

Sample Page

from the

**2011 ANNOTATED CODE & RULES:
WESTERN EDITION**

agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term “transfer” means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor’s equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

(54A) The term “uninsured State member bank” means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

^(*) As adjusted under section 104, effective April 1, 2010. To be readjusted effective April 1, 2013.

^(**) So in original. A comma should probably appear.

^(***) So in original.

RULE REFERENCE: 9001

Supreme Court Annotations

Hamilton v. Lanning, 130 S. Ct. 2464 (2010)(Sec. 101(10A)(A)(i) authorizes court to select its own 6 month period for projecting income if chapter 13 debtor fails to file Schedule I).

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

Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co., 127 S. Ct. 1199 (2007)(a “claim” as a “right to payment” is usually referring to such a right recognized by state law; state law governs the substance of claims).

Federal Communications Comm’n v. NextWave Personal Communications, 123 S.Ct. 832 (2003)(“debt” under 101(12) includes an obligation to pay even when the obligation to pay is also a regulatory condition for the retention of a government license).

Cohen v. de la Cruz, 118 S. Ct. 1212 (1998)(obligation to pay treble damages is “debt” and “claim”).

Johnson v. Home State Bank, 111 S.Ct. 2150 (1991)(mortgage lien which survives individual debtor’s chapter 7 discharge is a “claim” for purposes of a subsequent chapter 13).

Pennsylvania Dep’t of Public Welfare v. Davenport, 110 S.Ct. 2126 (1990)(“debt” and “claim” are coextensive; therefore, restitution obligation is a claim in bankruptcy).

Kelly v. Robinson, 107 S.Ct. 353 (1986)(restitution obligation of debtor may not be a “claim”).

Ohio v. Kovacs, 105 S.Ct. 705 (1985)(state court order that debtor remedy environmental violations is not “claim”).

Fifth Circuit Annotations

Hersh v. U.S. ex rel. Mukasey, 553 F.3d 743 (5th Cir. 2008)(attorney who provides “bankruptcy assistance” qualifies as a “debt relief agency” for purposes of BAPCPA).

Campbell v. Countrywide Home Loans, Inc., 545 F.3d 348 (5th Cir. 2008)(prepetition escrow defaults on a mortgage were “claims” for purposes of the automatic stay).

