

CALIFORNIA PRACTICE GUIDE

BANKRUPTCY

2025 UPDATE

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The Highlights summarize significant developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail.

The 2025 edition also includes updates to adjusted dollar amounts under the Bankruptcy Code, effective April 1, 2025.

Cut-Off Date: Some of the new cases cited were not final as of our October 1, 2025 cut-off date, so be sure to check the subsequent histories before relying on them.

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2025 UPDATE HIGHLIGHTS

CHAPTER 1

GOVERNING LAW, JURISDICTION AND VENUE

Newly Enacted Legislation Impacting the Bankruptcy Code

[1:4] **Genius Act (2025):** The Guiding and Establishing National Innovation for U.S. Stablecoins Act (“Genius Act,” PL 119-27, 12 USC §5590 et seq.) was signed into law on July 18, 2025. The Genius Act establishes a regulatory framework for payment stablecoins, a type of cryptocurrency tied to a stable asset (e.g., U.S. dollar). The Genius Act amends several provisions of the Bankruptcy Code to provide protection to stablecoin holders in the event a stablecoin operator (issuer) files bankruptcy.

Caution—Not Yet Effective: The Genius Act will take effect the earlier of January 18, 2027 or 120 days after federal regulators issue final regulations implementing the Genius Act.

Jurisdiction Over Bankruptcy Cases

[1:83] **Not dependent on debtor’s financial distress:** Federal court subject matter jurisdiction under 11 USC §1334(a) is not limited to bankruptcy cases involving debtors who *cannot pay* their debts; it also includes jurisdiction over bankruptcy cases involving debtors who *can* pay their debts. (I.e., subject matter jurisdiction in bankruptcy is not dependent on a debtor’s financial distress.) [*Bestwall LLC v. Official Committee of Asbestos Claimants of Bestwall, LLC* (4th Cir. 2025) 148 F4th 233, 241-242—rejecting argument that bankruptcy courts lack subject matter jurisdiction unless debtor has certain degree of financial distress] *See also* ¶11:16.

Sovereign Immunity Waiver for Governmental Units (11 USC §106(a))

Limitation—viability of debtor’s action under Bankruptcy Code provision

- [1:147.2] **Avoidance action under 11 USC §544(b) based on nonbankruptcy law:** The 11 USC §544(b) trustee avoidance power permits avoidance of transfers or obligations that could have been avoided by an unsecured creditor under nonbankruptcy law. But 11 USC §106(a)’s sovereign immunity waiver does not alter the trustee’s obligations to prove the substantive elements of 11 USC §544(b), which include demonstrating the existence of an *actual unsecured creditor* who could have avoided the transfer. [*United States v. Miller* (2025) 604 US 518, 522-525, 145 S.Ct. 839, 846-848—absent actual creditor requirement, trustee could use §544(b) to unwind transactions that would not be avoidable outside of bankruptcy (reversing contrary 9th Circuit authority)]

Noncore “Related to” Proceedings

Absent consent, bankruptcy court cannot enter final order/judgment

- [1:474] **Entry of final judgment by magistrate judge in bankruptcy appeal?** The circuits are split on whether a magistrate

judge may enter a final judgment on noncore matters in a bankruptcy appeal. [*In re MTE Holdings LLC* (3rd Cir. 2025) 136 F4th 506, 512-515 (magistrate judge authorized to enter final judgment in bankruptcy appeal where parties consented and district court referred matters to magistrate judge) (also discusses circuit split)]

Abstention From Exercise of Bankruptcy Jurisdiction

Based on pending state court proceedings (“*Younger* abstention doctrine”)

- [1:821] **Limitation—bankruptcy discharge and antidiscrimination enforcement actions excluded:** The *Younger* abstention doctrine does not apply when a debtor in bankruptcy seeks to enforce a discharge order or the antidiscrimination provisions of 11 USC §525(a) against a state in federal court. [*In re Lacher* (9th Cir. BAP 2025) 669 BR 548, 559-561—bankruptcy court not required to abstain from determining debtor’s motion seeking reinstatement of law license based on discharge order and §525’s antidiscrimination provision, notwithstanding Calif. State Bar disciplinary proceeding against debtor]

Duration of Bankruptcy Court Jurisdiction

After case dismissal—jurisdiction over ancillary matters

- [1:996.6] **Damages award after dismissal of involuntary petition (11 USC §303(i)):** Bankruptcy courts retain jurisdiction postdismissal of an involuntary bankruptcy case to award attorney fees and other damages under 11 USC §303(i), *even where the dismissal order lacks a specific jurisdiction-retention statement.* [*Reyes-Colón v. Banco Popular De Puerto Rico* (1st Cir. 2024) 110 F4th 54, 65-66]

Venue in Bankruptcy Proceedings

Where petitions for same debtor filed in several districts (“first-filed rule”)

- [1:1109.1] **Court can transfer case to itself:** Although 28 USC §1412 is silent, FRBP 1014(b) authorizes a bankruptcy court to transfer to itself a case pending in another court. [*In re Bula Developments, Inc.* (BC ED CA 2025) 666 BR 922, 927]

Contesting venue of debtor’s bankruptcy case—motion to transfer venue

- [1:1120] **Application:** Venue transfer motion approved where bankruptcy case was pending for over a year with 298 docket entries, but no parties opposed transfer. [*In re Bula Developments, Inc.* (BC ED CA 2025) 666 BR 922, 927]

Court discretion to transfer venue in the “interest of justice”

