2021 Bench Bar Supreme Court and 5th Circuit Case Summaries[1]

14th Annual Virtual Bankruptcy Bench Bar Conference

Case Summaries for Opinions from April 2019 – March 2021

[1] Case summaries consolidated by Sarah Wood and drafted by Bobby Biedrzycki, Allie Brak, Erin Coughlin, Elizabeth Grube, Nick Miller, and Sarah Wood.

Table of Cases

The Supreme Court of the United States

Cite	***City of Chicago v. Fulton,*** 141 S. Ct. 585 (2021)
Business v. Consumer	Consumer
Category	Automatic Stay
Summary	This case arose out of four separate bankruptcy cases consolidated on appeal. In each case, the City of Chicago impounded the debtors' vehicles for failure to pay traffic fines. After the debtors filed chapter 13, the City refused to return their vehicles, claimed that it needed to maintain possession to continue perfection of its possessory liens on the vehicles, and stated that it would only return the vehicles after the fines had been paid in full. In each case the bankruptcy courts held that the City violated the automatic stay by "exercising control" over property of the bankruptcy estate, ordered the City to return the debtors' vehicles, and imposed sanctions on the City for violating the automatic stay. The Seventh Circuit held that passive retention of property of the estate violates the automatic stay. The Supreme Court held that merely retaining estate property after the petition date is not an act to exercise control over property of the estate in violation of the automatic stay.

Cite	***Ritzen Group, Inc. v. Jackson Masonry, LLC,*** 140 S. Ct. 582 (2020)
Business v. Consumer	Business
Category	Automatic Stay
Summary	Ritzen filed a motion for relief from stay to proceed with a state court lawsuit against the debtor. The bankruptcy court denied the motion and Ritzen did not appeal the decision. Thereafter, Ritzen filed a proof of claim that was subsequently disallowed. The bankruptcy court confirmed the debtor's chapter 11 plan which, in part, enjoined all parties from continuing or proceeding any action against the debtor. Ritzen did not object to the chapter 11 plan. After confirmation, Ritzen appealed the bankruptcy court's order denying relief from stay. On appeal, the Supreme Court held that a bankruptcy court's order conclusively denying relief from stay is a final immediately appealable order and so Ritzen's appeal was untimely.

Cite	***Mission Prod. Holdings, Inc. v. Tempnology, LLC***, 139 S. Ct. 1652 (2019)
Business v. Consumer	Business
Category	Jurisdiction; Intellectual Property
Summary	Bankruptcy court ruled that distributor/licensee had no remaining distribution rights or rights in debtor's trademarks or logo, and distributor/licensee appealed. On appeal, the Supreme Court held: (1) distributor/licensee's plausible claim for money damages ensured a live controversy, such that this case was not moot, and (2) a debtor-licensor's rejection of an executory trademark licensing agreement does not deprive a licensee of its rights to use the trademark. The Court explained that section 365(g) treats rejection as a breach of contract. Moreover, "breach" under the Bankruptcy Code is synonymous with "breach" under contract law outside bankruptcy. Further—regardless of whether the licensor breaches a trademark agreement in or outside the bankruptcy context—a breach does not revoke a license or stop a licensee from exercising its rights under the agreement. After a breach, the trademark licensee's rights depend on the surviving rights under applicable non-bankruptcy law. Congress's enactment of section 365(n), which protects the rights of patent and certain other intellectual property (but not trademark) licensees, did not alter the application of section 365(g) to other types of agreements, including trademark licenses. Next, the Court noted that not allowing a debtor to rescind previously granted rights, by rejection, is consistent with the general rule that a bankruptcy estate cannot include anything more than: (1) the debtor's assets and rights before the bankruptcy petition was filed; and (2) the Bankruptcy Code's strict limits on a trustee's or debtor's avoidance powers to unwind pre-bankruptcy transfers. Finally, a debtor's right to reject its contractual obligations under section 365 does not allow it to avoid all other burdens that may be applicable under non-bankruptcy law. Therefore, the Court rejected Debtor's argument that allowing a trademark licensee to continue using a mark after the licensor rejects the license agreement conflicts with a trademark licensor's duty under trademark law to exercise quality control over its licensees' use to preserve the validity of the mark.

Cite	***Taggart v. Lorenzen,*** 139 S. Ct. 1795 (2019)
Business v. Consumer	Consumer
Category	Discharge Order
Summary	After Debtor's discharge, a state court issued a judgment against Debtor in a lawsuit that was initiated pre-petition and litigated post-petition. Judgment creditor sought to collect attorney's fees incurred after Debtor filed bankruptcy. The Supreme Court examined the circumstances in which § 524(a)(2) and § 105(a) permit a court to hold a creditor in civil contempt for violating a discharge order. In reversing the Ninth Circuit, the Court held the standard a court should employ in evaluating whether a creditor's conduct is subject to contempt is the "no fair ground of doubt" standard. In reaching its conclusion, the Court found the Ninth Circuit's standard of a "creditor's good faith belief" that the discharge order does not apply, even if unreasonable, is unworkable. The Court ruled that a party should not be able to insulate itself from contempt based upon its subjective good faith. Moreover, such a standard relies too heavily on state of mind and would force a debtor back into litigation over a discharge that is intended to protect a debtor. Further, the Court found the bankruptcy court's "strict liability" standard difficult because it would cause a creditor to be risk averse and seek a bankruptcy court's determination over discharge matters that ordinarily would be restrained under a facial reading of § 523. A strict liability standard would also increase the amount of litigation with the attendant delay and costs.

The United States Court of Appeals for the Fifth Circuit

Cite	***Le v. Exeter Fin. Corp.,*** 2021 WL 838266, at *1 (5th Cir. Mar. 5, 2021)
Business v. Consumer	Non-bankruptcy; business
Category	Protective Orders; Sealing Documents
Summary	After deciding the substantive issues in this employment dispute, the 5th Circuit noted that "[t]he public's right of access to judicial proceedings is fundamental." It went on to note the standards for sealing judicial records. The standard for sealing documents produced in discovery by protective order is "good cause." However, once a document is filed on the public record, a stricter standard applies. The Court directed judges to "undertake a case-by case, 'document-by-document, line by line' balancing of 'the public's common law right of access against the interests favoring nondisclosure." And noted that a court abuses its discretion if it doesn't articulate reasons that would support sealing the documents.

Cite	***Morgan v. Regions Bank (In re Morgan),*** 2021 WL 1165996 at *1 (5th Cir. Mar. 26, 2021)
Business v. Consumer	Consumer
Category	Homestead Exemption
Summary	After filing for divorce, the Debtor entered into a contract to purchase a home in Bellville, Texas. After his divorce was finalized, the Debtor married again and purchased a home in Austin with his new wife. Shortly thereafter, he purchased the Bellville house. His new wife was not listed on the closing documents for the Bellville house. Not long after the closings, the Debtor and his new wife separated. She lived in the Austin house and he lived in the Bellville house. When the Debtor filed bankruptcy, he claimed a homestead exemption in the Austin property. His bank objected and the bankruptcy court sustained the objection, concluding that the Austin home was not his primary residence. The district court affirmed. On appeal, the 5th Circuit also affirmed, noting that the Debtor's time in the Austin house was fleeting. The Debtor and his new wife separated shortly after purchasing the home, the Debtor claimed the Bellville home as his homestead for property-tax purposes, and he listed the Bellville house as his residence on his bankruptcy petition. The fact that he kept some belongings in the Austin house, visited on weekends, and conducted some business there was not enough to convert the Austin property into his homestead.

Cite	***Comty Home Fin. Serv., Inc. v. Johnson (In re Comty. Home Fin. Serv., Inc.),*** 2021 WL 838267 (5th Cir. Mar. 5, 2021)
Business v. Consumer	Business
Category	Fee Applications; Trustee Standing
Summary	Creditors appealed a bankruptcy court's decision to award fees to Debtor's counsel for work performed before the appointment of a trustee. The district court vacated the fee award. After Debtor's counsel and the chapter 7 Trustee appealed to the 5th Circuit, Debtor's counsel and the Creditors settled the dispute. The creditors then moved to dismiss the appeal as moot, but the Trustee opposed the motion because of her ongoing duty to the bankruptcy estate regarding fees. The 5th Circuit first found that the settlement didn't moot the appeal and rejected the "pecuniary interest" test for standing in the case of trustees. It found that the trustee had standing to pursue the appeal because the payment of the attorney's fees affects administration of the estate. The Fifth Circuit then reversed the fee application decision because the district court improperly considered the reasonableness and likely benefit of counsel's services retrospectively, instead of at the time the services were rendered.

