ACB 7th Circuit Educational Program
Courtside Seats: SCOTUS, Circuit, and Local Developments

3-Point Shot: UNITED STATES SUPREME COURT CASES

***Keathley v. Buddy Ayers Construction*, No. 25-6, 608 U.S. ___, 2026 WL 1686028 (2026)**

Justice Jackson wrote a unanimous opinion reversing the Fifth Circuit and holding that the Fifth Circuit's objective rule for determining whether the doctrine of judicial estoppel should apply is too broad and rigid. Without deciding whether judicial estoppel is applicable at all in the bankruptcy context, judicial estoppel is an equitable doctrine that must be applied on a case-by-case basis. A rigid rule is out of step with equity.

Facts: Thomas Keathley and his wife filed Chapter 13 bankruptcy in December 2019, and in April 2020, the bankruptcy court confirmed a plan that would pay all allowable claims in full.

In August 2021 (more than 20 months after the bankruptcy was filed), Keathley was involved in a personal injury vehicle accident involving an employee of Buddy Ayres Construction, Inc. Keathley retained personal injury counsel and notified his bankruptcy attorney about the potential personal injury claim, but neither Keathley nor counsel disclosed the potential personal injury claim to the court.

Keathley filed suit in U.S. District Court for the Northern District of Mississippi in December 2021 but again failed to notify the bankruptcy court. In March 2023, Buddy Ayres Construction moved for summary judgment on the grounds of judicial estoppel. Keathley immediately filed an amended schedule notifying the Bankruptcy Court of his pending claims. He then submitted affidavits in response to the motion for summary judgment, explaining that his omission had been inadvertent. The District Court granted summary judgment and relied on Fifth Circuit precedent that failure to disclose will be considered the result of inadvertence or mistake only if (1) the debtor did not know the facts underlying the claim, or (2) there was no potential motive to conceal the claim. The District Court dismissed the case holding that Keathley knew about the underlying facts and that he had a motive to conceal the asset as he might have been required to pay interest on the unsecured claims had the creditors learned of the asset. The Fifth Circuit COA affirmed the decision agreeing that Fifth Circuit precedent dictated the outcome.

Held: After filing Chapter 13 bankruptcy, debtors must disclose all newly acquired assets while the case is pending. On occasion debtors fail to disclose a pending cause of action in the bankruptcy court and then pursue that action in another court now pursuing inconsistent positions in successive litigation. Judicial estoppel is an equitable doctrine intended to protect the integrity of the judicial process, and courts must look to the totality of circumstances surrounding the omission. The Fifth Circuit's rule is both too rigid and too broad. Inadvertence or mistake can function as an exception to that application. Utilizing the Fifth Circuit's objective standard that judicial estoppel will apply any time a debtor knows certain facts or could potentially benefit from nondisclosure will almost always be true. "A near-dispositive criterion is a poor fit for a fair inquiry into whether an omission is *actually* the result of inadvertence or mistake."

Justice Thomas wrote a concurring opinion in which Justice Gorsuch joined questioning whether lower courts have any clear authority under statute or Federal Rule. Justice Thomas wrote: "It is unclear what gives federal courts the authority to bar suits based on judicial estoppel. Often, as in the case below, federal courts treat judicial estoppel as a matter of federal law and feel free to craft their own standards and extend the doctrine to new contexts. But, the doctrine appears to have no basis in any statute, any Federal Rule of Civil Procedure, or any traditional inherent power of federal courts. Although the doctrine purports to punish litigants to "protect the integrity of the judicial process," *Edwards v. Aetna Life Ins. Co*., 690 F. 2d 595, 598 (CA6 1982), the courts of appeals have not justified it as an exercise of the traditional sanctioning power that courts have been held to have in other contexts." Justice Thomas would like the entire doctrine reexamined in a future case.

Justice Sotomayor also wrote a concurring opinion questioning whether it would ever make sense to apply judicial estoppel while the bankruptcy proceedings are pending. She wrote, "applying judicial estoppel to debtors still involved in open bankruptcies is more likely to hurt creditors than it is to help them. Instead, the party most likely to benefit is the potential tortfeasor in the separate proceeding: someone who is not prejudiced by the debtor's earlier, inconsistent position, but whom judicial estoppel permits to escape liability."

In Indiana and the Seventh Circuit:

As the Supreme Court decision did not eliminate judicial estoppel in the bankruptcy context (at the moment), the opinion may force judges to consider whether dismissing a case under the doctrine of judicial estoppel would only benefit the alleged tortfeasor. If the underlying bankruptcy case is still pending and the bankruptcy court retains jurisdiction and control of

property of the bankruptcy estate, it may be better for creditors to allow the case to move forward after proper disclosures have been made. Neither the Seventh Circuit nor Indiana District Courts have created objective rules for determining whether judicial estoppel is applicable but instead have historically followed the Supreme Court guidance to review each case equitably.

In the Seventh Circuit case, *Cannon-Stokes v. Potter* [453 F.3d 446 at 448 (7th Cir. 2006)], the debtor failed to disclose a pre-petition asset that was worth more than the entirety of her debts [it may be worth noting that the potential asset would have been an exempt asset]. In dismissing her suit against the United States Postal Service, Judge Easterbrook stated: "A doctrine that induces debtors to be truthful in their bankruptcy filings will assist creditors in the long run (though it will do them no good in the particular case) - and it will assist the debtors too, for the few debtors who scam their creditors drive up interest rates and injure the more numerous honest borrowers. Judicial estoppel is designed to 'prevent the perversion of the judicial process,' *In re Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990), a fair description of the result if we were to let Cannon-Stokes conceal, for her benefit, an asset that by her reckoning is three times the value of the debts she has discharged. It is impossible to believe that such a sizeable claim – one central to her daily activities at work – could have been overlooked when Cannon-Stokes was filling in the bankruptcy schedules. And if Cannon-Stokes were really making an honest attempt to pay her debts, then as soon as she realized that it had been omitted, she would have filed amended schedules and moved to reopen the bankruptcy, so that creditors could benefit from any recovery."

