

UPDATE I TO MINI•CODE / MINI•RULES ANNOTATIONS
SUBSEQUENT TO PUBLICATION OF THE 2012 EDITIONS

TITLE 11 U. S. C.

§ 101

7th Cir. *In re Longview Aluminum, LLC*, 657 F.3d 507 (7th Cir. 2011)("insider" definition is not exclusive and may also include those whose relationship is similar to or has characteristics of the defined relationships; managing member of LLC held insider in preference action).

§ 107

9th Cir. *Father M v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland)*, 661 F.3d 417 (9th Cir. 2011)(under 107(b)(2), party objecting to disclosure of filed document need only show that material is scandalous with no requirement to show that material untrue or potentially untrue).

§ 323

1st Cir. *City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.)*, 656 F.3d 82 (1st Cir. 2011)(trustee had exclusive standing to pursue debtor's commercial tort claims; actions had not been included in secured property of lender and were not personal to lender).

3d Cir. *Official Comm. of Unsec'd Creds. v. Baldwin (In re Lemington Home for the Aged)*, 659 F.3d 282 (3d Cir. 2011)(*in pari delicto* defense can be raised against trustee subject to "adverse interest" exception which is applicable when estate did not benefit; Penn. cause of action for fraudulently deepening insolvency is recognized).

§ 362

7th Cir. *Reedsburg Utility Comm'n v. Greede Foundries, Inc. (In re Greede Foundries, Inc.)*, 651 F.3d 786 (7th Cir. 2011)(collection of municipal utility charges were not excepted from stay as a "tax" under (b)(9), a "special tax or assessment" under (b)(18), or secured by an interest in property under (b)(3)).

7th Cir. *Kimbrell v. Brown*, 651 F.3d 752 (7th Cir. 2011)(dismissal of claims against defendant is not final for appeal when action against co-defendant is automatically stayed).

9th Cir. *Palmdale Hills Prop., LLC v. Lehman Commercial Paper, Inc. (In re Palmdale Hills Prop., Inc.)*, 654 F.3d 868 (9th Cir. 2011)(before a creditor, which is also in bankruptcy, seeks to equitably subordinate the claim of debtor, it must obtain relief from stay in that debtor/claimant's case).

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10th Cir. *TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011)(overruling prior cases, automatic stay stays appeals in proceedings that were originally brought against debtor, even if debtor is appellant).

10th Cir. *Garrett v. Cook*, 652 F.3d 1249 (10th Cir. 2011)(automatic stay did not prevent defendant/debtor from liability for fees and costs incurred postpetition for improper removal of prepetition lawsuit).

§ 363

5th Cir. *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593 (5th Cir. 2011)(business judgment standard of 363(b) should be used to assess reimbursement of pre authorized bidder expense fees; court's finding that reimbursement would maximize value of estate was appropriate).

7th Cir. *In re River West Plaza-Chicago, LLC*, 664 F.3d 668 (7th Cir. 2011)(creditor's failure to obtain stay under 363(m) prevented appeal of his claim disallowance).

7th Cir. *In re Golf 255, Inc.*, 652 F.3d 806 (7th Cir. 2011)(rescission of bankruptcy sale denied absent showing the BFP was a party to creditor's alleged fraud).

§ 365

8th Cir. *Green Tree Servicing, LLC v. DBSI Landmark Towers, LLC*, 652 F.3d 910 (8th Cir. 2011)(debtor/sublessor's rejection of lease does not extinguish rights and obligations of sublessee to third party master lessor when those parties are in privity).

§ 502

5th Cir. *Listokin Trust v. Lothian Oil Inc. (In re Lothian Oil Inc.)*, 650 F.3d 539 (5th Cir. 2011)(creditor's claims were held common equity rather than debt under Tex. law, in that their payment was dependent on success of business with no ordinary loan terms; insider status was not required under state law).

§ 503

3d Cir. *In re Marcal Paper Mills, Inc.*, 650 F.3d 311 (3d Cir. 2011)(portion of ERISA withdrawal liability attributable to postpetition work qualifies as an administrative expense under 503(b)(1)(A)).

7th Cir. *In re Resource Tech. Corp.*, 662 F.3d 472 (7th Cir. 2011)(tort that occurred after case was converted from chapter 11 to 7 did not arise while trustee was “operating” business and did not result in benefit to debtor; therefore, resulting claim was not a priority administrative claim).