- Ad Hoc Group of Timber Noteholders v. Pacific Lumber Co. (In re Scotia Pacific Co., LLC)*, 508 F.3d 214 (5th Cir. 2007)(debtor was not a SARE under 101(51B) since its timberland was not a passive investment, and it conducted substantial other business on the real estate).
- Tarbox v. U.S. Trustee (In re Reed)*, 405 F.3d 338 (5th Cir. 2005)(chapter 7 trustee is not a “creditor” under 101(10)(A) since he does not hold a prepetition claim).
- Carrieri v. Jobs.com Inc.*, 393 F.3d 508 (5th Cir. 2004)(shareholders’ right to require debtor to repurchase preferred shares was in the nature of “equity security” under 101(16)(C)).
- Foust v. McNeill (In re Foust)*, 310 F.3d 849 (5th Cir. 2002)(sheriff and deputy who had executed replevin order prepetition were “custodians” under 101(11)).
- Williams v. Morgan Stanley Capital Group (In re Olympic Nat. Gas Co.)*, 294 F.3d 737 (5th Cir. 2002)(natural gas purchase and sale contracts for specified future delivery dates were “forward contracts” to a “forward contract merchant” under 101(25) and (26) and, therefore, qualified for the 546(e) statutory exception to trustee’s avoiding powers).
- Cadleyway Props., Inc. v. Andrews (In re Andrews)*, 239 F.3d 708 (5th Cir. 2001)(claimant whose claim has been order turned over to his own creditor was held to still have standing to appeal bankruptcy orders regarding the claim; TX law provided that a turnover order did not transfer title to the claim).
- Fezler v. Davis (In re Davis)*, 194 F.3d 570 (5th Cir. 1999)(administrator of probate estate of person murdered by debtor had standing to bring nondischargeability claim; creditor is entity with right to enforce legal obligation of payment against debtor).
- Louisiana Dept. of Environmental Quality v. Crystal Oil Co. (In re Crystal Oil Co.)*, 158 F.3d 291 (5th Cir. 1998)(a “claim” arises when a potential claimant can tie the debtor to a known release of a hazardous substance).
- Southmark Corp. v. Schulte Roth & Zabel (In re Southmark Corp.)*, 88 F.3d 311 (5th Cir. 1996)(there is no distinction between “debt” and “claim” for purposes of Bankruptcy Code).
- Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994)(a “claim” does not arise in bankruptcy until a cause of action has accrued under nonbankruptcy law where claimant was entirely unknown at the time of bankruptcy proceeding).
- Sheerin v. Davis (In re Davis)*, 3 F.3d 113 (5th Cir. 1993)(equitable remedies in fraud suit against debtor which gave rise to resulting trust were not “claims” since there were no alternative rights to payment of damages).
- Lindsey, Stephenson & Lindsey v. F.D.I.C. (In re Lindsey, Stephenson & Lindsey)*, 995 F.2d 626 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1053 (1994)(a nonrecourse debt counts for \$1.5 million debt limitation purposes in chapter 12 under § 101(18)).
- Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008 (5th Cir. 1992)(debtor’s ex-wife was an “insider” for purposes of TX UFTA).
- Fussell v. Price (In re Fussell)*, 928 F.2d 712 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1203 (1992)(bankruptcy court may enjoin a criminal proceeding if it threatens a right provided by federal law).
- W.F. Dev. Corp. v. U.S. Trustee (In re W.F. Dev. Corp.)*, 905 F.2d 883 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 1311 (1991)(attorney who proposed to represent general partner is not disinterested to represent limited partnerships under § 101(14)(E)).

Ninth Circuit Annotations

- Egebjerg v. Anderson (In re Egebjerg)*, 574 F.3d 1045 (9th Cir. 2009)(debtor’s obligation to repay loan to his retirement account was not a “debt” or “claim”).
- Blausey v. U.S. Trustee*, 552 F.3d 1124 (9th Cir. 2009)(debtor’s private disability insurance benefits are “income” under 101(10A)(A) definition of current monthly income).
- Sherman v. Securities and Exch. Comm’n (In re Sherman)*, 491 F.3d 948 (9th Cir. 2007)(SEC was “creditor” when it held disgorgement order against debtor/attorney for retainer fees and had standing to seek dismissal of bankruptcy).

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- Sherman v. Sec. & Exch. Comm'n (In re Sherman)*, 441 F.3d 794 (9th Cir. 2006)(SEC was a “creditor” by virtue of disgorgement judgment for funds in debtor/attorney’s possession; claim was not settled by agreement of other parties).
- Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055 (9th Cir. 2004)(Indian tribes are “domestic governments” under 101(27)).
- Balser v. Dep’t. of Justice*, 327 F.3d 903 (9th Cir. 2003)(US Trustee is expressly excluded from 106 waiver of sovereign immunity by definition under 101(27)).
- Brown v. Smith (In re Poole)*, 222 F.3d 618 (9th Cir. 2000)(bankruptcy “attorney” licensed to practice in federal district court did not have to be licensed in the state courts of that state).
- Cool Fuel, Inc. v. Bd. of Equalization (In re Cool Fuel, Inc.)*, 210 F.3d 999 (9th Cir. 2000)(bankruptcy law governs when a claim arises; a claim is ripe even if the cause of action has not yet accrued).
- Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525 (9th Cir. 1998)(“claim” is coextensive with “debt” under Code; contingent claim defined and any doubts regarding dischargeability of contingent claim should be resolved by finding that one existed).
- Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237 (9th Cir. 1997)(granting of a security interest is a “transfer” under § 101(54)).
- Oregon by and through SAIF Corp. v. Harmon (In re Harmon)*, 188 B.R. 421 (9th Cir. BAP 1995)(right of recoupment is not a claim under § 101(5) and is not discharged).
- California Dep’t of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925 (9th Cir. 1993)(debtor’s liability for pollution is a contingent claim when it has already occurred and the debtor is a PRP; claim does not arise only when there is an enforceable right to payment).
- Quintana v. Comm’r of I.R.S. (In re Quintana)*, 915 F.2d 513 (9th Cir. 1990)(neither counterclaim by debtor against creditor nor creditor’s waiver of deficiency offsets that creditor’s debt for determining chapter 12 eligibility under § 101(18)).

