# 2025 HIGHLIGHTS

*The Law of Debtors and Creditors* has now been presented for three years as a soft-bound text in three volumes that are updated annually, and with this edition we welcome a new co-author Francesco Mazzotta. This edition has been substantially revised, with chapters undergoing review by the three co-authors, each focusing on specific areas of the relevant law.

This 2025 edition features developments in caselaw, legislation and rules, including Supreme Court decisions in this last term.

**Chapters 1-9**. Significant updates in nonbankruptcy law and practice, in these opening chapters of the text, include:

*Chapters 1-3*: Added citations to Pennsylvania statutes and/or case law. Removed case law that has been overruled or abrogated.

*Chapter 4*: Statutory sections of Truth in Lending Act and Regulation Z, as well as the Official Interpretations, were updated to provide precise location of cited text. Case law interpreting Regulation Z and the Official Interpretations were added. Some paragraphs were reworded for ease of reading.

*Chapter 5*: Removed case law that has been overruled or abrogated. In § 5:49, discussion of cases have been removed where caselaw was abrogated by *Henson v. Santander Consumer USA, Inc.*, 582 U.S. 79 (2017), which clarified that the FDCPA's definition of 'debt collector' does not include individuals and entities who regularly purchase debts originated by someone else and then seek to collect those debts for their own account. Discussion of cases has also been removed where the caselaw was abrogated by *Obduskey v. McCarthy & Holthus LLP*, 486 U.S. 466 (2019), holding that those who engage in only nonjudicial foreclosure proceedings are not debt collectors under the FDCPA.

*Chapter 6*: Added specific citations to Pennsylvania Rules of Civil Procedure for judicial debt collection.

*Chapter 7*: In response to the promulgation of a new UCC Article 12 (addressing digital assets including cryptocurrency) and related changes in Article 9, which have now been adopted in a majority of jurisdictions, this edition introduces a new chart of methods of perfection of security interests, while retaining the old chart for reference in non-adopting jurisdictions.

**Chapter 10 et seq.**, the bankruptcy-related chapters:

Numerous monetary amounts that are subject to automatic adjustment every three years pursuant to 11 U.S.C.A. § 104 were adjusted effective April 1, 2025. The next triennial adjustment for inflation pursuant to 11 U.S.C.A. § 109(e) will occur on April 1, 2028. Resulting changes in the references to these amounts have been made throughout the text of this edition.

Two changes in amounts went beyond the triennial adjustments, as the eligibility requirements for subchapter V of Chapter 11 and Chapter 13 returned to pre-CARES Act limits. The eligibility threshold to elect treatment of the case under subchapter V is now limited by section 101(51D) to businesses with debts of not more than $3,424,000. In Chapter 13, there are again separate limits on the amount of secured and unsecured debt that can be owed by an individual seeking relief under Chapter 13. To be eligible, on the date the petition is filed, the debtor must have "noncontingent, liquidated, unsecured debts" of less than $526,700 and "noncontingent, liquidated secured debts" of less than $1,580,125.

Some Federal Rules of Bankruptcy Procedure were revised, effective December 1, 2024, including Rule 1007(b)(7), which was amended to require a debtor to submit the course certificate from the debtor education requirement in section 109(h) of the Bankruptcy Code. This requirement is related to the abrogation of the former Official Form 423 that had been used by the debtor to show completion of the required pre-bankruptcy course. Conforming amendments

were made to the following rules by replacing the word "statement" with "certificate": Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2).

Also effective December 1, 2024, Rule 7001(a) was amended to exempt from the list of adversary proceedings "a proceeding by an individual debtor to recover tangible personal property under § 542(a)." The drafters' comment that "[a]n individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted." *City of Chicago v. Fulton*, 141 S. Ct. 585, 592–95 (2021), by requiring compliance with the more elaborate procedures applicable to adversary proceedings, may be too time-consuming for such a debtor, who can now proceed by motion to require turnover of such property under subsection 542(a), triggering the procedures of Rule 9014.

Important decisions concerning bankruptcy-related exemptions include *In re Masingale*, 108 F.4th 1195 (9th Cir. 2024). The Chapter 11 case had been converted to Chapter 7, and the debtors moved to require the trustee to abandon residential real property that had been claimed as exempt in the Chapter 11 phase at "100% of fair market value." No party in interest had objected during the 30-day period under Rule 4003(b). The Bankruptcy Court had denied the abandonment motion, approved the Chapter 7 trustee's sale of the homestead, and limited the exemption to the Washington statutory limit of $45,950. The Bankruptcy Appellate Panel, at 644 B.R. 530 (B.A.P. 9th Cir. 2022), had reversed, because no timely objection had been filed to the exemption claim, but the Ninth Circuit reversed the BAP, saying: "The question is whether the debtors successfully exempted an above-limit interest, so that the statutory cap for the homestead exemption no longer applies. We hold that in the circumstances presented, the initial failure to object does not mean the debtor can exempt more than the statutory limit. Because this case began as a Chapter 11 bankruptcy, in which the debtors owed fiduciary duties to their creditors, and in light of specific and conflicting representations that the debtors made within the 30-day objection window, the debtors did not properly claim an above-limit exemption. Resultingly, no early objection to the homestead exemption

was required."