- [1:1132.2] **Preventing abusive litigation:** At least one court has held that the “interest of justice” in preventing abusive litigation alone was sufficient to warrant transfer under 28 USC §1412. [*In re Bula Developments, Inc.* (BC ED CA 2025) 666 BR 922, 927—controlling shareholder of Chapter 11 debtor filed Chapter 13 case in other district to use new automatic stay to thwart results of Chapter 11 developments]

CHAPTER 2

REPRESENTING DEBTORS IN BANKRUPTCY

Protection from Discriminatory Treatment by Governmental Entities (11 USC §525(a))

Violation not found

- [2:869] **Proximate cause of disciplinary action unrelated to debt collection:** California State Bar’s disciplinary action was not “solely” due to debtor’s failure to pay a dischargeable debt. Because the “proximate” cause of debtor’s suspension and possible disbarment was the result of debtor’s *own poor choices to avoid paying a judgment* (i.e., willful violation of court orders and ethical responsibilities, pattern of misconduct, and abuse of judicial process), disciplinary proceeding did not violate 11 USC §525(a). [*In re Lacher* (9th Cir. BAP 2025) 669 BR 548, 564]

CHAPTER 4

EMPLOYMENT AND COMPENSATION OF PROFESSIONALS, INSIDERS, TRUSTEES AND EXAMINERS

Employment Application Procedure—Debtor’s Counsel

Compensation Disclosure Requirement (11 USC §329)

- [4:451] **No jury trial right for violations of 11 USC §329(a):** Debtor’s counsel does not have a Seventh Amendment right to jury trial on the issue of sanctions imposed for violation of 11 USC §329(a). [*In re Aquilino* (3rd Cir. 2025) 135 F4th 119, 131-132—counsel’s right to jury trial in state court collections action did not extend to §329(a) proceeding in bankruptcy case]

Nunc Pro Tunc Employment

[4:673.1] **No retroactive approval of employment applications following conversion:** Following conversion of a bankruptcy case, a former trustee had no authority to file an after-the-fact employment application for professionals for the period before conversion. [*David v. King* (4th Cir. 2024) 109 F4th 653, 661-663—former Chapter 11 trustee, whose services were terminated upon conversion to Chapter 13, could not apply under 11 USC §327(a) for retroactive approval in Chapter 13 case to employ law firm and seek compensation under 11 USC §330 for work performed during Chapter 11 case, even though law firm was employed by same trustee in Chapter 7 case before case was converted to Chapter 11]

Compensation of Chapter 13 Standing Trustee

[4:2047.1] **Effect where case dismissed or converted preconfirmation:** Chapter 13 trustees may not deduct their statutory fee when the case is dismissed or converted preconfirmation, and all undistributed funds must be returned to the debtor. [*Matter of Evans* (9th Cir. 2023) 69 F4th 1101, 1105-1108]

The Ninth Circuit BAP has determined the fact that funding for Chapter 13 trustees is conditioned upon Chapter 13 plan confirmation does

not violate due process. [*In re Chapter 13 Trustee's Motions for Declaratory Relief Challenging Constitutionality of 28 USC §586(e) & 11 USC §1326(b)(2)*] (9th Cir. BAP 2024) 666 BR 659, 666-673]

CHAPTER 5 PART I

COMMENCING BANKRUPTCY PROCEEDINGS

Commencing Voluntary Bankruptcy Proceedings

Filing in Eastern District of California

- [5:28] **Caution:** Effective June 15, 2025, the Eastern District's former Modesto Division (i.e., counties of Calaveras, Stanislaus and Tuolumne) were permanently closed and all cases were transferred to the Sacramento Division. Such cases retained the same case number, judge and trustee assigned at the time of transfer to the Sacramento Division. [ED CA BC General Order 25-04]

Special Eligibility Rules for Small Business Debtors

Objecting to Sub V designation

- [5:493.12a] **Burden on objector:** If an objection to Sub V eligibility is raised (*see* ¶5:493.11), the debtor bears the burden of proving Sub V eligibility. [*In re Village Oaks Senior Care, LLC*] (BC ED CA 2024) 664 BR 170, 179]

Commencing Involuntary Proceedings

Creditor eligibility to file involuntary petition—qualifying claims

- [5:1177.3] **Unmatured claims:** Unlike contingent claims where the debt is called upon to pay only on the occurrence of an extrinsic event (*see* ¶5:1176), unmaturred claims are obligations where the right to payment exists from the outset, but the time of payment is deferred. At least one court has held a creditor holding an unmaturred claim has a qualifying claim for purposes of joining as a petitioning creditor under 11 USC §303(c). [*In re King*] (9th Cir. BAP 2024) 664 BR 356, 368-370—creditor owed continuing obligation under installment contract had qualifying claim for petitioning creditor even if invoice was not due at time creditor filed joinder]

CHAPTER 5 PART II

CASE CONVERSION AND DISMISSAL

Dismissal of Chapter 13 Cases

[5:2310] **At debtor's request (11 USC §1307(b)):** The Ninth Circuit has concluded that a Chapter 13 debtor's right of case dismissal is absolute. [11 USC §1307(b); *In re Nichols*] (9th Cir. 2021) 10 F4th 956, 962-964]

This is true even where the debtor may have been ineligible for Chapter 13 in the first place or may have filed the case in *bad faith*. The court is required to dismiss the case at the debtor's request "without further inquiry." [*In re Powell*] (9th Cir. 2025) 119 F4th 597, 603-606]

CHAPTER 6

THE BANKRUPTCY ESTATE

Potential Judicial Estoppel Effect of Debtor’s Failure to Schedule Causes of Action/Lawsuits

[6:68.6] **Caution—issue on review:** The Supreme Court has agreed to resolve whether judicial estoppel can be invoked to bar a plaintiff who fails to disclose a claim in a bankruptcy filing from pursuing that claim simply because there is a potential motive for nondisclosure, regardless of whether there is evidence the plaintiff acted in bad faith (*Keathy v. Buddy Ayres Const., Inc.*, cert.grntd. 10/20/25, — S.Ct. — (2025 WL 2949568) (Case No. 25-6)).

