

TITLE 11

SUPREME COURT ANNOTATIONS

SEC. 101

U. S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(attorneys providing bankruptcy advice are “debt relief agencies” under 101(12A)).

SEC. 363

U. S. *Indiana State Police Pension Trust v. Chrysler LLC*, 130 S. Ct. 1015 (2009), *cert. granted, judgment vacated, and remanded to dismiss appeal as moot*, 592 F.3d 370 (2d Cir. 2010)(judgment vacated), 576 F.3d 108 (2d Cir. 2006)(sale of essentially all of debtor’s assets approved when there was a good business reason and only possible alternative was less recovery in immediate liquidation; release of all liens was allowed based on consent provided by collateral trustee).

SEC. 523

U. S. *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010)(order confirming plan that proposes to discharge student loan without adversary proceeding is not void and entitled to Rule 60(b)(4) relief; however, such a plan is violative of 1328(a)(2) and 523(a)(8) and should not be confirmed, even without creditor objection).

SEC. 526

U. S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(debt relief agency/attorney is forbidden from advising debtor to incur more debt in contemplation of filing, but does not prohibit frank discussions or incurrence of debt for valid reasons).

SEC. 528

U. S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(528(a)(4) and (b)(2) are constitutional as reasonably related to government’s interests in protecting consumers from deceptive advertising).

TITLE 11

SEC. 101

U. S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(attorneys providing bankruptcy advice are “debt relief agencies” under 101(12A)).

1st Cir. *Rederford v. US Airways, Inc.*, 589 F.3d 30 (1st Cir. 2009)(terminated employee’s cause of action for reinstatement constituted a “claim” under 101(5)).

1st Cir. *Smith v. Pritchett (In re Smith)*, 586 F.3d 69 (1st Cir. 2009)(\$50/day penalty for late payment of alimony was not a nondischargeable “domestic support obligation” under 101(14A) despite contrary language of agreement and tax treatment as alimony).

SEC. 106

8th Cir. *Knudsen v. Internal Revenue Serv.*, 581 F.3d 696 (8th Cir. 2009)(government held to have waived sovereign immunity regarding tax claims which could be stripped of their priority under 1222(a)(2)(A)).

SEC. 109

D.C. Cir. *Burns v. George Basilikas Trust*, 599 F.3d 673 (D.C. Cir. 2010)(reversed sanctions against attorney who filed bankruptcy for debtors who received credit counseling from a non accredited agency; attorney had basis for believing counseling was legally adequate).

SEC. 323

2d Cir. *Kirschner v. KPMG LLP*, 590 F.3d 186 (2d Cir. 2009)(certified to NY Ct of App question of litigation trustee’s right to sue third parties who assisted insiders in defrauding creditors).

9th Cir. *Harris v. Wittman (In re Harris)*, 590 F.3d 730 (9th Cir. 2009)(party must obtain leave of court to sue trustee or other court appointed official in nonbankruptcy forum for acts done in his official capacity).

SEC. 327

5th Cir. *Kennedy v. MindPrint (In re Proeducation Int’l, Inc.)*, 587 F.3d 296 (5th Cir. 2009)(under Tex. Rules, attorney who had worked for firm which represented one creditor could, when no longer employed by firm, represent adverse creditor when he had no knowledge of client or confidential information at prior firm).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 362

4th Cir. *DaimlerChrysler Fin. Servs. Ams., LLC v. Jones (In re Jones)*, 591 F.3d 308 (4th Cir. 2009)(Under BAPCPA, if debtor fails to redeem or reaffirm vehicle contract, stay was terminated and creditor could repossess vehicle).

5th Cir. *Barner v. Saxon Mtge. Servs., Inc. (In re Barner)*, 597 F.3d 651 (5th Cir. 2010)(lift stay order granted pre-BAPCPA in debtor's prior chapter 7 did not have to comply with BAPCPA 362(b)(20) and (d)(4); adversary proceeding was not required to determine that lift stay and abandonment in prior case rendered postpetition foreclosure effective).

9th Cir. *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2010)(attorney violated automatic stay by defending overbroad state court spousal support order after husband's chapter 11; husband entitled to emotional distress damages, but attorney's fee award limited to those incurred righting stay violation, but not to those in the action for damages).

