Professor Kenneth N. Klee and Whitman L. Holt on

Judge Neil M. Gorsuch and Bankruptcy Law

2017 Emerging Issues 7505

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Introduction

On January 31, 2017, President Donald J. Trump nominated Judge Neil M. Gorsuch to be appointed to the Supreme Court of the United States as an Associate Justice and the replacement for Justice Antonin Scalia. Judge Gorsuch has served as a judge of the United States Court of Appeals for the Tenth Circuit since August 2006. During his approximately 10 and a half years as a circuit judge, Judge Gorsuch has written more than 750 published and unpublished decisions.

Among Judge Gorsuch's opinions are 13 decisions regarding issues of bankruptcy or insolvency law.[1] This analysis synthesizes 10 lessons that can be observed in those decisions regarding Judge Gorsuch's approach to bankruptcy and insolvency issues, including his apparent methodology when interpreting the Bankruptcy Code. Although the authors think it unlikely that Judge Gorsuch's bankruptcy jurisprudence will be a focus of, or even mentioned during, his Senate confirmation process, his bankruptcy-related decisions nevertheless should be of interest to bankruptcy practitioners seeking insight about how a confirmed Justice Gorsuch may approach bankruptcy issues, as well as to those analyzing his judicial approach more broadly.

Lessons Learned

1. Judge Gorsuch focuses intensely on the text of the Bankruptcy Code. Given widespread accounts of Judge Gorsuch's position as a textualist in the mode of Justice Scalia, it is no surprise that his opinions requiring interpretation of the Bankruptcy Code are intensely focused on the text of the statute, which is often read against the background of interpretative canons as recited by the Supreme Court. *See, e.g.*, *Woolsey v. Citibank, N.A. (In re Woolsey)*, 696 F.3d 1266, 1272-74; 2012 U.S. App. LEXIS 18597 (10th Cir. 2012); *United States v. Dawes (In re Dawes)*, 652 F.3d 1236, 1239-42; 2011 U.S. App. LEXIS 12477 (10th Cir. 2011), *cert. denied*, 566 U.S. 1017 (2012); *Morris v. St. John Nat'l Bank (In re Haberman)*, 516 F.3d 1207, 1210-12; 2008 U.S. App. LEXIS 3755(10th Cir. 2008). Judge Gorsuch has rejected interpretations that would introduce multiple meanings or contextual flexibility to statutory text. *E.g.*, *Woolsey*, 696 F.3d at 1277 (noting that although "giving a term different meanings in different but related statutes is one thing and disfavored enough, in recent years the Supreme Court has suggested that giving a *single* use of a term different meanings is another thing altogether, a ploy not just frowned upon but methodologically incoherent and categorically prohibited").

2. Judge Gorsuch will look beyond the text to various other authorities when analyzing the issues presented. Although Judge Gorsuch begins with the text governing the issue before him, his

1 The Appendix of Decisions at the end of this analysis summarizes the issue presented and holding of each decision.

opinions freely look to a range of sources—including treatises, articles, amicus briefs, and even legislative history—when analyzing issues. *See, e.g.*, *Loveridge v. Hall (In re Renewable Energy Dev. Corp.)*, 792 F.3d 1274, 1278-82; 2015 U.S. App. LEXIS 11957(10th Cir. 2015) (multiple law review articles); *Woolsey*, 696 F.3d at 1274 n.1 & 1275-79 (law review articles, legislative history, treatise, and amicus brief); *TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495, 497 2011 U.S. App. LEXIS 22833 (10th Cir. 2011) (treatise); *Dawes*, 652 F.3d at 1243 (legislative history); *Haberman*, 516 F.3d at 1210-11 (legislative history and treatise). Judge Gorsuch may be somewhat more prone to look to legislative history or other authorities for guidance than was Justice Scalia.