Property Interests Included in Estate

Redemption rights

- [6:112] **Real property:** A debtor’s right to redeem real property is considered a property interest includible in the estate. [*In re Gerwer* (9th Cir. 1990) 898 F2d 730, 732—Chapter 7 debtor’s right to redeem notes and trust deeds constituted estate property; *In re Sharp* (9th Cir. BAP 2025) 666 BR 906, 914—where Chapter 13 debtor filed bankruptcy after judicial foreclosure sale of residence but before expiration of statutory redemption right under Wash. law, redemption right was estate property (but debtor failed to timely exercise redemption right postpetition); *In re Hurt* (9th Cir. BAP 1993) 158 BR 154, 160]

CHAPTER 7

EXEMPTIONS

“Opting out” of Bankruptcy Code Exemptions

[7:6] **Federal exemptions apply where debtor not domicile-qualified for any state’s exemptions:** Where the domiciliary requirement (§7:4) renders the debtor ineligible for any state’s exemptions, the §522(b)(3) “savings clause” permits the debtor to use the federal exemptions listed in 11 USC §522(d). [11 USC §522(b)(3), last “hanging” para.; *In re Nance* (9th Cir. 2025) — F4th —, — (2025 WL 2908823, *1-2) (where court sustained objections to debtor’s claimed exemptions under Ariz. and Wash. law, debtor properly claimed federal exemptions under §522(d))]

Claiming Exemptions

[7:212] **Court may correct debtor’s chosen exemption:** The bankruptcy court has discretion to correct a debtor’s chosen exemption and apply the correct one. [*In re Nance* (9th Cir. 2025) — F4th —, — (2025 WL 2908823, *6-7)—where trustee objected to debtor’s claimed exemption combining real property and RV under homestead exemption, bankruptcy court could correct debtor’s exemption to claim \$5,000 under homestead exemption for real property and apply \$22,900 to RV under “wildcard” exemption]

Homestead Exemption Objections

Homestead “cap” under 11 USC §522(q)

- [7:240.3a] **Fiduciary capacity required for fraud-based debt:** Where a homestead objection is based on a debt resulting from the debtor’s fraudulent conduct under 11 USC §522(q)(1)(B)(ii), the fraud must be in a fiduciary capacity, which requires an express or technical trust imposed prior to the wrongdoing that created the debt. [*In re Uriostegui* (9th Cir. BAP 2025) 669 BR 49, 53-56 (fiduciary capacity not found)]

Exempting Retirement Plans Under Calif. CCP §704.115

Limitations on “self-employed” retirement plans

- [7:380] **Cannot exceed nontaxable amount:** Amounts held in “self-employed retirement plans” (e.g., IRAs, solo 401(k)s, SEP plans for sole proprietors and Keoghs) whether held, in process of distribution, or already paid are exempt to the extent those amounts do not exceed the maximum amounts exempt from income tax. [Calif. CCP §704.115(a)(3), (b), (d) (amended eff. 1/1/25)]
- [7:380.1] **Limited to amount “necessary” for debtor’s support:** With some exception (*see* ¶7:383 *ff.* re periodic distributions), the exemption is also limited to the amount necessary for the support of the debtor (and debtor’s spouse and dependents) when the debtor retires. [Calif. CCP §704.115(e)(1) (amended eff. 1/1/25), *see discussion at* ¶7:391 *ff.*]

Where retirement account subject to money judgment—additional factors considered re amount “necessary” for debtor’s support

- [7:391.1] **Taxes:** When determining the exemption amount the court must permit the debtor an additional amount to pay state and federal income taxes owed when applying retirement funds to satisfy a money judgment. [Calif. CCP §704.115(e)(3) (amended eff. 1/1/25)]
- [7:391.2] **Personal debt:** Where the retirement account is subject to a money judgment for personal debt (defined in Calif. CCP §683.110(d)), the necessary support amount cannot be less than the Bankruptcy Code “cap” amount in 11 USC §522(n) (¶7:381). [Calif. CCP §704.115(e)(2) (amended eff. 1/1/25)]

[7:395] **Other tax exempt retirement funds:** Also exempt are retirement funds that are tax exempt under 26 USC §§403, 414 or 457 (municipal and nonprofit plans), provided the amounts do not exceed the maximum exempt from federal income taxation. [CCP §704.115(a)(4) (amended eff. 1/1/25)]

As with self-employed retirement funds, exempt amounts are limited to the extent necessary for the support of the debtor (and debtor’s spouse and dependents) upon retirement. *See discussion at* ¶7:391 *ff.*

CHAPTER 8 PART I
SCOPE OF THE AUTOMATIC STAY

Specific Acts Barred by Automatic Stay

Effect of redemption rights on foreclosed property

- [8:197] **Chapter 13 plan cannot revive expired redemption right:** See ¶8:1195.1 of the Highlight Summaries.