In *Swiss Solutions Corp. Solutions Am. Ins. Co. v. Fieldwood Energy, L.L.C. (In re Fieldwood Energy, L.L.C.)*, 93 F.4th 817 (5th Cir. 2024), the Fifth Circuit held that statutory mootness under section 363(m) barred an appellant's challenge to the bankruptcy court's confirmation order—which stripped the appellants of their subrogation rights and allowed a sale of the debtor's assets—notwithstanding the Supreme Court's 2023 decision in *MOAC Mall Holdings LLC v. Transform Holdco LLC*, that section 363(m) is non-jurisdictional (and therefore subject to waiver and forfeiture). The Fifth Circuit affirmed that the appeal was statutorily moot. *In re Cambrian Holding Company, Inc.*, 110 F.4th 889 (6th Cir. 2024), is another case struggling with the procedural issues under *MOAC*. The Court of Appeals held that the Bankruptcy Court did not abuse its discretion when determining the validity of its prior orders despite facts becoming known during the course of the bankruptcy proceedings and litigation which would have, if known at the time, likely have resulted in a different finding by the Bankruptcy Court as to the validity of a lease that was assigned during the bankruptcy.

In *United States v. Miller*, 145 S. Ct. 839 (2025), considering the "interplay between § 106(a) and § 544(b)," the Chapter 7 trustee sued the IRS to avoid transfers, arguing that subsection 106(a)'s sovereign immunity waiver applied to "whatever state-law cause of action a trustee might invoke as the source of 'applicable law' for his or her § 544(b) claim." The Court held that section 106(b) "abrogates sovereign immunity for the federal cause of action created by § 544(b), but it does not take the additional step of abrogating sovereign immunity for whatever state-law claim supplies the 'applicable law' for a trustee's § 544(b) claim."

When debtors are attempting to modify a mortgage on property that is used for both residential and other purposes, a division in circuit authority was presented by Lee v. U.S. Bank Nat'l Assoc., 102 F.4th 1177 (11th Cir. 2024). In a Chapter 11 case, the divided panel of the Eleventh Circuit construed § 1123(b)(5), which contains an anti-modification provision identical to Chapter 13's § 1322(b)(2), and the opinion rejected the view found in *Lomas Mortgage. Inc. v.*

*Louis*, 82 F.3d 1 (1st Cir. 1996), and *In re Scarborough*, 461 F.3d 406 (3d Cir. 2006). The majority opinion declined to read "only" or "exclusively" into § 1123(b)(5)'s anti-modification provision; therefore, the Chapter 11 debtor could not modify her home mortgage on property that was only partially used as her residence and primarily used for farming.

An important decision for calculation of disposable income in Chapter 13 is found in the Ninth Circuit's decision that created a Circuit split. In a two to one decision, the Ninth Circuit held in *Saldana v. Bronitsky*, 122 F.4th 333 (9th Cir. 2024), cert. denied, 2025 WL 172792 (June 23, 2025), that under the plain language of section 541(b)(7)'s "hanging paragraph," which was enacted as part of BAPCPA, voluntary retirement contributions from the debtor to employer-managed retirement plans are properly deducted from the calculation of disposable income. In so holding the Circuit panel overruled the BAP's decision in *Parks v. Drummond*, 475 B.R. 703 (B.A.P. 9th Cir. 2012), and disagreed with Circuit authority from the Sixth Circuit, *Burden v. Seafort*, 669 F.3d 662 (6th Cir. 2012).

The lower courts continue to struggle with the permissibility of third-party releases since the Supreme Court's broad disapproval in *Harrington v. Purdue*. The Court returned another case involving third-party obligations to the Fifth Circuit in *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419 (5th Cir. 2022), cert. denied, 144 S. Ct. 2714, 219 L. Ed. 2d 1318 (2024), and cert. denied, 144 S. Ct. 2715, 219 L. Ed. 2d 1318 (2024). The Court of Appeals held that the definition of "Protected Parties," as used in the gatekeeper clause of the plan prohibiting "Enjoined Parties" from taking specific actions against non-debtor "Protected Parties" via pre-filing injunction, was coextensive with the definition of "exculpated parties," as used in the exculpation provision, so the case was remanded for the bankruptcy court to narrow the injunctive relief to only the debtor and independent directors, the committee, and its members in their official capacities, for conduct within the scope of their duties, because (under *Purdue*) the plan could not protect non-debtors from liability. *Matter of Highland Capital Management, L.P.*, 132 F.4th 353 (5th Cir. 2025).

In *Matter of GFS Industries, L.L.C.*, 99 F.4th 223 (5th Cir. 2024), the Fifth Circuit agreed with the Fourth, that the "kinds" of debt that debtors cannot discharge pursuant to subsection 523(a) applied to both corporate and individual debtors. The bankruptcy court held that the debt was dischargeable, relying on the language in the preamble to 11 U.S.C.A. § 523(a), stating that a discharge under certain sections of the title "does not discharge *an individual debtor* from any debt. . ." (emphasis added). The Fifth Circuit held that placing controlling weight on "individual" was in direct contradiction to the plain language of subsection 1192(2), which governs discharging debts of a "debtor" with no distinction made between individuals and corporations, and goes against the larger context of the Bankruptcy Code (which at times explicitly distinguishes between corporate and individual debtors).

August 2025
William Houston Brown
Lawrence R. Ahern, III
Francesco Mazzotta