Tenth Circuit Annotations

- Anstine v. Carl Zeiss Meditec AG (In re U.S. Med., Inc.)*, 531 F.3d 1272 (10th Cir. 2008)(creditor was not a “non-statutory insider” for extended avoidance period if parties acted at arms length).
- Rupp v. United Security Bank (In re Kunz)*, 489 F.3d 1072 (10th Cir. 2007)(“insider” list under 101(31) is not exclusive; listed relationships create “per se” insiders, but closely related parties may still be insiders based on weight of the evidence).
- Watson v. Parker (In re Parker)*, 313 F.3d 1267 (10th Cir. 2002)(date used to determine if malpractice claim is pre or post-petition is the date of the conduct giving rise to the claim).
- Stewart v. United States Trustee (In re Stewart)*, 175 F.3d 796 (10th Cir. 1999)(a profit motive distinguishes consumer debt under 101(8) from non-consumer debt; in this case, alimony, portion of student loans, and loan from debtor’s father-in-law held to be consumer debt for purposes of 707(b)).
- Wyoming DOT v. Straight (In re Straight)*, 143 F.3d 1387 (10th Cir. 1998)(under 101(27), WY Department of Transportation is the same “governmental unit” as its sister state agencies for the purpose of applying waiver of sovereign immunity under 106(b)).
- Hamilton Creek Metro. Dist. v. Bondholders Colo. Bondshares (In re Hamilton Creek Metro. Dist.)*, 143 F.3d 1381 (10th Cir. 1998)(“due” is unqualified in 101(32)(C), meaning presently, unconditionally owing and presently enforceable).
- Sender v. Buchanan (In re Hedged-Investments Assocs.)*, 84 F.3d 1286 (10th Cir. 1996)(the terms are coextensive: a creditor has a ‘claim’ against the debtor; the debtor owes a ‘debt’ to the creditor).
- Sender v. Johnson (In re Hedged-Investments Assocs.)*, 84 F.3d 1267 (10th Cir. 1996)(limited partners’ interests do not constitute ‘claims’ as defined under 101(5), but are equity security interests; equity security holders are not ‘creditors’ for purposes of 547).

Gillman v. Scientific Research Prods., Inc. (In re Mama D'Angelo, Inc.), 55 F.3d 552 (10th Cir. 1995)(to determine “insolvency”, going concern valuation is appropriate only if it is believed that the enterprise will continue as a going concern; this company, although current on payments, was surviving on loans of principal).

Gray v. English, 30 F.3d 1319 (10th Cir. 1994)(trustee who acquired creditor’s claim during case was no longer “disinterested” under 101(14) or 328(c)).

§ 102. Rules of construction

In this title—

(1) “after notice and a hearing”, or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) “claim against the debtor” includes claim against property of the debtor;

(3) “includes” and “including” are not limiting;

(4) “may not” is prohibitive, and not permissive;

(5) “or” is not exclusive;

(6) “order for relief” means entry of an order for relief;

(7) the singular includes the plural;

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and

(9) “United States trustee” includes a designee of the United States trustee.

RULE REFERENCE: 9001

Fifth Circuit Annotations

International Transactions, Ltd. v. Embotelladora Agral Regiomontana, SA de CV, 347 F.3d 589 (5th Cir. 2003)(102(1)(A) does not allow *ex parte* relief without specific finding on appropriateness and a reasonable effort to notice the parties in interest).

River Hills Assocs., Ltd. v. River Hills Apts. Fund (In re River Hills Apts. Fund), 813 F.2d 702 (5th Cir. 1987)(“after notice and a hearing” means such hearing as is appropriate and is designed to eliminate the bankruptcy court’s involvement in requests for relief absent a dispute).