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(26 USC 6503(h)(2) tolls 10 year IRS limitations on collection, plus an additional 6 months after stay is no longer in effect).

9th Cir. *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104 (9th Cir. 2009)(under BAPCPA, chapter 7 debtor who is current in car payments may not "ride-through" case without reaffirmation; under 362(h) and 521(d), she subjects collateral to repossession based on an *ipso facto* default clause in loan documents).

10th Cir. *Beaumont v. Dept. of Veteran Affairs (In re Beaumont)*, 586 F.3d 776 (10th Cir. 2009)(VA's postpetition reduction of benefits following prepetition overpayment was not violative of stay under recoupment doctrine).

SEC. 363

U. S. *Indiana State Police Pension Trust v. Chrysler LLC*, 130 S. Ct. 1015 (2009), *cert. granted, judgment vacated, and remanded to dismiss appeal as moot*, 592 F.3d 370 (2d Cir. 2010)(judgment vacated), 576 F.3d 108 (2d Cir. 2009)(sale of essentially all of debtor's assets approved when there was a good business reason and only possible alternative was less recovery in immediate liquidation; release of all liens was allowed based on consent provided by collateral trustee).

11th Cir. *Marathon Petroleum Co. v. Cohen (In re Delco Oil, Inc.)*, 599 F.3d 1255 (11th Cir. 2010)(trustee could recover debtor's funds which were transferred without authorization for use of cash collateral, despite transferee's provision of equivalent value and even if transferee acted without knowledge and in good faith).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 502

2d Cir. *Ogle v. Fidelity & Deposit Co.*, 586 F.3d 143 (2d Cir. 2009)(an unsecured claim for postpetition attorneys' fees authorized by pre-petition contract is allowable and deemed to have arisen prepetition).

2d Cir. *ASM Capital, LP v. Ames Dept. Stores, Inc. (In re Ames Dept. Stores, Inc.)*, 582 F.3d 422 (2d Cir. 2009)(502(d) does not bar allowance of a postpetition administrative claim owed to an alleged preference recipient).

6th Cir. *PCFS Fin. v. Spragin (In re Nowak)*, 586 F.3d 450 (6th Cir. 2009)(informal proof of claim disallowed for creditor with avoided lien who failed to subsequently file unsecured claim when court determined distribution would be inequitable).

SEC. 503

3d Cir. *In re Reliant Energy Channelview LP*, 594 F.3d 200 (3d Cir. 2010)(denial of \$15 million breakup fee for sale of estate asset was affirmed as not necessary to preserve the value of the estate; potential harm could be caused by deterring other bidders).

5th Cir. *Szwak v. Earwood (In re Bodenheimer, Jones, Szwak, & Winchell, LLP)*, 592 F.3d 664 (5th Cir. 2009)(compensation for prebankruptcy custodian must benefit the estate under 503(b)(3)(E); fees for opposition to involuntary bankruptcy filing held noncompensable).

SEC. 506

2d Cir. *Ogle v. Fidelity & Deposit Co.*, 586 F.3d 143 (2d Cir. 2009)(unsecured claim for post-petition attorneys' fees authorized by prepetition contract is allowable and deemed to have arisen prepetition; 506(b), by negative implication, does not preclude such an unsecured claim).

6th Cir. *PCFS Fin. v. Spragin (In re Nowak)*, 586 F.3d 450 (6th Cir. 2009)(secured creditor not required to file claim to maintain collateral, but proof of claim is required to collect on unsecured deficiency).

9th Cir. *Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai)*, 581 F.3d 1090 (9th Cir. 2009)(506(b) entitles oversecured creditor to contractual attorney's fees prior to chapter 13 plan confirmation, preempting state law; Haw. state law governs post confirmation fees in which debtor was held to be prevailing party).

SEC. 507

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(taxes held nondischargeable under 523(a)(1)(A) and entitled to priority under 507(a)(8)(A)(i) when bankruptcy is filed less than 3 years after taxes were due).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 521

4th Cir. *DaimlerChrysler Fin. Servs. Ams., LLC v. Jones (In re Jones)*, 591 F.3d 308 (4th Cir. 2009)(Under BAPCPA, if debtor fails to redeem or reaffirm vehicle contract, stay was terminated and creditor could repossess vehicle; creditor may enforce *ipso facto*).

