)

The court granted a motion for relief from stay filed by the debtor's neighbor to enforce a state court order allowing her to remove a pipe and a fence that were on her property. The neighbor also filed a complaint to determine the dischargeability of her claim against the debtor for trespass. The court denied the neighbor's motion for relief from stay to the extent that it involved issues that would be resolved in the adversary proceeding.

In re Collum, 604 B.R. 61 (Bankr. M.D. Ala. 2019) (Sawyer, J.)

The court found that a creditor that was participating in prepetition setoff program willfully violated the stay by continuing to receive funds on prepetition debt postpetition. But the court limited the attorney's fee award to $150.00 given that the creditor had promptly returned the funds and that the attorney had made no effort to resolve creditor's routine violation of the stay by contacting creditor's counsel, but had increased expenses by immediately involving bankruptcy court.

Turner v. Fidelity Bank, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway, J.)

The court awarded the debtor $750.00 for the bank's violations of the automatic stay in mistakenly sending computer-generated past due notices to the debtor after she filed for bankruptcy. Although the bank's employees did not intend to violate the stay, the bank failed to take appropriate steps once it received notice of the debtor's bankruptcy. The debtor was not responsible for notifying the creditor of the continuing stay violations; however, the court limited the attorney's fee award to $250.00 because it found that one communication from debtor's counsel to the bank's counsel would have remedied the problem.

**Approval of settlements**

In re Gaddy, 622 B.R. 440 (Bankr. S.D. Ala. 2020) (Callaway, J.)

The court approved the chapter 7 trustee's settlement of a fraudulent transfer case with the debtor and other defendants over the largest creditor's objection. The court performed an extensive analysis of the *Justice Oaks* factors and found that the settlement was fair and reasonable given the circumstances, including defenses that would likely result in the case going

to trial and the uncertainty of what a jury would do. The creditor's argument that the trustee should have conducted more discovery before reaching a settlement did not compel a different result.

*** On appeal, the district court found that the bankruptcy court thoroughly considered each of the *Justice Oaks* factors in concluding that the settlement was reasonable, that the bankruptcy court did not abuse its discretion in approving the settlement, and that the bankruptcy court did not abuse its discretion in denying the largest creditor's request for more discovery. *See* SE Property Holdings, LLC v. Gaddy Electric & Plumbing, LLC, et al., Case No. 1:20-00201-KDN (S.D. Ala. August 20, 2020). The Eleventh Circuit also found that the bankruptcy court did not abuse its discretion in approving a settlement because the settlement did not fall below the lowest point in the range of reasonableness. *See* In re Gaddy, Case No. 20-13549 (11th Cir. April 26, 2021)

**Motion to stay pending appeal**

In re Gaddy, 2020 WL 6065177 (S.D. Ala. May 7, 2020) (Callaway, J.)

The court denied a creditor's motion to stay pending appeal of the court's order approving the chapter 7 trustee's motion to compromise. The creditor did not meet its burden of showing a substantial likelihood that it would prevail on the merits of the appeal. Even if it had, the creditor did not show that the three remaining factors for stay relief – a substantial risk of irreparable injury to it unless the stay is granted, no substantial harm to other interested persons, and no harm to the public interest – tended strongly in its favor.

**Section 523**

First Bank of Linden v. Gunter, AP No. 19-80037 (Bankr. N.D. Ala. Feb. 12, 2021) (Jessup, J.)

The court found that the debt owed by the debtor to the creditor bank was dischargeable in the debtor's bankruptcy. Although the bank established that the debtor repeatedly signed loan documents which listed certain collateral that did not then exist or that he had sold without written consent of the bank in violation of the loan documents, the bank failed to establish that the debt at issue was a debt for "willful and malicious injury" caused by the defendant the bank or to property of the bank under 11 U.S.C. § 523(a)(6). Every breach of contract or even unauthorized sale of collateral does not automatically lead to a willful and malicious injury causing the nondischargeabilty of a debt. The court denied the bank's motion to reconsider, as well. See First Bank of Linden v. Gunter, AP No. 19-80037 (Bankr. N.D. Ala. Mar. 31, 2021) (Jessup, J.). The court declined to find that every knowing breach of contract is excepted from discharge.