Cite	***First River Energy, LLC v. U.S. Energy Dev. Corp.,*** 986 F.3d 914 (5th Cir. 2021)
Business v. Consumer	Business
Category	Liens
Summary	A month before filing bankruptcy, the Debtor, a mid-stream oil and gas service provider, bought crude oil and condensate from some Texas and Oklahoma producers, which it then sold to downstream producers for $27.6 million. The Debtor didn't pay the Texas and Oklahoma producers before it filed bankruptcy. The unpaid producers asserted liens created by statute in Texas and Oklahoma on the production and sale proceeds. Deutsche Bank, as agent for several secured lenders, asserted a priority claim to the sale proceeds as a secured creditor of the Debtor. On summary judgment, the bankruptcy court found that it should use the Delaware UCC to assess the validity, perfection, and priority of the parties' liens. It held that the bank's liens took priority over the unperfected or later-filed claims of the Texas producers, but that the bank's liens were subordinate to the liens asserted by the Oklahoma

	producers. The bankruptcy court then certified the producers' appeal for direct review by the Fifth Circuit. The Fifth Circuit first determined that warranty language in the sales agreements didn't constitute waiver of the producers' security interests because the warranty provisions only covered the production, not the sales proceeds. It then went on to affirm the bankruptcy court. Specifically, it found that (1) Delaware UCC law governed lien priority, (2) Delaware UCC law did not recognize the priority of the Texas producer's unfiled, unperfected security interests in the proceeds and so the bank's interests had priority, (3) the Oklahoma Lien Act created a first-priority statutory lien in favor of the Oklahoma producers and that proving up the extent and amount of the claims at the summary judgment stage was unnecessary.

Cite	***In re Barragan-Flores,*** 984 F.3d 471 (5th Cir. 2021)
Business v. Consumer	Consumer
Category	Confirmation; Secured Claims
Summary	At the time the Debtor filed chapter 13, he had two cross-collateralized car loans with a credit union for a GMC Sierra and a Toyota Camry. In his plan, the Debtor proposed to keep the Sierra, cram down the Sierra loan, and surrender the Camry. The bankruptcy court confirmed the plan and the credit union appealed. The district court reversed. On appeal, the Fifth Circuit held that section 1325(a)(5) allows the debtor to select a different option for each allowed secured claim, but it does not allow the debtor to select a different option for different collateral that secures the same claim.

Cite	***Burch v. Freedom Mortg. Corp. (In re Burch),*** 835 F. App'x 741 (5th Cir. 2021)
Business v. Consumer	Consumer Ch 11
Category	Jurisdiction; Filing Fees
Summary	This case involved a consolidated appeal regarding six state court actions that had been removed to the district court and then referred to the bankruptcy court or had been removed to bankruptcy court directly. The Fifth Circuit found that in three of the cases it lacked subject matter jurisdiction because orders denying motions for remand were not final orders.

	In the other appeals, the Court found the district court and bankruptcy court had subject matter jurisdiction over the state law claims when they clearly relied on interpretation of the Debtor's Chapter 11 plan. Finally, the Court found that the district court did not abuse its discretion by denying the Debtor's application for waiver of the filing fee or for dismissing his appeals for failure to pay the fee.

Cite	***German Pellets La., LLC. v. Wessel G M B H (In re La. Pellets, Inc.),*** 838 F. App'x 45 (5th Cir. 2020)
Business v. Consumer	Business
Category	Fraudulent Transfers (548)
Summary	Pre-petition, the Debtor and a subcontractor agreed to reinstate a portion of a construction project through a Second Change Order. Five payments were made from the Debtor to the subcontractor. The reinstated portion of the construction was never completed because the Debtor filed for Chapter 11 bankruptcy. In an adversary proceeding, the bankruptcy court denied the trustee's fraudulent transfer claims. The court found that the payments were for reasonably equivalent value because they satisfied an antecedent debt retroactively sanctioned by the Second Change Order, that the payments did not increase the Debtor's insolvency under Louisiana law, and that the Second Change Order was not a constructive fraudulent transfer. The trustee appealed. The 5th Circuit affirmed, finding that both a dollar-for-dollar reduction in the Debtor's obligation to pay and payments that ensured the Debtor did not breach the contract, thereby keeping alive the possibility of completing the reinstated construction, were reasonably equivalent value.

Cite	***Hobbs v. Buffets, LLC. (In re Buffets, LLC),*** 979 F.3d 366 (5th Cir. 2020)
Business v. Consumer	Business
Category	United States Trustee Fees
Summary	In 2017, Congress attempted to address a funding shortage in the United States Trustee Program by increasing UST fees for the years 2018 to 2022 when the Trustee System Fund's balance is less than $200 million. The increase only applies to debtors with disbursements over $1 million in a quarter. In those cases, the UST fee is the lesser of 1% of the disbursements or $250,000. The increased fee applied to disbursements starting the first quarter of 2018, even if the case had been filed prior to the fee increase. Although the vast majority of districts participate in the Trustee

	Program, six districts fall under the Bankruptcy Administrator program, which is overseen by the Judicial conference and funded by the judiciary's general budget. At first, only debtors in Trustee Program districts had to pay the higher fees. When the Judicial Conference increased the fees in Administrator districts, the higher fees only applied to cases filed after October 1, 2018. In this case, the Debtors filed under chapter 11 in 2016 and obtained confirmation of their plan in 2017. For the first 3 quarters of 2018, they had quarterly disbursements exceeding $1 million and the UST assessed quarterly fees of $250,000. The Debtors asked the bankruptcy court to determine that "disbursements" are only payments made under the plan and don't include normal operating expenses. The UST objected and asked the court to set the fees at $250,000 a quarter. The bankruptcy court denied the motion. Undeterred, the Debtors asked the court to reconsider arguing that the increased fees were unconstitutional. The bankruptcy court ultimately found that the fee increase was unconstitutional because (1) it only applied in Trustee districts and (2) it should not apply to debtors whose cases were pending before the enactment of the 2017 Amendment because applying the fees would retroactively impose new duties and liabilities on the Debtor for transactions that were already completed. On direct appeal, the Fifth Circuit first agreed with the bankruptcy court that "disbursements" includes all payments a debtor makes, including normal operating expenses. However, it disagreed that the fee increase was unconstitutional. It found (1) the fee increase applied to debtors whose cases were pending before the amended statute went into effect; (2) the amendment didn't violate the uniformity requirement by increasing fees only in Trustee program districts; (4) the amendment didn't violate due process; and (5) the increased fees were reasonable and not unconstitutional "takings."

Cite	***Yaquinto v. Ward (In re Ward),*** 978 F.3d 298 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Deadlines; Section 105(a)
Summary	Prepetition, the Debtor's creditors obtained a judgment against him for $782,838. The Debtor then filed under chapter 7 in the Eastern District of Texas. The bankruptcy court issued a notice that scheduled the 341 meeting for May 30, 2014 and set July 29, 2014 as the deadline to object to the Debtor's discharge. Prior to May 30th, an agreed motion to transfer venue was filed and the previously scheduled 341 meeting did not occur. On June 5th, the case was transferred to the Northern District of Texas. The bankruptcy court in

	the Northern District then issued its own notice scheduling the 341 meeting for July 22, 2014 and setting September 22, 2014 as the deadline for objecting to the Debtor's discharge. On August 27, 2014, the judgment creditors and chapter 7 trustee moved to extend the deadline for objecting to discharge. The Debtor objected arguing that the motion was untimely because it was filed more than 60 days after May 30th, the date of the 341 meeting scheduled in the Easter District of Texas. Several opposed motions to extend the deadline for objecting to discharge were granted and the deadline was ultimately extended to May 1, 2015. The judgment creditors and chapter 7 trustee filed a complaint objecting to the Debtor's discharge on April 30, 2015. After trial, the bankruptcy court affirmed its conclusion that the complaint was timely and denied the Debtor's discharge. The Debtor appealed to the district court, which affirmed. The Debtor then appealed to the Fifth Circuit. The Fifth Circuit found that the bankruptcy court in the Northern District of Texas had authority to move the first 341 meeting and objection deadline under section 105(a).

Cite	***Holland v. Westmoreland Coal Co. (In re Westmoreland Coal Co.),*** 968 F.3d 526 (5th Cir. 2020)
Business v. Consumer	Business
Category	Confirmation
Summary	Trustees of several employee benefit plans sought a declaratory judgment regarding whether the Debtor, a bankruptcy coal mining company, could modify its obligations to retirees under the Coal Act through chapter 11. The bankruptcy court found that the obligations could be modified, and the trustees appealed. The 5th Circuit affirmed holding that the employee benefits could be modified under section 1114, but that a court must find that the principal purpose of the transaction is not to avoid liability under the Act.