Ninth Circuit Annotations

Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006)(hearing is not required for chapter 13 attorney’s fee application filed without objection, unless court intends to materially deny request; if fees are denied requirement is satisfied by written submission with opportunity to rebut).

Tenth Circuit Annotations

Turney v. FDIC, 18 F.3d 865 (10th Cir. 1994)(“notice and a hearing” requirement effectuates two significant policies: a separation of administrative and judicial functions, with the bankruptcy able to concentrate on the latter; and that bankruptcy cases be handled in a speedy and expeditious manner).

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15.

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(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) Scope of Application.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Chapter 13 of this title applies only in a case under such chapter.

(j) Chapter 12 of this title applies only in a case under such chapter.

(k) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

§ 104. Adjustment of dollar amounts

(a) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28 immediately before such April 1 shall be adjusted—

(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) to round to the nearest \$25 the dollar amount that represents such change.

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28.

(c) Adjustments made in accordance with subsection (a) shall not apply with respect to cases commenced before the date of such adjustments.

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by

reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

RULE REFERENCE: 7001, 7065

Supreme Court Annotations

United States v. Energy Resources Co., 110 S.Ct. 2139 (1990)(if necessary for success of chapter 11 plan, court can order IRS to allow payment of taxes to trust fund portion first).

California State Board of Equalization v. Sierra Summit, Inc., 109 S.Ct. 2228 (1989)(state may impose sales tax on bankruptcy liquidation sale).

Fifth Circuit Annotations

Wells Fargo Bank of Tex. N.A. v. Sommers (In re Amco Ins.), 444 F.3d 690 (5th Cir. 2006)(disallowed *nunc pro tunc* substantive consolidation of debtor with non-debtor which would have invalidated a settlement non-debtor had reached with objecting creditor based on a previous lift stay order).

Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.), 378 F.3d 511 (5th Cir. 2004)(court could enjoin FERC from negating debtor's right to reject electric purchase contract; however, requirement to give court 10 day notice of any regulatory action was overbroad).

United States IRS v. Prescription Home Health Care, Inc. (In re Prescription Home Health Care, Inc.), 316 F.3d 542 (5th Cir. 2002)(bankruptcy court does not, as a part of chapter 11 plan confirmation, have jurisdiction to enjoin IRS from pursuing responsible person penalty).

Louisiana Public Service Comm'n v. Mabey, 185 F.3d 446 (5th Cir. 1999)(finds abuse of discretion in bankruptcy court enjoining public service commission; authority of §105 is not unlimited).

Placid Refining Co. v. Terrebonne Fuel and Lube, Inc. (In re Terrebonne Fuel and Lube, Inc.), 108 F.3d 609 (5th Cir. 1997)(bankruptcy court has authority to conduct civil contempt proceedings for postconfirmation stay violation).

Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746 (5th Cir. 1995)(bankruptcy court could temporarily issue third party injunction against noncreditors' suit against debtor's D&O insurance company).

11 U.S.C. § 105

Smith v. Legg (In re United Markets Int'l, Inc.), 24 F.3d 650 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 356 (court could prohibit principal of debtor from further participation in case due to his failure to pay \$68,000 in sanctions).

Omni Mfg., Inc. v. Smith (In re Smith), 21 F.3d 660 (5th Cir. 1994)(cannot use § 105 to affect substantive rights and remedies contained in Code or Rules).

In re Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990)(criminal contempt sanctions not necessary or appropriate to enforce court's orders).

Ninth Circuit Annotations

Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052 (9th Cir. 2009)(court had power under its inherent sanction authority to suspend chapter 13 debtor's attorney for bad faith or willful misconduct, provided due process was accorded).

Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764 (9th Cir. 2008)(bankruptcy court may convert a chapter 13 to a 7 on its own motion; unqualified rights of debtors may be limited by court's power to police bad faith or abuse of process).

Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086 (9th Cir. 2007)(to obtain preliminary injunction to stay wholly third party litigation court must balance likelihood of success in reorganization, relative hardships, and public interest).