Exceptions to the Automatic Stay

Governmental Unit’s Enforcement of Police/Regulatory Power (11 USC §362(b)(4))

- [8:562] **Enforcement of sale order linked to license revocation:** Section 362(b)(4)’s police power exception applied to Puerto Rico agency’s planned auction of Chapter 12 debtor’s milk quota. Auction to sell debtor’s milk quota was a step in the enforcement of the agency’s nonmonetary judgment revoking debtor’s dairy license. [*In re Ruiz* (1st Cir. 2024) 122 F4th 1, 13]

Residential Eviction Proceedings Where Judgment for Possession Entered Prepetition (11 USC §362(b)(22))

- [8:685.1] **Effect where debtor fails to file/serve “cure” certification and pay monetary default:** The 30-day deadline to file and serve the “cure” certification and pay the entire monetary default (¶8:685) is “inflexible” and cannot be extended; as a result, the 11 USC §362(b)(22) stay exception is immediately effective where the debtor fails to timely perform those acts. [*In re Bowers* (BC CD CA 2025) 666 BR 374, 385]

CHAPTER 8 PART II
RELIEF FROM THE AUTOMATIC STAY

Relief From Stay for “Cause” (11 USC §362(d)(1))

Prepetition loss of title to property as “cause”

- [8:1195.1] **Prepetition judicial foreclosure:** In some states (e.g., California), debtors retain a statutory right to redeem real property taken by judicial foreclosure (see Calif. CCP §729.030(a)) for a certain period of time. Thus, provided the debtor still has a redemption right, the filing of a bankruptcy petition stays the enforcement of a prepetition foreclosure judgment. [*In re Wheeler* (BC ND GA 1980) 5 BR 600, 604—delivery/recording of deed stayed; *In re Rouse* (BC ED PA 1985) 48 BR 236, 238—delivery of deed stayed]

However, a debtor’s failure to exercise a redemption right before its postpetition expiration cannot be cured by a Chapter 13 plan. [*In re Sharp* (9th Cir. BAP 2025) 666 BR 906, 915-918—debtor could not use Chapter 13 plan to invoke redemption rights to reclaim her home where statutory redemption period, as extended under 11 USC §108(b), expired before debtor’s plan confirmation]

CHAPTER 11

CHAPTER 11 CASES

Chapter 11 Plan Exclusivity

Moving party's burden re plan exclusivity extension/reduction

- [11:225] **Application:** Mere statements by creditors/parties in interest that they are prepared to offer a more favorable plan if exclusivity is terminated is insufficient cause to cut short the debtor's exclusivity period. [*In re Naturals* (BC CD CA 2025) 669 BR 326, 338]

Drafting a Chapter 11 Plan—Optional Provisions

Compromising/retaining claims against third parties

- [11:936.1] **Compromised claims cannot violate Bankruptcy Code provisions:** Plan provisions compromising claims cannot contravene explicit Bankruptcy Code provisions. [See *In re Serta Simmons Bedding, LLC* (5th Cir. 2024) 125 F4th 555, 589-591—Lender's contingent indemnification and contribution claims, which were disallowed under 11 USC §502(e)(1)(b), could not be resurrected as "settlement" indemnity in the plan under 11 USC §1123(b)(3)(A) (settlement indemnity provision ordered excised from plan)]

Res judicata Effect of Order Confirming Plan

[11:2020.1] **Lack of participation irrelevant:** A plan of reorganization and its accompanying confirmation order are final orders binding all creditors afforded notice and opportunity to litigate plan issues in the bankruptcy proceeding. A creditor's decision not to actively participate in those proceedings does not invalidate the res judicata effect of the plan and confirmation order. [*In re Congoleum Corp.* (3rd Cir. 2025) 149 F4th 318, 335-337]

[11:2041.1] **Limitation—due process required:** Although plan issues that could have been raised during confirmation are entitled to res judicata effect (§11:2020), due process mandates that the specific language in the plan disposing of a party's rights must be clear and unambiguous. [*In re Solimano Framing Group, LLC* (9th Cir. BAP 2024) 664 BR 803, 813-815; *In re PS On Tap, LLC* (BC CD CA 2025) 669 BR 56, 77-78—plan language earmarking plan payments coupled with lack of any notice that IRS' setoff rights might be affected by plan terms insufficient to preclude IRS from asserted postconfirmation setoff rights (discussing *Solimano*, supra)]

- [11:2041.2] **Application:** Confirmed plan assumed executory contracts with zero cure costs, including two Leases terminated prepetition that were ineligible for assumption. When the Landlord filed claims for termination damages under the Leases, the debtor argued assumption of the Leases under the confirmed plan barred the Landlord from asserting those claims. The Ninth Circuit BAP determined application of claims preclusion would violate the Landlord's due process rights because the plan failed to disclose

the Leases terminated prepetition and failed to clearly indicate the Landlord's rights to file a claim for termination damages would be affected by the plan's contract assumption provisions. [*In re Solimano Framing Group, LLC* (9th Cir. BAP 2024) 664 BR 803, 813-815]

CHAPTER 13

CHAPTER 13 CASES

Optional Chapter 13 Plan Provisions (11 USC §1322(b)(11))

Making payments on secured debts “outside” the plan

- [13:611] **Caution—effect of secured creditor’s failure to properly credit “cure” payments:** Secured creditors may be liable for violating the discharge injunction (including emotional distress damages) for willfully failing to properly credit “cure” payments in a confirmed Chapter 13 plan. [See *In re Valdellon* (9th Cir. BAP 2024) 665 BR 420, 424—“We publish to clarify that a creditor may be liable for willful failure to credit plan payments when it disregards the cure effectuated by a completed plan, and to affirm our holding that bankruptcy courts may, in appropriate circumstances, award emotional distress damages for violations of the discharge injunction”]