The Seventh Circuit additionally discussed judicial estoppel in the bankruptcy context in the 2013 case, *Grochocinski v. Mayer, Brown, Rowe & Maw, LLP*, No. 11-3597 (7th Cir. 2013). In that case a creditor obtained a $17M default judgment against an insolvent business, forced that business into an involuntary Chapter 7 bankruptcy, and then convinced the trustee to sue the business's attorney for malpractice for not defending the lawsuit. In other words, the creditor argued that its state court case had no merit and had the debtor defended the action there would have been no $17M default judgment; therefore, the debtor's attorneys should pay the creditor the $17M judgment as malpractice for not defending the state court action. In dismissing the malpractice suit, Judge Hamilton wrote, "Judicial estoppel is a flexible equitable doctrine designed to prevent 'the perversion of the judicial process.' *In re Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990). The doctrine protects the courts from being 'manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories.' *Ogden Martin Systems of Indianapolis, Inc. v. Whiting Corp.*, 179 F.3d 523, 527 (7th Cir. 1999) (quotations omitted); *Ladd v. ITT Corp.*,148 F.3d 753, 756 (7th Cir. 1998) ("the purpose of the doctrine . . . is to reduce fraud in the legal process by forcing a

modicum of consistency on a repeating litigant"). It may be raised by any party, regardless of whether the party was prejudiced by the inconsistency, or by the court on its own motion. ... "The application of judicial estoppel is 'not reducible to any general formulation of principle,' though the inquiry is typically informed by several factors. *New Hampshire v. Maine, 532 U.S. 742, 750 (2001)* (quotation omitted). The Supreme Court has identified three considerations to help guide the inquiry: (1) whether 'a party's later position must be clearly inconsistent with its earlier position;' (2) whether 'the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or second court was misled;' and (3) whether 'the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.' *Id*. at 750-51 (quotations omitted). We have emphasized that these are not rigid requirements but 'general guideposts that must be considered in the context of all the relevant equities in any given case.' *In re Knight-Celotex, LLC*, 695 F.3d at 722."

In the Indiana Southern District Court case, *Thomas v. Indiana Oxygen Co., Inc*. [32 F.Supp.3d 983 (2014)] Judge Magnus-Stinson allowed the debtor's District Court claim to continue after Thomas quickly amended his schedules once the error was raised. She wrote: "It is clear that Mr. Thomas' discrimination claims are part of the bankruptcy estate. The Bankruptcy Code requires the debtor to schedule as assets 'all legal or equitable interests of the debtor in property as of the commencement of the [Chapter 13 bankruptcy] case.' 11 U.S.C. § 541(a)(1). Any legal claims procured while the bankruptcy is pending also become property of the bankruptcy estate. 11 U.S.C. § 1306(a)(1) ('Property of the [Chapter 13 bankruptcy] estate includes ... all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted ....'); *Rainey v. United Parcel Service, Inc*., 466 Fed.Appx. 542, 544 (7th Cir.2012) ('A Chapter 13 estate encompasses all property, including legal claims, acquired after the petition is filed and before the case is closed')."

The District Court denied the motion to dismiss the EEOC case because there was no evidence presented that his nondisclosure was purposeful. Additionally, there was a prompt disclosure to the bankruptcy court, and the plaintiff/debtor did not substantially gain from the nondisclosure. "This decision is made with an understanding of the vital importance of full disclosure of legal claims to bankruptcy courts. Allowing Mr. Thomas to continue this litigation on behalf of the bankruptcy estate without a damages cap will not encourage debtors to be dishonest in district courts. When a plaintiff is 'caught' for failing to disclose a lawsuit to the bankruptcy court, there is no guarantee that the bankruptcy court will allow the late disclosure or that the district court will determine that the nondisclosure was inadvertent and allow the lawsuit to proceed."

***Pung v. Isabella County, Michigan*., No. 25-95, 609 U.S. ___, 2026 WL 3031000 (2026)**

Justice Alito wrote the opinion for the Court holding that a taxing authority selling real property at a tax sale only needs to return the surplus (the difference between what was received reduced by the tax liability) and not the hypothetical fair market value. It is not a violation of the Eighth Amendment Excessive Fines Clause to return more than the surplus proceeds.

Facts: The Pung family owed $2,241.93 in real property taxes. After the family refused to pay (there was a dispute regarding whether they could use a principal residence state-law tax exemption), the County initiated foreclosure proceedings. At auction, the property sold for $76,008 even though the assessed value was $194,400. Initially, the County retained the entire $76,008, and Michael Pung sued in Federal court claiming the County violated both the Takings Clause in the Fifth Amendment and the Excessive Fines Clause in the Eighth Amendment. Pung was successful on the Fifth Amendment claim and the County returned the surplus funds. Accordingly, the District Court did not have to reach any decision on whether the failure to pay the assessed value was an excessive fine. The Sixth Circuit affirmed the District Court holding that "when a municipality sells foreclosed property at a properly conducted auction, the owner is entitled to 'the amount of the sale above his debt and no more.'"