3. Judge Gorsuch respects the principle of *stare decisis*, even as to questionable decisions. Judge Gorsuch's opinions make clear that he feels bound by Supreme Court precedent, even when the prior decisions may have been flawed and heavily criticized by courts and commentators. For example, in the *Woolsey* case, Judge Gorsuch engaged in a vigorous discussion of the analytic shortcomings in the Supreme Court's *Dewsnup* opinion, but nevertheless concluded that the decision is binding. *See* 696 F.3d at 1274 ("But this much still is clear. Right or wrong, the Dewsnuppian departure from the statute's plain language is the law. It may have warped the bankruptcy code's seemingly straight path into a crooked one. It may not be infallible. But until and unless the Court chooses to revisit it, it *is* final."); *see also Renewable Energy Dev. Corp.*, 792 F.3d at 1281 ("And it can come as no surprise that a court's well-reasoned confession its ruling runs afoul of Supreme Court precedent is enough to send us packing the other direction.").

4. Judge Gorsuch has a propensity to note interesting and difficult issues related to those directly presented, but to leave them unresolved. Several of Judge Gorsuch's opinions engage in an extended and thoughtful discussion of issues implicated by the case before the court, but those opinions generally do not take a firm position on the issues if doing so is not necessary to resolve the dispute actually before the court. *See, e.g.*, *Renewable Energy Dev. Corp.*, 792 F.3d at 1278-84 (providing a robust discussion of the Article III issues that arise in the bankruptcy context, but ultimately stating that these "questions remain for tomorrow"); *Woolsey*, 696 F.3d at 1278-79 (exploring issues regarding the proper construction of Bankruptcy Code section 1322(b)(2), but leaving "that statute and meaning for another day when a bankruptcy petitioner actually wants to pursue the question").

5. Judge Gorsuch values harmonization of the law, particularly across circuits. Judge Gorsuch often appears focused on whether the conclusion reached in a particular case fits with the conclusions reached by other federal courts of appeals. *See, e.g.*, *Renewable Energy Dev. Corp.*, 792 F.3d at 1281 ("Notably, many circuits to come this way before us have read *Stern* much as we do."); *Woolsey*, 696 F.3d at 1269 ("This court's precedent, moreover, finds analogies of various sorts in most other circuits."). Indeed, the *raison d'être* of one of Judge Gorsuch's opinions was to overrule (with en banc approval) prior Tenth Circuit decisions that were out of step with the law in nine other circuits. *See TW Telecom Holdings Inc.*, 661 F.3d 495.

6. Judge Gorsuch places a particular emphasis on issues of jurisdiction and procedure. Many of Judge Gorsuch's opinions engage in lengthy threshold discussions of federal jurisdiction or appellate rules before reaching the merits. *See, e.g.*, *Woolsey*, 696 F.3d at 1268-72 (lengthy discussion, involving "the application of some elbow grease," to resolve "a jurisdictional snarl" under Judicial

Code section 158); *Taumoepeau v. Mfrs. & Traders Trust Co. (In re Taumoepeau)*, 523 F.3d 1213, 1216-18; 2008 U.S. App. LEXIS 8716(10th Cir. 2008) (several-page discussion of the "separate document rule" and its appellate import preceding a three-paragraph resolution of the merits). Judge Gorsuch has made clear that principles of jurisdiction and procedure should control regardless of the practical consequences to the parties. *See C & M Props., L.L.C. v. Burbidge (In re C & M Props., L.L.C.)*, 563 F.3d 1156, 1167-68; 2009 U.S. App LEXIS 9106(10th Cir. 2009) ("We are loathe to add to the duration and complexity of an already overlong and overly complex matter, let alone to deliver the unwelcome news that the parties have been litigating in vain in federal court for over four years based on a mistaken premise. One might hope, if perhaps against hope, that the parties will see their way to ending voluntarily this tortuous, nearly decade-long dispute. But whatever the parties do, one thing is certain: they cannot do it in federal court."). Procedural defects have also doomed multiple *pro se* bankruptcy appeals. *See Wallin v. Martel (In re Martel)*, 328 Fed. Appx. 585; 2009 U.S. App. LEXIS 10407 (10th Cir. 2009) (failure to pay filing fee); *Tollefsen v. US Bank Nat'l Ass'n (In re Tollefsen)*, 315 Fed. Appx. 683; 2009 U.S. App. LEXIS 4190(10th Cir. 2009) (failure to prepare an adequate BAP appendix). Although he acknowledges that *pro se* litigants must be given the benefit of the doubt, Judge Gorsuch does not hesitate to hold their feet to the fire if they violate the rules. *See Tollefsen*, 315 Fed. Appx. at 685 ("That Mr. Tollefsen has proceeded pro se throughout his appeals cannot affect our disposition. While we must construe his filings liberally, as we have noted repeatedly, pro se parties must follow the same rules of procedure that govern other litigants." (citation omitted)).