9th Cir. *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104 (9th Cir. 2009)(under BAPCPA, chapter 7 debtor who is current in car payments may not “ride-through” case without reaffirmation; under 362(h) and 521(d), she subjects collateral to repossession based on an *ipso facto* default clause in loan documents).

11th Cir. *Robinson v. Tyson Foods, Inc.*, 595 F.3d 1269 (11th Cir. 2010)(chapter 13 debtor collaterally estopped from pursuing employment discrimination claim, filed postpetition, which she never listed on schedules despite continuing duty to amend).

SEC. 522

2d Cir. *Jackson v. Novak (In re Jackson)*, 593 F.3d 171 (2d Cir. 2010)(litigation recovery for lost earnings attributable to postpetition period could be exempted under 522(d)(11)(E)).

9th Cir. *Greene v. Savage (In re Greene)*, 583 F.3d 614 (9th Cir. 2009)(debtor’s Nev. homestead exemption not limited by 522(p)(1) when property was acquired more than 1,215 days prepetition, despite fact that homestead claim arose during that period; absent amendment of schedules, estate is entitled to retain sales proceeds in excess of scheduled petition date value).

11th Cir. *Baker v. Tardif (In re Baker)*, 590 F.3d 1261 (11th Cir. 2009)(profit-sharing plan did not have to comply with ERISA to qualify for FL state exemption).

SEC. 523

U.S. *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010)(order confirming plan that proposes to discharge student loan without adversary proceeding is not void and entitled to Rule 60(b)(4) relief; however, such a plan is violative of 1328(a)(2) and 523(a)(8) and should not be confirmed, even without creditor objection).

6th Cir. *Cassim v. Educ. Credit Mgmt. Corp. (In re Cassim)*, 594 F.3d 432 (6th Cir. 2010)(dischargeability action against student lender was ripe despite the fact that chapter 13 debtor had yet to receive discharge).

7th Cir. *Ojeda v. Goldberg*, 599 F.3d 712 (7th Cir. 2010)(“justifiable reliance” on misrepresentation under 523(a)(2)(A) required only that creditor did not blindly rely on patently false representation; forbearance on collection constitutes “extension or renewal” of credit preventing discharge of debt and resulted in creditor’s loss in value of collection remedies).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 523

7th Cir. *Tidwell v. Smith (In re Smith)*, 582 F.3d 767 (7th Cir. 2009)(actual notice of debtor doctor's chapter 7 filing 17 days prior to dischargeability deadline was insufficient to bar late filing of such a complaint by unlisted plaintiff patients pursuant to 523(a)(3)(B)).

9th Cir. *State Bar of Cal. v. Findley (In re Findley)*, 593 F.3d 1048 (9th Cir. 2010)(costs of attorney disciplinary proceedings are excepted from attorney's discharge as a governmental fine, penalty, or forfeiture under 523(a)(7)).

9th Cir. *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199 (9th Cir. 2010)(state judgment for misappropriation of title plant and files of competitor was basis for issue preclusion supporting nondischargeability under 523(a)(4) and (6)).

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(taxes held nondischargeable under 523(a)(1)(A) and entitled to priority under 507(a)(8)(A)(i) when bankruptcy is filed less than 3 years after taxes were due).

10th Cir. *Johnson v. Riebesell (In re Riebesell)*, 586 F.3d 782 (10th Cir. 2009)(loan owed by lawyer-debtor to client held nondischargeable under 523(a)(2)(A) for failure to meet state imposed disclosure obligations for lawyers; post-judgment interest should be calculated at statutory rate rather than contract default rate since there was no contract post-judgment rate).

10th Cir. *Melnor, Inc. v. Corey (In re Corey)*, 583 F.3d 1249 (10th Cir. 2009)(doctrine of issue preclusion rendered default fraud judgment in Va. federal district court preclusive in nondischargeability action under 523(a)(2)(A)).