Cite	***Bailey Tool & Mfg. Co. v. Comerica Bank,*** 795 F. App'x 288 (5th Cir. 2020)
Business v. Consumer	Business
Category	Fee Applications
Summary	Four interrelated debtors' jointly administered chapter 11 case was converted to chapter 7. After conversion, debtors' counsel filed a fee application. The court awarded the requested fees and expenses, except for post-conversion fees incurred in preparing the fee application. Additionally, the court found one of the debtors liable for 12% of the fees and 25% of the expenses, and the other three debtors

	were held equally liable for the remainder of fees. Debtors' counsel appealed, contending that the bankruptcy court erred in three respects: (1) not holding the debtors jointly and severally liable for all fees and expenses; (2) failing to award fees for preparing the fee application post-conversion; and (3) determining that certain portions of the legal services did not benefit one of the joint debtors. The Fifth Circuit affirmed, finding that neither the district court nor the bankruptcy court committed reversible error.

Cite	***Elbar Invs., Inc. v. Prins (In re Okedokun),*** 968 F.3d 378 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Automatic Stay; Equitable Subrogation; Fraud in Real Estate Transaction; Unjust Enrichment
Summary	United Sentry Mortgage Investment Fund, a private lender, provided financing to an entity owned by the Debtor to purchase real property in Houston, Texas. After the Debtor defaulted, United Sentry retained attorney Todd Prins to post the property for notice of sale. The morning of the foreclosure sale, the Debtor filed bankruptcy and faxed a notice of bankruptcy filing to Prins. The foreclosure sale proceeded anyway, and Elbar Investments, Inc., a privately held foreclosure investment firm, won the auction with a bid of $2.4 million. Elbar initially sent the $2.4 million to Prins via eleven cashier's checks, but Prins claimed that his bank could not except eleven checks and would require either a single check or a wire transfer instead. The next morning, Prins received a deed showing that the Debtor had a homestead claim on the property. Elbar was informed of this and, knowing that the automatic stay would preclude transfer of title, wired $2.4 million to Prins's IOLTA account anyway. Prins then transferred $2 million from his IOLTA account into his Prins Law Firm account and absconded with the money to travel across Europe. Prins also used some of the money to pay two former clients. A few weeks later, Elbar's counsel requested that Prins return the $2.4 million he had stolen from Elbar, but by that point only $13,414 remained. Prins later pled guilty to wire fraud and was sentenced to seventy-two months imprisonment, three years of supervised release, and was ordered to pay $2,975,264 in restitution. Of the $2.4 million Elbar wired to Prins, Elbar recovered a total of $1,683,915.42. Elbar then sought to recover $716,084.58, the balance of the $2.4 million, from a combination of United Sentry, TransWorld, and Industry Drive as part of the Debtor's bankruptcy proceeding. Elbar brought claims for equitable subrogation, unjust enrichment, and money had and received. After a multi-day trial, the bankruptcy court denied Elbar all relief. The district court affirmed, and Elbar appealed to the Fifth Circuit.

	On appeal, the Fifth Circuit agreed with the bankruptcy court's findings and held that Elbar violated the automatic stay three times. It then considered Elbar's claim for equitable subrogation against United Sentry. Elbar argued that because it paid Prins following the foreclosure sale but never received title to the property from United Sentry, it should be subrogated to United Sentry's lien on the property. The Fifth Circuit agreed with the bankruptcy court that Elbar failed to satisfy the elements of equitable subrogation and that the equities weighed against it. The Fifth Circuit also rejected Elbar's claim that United Sentry was liable for fraud in a real estate transaction and found that Elbar had not submitted evidence that United Sentry or Prins, as United Sentry's agent, had acted in bad faith at the time of the foreclosure sale. Elbar also raised claims of money had and received, unjust enrichment, and conversion against TransWorld and Industry Drive. Under Texas law, a plaintiff seeking recovery under a theory of money had and received must prove that the defendant holds money which in equity and good conscience belongs to the plaintiff. The bankruptcy court found that Elbar had satisfied the elements under the theory but that once again the equities weighed against Elbar, in large part because of Elbar's multiple and willful violations of the automatic stay. The Fifth Circuit found no reversible error. The Fifth Circuit also agreed with the bankruptcy court's conclusion that Elbar could not recover from TransWorld or Industry Drive under an unjust-enrichment theory because both parties believed in good faith that they were receiving back their own funds. As for Elbar's conversion claim, the Fifth Circuit held that Elbar could not prove that the money in question was delivered to Industry Drive or to TransWorld for safekeeping, a necessary element for a claim of conversion of money.

Cite	***Hidalgo Cty. Emergency Serv. Found. v. Carranza (In re Hidalgo Cty. Emergency Serv. Found.),*** 962 F.3d 838 (5th Cir. 2020)
Business v. Consumer	Business
Category	Small Business Act; Paycheck Protection Program; CARES Act
Summary	The CARES Act, among other things, made billions of government-guaranteed loans available to qualified small businesses through the Paycheck Protection Program ("PPP"), which is administered by the Small Business Administration ("SBA"). Following the CARES Act's passage, the SBA "quickly promulgated several regulations." One such regulation states that debtors in bankruptcy are ineligible to receive a PPP loan.

	The Debtor in this case initiated an adversary proceeding against the SBA because it was denied a PPP loan due to its status as a debtor in bankruptcy. The Debtor argued that the SBA's regulation (1) violates 11 U.S.C. § 525(a)'s prohibition on discrimination based on bankruptcy status under certain circumstances, (2) is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A), and (3) is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" under 5 U.S.C. § 706(2)(C). The bankruptcy court agreed with the Debtor and issued a preliminary injunction mandating that the SBA process the Debtor's PPP application regardless of its bankruptcy. The district court stayed the injunction and certified for direct appeal. The Fifth Circuit vacated the preliminary injunction and held that the bankruptcy court lacked the authority to enjoin the SBA Administrator.

Cite	***McCoy v. United States (In re McCoy),*** 810 F. App'x 315 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Student Loans
Summary	Debtor incurred over $345,000 of student loan debt in her forties. She consolidated her loans and entered an income-based repayment plan but was unable to pay. She then filed for bankruptcy seeking relief from her student loan debt. At the time of her bankruptcy filing, her repayment plan required payments of $0 a month because of her income. The Fifth Circuit held that Debtor had not shown additional circumstances demonstrating that her ability to pay a higher monthly amount would persist. Debtor argued that her age and severe mental and physical disabilities that were unlikely to recede or resolve were two major additional circumstances demonstrating that the state of affairs was likely to persist. The Fifth Circuit rejected these arguments and noted that her critical health issues stemmed from a car accident and a facial-burning incident that occurred before she took out the bulk of the loans and did not prevent her from obtaining a doctorate and various forms of employment.

Cite	***Rohi v. Brewer & Pritchard, PC (In re ABC Dentistry, PA),*** 978 F.3d 323 (5th Cir. 2020)
Business v. Consumer	Business

Category	Res Judicata; Leave to Amend Complaint
Summary	This case stems from the bankruptcy case of ABC Dentistry, P.A. During the bankruptcy, Dr. Rohi settled a lawsuit against ABC Dentistry for $4 million. In November 2017, the bankruptcy court proposed the following allocation of the settlement proceeds: $1,599,000 to Texas, $720,000 to Dr. Rohi, and $1,681,000 to his attorneys. Then, the court granted a "brief recess to allow the parties to consult with counsel." Dr. Rohi alleged that during the recess his attorneys misrepresented how the recovery would be split in order to get him to settle. Relying on these representations, Dr. Rohi didn't oppose or appeal the allocation. Dr. Rohi then sued his attorneys because of the alleged misrepresentations, but the bankruptcy court held that *res judicata* precluded the lawsuit. On appeal, the Fifth Circuit noted that the bankruptcy court had denied Dr. Rohi's request to amend his pleadings and that the district court affirmed the denial because the proposed amendments wouldn't alter the *res judicata* analysis. The Fifth Circuit then considered whether the previously unlitigated claim could have been brought in the original bankruptcy case and would therefore be precluded by *res judicata*. Because Dr. Rohi's desired amendments would have included a breach of fiduciary duty claim for failure to follow through on representations made during November 2017 hearing, the Court found that he couldn't have known that those were misrepresentations at the time of the hearing. Therefore, the Fifth Circuit held that the lower courts erred in denying Dr. Rohi leave to amend his complaint.

