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Featured Article

“Free and Clear” Bankruptcy Sales Do Not Extinguish Claims of Patent Infringement

Article contributed by:
 Matthew W. Siegal and Kristopher M. Hansen of Stroock & Stroock & Lavan LLP¹

Sales of assets in bankruptcy are governed by [§363](#) of the Bankruptcy Code and provide the purchaser with title to the assets “free and clear of all liens, claims and encumbrances.” Indeed, the policy behind a “free and clear” bankruptcy sale is to increase the value of the assets by providing the purchaser with clear title and a clean break from both the stigma of bankruptcy and from creditors who may have claims against the assets. However, this clear break cannot alter the underlying nature of the assets purchased or the fact that they may infringe a patent or violate a trademark or copyright, and that the intellectual property holder still has the ability to enforce its legal rights, even when the owner of the intellectual property participates in the bankruptcy proceeding leading up to the sale and benefits from the sale proceeds.²

The *Fuji v. Benun* case involved Fuji’s patented single use cameras. Fujifilm Corp., then known as Fuji Photo Film Co., Ltd., invented the single use camera and licensed its patents to Kodak and other film and camera manufacturers. Now defunct Jazz Photo Corp. requested a license from Fuji to sell single use cameras, but Fuji refused. Jazz nevertheless entered the business of selling single use cameras and Fuji sued Jazz for patent infringement. Fuji’s suit was successful and Fuji obtained a near \$30 million judgment against Jazz and its principal owner and operator, Jack Benun.³ The \$30 million judgment awarded to Fuji forced both Jazz and Benun to file for bankruptcy protection, under which Jazz operated as a chapter 11 debtor for two more years. Eventually, with the affirmance of the district court action⁴ and certain other factors, Jazz’s reorganization was converted into a liquidation. The primary goal of the liquidation was to sell all remaining Jazz assets and to make distributions to creditors with the proceeds of those sales. The \$30 million judgment made Fuji Jazz’s largest creditor by a wide margin.

On May 16, 2005, the bankruptcy court overseeing the Jazz and Benun cases issued an order authorizing the Jazz bankruptcy estate to sell substantially all of Jazz’s assets under [§363](#) and Federal Rule of Bankruptcy Procedure [6004](#) to Ribi Tech.⁵ Ribi Tech also operates in the single use camera business. These assets included approximately 1.4 million cameras that were imported while Jazz operated in bankruptcy.

Consistent with §363, the order authorizing the sale specified that the purchase price was “fair and constituted reasonably equivalent value” for the cameras and other assets.⁶ The bankruptcy court order also noted that the purchase was a good faith, arms length transaction and that the purchaser was entitled to the protection of §363(f) such that the trustee could sell the cameras “free and clear of any interest in such property” with all such liens and interests on the assets to be unconditionally released, discharged and terminated....⁷ Fuji, as the largest and most active creditor in the Jazz proceedings, unsuccessfully objected to the sale of the cameras.

After entry of the sale order, Fuji immediately sued Ribitech and asserted that the cameras that it had purchased from the Jazz estate and elsewhere infringed Fuji’s patents. Fuji then obtained a preliminary injunction against Ribitech’s selling certain types of cameras.⁸ During the course of the action, the purchased cameras were exported and then a portion were re-imported and sold in the United States. Ribitech raised a number of defenses over the course of the action and filed a motion for partial summary judgment on the grounds that its purchase of the 1.4 million cameras was authorized and supervised by the bankruptcy court.⁹ It asserted that the cameras were bought free of Fuji’s claim of patent infringement or any protectable interest that Fuji might have in the cameras. Thus, Ribitech argued that because the cameras were “sold free and clear of all liens, encumbrances and security interests,” they were sold free of any Fuji patent rights as well.¹⁰ Ribitech also asserted that because Fuji was Jazz’s largest unsecured creditor, it was the primary beneficiary of the sale proceeds.

Ribitech further argued that the “interest” referenced by §363 extended beyond property interests in the cameras and extended to all legal claims that Fuji or any other entity would have had against the Jazz estate. Thus, Ribitech argued that the “free and clear language” in the bankruptcy court’s sale order immunized Ribitech from any prior claims of infringement that Fuji may have made against Jazz and any future claims that Fuji could assert against Ribitech. Ribitech also argued that many purchasers would not buy assets in bankruptcy sales if those assets could still be subject to the claims of third parties, with the result that there would be a decrease in the value of such bankruptcy assets and a concomitant reduction of creditor recoveries. Ribitech argued that when Fuji was unsuccessful in preventing the bankruptcy sale to Ribitech, Fuji’s ability to maintain any intellectual property interest in the cameras was terminated. Finally, Ribitech argued that because the sale of the cameras was “authorized” by the bankruptcy court, the sale was a patent exhausting first sale of the cameras under the applicable patent laws.

Fuji countered that a sale pursuant to §363(f) may affect ownership and title to goods, but not their underlying nature. Fuji also argued that the sale order’s reference to “liens and interests” did not refer to intellectual property interests, but to “liens, encumbrances and security interests.” Fuji also noted that while the protections of §363 might have affected past

ownership issues with respect to the debtor, these protections did not affect future uses of the goods by the buyer. Indeed, Fuji noted that under [35 U.S.C. §271](#), patent infringement is a continuing tort caused by the making, using, selling, or importing of a patented product and thus, unless patent rights to a product are exhausted, each future act of importing or selling is another act of infringement.

Patent exhaustion was most recently discussed by the Supreme Court in *Quanta Computer, Inc. v. LG Electronics*.¹¹ As set forth in *Quanta*, an unrestricted authorized sale of patented products exhausts all patent rights to the products sold with respect to downstream resellers.¹² However, as pointed out by Fuji, the authority for the sale must originate from the patentee.¹³ Thus, argued Fuji, a sale by the bankruptcy court over its objection would not exhaust its intellectual property rights in the cameras.

On June 30, 2008, district court Judge Katherine S. Hayden ruled that when Ribitech bought the cameras from the Jazz bankruptcy estate, under the authority of the bankruptcy court, it did not buy those cameras free and clear of Fuji’s claims of patent infringement.¹⁴ The court agreed with Fuji that although a sale in the United States authorized by the United States patent owner can exhaust the owner’s patent rights with respect to the product sold, the bankruptcy court could not provide such authority: “[t]he [b]ankruptcy sale did not constitute a patent exhausting first sale because the cameras were sold without Fuji’s consent.”¹⁵ Accordingly, although the bankruptcy court’s order eliminated any third party claims as to title and ownership to the cameras in question, it did not extinguish third party intellectual property rights with respect to those cameras.

The decision in *Fuji v. Benun* confirms that entities seeking to purchase assets in a bankruptcy sale should consider conducting intellectual property due diligence to assure themselves that they are buying goods that they can use or resell freely, and that they are not buying an intellectual property infringement lawsuit. Thus, software, consumer products, machines, and factories should be reviewed for possible patent, trademark, copyright, and trade secret infringement issues before they are purchased in a bankruptcy liquidation sale. Purchasers in bankruptcy sales should not be lulled into a false sense of security merely because they will obtain unencumbered ownership rights in a product that they may not be able to use or resell.

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¹ Matthew W. Siegal and Kristopher M. Hansen represented Fuji in the matters discussed herein. The views expressed are their own, are subject to change, and do not necessarily represent the views of their clients or their firm.

² See *Fujifilm Corp. v. Benun*, [No. 05-01863, 2008 BL 139203](#) (D.N.J. Jun. 30, 2008) (“*Fuji v. Benun*”).

³ *Fuji Photo Film Co. v. Jazz Photo Corp.*, [249 F. Supp. 2d 434](#) (D.N.J. 2003).

⁴ *Fuji Photo Film Co. v. Jazz Photo Corp.*, [394 F.3d 1368](#) (Fed. Cir. 2005).

⁵ *In re Jazz Photo Corp.*, [No. 03-26565](#), Order Authorizing the Debtor to Sell Substantially All Its Assets (Bankr. D.N.J. May 16, 2005).

⁶ *Id.* at 4.

⁷ *Id.* at 6.

⁸ *Fuji Photo Film Co. v. Benun*, [No. 05-01863](#), Order Granting Plaintiff's Motion for a Preliminary Injunction (D.N.J. Jun. 15, 2005); *aff'd*, [463 F.3d 1252](#) (Fed. Cir. 2006).

⁹ See *Fuji v. Benun*, 2008 BL 139203.

¹⁰ *Id.*

¹¹ *Quanta Computer, Inc. v. LG Electronics, Inc.*, [No. 06-937, 2008 BL 122107](#) (U.S. Jun. 9, 2008).

¹² *Id.* at 13.

¹³ *Id.* at 19.

¹⁴ See *Fuji v. Benun*, 2008 BL 139203.

¹⁵ *Id.*

Federal Bankruptcy Law

Exemptions

Eighth Circuit Decides Debtor Did Not Act with Intent to Hinder, Delay, or Defraud Warranting Limitations on Exemption Rights or Denial of Discharge

[Addison v. Seaver \(In re Addison\)](#), [No. 07-2064, 2008 BL 166395](#) (8th Cir. Aug. 7, 2008)

On August 7, 2008, the United States Court of Appeals for the Eighth Circuit ruled that a debtor's transactions completed on the eve of his bankruptcy filing did not establish the requisite intent to hinder, delay, or defraud creditors such that it would warrant a reduction in the debtor's homestead exemption, the elimination of his Roth IRA exemption, or a denial of his bankruptcy discharge. At the same time, however, the Eighth Circuit determined that the debtor's tuition savings accounts were property of the estate not subject to exemption under state law.

Addison's Eve of Bankruptcy Filing

Lance Addison ("Addison"), a part owner of a cable company, personally guaranteed a portion of his company's debt. In June 2005, after a company creditor attempted to enforce a \$1.3 million personal guarantee against him, Addison consulted with bankruptcy counsel in an attempt to protect himself from the creditor's actions. A month later, in July 2005, Addison transferred \$8,000 in nonexempt funds to establish exemptible Roth IRAs for himself and his wife. Thereafter, on October 14, 2005, Addison transferred \$11,500 in nonexempt funds to pay down his home mortgage, thus increasing the value of his home equity. On that same date, Addison also filed a petition for chapter 7 bankruptcy protection. Utilizing the Minnesota state exemptions, Addison claimed both Roth

IRAs and the \$91,250 equity in his home as exemptions. Additionally, Addison claimed that college tuition savings accounts ("§529 Accounts") totaling \$22,000 belonged to his children and therefore did not constitute property of the estate. Alternatively, to the degree that the accounts were found not to belong to his children, Addison asserted that the §529 Accounts were exempt.

Lower Courts' Rulings and Addison's Appeals

The appointed chapter 7 trustee ("Trustee") objected to Addison's claimed exemptions in his homestead, the Roth IRAs, and the §529 Accounts. Issuing its judgment on the matter, the bankruptcy court decided in favor of the Trustee regarding all three issues, concluding that in converting nonexempt assets to exempt assets on the eve of bankruptcy, Addison had acted with the requisite intent to hinder, delay, or defraud his creditors. As a result, the bankruptcy court reduced Addison's homestead exemption by \$11,500, denied his claimed exemption in the Roth IRAs, and declared that the §529 Accounts were property of the estate not subject to exemption. The bankruptcy appellate panel ("B.A.P.") then affirmed the bankruptcy court's decisions, and Addison appealed to the Eighth Circuit.

Following the bankruptcy court's ruling on the exemption issues, the Trustee filed an adversary proceeding objecting to Addison's bankruptcy discharge under [11 U.S.C. §727\(a\)\(2\)](#) on the grounds that Addison had intended to hinder, delay, or defraud his creditors. Applying its earlier ruling, the bankruptcy court denied Addison his discharge on the basis of collateral estoppel. Addison again appealed, and the B.A.P. transferred the second appeal to the Eighth Circuit. Consolidating Addison's appeals, the Eighth Circuit considered the various issues in question simultaneously.

Notably, in his appeals, Addison alleged that the bankruptcy court had clearly erred in finding that Addison had intended to hinder, delay, or defraud his creditors when he converted nonexempt assets to exempt assets prior to filing for bankruptcy relief. As such, Addison requested that the Eighth Circuit reverse the bankruptcy court's judgments reducing his homestead exemption, eliminating his exemption in the Roth IRAs, denying his discharge, and deeming the §529 Accounts to be estate property not subject to exemption.

Limitation on Allowance of Claimed Exemptions

Beginning its analysis on appeal, the Eighth Circuit explained that under [11 U.S.C. §522\(b\)](#), a debtor may claim an exemption in property that is exempt under state or federal law. See *In re Sholdan*, [108 F.3d 886, 888](#) (8th Cir. 1997) ("*Sholdan I*"). However, the court of appeals emphasized that a debtor cannot claim exemptions through transfers that were made with the actual intent to hinder, delay, or defraud any creditor. See *In re Sholdan*, [217 F.3d 1006, 1008](#) (8th Cir. 2000) ("*Sholdan II*").

Eighth Circuit Reverses Reduction of Homestead Exemption

Turning first to the homestead exemption, the Eighth Circuit examined whether Addison's use of nonexempt assets to reduce his mortgage on the eve of bankruptcy involved an intent to hinder, delay, or defraud his creditors, thus justifying a reduction in his homestead exemption pursuant to Minnesota law or [11 U.S.C. §522\(o\)](#). Acknowledging that §522(o) does not define the "intent to hinder, delay or defraud," the Eighth Circuit relied on [11 U.S.C. §548](#) and §727, both of which contain identical language concerning intent. See *In re Maronde*, [332 B.R. 593, 599](#) (Bankr. D. Minn. 2005). To this end, the Eighth Circuit noted that courts addressing intent under §§548(a)(1) and 727(a)(2) infer a debtor's fraudulent acts through certain "badges of fraud." See *Sholdan II*, 217 F.3d at 1009; *Jackson v. Star Sprinkler Corp. of Florida*, [575 F.2d 1223, 1237](#) (8th Cir. 1978). Accordingly, the Eighth Circuit utilized the same "badges of fraud" standard for its analysis of Addison's intent under §522(o).

Significantly, the Eighth Circuit commented that while §§522(o), 548(a)(1), and §727(a)(2) each list "intent to hinder, delay or defraud" disjunctively, the court of appeals was nonetheless reluctant to deny a homestead exemption absent evidence of intent to defraud. *Sholdan I*, 108 F.3d at 888. Specifically, in *Sholdan I*, after having suit filed against him, a 90 year old debtor liquidated all of his nonexempt assets and utilized the proceeds to purchase a home in cash immediately before filing for bankruptcy protection. *Id.* at 887. Reversing the lower courts' denial of the *Sholdan I* debtor's homestead exemption on the grounds that the debtor had purchased the home with the intent to hinder and delay his creditors, the Eighth Circuit remanded the matter for a determination as to whether the debtor had acted with sufficient fraudulent intent. *Id.* at 888. Distinguishing *Sholdan I* from Addison's significantly less aggressive conduct in the instant case, the Eighth Circuit concluded that Addison had not acted with sufficient intent to hinder or delay his creditors such that a reduction in his homestead exemption was warranted.

Next, focusing on the intent to defraud a creditor, the Eighth Circuit declared that simply converting nonexempt property to exempt property on the eve of bankruptcy in an attempt to place assets beyond the reach of creditors is not fraudulent and does not merit depriving a debtor of exemptions to which the debtor would otherwise be entitled. See *Hanson v. First National Bank in Brookings*, [848 F.2d 866, 868](#) (8th Cir. 1988). In particular, the court of appeals pronounced that a showing of fraudulent intent requires extrinsic evidence of fraud beyond the mere fact of conversion of nonexempt assets into exempt assets. See *Sholdan II*, 217 F.3d at 1010. In distinguishing extrinsic evidence from facts relating to property transfers, the Eighth Circuit stated that the bankruptcy court had properly identified "badges of fraud" in connection with Addison's homestead transfer. To this end, the bankruptcy court had

noted that the transfer in question here was made to an insider, that Addison had retained control over the property following the transfer, and that the transfer had been made after Addison had been sued and at a time when he was insolvent.

Nonetheless, the Eighth Circuit clarified that each of these facts related to Addison's permissible conversion of his nonexempt property to exempt property, and as such, did not identify extrinsic evidence of fraud. In contrast, the Eighth Circuit remarked that if Addison had borrowed money to place into exempt assets, had concealed the transfers, or had purchased a home on the eve of filing, such actions would have constituted the extrinsic evidence necessary to find fraudulent use of an exemption. See *In re Armstrong*, [931 F.2d 1233, 1237](#) (8th Cir. 1991). Moreover, while the Eighth Circuit acknowledged that Addison had converted nonexempt assets to exempt assets with the motivation of removing his property from the reach of creditors, the court of appeals declared that such conduct was permissible under Eighth Circuit precedent. See *Hanson*, 848 F.2d at 868. Consequently, the Eighth Circuit resolved that the bankruptcy court had clearly erred by deciding that Addison had intended to hinder, delay, or defraud his creditors when he converted nonexempt property into his homestead on the same date that he had filed for bankruptcy.

Eighth Circuit Reverses Elimination of Roth IRA Exemption

Examining Addison's claimed exemption in the Roth IRAs, the Eighth Circuit pointed out that the bankruptcy court had declared that Addison had acted with the intent to hinder, delay, or defraud his creditors with respect to the Roth IRA transfer "for the same reasons" that the lower court had found sufficient intent to hinder, delay, or defraud regarding Addison's homestead transfer. Emphasizing that the bankruptcy court's finding of intent on the homestead matter was clearly erroneous, the Eighth Circuit similarly reversed the bankruptcy court's denial of Addison's Roth IRA exemption.

Eighth Circuit Reverses Denial of Addison's Bankruptcy Discharge

Addressing the Trustee's objection to Addison's discharge, the Eighth Circuit observed that under §727(a)(2), a discharge can be denied if a debtor transfers property within one year of the bankruptcy filing with the intent to hinder, delay, or defraud a creditor. To this end, the court of appeals articulated that insofar as the bankruptcy court had previously ruled that Addison had acted with the requisite intent to hinder, delay, or defraud in connection with the exemption issues, the lower court had denied Addison's discharge based on the collateral estoppel effect of its earlier decision. Thus, reasoning that the bankruptcy court had clearly erred in its previous finding of intent on the exemption issues,

the Eighth Circuit similarly reversed the denial of Addison's discharge.

*Eighth Circuit Decides §529 Accounts
Constitute Estate Property*

Continuing its analysis, the Eighth Circuit considered the bankruptcy court's determination that the §529 Accounts constituted property of the estate not subject to exemption. Regarding this issue, the court of appeals first stated that under [11 U.S.C. §541\(a\)\(1\)](#), property of the estate includes all legal or equitable interests of the debtor in property as of the filing date. As such, the Eighth Circuit rejected Addison's contention that the §529 Accounts were not estate property because they were owned by his children pursuant to [26 U.S.C. §529](#). Specifically, the court of appeals remarked that §529 involves the tax treatment of contributions to such accounts rather than their ownership. Furthermore, the Eighth Circuit indicated that Addison was listed as the owner on the §529 Accounts, that contributions made to such accounts became property of the owner rather than the beneficiary under Minnesota law, and that as the owner, Addison could request distributions from the accounts. Accordingly, the Eighth Circuit declared that the §529 Accounts constituted estate property, unless excluded by [11 U.S.C. §541\(b\)\(6\)](#).

Significantly, the Eighth Circuit indicated that §541(b)(6) was added by the [Bankruptcy Abuse Prevention and Consumer Protection Act of 2005](#) ("BAPCPA") and excludes §529 Accounts from property of the estate. Nevertheless, reasoning that BAPCPA became effective on October 17, 2005 while Addison had filed his bankruptcy petition on October 14, 2005, the Eighth Circuit resolved that §541(b)(6) was thus inapplicable to the instant case. See *In re Quackenbush*, [339 B.R. 845, 848](#) (Bankr. S.D.N.Y. 2006).

Finally, the Eighth Circuit observed that while Addison had claimed Minnesota state exemptions, Minnesota law does not provide an exemption for §529 accounts. In this regard, the Eighth Circuit clarified that while Minnesota law explicitly protects §529 accounts from "claims by creditors of the state," it does not exempt such accounts from all creditors. As a result, the court of appeals held that the §529 Accounts were nonexempt property of Addison's estate.

*Eighth Circuit Affirms Bankruptcy Court's Judgment
in Part, Reverses in Part, and Remands Case*

Ultimately, ruling that Addison had not acted with the requisite intent to hinder, delay, or defraud his creditors such that he warranted the reduction of his homestead exemption, the elimination of his Roth IRA exemption, or the denial of his bankruptcy discharge, but nonetheless declaring that his §529 Accounts constituted nonexempt estate property, the Eighth Circuit affirmed the bankruptcy court's judgment in part, reversed it in part, and remanded the case for further proceedings as necessary.

Discharge

Ninth Circuit Rules Breach of Contract Claim Is Not Excepted from §523(a)(6) Discharge Unless Accompanied by Tortious Conduct

[Lockerby v. Sierra, No. 06-15928, 2008 BL 164733 \(9th Cir. Aug. 7, 2008\)](#)

On August 7, 2008, the United States Court of Appeals for the Ninth Circuit ruled that a claim arising from a debtor's intentional breach of a contract is not excepted from discharge under [11 U.S.C. §523\(a\)\(6\)](#) unless the breach is accompanied by actions that constitute tortious conduct under state law and that result in willful and malicious injury.