SEC. 524

10th Cir. *Beaumont v. Dept. of Veteran Affairs (In re Beaumont)*, 586 F.3d 776 (10th Cir. 2009)(VA's postpetition reduction of benefits following prepetition overpayment was not violative of discharge injunction under recoupment doctrine).

SEC. 526

U.S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(debt relief agency/attorney is forbidden from advising debtor to incur more debt in contemplation of filing, but does not prohibit frank discussions or incurrence of debt for valid reasons).

SEC. 528

U.S. *Milavetz, Gallop & Milavetz v. U.S.*, 130 S. Ct. 1324 (2010)(528(a)(4) and (b)(2) are constitutional as reasonably related to government's interests in protecting consumers from deceptive advertising).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 541

2d Cir. *Jackson v. Novak (In re Jackson)*, 593 F.3d 171 (2d Cir. 2010)(debtor's wages earned pre petition are property of the estate even when paid post petition).

4th Cir. *Nickey Gregory Co. v. AgriCap, LLC*, 597 F.3d 591 (4th Cir. 2010)(PACA trust assets, perishable agricultural commodities, never become assets of the bankruptcy estate).

SEC. 543

5th Cir. *Szwak v. Earwood (In re Bodenheimer, Jones, Szwak, & Winchell, LLP)*, 592 F.3d 664 (5th Cir. 2009)(compensation for prebankruptcy custodian must benefit the estate under 503(b)(3)(E); fees for opposition to involuntary bankruptcy filing held noncompensable).

SEC. 544

9th Cir. *Chase Manhattan Bank v. Taxel (In re Deuel)*, 594 F.3d 1073 (9th Cir. 2010)(unrecorded deed of trust lender could not defend trustee's avoidance action based on secured listing on debtor's schedules or based on right of equitable subrogation from prior perfected lender that had filed a release of lien).

SEC. 546

3d Cir. *Brandt v. B.A. Capital Co. (In re Plassein Int'l Corp.)*, 590 F.3d 252 (3d Cir. 2009)(payments made in LBO to privately-held, acquired companies' shareholders were non-avoidable under 546(e) as "settlement payments").

SEC. 547

1st Cir. *National Lumber Co. v. Riley (In re Reale)*, 584 F.3d 27 (1st Cir. 2009)(property held in joint bank account was an interest of the debtor in property since he could control its use, and, therefore, "earmarking" doctrine was inapplicable).

4th Cir. *United Rentals, Inc. v. Angell*, 592 F.3d 525 (4th Cir. 2010)(determination of whether transferee received more by virtue of preference is based solely on whether it would have received 100% from bankruptcy estate; discharge of inchoate lien rights or payment from surety did not constitute "new value").

8th Cir. *Wells Fargo Home Mortgage, Inc. v. Lindquist*, 592 F.3d 838 (8th Cir. 2010)(2 year old mortgage held avoidable if not recorded prepetition under 547(e)(2)(C) and value of mortgage was recoverable from initial, pre-transfer lender).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

9th Cir. *USAA Fed. Sav. Bank v. Thacker (In re Taylor)*, 599 F.3d 880 (9th Cir. 2010)(lien perfected on car 21 days after debtors took possession avoided as preference, giving trustee option to recover security interest or its value).

SEC. 548

5th Cir. *Stanley v. U.S. Bank, N.A.(In re TransTexas Gas Corp.)*, 597 F.3d 298 (5th Cir. 2010)(transferee who was CEO at time of agreement to pay severance was “insider” under 548 despite fact he had left when payments were made; severance payment which was disproportionate to amount contractually owed did not provide reasonably equivalent value).

7th Cir. *Boyer v. Crown Stock Distribution, Inc.*, 587 F.3d 787 (7th Cir. 2009)(trustee was entitled to recover payment and “dividend” from shareholders who benefited from leveraged buyout, which had been structured as an asset sale and in which debtor did not receive reasonably equivalent value).

SEC. 552

3d Cir. *Wawel Sav. Bank v. Jersey Tractor Trailer Training, Inc. (In re Jersey Tractor Trailer Training, Inc.)*, 580 F.3d 147 (3d Cir. 2009)(factor whose lien search did not reveal prior secured creditor may have been a holder in due course who acted in good faith; case remanded to resolve good faith issue under NJ law).