Plan Confirmation Requirements

Plan must be “feasible”

- [13:784] **Effect of dependence on nondebtors for financial assistance:** The Ninth Circuit has concluded that a Chapter 13 plan that relies in part on financial assistance from a nondebtor can be feasible. [*Mission Hen, LLC v. Lee* (9th Cir. 2025) 137 F4th 1008, 1012-1013—Chapter 13 plan’s feasibility demonstrated by declaration from debtor’s nondebtor mother confirming contribution of specific monthly dollar amount during entire plan term to cover anticipated income deficits; see also *In re Strong* (BC CD CA 2024) 661 BR 638, 647-648—proposed Chapter 13 plan relying on promised contributions from debtor’s nondebtor father was feasible]

Determining “projected disposable income” on Official Form B122C-2

- [13:934] **Deduction for qualified retirement payments (Line 41):** The monthly total of all amounts withheld by the debtor’s employer from wages as contributions for qualified retirement plans as specified in 11 USC §541(b)(7) (e.g., 401(k) plans) and all required repayments of loans from retirement plans specified in 11 USC §362(b)(19) are deducted on Line 41. [See Official Form B122C-2, Part 2, Line 41]

In the Ninth Circuit, Chapter 13 debtors can exclude any amount of voluntary retirement contributions to employer-managed plans from their disposable income calculation (subject to annual contribution limits). [*In re Saladana* (9th Cir. 2024) 122 F4th 333, 341-342]

- [13:934.1] **Includes retirement contributions commenced**

after filing Chapter 13: According to the Ninth Circuit, the fact a Chapter 13 debtor was not making retirement contributions prepetition is irrelevant; retirement contributions (and deductions from disposable income) may be commenced postpetition. [*In re Saladana* (9th Cir. 2024) 122 F4th 333, 342 (rejecting argument that prepetition retirement deductions are required in order to continue making such contributions/deductions postpetition); see also *In re Vanlandingham* (BC D KS 2014) 516 BR 628, 635-638 (deductions for 401(k) contributions permitted even where debtor only commenced making those contributions after filing bankruptcy)]

- [13:934.2] **Includes postpetition payments on 401(k) loans:** Chapter 13 debtors are also permitted to deduct postpetition payments on 401(k) loans when calculating disposable income, based on 11 USC §1322(f), which states that amounts required to repay a 401(k) loan do not constitute disposable income under 11 USC §1325. [*In re Saladana* (9th Cir. 2024) 122 F4th 333, 343-344]

CHAPTER 14 PART I

USE, SALE AND LEASE OF ESTATE PROPERTY

Safe Harbor for Good Faith Purchasers/Lessees of Debtor's Property (11 USC §363(m))

[14:975.2] **Scope of protection on appeal of plan confirmation order authorizing §363 sale transaction:** 11 USC §363(m) protections prohibiting reversal or modification of 11 USC §363(b) relief embedded in a confirmation order may not moot appellate review of, or reversal or modification to, entire reorganization plans. [See *In re Boy Scouts of America* (3rd Cir. 2025) 137 F4th 126, 149-151, 155—appeal of plan confirmation order authorizing insurance buyback transactions not moot to extent plan could be modified to include reservation of rights preserving nonsettling insurers' contribution and indemnity claims against settling insurers]

Effect of 11 USC §363(m) where sale order not stayed

- [14:976.2] **Limitation on challenging good faith:** Although an appellant may still contest the application of 11 USC §363(m) by challenging the purchaser's/lessee's good faith (¶14:1002 ff.) where no stay pending appeal is obtained, such challenge is waived where a good faith objection was not made in the underlying bankruptcy court proceedings. [*In re Human Housing Henrietta Hyatt, LLC* (6th Cir. BAP 2025) 666 BR 332, 349-350]

[14:982] **Effect of state court stay of underlying litigation:** State court's stay of appellate proceedings that were part of the assets being sold in bankruptcy was insufficient; 11 USC §363(m) requires that the sale be stayed in the bankruptcy court. [See *Humphrey v. Christopher* (8th Cir. 2025) 146 F4th 682, 688-689]

Purchaser's "Good Faith"

[14:1005] **Seller's conduct irrelevant:** Seller (i.e., DIP or trustee) who acts unfairly by prohibiting bids or rejecting other offers does not preclude a good faith purchaser finding unless it includes fraud or

collusion with the purchaser. [*In re Human Housing Henrietta Hyatt, LLC* (6th Cir. BAP 2025) 666 BR 332, 351]

CHAPTER 16

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Financial Accommodation Contracts Not Assumable

[16:662] **Settlement agreement:** A settlement agreement providing for the release of a large debt contingent upon the timely remittance of discounted installments by the debtor constituted a “financial accommodation” not assumable under 11 USC §365(c)(2). [*In re Svenhard’s Swedish Bakery* (9th Cir. 2025) — F4th —, — (2025 WL 2627837, *4-*5)—“financial accommodations” include contracts to forebear or reduce payments to aid debtor’s poor financial condition]

Performing Debtor’s Obligations Under Unexpired Personal Property Lease (Chapter 11 Cases)

Lessor entitled to administrative priority for obligations arising after 60 days postpetition

- [16:1178.2] **Claim includes other obligations under nonconsumer personal property leases:** Section 365(d)(5) is not limited to the payment of rent and may extend to other contractual obligations; e.g., repair, maintenance, taxes, etc. [See *In re Avianca Holdings S.A.* (2nd Cir. 2025) 127 F4th 414, 418-421—aircraft leases that included fees for brokerage services (characterized in leases as “additional rental payments”) were includable in lessors’ 11 USC §365(d)(5) administrative claim]