In re Jones, 611 B.R. 685 (Bankr. M.D. Ala. Jan. 24, 2020) (Creswell, J.)

Federal court judgment for violations of the Alabama Uniform Fraudulent Transfer Act was entitled to collateral estoppel effect in nondischargeability proceeding but sanctions orders were not entitled to collateral estoppel effect. The sanctions orders stemmed from

noncompliance with discovery, which required the federal court to weigh degrees of culpability against the prejudice to the opposing parties, not find fraudulent intent, and there were no clear findings in the sanctions orders relating to actual fraud or a fraudulent conveyance scheme by the debtors.

In re Lanier, 2020 WL 130118 (Bankr. N.D. Ala. Jan. 10, 2020) (Robinson, J.)

The debtor's installation of a pipe that encroached onto the plaintiff's property and her subsequent placement of a fence along what her surveyor said was the line between the debtor's property and the plaintiff's property were not done with intent to harm the plaintiff or her property, so the acts were not "willful" under 11 U.S.C. § 523(a)(6). Likewise, installing the pipe and fence were not wrongful, nor unjustified or excessive, so they were not "malicious" under that section. The debtor's debt to the neighbor could thus be discharged in her chapter 7 case.

Keeton v. Short, 2020 WL 6065763 (Bankr. S.D. Ala. Jan. 10, 2020) (Callaway, J.)

The court found that the plaintiff's Alabama state court judgment for trespass against the debtor was nondischargeable under 11 U.S.C. § 523(a)(6). The doctrine of collateral estoppel did not mandate the judgment of nondischargeability because the "willful" standard under § 523(a)(6) was different from the "intentional" act required for trespass under Alabama law. However, the court found that the plaintiff had nevertheless proven by a preponderance of the evidence that the trespass was a willful and malicious injury under § 523(a)(6). The debtor knew that there was a significant dispute about the boundary line of his property but went forward with cutting trees on the plaintiff's property. The evidence showed the kind of intentional act the purpose of which is to cause injury or which is substantially certain to cause injury. The debtor's conduct also implied a sufficient degree of malice for purposes of § 523(a)(6).

In re Shears, 2019 WL 4877522 (Bankr. N.D. Ala. Oct. 2, 2019) (Mitchell, J.)

The debtor's debt allegedly owed to a former tenant was dischargeable in his chapter 7 case. There was no evidence that the debtor took any action or had anyone take any action that caused injury to the tenant under 11 U.S.C. 523(a)(6). Regardless, the tenant did not meet his burden to prove that any injury was willful and malicious under that section.

**Redemption**

In re Rivet, 2019 WL 10856814 (Bankr. S.D. Ala. Dec. 30, 2019) (Callaway, J.)

In valuing a vehicle for redemption purposes, the court calculated the average of the clean retail and trade-in NADA values as of the petition date (considering missing or broken optional equipment) and then adjusted downward $1,200 to account for the car's rough condition.

**Discharge violation**

In re Curry, Case No. 19-20160 (Bankr. S.D. Ala. Nov. 18, 2019) (Callaway, J.)

In discharge violation cases where the court can award attorney's fees and costs as part of contempt sanctions, the court should not just mechanically apply a percentage in determining a fee. To hold that an attorney representing the debtor in a discharge violation case is always limited to a percentage of the recovery would greatly reduce the initiative for attorneys to take on smaller cases, which serve a useful educational and deterrent purpose for creditors who might otherwise be tempted to ignore the discharge. The court thus approved an attorney's fee award of $1,500.00 and a damages award of $1,250.00, which she claimed as exempt. The trustee raised the issue that the debtor was delinquent in her chapter 13 plan payments. However, unless a debtor agrees for an exempt amount to go toward plan payments, her or she may retain the exempt amount under *Law v. Siegel*, 571 U.S. 415 (2014).

In re Jenkins, 608 B.R. 565 (Bankr. N.D. Ala. 2019) (Jessup, J.)

Chapter 7 debtors filed a motion for contempt related to actions taken post-discharge by a creditor to collect prepetition debt for solid waste collection services. The court found that the debt did not fall within the discharge exception for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit. However, the bankruptcy court did not hold the creditor in contempt since there was a fair ground of doubt as to whether the discharge order barred the creditor's conduct under the circumstances.