SEC. 727

11th Cir. *Coady v. D.A.N. Joint Venture III, LP (In re Coady)*, 588 F.3d 1312 (11th Cir. 2009)(discharge could be denied under 727(a)(2)(A) when debtor concealed interest in wife’s business to which he diverted his uncompensated labor and in which he personally participated).

SEC. 1101

10th Cir. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1328 (10th Cir. 2009)(substantially consummated plan can be reviewed on appeal and is not singularly dispositive of equitable mootness).

SEC. 1103

7th Cir. *In re Ray*, 597 F.3d 871 (7th Cir. 2010)(former attorney for committee lacked standing to appeal case dismissal order when he did not appear on his firm’s behalf).

SEC. 1109

D.C. Cir. *Advantage HealthPlan Inc. v. Potter (In re Greater Southeast Cmty. Hosp. Found., Inc.)*, 586 F.3d 1 (D.C. Cir. 2009)(courts do not extend broad standing of 1109 to appellate standing; corporate president of creditor was not “person aggrieved”, and corporation needed attorney).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 1112

3d Cir. *In re 15375 Memorial Corp. v. BEPCO, LP*, 589 F.3d 605 (3d Cir. 2009)(filing chapter 11 for tactical advantage in litigation with no bankruptcy purpose supports dismissal for bad faith filing).

SEC. 1122

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(classes must contain “substantially similar” claims, but similar claims may be classed separately for good business reasons not include gerrymandering for voting; review of this issue was held equitably moot).

SEC. 1123

5th Cir. *Schaefer v. Superior Offshore Int’l, Inc. (In re Superior Offshore Int’l, Inc.)*, 591 F.3d 350 (5th Cir. 2009)(liquidation plan was not required to provide conversion mechanism for subordinated securities when correct pro rata treatment and possible adjudication was adequate).

SEC. 1127

5th Cir. *Alberta Energy Partners v. Blast Energy Servs., Inc. (In re Blast Energy Servs., Inc.)*, 593 F.3d 418 (5th Cir. 2010)(1127 anti modification provision does not limit appellate review of confirmation order; review is only limited by equitable mootness doctrine).

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(equitable mootness does not apply to entire appeal and did not preclude review of treatment of specific claims).

10th Cir. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1328 (10th Cir. 2009)(neither constitutional nor equitable mootness prevented review on appeal of plan confirmation despite substantial consummation).

SEC. 1129

3d Cir. *In re Philadelphia Newspapers, LLC*, 599 F.3d 298 (3d Cir. 2010)(plain meaning of 1129(b)(2)(A) permits debtor to conduct asset sale under subdivision (iii) without allowed secured creditor to credit bid).

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(absolute priority rule and fair and equitable standard must be satisfied to cram down plan over a dissenting class; secured noteholders received indubitable equivalent by cash payment of court-determined value of collateral and were not entitled to credit bid).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
PUBLICATION OF 2010 EDITIONS (INCLUSIVE OF UPDATE I)

SEC. 1141

1st Cir. *Boston and Maine Corp. v. Mass. Bay Transp. Auth.*, 587 F.3d 89 (1st Cir. 2009)(under 1898 Bankruptcy Act, claim for environmental liability contribution was barred for contamination which occurred prior to bankrupt's discharge).

6th Cir. *Tam Travel, Inc. v. Delta Airlines, Inc. (In re Travel Agent Comm. Antitrust Litigation)*, 583 F.3d 896 (6th Cir. 2009)(reorganized debtor is generally liable for its post confirmation conduct; however, reorganized debtor's maintenance of its prepetition commission policy held not to be a continuing antitrust violation).

SEC. 1142

7th Cir. *Grede v. Bank of N.Y. Mellon*, 598 F.3d 899 (7th Cir. 2010)(trustee of liquidation trust created by confirmed plan may pursue third-party claim that was assigned to trust).

SEC. 1222

8th Cir. *Knudsen v. Internal Revenue Serv.*, 581 F.3d 696 (8th Cir. 2009)(pre and postpetition sales of hogs, held to be farm assets, gave rise to resulting tax claims which could be stripped of their priority under 1222(a)(2)(A); marginal method rather than proration method was appropriate to allocate tax liability).