Held: Pung's theories that eminent domain laws or taking less drastic measures (such as selling personal property) were not persuasive to the Court. "Pung's fair-market-value theory would impose unprecedented burdens on jurisdictions that wish to collect unpaid taxes and might well make tax sales impractical. In order to obtain something like fair market value for homes on which they have foreclosed, jurisdictions would have to do what homeowners typically do when they want to sell their homes: either shoulder the burden of selling the property themselves or employ a real estate agent. In the meantime, local governments would have to do without the unpaid taxes and bear the costs and risks that go with the ownership of unoccupied homes." And, if the Court followed Pung's suggestions, many tax sales would result in a net loss for the municipality. For example, if a home had a fair market value of $100,000 with $20,000 owed in taxes and the property sold for $60,000 at auction, the municipality would be required to pay $80,000 to the homeowner (FMV less taxes owed) and have a net *loss* of $20,000 on the sale.

There was no violation of the Excessive Fines Clause in the Eighth Amendment. Forfeiture of property is only a fine for purposes of the Eighth Amendment if it serves in part to punish. Paying the taxes that are statutorily due is not a punishment. "The Pung family lost its property because it failed to pay its taxes. The Fifth Amendment protects the family's

right to surplus proceeds from the tax sale, not compensation for the property's fair market value. The Eighth Amendment offers no greater protections."

How is this decision related to bankruptcy? Indiana has a one-year right of redemption after the tax sale, and the Seventh Circuit decided in the case, *In re Lamont* [740 F.3d 397 (7th Cir. 2014)] that a tax purchaser's interest in a debtor's property is a secured claim that can be treated and modified under a Chapter 13 bankruptcy plan. Accordingly, in states that allow a redemption period, a debtor could repay the minimum tax bid and redeem the property over an additional 36-to-60-month period.

Even if there is no redemption period (or any redemption period has expired), a bankruptcy trustee using "strong-arm powers" can avoid fraudulent transfers. A fraudulent transfer can either be actual fraud (a transfer with intent to hinder, delay, or defraud) or constructive fraud (in which the debtor received less than a reasonably equivalent value). In the case *BFP v. Resolution Trust Corporation* [511 U.S. 531 (1994)], the question before the Supreme Court was whether the sale for a "reasonably equivalent value" is different from a sale for "fair market value" in the context of a mortgage foreclosure sale. The Supreme Court held that there is a difference between fair market value (what a homeowner could expect to receive) versus a reasonably equivalent value (as one might expect to receive within the strict requirements of a foreclosure sale). The Court stated, "States have created diverse networks of judicially and legislatively crafted rules governing the foreclosure process, to achieve what each of them considers the proper balance between the needs of lenders and borrowers. All States permit judicial foreclosure, conducted under direct judicial oversight; about half of the States also permit foreclosure by exercising a private power of sale provided in the mortgage documents. … When these States have created diverse networks of judicially and legislatively crafted rules governing the foreclosure process, to achieve what each of them considers the proper balance between the needs of lenders and borrowers." Accordingly, when lenders and courts follow the strict foreclosure proceedings, selling property for less than fair market value does not mean that the property was sold for less than a reasonably equivalent value.

However, a tax sale may be different from a foreclosure sale, and the Court continued by saying "the 'reasonably equivalent value' criterion will continue to have independent meaning (ordinarily a meaning similar to fair market value) outside the foreclosure context." Would that include a tax sale? In this case, the sale resulted in less than a 40% return on the home's assessed value. Could the Pungs file bankruptcy and "try again?"

***Margolin v. National Association of Immigration Judges*., No. 25-767, 608 U.S. ___, 2026 WL 2490532 (2026)**

This case resulting in a *per curiam* opinion that is tangentially related to bankruptcy and other areas of law regarding the principal of party presentation.

Facts: The National Association of Immigration Judges sued the Executive Office for Immigration Review (there were several named defendants between July 1, 2020, and 2026 including James McHenry, David Neal, Sheila Owen, and Daren Margolin – all Directors for the EOIR) alleging a new policy requiring supervisor approval for public statements by immigration judges violated their First and Fifth Amendment rights. A Federal District Court in the Eastern District of Virginia dismissed the case holding that a federal statute known as the Civil Service Reform Act ("CSRA") generally keeps federal employees' grievances out of court. Instead, grievances must be heard by the Merit Systems Protection Board ("MSPB"), an independent agency that handles federal personnel matters. The NAIJ had argued ONLY that its members' constitutional claims were not the kind of work-related claims that Congress intended to steer out of district court.

On appeal the NAIJ again argued only that its specific claims were not covered under the CSRA's claim-channeling scheme. The Fourth Circuit reversed the lower court and held *sua sponte* that while federal law would normally require the NAIJ to go through the MSPB, the District Court should first determine whether the MSPB maintains its functionality and independence.

The Supreme Court reversed the Fourth Circuit on the principle of party presentation. "That principle—the 'rule that points not argued will not be considered'—distinguishes our adversarial system of justice from an inquisitorial one. … Because courts are 'essentially passive instruments of government,' we rely on the parties to 'frame the issues for decision' and decide 'only the questions presented.'"

SCOTUS continued, "The court transformed respondent's argument that the CSRA did not channel its claims into one that the CSRA might not—in light of current conditions—channel any claims. And the court did so without giving either side a chance to address its theory." It was an abuse of discretion for the court to depart from the principal of party presentation.

How does this decision relate to bankruptcy?

In the Supreme Court Case *United Student Aid Funds, Inc. v. Espinosa* (559 U.S. 260 2010), the Supreme Court ruled that a bankruptcy judge committed legal error by confirming a plan that discharged student loan debts even though the student loan creditor did not file

any objection to plan confirmation. Even though the issue of undue hardship was never presented to the bankruptcy court at any time, the Supreme Court stated that the judge should have acted independently and denied confirmation. The Court stated, "But, to comply with §523(a)(8)'s directive (student loan undue hardship), the bankruptcy court must make an independent determination of undue hardship before a plan is confirmed, even if the creditor fails to object or appear in the adversary proceeding." In other words, the bankruptcy court must be a roving commission licensed to sally forth each day looking for wrongs to right (contrary to the *Margolin* decision).