Debt Arising from Breach of Prepetition Contract

Alexander Sierra ("Sierra"), an attorney, had represented Glenn Lockerby ("Lockerby") in a prior legal action. Thereafter, when Lockerby commenced a malpractice action against Sierra, the parties entered into a binding settlement agreement ("Settlement Agreement"), pursuant to which Sierra assigned to Lockerby the proceeds from four of his pending cases. Believing that Lockerby did not have a valid malpractice claim against him, Sierra later breached the Settlement Agreement.

After Sierra filed a petition for chapter 7 bankruptcy protection, Lockerby filed a complaint against Sierra, alleging that his prepetition claim for breach of contract was nondischargeable pursuant to [11 U.S.C. §§523\(a\)\(4\)](#) and (a)(6). Issuing its decision, the bankruptcy court held that Lockerby's claim was not sustainable under §523(a)(4) because the parties were not involved in a fiduciary relationship, as statutorily required. Nevertheless, the bankruptcy court declared that because Sierra had acted with intent to harm Lockerby in breaching the Settlement Agreement, Sierra's actions constituted willful and malicious injury, thus rendering Lockerby's debt nondischargeable pursuant to §523(a)(6).

On appeal, the district court affirmed the bankruptcy court's ruling, expressly holding that tortious conduct is not a prerequisite to a claim under §523(a)(6). Sierra then appealed the district court's decision to the Ninth Circuit.

Section 523(a)(6)'s Tortious Conduct Requirement

Conducting its analysis, the Ninth Circuit instructed that subject to certain exceptions, chapter 7 debtors are generally permitted to discharge unsecured debts pursuant to §523. Focusing on §523(a)(6), the Ninth Circuit explained that debts for willful and malicious injury by a debtor are nondischargeable. Notably, the Ninth Circuit emphasized that the prevailing case law considers tortious conduct a prerequisite for a finding of nondischargeability under §523(a)(6). See *In re Jercich*, [238 F.3d 1202, 1205](#) (9th Cir. 2001).

In deciding whether a debt arising from a breach of contract should be excepted from discharge, the Ninth Circuit observed that the *Jercich* court had first determined whether the debtor's conduct was tortious and then whether the debtor's conduct was willful and malicious. *Id.* at 1206–09. As such, the Ninth Circuit clarified that under *Jercich*, a breach of contract may be excepted from discharge only if it is accompanied by tortious conduct that results in willful and malicious injury. *Id.* at 1206; see also *In re Peklar*, [260 F.3d 1035, 1038](#) (9th Cir. 2001).

Additionally, the Ninth Circuit declared that the Supreme Court has also found tortious conduct to be a required element under §523(a)(6). See *Kawaauhau v. Geiger*, [523 U.S. 57, 62](#) (1998). Specifically, in *Geiger*, the Supreme Court affirmed the Eighth Circuit's ruling that exceptions to discharge under §523(a)(6) are limited to debts involving intentional torts, which by definition require that the actor intended the consequences of the act and not merely the act itself. *Id.* at 60. In so holding, the Supreme Court expressly rejected the concept that a debtor's intentional breach of contract, without more, renders a debt nondischargeable under §523(a)(6). *Id.* at 62. Consistent with the Supreme Court's ruling, the Ninth Circuit expressed that *Jercich*, which was decided after *Geiger*, defined the additional element required under §523(a)(6) as tortious conduct.

Definition of Tortious Conduct under §523(a)(6)

Next, the Ninth Circuit explained that under §523(a)(6), conduct is not tortious merely because injury is intended or likely to occur. Rather, as the Ninth Circuit emphasized, an action is tortious only if it constitutes a tort under state law. *Jercich*, 238 F.3d at 1206; *In re Hayes*, [315 B.R. 579, 590](#) (Bankr. C.D. Cal. 2004). The Ninth Circuit viewed its interpretation of §523(a)(6) as consistent with the long-standing distinction between injuries resulting from breaches of contract and injuries resulting from torts. In this regard, the court of appeals commented that expanding §523(a)(6) to include not only intentional torts but also intentional breaches of contract accompanied by substantial certainty of injury would confuse basic principles of contract law.

Furthermore, the Ninth Circuit reasoned that equating tortious conduct with intent to injure under §523(a)(6) would conflict with bankruptcy principles favoring a debtor's ability to achieve a fresh start by significantly expanding the types of debts eligible for exception from discharge. Similarly, the Ninth Circuit remarked that such an expansive definition would conflict directly with the intentional breaches of contract explicitly authorized by the Bankruptcy Code itself. In particular, the Ninth Circuit pointed out that under [11 U.S.C. §365](#), a debtor can intentionally reject or breach unprofitable executory contracts and unexpired leases for financial reasons, notwithstanding the resulting harm to the other contractual party. To this end, the Ninth Circuit resolved that redefining §523(a)(6) to render nondischargeable all debts arising from intentional breaches of contract substantially likely to cause injury to the opposing party would be inconsistent with the

Bankruptcy Code's policy underlying permissible breaches of contract. As a result, the Ninth Circuit held that an exception to discharge exists under §523(a)(6) only if the accompanying conduct gives rise to a tort under state law.

Tortious Conduct under Arizona Law

Turning to Arizona law, the Ninth Circuit found that Sierra's breach of the Settlement Agreement triggered an ordinary debt, which Arizona law would not recognize as tortious. While acknowledging that Sierra knew that he would injure Lockerby when he breached the Settlement Agreement, the Ninth Circuit distinguished intentional conduct with likelihood of injury, which was the situation in the instant case, from actual state specific tortious conduct, which did not occur here. Asserting that intentional conduct likely to injure would not by itself give rise to a tort under state law, the Ninth Circuit held that such conduct was not willful and malicious, and accordingly, Lockerby's debt could not be excepted from discharge under §523(a)(6).

Finally, the Ninth Circuit remarked that Sierra's conduct was financially motivated and did not implicate larger public policy issues that could potentially affect the court's ruling. See *Enyart v. Transamerica Insurance Co.*, [985 P.2d 556, 561](#) (Ariz. Ct. App. 1998). Describing the relationship between the parties, the Ninth Circuit clarified that the Settlement Agreement did not create the type of fiduciary relationship within the meaning of §523(a)(4) that could otherwise have given rise to a tort claim for breach of a special relationship.

Ninth Circuit Reverses District Court's Ruling and Vacates Bankruptcy Court's Judgment

Ultimately, concluding that a breach of contract is not deemed to be willful and malicious conduct under §523(a)(6) unless accompanied by conduct that would constitute a tort action under state law, the Ninth Circuit reversed the district court's ruling, vacated the bankruptcy court's judgment, and remanded the proceeding.

Chapter 13 Ninth Circuit Finds Undue Hardship Determination Was Ripe for Consideration Substantially in Advance of Chapter 13 Plan Completion

[Educational Credit Management Corp. v. Coleman \(In re Coleman\)](#), No. 06-16477, 2008 BL 161142 (9th Cir. Aug. 1, 2008)

On August 1, 2008, the United States Court of Appeals for the Ninth Circuit affirmed the lower courts' rulings, finding that an undue hardship determination under [11 U.S.C. §523\(a\)\(8\)](#) with respect to a chapter 13 debtor's student loan obligations

was ripe for consideration substantially in advance of plan completion.

Debtor's Confirmed Chapter 13 Plan

In 2004, Cathy Coleman (“Debtor”) filed a petition for chapter 13 bankruptcy protection. Thereafter, the bankruptcy court confirmed Debtor’s five year plan, which included the repayment of approximately \$100,000 in student loans owed by Debtor to Educational Credit Management Corporation (“Educational Credit”).

Bankruptcy Court Decides Undue Hardship Determination Was Ripe for Consideration

Approximately one year after plan confirmation, subsequent to Debtor’s being laid off from her job, Debtor requested a determination from the bankruptcy court that it would constitute an undue hardship for her to repay her student loans and that her student loans should thus be excepted from discharge pursuant to §523(a)(8). In response, Educational Credit filed a motion to dismiss (“Motion to Dismiss”) for lack of subject matter jurisdiction, arguing that the matter was not ripe for consideration because Debtor had several years’ worth of payments remaining in accordance with her confirmed chapter 13 plan. Rejecting Educational Credit’s position, the bankruptcy court determined that Debtor’s undue hardship request was ripe for consideration and therefore denied the Motion to Dismiss.

After the district court affirmed the bankruptcy court’s denial of the Motion to Dismiss, Educational Credit appealed the lower courts’ findings to the Ninth Circuit.

Overview of Undue Hardship Requirements in Chapter 13

Issuing its decision on appeal, the Ninth Circuit began by declaring that, in contrast to chapter 7, chapter 13 requires a debtor to commit to a three to five year period of repayment, after which time the debtor’s remaining debts are discharged. See [11 U.S.C. §1328\(a\)\(2\)](#). The Ninth Circuit further announced that student loans are excepted from such discharge unless the debtor can demonstrate “undue hardship” pursuant to §523(a)(8). Notably, in order to meet the “undue hardship” exception of §523(a)(8), the Ninth Circuit stated that Debtor would be required to establish that: (1) she could not maintain, based on current income and expenses, a minimal standard of living for herself and for her dependents if she were required to repay the student loans; (2) additional circumstances exist indicating that such situation is likely to continue for a significant part of the repayment period; and (3) she has made good faith efforts in an attempt to repay the loans. See *In re Saxman*, [325 F.3d 1168, 1172](#) (9th Cir. 2003).

Applying these principles, the Ninth Circuit declared that the issue in question involved timing, namely, whether Debtor’s undue hardship determination was ripe even though it had occurred substantially before the point of plan completion.

Arguing in favor of ripeness, Debtor cited Federal Rules of Bankruptcy Procedure [4007\(a\)](#) and [\(b\)](#), which provide that a debtor can file a complaint in order to obtain a determination of the dischargeability of any debt at any time. In response, Educational Credit contended that because Debtor could not obtain a discharge until she had completed making payments under the plan, the undue hardship determination was not ripe until or near that specific point in time.

Ninth Circuit Holds Parties' Dispute Was Constitutionally Ripe

Examining the ripeness of Debtor’s undue hardship determination, the Ninth Circuit observed that ripeness consists of two components: constitutional ripeness and prudential ripeness. See *Thomas v. Anchorage Equal Rights Commission*, [220 F.3d 1134, 1138](#) (9th Cir. 2000). Addressing constitutional ripeness first, the Ninth Circuit pronounced that a declaratory judgment action is constitutionally ripe when “there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” See *United States v. Braren*, [338 F.3d 971, 975](#) (9th Cir. 2003).

Ultimately finding that this standard had been satisfied in the instant case, the Ninth Circuit concluded that a “substantial controversy” had arisen between Debtor and Educational Credit when Debtor filed for chapter 13 bankruptcy protection and attempted to discharge her student loans, which Educational Credit staunchly opposed. The Ninth Circuit further determined that the controversy was “not hypothetical or abstract” since it involved a specific and defined debt. See *Thomas*, 220 F.3d at 1139. Finally, while acknowledging that Debtor’s actual discharge of her student loan would only occur, if at all, upon her completion of making the plan payments, the Ninth Circuit commented that plan completion is a single factual contingency rather than a series of contingencies that would result in the court’s decision being “impermissibly speculative.” See *Portland Police Association v. City of Portland*, [658 F.2d 1272, 1273](#) (9th Cir. 1981).

Accordingly, the Ninth Circuit decided that the dispute between Debtor and Educational Credit was constitutionally ripe.

Ninth Circuit Decides Abbott Test for Prudential Ripeness Is Applicable in Bankruptcy Context

Next, the Ninth Circuit set forth a two part test to consider prudential ripeness, involving determinations of the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration. See *Abbott Labs v. Gardner*, [387 U.S. 136, 149](#) (1967). In so doing, the Ninth Circuit acknowledged the case of *Principal Life Insurance Co. v. Robinson*, [394 F.3d 665, 670–71](#) (9th Cir. 2005), in which the Ninth Circuit held that the *Abbott* test is not applicable to private contract disputes and that it may only be used in the administrative law context. However, remarking

that *Principal Life Insurance* did not specifically rule on whether *Abbott* applies to private party disputes governed by the Bankruptcy Code and pointing out that disputes prior to *Principal Life Insurance* in the bankruptcy context were decided in accordance with the *Abbott* test, the Ninth Circuit resolved that *Abbott* was applicable to the instant case. See *In re Dominelli*, [788 F.2d 584, 585](#) (9th Cir. 1986).

*Split of Authority Regarding Whether Undue Hardship
Determination Is Ripe Substantially in Advance
of Plan Completion*

Addressing the application of prudential ripeness in the bankruptcy context, the Ninth Circuit focused on a split of authority among the circuit courts regarding whether student loan dischargeability determinations are ripe substantially prior to plan completion. On the one hand, as the Ninth Circuit indicated, the United States Bankruptcy Appellate Panel for the Ninth Circuit (“B.A.P.”) and the United States Court of Appeals for the Fourth Circuit, each without expressly utilizing the *Abbott* test or any specific ripeness test, have held that the issue of student loan dischargeability is ripe before the completion of plan payments. See *In re Taylor*, [223 B.R. 747, 751–52](#) (9th Cir. B.A.P. 1998); *In re Ekenasi*, [325 F.3d 541, 547](#) (4th Cir. 2003). On the other hand, however, as the Ninth Circuit explained, the United States Court of Appeals for the Eighth and Fifth Circuits have held, again without using any explicit ripeness standard, that an undue hardship determination is not ripe until plan completion. See *In re Bender*, [368 F.3d 846, 848](#) (8th Cir. 2004); *In re Rubarts*, [896 F.2d 107, 109](#) (5th Cir. 1990). Ultimately accepting the view of the B.A.P. and the Fourth Circuit, the Ninth Circuit resolved that in applying *Abbott*, an undue hardship determination can be ripe substantially before the point of plan completion.

*Ninth Circuit Declares Fitness Test Weighed
in Favor of Ripeness*

Considering the first prong of the *Abbott* test, namely, the fitness of the issues for judicial decision, the Ninth Circuit observed that the purpose of the fitness test is to defer consideration of the matter in question until the significant and relevant facts have been well-developed in cases where such development would facilitate the court’s determination. See *National Park Hospitality Association Department of the Interior*, [538 U.S. 803, 812](#) (2003). Resolving that the factual contingency of Debtor’s financial situation did not warrant delaying an undue hardship determination, the Ninth Circuit found it to be significant that many student loan repayment periods are 30 years in duration, which is far longer than the length of a typical chapter 13 plan.

Moreover, the Ninth Circuit rejected Educational Credit’s argument that a determination concerning whether a debtor has made good faith efforts to repay the loans, as required in order to establish undue hardship, cannot be made until the point in time of approximate plan completion. See *Saxman*, 325 F.3d at 1173. Instead, the Ninth Circuit found that the prematurity of

the determination varies given each debtor’s specific situation, stating, for example, that Debtor in the case at hand had been attempting to repay her student loans since 1999.

Likewise, the Ninth Circuit disagreed with the Eighth Circuit’s conclusion in *Bender* that an undue hardship determination is measured from the time of discharge rather than from the point in time that a §523(a)(8) proceeding is filed. See *Bender*, 368 F.3d at 848. To this end, the Ninth Circuit emphasized the lack of any provision in §523(a)(8) specifying that an undue hardship must exist precisely at the time of discharge. See *In re Coleman*, [333 B.R. 841, 849](#) (Bankr. N.D. Cal. 2005). Furthermore, the Ninth Circuit favorably cited the Fourth Circuit’s approach in *Ekenasi* permitting a debtor to select the “snapshot date” for determining undue hardship, declaring that it was consistent with both §523(a)(8) and Rule 4007(b). See *Ekenasi*, 325 F.3d at 547.

Consequently, the Ninth Circuit held that the fitness prong of the *Abbott* test weighed in favor of ripeness.

*Ninth Circuit Decides Hardship to Parties
Also Weighed in Favor of Ripeness*

Turning to the second prong of the *Abbott* test, the Ninth Circuit proclaimed that the hardship to Debtor in postponing a decision also weighed in favor of ripeness. Specifically, the Ninth Circuit ruled that requiring chapter 13 debtors to commit the entirety of their disposable income for three to five years pursuant to [11 U.S.C. §1325\(b\)\(1\)\(2\)](#) was a considerable burden to bear absent any guarantee that the debt would be discharged upon plan completion.

Additionally, the Ninth Circuit took into account that the fact that filing a chapter 7 petition and receiving a discharge under [11 U.S.C. §727\(a\)](#) was not a comparable option because, unlike chapter 13 attorneys who may be paid through a confirmed plan, chapter 7 attorneys must be paid “up-front” for proceeding with litigation on a debtor’s behalf, including an undue hardship determination. As such, the Ninth Circuit concluded that the “fresh start” purpose in bankruptcy would not be served if debtors were forced by financial constraints to pursue undue hardship matters *pro se* or, alternatively, were unable to obtain such a judgment simply because the matter was not yet ripe.

As a result, the Ninth Circuit resolved that prudential ripeness considerations did not warrant taking the undue hardship determination away from the bankruptcy court at the point in time when its resolution could be integral to the successful completion of the plan.

*Ninth Circuit Affirms Bankruptcy Court’s Denial
of Educational Credit’s Motion to Dismiss*

Ultimately, the Ninth Circuit affirmed the bankruptcy court’s denial of Educational Credit’s Motion to Dismiss, concluding that Debtor’s undue hardship determination was ripe for consideration substantially in advance of plan completion.

Automatic Stay

Fifth Circuit Determines Judgment Creditor's Efforts to Collect Prepetition Legal Fees Violated Automatic Stay

[*Young v. Repine \(In re Repine\)*, No. 06-20807, 2008 BL 155249 \(5th Cir. Jul. 22, 2008\)](#)

On July 22, 2008, the United States Court of Appeals for the Fifth Circuit ruled that a judgment creditor's attempts to collect prepetition attorneys' fees from a debtor constituted a willful violation of the automatic stay. Accordingly, the Fifth Circuit affirmed the district court's award of lost wages, punitive damages, and attorneys' fees to the debtor, but vacated the lower court's award of damages for emotional distress.

Judgment Creditor's Attempts to Collect Prepetition Attorneys' Fees

Between 2000 and 2003, attorney Patsy Young ("Young") represented Elizabeth Pollard ("Pollard") in a child support enforcement action ("Support Action") against Eugene Repine ("Repine"), Pollard's former husband. In June 2003, the family court held Repine in criminal contempt for failure to pay child support and ordered his incarceration for 180 days. In addition, the family court directed that Repine be held in civil contempt each day until he paid the support obligations, as well as \$2,027 in attorneys' fees owed to Young.

Thereafter, Young filed a child support lien against Repine's property. On July 1, 2003, Repine filed a petition for chapter 13 bankruptcy protection from prison, which automatically stayed all actions against Repine, including the Support Action. On or before July 22, 2003, Repine's counsel informed Young of the bankruptcy case and warned that any efforts to collect attorneys' fees would violate the automatic stay.

Repine and Pollard then engaged in settlement discussions related to the Support Action to secure Repine's release from prison. To that end, on September 11, 2003, the bankruptcy court entered a consensual order ("Settlement Order") lifting the automatic stay for the limited purpose of allowing Pollard to pursue the Support Action to the extent permitted under state law. Notably, the Settlement Order required Repine to deed his home to Pollard, who, once the home was sold and the senior liens were repaid, was ordered to credit the remaining proceeds to child support arrears and Young's outstanding fees.

The next day, the family court considered Repine's motion for suspension of prison commitment ("Suspension Motion"). Ignoring her client's wishes, Young objected to Repine's release based on concerns about the payment of her legal fees. Finding that Repine still owed support obligations, the family court denied the Suspension Motion, and, as a result, Repine remained incarcerated.

On September 23, 2003, Repine's criminal prison sentence ended, but his incarceration for civil contempt was to continue until he paid child support. On that same day, Repine's father died. Despite Pollard's wishes, Young declared that she would not appear in court to support Repine's release from prison until she received payment of her attorneys' fees. On September 24, 2003, Pollard and Repine moved to enforce the Settlement Order in the bankruptcy court and for Repine's release from prison in order to attend his father's funeral. After being advised that Young had refused to appear, the bankruptcy court ordered Young to appear and show cause as to why she should not be held in contempt for attempting to collect her fees in violation of the automatic stay. The next day, United States Marshals took Young into custody due to her failure to appear before the bankruptcy court. Releasing Young, the bankruptcy court warned her to cease all efforts to collect her attorneys' fees. Nevertheless, Young continued taking actions to collect her fees and repeatedly opposed Repine's release from prison in order to attend his father's funeral. In October 2003, Young withdrew as Pollard's counsel, and in November 2003, Repine was finally released from prison.

Complaint for Willful Violation of Automatic Stay

In January 2004, Repine filed a complaint against Young under [11 U.S.C. §362\(k\)](#) for damages and attorneys' fees related to Young's willful violation of the automatic stay. Ruling in Repine's favor, the bankruptcy court awarded actual damages, damages for emotional distress, punitive damages, and attorneys' fees. Young appealed the bankruptcy court's decision, which the district court subsequently affirmed. On further appeal to the Fifth Circuit, Young argued that: (1) the automatic stay did not apply to her collection efforts; (2) her actions did not cause Repine any damage; (3) there was no evidence supporting an award of damages; (4) emotional damages were not actual damages and thus were not recoverable; and (5) Repine was not entitled to attorneys' fees.