CHAPTER 17

ENFORCEMENT OF CLAIMS AND INTERESTS IN BANKRUPTCY

Setoff Requirements

Prepetition claim against debtor required

- [17:192.1] **Obligation “sufficiently rooted” in prepetition past:** Debtor’s entitlement to employee retention credits issued postpetition by IRS were “sufficiently rooted” in debtor’s prepetition employment activities to render such credits prepetition obligations for purposes of §553 setoff against prepetition IRS claims. [*In re PS On Tap, LLC* (BC CD CA 2025) 669 BR 56, 66-67]

Other limitations on setoff right

- [17:306] **Debtor’s financial hardship insufficient to deny setoff:** Debtors’ postconfirmation financial hardship is insufficient to warrant unwinding creditor’s offset rights where creditor did not violate the confirmed plan or waive its setoff rights. [*In re PS On Tap, LLC* (BC CD CA 2025) 669 BR 56, 80-81—although financial hardship was result of circumstances beyond its control, debtor should have addressed setoff question prior to confirmation]

Waiving right of setoff

- [17:321.1] **Effect of express reservation of rights**

language: [See *In re PS On Tap, LLC* (BC CD CA 2025) 669 BR 56, 72—IRS did not waive setoff rights where proofs of claim contained express language reserving setoff rights and debtor’s plan did not put IRS on notice that setoff rights would be impaired or abrogated]

Recoupment Claim—Logical Relationship Test

[17:338.1] **Equitability analysis required on facts of each case:** The logical relationship test requires consideration of equitability, including the purpose of the Bankruptcy Code, in each individual case: “The factual and legal connections that undergird any logical relationship must be such that recoupment is equitable on the facts of the specific case and thus will not improperly encroach on the Bankruptcy Code’s policy of limiting setoff.” [*Cooper v. Social Security Admin.* (9th Cir. 2025) 131 F4th 995, 1011-1012—rejecting per se rule permitting SSA to recoup overpaid benefits (recoupment of mistaken pre-discharge overpayments made by SSA against Chapter 7 debtor’s post-discharge benefits denied where debtor not at fault)]

Second Priority—Administrative Expense Claims, Assessed Fees and Charges

Administrative expenses not listed in 11 USC §503(b)

- [17:686.1] **Claims arising under unexpired commercial personal property leases accrued after 60 days postpetition (Chapter 11 cases):** Pending assumption or rejection in a Chapter 11 case, the DIP or trustee lessee is required to perform all obligations under an unexpired lease of nonconsumer personal property that arise “from or after 60 days after the order for relief.” [11 USC §365(d)(5)]

If the DIP or trustee fails to perform obligations accruing from or after 60 days following entry of the order for relief, the lessor is entitled to an administrative claim for the unpaid amounts at the contract rate. [*In re Avianca Holdings S.A.* (2nd Cir. 2025) 127 F4th 414, 420-422—§365(d)(5) provides alternative basis for administrative priority independent of 11 USC §503(b) (debtor required to pay additional rental payments at rate owed under unexpired airplane leases for brokerage services already rendered)]

Timing of payment

- [17:731] **Immediate payment of “ordinary course” expenses:** [*In re Avianca Holdings S.A.* (2nd Cir. 2025) 127 F4th 414, 426—11 USC §365(d)(5) requires debtor to *automatically resume* making timely payments under unexpired personal property leases for obligations arising 60 days postpetition without creditors seeking priority treatment]

Filing and Amending Proof of Claim or Interest

Claim secured by Chapter 13 debtor’s principal residence paid under debtor’s plan—special FRBP 3002.1 requirements

- [17:1093-1094.26] **Amendments to FRBP 3002.1 (eff. 12/1/25); new/amended Official Forms:** FRBP 3002.1, which requires a creditor to provide supplemental claim information using Of-

ficial Forms where the creditor’s claim is secured by a Chapter 13 debtor’s principal residence and the debtor’s plan provides for payment on the debt of the claim in postpetition contractual installments, was amended effective December 1, 2025. The FRBP 3002.1 amendments and new disclosure requirements are discussed in detail in *Ch. 17*, along with the new Official Forms required under the amended Rule.

Grounds for Claim Objection/Disallowance

Claim unenforceable under nonbankruptcy law (11 USC §502(b)(1))

- [17:1371] **Timing of determination:** Whether a claim under nonbankruptcy law is unenforceable is determined as of the petition date. [See *In re Promise Healthcare Group, LLC* (3rd Cir. 2025) 130 F4th 56, 60-64—proof of claim for medical malpractice was “enforceable” under nonbankruptcy law where claim was valid as of petition date although time barred under state law at time trustee objected to it]
- [17:1373] **Where objection based on failure to timely file separate nonbankruptcy action:** Where a creditor files a proof of claim for medical malpractice, creditor *is not obligated* under 11 USC §108(c) to file a separate tort suit in state court after the automatic stay is lifted to protect creditor’s bankruptcy claim. [*In re Promise Healthcare Group, LLC* (3rd Cir. 2025) 130 F4th 56, 64-65 (trustee’s summary judgment motion to disallow creditor’s medical malpractice claim denied)]