The Seventh Circuit ruled in the case, *In re Wright* (492 F.3d 829 (7th Cir. 2007) that debtors in Chapter 13 bankruptcy may not surrender a vehicle in full satisfaction of the claim (that is, the lender will always be allowed to file a deficiency claim following a commercially reasonable sale). That decision has been followed in five other Circuits and is almost universally the law of the land. What should a bankruptcy judge do when a plan is filed that proposes to surrender a vehicle in full satisfaction of the lenders claim? If the judge *sua sponte* denies confirmation there is clearly a violation of the principal of party presentation. However, if the judge confirms the plan, then the judge has committed legal error and must independently determine whether requirements for confirmation have been satisfied.

***Coney Island Auto Parts Unlimited, Inc. v. Burton*, 607 U.S. 155, 2026 WL 135998 (2026)**

Justice Alito wrote a unanimous opinion affirming the Sixth Circuit's holding that requests to set aside a "void" judgment under Federal Rule of Civil Procedure 60(b)(4) must be filed within a "reasonable time" under FRCP 60(c)(1). The decision *reversed* the positions of eleven other Circuits.

In that case, the Debtor, Vista-Pro Automotive filed bankruptcy in 2014 and sued Coney Island Auto Parts in an adversary claiming $50,000 in unpaid invoices. Vista-Pro improperly served Coney Island and obtained a default judgment in 2015. It should be noted that the DIP sent a demand letter to Coney Island Auto Parts CEO in 2016, so Coney Island likely knew about the default judgment. After the case was converted to Chapter 7, the Chapter 7 bankruptcy trustee was more successful in its collection tactics. In 2021, a US Marshal seized money from Coney Island's bank account in full satisfaction of the judgment. Only then did Coney Island filed a motion to vacate the judgment under Federal Rule of Civil Procedure 60, claiming that improper service rendered the judgment void in 2015. The bankruptcy court found their delay in filing the motion to vacate was unreasonable and both the District Court and Sixth Circuit affirmed.

Coney Island argued that eleven Circuits have agreed that a void judgment is a legal nullity and that the passage of time cannot turn a nullity into an enforceable judgment. But the Supreme Court did not agree with that reasoning and held, "[t]his argument cannot bear the weight that Coney Island and others have placed on it. Even if the passage of time cannot cure voidness, the same principle holds true for most legal errors. Nevertheless, statutes and rules routinely limit the time during which a party can seek relief from a judgment infected by error. Therefore, a party in Coney Island's position would need to show that some principle of law, such as the Due Process Clause, gives a party the right to allege voidness at any time."

Note that if you are seeking relief under Federal Rule 60(b)(4), that motion must be filed within a reasonable time. Coney Island never made the argument that the timing of its motion was "reasonable," so the Court did not make that determination. There may have been a different outcome had the DIP not attempted to collect on the debt within the intervening six years. Once the Coney Island CEO learned of the default judgment, a Rule 60(b)(4) motion for relief should have been filed immediately.

Mid-Range Jump Shot: SEVENTH CIRCUIT COURT CASE UPDATE

In re Bernardo Romero, No. 25-2021, slip op. (7th Cir. July 16, 2026)

If a tax sale purchaser purchases property and the property owner files bankruptcy during the redemption period, the tax sale purchaser holds a secured tax claim that can be repaid over the life of a Chapter 13 bankruptcy reorganization [See *In re Lamont*, 740 F.3d 397 (7th Cir. 2014)]. A question recently decided by the Seventh Circuit was the applicable rate of interest to pay on that secured claim. Debtors' plans generally used a prime rate of interest plus a risk factor of one to three percent as determined by the Supreme Court in the case, *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) [commonly called "the Till rate" in consumer bankruptcy cases]. However, there is a specific Bankruptcy Code section which deals with "tax claims." Section 511(a) reads: "If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law. [See 11 U.S.C. § 511(a)]. In holding that section 511 also applies to tax sale purchasers, the Court wrote, "Corona Investments [tax sale purchaser] is not itself a taxing authority. So, if Corona holds a 'tax claim,' it does so indirectly—as a result of acquiring, through Cook County's tax sale, a right to receive [homeowner's] payment of his overdue property taxes. In our view, Corona's right suffices to give it a 'tax claim' within the meaning of § 511(a)." Accordingly, the interest rate must be determined under nonbankruptcy law. The *Till* rate was bankruptcy case law and therefore cannot be the appropriate rate of interest.

There is no clear answer regarding an appropriate rate of interest. The Seventh Circuit stated that in Illinois, that interest rate may be the redemption rate of 12% [See 25 ILCS 200/21-355]. Or the interest rate may be determined under the Illinois delinquent tax rate of 18% [See 35 ILCS 200-21-15]. However, "in the final analysis, then, we conclude that the best answer to what interest rate applies to a 'tax claim' under § 511(a) comes from the 'nonbankruptcy law' supplied by the Illinois General Assembly in 35 ILCS 200/21-15. That rate, in this instance, is 18% per year—a conclusion that aligns with recent bankruptcy court decisions that have confronted this same knotty question at the intersection of the Illinois Property Tax Code and the Bankruptcy Code."

Under Indiana law, it appears that the appropriate rate of interest would now be: 1) 110% repayment of the minimum bid within 6-months of the sale or 115% of the minimum bid longer than 6-months after the sale; 2) 5% per annum on the surplus; and 3) 5% per annum on all post-sale taxes and special assessments paid by the tax sale purchaser [See Indiana Code § 6-1.1-25-2(b), *et seq*.].