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8th Cir. *Sanchez v. Northwest Airlines, Inc.*, 659 F.3d 671 (8th Cir. 2011)(employee's ADA claim is preserved as a post petition administrative claim incurred in the ordinary course of business not discharged by plan).

§ 507

4th Cir. *Matson v. Alarcon*, 651 F.3d 404 (4th Cir. 2011)(debtor's employees' claims for severance payments were entitled to 507(a)(4) priority since they were not eligible until they terminated employment and signed agreement with release).

9th Cir. *California Franchise Tax Bd. v. Kendall (In re Jones)*, 657 F.3d 921 (9th Cir. 2011)(three-year lookback period under 507(a)(8) was not suspended by debtor's prior chapter 13 case since taxes sought to be discharged were due prior to chapter 13 plan confirmation).

9th Cir. *Ilko v. Cal. State Board of Equalization (In re Ilko)*, 651 F.3d 1049 (9th Cir. 2011)(Cal. sales tax, still assessable under 507(a)(8)(A)(iii), was a tax that was non dischargeable against a responsible person under 523(a)(1)).

§ 521

1st Cir. *Donarumo v. Furlong (In re Furlong)*, 660 F.3d 81 (1st Cir. 2011)(to adequately schedule assets, debtor is only required to itemize enough for trustee to determine whether to investigate further).

5th Cir. *Reed v. City of Arlington*, 620 F.3d 477 (5th Cir. 2010), *reh'g en banc* 650 F.3d 571 (2011)(debtor's deliberate failure to disclose lawsuit in which he had obtained a judgment, then on appeal, did not judicially estopped his chapter 7 trustee from pursuing recovery).

§ 522

4th Cir. *Botkin v. DuPont Comm. Credit Union*, 650 F.3d 396 (2011)(debtor need not actually claim exemption to avoid judicial lien on basis that lien impairs exemption).

5th Cir. *Smith v. H.D. Wholesale Drug Co. (In re McCombs)*, 659 F.3d 503 (5th Cir. 2011)(judgment creditor's TX lien against homestead was unenforceable against home and sales proceeds that became non exempt under 522(p)(1)(D)).

6th Cir. *Dickson v. Countrywide Home Loans (In re Dickson)*, 655 F.3d 585 (6th Cir. 2011)(chapter 13 debtor has standing to avoid a transfer under 522(h) if the transfer was involuntary, not concealed, not avoided by trustee, sought to be avoided under one of the enumerated statutes, and may be exempted if avoided).

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§ 523

8th Cir. *Walker v. Sallie Mae Servicing Corp. (In re Walker)*, 650 F.3d 1227 (8th Cir. 2011)(undue hardship discharge of \$300,000 student loan granted under 523(a)(8) to debtor who stays home with 5 children, 2 autistic; court holds only a minimal standard of living, despite expensive car payment and home improvement loan for porch).

9th Cir. *Sherman v. Sec. & Exch. Comm'n (In re Sherman)*, 658 F.3d 1009 (9th Cir. 2011)(523(a)(19) does not apply when the debtor is not culpable for the securities violation that caused the debt).

9th Cir. *Ilko v. Cal. State Board of Equalization (In re Ilko)*, 651 F.3d 1049 (9th Cir. 2011)(Cal. sales tax, still assessable under 507(a)(8)(A)(iii), was a tax that was non dischargeable against a responsible person under 523(a)(1)).

§ 524

4th Cir. *Behrmann v. Nat'l Heritage Foundation, Inc.*, 663 F.3d 704 (4th Cir. 2011)(in order to approve non debtor releases as part of chapter 11 plan, court must make explicit factual findings supporting such extraordinary relief).

6th Cir. *Salyersville Nat'l Bank v. Bailey (In re Bailey)*, 664 F.3d 1026 (6th Cir. 2011)(under KY law, reaffirmation agreement entered into based on mutual mistake that creditor was secured held unenforceable).

§ 541

8th Cir. *Bachelor v. Regions Bank (In re Wetzel)*, 649 F.3d 831 (8th Cir. 2011)(distributions of income to debtor/beneficiary of a valid Ark. spendthrift trust were not part of bankruptcy estate under 541(c)(2)).

§ 546

2d Cir. *Enron Creditors Recovery Corp. v. ALFA, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011)(546(c) shields "settlement payments," including payments from debtor to redeem its commercial paper prior to maturity, from bankruptcy avoidance actions).

