

## **Introduction for Bankruptcy Evidence Manual 2024-2025 Edition**

The following recent cases of interest are included in this latest edition.

### **Volume I**

#### **The issue of res judicata (claim preclusion) often arises in bankruptcy litigation.**

§ 2:6: The Bankruptcy Court in *In re Jardine*, 647 B.R. 224 (Bkrcty.D.Idaho 2022), held that where in a reopened chapter 7 case, due to debtor’s timely objection to creditor’s claim, the claim is not deemed allowed under § 502(a) and therefore is not entitled to preclusive effect.

§ 2:14: The Eleventh Circuit in *In re Bozeman*, 57 F.4th 895 (11th Cir. 2023), held that the “antimodification” provision § 1322(b)(2) prevailed over the res judicata effect of the final order, confirming the debtor’s chapter 13 plan.

§ 2:14: The Bankruptcy Court in *In re Bowman*, 649 B.R. 541 (Bkrcty.N.D.Cal. 2021), held that the res judicata effect of a chapter 13 plan confirmation which did not provide for creditors secured tax lien, did not bar creditor from enforcing its lien.

#### **The issue of collateral estoppel (issue preclusion) often arises in bankruptcy litigation.**

§ 3:5: The Ninth Circuit BAP in *In re Rodriguez*, 649 B.R. 773 (9th Cir.BAP 2023), held that pursuant to § 523(a)(19) collateral estoppel applied to state court judgment against chapter 7 debtor for violation of Nevada securities laws.

§ 3:5: The Fifth Circuit in *Matter of Amberson*, 73 F.4th 348 (5th Cir. 2023), held that prior state arbitration award entitled to collateral estoppel effect in § 523 proceeding.

§ 3:13: The Bankruptcy Court in *Matter of Jones*, 648 B.R. 371 (Bkrcty.D.Neb. 2022), held that prior state court default judgment for more than \$400,000 the result of a discovery sanction against chapter 7 debtor was “fully litigated” for collateral estoppel purposes.

§ 3:16: The Bankruptcy Court in *In re Uhls*, 653 B.R. 154 (Bkrcty.S.D.Ill. 2023), held that state court default judgment against chapter 7 debtor could not be accorded collateral estoppel effect in § 523 proceeding for fraud and larceny because issues were not identical in state and § 523 proceeding.

**The issue of judicial estoppel often arises in bankruptcy litigation.**

§ 6:5: The Bankruptcy Court in *In re Foufas*, 650 B.R. 732 (Bkrcty.S.D.Fla. 2023), held that judicial estoppel prohibited chapter 7 debtor from asserting that assets of trust he created were property of the estate.

§ 6:6: The Fifth Circuit in *Matter of Imperial Petroleum Recovery Corp.*, 84 F.4th 264 (5th Cir. 2023), held that plaintiffs were not judicially estopped from claiming that debtor's property was worth more than the value debtor assigned to it in the bankruptcy petition.

§ 6:6: The Ninth Circuit BAP in *In re Groves*, 652 B.R. 104 (9th Cir.BAP 2023), held that secured creditor was not judicially estopped from asserting its lien rights against nondebtor business owned by chapter 13 debtor.

§ 6:6: The Bankruptcy Court in *In re Kant*, 647 B.R. 740 (Bkrcty.D.Neb. 2022), held that judicial estoppel did not apply based on chapter 7 debtor's prior statements that state court suit was an action in rem.

**Although less common than res judicata or collateral estoppel, the Rooker-Feldman doctrine also arises in bankruptcy litigation.**

§ 8:6: The Bankruptcy Court in *In re Times Square JV LLC*, 648 B.R. 277 (Bkrcty.S.D.N.Y. 2023), held that the Rooker-Feldman doctrine did not preclude debtor's motion to reject license agreement because of a non-final pre-petition state court preliminary judgment preventing the debtor from terminating the license agreement.

§ 8:12: The District Court in *SEC. Nat. Bank of Sioux v. Welte Trust*, 646 B.R. 822 (N.D.Iowa 2022), held that where Rooker-Feldman issue is difficult, the court will decide preclusion issue under more straight forward principles of res judicata, without first resolving the issue under Rooker-Feldman.

**The issue of judicial notice often arises in bankruptcy litigation.**

§ 201:8: The Bankruptcy Court in *In re Hamilton*, 651 B.R. 499 (Bkrcty.D.S.C. 2023), held that in denying creditor’s motion for relief from the automatic stay, the court took judicial notice that “market values for real estate in the Charleston and its surrounding areas have increased significantly since 2018.”