Application of Automatic Stay to Collection Attempts

Beginning its analysis, the Fifth Circuit considered whether Young's efforts to collect her fees had violated the automatic stay. In support of her actions, Young argued that the stay did not apply because she had sought payment from funds that were not property of the estate. Moreover, Young alleged that the Settlement Order lifting the stay had authorized her collection efforts. Disagreeing with Young's position, Repine countered that Young had violated the automatic stay by seeking payment from estate funds and that the Settlement Order did not permit Young to take actions to collect her fees outside of its terms.

Reviewing the statutory language, the Fifth Circuit explained that [11 U.S.C. §362\(a\)\(1\)](#) precludes a creditor from asserting prepetition claims against a debtor. Furthermore, the court of appeals noted that [§362\(k\)](#) enables a debtor to commence an

action against a party who willfully violates the automatic stay and to recover actual damages, attorneys' fees, and punitive damages. Additionally, the court of appeals clarified that for Repine to assert a §362(k) claim, Young must have known about the stay, her acts must have been intentional, and the acts must have violated the stay. *In re Chesnut*, [422 F.3d 298, 302](#) (5th Cir. 2005).

Focusing on this last element involving violation of the stay, the Fifth Circuit concluded that Young's collection efforts were not limited to non estate property. Notably, the Fifth Circuit stated that while the Settlement Order authorized collection actions in accordance with its terms, Young's actions far exceeded those terms. Specifically, the Settlement Order permitted payment of Young's attorneys' fees only if proceeds remained after Pollard had sold Repine's house and had credited the sale proceeds to child support arrears and other senior obligations. The Fifth Circuit emphasized that while the Settlement Order provided one specific path by which Young could potentially recover her fees, it did not allow her to "pursue her own collection campaign." Resolving that her actions had defied the Settlement Order, the Fifth Circuit held that Young had willfully violated the automatic stay.

Causal Connection between Collection Attempts and Damages

Next, the court of appeals questioned whether Young's collection efforts had caused the damages suffered by Repine. Looking to the record, the Fifth Circuit observed that Repine was eligible for release from prison as of September 23, 2003, pending payment of his support obligations, and that on the following day, Repine and Pollard had moved jointly for Repine's immediate release in order to attend his father's funeral. Recognizing that Young's refusal to appear and submit an order releasing Repine had frustrated the parties' efforts, the Fifth Circuit declared that the bankruptcy court had not clearly erred in holding that Young's actions had extended Repine's prison stay and prevented him from attending his father's funeral. As such, the Fifth Circuit ruled that Young's actions had indeed caused Repine's damages. See *Skipper v. U.S.*, [1 F.3d 349, 352](#) (5th Cir. 1993).

Evidence Supporting Award of Damages

Thereafter, the court of appeals considered whether the evidence supported an award of damages. Regarding this matter, Young asserted that the evidence did not reflect any lost wages by Repine, or that Young had acted with the necessary malice or bad faith to support an award of punitive damages. Addressing the wage issue, the Fifth Circuit recalled testimony indicating that Repine had recently earned \$147,000 annually. Resolving that the award for lost wages was consistent with Repine's recent salary, the Fifth Circuit determined that the bankruptcy court had not clearly erred in awarding Repine lost wages. See *Dial One of the Mid-South,*

Inc. v. BellSouth Telecommunications, Inc., [269 F.3d 523, 527](#) (5th Cir. 2001).

In addition, the Fifth Circuit acknowledged that §362(k) allows for punitive damages "in appropriate circumstances," which the court of appeals equated with "egregious conduct." See *In re Knaus*, [889 F.2d 773, 776](#) (8th Cir. 1989); *In re Lile*, [161 B.R. 788, 792](#) (S.D. Tex. 1993). To this end, the court of appeals observed that Young had disregarded warnings from Repine's counsel that collection efforts would violate the automatic stay, ignored her own client's wishes that Repine be released from prison, failed to appear before the bankruptcy court after being so ordered, and continued her attempts to collect prepetition fees following the bankruptcy court's warning to cease doing so. Consequently, the Fifth Circuit found that based on Young's egregious conduct, the award of punitive damages was not clear error.

Emotional Injury Damages

Continuing its analysis, the Fifth Circuit examined the bankruptcy court's award for Repine's emotional injuries. Addressing this issue, the court of appeals reviewed the First Circuit's position that emotional damages constitute actual damages under §362(k) and must be supported by "specific information" rather than "generalized assertions." *Fleet Mortgage Group, Inc. v. Kaneb*, [196 F.3d 265, 269](#) (1st Cir. 1999). Moreover, the Fifth Circuit asserted that while the Seventh Circuit has also adopted a specificity requirement, it has further held that emotional injuries are not compensable unless they can be linked to a financial injury. See *Aiello v. Providian Financial Corp.*, [239 F.3d 876, 880](#) (7th Cir. 2001). Determining that Repine had not provided specific information regarding the damages caused by his emotional distress, the Fifth Circuit vacated the bankruptcy court's award of damages for emotional injury.

Attorneys' Fees

Finally, the Fifth Circuit explored whether the bankruptcy court had abused its discretion in awarding Repine attorneys' fees that were incurred in prosecuting the stay violation under §362(k). In reaching its decision, the Fifth Circuit remarked that lower courts have upheld the propriety of an award of attorneys' fees incurred in prosecuting a §362 claim. See *Mitchell v. Bankllinois*, [316 B.R. 891, 901-04](#) (S.D. Tex. 2004); *In re Still*, [117 B.R. 251, 254-55](#) (Bankr. E.D. Tex. 1990). Agreeing with this interpretation of §362(k), the Fifth Circuit affirmed the award of attorneys' fees to Repine.

Fifth Circuit Affirms in Part and Vacates in Part District Court's Judgment

Declaring that Young's collection efforts had constituted a willful violation of the automatic stay, the Fifth Circuit vacated the district court's award of emotional injury damages but affirmed the district court's order in all other respects.

Debtors

Chapter 11 Filings

Filed Aug. 20, 2008 through Aug. 26, 2008

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
A & K Skyline Development LLC	District of Arizona	08-bk-10814	Aug. 20, 2008	Eileen W. Hollowell
Kelsep, Inc.	District of Arizona	08-bk-10825	Aug. 20, 2008	Randolph J. Haines
Regatta Bay, LLC	District of Arizona	08-bk-10838	Aug. 20, 2008	Randolph J. Haines
Lynnkohn, LLC	Western District of Arkansas	08-bk-73301	Aug. 20, 2008	Ben T. Barry
Performance Labs, Inc.	Central District of California	08-bk-16121	Aug. 20, 2008	Maureen Tighe
Woodside Group, LLC	Central District of California	08-bk-20682	Aug. 20, 2008	Peter Carroll
Pleasant Hill Investments, LC	Central District of California	08-bk-20686	Aug. 20, 2008	Peter Carroll
WDS Holdings, Inc.	Central District of California	08-bk-20688	Aug. 20, 2008	Peter Carroll
BCD 99, LLC	Central District of California	08-bk-20690	Aug. 20, 2008	Peter Carroll
Woodside 04N, LP	Central District of California	08-bk-20692	Aug. 20, 2008	Peter Carroll
Woodside 04S, LP	Central District of California	08-bk-20694	Aug. 20, 2008	Peter Carroll
Woodside 05N, LP	Central District of California	08-bk-20699	Aug. 20, 2008	Peter Carroll
Woodside 05S, LP	Central District of California	08-bk-20701	Aug. 20, 2008	Peter Carroll
Woodside 06N, LP	Central District of California	08-bk-20704	Aug. 20, 2008	Peter Carroll
Woodside 7N, LP	Central District of California	08-bk-20706	Aug. 20, 2008	Peter Carroll
TBB 03, LLC	Central District of California	08-bk-20711	Aug. 20, 2008	Peter Carroll
Menifee Woodside, LLC	Central District of California	08-bk-20714	Aug. 20, 2008	Peter Carroll
Hi-Line Construction, Inc.	Central District of California	08-bk-20718	Aug. 20, 2008	Meredith A. Jury
MHA02, LLC	Central District of California	08-bk-20728	Aug. 20, 2008	Peter Carroll
MWG 00, LLC	Central District of California	08-bk-20730	Aug. 20, 2008	Peter Carroll
MWL 01, LLC	Central District of California	08-bk-20734	Aug. 20, 2008	Peter Carroll
Woodside Autumn Ridge, LLC	Central District of California	08-bk-20735	Aug. 20, 2008	Peter Carroll
Woodside Glenmere, LLC	Central District of California	08-bk-20736	Aug. 20, 2008	Peter Carroll
Woodside Clarendon Hills, LLC	Central District of California	08-bk-20737	Aug. 20, 2008	Peter Carroll
Woodside Legacy, LLC	Central District of California	08-bk-20738	Aug. 20, 2008	Peter Carroll
Woodside Homes of Southern California, LLC	Central District of California	08-bk-20742	Aug. 20, 2008	Peter Carroll
Woodside AMR 91, LLC	Central District of California	08-bk-20744	Aug. 20, 2008	Peter Carroll
Woodside Paseo 5000, LLC	Central District of California	08-bk-20746	Aug. 20, 2008	Peter Carroll
Woodside Paseo 6000, LLC	Central District of California	08-bk-20748	Aug. 20, 2008	Peter Carroll
Woodside Paseo 7200, LLC	Central District of California	08-bk-20750	Aug. 20, 2008	Peter Carroll
Woodside Vista Montana, LLC	Central District of California	08-bk-20751	Aug. 20, 2008	Peter Carroll
Woodside Weston Ranch, LLC	Central District of California	08-bk-20753	Aug. 20, 2008	Peter Carroll
Foxboro 50's, LLC	Central District of California	08-bk-20754	Aug. 20, 2008	Peter Carroll
Foxboro Coventry, LLC	Central District of California	08-bk-20755	Aug. 20, 2008	Peter Carroll
Foxboro Estates, LLC	Central District of California	08-bk-20756	Aug. 20, 2008	Peter Carroll
Foxboro Villages, LLC	Central District of California	08-bk-20757	Aug. 20, 2008	Peter Carroll

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Ivywood Interior Design, LLC	Central District of California	08-bk-20758	Aug. 20, 2008	Peter Carroll
Oquirrh Highlands Condominiums, LLC	Central District of California	08-bk-20759	Aug. 20, 2008	Peter Carroll
Pleasant Valley Investments, LC	Central District of California	08-bk-20760	Aug. 20, 2008	Peter Carroll
Portola Development Co., LC	Central District of California	08-bk-20762	Aug. 20, 2008	Peter Carroll
Portola Development, Arizona, LLC	Central District of California	08-bk-20763	Aug. 20, 2008	Peter Carroll
Portola Development, Utah, LC	Central District of California	08-bk-20764	Aug. 20, 2008	Peter Carroll
Saratoga Land Development, LLC	Central District of California	08-bk-20765	Aug. 20, 2008	Peter Carroll
Sonora HOA Management, LLC	Central District of California	08-bk-20766	Aug. 20, 2008	Peter Carroll
Sterling 69, LLC	Central District of California	08-bk-20767	Aug. 20, 2008	Peter Carroll
WDS GP, Inc.	Central District of California	08-bk-20768	Aug. 20, 2008	Peter Carroll
WGP Group, LLC	Central District of California	08-bk-20770	Aug. 20, 2008	Peter Carroll
Woodside 20/25, LLC	Central District of California	08-bk-20772	Aug. 20, 2008	Peter Carroll
Woodside Aberdeen, LLC	Central District of California	08-bk-20774	Aug. 20, 2008	Peter Carroll
Woodside Allerton, LLC	Central District of California	08-bk-20775	Aug. 20, 2008	Peter Carroll
Woodside Amberly, LLC	Central District of California	08-bk-20776	Aug. 20, 2008	Peter Carroll
Woodside Amelia Lakes, LLC	Central District of California	08-bk-20777	Aug. 20, 2008	Peter Carroll
Woodside Avalon Park, LLC	Central District of California	08-bk-20778	Aug. 20, 2008	Peter Carroll
Woodside Avalon, LLC	Central District of California	08-bk-20779	Aug. 20, 2008	Peter Carroll
Woodside Ballantrae, LLC	Central District of California	08-bk-20780	Aug. 20, 2008	Peter Carroll
Woodside Bella Fresca, Inc.	Central District of California	08-bk-20782	Aug. 20, 2008	Peter Carroll
Woodside Berkeley, LLC	Central District of California	08-bk-20783	Aug. 20, 2008	Peter Carroll
Woodside Blue Water Bay, LLC	Central District of California	08-bk-20784	Aug. 20, 2008	Peter Carroll
Woodside Bridges at Boulder Creek, LLC	Central District of California	08-bk-20785	Aug. 20, 2008	Peter Carroll
Woodside Brookstone, LLC	Central District of California	08-bk-20786	Aug. 20, 2008	Peter Carroll
SageCrest Holdings Ltd.	District of Connecticut	08-bk-50763	Aug. 20, 2008	Alan H.W. Shiff
Hines Horticulture, Inc.	District of Delaware	08-bk-11922	Aug. 20, 2008	Kevin J. Carey
Hines Nurseries, Inc.	District of Delaware	08-bk-11923	Aug. 20, 2008	Kevin J. Carey
Palm Suites Land Trust	Middle District of Florida	08-bk-07263	Aug. 20, 2008	Arthur B. Briskman
A Gentlemen's Cut LLC	Western District of Kentucky	08-bk-33654	Aug. 20, 2008	Thomas H. Fulton
YUR Construction Co., Inc.	Eastern District of Louisiana	08-bk-12013	Aug. 20, 2008	Elizabeth W. Magner
Falcon Shoe Manufacturing Co.	District of Massachusetts	08-bk-16200	Aug. 20, 2008	Henry Boroff
Red Oak Winery, LLC	District of Massachusetts	08-bk-16222	Aug. 20, 2008	Henry Boroff
G&B Trucking Corp.	District of Massachusetts	08-bk-16225	Aug. 20, 2008	Joan N. Feeney
The Mattress Warehouse Plus, Inc.	Eastern District of Michigan	08-bk-33370	Aug. 20, 2008	Daniel S. Opperman
PESE, LLC	District of Minnesota	08-bk-34241	Aug. 20, 2008	Robert J. Kressel
Mt. Zion Pentecostal Holiness Church Inc.	Eastern District of New York	08-bk-45449	Aug. 20, 2008	Dennis E. Milton
Sunbeam Realty Inc.	Eastern District of New York	08-bk-45455	Aug. 20, 2008	Elizabeth S. Stong
Advanced Chimney Inc.	Eastern District of New York	08-bk-74464	Aug. 20, 2008	Alan S. Trust
Guilderland LTC Management, LLC	Northern District of New York	08-bk-12759	Aug. 20, 2008	Robert E. Littlefield, Jr.
Guilderland Realty Holdings Corp.	Northern District of New York	08-bk-12760	Aug. 20, 2008	Robert E. Littlefield, Jr.

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Guilderland Center Group, LLC	Northern District of New York	08-bk-12761	Aug. 20, 2008	Robert E. Littlefield, Jr.
Howd Manor Group, LLC	Northern District of New York	08-bk-12762	Aug. 20, 2008	Robert E. Littlefield, Jr.
Chateau Senior Services, LLC	Eastern District of Pennsylvania	08-bk-15318	Aug. 20, 2008	Eric L. Frank
Ambler Senior Services, LLC	Eastern District of Pennsylvania	08-bk-15319	Aug. 20, 2008	Eric L. Frank
Brighten Health Group, LLC	Eastern District of Pennsylvania	08-bk-15320	Aug. 20, 2008	Eric L. Frank
Church Lane Senior Services, LLC	Eastern District of Pennsylvania	08-bk-15321	Aug. 20, 2008	Eric L. Frank
Julia Ribaldo Senior Services, LLC	Eastern District of Pennsylvania	08-bk-15322	Aug. 20, 2008	Eric L. Frank
Winthrop House Senior Services, LLC	Eastern District of Pennsylvania	08-bk-15324	Aug. 20, 2008	Eric L. Frank
Coliseum Entertainment Group, Inc.	Middle District of Pennsylvania	08-bk-02990	Aug. 20, 2008	Mary D. France
NAB Basu Inc.	District of Puerto Rico	08-bk-05380	Aug. 20, 2008	Gerardo Carlo Altieri
Bayamon Shopping Center Inc.	District of Puerto Rico	08-bk-05387	Aug. 20, 2008	Brian K. Tester
Hope Mill Village Associates, LLC	District of Rhode Island	08-bk-12568	Aug. 20, 2008	Arthur N. Votolato
Kleriotis LLC	Eastern District of Virginia	08-bk-15006	Aug. 20, 2008	Stephen S. Mitchell
D&M Commercial Plumbing, Inc.	Western District of Washington	08-bk-44078	Aug. 20, 2008	Paul B. Snyder
SAIDUTT, Inc.	Middle District of Alabama	08-bk-11322	Aug. 21, 2008	William R. Sawyer
Woodside Buffalo Ridge, LLC	Central District of California	08-bk-20788	Aug. 21, 2008	Peter Carroll
Woodside Cambria, LLC	Central District of California	08-bk-20789	Aug. 21, 2008	Peter Carroll
Woodside Canyon Creek, LLC	Central District of California	08-bk-20790	Aug. 21, 2008	Peter Carroll
Woodside Casa Palermo, LLC	Central District of California	08-bk-20791	Aug. 21, 2008	Peter Carroll
Woodside Castleton, LLC	Central District of California	08-bk-20792	Aug. 21, 2008	Peter Carroll
Woodside Cedar Creek, LLC	Central District of California	08-bk-20793	Aug. 21, 2008	Peter Carroll
Woodside Clearwater, LLC	Central District of California	08-bk-20794	Aug. 21, 2008	Peter Carroll
Woodside Colonial Charles SFD, LLC	Central District of California	08-bk-20795	Aug. 21, 2008	Peter Carroll
Woodside Colonial Charles Villas, LLC	Central District of California	08-bk-20796	Aug. 21, 2008	Peter Carroll
Woodside Communities - WDC, LLC	Central District of California	08-bk-20797	Aug. 21, 2008	Peter Carroll
Woodside Communities of North Florida, LLC	Central District of California	08-bk-20798	Aug. 21, 2008	Peter Carroll
Woodside Cortez Heights, LLC	Central District of California	08-bk-20799	Aug. 21, 2008	Peter Carroll
Woodside Daytona Land, LLC	Central District of California	08-bk-20800	Aug. 21, 2008	Peter Carroll
Woodside Eagle Marsh North, LLC	Central District of California	08-bk-20801	Aug. 21, 2008	Peter Carroll
Woodside Eagle Marsh South, LLC	Central District of California	08-bk-20802	Aug. 21, 2008	Peter Carroll
Woodside Encore at Sunset Ranch, LLC	Central District of California	08-bk-20803	Aug. 21, 2008	Peter Carroll
Woodside Exeter South, LLC	Central District of California	08-bk-20804	Aug. 21, 2008	Peter Carroll
Woodside Farmington Hollow Cottages, LLC	Central District of California	08-bk-20805	Aug. 21, 2008	Peter Carroll
Woodside Farmington Hollow Estates, LLC	Central District of California	08-bk-20806	Aug. 21, 2008	Peter Carroll
Woodside Farmington Meadows, LLC	Central District of California	08-bk-20807	Aug. 21, 2008	Peter Carroll