SEC. 1306

11th Cir. *Robinson v. Tyson Foods, Inc.*, 595 F.3d 1269 (11th Cir. 2010)(qualified property acquired during case was property of estate).

SEC. 1325

2d Cir. *Reiber v. GMAC, LLC (In re Peaslee)*, 585 F.3d 53 (2d Cir. 2009)(portion of car sale attributable to trade-in's negative equity was part of PMSI and entitled to secured treatment).

5th Cir. *Ford Motor Credit Co. v. Dale (In re Dale)*, 582 F.3d 568 (5th Cir. 2009)(under Tex. law, claim which included financing of negative equity in traded auto, gap insurance, and extended warranty constituted purchase money obligations entitled to protection of 1325(a) hanging paragraph).

6th Cir. *Nuvel Credit Corp. v. Westfall (In re Westfall)*, 599 F.3d 498 (6th Cir. 2010)(under Ohio law, claim which included financing of negative equity in traded auto constituted purchase money obligations entitled to protection of 1325(a) hanging paragraph and could not be bifurcated).

UPDATE II TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO
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7th Cir. *In re Howard*, 597 F.3d 852 (7th Cir. 2010)(under Ill. law, claim which included financing of negative equity in traded auto constituted purchase money obligations entitled to protection of 1325(a) hanging paragraph and could not be bifurcated).

8th Cir. *Ford Motor Credit Co v. Mierkowski (In re Mierkowski)*, 580 F.3d 740 (8th Cir. 2009)(claim which included financing of negative equity in traded auto was still entitled to purchase money security interest protection of 1325(a) hanging paragraph); *accord Nuvel Credit Co. v. Callicott (In re Callicott)*, 580 F.3d 753 (8th Cir. 2009).

9th Cir. *Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai)*, 581 F.3d 1090 (9th Cir. 2009)(506(b) entitles oversecured creditor to enforce contractual attorney’s fees up to date of chapter 13 plan confirmation, preempting state law; “effective date” of plan is date when plan becomes binding by court order of confirmation).

10th Cir. *Hamilton v. Lanning*, 545 F.3d 1269 (10th Cir. 2008), *cert granted* 130 S. Ct. 487 (2009)(review limited to question of effects of income and expense changes during plan period on “projected disposable income”).

SEC. 1327

1st Cir. *Smith v. Pritchett (In re Smith)*, 586 F.3d 69 (1st Cir. 2009)(\$50/day penalty for late payment of alimony was not a nondischargeable “domestic support obligation” under 101(14A) despite contrary language of agreement and tax treatment as alimony).

SEC. 1328

U. S. *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010)(order confirming plan that proposes to discharge student loan without adversary proceeding is not void and entitled to Rule 60(b)(4) relief; however, such a plan is violative of 1328(a)(2) and 523(a)(8) and should not be confirmed, even without creditor objection).

TITLE 18

18 U. S. C. 152

7th Cir. *United States v. Arthur*, 582 F.3d 713(7th Cir. 2009)(violation of 152(5) found despite marital agreement that non debtor wife claimed entitled her to property; court found agreement fraudulent and also held debtor husband 152(2) for nondisclosure of assets).

9th Cir. *United States v. Edwards*, 595 F.3d 1004 (9th Cir. 2010)(criminal restitution under Mandatory Victim’s Recovery Act with its penal objectives cannot be waived by civil settlement of bankruptcy claim).

TITLE 28

28 U. S. C. 157

3d Cir. *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.)*, 591 F.3d 164 (3d Cir. 2009)(court lacks “related to” jurisdiction over negligence actions brought against state of MT which could, in future proceeding, give rise to indemnity or contribution claim against debtor; court may not enjoin proceedings against third parties unless proceeding arise in or under or is related to underlying bankruptcy).

5th Cir. *Lone Star Fund V (U.S.) v. Barclays Bank PLC*, 594 F.3d 383 (5th Cir. 2010)(fraud allegations against mortgage backed securities seller gave rise to contractual indemnification rights against its seller-debtor which supported “related to” jurisdiction).