In re Deemer, 602 B.R. 770 (Bankr. M.D. Ala. 2019) (Creswell, J.).

The court found that the conduct of a creditor whose claim was secured by an inoperable motor vehicle that the debtor proposed to surrender, in failing for more than a year either to repossess the vehicle or to release title, violated the discharge injunction. This case contains good discussions about the damages recoverable in a case for violation of the discharge injunction.

**Property of the estate**

In re Russell, 608 B.R. 893 (Bankr. S.D. Ala. 2019) (Oldshue, J.)

The "gavel rule" as codified by 11 U.S.C. § 1322(c)(1) remains the standard for evaluating a chapter 13 debtor's interest in foreclosed property. The debtor's principal residence was not property of the bankruptcy estate in a chapter 13 filed after the fall of the gavel at a foreclosure auction conducted in accordance with Alabama law.

**CARES Act**

In re Fowler, 2020 WL 6701366 (Bankr. M.D. Ala. Nov. 13, 2020) (Sawyer, J.)

The court overruled the chapter 13 trustee's objection to the debtor's motion to modify pursuant to the CARES Act. Bankruptcy Code § 1329(d) allows a debtor to extend payments even if the debtor had been behind in payments prior to the COVID pandemic.

Consumer Bankruptcy Panel, September 2021
Judge Tamara O. Mitchell
Career law clerk Donna McGee
United States Bankruptcy Court
Northern District of Alabama, Southern Division

# COSIGNERS, CLAIMS, AND EXEMPTIONS
# THREE ISOLATED ISSUES IN CONSUMER BANKRUPTCY CASES[1]

A. **Exemptions are determined as of the petition date**. It is well-settled law that exemptions are determined as of the filing date. Sometimes, however, what seems like a straightforward issue is not so straightforward. For example, it is not unusual for a debtor to have an automobile accident while his bankruptcy case is pending, nor is it unusual for a debtor to attempt to claim an exemption on the insurance proceeds if the funds exceed the balance due to a lienholder. Often the debtor has scheduled the collateral as exempt in his original schedules. Upon occasion, a debtor will fail to claim an exemption on the collateral, but once insurance proceeds are to be paid, the debtor wants to amend his schedules and exempt the proceeds. Should the exemption be allowed? If the debtor amends, what should be exempted – the collateral or the insurance proceeds?

1. ***In re Simpson*, 238 B.R. 776 (Bankr. S.D. Ill. 1999)**

   Prior to filing his bankruptcy case the debtor totaled his truck. He included both the truck and the anticipated insurance payment on his personal property schedule and declared the insurance proceeds as exempt, but failed to exempt the truck itself. The Chapter 13 trustee objected to the claim of exemption for the insurance proceeds. In reliance on *Payne v. Wood*, 775 F.2d 202 (7th Cir. 1985), the debtor argued "that insurance proceeds traceable to exempt property are protected by an exemption covering the property itself." *Simpson*, 238 B.R. at 778. The *Simpson* court observed that in *Payne v. Wood* that court concluded "once the debtors' exemption had been made, effecting a 'partition' between the debtors and the estate, it did not matter whether the property changed form; the estate was entitled to insurance proceeds on property that was not exempted, and the debtors were entitled to insurance proceeds on property that was exempted." *Simpson*, 238 B.R. at 780 (citing *Payne*, 775 F.2d 202). In *Payne*, the debtors claimed an exemption on the property in question at the time the bankruptcy case was filed. The *Simpson* court distinguished the debtor's situation from *Payne* because, at the time the debtor filed his petition, the damaged truck was part of the estate but not exempted by the debtor. The court found that the debtor should have exempted the value of the truck at the time of filing and thus sustained the trustee's objection to the exemption. The court stated, however, that "a debtor is to be granted broad license to amend his or her schedule of exemptions absent evidence of wrongdoing." *Simpson*, 238 B.R. at 781.

[1] Unless otherwise specified or is made clear by context, any reference to a code section refers to the Bankruptcy Code, 11 U.S.C. § 101 et seq.