Cite	***SE Prop. Holdings, LLC v. Green (In re Green),*** 968 F.3d 516 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Nondischargeability; Summary Judgment
Summary	Debtor owned several natural-disaster remediation businesses and had personally guaranteed debts that his business owed to SE Property Holdings. After the Debtor's businesses defaulted, the Lender obtained a judgment and a charging order directing certain of the Debtor's companies to "distribute to [the Lender] any amounts that become due or distributable to [the Debtor]." A few years later, the Debtor filed bankruptcy. The Lender filed an adversary proceeding alleging that the judgment, worth more than $41 million, was nondischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(6). The bankruptcy court granted summary judgment in favor of the Debtor on all but one of the Lender's claims. The Lender appealed on its claim that the Debtor's company violated the charging order by spending money it received from FEMA. In granting summary

	judgment, the bankruptcy court discounted an affidavit from a vice president of the Lender, which stated that the Lender never consented to any use of the FEMA money other than to repay its claim. The bankruptcy court questioned the veracity of the affidavit and found that it was not based on the V.P.'s personal knowledge. On appeal, the Fifth Circuit held that the bankruptcy court had erred by assessing the evidence and evaluating the credibility of a witness when ruling on a motion for summary judgment. Judge Willet, writing for the panel, stated that the "Bankruptcy Court was permitted to consider only whether the competing affidavits diverged on specific facts to determine whether a factual dispute existed for trial. And it failed to stay within this limited scope of authority." The Fifth Circuit also noted that, while the affidavit did not include an explicit statement of the V.P.'s personal knowledge, personal knowledge "can be inferred if such knowledge reasonably falls within the person's 'sphere of responsibility,' particularly as a corporate officer." The Fifth Circuit held that the V.P. likely knew whether the Lender had allowed the borrower to use money that was contractually obligated to pay the debt. The Fifth Circuit thus held that the V.P.'s attestation was sufficient to create a genuine dispute of material fact sufficient to overturn summary judgment.

Cite	***Brown v. Viegelahn (Matter of Brown),*** 960 F.3d 711 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Chapter 13 Plans
Summary	Chapter 13 trustee objected Debtor's proposed repayment plan based on Debtor's failure to commit all his disposable income to his plan payments. Debtor had monthly disposable income of $2,191, but his 60- month plan called for monthly payments of just $1,080. While Debtor's plan provided for full payment of allowed secured claims, the trustee argued that Debtor should be required to pay all his disposable income into the plan until all unsecured claims are paid. The Bankruptcy Court provided that the plan could either pay unsecured claims in full during the first seven months, or it could include *Molina* language in the plan, conditioning discharge on payment of all unsecured claims in full. Debtor chose to include the *Molina* language. The Court confirmed the plan without ruling on the trustee's objections. Thereafter, Debtor appealed the confirmation order to the district court, which *sua sponte* certified it for direct appeal to the Fifth Circuit. On appeal, Debtor argued the imposition of non-statutory conditions was improper because his plan satisfied the Chapter 13 confirmation

	requirements. The trustee argued that the proposed plan did not satisfy section 1325 because Debtor did not commit all his disposable income to plan payments. The trustee argued that this failure interfered with the trustee's statutory duty to preserve the estate. The Fifth Circuit disagreed with the trustee, holding that: (1) the trustee's duty to preserve the estate was not implicated because she was accountable only for property she received, and this did not include Debtor's excess disposable income; (2) Section 1325(b)(1) of the Bankruptcy Code requires debtors to either pay claims in full or commit all their projected disposable income to plan payments. But section 1325(b)(1) is disjunctive and does not require a debtor to pay all disposable income into the plan; and (3) If the *Molina* language would deny Debtor a discharge if he completed payments under a modified plan, then the language violated section 1328 of the Bankruptcy Code, which mandates a discharge for a debtor who has completed their plan payments.

Cite	***Diaz v. Viegelahn (Matter of Diaz),*** 972 F.3d 713 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Chapter 13 Plans; Tax Returns
Summary	In October 2017, the U.S. Bankruptcy Court for the Western District of Texas adopted a "form" Chapter 13 plan. Section 4.1 of the Local Plan states that any annual tax refund amounts that a debtor receives in excess of $2,000 must be turned over to the trustee. A chapter 13 Debtor with below-median income indicated through her schedules that she expected to receive an income tax refund of $3,261. The confirmation order required Debtor pay $1,261 from her income tax refund to the trustee. The debtor appealed. The district court affirmed. The Fifth Circuit vacated and remanded. The issue here was whether Section 4.1 of the Local Plan, by automatically declaring tax refunds in excess of $2,000 to be projected disposable income, was contrary to *Lanning*, which said such adjustments should be made in unusual cases. Debtor argued that as a below-median income debtor she was entitled to use her income tax refund to pay for reasonably necessary expenses. She asserted that Section 4.1's "one-size-fits-all" rule abridged the substantive rights of below-median income debtors. The Fifth Circuit agreed with the Debtor that Section 4.1's categorical rule was "inapt as applied to below-median income debtors filing for chapter 13 relief" in the Western District of Texas. Section 1325(b)(2), as clarified in *Lanning*, plainly allows below-median income debtors to retain any income that is "reasonably necessary for their maintenance and support." The Court recognized that "the bankruptcy court has an

	important interest in efficiency, that interest is not grounds for abridging below-median income debtors' substantive rights to use their 'excess' refund income to finance reasonably necessary expenses for their maintenance and support." At bottom, however, "the provisions in a local chapter 13 plan must be procedural, not substantive."

Cite	***Hill v. King (In re King),*** 802 F. App'x 133 (5th Cir. 2020***)***
Business v. Consumer	Consumer
Category	Fee Applications
Summary	Chapter 7 Trustee elected to investigate the debtor's financial affairs despite there being no assets to investigate and retained his law firm to investigate debtor's joint assets with debtor's ex-spouse. Firm filed an application for roughly $123,000 in fees and expenses of $4,500. The largest creditor in the case objected. Bankruptcy court reduced fees to roughly $42,000 and expenses of $3,700. The bankruptcy court found that some of services were "lumped" together and that the trustee had violated his fiduciary duty to the estate by allowing his firm to seek illegitimate fees from the estate. The Trustee did not appeal the court's order reducing the fees. Thereafter, chapter 7 Trustee filed his application under § 326(a) for compensation and expenses in the total 13 sum of roughly $28,500. The bankruptcy court reduced the chapter 7 Trustee's compensation and fees down to roughly $5800, finding that trustee had: (1) violated his fiduciary duty by allowing his law firm to seek excessive fees; (2) violated Bankruptcy Rule 9019 by settling a portion of the Objection to Exemption without court approval; (3) allowed firm to bill $515.50 for reviewing claims but stated in his application to retain firm that he would review claims; and (4) violated Bankruptcy Rule 2016(a) by not submitting detailed statements with his application. Hill asserted that the bankruptcy court applied an incorrect standard in determining his compensation and erred in finding that he had breached his fiduciary duty. Hill asserted that the compensation of a Chapter 7 trustee is not controlled by § 330(a)(3), but rather by § 330(a)(7). The Fifth Circuit noted that the percentage amounts listed in § 326 are presumptively reasonable for Chapter 7 trustee awards. The Fifth Circuit did note, however, that treating Chapter 7 trustee's compensation as a commission "leav[es] open the possibility of a reduced commission based on 'extraordinary circumstances." As to the reduction of the trustee's statutory compensation, the Fifth Circuit affirmed the bankruptcy court's determination that the trustee had not met his burden as to whether the bankruptcy court had abused its discretion.

Cite	***Port of Corpus Christi Auth. v. Sherwin Alumina Co., LLC (In re Sherwin Alumina Co., LLC),*** 952 F.3d 229 (5th Cir. 2020)
Business v. Consumer	Business
Category	Sales
Summary	In 1998, the Port of Corpus Christi Authority purchased an 1,100 acre parcel near Corpus Christi Bay in San Patricio County, Texas, adjacent to land owned by the Sherwin Alumina Company, together with an easement granting use and access to a private roadway on the Company's land known as La Quinta Road. Sherwin then filed under chapter 11. Sherwin's plan of reorganization proposed to sell real property in the bankruptcy estate "free and clear of all Liens, Claims, charges and other encumbrances." Sherwin filed a final proposed confirmation order the day of the confirmation hearing. The proposed confirmation order provided that the buyer would receive the property free and clear of all encumbrances, subject to a limited exception for permitted encumbrances. The Port's easement was not included in the exception. Later that day, the bankruptcy court held a hearing on the proposed plan and confirmation order, which the Port "attended" telephonically. During the hearing, Sherwin's counsel stated that the proposed order submitted earlier that day included "extensive modifications," but that Sherwin "d[id]n't believe that they are material in any real way." The court entered the order without objection. Sherwin sold its real property to Corpus Christi Alumina the same day the plan became effective. A month later, Corpus Christi Alumina sold the land and notified the Port that its easement had been extinguished. The Port then filed an adversary complaint with the bankruptcy court, collaterally attacking the confirmation order as procured by fraud, barred by state sovereign immunity, and a denial of due process for want of notice. The bankruptcy court rejected the Port's sovereign immunity and fraud claims, and the district court affirmed. On appeal from the district court, the Fifth Circuit found no Eleventh Amendment violation or basis for a fraud claim under § 1144. The dissenting judges took exception to the way the confirmation hearing was conducted, the alleged misrepresentations of debtor's counsel, and the lack of due process in taking of the easement.