28 U. S. C. 158

9th Cir. *Congrejo Invs., LLC v. Mann, (In re Bender)*, 586 F.3d 1159 (9th Cir. 2009)(determination of finality of remanded case must be based on *Vylene* factors - avoid piecemeal litigation; judicial efficiency; preserving bankruptcy court as fact finder; and irreparable harm to party).

28 U. S. C. 455

8th Cir. *American Prairie Constr. Co. v. Hoich*, 594 F.3d 1015 (8th Cir. 2010)(to support recusal judge must display deep seated favoritism or antagonism making fair judgment impossible).

28 U. S. C. 1334

9th Cir. *Harris v. Wittman (In re Harris)*, 590 F.3d 730 (9th Cir. 2009)(suit by debtor against his chapter 7 trustee for breach of settlement agreement had “arising in” subject matter jurisdiction).

28 U. S. C. 1452

2d Cir. *Orange County Water Dist. v. Unocal Corp.*, 584 F.3d 43 (2d Cir. 2009)(party waived improper bankruptcy removal by failing to raise issue within 30 days under 28 USC 1447(c); improper removal did not affect subject matter jurisdiction).

4th Cir. *MR Crescent City, LLC v. Draper (In re Crescent City Estates, LLC)*, 588 F.3d 822 (4th Cir. 2009)(28 USC 1447(c) does not permit recovery of legal fees from attorney who erroneously removes action from state court; statute applies solely to litigants).

BANKRUPTCY RULES

RULE 1009

9th Cir. *Greene v. Savage (In re Greene)*, 583 F.3d 614 (9th Cir. 2009)(court may disallow amendment of schedules only upon showing of bad faith or 3d party prejudice).

RULE 3001

5th Cir. *APS Capital Corp. v. Mesa Air Group*, 580 F.3d 265 (5th Cir. 2009)(under TX law, enforceable agreement to sell bankruptcy claim must resolve all essential terms and leave no material matters for future negotiations).

RULE 7015

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(court may deny motion to amend complaint based on delay, bad faith motivation, or prejudice to other party).

RULE 7065

5th Cir. *Ingalls v. Thompson (In re Bradley)*, 588 F.3d 254 (5th Cir. 2009)(remedial civil contempt may be based on violation of oral injunction order).

RULE 8001

5th Cir. *Alberta Energy Partners v. Blast Energy Servs., Inc. (In re Blast Energy Servs., Inc.)*, 593 F.3d 418 (5th Cir. 2010)(notice of appeal covering only ruling on motion for rehearing was adequate to hear the district court's underlying judgment; court is lenient on construction of notices of appeal).

RULE 8006

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(appellate record cannot be supplemented with evidence not presented in the bankruptcy court through attachment to brief).

RULE 8009

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(appellate record cannot be supplemented with evidence not presented in the bankruptcy court through attachment to brief).

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RULE 9011

D.C. Cir. *Burns v. George Basilikas Trust*, 599 F.3d 673 (D.C. Cir. 2010)(reversed sanctions against attorney who filed bankruptcy for debtors who received credit counseling from a non accredited agency; attorney had basis for believing counseling was legally adequate).

6th Cir. *B-Line, LLC v. Wingerter (In re Wingerter)*, 594 F.3d 931 (6th Cir. 2010)(imposition of sanctions not warranted for filing proof of claim with inadequate documentation given reasonableness of actions taken by particular claimant).

RULE 9019

8th Cir. *American Prairie Constr. Co. v. Hoich*, 594 F.3d 1015 (8th Cir. 2010)(settlement agreement between creditor and third party acquiring a chapter 11 debtor was necessarily part of plan and required court approval upon notice).

RULE 9024

5th Cir. *Heller v. Tex. Real Estate Comm'n (In re Marinez)*, 589 F.3d 772 (5th Cir. 2009)(default order could be set aside when defendant's failure to answer was not willful, attempts were made to resolve litigation, and no prejudice to plaintiff resulted).

RULE 9028

1st Cir. *National Lumber Co. v. Riley (In re Reale)*, 584 F.3d 27 (1st Cir. 2009)(successor judge to nonjury trial not required to recall witnesses without request from party).

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