Hansbrough v. Birdsell (In re Hercules Enters., Inc.), 387 F.3d 1024 (9th Cir. 2004)(court could impose monetary contempt sanction on corporate debtor's principal; however, it did not have the power to make sanction non-dischargeable in subsequent bankruptcy).

Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178 (9th Cir. 2003)(even though chapter 7 trustee was not authorized to claim damages under 362(h) for stay violation, trustee may claim civil contempt sanction under 105(a), including mild punitive sanction and attorneys' fees).

Canter v. Canter (In re Canter), 299 F.3d 1150 (9th Cir. 2002)(105 contemplates injunctive relief when parties are pursuing actions in other courts which threaten the integrity of the estate).

Schulman v. State of Cal., 237 F.3d 967 (9th Cir. 2001)(applied "logical relationship" test to determine whether filed proofs of claim arose out of same transaction or occurrence to establish waiver of sovereign immunity).

Levander v. Prober (In re Levander), 180 F.3d 1114 (9th Cir. 1999)(bankruptcy court can amend a judgment based on "fraud on the court"; court had authority under CA law to add additional judgment debtors).

Tuli v. Republic of Iraq, 172 F.3d 707 (9th Cir. 1999)(foreign states can no longer assert sovereign immunity for certain actions under the Bankruptcy Code).

Hamilton v. Lumsden (In re Geothermal Resources Int'l, Inc.), 93 F.3d 648 (9th Cir. 1996)(bankruptcy court cannot in the name of equity ignore specific statutory mandates).

Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278 (9th Cir. 1996)(bankruptcy court had inherent power to sanction principal of debtor for vexatious conduct).

Havelock v. Taxel (In re Pace), 67 F.3d 187 (9th Cir. 1995)(trustee may recover costs and attorneys' fees as sanction for civil contempt).

In re Heincy, 858 F.2d 548 (9th Cir. 1988)(bankruptcy court may enjoin state criminal proceedings if necessary to prevent irreparable injury).

Tenth Circuit Annotations

Scrivner v. Mashburn (In re Scrivner), 535 F.3d 1258 (10th Cir. 2008)(court lacks equitable power to surcharge exempt assets to punish debtor misconduct).

State Bank v. Gledhill (In re Gledhill), 76 F.3d 1070 (10th Cir. 1996)(party may seek relief from an order lifting the automatic stay by filing a motion as a contested matter under Rules 9024 and FRCP 60(b) without filing an adversary proceeding; a request to reimpose the automatic stay under 105(a) constitutes a proceeding to obtain an injunction or other equitable relief under Rule 7001(7), which requires the filing of an adversary proceeding).

Jones v. Bank of Santa Fe (In re Courtesy Inns, Ltd., Inc.), 40 F.3d 1084 (10th Cir. 1994)(bankruptcy courts do not have jurisdiction to issue sanction orders under 28 U.S.C. 1927; however, under 105,

court had power to sanction president of corporate debtor for bad faith filing used solely to prevent a foreclosure).

Themy v. Yu (In re Themy), 6 F.3d 688 (10th Cir. 1993)(when the court's act affirmatively misleads the creditor as to a deadline, filing within the extended deadline is approved; a court has the inherent equitable power to correct its own mistakes).

§ 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

Supreme Court Annotations

Central Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006)(sovereign immunity does not bar bankruptcy suits to recover preferential transfers which are authorized by *in rem* jurisdiction granted in Constitutional Bankruptcy Clause).

Tennessee Student Assistance Corp. v. Hood, 124 S. Ct. 1905 (2004)(state's sovereign immunity did not protect it from student loan debtor's hardship discharge adversary; jurisdiction was *in rem* and was not a suit against state under 11th Amendment).

Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996)(Indian tribe barred from bringing an action against state of FL in federal court; federal jurisdiction is barred by 11th Amendment when state has not consented to be sued).

United States v. Nordic Village, Inc., 112 S. Ct. 1011 (1992)(§ 106(c)[pre 1994 amendment] does not waive sovereign immunity of the U.S. for monetary recovery in bankruptcy).