2. ***In re Hampton*, 616 B.R. 917 (Bankr. S.D. Fla. 2020)**

Prior to her bankruptcy filing the debtor withdrew several thousand dollars from the home equity line of credit on her condo. Among other things she used the money to pay attorneys and property taxes and make a transfer to her son. At the time she filed her Chapter 13 bankruptcy case, she claimed a homestead exemption in the condo, which had been put up for sale. Approximately one year later she moved for an order approving a sale of the condo, the proceeds of which were used to pay off the HELOC and expenses relating to the sale, leaving net proceeds of around $300,000. The debtor converted her case to Chapter 7 roughly 14 months later and a trustee was appointed. During her case the debtor had amended her schedules several times, always claiming a homestead exemption in the condo. After the conversion to Chapter 7 the debtor filed an amendment, still claiming the homestead exemption in the condo, but also disclosing that the property had been sold and that the net proceeds were being held in her attorney's trust account. Although no one objected to the homestead exemption while the case was pending under Chapter 13, the Chapter 7 trustee objected. One basis for the trustee's objection was that the proceeds had not been reinvested within a reasonable time. The court disagreed, noting that "[i]t is 'settled law' . . . that a debtor's claim of exemptions is determined as of her bankruptcy petition date. . . . Because the Property was her homestead on the Petition Date that is the beginning and end of the inquiry. That she later . . . sold the Property does not change the fact that on the Petition Date it was her homestead, which she properly claimed as exempt." *Hampton*, 616 B.R. at 921-22. Furthermore, that the fact she later sold the homestead made no difference, since "in bankruptcy the Court's only temporal concern regarding exemptions is the status of the property *as of the petition date*." *Id*. at 922 (emphasis in original). The court granted the debtor's motion for summary judgment and overruled the trustee's objection.

3. ***In re Middleton*, 544 B.R. 449 (Bankr. S.D. Ala. 2016) (Callaway, C.J. and Oldshue, J.)**

This opinion by two courts covered 41 cases with the same issue: "how to apply a change in Alabama's exemption limits – which by statute are based on the date of debt – to bankruptcy cases with dozens of debts?" *Middleton*, 544 B.R. at 451. In other words, when a Chapter 7 case includes debts, some of which were incurred prior to and some of which were incurred after the amendment change, which exemption limit applies? The courts took note of Alabama Code § 6-10-1 which mandates that "'[t]he right of homestead or other exemption shall be governed by the law in force when the debt or demand was created . . . .'" *Middleton*, 544 B.R. at 452 (quoting Ala. Code § 6-10-1). However, when Alabama's exemption laws for personal property and homestead, Alabama Code §§ 6-10-2 and 6-10-6, changed in 2015, applying Alabama Code § 6-10-1 became more difficult. The courts held that "in Chapter 7 cases with a 'mix' of debts which pre-and postdate the change in exemptions, the approach which complies with the Bankruptcy Code and is most consistent with other law is to apply the exemption limits in effect at the time of the bankruptcy petition . . . ." *Middleton*, 544 B.R. at 458. It is worth noting that in reaching this decision the courts recognized "'[i]t is hornbook

bankruptcy law that a debtor's exemptions are determined as of the date of the filing of the petition.'" *Id.* (quoting *Matter of Wickstrom*, 113 B.R. 339, 343-44 (Bankr. W.D. Mich. 1990).

B. **Consequences for a non-filing cosigner when the debtor does not pay a secured debt in full.** Usually, a debtor owing a secured debt for which a non-filing cosigner is also obligated proposes in his Chapter 13 plan to pay the claim in full at the contract rate of interest, thus "protecting" the cosigner. Sometimes, however, a debtor proposes a different treatment that will leave a balance owed on the debt when debtor receives a discharge. What happens to the cosigner, and what happens to the collateral?