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Woodside Fieldstone Ranch, LLC	Central District of California	08-bk-20808	Aug. 21, 2008	Peter Carroll
Woodside Fieldstone, LLC	Central District of California	08-bk-20809	Aug. 21, 2008	Peter Carroll
Woodside Finisterre, LLC	Central District of California	08-bk-20810	Aug. 21, 2008	Peter Carroll
Woodside Foothills Sunrise, LLC	Central District of California	08-bk-20811	Aug. 21, 2008	Peter Carroll
Woodside Foothills West, LLC	Central District of California	08-bk-20812	Aug. 21, 2008	Peter Carroll
Woodside Garden Gate, LLC	Central District of California	08-bk-20813	Aug. 21, 2008	Peter Carroll
Woodside Grande Premier, LLC	Central District of California	08-bk-20814	Aug. 21, 2008	Peter Carroll
Woodside Greyhawk, LLC	Central District of California	08-bk-20815	Aug. 21, 2008	Peter Carroll
Woodside Grouse Pointe, LLC	Central District of California	08-bk-20816	Aug. 21, 2008	Peter Carroll
Woodside Hearthstone, LLC	Central District of California	08-bk-20817	Aug. 21, 2008	Peter Carroll
Woodside Heritage Lake 150, Inc.	Central District of California	08-bk-20820	Aug. 21, 2008	Peter Carroll
Woodside Heritage Lake 7200, Inc.	Central District of California	08-bk-20821	Aug. 21, 2008	Peter Carroll
Woodside Highland Ridge, LLC	Central District of California	08-bk-20825	Aug. 21, 2008	Peter Carroll
Woodside Homes Corp.	Central District of California	08-bk-20827	Aug. 21, 2008	Peter Carroll
Woodside Homes of Arizona, Inc.	Central District of California	08-bk-20830	Aug. 21, 2008	Peter Carroll
Woodside Homes of California, Inc.	Central District of California	08-bk-20832	Aug. 21, 2008	Peter Carroll
Woodside Homes of Central California, Inc.	Central District of California	08-bk-20834	Aug. 21, 2008	Peter Carroll
Woodside Homes of Florida, LLC	Central District of California	08-bk-20837	Aug. 21, 2008	Peter Carroll
Woodside Homes of Fresno, Inc.	Central District of California	08-bk-20840	Aug. 21, 2008	Peter Carroll
Woodside Homes of Minnesota, Inc.	Central District of California	08-bk-20842	Aug. 21, 2008	Peter Carroll
Woodside Homes of Northern California, Inc.	Central District of California	08-bk-20844	Aug. 21, 2008	Peter Carroll
Woodside Homes of South Texas, LLC	Central District of California	08-bk-20846	Aug. 21, 2008	Peter Carroll
Woodside Home Sales Corp.	Central District of California	08-bk-20850	Aug. 21, 2008	Peter Carroll
Woodside Hunters Creek, LLC	Central District of California	08-bk-20852	Aug. 21, 2008	Peter Carroll
Woodside Jackrabbit Estates, LLC	Central District of California	08-bk-20855	Aug. 21, 2008	Peter Carroll
Woodside Karston Cove, LLC	Central District of California	08-bk-20861	Aug. 21, 2008	Peter Carroll
Woodside Knoll Creek, LLC	Central District of California	08-bk-20866	Aug. 21, 2008	Peter Carroll
Woodside Land Holdings, LLC	Central District of California	08-bk-20868	Aug. 21, 2008	Peter Carroll
Woodside Las Colinas, LLC	Central District of California	08-bk-20869	Aug. 21, 2008	Peter Carroll
Woodside Legacy Oaks, LLC	Central District of California	08-bk-20871	Aug. 21, 2008	Peter Carroll
Woodside Madison Colony, LLC	Central District of California	08-bk-20872	Aug. 21, 2008	Peter Carroll
Woodside Magma Ranch, LLC	Central District of California	08-bk-20874	Aug. 21, 2008	Peter Carroll
Woodside Majestic Oaks, LLC	Central District of California	08-bk-20875	Aug. 21, 2008	Peter Carroll
Woodside Meadows of Big Lake, LLC	Central District of California	08-bk-20877	Aug. 21, 2008	Peter Carroll
Woodside Menifee 105, Inc.	Central District of California	08-bk-20879	Aug. 21, 2008	Peter Carroll
Woodside Montrose, Inc.	Central District of California	08-bk-20881	Aug. 21, 2008	Peter Carroll
Woodside Murabella, LLC	Central District of California	08-bk-20882	Aug. 21, 2008	Peter Carroll
Woodside North MPLS, LLC	Central District of California	08-bk-20883	Aug. 21, 2008	Peter Carroll
Woodside Northridge, LLC	Central District of California	08-bk-20885	Aug. 21, 2008	Peter Carroll

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Woodside Palmilla, LLC	Central District of California	08-bk-20886	Aug. 21, 2008	Peter Carroll
Woodside Palomar, LLC	Central District of California	08-bk-20893	Aug. 21, 2008	Peter Carroll
Woodside Park Paseo, LLC	Central District of California	08-bk-20895	Aug. 21, 2008	Peter Carroll
Woodside Parkview, LLC	Central District of California	08-bk-20899	Aug. 21, 2008	Peter Carroll
Woodside Pebble Creek, LLC	Central District of California	08-bk-20901	Aug. 21, 2008	Peter Carroll
Woodside Preserve at Boulder Creek, LLC	Central District of California	08-bk-20905	Aug. 21, 2008	Peter Carroll
Woodside Provence, LLC	Central District of California	08-bk-20906	Aug. 21, 2008	Peter Carroll
Woodside Quail Crossing, LLC	Central District of California	08-bk-20909	Aug. 21, 2008	Peter Carroll
Woodside Rio Vista, LLC	Central District of California	08-bk-20912	Aug. 21, 2008	Peter Carroll
Woodside Riverwalk Preserve, LLC	Central District of California	08-bk-20915	Aug. 21, 2008	Peter Carroll
Woodside Rocking Horse, LLC	Central District of California	08-bk-20916	Aug. 21, 2008	Peter Carroll
Woodside Rockwell, LLC	Central District of California	08-bk-20923	Aug. 21, 2008	Peter Carroll
Woodside Rocky Pen, LLC	Central District of California	08-bk-20927	Aug. 21, 2008	Peter Carroll
Woodside Rogers Ranch, LLC	Central District of California	08-bk-20937	Aug. 21, 2008	Peter Carroll
A & B Bonding Co., Inc.	Northern District of Georgia	08-bk-76176	Aug. 21, 2008	Mary Grace Diehl
Postal Logistics Services LLC	Northern District of Illinois	08-bk-22006	Aug. 21, 2008	John H. Squires
Bui, Inc.	Southern District of Iowa	08-bk-03215	Aug. 21, 2008	Lee M. Jackwig
BMV Properties, LLC	Southern District of Iowa	08-bk-03217	Aug. 21, 2008	Lee M. Jackwig
ER Entertainment, LLC	District of Maine	08-bk-20982	Aug. 21, 2008	James B. Haines, Jr.
Newburgh Investment Properties, LLC	Eastern District of Michigan	08-bk-60364	Aug. 21, 2008	Thomas J. Tucker
Wolverine Security Services, Inc.	Eastern District of Michigan	08-bk-60369	Aug. 21, 2008	Steven W. Rhodes
Beatrice Biodiesel, LLC	District of Nebraska	08-bk-41927	Aug. 21, 2008	Thomas L. Saladino
530 West 28th Street LP	Southern District of New York	08-bk-13266	Aug. 21, 2008	Stuart M. Bernstein
United States Seamless of Western North Dakota, LLC	District of North Dakota	08-bk-30834	Aug. 21, 2008	William A. Hill
8009 Lake Road Holdings, Ltd.	Northern District of Ohio	08-bk-16432	Aug. 21, 2008	Arthur I. Harris
Oak Tree Learning Center, Inc.	Western District of Oklahoma	08-bk-13611	Aug. 21, 2008	Niles L. Jackson
General Spring, LLC	Middle District of Tennessee	08-bk-07445	Aug. 21, 2008	Keith M. Lundin
Renaissance Hospital Terrell Inc.	Northern District of Texas	08-bk-34143	Aug. 21, 2008	Barbara J. Houser
Renaissance Hospital - Grand Prairie, Inc.	Northern District of Texas	08-bk-43775	Aug. 21, 2008	D. Michael Lynn
Lake Tye Building LLC	Western District of Washington	08-bk-15340	Aug. 21, 2008	Thomas T. Glover
DLC Dermacare, LLC	District of Arizona	08-bk-11021	Aug. 22, 2008	Eileen W. Hollowell
Woodside Rosewood, LLC	Central District of California	08-bk-20939	Aug. 22, 2008	Peter Carroll
Woodside Royal Meadows, LLC	Central District of California	08-bk-20940	Aug. 22, 2008	Peter Carroll
Woodside S.O., LLC	Central District of California	08-bk-20941	Aug. 22, 2008	Peter Carroll
Woodside Scotland Heights, LLC	Central District of California	08-bk-20942	Aug. 22, 2008	Peter Carroll
Woodside Sienna, LLC	Central District of California	08-bk-20943	Aug. 22, 2008	Peter Carroll
Woodside Solano, LLC	Central District of California	08-bk-20944	Aug. 22, 2008	Peter Carroll
Woodside Somerset, LLC	Central District of California	08-bk-20945	Aug. 22, 2008	Peter Carroll
Woodside South Brook, LLC	Central District of California	08-bk-20946	Aug. 22, 2008	Peter Carroll

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Woodside Southern Hills, LLC	Central District of California	08-bk-20947	Aug. 22, 2008	Peter Carroll
Woodside Southridge, LLC	Central District of California	08-bk-20948	Aug. 22, 2008	Peter Carroll
Woodside Springs at Boulder Creek, LLC	Central District of California	08-bk-20949	Aug. 22, 2008	Peter Carroll
Woodside Stonehaven, LLC	Central District of California	08-bk-20950	Aug. 22, 2008	Peter Carroll
Woodside Stoneybrook, LLC	Central District of California	08-bk-20951	Aug. 22, 2008	Peter Carroll
Woodside Summerwood, LLC	Central District of California	08-bk-20952	Aug. 22, 2008	Peter Carroll
Woodside Summit at Foothills Reserve, LLC	Central District of California	08-bk-20953	Aug. 22, 2008	Peter Carroll
Woodside Summit at Riverwalk, LLC	Central District of California	08-bk-20954	Aug. 22, 2008	Peter Carroll
Woodside Sunrise at Riverwalk, LLC	Central District of California	08-bk-20955	Aug. 22, 2008	Peter Carroll
Woodside Sunset Farms, LLC	Central District of California	08-bk-20956	Aug. 22, 2008	Peter Carroll
Woodside Talaverde, LLC	Central District of California	08-bk-20958	Aug. 22, 2008	Peter Carroll
Woodside Tampa Palms, LLC	Central District of California	08-bk-20959	Aug. 22, 2008	Peter Carroll
Woodside Tempe Village, LLC	Central District of California	08-bk-20960	Aug. 22, 2008	Peter Carroll
Woodside Texas Holdings, LLC	Central District of California	08-bk-20962	Aug. 22, 2008	Peter Carroll
Woodside Texas Land Holdings, LLC	Central District of California	08-bk-20963	Aug. 22, 2008	Peter Carroll
Woodside Thurnbeck, LLC	Central District of California	08-bk-20964	Aug. 22, 2008	Peter Carroll
Woodside Terre Verde 301, LLC	Central District of California	08-bk-20965	Aug. 22, 2008	Peter Carroll
Woodside Timberlake, LLC	Central District of California	08-bk-20969	Aug. 22, 2008	Peter Carroll
Woodside Trails North at Horsemans Park, LLC	Central District of California	08-bk-20972	Aug. 22, 2008	Peter Carroll
Woodside Triana, LLC	Central District of California	08-bk-20975	Aug. 22, 2008	Peter Carroll
Woodside Trillium, LLC	Central District of California	08-bk-20979	Aug. 22, 2008	Peter Carroll
Woodside Trinity Oaks 65, LLC	Central District of California	08-bk-20981	Aug. 22, 2008	Peter Carroll
Woodside Trinity Oaks 55, LLC	Central District of California	08-bk-20985	Aug. 22, 2008	Peter Carroll
Woodside Tuscan Oaks, LLC	Central District of California	08-bk-20995	Aug. 22, 2008	Peter Carroll
Woodside Two Creeks 50, LLC	Central District of California	08-bk-21002	Aug. 22, 2008	Peter Carroll
Woodside Two Creeks 65, LLC	Central District of California	08-bk-21007	Aug. 22, 2008	Peter Carroll
Woodside Two Creeks Villas, LLC	Central District of California	08-bk-21008	Aug. 22, 2008	Peter Carroll
Woodside Valencia, LLC	Central District of California	08-bk-21012	Aug. 22, 2008	Peter Carroll
Woodside Via Valencia, LLC	Central District of California	08-bk-21013	Aug. 22, 2008	Peter Carroll
Woodside Via Ventura, LLC	Central District of California	08-bk-21016	Aug. 22, 2008	Peter Carroll
Woodside Vicinato, LLC	Central District of California	08-bk-21017	Aug. 22, 2008	Peter Carroll
Woodside Villa Palazzo, LLC	Central District of California	08-bk-21018	Aug. 22, 2008	Peter Carroll
Woodside Villa Palermo, LLC	Central District of California	08-bk-21022	Aug. 22, 2008	Peter Carroll
Woodside Walden, LLC	Central District of California	08-bk-21024	Aug. 22, 2008	Peter Carroll
Woodside Watson 308, LLC	Central District of California	08-bk-21030	Aug. 22, 2008	Peter Carroll
Woodside Wildwood, LLC	Central District of California	08-bk-21035	Aug. 22, 2008	Peter Carroll
Woodside Willowbrook, LLC	Central District of California	08-bk-21036	Aug. 22, 2008	Peter Carroll
Woodside Wolf Creek 121, Inc.	Central District of California	08-bk-21068	Aug. 22, 2008	Peter Carroll
Woodside Wolf Creek 126, Inc.	Central District of California	08-bk-21069	Aug. 22, 2008	Peter Carroll
Woodside Wolf Creek 133, Inc.	Central District of California	08-bk-21070	Aug. 22, 2008	Peter Carroll

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Woodside Wolf Creek 138, Inc.	Central District of California	08-bk-21071	Aug. 22, 2008	Peter Carroll
Woodside Bilby Ranch, Inc.	Central District of California	08-bk-21072	Aug. 22, 2008	Peter Carroll
Woodside Montecatini, Inc.	Central District of California	08-bk-21073	Aug. 22, 2008	Peter Carroll
Woodside Wolf Creek 77, Inc.	Central District of California	08-bk-21074	Aug. 22, 2008	Peter Carroll
Creekside Village LLC	Central District of California	08-bk-23316	Aug. 22, 2008	Richard M. Neiter
Station 81 Holdings, LLC	Northern District of California	08-bk-54647	Aug. 22, 2008	Arthur S. Weissbrodt
Potomac Group West, Inc.	Southern District of California	08-bk-08040	Aug. 22, 2008	Laura S. Taylor
Stamford Center for the Arts, Inc.	District of Connecticut	08-bk-50773	Aug. 22, 2008	Alan H.W. Shiff
Jerk Machine, Inc.	Southern District of Florida	08-bk-21962	Aug. 22, 2008	John K. Olson
JFPF Holding Co. of Georgia, LLC	Southern District of Georgia	08-bk-11752	Aug. 22, 2008	Susan D. Barrett
Production Systems, Inc.	Southern District of Indiana	08-bk-10282	Aug. 22, 2008	Anthony J. Metz III
Olio Dental, Inc.	Southern District of Indiana	08-bk-10305	Aug. 22, 2008	Basil H. Lorch III
Sogda, LLC	District of Maryland	08-bk-20717	Aug. 22, 2008	Robert A. Gordon
F F & Y, LLC	District of Maryland	08-bk-20765	Aug. 22, 2008	Paul Mannes
Great Basin Internet Services, Inc.	District of Nevada	08-bk-51489	Aug. 22, 2008	Gregg W. Zive
Ginx, Inc.	Southern District of New York	08-bk-13283	Aug. 22, 2008	Robert E. Gerber
Inflatable Dome, LLC	Western District of North Carolina	08-bk-10662	Aug. 22, 2008	George R. Hodges
Hercules Chemical Co., Inc.	Western District of Pennsylvania	08-bk-25553	Aug. 22, 2008	M. Bruce McCullough
Aerobics Fitness Gallery, Inc.	District of Puerto Rico	08-bk-05451	Aug. 22, 2008	Enrique S. Lamoutte Inclan
Signature Partnership, LLC	Middle District of Tennessee	08-bk-07482	Aug. 22, 2008	Keith M. Lundin
Lone Oak Fabricators, Inc.	Eastern District of Texas	08-bk-42232	Aug. 22, 2008	Brenda T. Rhoades
Baugher Chevrolet-Buick, Inc.	Western District of Virginia	08-bk-50862	Aug. 22, 2008	Ross W. Krumm
Mrs. Fields' Original Cookies, Inc.	District of Delaware	08-bk-11953	Aug. 24, 2008	Peter J. Walsh
Mrs. Fields Famous Brands, LLC	District of Delaware	08-bk-11954	Aug. 24, 2008	Peter J. Walsh
Mrs. Fields Financing Co., Inc.	District of Delaware	08-bk-11955	Aug. 24, 2008	Peter J. Walsh
Mrs. Fields Franchising, LLC	District of Delaware	08-bk-11956	Aug. 24, 2008	Peter J. Walsh
PTF, LLC	District of Delaware	08-bk-11957	Aug. 24, 2008	Peter J. Walsh
PMF, LLC	District of Delaware	08-bk-11958	Aug. 24, 2008	Peter J. Walsh
GACCF, LLC	District of Delaware	08-bk-11959	Aug. 24, 2008	Peter J. Walsh
GAMAN, LLC	District of Delaware	08-bk-11960	Aug. 24, 2008	Peter J. Walsh
The Mrs. Fields' Brand, Inc.	District of Delaware	08-bk-11961	Aug. 24, 2008	Peter J. Walsh
TCBY Systems, LLC	District of Delaware	08-bk-11962	Aug. 24, 2008	Peter J. Walsh
Mrs. Fields Gifts, Inc.	District of Delaware	08-bk-11963	Aug. 24, 2008	Peter J. Walsh
TCBY International, Inc.	District of Delaware	08-bk-11965	Aug. 24, 2008	Peter J. Walsh
TCBY of Texas, Inc.	District of Delaware	08-bk-11966	Aug. 24, 2008	Peter J. Walsh
Building Commercial Arizona, LLC	District of Arizona	08-bk-11065	Aug. 25, 2008	Charles G. Case II
Golden Valley 566, LLC	District of Arizona	08-bk-11107	Aug. 25, 2008	Sarah Sharer Curley
Kincaid Technologies, Inc.	District of Colorado	08-bk-22889	Aug. 25, 2008	A. Bruce Campbell
Welend Associated Group, LLC	District of Colorado	08-bk-22907	Aug. 25, 2008	Howard R. Tallman
DPF Financial Holding, LLC	District of Connecticut	08-bk-21616	Aug. 25, 2008	Robert L. Krechevsky

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
JJH Investments, Inc.	Southern District of Florida	08-bk-22022	Aug. 25, 2008	Raymond B. Ray
Genesis Restaurant Entity Group, Inc.	Northern District of Georgia	08-bk-12428	Aug. 25, 2008	W. Homer Drake
MGP Auburn Gresham II, LLC	Northern District of Illinois	08-bk-22313	Aug. 25, 2008	Bruce W. Black
MGP Auburn Gresham I, LLC	Northern District of Illinois	08-bk-22394	Aug. 25, 2008	Jack B. Schmetterer
Ervin Mott Enterprises, LLC	Western District of Kentucky	08-bk-33728	Aug. 25, 2008	David T. Stosberg
Gioni Brothers Inc.	District of Maryland	08-bk-20838	Aug. 25, 2008	Thomas J. Catliota
Avalon Fortress Security Corp.	District of Minnesota	08-bk-44252	Aug. 25, 2008	Robert J. Kressel
Mantiff Jackson Hospitality, LLC	District of New Jersey	08-bk-26038	Aug. 25, 2008	Morris Stern
Mantiff-Jahnavi Zanesville Hospitality, LLC	District of New Jersey	08-bk-26040	Aug. 25, 2008	Morris Stern
The Robert Plan Corp.	Eastern District of New York	08-bk-74573	Aug. 25, 2008	Robert E. Grossman
The Robert Plan of New York Corp.	Eastern District of New York	08-bk-74575	Aug. 25, 2008	Robert E. Grossman
Eurosocks North America, Inc.	District of Rhode Island	08-bk-12602	Aug. 25, 2008	Arthur N. Votolato
Southeast Waffles, LLC	Middle District of Tennessee	08-bk-07552	Aug. 25, 2008	Keith M. Lundin
DigiScript, Inc.	Middle District of Tennessee	08-bk-07584	Aug. 25, 2008	Marian F. Harrison
John Wolfe Auto Group, LP	Northern District of Texas	08-bk-70341	Aug. 25, 2008	Harlin DeWayne Hale
The Finish Crew, Inc.	Western District of Washington	08-bk-15424	Aug. 25, 2008	Karen A. Overstreet
Mineola Water Corp.	Southern District of Alabama	08-bk-13158	Aug. 26, 2008	William S. Shulman
Baileyville Inc.	District of Arizona	08-bk-11127	Aug. 26, 2008	Charles G. Case II
Baileyville 2 Inc.	District of Arizona	08-bk-11128	Aug. 26, 2008	James M. Marlar
Cadence Innovation LLC	District of Delaware	08-bk-11973	Aug. 26, 2008	Kevin Gross
New Venture Real Estate Holdings, LLC	District of Delaware	08-bk-11974	Aug. 26, 2008	Kevin Gross
Hurri of Jax, LLC	Middle District of Florida	08-bk-05048	Aug. 26, 2008	Jerry A. Funk
Kandy, LLC	Northern District of Florida	08-bk-40573	Aug. 26, 2008	Lewis M. Killian, Jr.
Amores Oil Co.	Southern District of Florida	08-bk-22132	Aug. 26, 2008	Robert A. Mark
Amopetrol Corp.	Southern District of Florida	08-bk-22138	Aug. 26, 2008	Robert A. Mark
Captain's Cove Group, LLC	District of Maryland	08-bk-20901	Aug. 26, 2008	Duncan W. Keir
Zee Zero, LLC	District of Massachusetts	08-bk-16350	Aug. 26, 2008	Henry Boroff
Harvey Marine, Inc.	Eastern District of Michigan	08-bk-22522	Aug. 26, 2008	Daniel S. Opperman
NOMC Services, Corp.	Eastern District of Michigan	08-bk-60732	Aug. 26, 2008	Marci B. McIvor
Davison Plaza Shopping Center, Inc.	Eastern District of Michigan	08-bk-60737	Aug. 26, 2008	Phillip J. Shefferly
NOMC Physician Services, Inc.	Eastern District of Michigan	08-bk-60740	Aug. 26, 2008	Thomas J. Tucker
Deepwater Development Co., LLC	Eastern District of North Carolina	08-bk-05747	Aug. 26, 2008	J. Rich Leonard
Spa Island Enterprises, Inc.	District of Rhode Island	08-bk-12615	Aug. 26, 2008	Arthur N. Votolato
Odessa Group, LLC	District of South Carolina	08-bk-05166	Aug. 26, 2008	David R. Duncan
Villages of the Reserve Group, LLC	Middle District of Tennessee	08-bk-07616	Aug. 26, 2008	Marian F. Harrison
Renaissance Hospital Dallas, Inc.	Northern District of Texas	08-bk-43819	Aug. 26, 2008	D. Michael Lynn
Houston Community Hospital, Inc.	Northern District of Texas	08-bk-43820	Aug. 26, 2008	Russell F. Nelms
Renaissance Hospitals, Inc.	Northern District of Texas	08-bk-43821	Aug. 26, 2008	D. Michael Lynn
Renaissance Healthcare Systems, Inc.	Northern District of Texas	08-bk-43822	Aug. 26, 2008	Russell F. Nelms

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Sherwood Resources LLC	Southern District of Texas	08-bk-35528	Aug. 26, 2008	Letitia Z. Clark
Under Par Properties, LLC	District of Utah	08-bk-25647	Aug. 26, 2008	Glen E. Clark
Broad & Allison, LLC	Eastern District of Virginia	08-bk-34107	Aug. 26, 2008	Douglas O. Tice, Jr.
YGIAGAM, LLC	Eastern District of Virginia	08-bk-34108	Aug. 26, 2008	Douglas O. Tice, Jr.