Cite	***Trendsetter HR L.L.C. v. Zurich Am. Ins. Co. (In re Trendsetter HR LLC),*** 949 F.3d 905 (5th Cir. 2020)
Business v. Consumer	Business
Category	Proof of Claim
Summary	A worker's compensation provider ("Carrier") provided coverage to the Debtor from May 2011 to June 2015, at which point the Debtor sought coverage from a different carrier. The Bankruptcy Court allowed Carrier an unsecured claim totaling $7.6 million—including $5.7 million in unpaid invoices and $1.7 million in estimated future losses. The district court affirmed. On appeal, the Fifth Circuit, affirmed and held: (1) the Bankruptcy Court properly and intentionally made concurrent allowance for unpaid-invoices and future-losses claims; (2) under New York law, insurer had enforceable right to payment for unpaid invoices; (3) Bankruptcy Court did not clearly err in assessing insurer's future losses claims in amount of $4,674,629; (4) under New York law, insurer had enforceable contractual right to fee schedule write-down fees; and (5) Bankruptcy Court did not clearly err in determining that unconscionability doctrine did not apply under New York law to deprive insurer of enforceable claim for fee schedule write-down fees. Fifth Circuit ultimately held the bankruptcy court properly allowed Carrier's claim for unpaid fee schedule write-downs—intentionally allowing Carrier's unpaid invoices and future-losses claims.

Cite	***United States v. Chesteen (In re Chesteen),*** 799 F. App'x 236 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Affordable Care Act, Shared-Responsibility Payment, Excise Tax

Summary	Under the Affordable Care Act, Debtor owed a shared-responsibility payment ("SRP") of $695 that he failed to include in his chapter 13 plan. The federal government filed a proof of claim, denominating the amount owed as a priority excise tax on a transaction under § 507(a)(8)(E)(i). Debtor argued that the SRP was a penalty, not a tax, and therefore not a debt for which the Code required repayment. The bankruptcy court and the district court agreed with Debtor, finding the SRP was a penalty to deter citizens from living without health insurance, not a tax. The issue on appeal was whether the Patient Protection and Affordable Care Act's shared-responsibility payment, as effective in 2016, is entitled to priority treatment in bankruptcy as an "excise tax on a . . . transaction" under § 507(a)(8)(E)(i). The Fifth Circuit found that the SRP is not an excise tax as used in § 507(a)(8)(E)(i) because an excise tax is imposed on a discrete act, not on *inaction* for failure to obtain health insurance.

Cite	***Wal-Mart Stores, Inc. v. Parker (In re Parker),*** 789 F. App'x 462 (5th Cir. 2020)
Business v. Consumer	Consumer
Category	Judicial Estoppel, Property of the Estate
Summary	Debtor filed a workplace injury lawsuit post-petition which he failed to disclose on his schedules. Debtor completed his plan payments and received his discharge. Employer reopened the case arguing Debtor was judicially estopped from pursuing his personal injury claim against Employer for failing to disclose the claim in his bankruptcy filings. The bankruptcy court determined the elements of judicial estoppel were met, but ultimately declined to apply the doctrine for equitable reasons. Instead, the bankruptcy court ordered Debtor to turn over any recovery to the Trustee to be administered for the benefit of creditors. Employer appealed, and the district court certified the issue for direct appeal to the Fifth Circuit. The issue considered by the Fifth Circuit was whether the bankruptcy court erred in declining to apply judicial estoppel for equitable reasons, despite the fact that the elements of judicial estoppel were met, when the court ordered Debtor to turn over any recovery to Trustee to be administered for the benefit of creditors. The Fifth Circuit affirmed the bankruptcy court's holding. When a potential defendant argues that a debtor is estopped from bringing a lawsuit for failure to disclose it to the bankruptcy court, standard practice is that Trustee pursues the claim for the benefit of creditors. Here, however, the bankruptcy court did not abuse its discretion by allowing Debtor to pursue his claim and remit proceeds to the Trustee.

Cite	***Double Eagle Energy Serv., LLC. v. MarkWest Utica EMG, LLC,*** 936 F.3d 260 (5th Cir. 2019)
Business v. Consumer	Business
Category	Jurisdiction; Assignment of claims
Summary	Chapter 11 Debtor brought breach of contract action against Defendants alleging breach-of-contract claims were ones over which the court could exercise "related to" jurisdiction. After Debtor subsequently assigned these claims to one of its creditors, Defendants moved to dismiss, asserting: (1) claims assignment had destroyed the court's subject matter jurisdiction; and (2) the court also lacked personal jurisdiction over Defendants. The district court adopted report and recommendation of the United States Magistrate Judge, and granted Defendant's motion to dismiss. The Fifth Circuit held that: (1) assignment of state law breach-of contract claims did not destroy "related to" jurisdiction; and (2) court could exercise personal jurisdiction over United States residents named as Defendants on "related to" breach-of-contract claims asserted by debtor, despite Defendants' alleged lack of contact with forum state. Ultimately, the Fifth Circuit remanded the proceeding to district court to determine whether, in light of subsequent developments, it should exercise its discretion to dismiss claims. The Fifth Circuit reasoned that the "time-of-filing rule" is hornbook law. Therefore, if "related to" jurisdiction exists at the outset of a lawsuit, the court retains jurisdiction even if the basis for such jurisdiction subsequently disappears

Cite	***Dropbox, Inc. v. Thru, Inc. (In the Matter of Thru, Inc.),*** 782 F. App'x 339 (5th Cir. 2019)
Business v. Consumer	Business
Category	Interest
Summary	This case involved whether an appeal became equitably moot because the confirmed chapter 11 plan was substantially consummated and there were significant post-confirmation transactions. The Fifth Circuit affirmed the district court, finding that the appeal was properly dismissed as equitably moot because Debtor demonstrated that the Plan had progressed too far for the requested relief to be granted. The Fifth Circuit noted that reversal of the Plan would require third-party creditors to return distributions already paid, and, upset the expectation and reliance of third-party customers, vendors, and partners who entered into post-confirmation transactions

	with Debtor. The remaining issue that the Circuit reviewed was whether the district court erred in finding that interest at the federal judgment rate of 1.22% satisfied the cramdown requirements of § 1129(b) of the Bankruptcy Code. Appellant argued that the bankruptcy court should have applied the "prime-plus" formula endorsed by a plurality of the Supreme Court in *Till v. SCS Credit Corp*. The Fifth Circuit agreed with the bankruptcy court that the federal judgment rate was lower than the rate of inflation at the time of confirmation, but that it provided unsecured creditors the amount they would receive outside of bankruptcy. As such, the Fifth Circuit found no clear error in the bankruptcy court's choice of interest at the federal judgment rate.

Cite	***French v. Linn Energy, LLC (In re Linn Energy, LLC.),*** 936 F.3d 334 (5th Cir. 2019)
Business v. Consumer	Business
Category	Equitable Subordination
Summary	A former shareholder's estate filed claims against Debtor for failure to pay deemed dividends. Debtors objected and asserted that the claims should either be expunged or subordinated. The bankruptcy court subordinated the Estate's claims. The district court affirmed. The Estate appealed to the Fifth Circuit, arguing that the bankruptcy court erred in subordinating the Estate's claims under 11 U.S.C. § 510(b). The Fifth Circuit affirmed. The Court examined whether: (1) the nature of the Estate's interest made the Estate more like an investor or creditor; (2) did the Estate's claims pertain to securities of the debtor; and (3) whether the Estate's clams arise from the purchase or sale of a security of the Debtor. The Court's assessment was that the deemed dividends gave the Estate benefits normally reserved for equity investors. The Court also found the deemed dividend interest owned by the Estate was a security interest under the residual clause of the Code at § 101(49)(A)(xiv). The Court found that the Estate's claims were subject to a transaction that was part of a causal link leading to the alleged injury. *Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587 (5th Cir. 2019).

Cite	***Henry v. Educ. Fin. Serv. (In re Henry),*** 944 F.3d 587 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Arbitration; Discharge Injunction; Student Loans
Summary	A Chapter 13 debtor filed an adversary proceeding as a putative class action to recover against a student loan lender's alleged violation of

	discharge injunction. Lender moved to compel arbitration in accordance with arbitration clause in loan agreement. The United States Bankruptcy Court for the Southern District of Texas denied the motion to compel and certified its order for interlocutory appeal directly to the Fifth Circuit. The Fifth Circuit held that bankruptcy courts in the Fifth Circuit may decline to enforce arbitration clauses in proceedings seeking enforcement of the discharge injunction. Specifically, the Fifth Circuit noted that a bankruptcy court may decline to enforce arbitration clauses if two requirements are met: (1) the proceeding adjudicates statutory rights conferred by the Bankruptcy Code rather than the debtor's prepetition legal or equitable rights; and (2) requiring arbitration would conflict with the purposes of the Bankruptcy Code.