§ 547

1st Cir. *Soto-Rios v. Banco Popular de Puerto Rico*, 662 F.3d 112 (1st Cir. 2011)(debtors' transfers of mortgage deeds to bank were "perfected" for purposes of §547 as of the date of presentment to Puerto Rican registrar).

8th Cir. *Lange v. Inova Capital Funding, LLC (In re Qualia Clinical Serv., Inc.)*, 652 F.3d 933 (8th Cir. 2011)(security interest on accounts was voidable preference when

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perfected during 90 days prebankruptcy; §547(c)(5) improvement of position test was inapplicable).

§ 548

11th Cir. *Perkins v. Haines*, 661 F.3d 623 (11th Cir. 2011)(when debtor has been involved in a Ponzi scheme, a defrauded investor is held to have given value up the principal amount of his investment).

§ 707

4th Cir. *McDow v. Dudley*, 662 F.3d 284 (4th Cir. 2011)(bankruptcy court order denying dismissal as abusive under §707(b) is a final order for appeal).

4th Cir. *Calhoun v. U. S. Trustee*, 650 F.3d 338 (4th Cir. 2011)(means test is not conclusive on abuse; 707(b)(3) can also provide grounds for abuse if totality of debtor's circumstances evidence abuse finding that debtors could pay their creditors).

§ 727

8th Cir. *Kramer v. Cash Link Sys.*, 652 F.3d 840 (8th Cir. 2011)(corporate debtor does not receive a discharge in chapter 7; its debt survives and can be charged if corporation resumes operations.)

§ 1101

4th Cir. *Behrmann v. Nat'l Heritage Foundation, Inc.*, 663 F.3d 704 (4th Cir. 2011)(appeal held not equitably moot despite substantial consummation of plan, due to other factors, such as lack of negative effects on third parties and severability of plan).

5th Cir. *Spencer Ad Hoc Equity Comm. v. Idearc, Inc. (In re Idearc, Inc.)*, 662 F.3d 315 (5th Cir. 2011)(plan appeal held equitably moot where substantial consummation occurred due to transfer of property, trading of newly organized stock, and implementation of financial rights of third parties).

§ 1127

5th Cir. *Bank of NY Trust Co. v. Pacific Lumber Co. (In re Scopac)*, 649 F.3d 320 (5th Cir. 2011)(in postconfirmation claim dispute, partial recovery may be necessary if full recovery is impracticable or would undermine plan).

§ 1129

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7th Cir. *River Road Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642 (7th Cir. 2011)(1129(b)(2)(A)(iii) does not permit cram down confirmation by selling a secured asset free and clear without allowing credit bid).

§ 1141

5th Cir. *Weaver v. Tex. Cap. Bank*, 660 F.3d 900 (5th Cir. 2011)(Tex. *res judicata* law precluded guarantor's claim requesting declaratory judgment that his liability was discharged by bankruptcy plan when defense should have been raised in earlier action).

7th Cir. *In re River West Plaza-Chicago, LLC*, 664 F.3d 668 (7th Cir. 2011)(creditor's failure to obtain stay under 363(m) and to appeal plan confirmation order regarding proceeds' distribution mooted appeal of his claim disallowance).

§ 1222

10th Cir. *United States v. Dawes (In re Dawes)*, 652 F.3d 1236 (10th Cir. 2011)(postpetition income tax liability for sale of farm asset is not dischargeable and remains liability of individual debtors and not the bankruptcy estate; 1222(a)(2)(A) protects taxes incurred prepetition).

TITLE 18

18 USC § 152

7th Cir. *United States v. Persfull*, 660 F.3d 286 (7th Cir. 2011)(defendant concealed assets where he disclaimed inheritance but used the money for himself; fraudulent intent may be established by circumstantial evidence).

18 USC § 157

5th Cir. *United States v. Spurlin*, 664 F.3d 954 (5th Cir. 2011)(debtor whose fraud was being investigated by creditor at time of filing was convicted of bankruptcy fraud when court found that filing was used to conceal the scheme and obtain a discharge).

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TITLE 28

28 USC § 157

7th Cir. *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906 (7th Cir. 2011)(non Article III judge could not render final judgment on state law counter claim to creditor’s proof of claim as a “core” matter under 157(b)).

28 USC § 158

4th Cir. *McDow v. Dudley*, 662 F.3d 284 (4th Cir. 2011)(bankruptcy court order denying dismissal as abusive under §707(b) is a final order for appeal).