Noteworthy Airline Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
United West Airlines, Inc.	Southern District of Florida	08-bk-20714	Jul. 31, 2008	Paul G. Hyman, Jr.
TradeWinds Airlines, Inc.	Southern District of New York	08-bk-20394	Jul. 25, 2008	A. Jay Cristol
Eos Airlines, Inc.	Southern District of New York	08-bk-22581	Apr. 28, 2008	Adlai S. Hardin, Jr.
Frontier Airlines Holdings, Inc.	Southern District of New York	08-bk-11298	Apr. 10, 2008	Robert D. Drain
Skybus Airlines, Inc.	District of Delaware	08-bk-10637	Apr. 5, 2008	Christopher S. Sontchi
ATA Airlines, Inc.	Southern District of Indiana	08-bk-03675	Apr. 2, 2008	Basil H. Lorch III
Aloha Airlines, Inc.	District of Hawaii	08-bk-00337	Mar. 20, 2008	Lloyd King
MAXjet Airways, Inc.	District of Delaware	07-bk-11912	Dec. 24, 2007	Peter J. Walsh

Noteworthy Automotive Industry Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Cadence Innovation LLC	District of Delaware	08-bk-11973	Aug. 26, 2008	Kevin Gross
Internet Corp.	District of Delaware	08-bk-11859	Aug. 12, 2008	Kevin Gross
DynAmerica Manufacturing LLC	District of Delaware	08-bk-11515	Jul. 18, 2008	Kevin Gross
Progressive Molded Products Inc.	District of Delaware	08-bk-11253	Jun. 20, 2008	Kevin J. Carey
BHM Technologies Holdings, Inc.	Western District of Michigan	08-bk-04413	May 19, 2008	Scott W. Dales
Lexington Precision Corp.	Southern District of New York	08-bk-11153	Apr. 1, 2008	Martin Glenn
Blue Water Automotive System, Inc.	Eastern District of Michigan	08-bk-43196	Feb. 12, 2008	Marci B. McIvor
Plastech Engineered Products, Inc.	Eastern District of Michigan	08-bk-42417	Feb. 1, 2008	Phillip J. Shefferly
Johnson Rubber Co., Inc.	Northern District of Ohio	07-bk-19391	Dec. 11, 2007	Randolph Baxter
Blackhawk Automotive Plastics, Inc.	Northern District of Ohio	07-bk-42671	Oct. 22, 2007	Kay Woods
Remy Worldwide Holdings, Inc.	District of Delaware	07-bk-11481	Oct. 8, 2007	Kevin J. Carey
Citation Corp.	Northern District of Alabama	07-bk-01153	Mar. 12, 2007	Tamara O. Mitchell
Pine River Plastics, Inc.	Eastern District of Michigan	07-bk-42051	Feb. 1, 2007	Phillip J. Shefferly

Noteworthy Retailer Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Boscov's, Inc.	District of Delaware	08-bk-11643	Aug. 4, 2008	Kevin Gross
Burnside Avenue Lot Stores, Inc.	Southern District of New York	08-bk-12988	Jul. 31, 2008	James M. Peck
Mervyn's Holdings, LLC	District of Delaware	08-bk-11586	Jul. 29, 2008	Kevin Gross
Yazmin Enterprises, Inc.	District of Puerto Rico	08-bk-04614	Jul. 16, 2008	Enrique S. Lamoutte Inclan
Shoe Pavilion Corp.	Central District of California	08-bk-14941	Jul. 15, 2008	Maureen Tighe

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
CMT America Corp.	District of Delaware	08-bk-11434	Jul. 13, 2008	Christopher S. Sontchi
Steve & Barry's Manhattan LLC	Southern District of New York	08-bk-12579	Jul. 9, 2008	Allan L. Gropper
Room Source LLC	Eastern District of California	08-bk-28487	Jun. 25, 2008	Michael S. McManus
Whitehall Jewelers Holdings, Inc.	District of Delaware	08-bk-11261	Jun. 23, 2008	Kevin Gross
Goody's Family Clothing, Inc.	District of Delaware	08-bk-11133	Jun. 9, 2008	Christopher S. Sontchi
Dawahare's of Lexington, LLC	Eastern District of Kentucky	08-bk-51381	May 30, 2008	Joseph M. Scott, Jr.
Bag 'n Baggage, Ltd.	Northern District of Texas	08-bk-32096	May 4, 2008	Stacey G. Jernigan
Linens Holding Co.	District of Delaware	08-bk-10832	May 2, 2008	Christopher S. Sontchi
Home Interiors & Gifts, Inc.	Northern District of Texas	08-bk-31961	Apr. 29, 2008	Barbara J. Houser
RedEnvelope, Inc.	Northern District of California	08-bk-30659	Apr. 17, 2008	Dennis Montali
Fred Leighton Holding Inc.	Southern District of New York	08-bk-11363	Apr. 15, 2008	Robert D. Drain
Hoop Holdings, LLC	District of Delaware	08-bk-10544	Mar. 26, 2008	Brendan Linehan Shannon
Lillian Vernon Corp.	District of Delaware	08-bk-10323	Feb. 20, 2008	Brendan Linehan Shannon
Sharper Image Corp.	District of Delaware	08-bk-10322	Feb. 19, 2008	Kevin Gross
Fortunoff Fine Jewelry and Silverware, LLC	Southern District of New York	08-bk-10353	Feb. 4, 2008	James M. Peck

Noteworthy Homebuilder Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Eagle Crest Homes, LLC	Eastern District of Virginia	08-bk-10195	Aug. 21, 2008	Robert G. Mayer
Taro Properties Arizona I, LLC	District of Arizona	08-bk-10427	Aug. 13, 2008	Charles G. Case II
Seacoast Communities, Inc.	District of South Carolina	08-bk-04735	Aug. 6, 2008	John E. Waites
WCI Communities Inc.	District of Delaware	08-bk-11643	Aug. 4, 2008	Kevin J. Carey
Lafferty Homes Inc.	Northern District of California	08-bk-43808	Jul. 21, 2008	Edward D. Jellen
LandSource Communities Development LLC	District of Delaware	08-bk-11111	Jul. 21, 2008	Kevin J. Carey
Crosswinds at Rocky River, LLC	Western District of North Carolina	08-bk-31357	Jun. 30, 2008	George R. Hodges
Caruso Homes, Inc.	District of Maryland	08-bk-18254	Jun. 23, 2008	James F. Schnieder
M.W. Johnson Construction, Inc.	District of Minnesota	08-bk-32874	Jun. 13, 2008	Robert J. Kressel
Matrix Development Corp.	District of Oregon	08-bk-32798	Jun. 10, 2008	Trish M. Brown
GT Architecture Contractors Corp.	District of Georgia	08-bk-69440	May 20, 2008	Margaret Murphy
Kimball Hill, Inc.	Northern District of Illinois	08-bk-10095	Apr. 23, 2008	Susan Pierson Sonderby
Randall Martin Home Higley Park, LLC	District of Arizona	08-bk-03097	Mar. 25, 2008	Sarah Sharer Curley
Masters Developments Properties, LLC	District of Arizona	08-bk-03050	Mar. 24, 2008	Sarah Sharer Curley
R&B Construction, Inc.	Northern District of Georgia	08-bk-62023	Feb. 4, 2008	C. Ray Mullins
TOUSA, Inc.	Southern District of Florida	08-bk-10928	Jan. 29, 2008	John K. Olson
Maryland Development Co. LLC	District of Maryland	08-bk-10938	Jan. 22, 2008	Paul Mannes

Distressed Debt

Subprime and Other Mortgage Lender Actions

Aegis Mortgage Corp.	
Date	Action
<i>In re Aegis Mortgage Corp.</i> , No. 07-11119 (Bankr. D. Del. Aug. 20, 2008)	The United States Bankruptcy Court for the District of Delaware entered several orders granting relief from the automatic stay in the Aegis Mortgage Corp. bankruptcy proceedings.
American Home Mortgage Holdings, Inc.	
Date	Action
<i>In re American Home Mortgage Holdings, Inc.</i> , No. 07-11047 (Bankr. D. Del. Aug. 26, 2008)	American Home Mortgage Holdings, Inc. and its affiliated debtors filed a motion in the United States Bankruptcy Court for the District of Delaware seeking approval of a sale agreement and authorization to conduct a private sale of assets free and clear of liens, claims, encumbrances, and other interests.
<i>In re American Home Mortgage Holdings, Inc.</i> , No. 07-11047 (Bankr. D. Del. Aug. 21, 2008)	Chase Home Loan Servicing, LLC filed a motion in the United States Bankruptcy Court for the District of Delaware seeking relief from the automatic stay in the American Home Mortgage Holdings, Inc. bankruptcy proceedings.
Delta Financial Corp.	
Date	Action
<i>In re Delta Financial Corp.</i> , No. 07-11880 (Bankr. D. Del. Aug. 26, 2008)	Delta Financial Corp. and its affiliated debtors filed a motion in the United States Bankruptcy Court for the District of Delaware seeking authorization to sell certain <i>de minimis</i> assets free and clear of liens, claims, encumbrances, and other interests.
First Magnus Financial Corp.	
Date	Action
<i>In re First Magnus Financial Corp.</i> , No. 07-01578 (Bankr. D. Ariz. Aug. 20, 22, and 25, 2008)	Countrywide Home Loans, Inc. filed motions in the United States Bankruptcy Court for the District of Arizona seeking relief from the automatic stay in the First Magnus Financial Corp. bankruptcy proceedings.
First NLC Financial Services, LLC	
Date	Action
<i>In re First NLC Financial Services, LLC</i> , No. 08-10632 (Bankr. S.D. Fla. Aug. 22, 2008)	Two individuals filed a motion in the United States Bankruptcy Court for the Southern District of Florida seeking relief from the automatic stay in the First NLC Financial Services, LLC bankruptcy proceedings in order to resume a lawsuit filed against the debtor in Washington state court for alleged violations of the Truth in Lending Act and the Washington Consumer Protection Act.
Fremont General Corp.	
Date	Action
<i>In re Fremont General Corp.</i> , No. 08-13421 (Bankr. C.D. Cal. Aug. 22, 2008)	The equity holders' committee in the Fremont General Corp. bankruptcy proceedings filed a notice in the United States Bankruptcy Court for the Central District of California of withdrawal of their motion for an order authorizing Federal Rule of Bankruptcy Procedure 2004 examinations and the production of documents.
<i>In re Fremont General Corp.</i> , No. 08-13421 (Bankr. C.D. Cal. Aug. 14, 2008)	A stockholder of Fremont General Corp. filed a motion in the United States Bankruptcy Court for the Central District of California seeking relief from the automatic stay in order to take actions necessary to compel a stockholders' meeting for the election of directors of the debtor. Specifically, the shareholder intends to bring an action under Nevada law to compel an annual stockholders' meeting.
Mortgage Lenders Network USA, Inc.	
Date	Action
<i>In re Mortgage Lenders Network USA, Inc.</i> , No. 07-10146 (Bankr. D. Del. Aug. 26, 2008)	LaSalle Bank, N.A. and U.S. Bank, N.A. filed motions in the United States Bankruptcy Court for the District of Delaware seeking relief from the automatic stay in the Mortgage Lenders Network USA, Inc. bankruptcy proceedings.

Mortgage Lenders Network USA, Inc. (cont'd)	
Date	Action
<i>In re Mortgage Lenders Network USA, Inc.</i> , No. 07-10146 (Bankr. D. Del. Aug. 25, 2008)	U.S. Bank, N.A., LaSalle Bank, N.A., Southstar I, LLC, and Wells Fargo Bank, N.A. filed motions in the United States Bankruptcy Court for the District of Delaware seeking relief from the automatic stay in the Mortgage Lenders Network USA, Inc. bankruptcy proceedings.
<i>In re Mortgage Lenders Network USA, Inc.</i> , No. 07-10146 (Bankr. D. Del. Aug. 21, 2008)	Aurora Loan Services, U.S. Bank, N.A., Wells Fargo Bank, N.A., and Countrywide Home Loans, Inc. filed motions in the United States Bankruptcy Court for the District of Delaware seeking relief from the automatic stay in the Mortgage Lenders Network USA, Inc. bankruptcy proceedings.
<i>In re Mortgage Lenders Network USA, Inc.</i> , No. 07-10146 (Bankr. D. Del. Aug. 21, 2008)	The United States Bankruptcy Court for the District of Delaware entered numerous orders granting relief from the automatic stay in the Mortgage Lenders Network USA, Inc. bankruptcy proceedings to parties seeking to enforce rights in real property securing obligations in default.
New Century TRS Holdings, Inc.	
Date	Action
<i>In re New Century TRS Holdings, Inc.</i> , No. 07-10416 (Bankr. D. Del. Aug. 22, 2008)	The United States Bankruptcy Court for the District of Delaware entered numerous orders in the New Century TRS Holdings, Inc. bankruptcy proceedings granting motions for relief from the automatic stay filed by parties seeking to exercise rights in real property securing obligations in default.
<i>In re New Century TRS Holdings, Inc.</i> , No. 07-10416 (Bankr. D. Del. Aug. 22, 2008)	The United States Bankruptcy Court for the District of Delaware entered an order denying the motion filed by the Ad Hoc Committee of Beneficiaries of the New Century Financial Corp. Deferred Compensation Plan and/or Supplemental Executive Retirement Savings Plans, for themselves and other similarly situated beneficiaries, seeking a stay of the order confirming the amended joint chapter 11 plan of liquidation filed by New Century TRS Holdings, Inc., its affiliated debtors, and the unsecured creditors' committee.
Ownit Mortgage Solutions, Inc.	
Date	Action
<i>In re Ownit Mortgage Solutions, Inc.</i> , No. 06-12579 (Bankr. C.D. Cal. Aug. 22, 2008)	Mortgage Electronic Registration Systems, Inc. filed several motions in the United States Bankruptcy Court for the Central District of California seeking relief from the automatic stay in the Ownit Mortgage Solutions, Inc. bankruptcy proceedings.
<i>In re Ownit Mortgage Solutions, Inc.</i> , No. 06-12579 (Bankr. C.D. Cal. Aug. 21, 2008)	Mortgage Electronic Registration Systems, Inc. and GMAC Mortgage, LLC filed motions in the United States Bankruptcy Court for the Central District of California seeking relief from the automatic stay in the Ownit Mortgage Solutions, Inc. bankruptcy proceedings.
<i>In re Ownit Mortgage Solutions, Inc.</i> , No. 06-12579 (Bankr. C.D. Cal. Aug. 20, 2008)	GMAC Mortgage, LLC filed several motions in the United States Bankruptcy Court for the Central District of California seeking relief from the automatic stay in the Ownit Mortgage Solutions, Inc. bankruptcy proceedings.
People's Choice Home Loan, Inc.	
Date	Action
<i>In re People's Choice Home Loan, Inc.</i> , No. 07-10765 (Bankr. C.D. Cal. Aug. 21 and 23, 2008)	HSBC Bank USA, N.A. filed several motions in the United States Bankruptcy Court for the Central District of California seeking relief from the automatic stay in the People's Choice Home Loan, Inc. bankruptcy proceedings.

Credit Ratings Downgraded

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Foamex-LP	8/21/2008	LT Local Issuer Credit	S&P	CCC+	B- *-	Advanced Materials/Prd
Foamex-LP	8/21/2008	LT Foreign Issuer Credit	S&P	CCC+	B- *-	Advanced Materials/Prd
US Shipping Partners LP	8/21/2008	LT Foreign Issuer Credit	S&P	CCC *	B- *-	Transport - Marine

Company	Date	Rating Type	Agency	Current	Last	Industry Type
US Shipping Partners LP	8/21/2008	LT Local Issuer Credit	S&P	CCC *	B- *-	Transport - Marine
Ashton Woods USA LLC	8/22/2008	LT Foreign Issuer Credit	S&P	CCC *-	B *-	Real Estate Oper/Develop
Ashton Woods USA LLC	8/22/2008	LT Local Issuer Credit	S&P	CCC *-	B *-	Real Estate Oper/Develop
Cavtel Holdings LLC	8/22/2008	Bank Loan Debt	Moody's	Caa1	B3 *-	Telephone - Integrated
Cavtel Holdings LLC	8/22/2008	LT Corp Family Rating	Moody's	Caa1	B3 *-	Telephone - Integrated
Sbarro Inc.	8/22/2008	LT Corp Family Rating	Moody's	Caa1	B3	Retail - Restaurants
Sbarro Inc.	8/22/2008	Senior Unsecured Debt	Moody's	Caa2	Caa1	Retail - Restaurants
Tribune Co.	8/22/2008	Senior Subordinate	Fitch	CC	CCC-	Publishing - Newspapers
Tribune Co.	8/22/2008	Bank Loan Debt	Fitch	CCC+	B	Publishing - Newspapers
Tribune Co.	8/22/2008	LT Issuer Default Rating	Fitch	CCC	B-	Publishing - Newspapers
Tribune Co.	8/22/2008	Senior Unsecured Debt	Fitch	CC	CCC	Publishing - Newspapers
Tronox Worldwide LLC	8/25/2008	Senior Unsecured Debt	Moody's	Ca *-	Caa3 *-	Chemicals - Specialty
Tronox Worldwide LLC	8/25/2008	LT Corp Family Rating	Moody's	Caa3 *-	Caa2 *-	Chemicals - Specialty
Airtran Holdings Inc.	8/26/2008	LT Foreign Issuer Credit	S&P	CCC+	B- *-	Airlines
Airtran Holdings Inc.	8/26/2008	LT Local Issuer Credit	S&P	CCC+	B- *-	Airlines
Neenah Foundary Co.	8/26/2008	Senior Secured Debt	Moody's	Caa1	B2	Metal Processors & Fabricators
Neenah Foundary Co.	8/26/2008	LT Corp Family Rating	Moody's	Caa1	B2	Metal Processors & Fabricators
Indalex Holding Corp.	8/27/2008	LT Foreign Issuer Credit	S&P	CCC+	B-	Diversified Manufact Op
Indalex Holding Corp.	8/27/2008	LT Local Issuer Credit	S&P	CCC+	B-	Diversified Manufact Op
Morris Publishing Group LLC	8/27/2008	LT Local Issuer Credit	S&P	CCC+	B-	Publishing - Books
Morris Publishing Group LLC	8/27/2008	LT Foreign Issuer Credit	S&P	CCC+	B-	Publishing - Books

Cross-Border Insolvency

2008 Chapter 15 Proceedings

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Pope & Talbot, Inc.</i> , No. 08-11933 (Bankr. D. Del. Aug. 22, 2008)	Uncontested	Canada	Pending
<i>In re Namirei-Showa Co., Ltd.</i> , No. 08-13256 (Bankr. S.D.N.Y. Aug. 21, 2008)	Uncontested	Japan	Pending
<i>In re Blue Point Re Ltd.</i> , No. 08-13169 (Bankr. S.D.N.Y. Aug. 13, 2008)	Uncontested	Bermuda	Pending
<i>In re Condor Insurance Ltd.</i> , No. 07-51045 (Bankr. S.D. Miss. Jul. 26, 2008)	Uncontested	St. Christopher and Nevis	Recognized as a foreign main proceeding
<i>In re Maax Corp.</i> , No. 08-11443 (Bankr. D. Del. Jul. 14, 2008)	Uncontested	Canada	Pending
<i>In re Multy Industries Inc.</i> , No. 08-12630 (Bankr. W.D.N.Y. Jun. 16, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Multy Industries (U.S.A.), Inc.</i> , No. 08-12631 (Bankr. W.D.N.Y. Jun. 16, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Multy Industries Flexible Products Group Inc.</i> , No. 08-12632 (Bankr. W.D.N.Y. Jun. 16, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re 1306943 Ontario Ltd.</i> , No. 08-12633 (Bankr. W.D.N.Y. Jun. 16, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re 1444240 Ontario Inc.</i> , No. 08-12634 (Bankr. W.D.N.Y. Jun. 16, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Pro-Fit Holdings Ltd.</i> , No. 08-17043 (Bankr. C.D. Cal. May 21, 2008)	Uncontested	United Kingdom	Pending
<i>In re Pro-Fit International Ltd.</i> , No. 08-17049 (Bankr. C.D. Cal. May 21, 2008)	Uncontested	United Kingdom	Pending
<i>In re Genesis Bradford Ltd.</i> , No. 08-17054 (Bankr. C.D. Cal. May 21, 2008)	Uncontested	United Kingdom	Pending
<i>In re Destinator Technologies, Inc.</i> , No. 08-11003 (Bankr. D. Del. May 20, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re S.J. Williams</i> , No. 08-07002 (Bankr. M.D. Fla. May 16, 2008)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Ascalade Communications Inc.</i> , No. 08-10612 (Bankr. N.D. Ill. Apr. 29, 2008)	Contested	Canada	Pending
<i>In re RSM Richter Inc.</i> , No. 08-11540 (Bankr. S.D.N.Y. Apr. 28, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Main Knitting Inc.</i> , No. 08-11272 (Bankr. N.D.N.Y. Apr. 24, 2008)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Madill Equipment Canada</i> , No. 08-41426 (Bankr. W.D. Wash. Apr. 1, 2008)	Uncontested	Canada	Pending
<i>In re ROL Manufacturing of America, Inc.</i> , No. 08-31027 (Bankr. S.D. Ohio Mar. 7, 2008)	Uncontested	Canada	Pending
<i>In re Ecomares, Inc.</i> , No. 08-50074 (Bankr. D. Nev. Jan. 18, 2008)	Contested	Germany	Dismissed
<i>In re ING re (UK) Ltd.</i> , No. 08-10018 (Bankr. S.D.N.Y. Jan 4, 2008)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Casa Grande N.V.</i> , No. 08-10060 (Bankr. S.D. Fla. Jan. 4, 2008)	Uncontested	Aruba	Recognized as a foreign main proceeding

For more information, see the Bloomberg LawNote: [Chapter 15 Proceedings filed 2006-2008](#).