City of Chicago v. Falkner, No. 25-2878 (7th Cir. June 10, 2026).

Bankruptcy Code section 1325 states in part, "if the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan … the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period … will be applied to make payments to unsecured creditors under the plan [See 11 U.S.C. § 1325(b)(1)(B)]. The City of Chicago was the holder of an unsecured claim resulting from unpaid parking tickets and objected to the plan which paid the debtor's ongoing bankruptcy attorney fees through the plan instead of paying its claim as an unsecured creditor. The City insisted that bankruptcy attorney fees are priority claims which are not contemplated in section 1325(b)(1)(B). The Seventh Circuit disagreed and stated that this provision cannot be read in isolation but must be considered with the Bankruptcy Code as a whole. For example, the Court pointed out that "Section 1322(a)(2) provides that a plan 'shall provide for the full payment … of all claims entitled to priority under section 507,' including attorneys' fees, see 11 U.S.C. §§ 507(a)(2), 503(b)(2), 330(a)(4)(B). And, for its part, § 1326(b)(1) clarifies when that payment must occur. It mandates that priority claims, including attorneys' fees, see *id*. §§ 507(a)(2), 503(b)(2), 330(a)(4)(B), 'shall be paid' '[b]efore or at the time of each payment to creditors under the plan, *id*. § 1326(b)(1). As a result, Chapter 13 plans must provide for the payment of attorneys' fees before or at the same time as any payments to nonpriority unsecured creditors during the commitment period." The Court determined that attorneys' fees are a reasonably necessary expense for a debtor in a reorganizational plan.

***Cassandra Sykes v. Experian Information Solutions, Inc.*, No. 25-2279 (7th Cir. July 30, 2026).**

Cassandra Sykes filed a Fair Credit Reporting Act (FCRA) complaint against Experian regarding the reporting of a discharged mortgage debt. Specifically, Ms. Sykes transferred her home to the mortgage creditor through a deed in lieu of foreclosure and then received a bankruptcy discharge in 2018. In 2022, Sykes obtained a copy of her credit report which stated the status of the mortgage "Creditor received deed. Balloon payment of $67,209 due Dec 2055. $2,762 past due as of Oct 2016." The report separately noted that the mortgage account carried a $145,952 balance. Sykes claimed that Experian violated the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b), by reporting inaccurate or misleading information about her mortgage account given her bankruptcy discharge. The District Court dismissed the complaint holding that evaluating the accuracy of the information required Experian to make a legal determination. In affirming the district court ruling the Seventh Circuit stated, "CRAs must report facts that are ascertainable from available records (including legal documents) but have no obligation to discern the meaning of those documents. That is, the FCRA does not require CRAs to resolve legal disputes, interpret contracts or statutes, or determine the validity or enforceability of debts." The Court further explained. "The FCRA does not require CRAs to make legal determinations to confirm the accuracy of the information they include in consumer credit reports. *Denan*, 959 F.3d at 295. Consequently, CRAs may sometimes report information that is inaccurate (in either a technical or legal sense) although it is not actionable under the statute. Such errors are distinguishable from actionable inaccuracies, which the CRA could have resolved by diligent factual review."

***Hooper v. Crawford (In re Crawford)*, No. 25-2434 (7th Cir. Jul. 31, 2026)**

Bankruptcy Code section 1326 states in part, "If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable (emphasis added) [See 11 U.S.C. § 1326(a)(2)]. The question presented to the Seventh Circuit was whether the Chapter 13 trustee could make disbursements on a confirmed plan when the plan provided for payments to a secured creditor, but the secured creditor did not file a proof of claim. The long-standing rule is that secured creditors are not required to participate in Chapter 13 bankruptcy, and their secured liens will generally pass through bankruptcy unaffected. In fact, in the case *in re Pajian*, 785 F.3d 1161 (7th Cir. 2015), the Court disallowed a secured creditor's proof of claim which was filed beyond the set claims bar date. The secured creditor argued that the claims deadline only applied to unsecured creditors, but it was mistaken.

In this case, Jill Crawford filed for Chapter 13 bankruptcy and filed a plan which proposed paying Bank of America on its secured claim. The claims bar date was set for January 9, 2023, and the case was confirmed on January 31, 2023. Bank of America had never filed its claim. The trustee moved to modify the plan to remove Bank of America, asserting that a creditor must file an allowed claim to participate in bankruptcy. The Seventh Circuit did not agree holding that section 1326 states that the trustee shall distribute payments in accordance with the plan and that a confirmed plan is binding on the debtor and all creditors. Additionally, Congress did not require an "allowed claim" in order to be paid under section 1326, and all parties agree that Bank of America did have a claim which would have been allowed had a claim been filed. The Court has stated that the trustee was reading *Paijan* too broadly. It wrote, "In *Pajian*, however, the court was distinguishing between the two options available to secured creditors. A secured creditor can participate in the bankruptcy plan, or it can allow the lien to pass through bankruptcy unaffected and enforce its lien through a foreclosure. See *id*. And there are several ways for a secured creditor to participate in bankruptcy distributions: It can file a proof of claim. Fed. R. Bankr. P. 3002(a). The debtor or trustee can file a claim on its behalf. 11 U.S.C. § 501. Or it can refrain from objecting when the debtor adds its name to the proposed plan and gives it notice, thus becoming bound by the terms of the plan."

It should be noted that the Southern District of Indiana form plan contains language which reads, "You must file a proof of claim to receive distributions under the plan." Attorneys who represent secured creditors and have read this case presuming that claims are no longer necessary should read every plan carefully. If the plan states that claims must be filed to receive payment and confirmation is binding on the parties, then the trustee is prohibited from making payments under the plan.