1. ***Southeastern Bank v. Brown*, 266 B.R. 900 (S.D. Ga. 2001)**

The Chapter 13 debtors proposed to pay a vehicle debt in full, including postpetition interest, in order to protect the cosigner. The bankruptcy court confirmed the debtors' plan only after they removed a provision regarding postpetition interest. The creditor filed a motion for relief from the codebtor stay under § 1301 so that it could collect postpetition interest from the cosigner, but the motion was denied by the court. On appeal, the district court explained two different approaches taken by bankruptcy courts regarding payment in full on cosigned debts and relief from stay to pursue the cosigner. In its discussion, the district court recognized that under § 1301(c)(2) a court may give stay relief to a creditor if the debtor's plan does not propose to pay the creditor's claim. Using the first approach, the bankruptcy court had determined that § 502 prohibits a debtor from paying postpetition interest in a Chapter 13 plan, and furthermore, § 1301(c)(2) allows relief from the stay only to the extent that the debtor is not fully paying the allowed claim. Thus, because the debtor was not allowed by the Code to pay postpetition interest the creditor could not obtain stay relief. Using the second approach, another bankruptcy court in the district issued a line of cases holding that postpetition interest may be paid in a Chapter 13 plan, and that a creditor is entitled to relief from the stay to the extent that part of the debt, including interest, is not being paid through the plan. After examining the language of §§ 502, 1301(c)(2), and 101(5) (defining "claim"), and the legislative history of § 1301, the district court concluded "as the legislative history clearly reflects, § 1301 must grant a creditor relief from the stay whenever the plan does not pay the full amount of the debtor's debt, including post-petition interest." *Brown*, 226 B.R. at 907.

2. ***In re Leonard*, 307 B.R. 611 (Bankr. E.D. Tenn. 2004)**

One of the debtors and a nonfiling cosigner owned a Chevrolet Suburban. The debtors crammed down the lender's secured claim, leaving a portion of the claim unsecured. The debtors made all payments required under the plan and received a discharge; however, $3,328.64 of the amount contractually due to the creditor remained unpaid. The debtors moved for an order requiring the creditor to release its lien and stop collections attempts against them. The court recognized that the legislative history of § 524, the section that sets out the effects of discharge, reflects that the purpose of § 524 is to prevent pressure on the debtors to repay a discharged debt. The court remarked that "there is no injunction preventing a creditor from

proceeding with collection actions against a non-filing co-debtor once a Chapter 13 case has ended." *Leonard*, 307 B.R. at 613. The court pointed out that § 524 was enacted to protect the debtor only, and "'if debtors do not propose to pay the debt in full in the plan, their co-debtors will have to pay, but if debtors are not going to pay, their co-debtors would be liable at some point anyway.'" *Leonard*, 307 B.R. at 614 (quoting *Se. Bank v. Brown*, 266 B.R. 900, 908 (S.D. Ga. 2001)). The court held that the cosigner was still liable for the debt and the creditor could proceed against both the cosigner and the collateral. Furthermore, the creditor would not be required to release its lien until after the remaining debt had been paid.

3. ***In re Brooks*, 340 B.R. 648 (Bankr. D. Me. 2006)**

The debtor-wife owned a 1994 Plymouth Voyager along with her father who cosigned on the loan. The debtors' confirmed Chapter 13 plan provided that they would pay the holder of the lien on the Voyager as secured to the extent of the vehicle's value and unsecured for the remainder. In addition, the plan separately classified the creditor's unsecured debt so that it would be paid at 100% while other unsecured creditors were to receive 5%. Because the creditor never filed a proof of claim despite having notice of the bankruptcy, the debtors filed one on its behalf. After confirmation, and after the secured portion of the claim had been paid in full, but before the case was paid off, the debtors moved for an order allowing them to sell the vehicle free and clear of liens. No objection was filed by the creditor and the court granted the debtors' motion. Sometime thereafter, while the debtors were still paying their case, they requested the creditor to release its lien on the Voyager but the creditor refused. The debtors filed a complaint for violation of the stay. Citing *In re Leonard*, 307 B.R. 611 (Bankr. E.D. Tenn. 2004), the court maintained that nothing in § 524 would keep the creditor from collecting from a cosigner after a bankruptcy case closed. The court concluded that, while the bankruptcy case was pending, the creditor could not collect from the cosigner but it was not required to release its lien until it received payment in full. "In other words, so long as there remains the possibility of personal liability on behalf of a record owner of the vehicle, [the creditor] is within its rights in retaining its lien." *Brooks*, 340 B.R. at 654.