Bankruptcy News

Bill Rochelle Daily Bankruptcy News Wrap-Up

Aug. 25 (Bloomberg) —

Casino operator Tropicana Entertainment LLC filed papers in bankruptcy court on Aug. 22 setting up an auction to test whether anyone will pay more than the minimum of \$220 million being offered by Eldorado Resorts LLC for the casino in Evansville, Indiana. The purchase contract signed in March

calls for Reno, Nevada-based casino operator Eldorado to pay \$190 million cash and \$30 million in notes, plus another \$25 million if earnings meet specified targets. Tropicana began marketing the Indiana casino early this year after New Jersey casino regulators in late 2007 terminated the gaming license for the Atlantic City property. Indiana regulators threatened to take action similar to New Jersey if the Evansville casino weren't sold. Tropicana is proposing to require other bids by Oct. 31, followed by an auction the week of Nov. 10. The sale approval hearing would be Nov. 18. The sale needs to close before Eldorado's financing commitment expires Dec. 31. If another bidder wins the auction, Tropicana proposes paying Eldorado a \$6.6 million breakup fee and reimbursement of

expenses up to \$500,000. The breakup fee and other sale procedures will be reviewed by the U.S. Bankruptcy Court in Delaware at a Sept. 16 hearing. The contract with Eldorado was negotiated by Tropicana's prior management. William J. Yung, who previously stepped down as chief executive, resigned from the board of directors in early July as part of a settlement to head off having the company taken over by a chapter 11 trustee. Before that, Tropicana appointed three independent directors to the board of five. The Evansville casino was part of the \$2.1 billion acquisition of Aztar Corp. in early 2007. The loss of the casino license in Atlantic City precipitated the slide into chapter 11. Tropicana's debt includes \$960 million in subordinated notes, \$1.3 billion secured by a first lien on most of the assets except the Las Vegas casino where there's effectively a second lien, and a \$440 million secured loan with first lien on the Las Vegas property. Crestview Hills, Kentucky-based Tropicana also intends to sell the casino in Atlantic City and the property in Vicksburg, Mississippi. Other casino properties are in Baton Rouge, Louisiana; Greenville, Mississippi; and Laughlin and Lake Tahoe, Nevada.

[The case is In re Tropicana Entertainment LLC, 08-10856](#), U.S. Bankruptcy Court for the District of Delaware (Wilmington).

Mrs. Fields Files Prepack with Vote in Hand

Cookie and frozen-yogurt store franchiser Mrs. Fields Famous Brands LLC filed a prepackaged chapter 11 petition yesterday in Delaware along with sufficient votes from noteholders so that the company intends to emerge from reorganization within 45 days. The reorganization plan, already accepted by 78 percent of noteholders, calls for exchanging \$195.7 million in senior secured notes for \$87.5 million cash, \$52.5 million in new notes and 87.5 percent of the new equity. The noteholders' expected recovery is 87.5 percent. Unsecured creditors with \$4.5 million in claims will be paid in full while existing stock will be canceled. The other 12.5 percent of the new stock goes to Capricorn Investors III LP, holder of a \$6.5 million note expected to recover 96.4 percent. The company said the bankruptcy reorganization was caused by too much debt. Where revenue in the first half of 2008 was \$29 million, annual interest on the notes totals more than \$20 million, the company said. Mrs. Fields intends on having the U.S. Bankruptcy Court in Delaware hold one hearing where the judge will first determine if the disclosure statement given to noteholders before the bankruptcy filing contained sufficient information. If the disclosure statement passes muster, the company will next ask the judge to approve the plan given votes already received. Under procedures for a so-called prepackaged bankruptcy, no further vote of creditors is required unless the judge decides the disclosure statement wasn't adequate. Mrs. Fields said it began soliciting votes on Aug. 15 and received more than the required majorities within a week. When originally announced in June, the restructuring called for noteholders to exchange their debt for \$90 million in cash, \$50 million in new senior secured notes, and 87.5 percent of the new common equity. Existing stockholders were to receive 12.5 percent of the new stock plus warrants

to purchase 30 percent of the equity. The chapter 11 filing was delayed while the workout was renegotiated. Salt Lake City-based Mrs. Fields has more than 1,200 franchised and licensed locations around the world under the names Mrs. Fields Cookies and TCBY.

[The case is Mrs. Fields Original Cookies Inc., 08-11953](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Appaloosa Again Trying to Dismiss Delphi \$2.5 Billion Suit

Appaloosa Management LP, the leader of a group that declined to go through with commitments to provide auto-parts maker Delphi Corp. with \$2.55 billion in equity financing, filed papers on Aug. 21 asking the bankruptcy judge for a second time to knock out most of Delphi's lawsuit seeking to compel the investors to complete the stock purchase. In a 69-page decision read into the record at a July 28 hearing, U.S. Bankruptcy Judge Robert Drain dismissed the largest claims in the lawsuit against all of the defendants except Appaloosa and an Appaloosa affiliate. Drain ruled that Delphi couldn't continue the lawsuit against defendants other than Appaloosa to the extent it was asking for damages exceeding \$250 million or seeking to compel completion of the \$2.55 billion investment. Drain allowed Delphi to continue suing Appaloosa and its affiliate to complete the investment or pay damages greater than \$250 million in view of allegations of fraud that the judge said might constitute criminal conduct. Still, Drain said in his July 28 ruling that the allegations against Appaloosa didn't contain enough specificity to survive under rules governing how complaints must be written. He did grant Delphi an opportunity to revise the complaint by including more specifics about conduct by Appaloosa allegedly constituting fraud. Appaloosa said in its Aug. 21 papers that Delphi decided not to amend the complaint. Since the complaint won't change, Appaloosa said in its new motion last week that Drain now must dismiss the most expensive parts of the lawsuit and put Appaloosa on the same footing as the other defendants, where it can't be liable for more than \$250 million in damages. Appaloosa's new motion also asks Drain to strike the summary allegations in Delphi's complaint that the judge said might constitute criminal conduct. Appaloosa contends the summary allegations must be deleted given that Delphi won't back them up with the specificity the judge required in his July 28 ruling. Appaloosa and the other defendants based their original motion on provisions in the investment agreement saying the investors couldn't be made liable for more than \$250 million in damages were they to breach their contract to make the \$2.55 billion investment. Delphi's complaint sought what's called specific performance which, if granted by the judge, would have required the investors to go through with the \$2.55 billion investment. The hearing on Appaloosa's new motion is set for Sept. 23. Drain previously made a schedule where the trial will begin in March. The other defendants against which the largest claims already were dismissed include UBS Securities LLC, Goldman, Sachs & Co., Harbinger Capital Partners Master Fund I Ltd., Pardus Special Opportunities Master Fund LP, and Merrill Lynch,

Pierce, Fenner & Smith Inc. The creditors' committee and Wilmington Trust Co., as indenture trustee, put on hold the lawsuits they filed in July to revoke the January confirmation order approving the plan. The committee and the indenture trustee retained the right to restart the suits whenever they find it necessary. They filed the suits to meet a six-month deadline in bankruptcy rules for revoking confirmation. Delphi couldn't carry out the reorganization plan the judge approved in a January confirmation order when the Appaloosa group wouldn't make the \$2.55 billion investment. The group members contended Delphi hadn't complied with conditions in the commitment, thus excusing them from making the equity investment. Delphi's reorganization plan was intended to pay unsecured creditors in full with new stock and the opportunity to buy additional stock at discount. Delphi had commitments for secured financing it couldn't implement in April when the Appaloosa group backed out. Troy, Michigan-based Delphi began the chapter 11 reorganization in October 2005, listing \$19.1 billion in debt in its amended schedules of property and liabilities.

[The case is *In re Delphi Corp.*, 05-44481](#), U.S. Bankruptcy Court, Southern District New York (Manhattan).

Homebuilder WCI Lands \$150 Million Secured Loan

WCI Communities Inc., the specialist in building high-end master planned communities in Florida, reached agreement with a group of existing secured lenders providing \$150 million in secured financing for the chapter 11 reorganization that began Aug. 4. WCI said in papers filed Aug. 22 that the loan will be used for working capital except \$49 million to repay a credit referred to as the Tower loan. WCI said that the Tower loan is fully secured by collateral and would be repaid anyway during the course of the reorganization. The new loan will have a security interest before the banks' existing secured loans. A hearing for approval of the loan is scheduled for Sept. 23. WCI already has permission from the bankruptcy court and the lenders for the use of cash. WCI had \$1.9 billion debt and assets on the books for \$2.2 billion as of June 30. Debt includes \$760 million in secured debt and \$815 million in subordinated debt. Secured debt includes a \$489 million revolving credit. WCI said it has 40 projects encompassing 12,000 acres and the possibility of constructing 15,000 units. Revenue of \$2 billion in 2006 plunged to \$936 million in 2007. For the first half of 2008, revenue slipped further to \$376 million. WCI lost money six quarters in row before the chapter 11 filing. Carl Icahn is the chairman and largest investor in the Bonita Springs, Florida-based company.

[The case is *WCI Communities Inc.*, 08-11643](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Steve & Barry's Sale Approved Absent Executive Releases

The intended purchasers of Steve & Barry's LLC, the 276-store casual apparel retailer, bent to the will of the bankruptcy judge by agreeing on Aug. 22 to drop a provision

from the asset purchase agreement where creditors would have been precluded from suing company executives. U.S. Bankruptcy Judge Allan Gropper in New York in return for the concession approved the \$163 million sale. The releases for the company managers might be revived at a Sept. 4 hearing. The company's founders and co-chief executive officers Steve Shore and Barry Prevor together are to be 20 percent owners of the buyout group led by Bay Harbour Management LC and York Capital Management. Hilco Merchant Resources LLC is to own another 10 percent. Lawsuits against company insiders could be one of the few assets remaining for unsecured creditors. Bay Harbour will acquire a majority of the stores, although it hasn't yet decided which stores will close or when. Port Washington, New York-based Steve & Barry's began chapter 11 in July with no cash and no financing. It was hoping someone would buy the business as a going concern. Papers along with the petition said assets are \$693 million while debt is \$638 million.

[The case is *Steve & Barry's Manhattan LLC*, 08-12579](#), U.S. Bankruptcy Court, Southern District New York (Manhattan).

SemGroup Proposes Bonuses for Employees and Executives

SemGroup LP, the transporter and marketer of petroleum products from Tulsa, Oklahoma, that filed in chapter 11 on July 21 in Delaware, is asking for authority to pay retention bonuses to halt the loss of executives and employees. Having seen 230 of their co-workers fired along with the bankruptcy filing, company managers and workers are leaving or threatening to leave, the company said in its Aug. 22 bankruptcy court filing. To stop the loss, SemGroup wants the bankruptcy court to ratify a retention program that will offer bonuses of as much as 150 percent of base annual salary for anyone who remains until a chapter 11 plan is confirmed or his or her business unit is sold. Otherwise, SemGroup says the remaining workers "may be literally working themselves out of a job." Officers and employees are divided into five tiers. Bonuses in the lowest tier will be between 10 percent and 25 percent of base annual salary. Executives in the highest tier can take home between 100 percent and 150 percent of annual salary. Anyone who remains beyond July 31, 2009, will be paid another one-twelfth of the bonus for each additional month up to the end of 2009. A hearing on the request has been set for Sept. 10. The creditors' committee filed papers on Aug. 22 asking the bankruptcy court's authorization to conduct an investigation about trades and cash transfers. The committee said the bankruptcy "commenced amid allegations that certain insiders had been violating company policy in an attempt to enrich themselves through imprudent commodities trading activities." SemGroup's publicly traded affiliate SemGroup Energy Partners LP isn't in bankruptcy. SemGroup's consolidated assets on May 31 were \$6.14 billion while consolidated liabilities were \$7.53 billion. Debt includes \$2.55 billion in secured debt and \$594 million in 8.75 percent unsecured senior notes. Consolidated

revenue last year was \$13.2 billion. The trading accounts were sold, transferred or closed. SemGroup Energy is an owner of crude oil gathering, transportation, terminaling and storage facilities in Oklahoma, Kansas and Texas.

[The case is *In re SemCrude LP*, 08-11525](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Hines Aims for November Auction, First Bid For \$70 Million

Hines Horticulture Inc., the commercial nursery that filed to reorganize on Aug. 20, intends to sell the business in November to Black Diamond Capital Management LLC for approximately \$70 million unless a higher bid turns up at auction. Hines also received interim borrowing authority. The contract that would make Black Diamond the so-called stalking-horse at auction calls for paying up to \$58 million cash to pay off the pre-bankruptcy secured loans and financing for the chapter 11 effort. Black Diamond also will pay up to \$12 million toward debt owing to suppliers both before and after the bankruptcy filing. Hines is proposing that other bids come in by Nov. 3, followed by a Nov. 7 auction. A hearing at U.S. Bankruptcy Court in Delaware for approval of the sale would take place by Nov. 20. The contract allows Black Diamond to continue studying Hines' financial condition until Sept. 19. In a separate set of papers, Hines is asking the bankruptcy court for permission to pay \$225,000 to defray Black Diamond's expenses in the financial investigation. In addition, Hines wants to give Black Diamond a \$1.5 million breakup fee if someone else prevails at auction, plus up to \$750,000 in expense reimbursement. Hines received interim authority on Aug. 22 to borrow up to \$53 million until a final financing hearing on Sept. 10 when it will seek approval for a \$62 million secured loan. A date hasn't yet been set for a hearing on the motion erecting sale procedures and bidder protections for Black Diamond. Before the bankruptcy filing, Hines was unable to nail down financing for a debt-to-equity exchange where Black Diamond would have ended up owning part of the new equity, the company said in a court filing. The lenders, on the other hand, said they were willing to finance a sale of the assets to Black Diamond. The Irvine, California-based company generated \$215 million sales during 2007 and said there were assets of \$297 million and debt of \$317 million on March 31. Hines blamed the filing on bad weather, "weaker consumer environment," "pricing pressure" from some large customers, and rising costs. Customers include Home Depot, Lowe's, and Wal-Mart, the company said. Debt at filing included \$175 million on 10.25 percent subordinated notes and \$38 million under a secured credit facility. Black Diamond owns a majority of the subordinated notes, court filings say. Hines has seven nurseries. A majority of the Hines stock is held by Madison Dearborn Partners LLC, according to data compiled by Bloomberg.

[The case is *In re Hines Horticulture Inc.*, 08-11922](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Pope & Talbot Now in Chapter 15 Alongside Chapter 7

Pope & Talbot Inc., the primarily Canadian pulp and paper producer that converted its reorganization to a chapter 7 liquidation in May, will have the remainder of its assets liquidated under the control of the Canadian receiver under an agreement with the chapter 7 trustee. To implement the agreement, which calls for the chapter 7 trustee to file lawsuits in the U.S., the Canadian receiver on Aug. 22 filed a petition for the companies under chapter 15 of U.S. bankruptcy laws. A case in chapter 15, not a full-blown bankruptcy, allows the foreign court to take the leading role if the U.S. court concludes that the insolvency proceeding in Canada is the "foreign main proceeding." The receiver explained in papers filed in the U.S. Bankruptcy Court in Delaware that the Canadian proceeding is providing the cash required to pay the expenses incurred by the chapter 7 trustee in the U.S. The agreement between the chapter 7 trustee and the Canadian receiver is intended to complete the liquidations as economically as possible. The companies began reorganizing in Canada last October and filed the next month under chapter 11 in Delaware. The reorganization failed when an approved sale of three pulp mills fell through. After the sale aborted, the U.S. chapter 11 case was switched to chapter 7, and the monitor in Canada also became the receiver. The Portland, Oregon-based company said the assets are \$347.9 million while total debt is \$473.2 million.

[The new case in chapter 15 is *Pope & Talbot Inc.*, 08-11933](#), U.S. Bankruptcy Court, District of Delaware (Wilmington), and [the U.S. chapter 11 case is *In re Pope & Talbot Inc.*, 07-11738](#), in the same court.

Friedman's Asking for Exclusivity into Late November

Liquidating jewelry retailers Friedman's Inc. and affiliate Crescent Jewelers Inc. are asking for an extension of their exclusive right to propose a chapter 11 plan from Sept. 24 to Nov. 24. The companies note that in May they fully repaid the senior and junior secured financing for the chapter 11 effort. The companies hired consultants to run going-out-of-business sales at 377 stores. They were separately authorized to sell 78 stores and inventory for \$14.3 million to Whitehall Jewelers Inc., the 373-store specialty jewelry retailer that itself filed under chapter 11 in June and is liquidating. The bankruptcy reorganization is the second for both Friedman's and Crescent. Creditors filed an involuntary chapter 7 petition against Friedman's on Jan. 22. Three days later Friedman's consented to a reorganization in chapter 11 and simultaneously put affiliate Crescent into chapter 11, also in Delaware.

[The case is *In re Friedman's Inc.*, 08-10161](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Syntax-Brilliant Nearing Sale Approval to TCV Industries

Syntax-Brilliant Corp., the manufacturer and marketer of Olevia brand liquid crystal high-definition televisions, told the

bankruptcy judge on Aug. 22 that it revised a proposed order to incorporate the court's rulings at an Aug. 20 hearing where the judge tentatively approved the sale of assets to TCV Industries Co. for the assumption of \$60 million in secured debt. A TCV affiliate controls Syntax-Brilliant's technology and research and development provider. The company is separately negotiating to sell the Vivitar camera business headquartered in the U.K. The bankruptcy judge last week authorized the company to allow Vivitar to sell its assets without further court permission. Based in Tempe, Arizona, Syntax listed assets of \$176 million against debt totaling \$259 million. Debt includes \$113 million owing on a revolving credit and term loan secured by most of the assets.

[The case is *In re Syntax-Brilliant Corp.*, 08-11407](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Skybus to Sell Parts and Ground Equipment at Auction

Skybus Airlines Inc., the discount air carrier that stopped flying and filed to liquidate under chapter 11 in April, was authorized last week to hire Zenith Aviation Inc. to auction off spare parts, tools, and ground equipment. Skybus estimates the sale will generate \$2.5 million. Zenith will receive a 15 percent commission capped at \$200,000. Zenith also will receive 5 percent of proceeds exceeding \$3 million. Skybus flew less than one year before shutting down. It said the largest asset is likely to be a contract to buy 48 new Airbus aircraft. Skybus was operating 28 aircraft to serve 15 cities. The petition said assets are less than \$100 million while liabilities exceed \$100 million.

[The case is *In re Skybus Airlines Inc.*, 08-10637](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Alpine Licenses Canceled Before Bankruptcy, Judge Rules

Alpine PCS Inc., a provider of telecommunications services, lost its effort at stopping the U.S. Federal Communications Commission from reselling two wireless licenses for California. Alpine filed under chapter 11 on Aug. 12, one day before the FCC was scheduled to hold an auction to resell the licenses. Although Alpine notified the FCC of the bankruptcy filing, the FCC took the position it terminated Alpine's licenses before bankruptcy, meaning there was no property still owned by Alpine that the automatic stay could protect. Alpine disagreed and filed papers in bankruptcy court on Aug. 18 asking the judge to declare that the automatic stay halted the FCC auction. The bankruptcy judge ruled last week that the FCC canceled the licenses before the chapter 11 filing, Alpine's lawyer Lawrence Katz told Bloomberg News in an interview. Katz said the FCC resold the licenses at auction on Aug. 20. Alpine, based in Gaylord, Michigan, was previously known as Firefly Wireless and Firefly PCS.

[The case is *In re Alpine PCS Inc.*, 08-00543](#), U.S. Bankruptcy Court, District of District of Columbia (Washington).

Stamford Connecticut Arts Center Files in Chapter 11

Stamford Center for the Arts Inc., the home of the Stamford Symphony, filed for chapter 11 protection on Aug. 22 in Bridgeport, Connecticut, blaming financial difficulties on lower state funding and falling ticket prices. The Center operates the 81-year-old Palace and the Rich Forum, a building with smaller theaters.

