2025 Bankruptcy Code Manual Highlights

SUPREME COURT:

§ 524(e)

Section 524(e) of the Code provides that when a debtor's debts are discharged, the liability of other entities on those debts are unaffected. The Supreme Court resolved a circuit split, holding that the Bankruptcy Code does not authorize a bankruptcy court to approve, as part of a Chapter 11 plan, a release and injunction that extinguishes claims against non-debtor third parties without the consent of affected claimants, as this would, in effect, extend the benefits of the bankruptcy discharge to non-debtors. Harrington v. Purdue Pharma L. P., 603 U.S. 204, 227, 144 S. Ct. 2071, 2088, 219 L. Ed. 2d 721, 73 Bankr. Ct. Dec. 159, 2024 Daily Journal D.A.R. 5818, 30 Fla. L. Weekly Fed. S 451, 2024 WL 3187799 (2024).

§ 544(b)

The Supreme Court has granted certiorari in a Tenth Circuit case, Miller v. United States, 71 F.4th 1247, 131 A.F.T.R.2d 2023-2196, 72 Bankr. Ct. Dec. 164, 2023 WL 4190456 (10th Cir. 2023), cert. granted, 144 S. Ct. 2678, 219 L. Ed. 2d 1297, 2024 WL 3089529 (2024), to decide whether the trustee may avoid a debtor's tax payment to the United States under § 544(b) even though no actual creditor could have obtained relief outside bankruptcy under the state fraudulent-conveyance law that applied.

§ 1109(b)

Section 1109(b) of the Code addresses which stakeholders can participate, and to what extent, in reorganization proceedings. It provides that a "party in interest" has standing to appear and be heard on any issue in a Chapter 11 case, which means the party must have a financial or legal interest in the outcome of the proceedings. The Supreme Court ruled that an insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may raise and be heard on any issue in a Chapter 11 case, including an objection to a proposed plan of reorganization. Truck Ins. Exch. v. Kaiser Gypsum Co., Inc., 602 U.S. 268, 144 S. Ct. 1414, 219 L. Ed. 2d 41, 2024 Daily Journal D.A.R. 4907, 30 Fla. L. Weekly Fed. S 230, 2024 WL 2853106 (2024).

CIRCUIT COURTS:

§ 301(a)

The Court of Appeals for the Ninth Circuit held that § 301(a) does not preclude the bankruptcy court from relying on a presumption of eligibility established by the debtor's certification to determine that the petition filing has indeed commenced a case. Nor does § 301(a) expressly require that the filing party must "actually" be a debtor or must be a "bona fide" debtor or that the court must verify the debtor's eligibility. In re Powell, 119 F.4th 597, 604, 73 Bankr. Ct. Dec. 221, 2024 Daily Journal D.A.R. 9489, 2024 WL 4352615 (9th Cir. 2024) (Chapter 13 filing).

§ 303(i)(2)

The Court of Appeals for the Eighth Circuit, explaining that federal courts will look to state tort law principles in determining an issue such as bad faith, held, however, that the proper remedy under § 303(i)(2) for a bad faith filing is a (fact-intensive) question of *federal* law, and some state law remedies might be beyond what a bankruptcy court should award. Stursberg v. Morrison Sund PLLC, 112 F.4th 556, 565, 2024 WL 3768511 (8th Cir. 2024).

§ 727(a)(2)

Addressing the requirement for loss of a discharge under § 727(a)(2) of "actual intent" to hinder, delay, or defraud a creditor, the Court of Appeals for the Sixth Circuit held that there must be evidence that the debtor acted with the specific intent to make it more difficult for the trustee to facilitate creditors' collection of debts from the estate. In re Wylie, 119 F.4th 1043, 134 A.F.T.R.2d 2024-5934, 74 Bankr. Ct. Dec. 02, 2024 WL 4553297 (6th Cir. 2024). The court found no intent to hinder here when the debtors, through income tax returns filed postpetition, sought to apply overpayments of federal and state income tax to future income tax liabilities instead of receiving refunds. The court credited the debtors' testimony that their refund elections were meant to make sure that future taxes were in fact paid.

§ 1123(b)(3)

The Court of Appeals for the Fifth Circuit has ruled that a plan's inclusion of settlement-indemnity under § 1123(b)(3)(A) cannot be used when § 502(e)(1)(B) clearly disallows the underlying claims and invalidates the related pre-petition indemnity. In re Serta Simmons Bedding, L.L.C., No. 23-20181, 2024 WL 5250365, at *21 (5th Cir. Dec. 31, 2024).

OTHER COURTS:

§ 727(a)(6)

Section 727(a)(6) of the Code authorizes the bankruptcy court to deny a discharge to a debtor in either of two related circumstances. The first such situation is when the debtor refuses to obey any lawful order of the court. A bankruptcy court in

the Tent Circuit held that a party objecting to a debtor's discharge for failure to adequately explain any loss of assets bears the burden of proving that a loss of assets occurred; the burden then shifts to the debtor to satisfactorily explain that loss. In re Link, No. 21-10221-M, 2024 WL 4874916, at *8 (Bankr. N.D. Okla. Nov. 22, 2024).

§ 1112(b)(4)(C)

A bankruptcy court in the Fifth Circuit has ruled that a Chapter 11 debtor's failure to maintain appropriate insurance may create "cause" to convert or dismiss the case under § 1112(b)(4)(C). The debtor had already suffered an uninsured fire loss while the bankruptcy proceeding was pending, and a certificate of property insurance showed a $100,000 limit to losses on personal property, business income, and extra expense. However the debtor's schedules showed that the debtor had office furniture, fixtures, and equipment worth over $46,000, thus risking a loss to the estate.