Fifth Circuit Annotations

Texas v. Soileau (In re Soileau), 488 F.3d 302 (5th Cir. 2007)(*in rem* bankruptcy petition filed by bail bondsman did not infringe on state's sovereign immunity by virtue of debt owed for bail forfeitures; no action was filed against state).

11 U.S.C. § 106

Zayler v. Dept. of Agric. (In re Supreme Beef Processors, Inc.), 468 F.3d 248 (5th Cir. 2006)(*reh'g en banc*)(106(c) did not permit trustee's claims for torts which were barred by the Federal Tort Claims Act as offsets against proof of claim).

Murphy v. Mich. Gty Agency (In re Murphy), 271 F.3d 630 (5th Cir. 2001)(adversary proceeding brought to seek discharge of a state guaranteed student loan debt was precluded by the 11th Amendment).

Magnolia Venture Capital Corp. v. Prudential Securities, Inc., 1998 WL 472053 (Aug. 28, 1998)(authority of state agency to waive 11th Amendment right through actions of a state official or agency must be expressly granted by constitution, statutes or court decisions).

State of Texas v. Walker, 142 F.3d 813 (5th Cir. 1998)(11th Amendment did not prevent discharge of professor's debt to state).

Department of Transp. and Dev. v. PNL Asset Management Co. (In re Fernandez), 123 F.2d 241 (5th Cir. 1997)(§ 106 is unconstitutional; Congress did not have the power to abrogate state sovereign immunity by enactment of bankruptcy statute; FDIC does not enjoy status of federal government for sovereign immunity purposes).

Ninth Circuit Annotations

City & County of San Francisco v. PG&E Corp., 433 F.3d 1115 (9th Cir. 2006)(sovereign immunity did not bar removal of a suit brought by attorney general in state court).

Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189 (9th Cir. 2005)(state did not waive its immunity from suit for post-confirmation activities by filing a claim).

Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004)(Indian tribe's sovereign immunity abrogated by 106(a)).

State Bd. of Equalization v. Harleston (In re Harleston), 331 F.3d 699 (9th Cir. 2003)(when state agency files proof of claim, it waives immunity to estate's claims against it arising out of same transaction or occurrence as state's claim).

Balsler v. Dep't of Justice, 327 F.3d 903 (9th Cir. 2003)(US Trustee is expressly excluded from 106 waiver of sovereign immunity by definition under 101(27)).

Arizona v. Bliemeister (In re Bliemeister), 296 F.3d 858 (9th Cir. 2002)(state had waived sovereign immunity claim by not raising it until it heard court's initial negative viewpoint; sovereign immunity cannot be used in as a tactical weapon).

Goldberg v. Ellett (In re Ellett), 254 F.3d 1135 (9th Cir. 2001)(sovereign immunity did not bar proceeding for injunctive relief against a state trying to collect discharged income taxes).

Schulman v. State of Cal., 237 F.3d 967 (9th Cir. 2001)(applied "logical relationship" test to determine whether filed proofs of claim arose out of same transaction or occurrence to establish waiver of sovereign immunity).

Mitchell v. Franchise Tax Bd., State of Cal. (In re Mitchell), 209 F.3d 1111 (9th Cir. 2000)(chapter 7 debtors violated state's sovereign immunity when they filed an adversary proceeding against state agencies to determine dischargeability of debt; a state must unequivocally consent to federal jurisdiction).

California Franchise Tax Bd. v. Jackson (In re Jackson), 184 F.3d 1046 (9th Cir. 1999)(state taxing authority waived its 11th Amendment rights when it filed a claim).

Tuli v. Republic of Iraq, 172 F.3d 707 (9th Cir. 1999)(foreign states can longer assert sovereign immunity for certain actions under Bankruptcy Code).

Confederated Tribes of the Colville Reservation Tribal Credit v. White (In re White), 139 F.3d 1268 (9th Cir. 1998)(agency that administered tribal trust monies waived its sovereign immunity by acknowledging claim and participating actively in plan confirmation issues).