Claim Distribution in Chapter 7 Cases

Fourth tier distribution—claims for fines or penalties

- [17:1733] **Effect of prior settlement of punitive damages claim:** Courts must look behind a decree or settlement of a punitive damages debt by way of contract to ascertain proper treatment of such debt in bankruptcy. [See *In re Matheson Flight Extenders, Inc.* (BC ED CA 2025) __ BR __, __ (2025 WL 2109976, *5)—prior Chapter 11 plan could not cleanse debt of punitive damage status in subsequently filed Chapter 11 case for purposes of distribution analysis under §726(a)(4)]

CHAPTER 18

LIENSTRIPPING

Lienstripping on Debtor’s Real Property Principal Residence Prohibited

[18:175] **Exception—home mortgages coming due before last plan payment (11 USC §1322(c)(2)):** Where the last payment on the original payment schedule for a debtor’s home mortgage comes due *before* the last plan payment, the debtor can bifurcate the mortgage into secured and unsecured claims and strip off the lien under 11 USC §506(a) (*see* ¶18:55 *ff.*), cram down the unsecured portion, and spread the payments over the life of the plan under 11 USC §1325(a)(5) (*see* ¶18:180 *ff.*). [11 USC §1322(c)(2) (*discussed at* ¶13:396 *ff.*); *see Mission Hen, LLC v. Lee* (9th Cir. 2025) 137 F4th 1008, 1013-1014 (col-

lecting cases and affirming confirmation of plan bifurcating and stripping lien on debt maturing during plan term)]

CHAPTER 20

ADVERSARY PROCEEDINGS

Motion for Relief from Judgment Based on Mistake, Fraud, Newly Discovered Evidence, etc. (FRCP 60(b))

[20:401] **Caution—issue under review:** The U.S. Supreme Court has granted certiorari to consider whether there is a “reasonable” time limit under FRCP 60(b)(4) to set aside a default judgment for lack of personal jurisdiction. [*In re Vista-Pro Automotive, LLC* (6th Cir. 2024) 109 F4th 438, cert.grntd. 6/6/25, 2025 WL 1603597 (Case No. 24-808)]

CHAPTER 21

AVOIDANCE AND TURNOVER ACTIONS

Transfers Avoidable Under 11 USC §544

Unperfected liens on real property

- [21:204] **Defective abstract of judgment:** An abstract of judgment that is technically defective under state law does not impart constructive notice to a subsequent bona fide purchaser of the property and therefore is avoidable under 11 USC §544(a)(3). [*In re Kim* (9th Cir. BAP 1993) 161 BR 831, 833-835 (failure to include required social security and drivers’ license numbers on abstract rendered it defective); *In re Kuo* (BC ND CA 2025) 668 BR 328, 334-335 (listing attorney’s name and address instead of judgment creditor’s rendered abstract defective under Calif. law)]

But where the information contained in the abstract of judgment substantially complies with state law statutory requirements (i.e., all necessary information is in the abstract but not in the proper location), the abstract provides sufficient notice. [*In re Kuo*, supra, 668 BR at 333-334—debtor substantially complied with state statutory requirements where judgment creditor’s correct name and last known address were correct in one section of abstract, but not another]

Existence of unsecured creditor who could avoid transfer required

- [21:255.1] **Burden of proof:** The trustee or DIP must identify the actual creditor who could have avoided the transaction in question under applicable law. [*United States v. Miller* (2025) 604 US 518, 524, 145 S.Ct. 839, 848; *In re Fresh Acquisitions, LLC* (BC ND TX 2025) 671 BR 171, 190-191 (citing *Miller*, supra)—trustee met burden by judicial notice of claims register]

Recovering Avoided Transfers and Liens (11 USC §550)

Property transferred or its value recoverable by estate

- [21:1646.3] **Effect where avoided liens are worthless:** The

“single transaction” requirement, prohibiting a court from awarding the value of property transferred in addition to the return of such property (¶21:1646), applies even where the liens returned to the estate appear worthless. [*In re Sanchez Energy Corp.* (5th Cir. 2025) 139 F4th 411, 420-421—11 USC §550(d) violated where court granted preferential lien avoidance and also applied value of lien avoidance action to equity allocation determination under plan; although avoidance of liens *appeared* worthless, parties fought for oil and gas assets due to potential market value rebound]

CHAPTER 22

DISCHARGE AND NONDISCHARGEABILITY

Discharge Injunction

[22:81.11] **Not applicable to attorney disciplinary proceedings determining fitness to practice law:** Attorney disciplinary proceedings to determine an attorney’s fitness to practice law (as opposed to recovery of a debt or to impose a personal liability) are not subject to the discharge injunction. [*In re Lacher* (9th Cir. BAP 2025) 669 BR 548, 562-563]

Acts not violating discharge injunction—recouping overpayments

- [22:101.1] **Limitation—equities of case:** Post-discharge recoupment may be denied based on the equities of the case. [See *Cooper v. Social Security Admin.* (9th Cir. 2025) 131 F4th 995, 1011-1012 (recoupment of mistaken pre-discharge overpayments made by SSA against Chapter 7 debtor’s post-discharge benefits denied where debtor not at fault)]

Damages available for violation

- [22:113.1] **Emotional distress damages:** The Ninth Circuit BAP has concluded that emotional distress damages may be available for discharge injunction violations. [*In re Valdellon* (9th Cir. BAP 2024) 665 BR 420, 435—bankruptcy courts have equitable power to compensate debtors for discharge injunction violations including emotional distress damages; *In re Marino* (9th Cir. BAP 2017) 577 BR 772, 787-788 (affirming bankruptcy court’s award of \$119,000 for emotional distress damages based on improper written and telephonic contact); compare *In re Blanco* (BC ED WA 2023) 649 BR 571, 582 (denying distress damages where debtor failed to provide evidence supporting stress suffered as result of improper collection activities)]