[The case is *In re Stamford Center for the Arts Inc.*, 08-50773](#), U.S. Bankruptcy Court, District of Connecticut (Bridgeport).

New York Nightclub Owner Files Under Chapter 11

The owner of two nightclubs in the Chelsea neighborhood of Manhattan named Pink Elephant and Mansion filed for chapter 11 reorganization on Aug. 21 in New York, saying assets and debt are both less than \$10 million. The company is having disputes with a landlord, was involved in lawsuits, and is behind in paying the electric bill.

[The case is *In re 530 West 28th Street LP*; 08-13266](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Propex Inc., a manufacturer of polypropylene fabrics and fibers for carpet backing, industrial applications, and concrete fiber reinforcement, was granted its request when the bankruptcy court extended the exclusive right to propose a chapter 11 plan until Oct. 20. Propex said it provided creditors with a plan of reorganization term sheet and is awaiting responses from lenders and the creditors' committee. The Chattanooga, Tennessee-based company listed assets of \$586 million against debt totaling \$527 million in the chapter 11 reorganization begun in January.

[The case is *In re Propex Inc.*, 08-10249](#), U.S. Bankruptcy Court, Eastern District Tennessee (Chattanooga).

National Dry Cleaners Inc. was authorized on Aug. 22 to sell 28 stores around Kansas City, Missouri, for about \$3 million. The sales of other locations are in process under authority given in late July by the U.S. Bankruptcy Court in Delaware. The Phoenix-based company, which has 231 dry-cleaning stores and six plants in nine states, filed under chapter 11 on July 7. Court papers say \$34.6 million is owing to the secured lender. National operates under the names Tuchman Cleaners, DryClean USA, Pride Cleaners, and Al Phillips the Cleaner. The company generated more than \$70 million in sales last year.

[The case is *In re National Dry Cleaners Inc.*, 08-11382](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

The creditors' committee of M.W. Johnson Construction Inc., a homebuilder from Lakeville, Minnesota, was authorized by the bankruptcy judge last week to investigate company insiders. The committee told the court that companies owned by

insiders received more than \$2 million within three months of the bankruptcy filing. The committee in another court filing said that a real estate broker under common ownership received \$1.5 million within three months of filing. The company has 250 uncompleted or unsold homes. A lawyer for the debtor said at the outset that the company might liquidate. The two secured creditors are owed more than \$59 million.

[The case is *In re M.W. Johnson Construction Inc.*, 08-32874](#), U.S. Bankruptcy Court, District of Minnesota (St. Paul).

Aug. 26 (Bloomberg) —

Mervyn's LLC, the 177-store retailer that filed under chapter 11 at the end of July, is scheduled to appear in bankruptcy court this morning to face objection from the creditors' committee to the proposed \$465 million secured financing. The committee said in papers filed Aug. 22 that the loan will provide only \$25 million in new financing and comes at the cost of paying some \$10 million in commitment fees and unused credit line fees. The committee interprets the proposed four-month loan as giving the banks the power to force a liquidation during the Christmas season. The committee believes the lenders shouldn't be able to convert the pre-bankruptcy loan into a post-bankruptcy loan and in the process secure the debt with collateral that didn't belong to them before the chapter 11 filing. The committee also complains that the banks will take liens on lawsuits and make the chapter 11 case for "the sole and exclusive benefit of the senior lenders" and insider lenders. At today's hearing, the bankruptcy judge is also scheduled to rule on hiring liquidators to conduct going-out-of-business sales at 26 stores. Mervyn's sales in fiscal 2008 were \$2.5 billion. Debt includes \$329 million owing on a credit facility secured by all the assets. Mervyn's stores are in California and six other states. Hayward, California-based Mervyn's is part-owned by affiliates of Sun Capital Partners Inc., a member of the group that bought the chain in 2004. The filing was the sixth this year by a Sun Capital investment.

[The case is *In re Mervyn's Holdings LLC*, 08-11586](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

JHT Truck-Hauling Plan Goes to Creditors For Vote

JHT Holdings Inc., a transporter of new trucks, is the beneficiary of an order of the bankruptcy court approving the disclosure statement explaining the chapter 11 plan and allowing creditors to vote. The Aug. 22 order from the U.S. Bankruptcy Court in Delaware picked Oct. 7 for the confirmation hearing where unsecured creditors say they will oppose approval of the reorganization. The plan calls for giving pre-bankruptcy lenders, owed \$133 million, 70 percent of the new stock, a new \$60 million second-lien note, and an unsecured deficiency claim for \$65 million. In return for providing a \$35 million secured revolving credit when the JHT emerges from reorganization, the lenders participating

in the loan will receive the remaining 30 percent of the new common stock. Unsecured creditors', whose claims total \$95 million including the lenders' \$65 million deficiency claim, aren't expected to receive anything, although they are entitled to vote on the plan. The official unsecured creditors' committee urges voting against the plan. They say the plan violates bankruptcy law and allows the company to sue suppliers for so-called preferences. Although the disclosure statement says any distribution for unsecured creditors would come from lawsuits against the creditor body, it also says that lawsuit recoveries will be used up in paying costs of the chapter 11 effort and claims coming ahead of unsecured creditors. At the same time, the committee complains that the plan allows the company not to file suits against what it terms "preferred" creditors. The committee previously argued to the bankruptcy judge that the stockholders and the pre-bankruptcy secured lenders "substantially overlap" and are using chapter 11 to "extinguish old equity and convert their debt to new equity." JHT originally filed the proposed plan and explanatory disclosure statement at the end of June, at the time taking the position that unsecured creditors weren't entitled to vote since they would receive nothing under the plan. General Electric Capital Corp. is agent for the lenders. Last year, JHT generated \$328 million transporting large commercial trucks from manufacturers to dealers. The operating subsidiaries are known as ACS, Active Truck Transport, and Unimark. JHT was acquired in January 2006 by four institutional investors including affiliates of Goldman, Sachs & Co., D.B. Zwirn Special Opportunities Fund LP, Spectrum Investment Partners LP, and Stonehouse Investment Co. Management was also part of the buyout group. The petition said assets and debt both are more than \$100 million and less than \$500 million.

[The case is *In re JHT Holdings Inc.*, 08-11267](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

SageCrest Looking to Use Deutsche Bank Cash

SageCrest Finance LLC and its affiliate SageCrest II LLC, providers of loans to borrowers who don't qualify for bank lending, are asking the U.S. Bankruptcy Court in Bridgeport, Connecticut, for permission to use cash standing as collateral for \$107 million owing to Deutsche Bank AG. SageCrest said in papers filed Aug. 22 that the bank announced in early August that it wanted the assets liquidated "as soon as possible." SageCrest said it paid the bank down to \$107 million from \$240 million during the preceding 10 months. SageCrest said it also faces redemption requests from investors. "Market conditions" adversely affect the company's ability to sell the loan portfolio, which it believes has value in excess of the bank debt, SageCrest said. SageCrest and two affiliates filed for creditor protection under chapter 11 last week in Bridgeport, Connecticut. SageCrest Holdings said its assets and debt are both between \$100 million and \$500 million. The SageCrest Finance petition listed assets of as much as \$100 million and debt of less than \$10 million. The companies are managed by Windmill Management LLC.

[The case is SageCrest Finance LLC, 08-50755](#), U.S. Bankruptcy Court, District of Connecticut (Bridgeport).

Retailer Boscov's Proposes Executive Bonuses

Boscov's Inc., the department store chain that filed for bankruptcy reorganization early this month, is proposing a \$1.45 million incentive bonus program for the top six executives. If approved by the U.S. Bankruptcy Court in Delaware at a Sept. 5 hearing, an executive vice president could earn a bonus equal to his annual salary if a chapter 11 plan is approved by the end of February or a sale of assets as a going concern is completed by early January. Both must be approved by the creditors' committee for the bonus to kick in. He would receive a 50 percent bonus if the assets are liquidated by January. The other top officers could receive from 20 percent to 50 percent of annual salary. For them to qualify, there must be a plan or a going-concern sale before the same deadlines. Boscov's 49 stores are in six states, mostly Pennsylvania, and generated \$1.3 billion in annual sales. On filing in chapter 11, the company immediately sought to close 10 locations. It listed \$538 million in assets and debts totaling \$479 million as of May 3.

[The case is In re Boscov's Inc., 08-11637](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Syntax-Brilliant Has Approved Sale and Examiner

Syntax-Brilliant Corp., the manufacturer and marketer of Olevia brand liquid crystal high-definition televisions, will have an examiner perform an investigation at the request of the U.S. Trustee, according to a ruling by the bankruptcy judge. The U.S. Trustee is a government official charged with overseeing bankruptcies. Although the U.S. Trustee selects the individual to perform the investigation, the bankruptcy judge in Delaware has responsibility for settling on the scope of the work, the time schedule, and the cost. The judge will hold a hearing on Sept. 3 to discuss the scope of the investigation and other matters. The bankruptcy judge yesterday also signed the order formally approving a sale of assets to TCV Industries Co. for the assumption of \$60 million in secured debt. A TCV affiliate controls Syntax-Brilliant's technology and research and development provider. The company is separately negotiating to sell the Vivitar camera business headquarters in the U.K. Based in Tempe, Arizona, Syntax listed assets of \$176 million against debt totaling \$259 million. Debt includes \$113 million owing on a revolving credit and term loan secured by most of the assets.

[The case is In re Syntax-Brilliant Corp., 08-11407](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

General Motors Corp., one of the principal customers of Blue Water Automotive Systems Inc., told the bankruptcy judge that the reorganization of the designer and manufacturer of plastic components and assemblies for autos is a "failure." GM recommends the case be converted

to a liquidation in chapter 7 where a trustee is appointed automatically. A confirmation hearing is scheduled for today on Blue Water's proposed reorganization plan. Blue Water previously decided not to go forward with a sale of the assets to Flex-N-Gate LLC, the bidder that made the highest offer at auction. The offer, including cash of \$19.4 million, wasn't sufficient for the secured lender, the chief executive told Bloomberg News in an interview. Acquired in 2005 by affiliates of KPS Special Situations Fund LP, a private equity fund, Blue Water has eight plants and development facilities generating \$200 million in annual revenue.

[The case is In re Blue Water Automotive System Inc., 08-43196](#), U.S. Bankruptcy Court, Eastern District of Michigan (Detroit).

Higher Interest Imposed Retroactively on False Financials

A borrower that falsely reports its financial condition to secured bank lenders can be liable to pay a higher interest rate that would have been owed under provisions in the loan agreement if the financial reports were accurate, a U.S. district judge ruled on Aug. 21, reversing the bankruptcy judge who presided over the reorganization of Adelphia Communications Corp. Calling for what's known in the banking industry as grid interest, the loan agreement required higher interest rates if Adelphia's total debt increased to specified levels. The banks didn't charge a higher rate before the bankruptcy filing, given financial statements that falsely reported lower debt. After the chapter 11 filing, the banks filed claims seeking higher interest that would have been imposed before bankruptcy were the financial statements accurate. The bankruptcy judge turned down the banks' claims, saying the higher rate couldn't be imposed retroactively. The banks appealed after Adelphia completed its chapter 11 reorganization in January 2007. U.S. District Judge John Koeltl disagreed with the bankruptcy court in an opinion handed down Aug. 21. Analyzing the loan agreement, he said that the banks were entitled to the higher interest rate "based on the borrower's actual leverage ratio, not the leverage ratio reflected in a materially false document." Although the banks may have won the appeal, they may not ultimately win a larger claim. The bankruptcy court never reached the question of whether the banks waived higher interest when they negotiated secured financing for Adelphia's reorganization. Koeltl sent the case back to the bankruptcy judge to decide that issue. Of the six lenders who originally appealed, four dropped out, making the appeal applicable only to the so-called Parnassos Credit Agreement and the Century-TCI Credit Agreement. The appeal with the two bank groups deals with \$117 million in additional interest, Michael Luskin, an attorney for Bank of Nova Scotia, told Bloomberg News in an interview. Before the four banks withdrew, the appeal involved \$187 million. Adelphia's liquidating chapter 11 plan was carried out in February 2007 by the distribution of \$11.2 billion in cash and stock to creditors. The distributions now total more than \$12.5 billion.

[The chapter 11 case is *In re Adelpia Communications Corp.*, 02-41729](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Circuits Split on Surcharging Exempt Property

A bankruptcy court can't dip into a bankrupt's exempt property to make up for non-exempt property the bankrupt refuses to turn over to the trustee, the 10th U.S. Circuit Court of Appeals ruled Aug. 8, reaching the opposite conclusion from the 9th Circuit in a 2004 ruling. The bankrupts refused to turn over \$17,000 in income from an investment even though they didn't claim the investment was exempt from creditors' claims. The bankruptcy judge allowed the trustee to take an equal amount of money from the bankrupt's retirement funds that were exempt property. The 10th Circuit reversed both the bankruptcy judge and the bankruptcy appellate panel. Although there were "compelling reasons" for allowing the trustee to recover a like amount of money from exempt assets, the court ruled that bankruptcy law contains no exceptions to the general rule that exempt assets are beyond reach. The 10th Circuit noted that the trustee isn't helpless. The court said the bankruptcy trustee could object to the discharge of the bankrupts' debts or ask the bankruptcy court to revoke a discharge already given. In addition to the 9th Circuit, the 10th Circuit mentioned that several lower courts allow a trustee to surcharge exempt assets.

[The case is *Scrivner v. Mashburn \(In re Scrivner\)*, 07-6176](#), 10th U.S. Circuit Court of Appeals.

Aug. 27 (Bloomberg) —

Cadence Innovation LLC, an auto-parts maker resurrected from the 2003 bankruptcy of Venture Holdings Co., filed a petition yesterday in Delaware for chapter 11 reorganization. Court filings say debt includes \$43.8 million owing on a secured revolving credit, plus \$107 million in notes. The principal customers for Cadence's interior parts are General Motors Corp. and Chrysler LLC. Chrysler is listed as the largest unsecured creditor with a claim of \$9.9 million. Troy, Michigan-based Cadence has five plants and two service centers in the U.S. The foreign operations didn't file. Cadence filed in chapter 11 after being unable to locate "a credible buyer" in the U.S. and potential purchasers in Europe withdrew from the sale process. Cadence has \$50 million in financing for the reorganization. The financing is to expire at year's end. Cadence is asking for authority to pay as much as \$1 million toward the pre-bankruptcy claims of what it calls critical suppliers. The predecessor Venture was one of the largest auto-parts makers in the U.S. with \$2.75 billion in sales when it filed under chapter 11 in March 2003. The assets were sold in January 2005 to the pre-bankruptcy lenders for \$157 million cash that was used to pay off the post-bankruptcy loan. Venture's petition in the prior reorganization listed \$1.3 billion in debt.

[The case is in re *Cadence Innovation LLC*, 08-11973](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Mrs. Fields Prepack Confirmation Set for Oct. 2

Mrs. Fields Famous Brands LLC, the cookie and frozen-yogurt store franchiser that filed a prepackaged chapter 11 petition on Aug. 24, will be in bankruptcy court on Oct. 2 for the confirmation hearing to approve the plan creditors already accepted. The confirmation procedure was set at a hearing yesterday. Despite the bankruptcy, the judge in Delaware authorized Mrs. Fields to pay unsecured creditors in the ordinary course of business when payments come due. The company can't spend more than \$3.1 million, and suppliers must agree to extend the same credit terms they gave before bankruptcy. The chapter 11 petition was accompanied by sufficient votes from noteholders to permit the company to go directly to a confirmation hearing. The reorganization plan calls for exchanging \$195.7 million in senior secured notes for \$87.5 million cash, \$52.5 million in new notes, and 87.5 percent of the new equity. The noteholders' expected recovery is 87.5 percent. The other 12.5 percent of the new stock goes to Capricorn Investors III LP, holder of a \$6.5 million note expected to recover 96.4 percent. Existing stock will be canceled. At the confirmation hearing, the judge must first determine whether the disclosure statement given to noteholders before the bankruptcy filing contained sufficient information. If the disclosure statement was adequate, the judge can approve the plan based on votes already received, so long as the plan otherwise complies with bankruptcy law. The prepackaged reorganization, originally announced in June, was modified before noteholders began voting this month. Salt Lake City-based Mrs. Fields has more than 1,200 franchised and licensed locations around the world under the names Mrs. Fields Cookies and TCBY.

[The case is *Mrs. Fields Original Cookies Inc.*, 08-11953](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Frontier Files Definitive Lists of Assets and Debt

Frontier Airlines Inc., the only one among six airlines to file in chapter 11 since December that's still operating, filed definitive lists of assets and debt on Aug. 25. The lists show assets on the books for \$1.1 billion against debt totaling \$546 million. The largest assets on the filing date in April were \$185 million cash and \$740 million in aircraft and accessories. The listed aircraft included nine A318s with a book value of \$231 million, 13 A319s for \$360 million, and two A320s at \$87.6 million. Debt includes \$454 million in secured claims and \$89 million in unsecured claims. The holding company's financial statement for the year ended March 31 listed assets of \$1.25 billion and debt totaling \$1.1 billion. Denver-based Frontier won temporary wage concessions from mechanics, pilots and dispatchers. The airline this month arranged \$75 million in financing for the reorganization. It had no financing commitment until the end of July. Frontier began reorganizing with 62 aircraft serving 70 destinations. It is the second-largest carrier operating from

Denver, where it competes with United Airlines Inc. Frontier said it will reduce capacity by 17 percent in September and increase liquidity by selling owned aircraft.

[The case is In Frontier Airline Holdings Inc., 08-11298](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Montana Resources Wants Grupo in Asarco Fraud Suit

Montana Resources Inc., controlled by Dennis Washington, is asking the U.S. Bankruptcy Judge in Corpus Christi, Texas, to add Grupo Mexico SAB, the parent of Arizona copper-mine owner Asarco LLC, as a defendant in a lawsuit brought by Asarco in April 2007. In an unrelated development, an official committee was named to represent asbestos claimants at Asarco's request. Asarco is suing Montana Resources, claiming that the loss of its 49.9 percent interest in a Montana mining operation between 2000 and 2003 was a fraudulent transfer. At Asarco's request, In papers filed Aug. 22, Montana Resources contends that Grupo Mexico controlled Asarco and should be liable for anything it's required to pay Asarco. The bankruptcy court in April denied a motion by Montana Resources to dismiss the suit. Asarco said in the complaint that the Montana investment was worth "hundred of millions, if not billions, of dollars," and that it lost the ownership interest when it was financially unable to meet a \$5 million cash call. Separately, Asarco sued Grupo Mexico in February 2007 in U.S. District Court in Brownville, Texas. The trial in that suit concluded last month. The parties are awaiting the judge's decision. The suit contends the parent company fraudulently transferred Asarco's 54 percent ownership in Peruvian copper miner Southern Copper Corp. to another Grupo Mexico unit before the chapter 11 filing. The bankruptcy judge yesterday granted Asarco's request and called for the appointment of an official committee to represent asbestos claimants. Although there already is an official representative of future asbestos claimants, the company concluded that an official committee was needed so asbestos claimants will have "adequate representation during the negotiation of the terms of a plan of reorganization." The U.S. Trustee later yesterday named 14 individuals to serve on the new committee. Asarco filed a proposed reorganization plan and disclosure statement at the end of July calling for the sale of the company for \$2.6 billion to Sterlite Industries (India) Ltd., a subsidiary of India's Vedanta Resources Plc. Phoenix-based Asarco filed under chapter 11 in August 2005 to deal with asbestos claims. Grupo Mexico acquired Asarco for \$1.2 billion in stock six years ago.

[The chapter 11 case is In re Asarco LLC, 05-21207](#), U.S. Bankruptcy Court, Southern District of Texas (Corpus Christi). The lawsuit between Asarco and Montana Resources is No. 07-02024 in the same court.

W.R. Grace Given Approval for Executive Bonuses

W.R. Grace & Co., the specialty chemical manufacturer in chapter 11 for more than seven years dealing with asbestos

claims, for a seventh time was given authority to implement an annual incentive bonus program for management and key workers. Except for the chief executive officer, the new program for the years 2008 through 2010 would cost \$15.8 million, an increase of \$4 million from prior years. For the CEO, the award would remain \$1.7 million. Grace thought it reached agreement in April on a chapter 11 plan the company hopes to implement late this year or in early 2009. The plan would set up a trust taking responsibility for all present and future asbestos personal-injury claims. A dispute surfaced over whether bank lenders are entitled to interest at the default rate on their \$500 million in unsecured claims. The dispute over default interest is scheduled for argument in bankruptcy court on Sept. 15. The plan calls for unsecured creditors other than asbestos claimants to be paid in full with interest. Environmental claims also will be paid 100 percent. Existing shareholders are to retain their stock, although diluted by warrants and shares securing Grace's obligation to make future payments. Columbia, Maryland-based Grace and 61 subsidiaries filed chapter 11 petitions in April 2001 to deal with asbestos claims. The stock closed yesterday at \$25.59, down 1 cent in New York Stock Exchange composite trading.