HAL, Inc. v. U.S. (In re HAL, Inc.), 196 B.R. 159 (Bankr. 9th Cir. 1996)(government did not waive sovereign immunity until it actually filed claim).

- Wilzig v. Lopez (In re Lopez)*, 192 B.R. 539 (Bankr. 9th Cir. 1996)(where court misleads creditor to late file complaint, equitable powers may be used to hold it timely).
- Doe v. U.S.*, 58 F.3d 494 (9th Cir. 1995)(as a matter of law, for purposes of waiver of sovereign immunity and setoff, all U.S. agencies except those acting in private capacity are a single governmental unit).
- Richardson v. Mt. Adams Furniture (In re Greene)*, 980 F.2d 590 (9th Cir. 1992), *cert. denied*, 114 S. Ct. 681 (1994)(sovereign immunity was valid defense by business owned by Indian tribe to a preference action).
- Sullivan v. Town & Country Home Nursing Services, Inc. (In re Town & Country Home Nursing Services, Inc.)*, 963 F.2d 1146 (9th Cir. 1992)(sovereign immunity waived when governmental entity files claim or offsets postpetition debt against its prepetition claim).
- Pearson v. U.S. (In re Pearson)*, 917 F.2d 1215 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 1291 (1992)(cannot recover monetary damages against the federal government for stay violation).

Tenth Circuit Annotations

- Franklin Sav. Corp. v. United States (In re Franklin Sav. Corp.)*, 385 F.3d 1280 (10th Cir. 2004)(waiver of sovereign immunity is limited to those actions which are cognizable outside bankruptcy and not barred by defenses such as limitations).
- Innes v. Kansas State Univ. (In re Innes)*, 184 F.3d 1275 (10th Cir. 1999)(state agent acting with proper authorization can effectuate a waiver of immunity by filing a proof of claim or initiating an adversarial action in federal court; KSU knowingly and voluntarily waived its immunity by agreeing, as a prerequisite to its participation in the Perkins Loan program, to undertake certain actions in federal bankruptcy court).
- Wyoming DOT v. Straight (In re Straight)*, 143 F.3d 1387 (10th Cir. 1998)(WY Department of Transportation is the same “governmental unit” as its sister state agencies for the purpose of applying waiver of sovereign immunity under 106(b); immunity validly waived by filing claims related to debtor’s business, as was debtor’s claim against WY DOT).
- United States v. Richman (In re Talbot)*, 124 F.3d 1201 (10th Cir. 1997)(§106(a) of the Code specifically waives the United States’ sovereign immunity with respect to §1327, in this case to determine treatment of tax claim).

§ 107. Public access to papers

(a) Except as provided in subsections (b) and (c) of this section and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

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(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28—

(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

(B) shall not disclose information specifically protected by the court under this title.

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Ninth Circuit Annotations

Ferm v. U.S. Trustee (In re Crawford), 194 F.3d 954 (9th Cir. 1999)(nonattorney bankruptcy petition preparer's required disclosure of social security number did not violate constitutional right to informational privacy).

§ 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Fifth Circuit Annotations

Stanley v. Trinchard, 579 F.3d 515 (5th Cir. 2009)(Sec. 108(a) extended period for trustee to sue based on attorney malpractice for 2 years, preempting La. law).

Ramming v. United States, 281 F.3d 158 (5th Cir. 2001)(the 60 day tolling period in subsection (b) applies to the filing of an administrative FTCA claim rather than the 2 year tolling period in subsection (a) which applies only to bringing suit in court).

Browning Mfg. v. Mims (In re Coastal Plains, Inc.) 179 F.3d 197 (5th Cir. 1999)(under TX law a cause of action generally accrues when the wrongful act effects an injury; discovery rule may defer limitations if injury is inherently undiscoverable).

Rogers v. Corrosion Prods. Inc., 42 F.3d 292 (5th Cir. 1995), *cert. denied*, 115 S.Ct. 2614 (§ 108(c) extends the period in which a party must file suit for 30 days after the stay is no longer in effect).