Nondischargeable Debts (Exceptions to Discharge)

Governmental fines, penalties, forfeitures (11 USC §523(a)(7))

- [22:283.2] **Civil penalties imposed under California Labor Code Private Attorneys General Act (PAGA):** 75% of California Private Attorneys General Act (PAGA) penalties awarded to the State of California in former employees’ prepetition action against Chapter 7 debtors for labor law violations that were statutorily earmarked for the state of California were “payable to” a governmental unit and thus nondischargeable. [*In re Patacsil* (ED CA 2024)]

666 BR 614, 622-624]

On the other hand, 25% of the PAGA penalties awarded to former employees in their action against Chapter 7 debtors were not “payable to” a governmental unit and therefore were dischargeable. [*In re Patacsil* (ED CA 2024) 666 BR 614, 622-624]

- [22:284.4] **Award to public entity for defending unmeritorious litigation (Calif. CCP §1038):** Award to county for defense costs under California statute allowing fees to public entities for defending unmeritorious litigation constitutes a penalty for deterring and punishing frivolous litigation (the functional equivalent of a FRBP 9011 sanctions award) and was excepted from discharge under 11 USC §523(a)(7). [*In re Harrington* (BC ED CA 2024) 665 BR 436, 443-446]

Debts incurred through false pretenses, false representation or actual fraud (11 USC §523(a)(2)(A))

- [22:452.1a] **Includes concealment of material fact resulting in false impression/misrepresentation:** The Ninth Circuit BAP has concluded that silence, or the concealment of a material fact, can be the basis for a false impression which creates a misrepresentation under 11 USC §523(a)(2)(A). [*In re Manion* (9th Cir. BAP 2025) 667 BR 473, 484—debtor’s failure to disclose—as required under factoring agreement and guaranty—that his company’s arrangement with major customer had been terminated was a false representation under §523(a)(2)(A)]

Debts based on debtor’s willful and malicious injury (11 USC §523(a)(6))

- [22:663] **No vicarious liability:** Because 11 USC §523(a)(6) requires the tort at issue to be *committed by the debtor*, a debtor’s *vicarious liability* for an intentional tort does not result in nondischargeability under §523(a)(6). [*In re Del Rosario* (9th Cir. BAP 2025) 668 BR 618, 626-627]

However, under 11 USC §523(a)(2) a debtor who is innocent of tortious fraud may be held vicariously liable via agency principles. *See discussion at ¶22:468 ff.*

Excepting Particular Debts from Discharge—Nondischargeability Actions

Effect of state court judgments re nondischargeability

- [22:1630] **Rooker-Feldman doctrine not applicable where bankruptcy court has exclusive jurisdiction:** *Rooker-Feldman* doctrine’s jurisdictional limitation on federal court review of state court nondischargeability determinations does not apply to matters within the bankruptcy court’s *exclusive* jurisdiction. [*In re Wike* (9th Cir. 2025) 145 F4th 1221, 1226-1227 (applicability of 11 USC §523(a)(7) to a particular debt falls within exclusive jurisdiction of federal courts and *Rooker-Feldman* does not apply)]
- [22:1715] **Collateral estoppel of state court judgment—“actually litigated” requirement:** California default judgment entered in state court against Chapter 7 debtors for vicarious liability for the intentional tort of their minor son did not have preclusive effect as to whether debtors willfully and maliciously intended to

cause injury under 11 USC §523(a)(6) in nondischargeability action because state court did not litigate the issue when imposing liability on debtors for son's actions. [*In re Del Rosario* (9th Cir. BAP 2025) 668 BR 618, 629-631]

CHAPTER 24

BANKRUPTCY APPEALS

Appealability of Bankruptcy Court Decisions

[24:198] **Collateral order doctrine applies in bankruptcy:** The collateral order doctrine applies to appeals in bankruptcy in the same manner as other appeals. [*In re Blixseth* (9th Cir. 2024) 112 F4th 837, 842-843]

Under the collateral order doctrine, an interlocutory order issued in an ongoing case may be appealed if that order finally determines a claim (or claims collateral to a claim) asserted in the underlying action, and the claims are “too important” to be denied review, and too independent of the case itself to require that appellate consideration be deferred until the entire case is adjudicated. [*In re Blixseth*, *supra*—bankruptcy court order denying sovereign immunity to state tax department is appealable to BAP/district court under collateral order doctrine]

Cross-refer: For a detailed discussion of the collateral order doctrine, see Goelz, Batalden & Querio, *Rutter Group Prac. Guide: Federal Ninth Circuit Civil Appellate Practice* (TRG), Ch 2.

“Final” bankruptcy court orders

- [24:224.2] **Order reimposing stay:** A bankruptcy court's order reimposing the stay—after previously granting stay relief—is a final order. [*Fantasia v. Diodato* (9th Cir. 2025) — F4th —, — (2025 WL 2639885, *4-6)]

Standing Requirements for Bankruptcy Appeals

[24:373.1] **Adversary defendant:** The Ninth Circuit has concluded that a nonparty adversary defendant may have appellate standing where that party was “significantly involved” in the underlying proceedings and the equities of the case weigh in favor of hearing the appeal. [*In re EPD Investment Co., LLC* (9th Cir. 2024) 114 F4th 1148, 1156—adversary defendant had standing to appeal judicial finding in trustee's bifurcated fraudulent transfer action that debtor operated a Ponzi scheme because that finding could adversely affect defendant's ability to defend to fraudulent transfer action]