4. ***In re Jackson*, No. 12-10757-JDW, 2012 WL 6623497 (Bankr. M.D. Ga. Dec. 18, 2012)**

A son and his mother had simultaneously pending Chapter 13 cases. The son owned a 2002 Pontiac Grand Prix for which his mother had cosigned on the debt. The creditor holding a lien on the Pontiac obtained relief from the stay and relief from the codebtor stay in the mother's case, and relief from the codebtor stay in the son's case. The son proposed in his plan to pay the amount of the creditor's claim in full but with only 5% interest, not the 28% contract rate of interest. His plan provided that "'all holders of liens other than long term debt . . . shall cancel said liens within 15 days following notification of the debtor(s) discharge.'" *Jackson*, 2012 WL 6623497, at *1. In the mother's case, her plan provided that the creditor "'is continuing to be paid by co-signer, son who drives Pontiac.'" *Id.* The creditor objected to confirmation of the son's plan, contending that it should not be required

to release its lien upon the son's discharge. According to the creditor, it should be able to retain its lien since it still could collect from the mother the difference between the interest being paid in the son's case and the contract rate of interest; thus, the creditor should not be required to release its lien until the interest was paid in full. The court concluded that the son's plan satisfied § 1325(a)(5)(B)(i) because it provided that the creditor's lien would be retained until it received payment in full under nonbankruptcy law or the son obtained a discharge, whichever occurred earlier. Analyzing §§ 1301(a), 1301(c)(2), 502(b)(2), and 101(5)(A), and citing to *Southeastern Bank v. Brown*, 226 B.R. 900 (S.D. Ga. 2001), the court concluded that the Bankruptcy Code allowed the creditor to collect the remaining interest from the cosigner-mother since both applicable stays had been lifted as to her. *Jackson*, 2012 WL 6623497, at *2. As to the plan provision requiring release of the lien upon discharge, the court held that the lien "will remain in place and can be enforced against [the mother's] interest in the Pontiac until such time as [the creditor] receives full payment of its claim at the contract rate." *Id.* at *3.

5. ***Faulkner v. CEFCU (In re Faulkner)*, BK No. 07-81412, AP No. 12-08069, 2013 WL 2154790 (Bankr. C.D. Ill. May 17, 2013)**

The debtor and a non-filing cosigner owed a debt secured by a 2002 Chevrolet Trailblazer. The creditor filed the proof of claim reflecting part of the debt as secured and the remainder unsecured. In her proposed plan the debtor provided that the secured debt would be paid in full with 9% interest and the unsecured portion would be paid 0% like the other unsecured claims. The debtor's plan specified that "'[t]he secured creditors shall retain their liens upon their collateral until they have been paid the value of said property.'" *Faulkner*, 2013 WL 2154790, at *1 (alteration in original). The plan was confirmed without objection by the creditor. The debtor received a discharge after making all of her plan payments, including paying the secured portion of the creditor's claim in full and a small amount on the unsecured portion. The debtor filed an adversary proceeding against the creditor for not releasing its lien on the Trailblazer. Citing to *In re Leonard*, 307 B.R. 611 (Bankr. E.D. Tenn. 2004), *In re Jackson*, No. 12-10757-JDW, 2012 WL 6623497 (Bankr. M.D. Ga. Dec. 18, 2012), and § 524, the court concluded that "the lien release provision in the Debtor's plan, no matter how clear and conspicuous, can only serve to release [the creditor's] lien as to the Debtor's vehicle;" therefore "[the creditor's] lien remains in place and can be enforced against the non-filing co-debtor's interest in the vehicle until such time as [the creditor] receives full payment of its claim at the contract rate." *Faulkner*, 2013 WL 2154790, at *5.

6. ***In re Ryel*, No. 5:15-bk-70290, 2015 WL 13776223 (Bankr. W.D. Ark. July 19, 2015)**

The debtor-husband purchased a vehicle with a non-debtor cosigner and sometime thereafter the debtors filed a Chapter 13 case. In their plan they proposed that, in accordance with §1325(a)(5)(B)(i)(I), the creditor would retain its lien until the debt was paid under non-bankruptcy law or the debtors received a discharge, whichever came first. It also provided that the creditor "shall" release the lien at that time.