[The case is In re W.R. Grace & Co., 01-01139](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

U.S. Trustee Wants Levitz Converted to Chapter 7 Liquidation

The chapter 11 reorganization of Levitz Furniture Inc. should be converted to a liquidation in chapter 7, according to papers filed yesterday by the U.S. Trustee. The U.S. Trustee, a federal official charged with overseeing bankruptcy cases, says the assets are all sold, the exclusive right to file a chapter 11 plan expired in March, and the company is able to pay ongoing expenses only by a "razor thin margin." The U.S. Trustee points to the latest operating report, showing \$4.6 million in assets and \$3.9 million in expenses incurred in the chapter 11 effort that are entitled to payment in full. The hearing on the conversion motion is set for Oct. 22. Levitz was authorized in December to sell the right to conduct going-out-of-business sales for a minimum of \$57.6 million to a joint venture including Hilco Merchant Resources LLC and Tiger Capital Group LLC. The November chapter 11 filing by the 76-store furniture and home-furnishings retailer was the company's third. The newest petition listed assets of \$123.8 million and debt totaling \$76.4 million, including \$55.3 million owing to secured creditors.

[The case is In re PLVTZ Inc., 07-13532](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

U.S. Energy Files Two Plans to Beat Exclusivity Deadline

When creditors objected to a longer extension of the exclusive right for U.S. Energy Systems Inc. to file a reorganization plan, the bankruptcy court last month extended the deadline only

until Aug. 22. To avoid losing control of the chapter 11 case, the company filed two plans on that date. The explanatory disclosure statements aren't yet filed. One plan covers U.S. Energy Systems and affiliate U.S. Energy Overseas Investments LLC. The second plan deals with GBGH LLC. The U.S. Energy plan calls for holding an auction to sell the stock of U.S. Energy Biogas Corp., a subsidiary that completed its own reorganization in May 2007 with a full-payment chapter 11 plan. Distributions under the U.S. Energy plan would be funded with proceeds from the auction. The GBGH plan is to be financed with a \$10 million rights offering allowing creditors to buy preferred stock. First-lien creditors of GBGH are to receive a new first-lien note while second-lien creditors are to take common and preferred equity and a new second-lien note. The company previously said it expects the price to be received from selling the generating subsidiary in the U.K. will be enough to pay off the first level of secured debt on its U.S. side and allow the U.K. side to confirm a chapter 11 plan. The petition in early January by the Avon, Connecticut-based company listed assets of \$258 million against debt totaling \$175 million.

[The case is *In re U.S. Energy Systems Inc.*, 08-10054](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Ridgemour Should be Dismissed, Former Venture Partner Says

The chapter 11 reorganization of Ridgemour Meyer Properties LLC, a real-estate developer with three properties in White Plains, New York, should be dismissed or a trustee should be appointed, according to Ginsburg Development Cos., a former joint-venture partner. The bankruptcy was a bad-faith attempt to avoid the result of an unfavorable arbitration decision, Ginsburg said in a court papers. Ridgemour said it has assets of \$83.8 million against debt totaling \$26.5 million.

[The case is *In re Ridgemour Meyer Properties LLC*, 08-13153](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Robert Plan, Insurance Holding Company, Files on Long Island

Holding company Robert Plan Corp. and an affiliate "best described as an insurance agency" filed chapter 11 petitions on Aug. 25 in U.S. Bankruptcy Court in Central Islip, New York. A sworn statement by the chief executive officer said assets on Dec. 31 were \$21.9 million while debt totaled \$41.1 million. Many liabilities are contingent or disputed, according to the statement. The company previously owned insurance companies and insurance agencies that were either discontinued or sold to Lincoln General Insurance Co. Robert Plan says the chapter 11 filing was caused by a cash-flow shortage resulting from disputes with Lincoln.

[The case is *In re The Robert Plan of New York Corp.*, 08-74575](#), U.S. Bankruptcy Court, Eastern District of New York (Central Islip).

The bankruptcy judge in Delaware yesterday approved \$465 million in secured financing for Mervyn's LLC after the company resolved objections from the unsecured creditors' committee. The judge said that when he first read the committee's objection he was "troubled." The committee now has longer to object to the secured claim of affiliates of Sun Capital Partners Inc., a member of the group that bought the Mervyn's chain in 2004. A provision giving Sun Capital \$75,000 a month for attorneys' fees also was deleted. The 177-store retailer filed under chapter 11 at the end of July. Sales of Hayward, California-based Mervyn's in the 2008 fiscal year were \$2.5 billion. Debt includes \$329 million owing on a credit facility secured by all the assets. The stores are in California and six other states.

[The case is *In re Mervyn's Holdings LLC*, 08-11586](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Homebuilder Touse Inc., the largest homebuilder now in bankruptcy reorganization, filed an operating report for July showing a \$7.5 million gross profit and a \$25.8 million net loss on \$90 million revenue. So far this year, the gross profit is \$53.9 million while the net loss totals \$168.8 million. During the month, cash grew to \$377 million from \$367 million. Touse filed for bankruptcy in January, listing assets of \$2.1 billion against debt totaling \$2 billion. It is 67 percent-owned by Technical Olympic SA.

[The case is *In re Touse Inc.*, 08-10928](#), U.S. Bankruptcy Court, Southern District of Florida (Fort Lauderdale).

Buffets Holdings Inc., the second-largest family restaurant operator in the U.S., filed an operating report showing \$113.9 million in revenue for the period July 3 through July 30, resulting in \$2.2 million in earnings from operations and a \$6 million net loss. Eagan, Minnesota-based Buffets filed under chapter 11 in January with 626 locations operating under the names Old Country Buffet, HomeTown Buffet, Ryan's and Fire Mountain. The filing listed \$964 million in assets against debt of \$1.16 billion.

[The case is *In re Buffets Holdings Inc.*, 08-10141](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Vertis Inc., a provider of advertising and marketing services, and American Color Graphics Inc., North America's third-largest insert printer, yesterday won the agreement of the U.S. Bankruptcy Judge in Delaware to sign confirmation orders approving the chapter 11 reorganization plans enabling the companies to merge and in the process reduce combined debt by \$1 billion. All of the new stock and \$550 million in new notes goes to existing noteholders. The holders of Vertis's unsecured senior notes are estimated to recover 57 percent while the ACG second-lien notes should see 43 percent. The Vertis subordinated notes are in line for an estimated 19 percent

realization. With votes from creditors already in hand, the companies began their so-called prepackaged reorganization on July 15. Brentwood, Tennessee-based ACG said it had \$528 million in debt on May 31 while Baltimore-based Vertis reported \$1.7 billion in debt at the holding company as of March 31. Vertis will be the survivor in the merger.

The cases are [In re ACG Holdings Inc., 08-11467](#), and [In re Vertis Holdings Inc., 08-11460](#), both in U.S. Bankruptcy Court, District of Delaware (Wilmington).

Protected Vehicles Inc., a South Carolina manufacturer of mine and ballistic-resistant vehicles for the military, filed a liquidating chapter 11 plan and explanatory disclosure statement last week essentially telling creditors they will be paid in the order of priority prescribed in bankruptcy law. The hearing to consider approval of the disclosure statement has since been set for Oct. 23. The company and the creditors' committee reached agreement on a procedure for selling the assets and confirming a liquidating chapter 11 plan. The auction having been held last week, the parties are awaiting formal approval of the sale where Patriarch Partners LLC initially bid \$5 million. Protected Vehicles filed under chapter 11 on Feb. 5 in Charleston. The company halted production in December.

[The case is In re Protected Vehicles Inc., 08-00783](#), U.S. Bankruptcy Court, District of South Carolina (Charleston).

An auction last week by Interstate Bakeries Corp. for the sale of a bakery and retail store on Crockett and East Slauson streets in Los Angeles resulted in an increase in the purchase price to \$4.15 million from \$4 million. The Teamsters union announced earlier this month that it brokered a settlement between the banks and hedge fund Ripplewood Holdings LLC allowing Interstate to emerge from reorganization as a stand-alone business. The wholesale baker is still reorganizing after almost four years in chapter 11. For lack of contract concessions from the Teamsters, Interstate was unable to confirm a plan in March that creditors accepted. Kansas City, Missouri-based Interstate was the U.S.'s largest wholesale baker when it began the reorganization in September 2004. Interstate's brand names include Wonder, Hostess, Merita, Dolly Madison, Drake's and Butternut. The company has 41 bakeries, 633 distribution centers, and 730 thrift stores.

[The case is In re Interstate Bakeries Corp., 04-45814](#), U.S. Bankruptcy Court, Western District of Missouri (Kansas City).

Midland Food Services LLC, the operator of 92 Pizza Hut restaurants in six states that filed under chapter 11 on Aug. 6, was granted authority on Aug. 25 to use cash representing collateral of secured lenders. The filing by Independence, Ohio-based Midland was the company's second in eight years. Net sales were \$64 million for the year ended July 7.

[The case is In re Midland Food Services LLC, 08-11802](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Aug. 28 (Bloomberg) —

The official creditors' committee of casino operator Tropicana Entertainment LLC and an unofficial committee of holders of subordinated notes are opposing Tropicana's motion filed on Aug. 22 aiming to set up an auction testing whether anyone will pay more than the minimum of \$220 million being offered by Eldorado Resorts LLC for the casino in Evansville, Indiana. Although the committee believes Tropicana should "test the market" by looking for a buyer at a higher price, the creditors' official representative says the result is "unlikely to result in a better offer." The committee's papers say the best option may be to retain the Evansville casino while reorganizing around it and other core assets. The committee argues that the pre-bankruptcy marketing effort resulting in the Eldorado contract was a "perfunctory sale process" producing in a price "far below its worth." The committee and the subordinated noteholders object to the \$7.1 million in breakup fee and expenses Eldorado would earn if the property is sold to another buyer. They note that no breakup fee is earned if the property is not sold. The purchase contract signed in March by Reno, Nevada-based casino operator Eldorado calls for \$190 million cash and \$30 million in notes, plus another \$25 million if earnings meet specified targets. The committee says the casino's earnings are not high enough so the earnout will never kick in. Tropicana began marketing the Indiana casino early this year after New Jersey casino regulators terminated the gaming license for the Atlantic City property in late 2007. Indiana regulators threatened to take action similar to New Jersey if the Evansville casino weren't sold. Now that Tropicana's management has been replaced, the committee argues that it's feasible to retain the Evansville casino. The hearing to set up sale procedures for Evansville is set for Sept. 16. Tropicana's debt includes \$960 million in subordinated notes, \$1.3 billion secured by a first lien on most of the assets except the Las Vegas casino where there's effectively a second lien, and a \$440 million secured loan with first lien on the Las Vegas property. Crestview Hills, Kentucky-based Tropicana also intends to sell the casino in Atlantic City and the property in Vicksburg, Mississippi. Other casino properties are in Baton Rouge, Louisiana; Greenville, Mississippi; and Laughlin and Lake Tahoe, Nevada.

[The case is In re Tropicana Entertainment LLC, 08-10856](#), U.S. Bankruptcy Court for the District of Delaware (Wilmington).

Involuntary Petitions Filed Against Woodside Affiliates

John Hancock Life Insurance Co. and four other insurance companies, saying they are owed \$407 million, filed an involuntary chapter 11 petition on Aug. 20 against homebuilder Woodside Group LLC and over three days filed involuntary petitions against almost 200 Woodside affiliates. The insurance companies, including AXA Equitable Life Insurance Co.,

Metropolitan Life Insurance Co., and New York Life Insurance Co., asked the U.S. Bankruptcy Court in Riverside, California, to prohibit the Woodside companies from carrying out any transactions outside of the ordinary course of business until it's decided whether the homebuilders are in bankruptcy. The insurance companies, saying Woodside owes \$312 million under another credit agreement, contended in papers filed Aug. 21 that Woodside secretly carried out a restructuring in July where more than 100 companies were merged into 11 new companies in violation of the credit agreement. The insurance companies contend the restructuring was intended to create "hundreds of millions of dollars worth of tax losses and corresponding tax refunds" for the benefit of the owners. The insurance companies say 90 percent of the equity is held by Ezra Nilson, his family and family trusts. The insurance companies say Salt Lake City-based Woodside has been in default since December and that workout negotiations proved unsuccessful. The time hasn't yet arrived when Woodside must respond to the involuntary petition.

[The case is *In re Woodside Group LLC*, 08-20682](#), U.S. Bankruptcy Court, Central District California (Riverside).

Mervyn's Approved to Close 26 Stores

Mervyn's LLC, the 177-store retailer that filed under chapter 11 at the end of July, was authorized on Aug. 26 to hire a joint venture between Gordon Brothers Retail Partners LLC and Hilco Merchant Resources LLC to conduct going-out-of-business sales at 26 stores. The joint venture guarantees Mervyn's will recover 117 percent of the cost of inventory at the stores. The liquidators will retain sale proceeds between 117 percent and 120.5 percent. Receipts over 120.5 percent will be split 70-30, with Mervyn's receiving the larger portion. Mervyn's sales in the 2008 fiscal year were \$2.5 billion, resulting in a \$64 million net loss. Debt includes \$329 million owing on a credit facility secured by all the assets. Mervyn's stores are in California and six other states. Hayward, California-based Mervyn's is part-owned by affiliates of Sun Capital Partners Inc., a member of the group that bought the chain in 2004. The filing was the sixth this year by a Sun Capital investment.

[The case is *In re Mervyn's Holdings LLC*, 08-11586](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Homebuilder Kimball Hill to Sell Mineral Rights

The properties of Kimball Hill Inc., the second-largest homebuilder now in reorganization, includes subsurface mineral rights on property in Arlington, Texas, within the so-called Barnett Shale, a natural-gas producing formation. Two wells already have been drilled, and one is shut in. The producing well generates between \$170,000 and \$215,000 in monthly royalties for Kimball. The mineral rights are leased to Harding Co. Kimball intends to sell the mineral rights along with its interest in the lease. In papers filed Aug. 26 asking the U.S. Bankruptcy Court in Chicago to set up sale procedures,

the company wants bids submitted by Sept. 26. The company and the creditors' committee will discuss the bids with the potential buyers, attempt to negotiate the prices upward, and submit the best offer for approval at an Oct. 14 hearing. Kimball filed for reorganization on April 23 in Chicago and obtained approval to borrow as much as \$51.8 million from a tax refund received by an affiliate also in chapter 11. The company said it doesn't need other traditional secured lending to finance the reorganization. Kimball listed assets of \$795.5 million and debt of \$631.9 million as of Dec. 31.

[The case is *In re Kimball Hill Inc.*, 08-10095](#), U.S. Bankruptcy Court, Northern District of Illinois (Chicago).

Five Texas Hospitals File to Reorganize in Fort Worth

Renaissance Healthcare Systems Inc. put itself and its five Texas hospitals into chapter 11 bankruptcy reorganization during the past week in Fort Worth, Texas. The facilities in Dallas, Houston, Terrell, and Groves, Texas, have 383 beds. The 146-bed hospital in Grand Prairie is undergoing renovation. According to a court filing, the company had revenue of \$98 million last year from 8,500 admissions and 35,400 outpatient procedures. The emergency rooms attracted 44,000 visits in 2007. The chain, sold to new owners in April, was formed to acquire and rehabilitate financially ailing hospitals. The bankruptcy filing was precipitated by cost overruns in the reconstruction of the Grand Prairie hospital. Contributing factors, according to a court filing, were the "collapse of the capital markets and gross underestimation of costs."

[The cases are being combined under the first-filed case, *In re Renaissance Hospital - Grand Prairie Inc.*, 08-43775](#), U.S. Bankruptcy Court, Northern District of Texas (Fort Worth).

Pontiac, Michigan, Hospital Files in Chapter 11

North Oakland Medical Centers Inc., a 366-bed not-for-profit hospital in Pontiac, Michigan, filed for bankruptcy reorganization on Aug. 26 in Detroit to avert running out of cash and disrupting a sale scheduled for completion in October. Formerly known as Pontiac General Hospital, the facility suffers from a 20 percent occupancy rate. The buyers are a group of physicians who would convert the hospital to for-profit status. The petition listed debt of as much as \$100 million and assets less than \$50 million. The hospital defaulted on bonds issued by the Pontiac Hospital Finance Authority.

[The case is *In re Pontiac General Hospital and Medical Center*, 08-60731](#), U.S. Bankruptcy Court, Eastern District of Michigan (Detroit).

Grupo Mexico SAB already has opposition to the competing chapter 11 plan it filed to reorganize and retain its ownership of Arizona copper-mine owner Asarco LLC. Sander Esserman, an attorney representing asbestos contamination claimants, characterized the Grupo Mexico proposal as a "litigation in full plan" that promises "nothing but years of litigation and

disputes.” Disclosure statements explaining the competing plans come to bankruptcy court for review at a Sept. 23 hearing. Asarco filed under chapter 11 in August 2005 to deal with asbestos claims. Grupo Mexico acquired Asarco for \$1.2 billion in stock six years ago.

[The chapter 11 case is In re Asarco LLC, 05-21207](#), U.S. Bankruptcy Court, Southern District of Texas (Corpus Christi).

Barbeques Galore Inc., the owner of 65 retail stores selling barbecue equipment and supplies, filed a motion asking the bankruptcy court at a Sept. 3 hearing to set up procedures for selling the assets and offering a breakup fee to the bidder with the best offer submitted before the auction. Dates for the submission of bids and the auction weren't set out in the company's papers filed Aug. 26. The filing under chapter 11 was on Aug. 15 in Woodland Hills, California. The company, which also has operations in Australia, said it owes \$16.6 million on a secured revolving credit facility and another \$38 million that is subordinated and unsecured. Court papers show unsecured and priority creditors are owed another \$16 million. Sales declined from \$124 million in fiscal 2006 to \$102 million in fiscal 2008. A court filing says the inventory has a book value of \$21.8 million at cost.

[The case is In re Barbeques Galore Inc., 08-16036](#), U.S. Bankruptcy Court, Central District of California (Woodland Hills).

The official creditors' committee of Lot Stores Inc. disclosed in papers filed last week that the 24-store discount retailer intends to close 9 locations. The disclosure was contained in papers where the committee is asking the U.S. Bankruptcy Court in Manhattan for permission to perform an investigation. At one time there were 64 stores before financial reverses caused the Bronx, New York-based company to retrench.

[The case is In re Burnside Avenue Lot Stores, 08-12988](#), U.S. Bankruptcy Court, District of New York (Manhattan).

A group of oil and gas producers from Oklahoma filed a motion yesterday asking the bankruptcy court to appoint an official committee to represent producers with claims against SemGroup LP, the transporter and marketer of petroleum products from Tulsa, Oklahoma, that filed in chapter 11 on July 21 in Delaware. The producers say their interests differ from other unsecured creditors in view of state laws giving them more rights to recover what they're owed than ordinary suppliers. A hearing to decide whether to form the committee will be held Sept. 29. SemGroup's publicly traded affiliate SemGroup Energy Partners LP isn't in bankruptcy. SemGroup's consolidated assets on May 31 were \$6.14 billion while consolidated liabilities were \$7.53 billion. Debt includes \$2.55 billion in secured debt and \$594 million in 8.75 percent unsecured senior notes. Consolidated revenue last year was \$13.2 billion. The trading accounts were sold, transferred, or

closed. SemGroup Energy is an owner of crude oil gathering, transportation, terminaling and storage facilities in Oklahoma, Kansas and Texas.

[The case is In re SemCrude LP, 08-11525](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Retailer Linens 'n Things Inc. filed an operating report for July showing sales of \$112 million resulted in a \$20.6 million net loss before \$7.5 million in “reorganization items.” The so-called store contribution was negative by \$12 million. Linens 'n Things entered chapter 11 on May 2 having already decided to close 120 of its 593 stores. The company decided to close another 57 stores in July. It listed \$369.3 million in secured bank debt plus \$650 million owing on secured floating rate notes. The petition in total listed assets of \$1.74 billion against debt totaling \$1.42 billion. Annual sales of \$2.8 billion when it began reorganizing made the Clifton, New Jersey-based company the second-largest in the market behind Bed Bath & Beyond Inc. Apollo Management LP and Silver Point Capital Fund Investors LLC acquired the company in February 2006 in a leveraged buyout.

[The case is In re Linens Holdings Co., 08-10832](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

Circuits Now Split on Discharge versus Rooker-Feldman

Circuits are now split over whether a bankruptcy discharge wins out over the so-called Rooker-Feldman doctrine in deciding whether a bankrupt remains liable on a claim that arose before bankruptcy. In the case decided by the 6th U.S. Circuit Court of Appeals on Aug. 26, an individual was liable on a note before filing bankruptcy. A state court in a later lawsuit held the bankrupt liable on the debt. The bankrupt, representing himself without a lawyer, didn't file a pleading in state court saying the debt was barred by his discharge in bankruptcy. The state court judgment was affirmed on appeal, based on the failure to submit a timely defense saying that the debt was discharged in bankruptcy. The bankrupt eventually went to bankruptcy court to stop enforcement of the judgment. The bankruptcy judge ruled that he lacked power under the Rooker-Feldman doctrine to undermine the validity of state court judgment. The 6th Circuit interpreted §524 of federal bankruptcy law to mean that the state court judgment made after bankruptcy regarding a pre-bankruptcy debt was void in the first place. With the state judgment void, the Rooker-Feldman doctrine didn't apply, the appeals court said. The court agreed with the leading treatise on bankruptcy in saying federal law was written to prevent enforcement of a debt discharged in bankruptcy, even when a bankrupt neglects to file papers saying the debt was wiped out. The 6th Circuit noted that the 8th U.S. Circuit Court of Appeals reached the opposite conclusion “in nearly the same circumstances.”

[The case is Hamilton v. Herr \(In re Hamilton\), 07-6269](#), 6th U.S. Circuit Court of Appeals.

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