Cite	***Crocker v. Navient Solutions, LLC (In re Crocker),*** 941 F.3d 206 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Jurisdiction; Discharge Injunction
Summary	Prior to this case, the Chapter 7 Debtors— who had obtained a bar exam study loan and career training loan—received Chapter 7 discharges from other bankruptcy courts. Subsequently, their loan servicer ("Servicer") demanded payment from the Debtors. This case arose when Debtors brought putative class action against the Servicer seeking: (1) a declaratory judgment that their loans were discharged; and (2) an order holding Servicer in contempt for violating their discharge injunctions. Debtors alleged the Servicer had engaged in a scheme to subvert the Bankruptcy Code by intentionally disregarding the statutory discharge injunction. Servicer moved for summary judgment arguing the bankruptcy court had no jurisdiction to enforce discharge orders from another bankruptcy court and that the Debtors' loans were discharged dismissing all claims. On appeal, the Fifth Circuit held: (1) bankruptcy courts—other than the court that issued the discharge order triggering the statutory discharge injunction—could not enforce the injunction; and (2) the term "educational benefit," as used in section 523, does not include private educational loans. Specifically, the Court held that section 523(a)(8)(A)(ii) applies only to educational payments that are not initially loans but whose terms create a reimbursement obligation upon the failure of payment condition. As to jurisdiction, the court held that enforcement of a discharge injunction is limited to the originating bankruptcy court because the originating court "retains a unique expertise in interpreting its own injunctions and determining when they have been violated."

Cite	***Bonakdar v. Ramos (In re Ramos),*** 789 F. App'x 417 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Liens
Summary	Ramos filed an action to determine the validity of Appellant Mojtaba Bonakdar's lien on her home. Ramos asserted the lien was no longer valid because the statute of limitations had run on the loan. Bonakdar responded by alleging Ramos acknowledged the loan when she continued to make monthly payments after the loan matured, and, therefore the lien was not invalidated. The bankruptcy court entered a declaratory judgment finding Bonakdar had not sufficiently proved acknowledgment and therefore the lien was void due to limitations. The bankruptcy court held a trial on Ramos' complaint and determined that acknowledgement was its own cause of action that should have been pleaded as a counterclaim rather than as an affirmative defense. The bankruptcy court then determined that even if Bonakdar had properly pleaded his acknowledgement claim, he had not established the elements for acknowledgement. Under Texas law, a suit on a debt that is not commenced within four years of the time that the cause of action accrues is barred. Tex. Civ. Prac. & Rem. Code § 16.004(a)(3)). Texas law also provides, however, that limitations may be avoided by a written acknowledgment that meets certain prerequisites. The bankruptcy court's decision in Ramos' favor rested, in part, on Bonakdar's failure to show that "the amount of the obligation purportedly acknowledged could be readily ascertained."

Cite	***Life Partners Creditors' Tr. v. Cowley et al (In re Life Partners Holdings, Inc.),*** 926 F.3d 103 (5th Cir. 2019)
Business v. Consumer	Business
Category	FRCP 8; FRCP 9
Summary	Chapter 11 Trustee filed an adversary proceeding targeting executives and insiders. After it was filed, the bankruptcy judge abated all adversary proceedings pending confirmation of the Chapter 11 plan. The Debtor's plan created a Creditors' Trust and assigned it the claims asserted by the Chapter 11 trustee, among others. In the face of a motion to dismiss for failure to state a claim, the Trust argued that the Rule 8 pleading standard applied to the claims asserted. The bankruptcy judge agreed, but the district court applied Rule 9(b), which required a heightened pleading standard when alleging fraud, to the fraudulent transfer and negligent misrepresentation claims and dismissed them.

	On appeal, the Fifth Circuit noted that the district courts in this circuit are not in unanimity on this question. It found that the Creditors' Trust's fraudulent transfer claims allegations were sufficient under either the Rule 8 or Rule 9 standard and so sidestepped the issue. The Court also found that the equitable subordination, negligent misrepresentation, Texas Securities Act, and breach of fiduciary duty claims that were not based on fraud only needed to satisfy the Rule 8 standard. Ultimately, the Court reversed the district court's dismissal of the fraudulent transfer and negligent misrepresentation claims because the claims were adequately pled, but properly dismissed the preference, equitable subordination, Texas Securities Act, and breach of fiduciary duty claims.

Cite	***McBride v. Riley (In re Riley),*** 923 F.3d 433 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Employment; Fees
Summary	Debtor sought confirmation of Chapter 13 plan which proposed to pay her attorney, as an administrative expense of her estate: (1) the "no-look" attorney fee allowed by the district's new standing order; and (2) reimbursement of advances totaling $367 made by attorney to pay filing fee and other prepetition costs on behalf of debtor as part of his "no money-down" practice. The bankruptcy court confirmed the plan but found the attorney could not be reimbursed for advancement of fees. The district court affirmed the bankruptcy court on appeal. A Chapter 13 Debtor agreed to pay $2,150 for legal services, along with another $367 to reimburse expenses advanced to cover the filing fee, cost of a required credit counseling session, and cost of obtaining a credit report. Debtor's Counsel requested reimbursement of the $367 in expenses via Debtor's repayment plan—separate from his no-look attorney fee. The bankruptcy court denied Counsel's reimbursement request, ruling that under the district's standing order, Debtor's Counsel was entitled only to the no-look fee and could not make a separate reimbursement request. The district court affirmed. On appeal, Debtor's Counsel argued he was entitled to reimbursement under sections 503(b)(1) and 330(a)(4)(B). The Fifth Circuit affirmed in part and vacated in part, concluding that section 503(b)(1) did not apply because the expenses were not for preservation of the estate. Nevertheless, expenses could potentially be reimbursable under section 330(a)(4)(B), unless—as in this case—they are prohibited under the standing order.

Cite	***Nabors Offshore Corp. v. Whistler Energy II, LLC (In re Whistler Energy II, LLC),*** 931 F.3d 432 (5th Cir. 2019)
Business v. Consumer	Business
Category	Administrative Claims; Executory contracts and unexpired leases
Summary	Debtor contracted with a Company to run Debtor's drilling operations using Company's equipment. Two years later, the U.S. Bureau of Safety and Environmental Enforcement ordered Debtor to cease drilling operations following the death of a Company employee. Debtor entered bankruptcy and rejected the drilling contract. Company's equipment remained on the drilling platform until Company demobilized and removed its drilling equipment from the platform. The maintenance of the Company equipment and the subsequent demobilization was costly. Company asserted an administrative expense claim of nearly $7 million for maintaining drilling equipment and demobilizing the well. Debtor and others objected to the claim. The bankruptcy court found that Company failed to show all services provided were necessary to preserving the bankruptcy estate under § 503(b)(1)(A). Therefore, the bankruptcy court granted Company's motion in part and denied it in part, awarding an administrative priority claim in the amount of $897,024 and a general unsecured contract rejection damages claim in the amount of $6,070,902. The bankruptcy court held the majority of Company's claim amount was an unsecured rejection damages claim. Company appealed and the district court affirmed. On appeal, the Fifth Circuit ruled that for the Company's claim to command administrative expense priority, Company must show: (1) some inducement by the debtor, who knowingly and voluntarily accepted Company's services after entering bankruptcy; and (2) demonstrate that the expense benefited the bankruptcy estate. Ultimately, the Fifth Circuit found no error in the bankruptcy court's decision not to award administrative expenses related to demobilization of the platform and agreed that those actions did not benefit the estate.

Cite	***Okla. State Treasurer, Unclaimed Prop. Div. v. Linn Operating, Inc. (In re Linn Energy, LLC),*** 927 F.3d 862 (5th Cir. 2019)
Business v. Consumer	Business
Category	Proof of claim, Res Judicata Effect of Confirmed Plan
Summary	Debtor, an oil and gas company, filed a report with the court informing the Oklahoma State Treasurer ("Treasurer") that Debtor

	possessed unclaimed royalty payments owed to claimants in Oklahoma. Treasurer timely filed proofs of claim for "unknown/continent" amounts but did not file a turnover lawsuit. Treasurer also failed to object to or move for reconsideration of Debtor's confirmed plan that contained injunction, vesting, and discharge provisions that precluded Treasurer from seeking turnover of the unclaimed funds. Two months post-confirmation, Debtor objected to Treasurer's proofs of claim asserting that it was not liable for Treasurer's claims. Treasurer then filed a turnover action that was dismissed by the bankruptcy court on a 12(b)(6) motion because the claims violated the plan and were barred by *res judicata* and preemption. Treasurer appealed to the district court, which reversed the bankruptcy court's dismissal on the grounds that the unclaimed property never became part of the estate. Debtor appealed to the Fifth Circuit on the issue of whether the bankruptcy court's approval of the Plan and ensuing confirmation order constitute a final judgment that could not be collaterally attacked. The Fifth Circuit reversed the district court because Treasurer failed to participate in the bankruptcy case and object to or appeal the Plan's disposition of the unclaimed property.