The creditor objected, claiming that the bankruptcy had no effect on the cosigner's liability or pledged interest. The debtors argued, among other things, that a conflict exists between non-bankruptcy law allowing a lien to remain in place until the debt is fully paid, and bankruptcy law which requires the creditor to release its lien once the debtors receive a discharge or when the debt is paid in full, whichever occurs first. The court disagreed. Under nonbankruptcy law the debtor-husband and the cosigner were both liable for the debt; however, the bankruptcy filing imposed a stay as to collection from the debtors and from the cosigner. The court recognized that the plan as proposed – the creditor must release the lien upon discharge - complied with § 1325 of the Bankruptcy Code but it went a step further, requiring the creditor to completely release its lien. The court pointed out that the Bankruptcy Code also provides in § 524(e) that a discharge has no effect on "'the liability of any other entity on, or the property of any other entity for, such debt.'" *Ryel,* 2015 WL 13776223, at *3 (quoting 11 U.S.C. § 524(e)). Noting that requiring the creditor to release its lien would run afoul of § 524, the court concluded "[u]nless the debtors pay the underlying debt as determined under nonbankruptcy law in full, [the creditor] is entitled to retain its lien on the subject vehicle to secure [the cosigner's] obligations under the parties' contract." *Ryel*, 2015 WL 13776223, at *3. The debtors had also alleged that the creditor's ability to repossess the vehicle after discharge would be a "cruel result." As to this argument, the court reminded the debtors that it was the debtor-husband's and cosigner's decision to co-own the vehicle and sign for the loan together. The court sustained the creditor's objection to confirmation and directed the debtors to amend their plan in accordance with the court's ruling.

## C. <u>Amending and withdrawing proofs of claim.</u>

Many bankruptcy courts take the approach that when an amended proof of claim is filed it supersedes the original proof of claim; thus, if the amended proof of claim is withdrawn the creditor no longer has a proof of claim in the case. There is very little case law on either side of the issue. However, proofs of claim have been likened to complaints, and an amended complaint supersedes the original complaint. On a more basic level, retired Bankruptcy Judge Keith Lundin has discussed general principles of amending proofs of claim in his treatise *Lundin on Chapter 13* that should be noted.

### 1. ***Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007)**

The complaint in this action was initially filed in the state court by plaintiffs who eventually numbered in the hundreds. One of the defendants filed a notice of removal to the United States District Court for the Northern District of Alabama under the Class Action Fairness Act of 2005 ("CAFA"). The defendants alleged in the notice that the jurisdictional requirements of CAFA had been met because, among other things, each claimant was seeking over $75,000, which collectively totaled more than the $5,000,000 required. Attached to the notice was plaintiffs' original complaint alleging damages in excess of $1,250 as to each plaintiff. Also attached was the plaintiffs' third amended complaint in which they requested no specific amount of damages, but instead "sought 'compensatory and punitive

damages in an amount . . . in excess of the [court's] minimum jurisdictional limit.'" *Lowery*, 483 F.3d at 1188. The defendant had the burden of establishing the federal court's jurisdiction, and the plaintiffs moved for remand on the grounds that "nothing in the notice of removal or the complaint indicated the specific amount of damages the plaintiffs were actually claiming." *Id.* at 1189. In trying to show the requisite jurisdictional amount was satisfied, the defendant relied upon the initial complaint requesting a specific amount of damages. The Eleventh Circuit Court of Appeals ultimately determined that "it would be improper to bind plaintiffs by the prayer for relief in the initial pleading. . . . Under both Alabama and federal law, an amended complaint supersedes the initial complaint and becomes the operative pleading in the case." *Id.* at 1219-20 (citing *Fritz v. Standard Sec. Life Ins. Co. of New York*, 676 F.2d 1356, 1358 (11th Cir. 1982); *Ex parte Puccio*, 923 So. 2d. 1069, 1072-73 (Ala. 2005)).

2. ***Townsend v. Quantum3 Group, LLC*, 535 B.R. 415 (M.D. Fla. 2015)**

The plaintiff brought a class action under the Fair Debt Collection Practices Act relating to a proof of claim filed by the creditor. The plaintiff alleged the creditor, among other things, did not provide certain notices as required under the FDCPA. The court stated that "'[c]ourts routinely recognize that the filing of a proof of claim is analogous to the filing of a complaint . . . .'" *Townsend*, 535 B.R. at 422 (quoting *In re Franchi*, 451 B.R. 604, 607 (Bankr. S.D. Fla. 2011) (alteration in original)). Examining the relevant provisions of the FDCPA, the court found that the notices required under the FDCPA did not apply to "formal pleadings" in civil actions. *Townsend*, 535 B.R. at 420 (citing 15 U.S.C. §§ 1692e(11) and 1692g(d)). Because the provisions of the FDCPA relating to the plaintiff's allegations do not apply to formal pleadings, and proofs of claim are considered formal pleadings, the plaintiff's claims under 15 U.S.C. §§ 1692e(11) and 1692g(d)) were due to be dismissed.