***Shao v. Customers Bank*, No. 25-1558 (7th Cir. Feb. 18, 2026)**

The Seventh Circuit affirmed the dismissal of a debtor's bankruptcy case, ruling that the debtor engaged in bad-faith serial bankruptcy filings across multiple jurisdictions to fraudulently delay foreclosure. The court upheld the bankruptcy court's finding that the serial filings were part of a scheme to hinder, delay, or defraud the creditor under the Bankruptcy Code.

Yang Shao was a member of Endeavor 1, LLC and Endeavor AL, LLC (collectively, "Endeavor"). Endeavor secured a commercial loan from Customers Bank using real estate holdings in Scottsdale, Arizona and Chicago, Illinois [the Chicago real estate was owned by Shao's business, Oceanus, Inc.] Endeavor defaulted on its loan with Consumers Bank by leasing out units on the Scottsdale properties through Airbnb in violation of loan terms. Shao transferred the Scottsdale property to her own name in April 2023, filed Chapter 13 bankruptcy in Arizona, and disputed the validity of the loan between Endeavor and Customers Bank. Prior to presenting any evidence at a July 20 evidentiary hearing, Shao voluntarily dismissed her case, and on July 24, 2023, filed a second Chapter 13 case in Chicago. Both the trustee and bank moved to dismiss under § 109(g)(2), and the bank moved to lift the automatic stay. The court ordered Shao to cease operations on the Scottsdale property and determined that the Chicago property was not affected by the stay as Ms. Shao did not own that property (she transferred that property from Oceanus, Inc. to herself and her son the same day). Shao failed to appear at an August 22, 2023, motion to dismiss hearing, and the court converted the case to Chapter 7. A week after this ruling, Ms. Shao filed a third case in the Central District of California and would later file five more cases in Northern District of Illinois, the District of Arizona, and the District of Rhoad Island.

The bankruptcy court heard the motion lift the stay and motions to dismiss on September 1, 2023. The court found that because Shao leased properties in violation of the loan agreement and the court's previous orders, improperly filed a new case within 180 days, and made multiple misrepresentations in her Central District of California petition, Ms. Shao filed the Chicago bankruptcy petition as part of a scheme to hinder delay to defraud the bank, and she was acting in bad faith. The court dismissed the case and imposed a 180-day bar to refiling. Thereafter, the California bankruptcy court also lifted the stay and dismissed that case. Customers Bank then sold the properties and applied the proceeds to the outstanding debt. Ms. Shao appealed to District Court and the appeal was dismissed as moot as the Scottsdale property was sold and the automatic stay provisions were no longer applicable. Regarding the Chicago property, the District Court further

concluded that the California bankruptcy court's orders lifting the stay and dismissing that case precluded her from relitigating those matters.

Ms. Shao appealed to the 7th Circuit arguing that there is no preclusive effect from the California judgment because the case was dismissed as a sanction, not on the merits, as is required for claim preclusion to apply. The Court of Appeals did not agree that California bankruptcy court's dismissal was a sanction but was instead actually decided on the merits. The Court wrote: "During a hearing in October 2023, the California bankruptcy court first determined that it had cause to lift the stay on the Scottsdale properties because Shao filed her Chapter 13 petition in bad faith, see 11 U.S.C. §362(d)(1), and that she filed the petition as 'part of a scheme to delay, hinder, or defraud' the bank. See id. § 362(d)(4). A month later, the court dismissed the case based on the conclusions made at the hearing." In citing the Supreme Court case, *Marrama v. Citizens Bank of Mass.* [549 U.S. 365, 374 (2007)] the Seventh Circuit found that a "dismissal of a Chapter 13 case because the debtor petitioned in bad faith 'is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13.'"

Lay Up: Bankruptcy Court Decisions

***Kokoszka v. Deborah Naguib (In re Naguib)*, --B.R.--, 2025 WL 30003465 (Bankr. N.D. Ill., Oct. 25, 2025)**

ISSUE: Does Fed.R.Bankr.P. 9006 give a bankruptcy judge ability to toll the section 546 two-year statute of limitations without the trustee demonstrating equitable tolling?

FACTS: In 2016, Doctor Manuel Cesar Iglesias filed a suit against Gamal Naguib in Cook County, Illinois, alleging that from 2002 to 2016 Gamal embezzled approximately $4.9M in investments, and charged fraudulent administrative fees of approximately $885,000. Litigation continued from 2016 under Gamal filed bankruptcy in March 2022.

Throughout the period of 2016 until bankruptcy, Gamal and Analida Naguib made various payments to their children and to their children's businesses. The Debtors made hundreds of pre-petition transfers to Deborah Naguib (daughter), Selective Liquors, James Anthony, and Anthony Realty, as well as to third parties for the benefit of Deborah and James and their businesses, totaling almost $475,000.

On March 30, 2022, Gamal and Analida Naguib (Debtors) filed bankruptcy under Chapter 7. Within the first two weeks of filing the bankruptcy, Dr. Iglesias filed a motion for relief to continue with the state court action. After the Trustee and Debtors objected and briefed the issues, the motion was denied on November 30, 2022, and Dr. Iglesias. The District Court dismissed the appeal on October 27, 2023, for want of prosecution. While the creditor doctor took no action for 11 months, it was likely not relevant to whether the Trustee could file an adversary proceeding against the children to avoid alleged fraudulent transfers.

On September 13, 2023, Dr. Iglesias sought to examine Debtors, their children (Deborah and James), another business owned by Gamal, and "numerous financial institutions." The Debtors objected, the matter was briefed, and the motion was granted. Accordingly, for a period of seventeen months (17) after the case was filed there were no discovery requests.