7th Cir. *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906 (7th Cir. 2011)(non Article III judge could not render final judgment on state law counter claim to creditor’s proof of claim as a “core” matter under 157(b); without a final judgment, court of appeals lacked appellate jurisdiction).

7th Cir. *River Road Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642 (7th Cir. 2011), *cert. granted*, 132 S. Ct. 845, (mootness may be disregarded if action (1) is too short in duration to be litigated, or (2) there is reasonable expectation that same subject may be appealed again).

10th Cir. *HealthTrio, Inc. v. Centennial River Corp. (In re HealthTrio, Inc.)*, 653 F.3d 1154 (10th Cir. 2011)(BAP had jurisdiction to review only orders issued by bankruptcy court in its judicial district).

28 USC § 455

U. S. Jud. Conf. Comm. *In re Complaint of Judicial Misconduct*, 664 F.3d 332 (U.S. Jud. Conf. Comm. 2011)(judge’s membership in discriminatory club was violative of Code of Judicial Conduct).

28 USC § 1334

7th Cir. *In re IFC Credit Corp.*, 663 F.3d 315 (7th Cir. 2011)(chapter 7 petition signed by debtor corporation’s president, which was followed the next day by amended petition signed by lawyer, did not deprive the court of subject matter jurisdiction).

28 USC § 1452

7th Cir. *Townsquare Media, Inc. v. Brill*, 652 F.3d 767 (7th Cir. 2011)(remand of removed action was not reviewable by Court of Appeals where remand was based on subject matter jurisdiction, even if that determination was erroneous).

FEDERAL RULES OF BANKRUPTCY PROCEDURE

RULE 1009

7th Cir. *In re IFC Credit Corp.*, 663 F.3d 315 (7th Cir. 2011)(chapter 7 petition signed by debtor corporation's president, which was followed the next day by amended petition signed by lawyer, did not deprive the court of subject matter jurisdiction).

RULE 3001

3d Cir. *Payne v. Lampe (In re Lampe)*, 665 F.3d 506 (3d Cir. 2011)(proof of claim based on breach of fiduciary duty of debtor was not based on writing, and, therefore, writing was not required to be attached under Rule 3001(c)).

RULE 4003

8th Cir. *Danduran v. Kaler (In re Danduran)*, 657 F.3d 749 (8th Cir. 2011)(under his burden of proof, trustee failed to segregate proceeds from combined sale of exempt and non exempt property; this lack of evidence was fatal to objection to claimed exemption).

RULE 7026

9th Cir. *Father M v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland)*, 661 F.3d 417 (9th Cir. 2011)(non-party retired priest entitled to protective order, but priest who continued to work with children was denied protective order in that nondisclosure was outweighed by public interest in knowing of alleged abuse).

RULE 8006

1st Cir. *City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.)*, 656 F.3d 82 (1st Cir. 2011)(issue omitted from statement of issues was waived where no exceptional circumstances existed).

5th Cir. *Smith v. H.D. Wholesale Drug Co. (In re McCombs)*, 659 F.3d 503 (5th Cir. 2011)(issue not included in statement of issues is waived on appeal, even if issue was argued in district court).

Rule 9010

5th Cir. *United States v. Spurlin*, 664 F.3d 954 (5th Cir. 2011)(a general power of attorney may be used to file bankruptcy).

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Rule 9011

3d Cir. *In re Taylor*, 655 F.3d 274 (3d Cir. 2011)(sanctions against creditor's counsel and firm upheld based on failure to make reasonable inquiry of client prior to making misleading statements in mortgage relief pleadings and hearings).

5th Cir. *Listokin Trust v. Lothian Oil Inc. (In re Lothian Oil Inc.)*, 650 F.3d 539 (5th Cir. 2011)(notice of appeal signed only by individual appellant does not effect appeal for non signing appellants; despite notice from clerk, non signing appellants did not correct deficiency).

RULE 9019

1st Cir. *City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.)*, 656 F.3d 82 (1st Cir. 2011)(bankruptcy court and reviewing court should determine whether settlement falls below the lowest point in the range of reasonableness).

7th Cir. *In re Fort Wayne Telsat, Inc.*, 665 F.3d 816 (7th Cir. 2011)(determining reasonableness of settlement requires a comparison of amount versus the net expected gain from litigation).

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