Cite	***Pate v. Tow (In re Clark),*** 921 F.3d 566 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Proof of Claim
Summary	Two claimants filed untimely proofs of claim for child support arrearages. Allegedly, neither claimant received notice of the bankruptcy case or a summary of trustee's final report. Trustee objected. The bankruptcy court allowed the claims as general unsecured claims—not first-priority claims. Claimants moved for reconsideration. The motion for reconsideration was granted in part—allowing claims as tardily-filed claims entitled to second-priority distribution. On appeal, the district court affirmed. The Fifth Circuit affirmed, holding: (1) the Claimants were not creditors of the Debtor because under Illinois law, the Illinois Department of Healthcare and Family Services has the right to enforce Claimants' child support obligations against Debtor; and (2) Trustee's amendment to his final report did not restart the ten-day filing deadline for first-priority proofs of claim.

Cite	***Penn v. Viegelahn (In re Penn),*** 779 F. App'x 278 (5th Cir. 2019)

Business v. Consumer	Consumer
Category	Chapter 13 Plans; Appeals
Summary	Penn submitted a plan to the bankruptcy court that included a "nonstandard" provision "reserv[ing] [her] right to file [a] relevant motion to retain [a] tax refund should a special need arise, to the extent said potential refund is not disposable income." Penn then filed a motion to retain her entire 2017 refund to use for home repairs. The Chapter 13 Trustee objected to the plan on several grounds, including that the plan included a nonstandard provision contrary to the form plan. The bankruptcy court told Penn that, pursuant to the Western District's form plan, she could not retain her full refund and continue with her Chapter 13 proceedings. The court offered Penn several alternatives, including modifying the plan to allow her to keep more monthly income for home repairs, dismissing her petition to allow her to use her tax refund as she saw fit, or converting her case to a Chapter 7. Penn declined the continuance and asked the court to enter orders denying the motion to retain the refund, denying the motion to confirm the plan, and dismissing the bankruptcy petition. The bankruptcy court entered the orders as Penn requested. With the case dismissed, the bankruptcy court had no occasion to address the Trustee's other objections to the proposed plan. The Fifth Circuit noted that after the bankruptcy court ruled on the tax return issue, it dismissed the petition *at Penn's request*. The Fifth Circuit found that by requesting an immediate dismissal, Penn prevented the bankruptcy court from addressing the Trustee's remaining objections to other aspects of her proposed plan. As a result, were the Fifth Circuit to reach the merits and conclude that the bankruptcy court erred in denying the request to retain the entire tax refund, the bankruptcy court could deny confirmation on remand based on one of the Trustee's other objections. Accordingly, the Fifth Circuit found that the appeal was not final and the district court lacked jurisdiction to hear the appeal.

Cite	***Permula Corp. v. Pacheco (In re Pacheco),*** 788 F. App'x 288 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Appeals

Summary	Creditor filed an adversary proceeding against Debtor for nondischargeability of a debt. The bankruptcy court dismissed the case after Creditor failed to timely amend its complaint, retain counsel, file a pre-trial order, and file proposed findings of fact and conclusions of law. Creditor's counsel filed a timely notice of appeal in the district court, but the district court granted Debtor's motion to dismiss the appeal because Creditor failed timely file a brief. The Fifth Circuit upheld the dismissal for failure to meet the briefing deadline.

Cite	***Phan v. Truong (In re Truong),*** 789 F. App'x 420 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Homestead Exemption
Summary	Creditor loaned Chapter 7 Debtors funds to pay off the mortgage on their homestead. Creditor received a state court judgment against Debtors, which Creditor claimed was awarded for non-payment of the mortgage payoff funds advanced to Debtors. The final judgment stated it was on a "claim for breach of contract." Debtors denied that any loan documents were executed with Creditor. The state court judgment did not award Creditor an interest in the homestead and was unrecorded. The bankruptcy court overruled Creditor's objection to Debtors' homestead exemption. The district court affirmed. Creditor appealed to the Fifth Circuit, arguing that his judgment was enforceable against Debtors' homestead under § 41.001 of the Texas Property Code. The Fifth Circuit found the judgment was not enforceable against Debtors' homestead because it was not an "encumbrance properly fixed on homestead property"—Creditor did not obtain an encumbrance on the property in the form of a mortgage of lien, nor did Creditor obtain a transfer of mortgage or lien.

Cite	***Rai v. Henderson (In re VCRI, L.L.C.),*** 789 F. App'x 992 (5th Cir. 2019)
Business v. Consumer	Business
Category	Appeals

Summary	Chapter 7 trustee hired an auctioneer to sell several parcels of real property. The Debtor's managing member objected, arguing that the auctioneer fee was too high. After conducting an evidentiary hearing on the auction process, the sale was approved over the managing member's objection. The bankruptcy court found the sale was made to good faith purchasers as defined in § 363(m). Managing member did not obtain a stay of the sale, so the chapter 7 trustee conveyed the property to the winning bidder. On appeal to the district court, the district court found that the bankruptcy court's ruling under § 363(m) was proper whether a de novo or a clear error standard applied. The Fifth Circuit held that a bankruptcy appeal is moot under § 363(m)—and must be dismissed—if the challenging party failed to obtain a stay of a sale order and the purchaser bought the debtor's assets in good faith.

Cite	***Reach, Inc. v. Smith (In re Alabama-Mississippi Farm, Inc.),*** 791 F. App'x. 466 (5th Cir. 2019)
Business v. Consumer	Business
Category	Appeals
Summary	An Order was entered by bankruptcy court disallowing a secured creditor's proof of claim and denying its request for injunction to prevent sale of debtor's farm in which it asserted a lien interest. Creditor appealed but did not obtain a stay pending appeal in order to prevent the sale from being consummated. The district court dismissed appeal as statutorily moot. Creditor appealed. Fifth Circuit held that collateral attack on approved and consummated section 363 sale was statutorily moot under section 363(m), but that statutory mootness did not extend to subsequent appeal of order denying leave to file late secured proof of claim. The Court held that statutory mootness could extend to settlements and distribution of proceeds if record demonstrated terms were "mutually dependent" on sale. The Court declined to dismiss appeal concerning late-filed proof of claim as moot under section 363(m) because there was no evidence that distribution of sale proceeds was a critical or "mutually dependent" condition for sale. Rather, the Court dismissed the subsequent appeal as untimely.

Cite	***Rose v. Select Portfolio Serv., Inc.,*** 945 F.3d 226 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Automatic Stay
Summary	Debtor sought a declaratory judgment that the statute of limitations had expired on Defendants' power to foreclose on certain real property. Over the course of the several years, the Defendants sent multiple

	Notices of Acceleration, each setting a new date for the foreclosure sale. Each time, Debtor filed for bankruptcy protection days before the scheduled sale, thwarting Defendants' attempts to foreclose. On appeal, the Fifth Circuit noted that the automatic stay is limited to 30 days for debtors who have filed for bankruptcy within the past year, but the majority view holds that the stay only terminates as to actions against the debtor, not actions against the bankruptcy estate. The Fifth Circuit agreed with majority view and found that the stay did not terminate as to the subject property. Therefore, the automatic stay tolled the statute of limitations and it had not expired.

Cite	***Rosbottom v. Schiff (In re Rosbottom),*** 770 F. App'x 242 (5th Cir. 2019)
Business v. Consumer	Procedure
Category	Due Process
Summary	An incarcerated Debtor received permission to appear telephonically at a hearing on the Chapter 11 Trustee's Motion for Final Decree. Due to a security concern at the federal prison, Debtor could not attend telephonically, but the court permitted him to access the hearing transcript and file a post-hearing memorandum. Thereafter, the court entered its Order Granting Motion for Final Decree. As a result, various motions filed by Debtor were moot. The district court affirmed. Debtor appealed to the Fifth Circuit, arguing that the bankruptcy court violated his due process rights by excluding his evidence by operation of the standing order regarding telephone appearances that prohibited telephone presentation of evidence. The Court affirmed. The rule prohibiting telephonic presentation of evidence does not facially violate due process. Here, Debtor failed to seek other legal process to appear at the hearing.