On November 23, 2023, the parties filed a motion to quash the subpoenas as unduly burdensome. After objection, a hearing was held December 22, 2023, and an order granting the subpoenas in part was entered January 19, 2024, with a response due on or before February 9, 2024.

On March 1, 2024, twenty-three months after the case was filed, the Chapter 7 Trustee finally got involved and filed a motion to employ William J. Factor (Dr. Iglesias' attorney) as special counsel to represent the estate claims. An Order was entered over the Debtors'

objection on March 8, 2024. On March 22, 2024, eight days before his deadline to file avoidance actions, the Trustee filed a motion seeking to toll the statute of limitations imposed by section 546(a) to allow him to both complete his Rule 2004 discovery and preserve claims for prosecution on behalf of the estate. The motion was set for hearing March 29, 2024 (1 day before the 2-year statute of limitations ended), and the bankruptcy court GRANTED the Trustee's motion. The time to file and adversary was extended to August 1, 2024. The Court stated: "[T]he motion is appropriate to grant, and I believe I have the authority under 9006(b) to do so." Debtors (who were the only other parties in any case at that time) sought leave to appeal the Tolling Order. The District Court denied an appeal holding that the time to extend was not a final order.

The Court entered an order granting the Trustee's "response" to a potential statute of limitations defense before the children were parties to the action or before the affirmative defense had ever been raised.

1. Was there a case or controversy before the Bankruptcy Court when the Trustee sought to extend a statute of limitations before the affirmative defense arose?
2. Does Fed.R.Bankr.P. 9006(b) supersede Bankruptcy Code § 546(a)(1)(A)?
    a. 28 U.S.C. § 2075 – Bankruptcy Rules: The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right.
    b. Fed.R.Bankr.P. 9006(b)(1) - *In General*. This paragraph (1) applies when these rules, a notice given under these rules, or a court order requires or allows an act to be performed at or within a specified period.

3. What is the difference between a substantive right and a procedural right? The right to own property is a substantive right, and the procedures for how an adversary procedure moves forward are a procedural right. Does FRBP 9006(b) allow modification of a two-year statute of limitations?

4. The House Report on the 1994 amendment to section 546 [H.R. Rep. No. 103-835, at 49-50(1994) reprinted in 1994 U.S.C.C.A.N. 3340, 3358 (also available at 1994 WL 562232, 55)] reads: "Section 217. Limitation of avoiding powers. This section clarifies section 546(a)(1) of the Bankruptcy Code which imposes a 2-year statute of limitations within which an appointed trustee must bring an avoidance action. The purpose of a statute of limitations is to define the period

of time that a party is at risk of suit. This section defines the applicable statute of limitations as 2 years from the entry of an order of relief or 1 year after the appointment of the first trustee if such appointment occurs before the expiration of the original 2-year period."

Equitable Tolling:

"The doctrine of equitable tolling is read into every federal statute of limitation including Section546(a)(1). *Holmberg v. Armbrecht*, 66 S.Ct. 582, 585 (1946); *In re United Ins. Management, Inc.*, 14 F.3d 1380, 1385 (9th Cir. 1994) (stating that '[e]very court that has considered the issue has held that equitable tolling applies to Section 546(a)(1).'). Because the applicability of equitable tolling is a fact-based decision, the bankruptcy court determines whether equitable tolling governs in any given case. 14 F.3d at 1385" *Moratzka v. Pomaville (In re Pomaville)*, 190 B.R. 632 (Bankr. D. Minn. 1995).

"The Trustee must prove two elements to establish equitable tolling: '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.' … Extraordinary circumstances are limited to those truly beyond the Trustee's control. … Put another way '[e]quitable tolling Is appropriate when the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his claim.' … However, the Trustee cannot sleep on his or her rights and successfully argue equitable tolling. [Citations omitted.] *Pierce v. Nielsen Enters. LLC (In re Pankowski)*, No. 24-5003 (Bankr. D.S.D. Sept. 19, 2024).

In re Noah, No. 24-30129-PES, 2025 WL 3641360, 2025 Bankr. LEXIS 3251 (Bankr. N.D. Ind. Dec. 12, 2025)

Can a secured creditor waive its rights as a secured creditor and elect to file a general unsecured claim? The Honorable Paul E. Singleton overruled the bankruptcy trustee's objection and confirmed that a secured creditor has the absolute right to waive its security interest entirely and participate in the estate as a general unsecured creditor.

Under established bankruptcy principles, a secured creditor is not locked into a single path. It possesses several distinct options for its claim:

1. It can disregard the bankruptcy process and rely exclusively on its security.

2. It can file a secured claim with the bankruptcy court to receive plan distributions.

3. It can seize and sell the collateral and assert an unsecured deficiency claim if it is under secured.

4. It can choose to surrender or waive its security interest entirely and file purely as a general unsecured creditor.

In the *Noah* case, the creditor chose the fourth option and elected to file an unsecured claim and waive any security interest. "Well-established bankruptcy law permits the Bank to do exactly what it did, forgo its secured claim and pursue its claim as an unsecured one." Finally, the Court held that the Trustee's attempt to transform an unsecured claim into a secured claim is a contested matter that must be an adversary proceeding. The Trustee not only disputed the amount of the claim, she also requested additional relief. Accordingly, there was not a "mutually acknowledged lien." Instead, there was an unacknowledged lien requiring an adversary proceeding in order to resolve the dispute.