3. **Keith M. Lundin, *Lundin on Chapter 13*, § 133.4 Amended Claims (selected portions)**[2]

   a. <u>Allowance of an amended proof of claim</u>

   "Although there is no mention of amended claims in § 501 of the Code, a proof of claim that amends a prior claim probably is 'filed under section 501' and thus is 'deemed allowed' by § 502(a) absent objection."

   b. <u>Possible reasons to amend</u>

   "The idea of amending a proof of claim is not fundamentally offensive. Creditors often make mistakes in the filing of proofs of claim, and adjustments are required for many reasons—to reflect an error in calculations, to add missing attachments, to reflect negotiation with the debtor, to adjust for payment by third parties or the like. With respect to

[2] Footnotes omitted. The text of this portion has been taken directly from § 133.4 of Judge Lundin's treatise, *Lundin on Chapter 13*, found at https://lundinonchapter13.com/. Headings in this portion of the materials have been included by the authors of these materials and are not part of the text of Judge Lundin's treatise.

debtors, a voluntary petition, list, schedule or statement 'may be amended by the debtor as a matter of course at any time before the case is closed,' pursuant to Bankruptcy Rule 1009(a). There is no analogue to Bankruptcy Rule 1009 for proofs of claim filed by creditors."

c. Amendments are anticipated as evidenced by the official form

"The drafters of the official forms clearly contemplate the filing of amended claims and intend that Official Bankruptcy Form 410 be used for that purpose."

d. Deadlines for amendment

"There is no deadline in the Rules or Code after which amendment of a claim is prohibited. Theoretically, a timely filed proof of claim can be amended at any time while the case is pending, at least until payments are completed under the plan."

**Fill in this information to identify the case:**

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

# Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy** (Form 309) **that you received.**

## Part 1: Identify the Claim

1. **Who is the current creditor?**

   _____
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

   ❑ No
   ❑ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| **Where should notices to the creditor be sent?** | **Where should payments to the creditor be sent?** (if different) |
|---|---|
| _____ Name | _____ Name |
| _____ Number Street | _____ Number Street |
| _____ City State ZIP Code | _____ City State ZIP Code |
| Contact phone _____ | Contact phone _____ |
| Contact email _____ | Contact email _____ |

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

__ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __

4. **Does this claim amend one already filed?**

   ❑ No
   ❑ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ❑ No
   ❑ Yes. Who made the earlier filing? _____

## Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ❑ No
   - ❑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $_____. **Does this amount include interest or other charges?**
   - ❑ No
   - ❑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

   Limit disclosing information that is entitled to privacy, such as health care information.

   _____

9. **Is all or part of the claim secured?**
   - ❑ No
   - ❑ Yes. The claim is secured by a lien on property.

   **Nature of property:**
   - ❑ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ❑ Motor vehicle
   - ❑ Other. Describe: _____

   **Basis for perfection:** _____

   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   **Value of property**: $_____

   **Amount of the claim that is secured:** $_____

   **Amount of the claim that is unsecured:** $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   **Amount necessary to cure any default as of the date of the petition:** $_____

   **Annual Interest Rate** (when case was filed)_____%
   - ❑ Fixed
   - ❑ Variable

10. **Is this claim based on a lease?**
    - ❑ No
    - ❑ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ❑ No
    - ❑ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

❑ No

❑ Yes. *Check one:*

| | **Amount entitled to priority** |
|---|---|
| ❑ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $_____ |
| ❑ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $_____ |
| ❑ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $_____ |
| ❑ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $_____ |
| ❑ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $_____ |
| ❑ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. | $_____ |

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

❑ I am the creditor.

❑ I am the creditor's attorney or authorized agent.

❑ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

❑ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

_____
Signature

**Print the name of the person who is completing and signing this claim:**

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____