Cite	***Russell v. Russell (In re Russell),*** 941 F.3d 199 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Authority

Summary	A Chapter 7 Debtor's ex-wife filed a proof of claim for an amount awarded to her by an arbitrator. Debtor objected on ground that his prepetition payment to his ex-wife's attorney had allegedly satisfied the debt. The bankruptcy court entered an order sustaining Debtor's objection. Debtor's ex-wife appealed. The district court reversed and remanded. On appeal to the Fifth Circuit, the Court affirmed the district court holding: (1) attorney who had filed motion to withdraw from representing creditor did not have actual authority to collect, on creditor's behalf, the amount awarded to creditor by the arbitrator; and (2) even if the creditor's attorney was still technically the creditor's attorney after filing the motion to withdraw from representation, attorney did not have apparent authority to collect, on creditor's behalf, amount awarded to creditor by arbitrator. The Court reasoned that because Debtor's payment to his ex-wife's attorney was made contrary to the ex-wife's instructions and contrary to the terms of an arbitration award, the ex-wife's attorney had no apparent authority.

Cite	***Smith v. Dynasty Grp., Inc. (In re Heritage Real Estate Inv., Inc.),*** 783 F. App'x 403 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Avoidance
Summary	Chapter 7 Debtor failed list a property on its Schedule A. Post-petition, a third-party recorded a quitclaim deed purporting to show that Debtor conveyed the property to the third-party seven years pre-petition. Trustee filed an adversary proceeding to avoid the quitclaim deed under § 544. The bankruptcy court ruled in favor of Trustee, holding that: (1) the quitclaim deed was invalid on its face under Mississippi law because it was signed by the purported grantee, rather than the purported grantor; (2) even if the deed were valid, the Trustee had the power under § 544(a)(3) as a hypothetical bona fide purchaser to avoid the quitclaim deed; and (3) even if the deed were valid and the Trustee lacked the power to avoid the quitclaim deed, the purported transfer was "void" and without legal effect because it amounted to an attempted post-petition transfer of property in violation of the "automatic stay" provided by § 362(a)(3). The district court affirmed. The third-party appealed. The Fifth Circuit examined whether the Trustee —who was awarded the status of a hypothetical bona fide purchaser of the property when Debtor files for bankruptcy—had the power to obtain legal title to the property under Mississippi law despite the 2008 quitclaim deed. Affirming the

	bankruptcy court and district court, the Fifth Circuit held that the Trustee was a bona fide purchaser under § 544.

Cite	***Thomas v. Dep't of Educ. (In re Thomas),*** 931 F.3d 449 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Student Loans
Summary	Chapter 7 Debtor—an unemployed sixty-year-old with diabetic neuropathy—took out two student loans for education five years before filing for bankruptcy. Debtor tried unsuccessfully to work at numerous different jobs. While in bankruptcy, Debtor brought an adversary proceeding against the Department of Education seeking a determination that her student loan debt was dischargeable as an "undue hardship" claim. Applying the test from *In re Gerhardt*, the bankruptcy court concluded that Debtor failed to show she was "completely incapable of employment now or in the future." As such, the bankruptcy court found that Debtor's student loans were non-dischargeable. The district court affirmed. Debtor appealed to the Fifth Circuit on the issue of whether the bankruptcy court erred when it failed to find, under the second prong of *Brunner/Gerhardt*, that Debtor would be unable to maintain employment and be unlikely to repay her debt because of external factors (i.e., Debtor's deteriorating diabetic conditions and the costs associated with it). The Fifth Circuit affirmed. It held that there was no evidence that Debtor's circumstances were likely to persist throughout a significant portion of the loan repayment period.

Cite	***Ultra Petroleum Corp. v. Ad Hoc Comm. Of Unsecured Creditors of Ultra Res., Inc. (In re Ultra Petroleum Corp.),*** 943 F.3d 758 (5th Cir. 2019)
Business v. Consumer	Business
Category	Impairment
Summary	Debtors—oil and gas holding and exploration companies—became solvent after filing for bankruptcy. Debtors had significant pre-petition debt obligations, including $1.46 billion of unsecured notes issued under an agreement that provided a make-whole premium and post-petition interest at a contractual default rate. Debtors proposed a plan that would pay the Noteholders the outstanding principal on Debtors' note, pre-petition interest at a rate of 0.1%, and post-petition interest at the federal judgment rate. Debtors argued that the proposed plan treatment rendered Noteholders unimpaired. Noteholders objected, arguing they were impaired because the plan did

	not provide for payment of the make-whole premium and additional post-petition interest at contractual default rates. The bankruptcy court denied the objection and certified the following questions for direct appeal to the Fifth Circuit: (1) Were the noteholders impaired by a plan that paid their claim in full pursuant to requirements of the Code, but failed to include payment of additional funds included in the parties' pre-petition loan documents?; and (2) Should Noteholders' claims for the make-whole amount and additional post-petition interest at contractual default rates be awarded under the "solvent-debtor" exception? The Fifth Circuit reversed in part, vacated in part, and remanded. Alteration of rights by the Code is not impairment under § 1124(1); therefore, Noteholders were not impaired under a plan that altered their contractual rights but paid them in full with interest. The Fifth Circuit remanded the issue of applicability of the "solvent-debtor exception" to the bankruptcy court.

Cite	***UMB Bank, Nat. Ass'n v. Linn Energy (In re Linn Energy),*** 927 F.3d 350 (5th Cir. 2019)
Business v. Consumer	Business
Category	Interest
Summary	Prepetition lenders' agent filed a motion for entry of order directing payment of post-petition default interest, as allegedly required by terms of debtors' confirmed Chapter 11 plan. The credit agreement governing the loans stated that upon an event of default, including a voluntary reorganization, all outstanding loans would bear default interest at a rate of 2% above the applicable base rate. The bankruptcy court entered a cash collateral order that reserved the lenders' right to seek default interest, but the lenders did not assert that right. Subsequently the lenders filed proofs of claims that included default interest. The bankruptcy court confirmed a plan that stated no default interest would accrue. Nevertheless, the lenders moved for $31 million in default interest. The bankruptcy court denied the motion, and the district court affirmed. The bankruptcy court denied the motion, and lenders' agent appealed. The district court affirmed The lenders argued that while one provision of the plan prohibited default interest, another allowed the lenders' claims "notwithstanding any other provision of this plan to the contrary." The Fifth Circuit concluded that the plain language of the plan determined the outcome and held the prepetition lenders were not entitled to default interest on their claims pursuant to the unambiguous language of Debtors' confirmed Chapter 11 plan.

Cite	***Whitlock v. Lowe (In re DeBerry),*** 945 F.3d 943 (5th Cir. 2019)
Business v. Consumer	Consumer
Category	Avoidance
Summary	In the underlying case, the Debtor's non-filing spouse opened a joint bank account with the Debtor's sister in law, Whitlock, and deposited $275,000 withdrawn from the DeBerry's joint account. Three days later, Debtor's non-filing spouse removed her name from the bank account, leavingthe account solely in Whitlock's name. One month later, Whitlock transferred $232,000 of the initial deposit to two accounts—one account was held solely by Debtor's non-filing spouse, and the other account was owned by Debtor's business. The chapter 7 trustee sought to avoid and recover these funds from Whitlock as fraudulent transfers. The bankruptcy court held, in relevant part, that Whitlock was an initial transferee of an avoidable transfer subject to recovery under § 550(a)(1), and ordered that Whitlock was strictly liable for the transfers. The district court affirmed. Whitlock appealed. On appeal, the Fifth Circuit framed the issue as "whether the trustee can *double*-recover funds that were already returned" in contravention of the single satisfaction rule under § 550(d). The Fifth Circuit determined that allowing the Trustee to recover funds from Whitlock that she had already transferred to the non- filing spouse and Debtor's business would result in a windfall for the estate. Specifically, the Court stated: "once the fraudulently transferred property has been returned, the bankruptcy trustee cannot 'recover' it again under § 550(a)." In arriving at its decision, the Court analogized to other circuits which have resolved similar issues under either: (1) § 550(d)'s single-satisfaction rule, or (2) the court's equitable powers. Moreover, the Court reasoned: "if the bankruptcy estate receives prepetition repayment of fraudulent transfers, then the estate, at filing, is in the same position it would have been in notwithstanding the transfers." In its conclusion, the Court stated that because Whitlock received fraudulently transferred funds, she had an obligation to return those funds to the Debtor for the benefit of his creditors. Moreover, Whitlock could satisfy her obligation by returning funds pre-petition. The Court did not address how Whitlock's transfer of funds to accounts held solely by the Debtor's non-filing spouse and the Debtor's separate entity constituted a return of property to the Debtor's estate. Nevertheless, the Court vacated and remanded the decisions of the district court and bankruptcy court. The Trustee's request for rehearing was later denied.

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