***Tharp v. Tharp (In re Brandy Tharp),* No. 25-50067-JMC, (Bankr. S.D. Ind. Sept. 4, 2026)**

Brand Tharp and Jared Tharp were married on August 3, 2019, and have two minor children. Brandy filed for divorce on April 23, 2020, in Knox County, Tennessee. The dissolution matters included issues related to child custody (including best interests of the minor children, guardian *ad litem* recommendations, and grandmother's coparenting time) as well as issues not related to child custody (including "coordination between Jared's Dissolution Case counsel and Jared's criminal case counsel, as well as an action separate from the Dissolution Case involving a protective order"). Dissolution did not substantially involve the division or allocation of marital property. The court determined that Jared would be the custodial parent and granted child support. On October 20, 2023, Jared's dissolution attorney submitted billing statement listing fees and expenses in the amount of $114,334.38. On November 20, 2023, the court issued an order requiring Brandy to pay $65,000 to Jared to compensate him for reasonable attorney fees and litigation expenses he incurred in the dissolution.

Brandy filed bankruptcy under Chapter 13 on May 16, 2025. The bankruptcy court was asked to determine whether an attorney fee award is in the nature of support and nondischargeable in bankruptcy under § 523(a)(5). "To determine the nature of the Attorney Fees, the Court will look to the intent of the parties and the Divorce Court. … Where, as here, the debt in question was liquidated by a state court judgment, 'the bankruptcy court is not confined to a review of the judgment and record in the prior state court proceedings when considering the dischargeability of respondent's debt.' *Brown v. Felsen*, 442 U.S. 127, 138-39, 99 S.Ct. 2205, 2213 (1979). Rather, the Court may look beyond the record of the Dissolution Case and the Fee Order to seek to determine the intent of the parties and the Divorce Court. The Court's inquiry into intent is not unbounded – the decision of the Divorce Court is conclusive on the issues decided in the Dissolution Case, consistent with the principles of issue preclusion and the Rooker-Feldman doctrine." The divorce court did not itemize which portion of the attorney fee award was in the nature of support. The bankruptcy court reviewed the billing statements carefully and determined that billable time was incurred for issues beyond child support and custody. Jared argued that $75,438.40 fees were related to custody and support, while Brandy argued that $17,340.75 were related to custody and support. The bankruptcy court determined that $50,000 represents such part of attorney fees are excepted from discharge because: "(a) they are a debt owed by Brandy to Jared; (b) they are in the nature of support of the parties' children; and (c) they were established by reason of applicable provisions of an order (the Fee Order) by a court of record (the Divorce Court)."

Overtime: FOURTH CIRCUIT COURT CASE UPDATE

Goddard v. Burnett, 173 F.4th 550 (4th Cir. 2026)

The Fourth Circuit unanimously affirmed the denial of a Chapter 13 bankruptcy plan, holding that technical compliance with the statutory means test does not insulate a repayment plan from an independent good-faith review under 11 U.S.C. § 1325(a)(3).

The debtor, Bobby Goddard, filed for Chapter 13 bankruptcy in North Carolina. At the time of filing, Goddard earned approximately $12,268 gross monthly income, and his non-filing spouse earned another $4,189 per month. During the 32 months prior to filing, Mr. Goddard purchased a 2015 Chevrolet Corvette, a 2021 GMC Sierra 1500, and a 2022 Genesis G70. He owed a total of $137,606 on the vehicles with monthly payments of more than $3,000 per month. Under his proposed Chapter 13 plan, Goddard aimed to divert his disposable income to fully pay off the secured loans on all three luxury vehicles while paying only 8 cents on the dollar to the unsecured creditors. By the end of the bankruptcy period, he would emerge completely unencumbered with three luxury cars, while discharging over $78,000 in general unsecured debt.

The debtor argued that he had complied with the requirements of § 1325(b) which is a statutory formula ("means test") which calculates how much money the debtor must repay to his secured creditors. The statutory formula allows (indeed requires) the debtor to include as an expense "the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the filing of the petition" [See 11 U.S.C. § 707(b)(2)(A)(iii)(I)]. When including the $2,543 mortgage payment and the three vehicle payments, the result was negative disposable income. In other words, the means test enacted by Congress to define specifically how much money must be returned to unsecured creditors required no dividend whatsoever. The question before the 4th Circuit Court of Appeals was whether a trustee could object to plan confirmation based on a lack of good faith when that plan complied with all the requirements mandated by the Code itself.

Goddard argued that "prior to 2005, Chapter 13 debtors were required to devote all their 'disposable income' to paying unsecured creditors, but what constituted 'disposable income' was determined on a case-by-case basis, giving bankruptcy courts discretion over whether expenses were 'reasonably necessary' for the support of the debtor. But with the 2005 changes made by BAPCPA, Congress removed that discretion from the determination of whether a debtor's expenses were reasonably necessary and provided 'a bright-line statutory test for debtors . . . whose income was above the median.' He thus argues that

'under BAPCPA's means test, bankruptcy judges no longer have discretion to determine which expenses . . . are reasonably necessary.'"

The 4th Circuit did not agree with this logic and stated that even if Congress did take away a judge's discretion in calculating disposable income, it did not eliminate the good faith requirement. "Consistent with this, 'the requirement of good faith permeates the entire Bankruptcy Code.'"

The Circuit Court also stated, "while compliance with the Bankruptcy Code's provisions may be required to show good faith, good faith reaches beyond mere compliance to assess whether a proposed plan, even if in technical compliance, would nonetheless abuse the provision's purposes or violate the spirit of Chapter 13 or the Bankruptcy Code more broadly." When Congress enacted BAPCPA and created the means test, it did not eliminate the good faith provision found in § 1325(a)(3), and § 1325(a)(1) requires the debtor to comply with all provisions of the Bankruptcy Code, and not simply the means test.