**The issue of receipt of mail often arises in bankruptcy litigation.**

§ 301:9: The Bankruptcy Court in *In re Jafroodi*, 651 B.R. 13 (Bkrcty.C.D.Cal. 2023), held that mailings of summons and complaint to debtor at outdated address failed to satisfy due process.

**Presumptions and the allocation of the burden of proof often arises in bankruptcy litigation.**

§ 301:24: The Fifth Circuit in *Matter of Highland Capital Management, L.P.*, 74 F.4th 361 (5th Cir. 2023), held that § 1109(b) granting parties in interest the right to be heard in chapter 11 cases does not confer appellate standing.

§ 301:45: The Bankruptcy Court in *In re Maldonado*, 646 B.R. 917 (Bkrcty.D.Utah 2022), held that chapter 13 debtors not allowed to reopen their chapter 13 case to list undisclosed cause of action to avoid possible judicial estoppel effects of their non-disclosure.

**The application of the Fifth Amendment privilege against self-incrimination often arises in bankruptcy litigation.**

§ 501:35: The Bankruptcy Court in *In re Kwok*, 653 B.R. 480 (Bkrcty.D.Conn. 2023), held that stay of order compelling production of individual chapter 11 debtor of documents to trustee was not warranted despite pending criminal inquiries against the debtor.

**The application of privileges is very important in bankruptcy litigation.**

§ 501:18: The Bankruptcy Court in *In re Sam Industrias S.A.*, 653 B.R. 196 (Bkrcty.S.D.Fla. 2023), the court held that U.S. attorney-client privilege law applied in chapter 15 case ancillary to Brazilian main case, to foreign representative’s motion to

compel production of documents from American lawyer.

§ 501:37: The Bankruptcy Court in *In re Cross*, 653 B.R. 362 (Bkrcty.E.D.Tex. 2023), held that withdrawal of chapter 7 debtors Fifth Amendment privilege against self-incrimination invoked throughout discovery in order to later defend against a motion for summary judgment would not be allowed.

§ 501:38: The Bankruptcy Court in *In re Kwok*, 653 B.R. 480 (Bkrcty.D.Conn. 2023), held that “required records” exception to Fifth Amendment privilege against self-incrimination applied to chapter 11 debtor.

**The issue of qualification of witnesses may arise in bankruptcy litigation.**

§ 601:1: The Bankruptcy Court in *In re Allen*, 653 B.R. 895 (Bkrcty.N.D.Ill. 2023), held that Illinois’ Dead Man’s Act, did not apply in § 523(a)(6) adversary proceeding.

§ 609:3: The Bankruptcy Court in *In re Beach*, 651 B.R. 359 (Bkrcty.E.D.Wis. 2023), held that evidence of convictions acknowledged by chapter 7 debtor that were more than 10 years old and not involving dishonesty, were given little weight in § 523(a)(2)(B) action.

**The admissibility of opinions and of expert testimony often arise in bankruptcy litigation.**

§ 701: The Ninth Circuit BAP in *In re Curiel*, 651 B.R. 548 (9th Cir.BAP 2023), held that debtor’s bald declaration of future value failed to establish her expertise to value her properties in five years.

§ 702:2: The Bankruptcy Court in *In re Levesque*, 653 B.R. 127 (Bkrcty.D.S.C. 2023), held that expert witness did not have to be a member of various appraisers’ associations or have accreditation or certification in business valuations to testify as an expert under Rule 702.

§ 702:2: The Bankruptcy Court in *In re Levesque*, 653 B.R. 127 (Bkrcty.D.S.C. 2023), held that opinion testimony that draws a legal conclusion from the facts is generally inadmissible.

§ 702:3: The Bankruptcy Court in *In re Celsius Network, LLC*, 655 B.R. 30 (Bkrcty.S.D.N.Y. 2023), held that valuation report written by artificial intelligence was not reliable and not admissible under Rule 702.

## INTRODUCTION

§ 702:3: The Bankruptcy Court in *In re Jackson*, 653 B.R. 1 (D.Conn. 2023), held that attorney’s opinions could not be considered to be based on sufficient facts or data and were not admissible as expert opinion under Rule 702.

**The application of the hearsay rules often arises in bankruptcy litigation.**

§ 801:13: The Bankruptcy Court in *In re Bradley*, 650 B.R. 232 (Bkrcty.D.S.C. 2023), held that audio file of chapter 7 debtor’s testimony at meeting of creditors was non-hearsay and admissible as both substantive evidence much as well as for impeachment.