7. Like Chief Justice Roberts, Judge Gorsuch attaches great importance to Article III limitations, but acknowledges the difficulty of the legal principles regarding this issue. Among the more notable bankruptcy-related opinions from the Supreme Court in recent years have been Chief Justice Roberts' opinions underscoring the limitations that Article III of the Constitution places on the judicial power of bankruptcy judges and the overarching public principles animating Article III. *See Stern v. Marshall*, 564 U.S. 462, 180 L. Ed. 2d 475; 2011 U.S. LEXIS 4791 (2011); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1950-60, 191 L. Ed. 2d 911; 2015 U.S. LEXIS 3405 (2015) (Roberts, C.J., dissenting). Judge Gorsuch appears to place similar importance on the separation of powers concerns. *See Renewable Energy Dev. Corp.*, 792 F.3d at 1278 (explaining how Article III operates as a promise "that the federal government will never be allowed to take the people's lives, liberties, or property without a decisionmaker insulated from the pressures other branches may try to bring to bear" and noting how "[t]o this day, one of the surest proofs any nation enjoys an independent judiciary must be that the government can and does lose in litigation before its 'own' courts like anyone else"). Nevertheless, Judge Gorsuch acknowledges the lack of clarity in this area, as well as the existence of thorny issues left to be resolved. *See id.* ("Bankruptcy courts bear the misfortune of possessing ideal terrain for testing the limits of public rights doctrine and they have provided the site for many such battles. Even today, it's pretty hard to say what the upshot is." (citations omitted)); *id.* at 1281-82 (previewing the "colorable argument that Article III should be read in light of [the] historical practice" that divided bankruptcy jurisdiction between summary and plenary proceedings, but ultimately declining "to venture farther into this dark wood without more help from counsel"). If yet another bankruptcy-related Article III dispute finds its way before the Supreme Court, this may be a topic about which a Justice Gorsuch will have much to write.

8. Judge Gorsuch will hold the parties to the positions they advocate or decline to advocate. Although Judge Gorsuch appears motivated to correctly apply the law in the cases before him, his opinions make clear that he will not pursue potentially winning lines of analysis when the parties in the case affirmatively disclaim those theories or did not adequately preserve them below. *See, e.g.*, *Woolsey*, 696 F.3d at 1278-79; *Patriot Mfg., LLC v. Hartwig, Inc.*, 613 Fed. Appx. 753, 754; 2015 U.S. App. LEXIS 14696 (10th Cir. 2015). Thus, if counsel has a potentially winning argument, he or she should press the point before Judge Gorsuch. *Cf. Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995; 2015 U.S LEXIS 3579 (2015).

9. At least on the bankruptcy front, Judge Gorsuch is a consensus builder. All of Judge Gorsuch's bankruptcy-related decisions are 3-0 opinions without any of the other panel members feeling the need to write additional opinions. One could surmise that Judge Gorsuch is effective in crafting his opinions in a fashion that resolves any concerns his judicial colleagues may have about joining those opinions *in toto*, again at least on the bankruptcy front.

10. Judge Gorsuch has a distinctive writing style that is filled with entertaining statements. Judge Gorsuch's writing is largely built on using a narrative style that avoids littering the discussion with citations to the record or the like. The writing is clear and the sentences are often short and punchy. Many of the opinions include entertaining observations about bankruptcy or other issues generally, such as the following examples:

- "Indeed, in the world of bankruptcy proceedings—a world where cases continue on in many ways for many years and lack the usual final judgment of a criminal or traditional civil matter—confirmation of an amended plan is as close to *the* final order as any the bankruptcy judge enters." *Woolsey*, 696 F.3d at 1269 (internal quotation marks omitted).
- "Not only is the rule against multiple interpretations of the same statute well entrenched, it is of special importance. Without it, even a statutory term used but a single time in a single statute risks never settling on a fixed meaning. And this surely would leave citizens at sea, only and always guessing at what the law might be held to mean in the unique 'fact situation' of the next case—a result in no little tension with the rule of law itself." *Woolsey*, 696 F.3d at 1277-78.
- "How is that the Daweses think they can defeat the IRS's tax claim? For the most part, of course, a bankruptcy filing offers scarce relief from the tax man. Other creditors may be neglected, but rarely the IRS." *Dawes*, 652 F.3d at 1238.
- "Once the district court remanded C&M's malpractice claim to state court, it and the bankruptcy court lost authority to adjudicate the claim's merits, including the merits of Burbidge's judicial estoppel defense. C&M's malpractice claim resides in state court and any further litigation by the parties in federal court is beside the point, something like playing 'air guitar' rather than the real thing, a sort of mimesis of litigation rather than an actual case or controversy." *C & M Props., L.L.C.*, 563 F.3d at 1161-62.

Conclusion

Viewed through the lens of his bankruptcy-related decisions, Judge Gorsuch appears to be a thoughtful judge who writes opinions that carefully develop and resolve the issues presented. With the exception of *Dawes*, it is difficult to disagree with any of his decisions as a matter of bankruptcy law or policy (and, in the case of *Dawes*, the statutory drafting admittedly could have more clearly given effect to the apparent congressional policy purpose, as illustrated by the Supreme Court's subsequent decision in *Hall v. United States*, 132 S. Ct. 1882; 2012 U.S. LEXIS 3781 (2012)). As such, it is unsurprising that none of the decisions engendered a dissent.

Of course, these 13 decisions are a small fraction of the more than 750 decisions authored by Judge Gorsuch, and bankruptcy law plays a *de minimis* (if any) role in the Supreme Court confirmation process. The authors express no view about whether Judge Gorsuch will be confirmed as an Associate Justice of the Supreme Court of the United States. Nevertheless, Judge Gorsuch's bankruptcy-related opinions do evince the work of a jurist seeking to correctly resolve the issues framed by the parties before him using established legal principles and interpretative tools.

APPENDIX OF DECISIONS BY JUDGE NEIL M. GORSUCH

Published Opinions

1. *Loveridge v. Hall (In re Renewable Energy Dev. Corp.)*, 792 F.3d 1274; 2015 U.S. App. LEXIS (10th Cir. 2015)

The court concludes that claims relating to the alleged breach of professional duties owed by a removed bankruptcy trustee were "*Stern* claims" that cannot be finally adjudicated by a non-Article III bankruptcy court (but could be the subject of a report and recommendation to the district court). The opinion engages in a robust discussion of the Supreme Court's Article III jurisprudence—including the recent trilogy of *Stern*, *Arkison*, and *Wellness*—noting a variety of difficult issues that remain about the notion that bankruptcy matters are encompassed by the "public rights" exception to Article III. The court suggests that perhaps "the constitutional line falls along something like the old summary-plenary divide" in bankruptcy jurisdiction under prior bankruptcy acts, but ultimate does not "venture farther into this dark wood without more help from counsel." *See* 792 F.3d at 1282; *cf.* Kenneth N. Klee & Whitman L. Holt, *Bankruptcy and the Supreme Court: 1801–2014,* at 167 (West Academic 2015) (explaining how "although the core/non-core distinction is not identical with the jurisdictional scheme under the Bankruptcy Act of 1898, the older jurisdictional decisions may retain vitality," and thus "knowledge of the Act precedents may prove persuasive in resolving future jurisdictional disputes, even though not binding under the jurisdictional scheme of the Bankruptcy Code"). The opinion obliquely suggests that 28 U.S.C. § 157(a) may allow district courts to refer matters to bankruptcy courts when the basis for federal jurisdiction is something other than 28 U.S.C. § 1334, *see* 792 F.3d at 1283-84, although it does not affirmatively endorse that principle (which would require reading the words of Judicial Code section 157(a) more broadly than the same words in section 1334).

One issue not considered by the court is whether the "Barton doctrine" from *Barton v. Barbour*, 104 U.S. (14 Otto) 126, 26 L. Ed. 672; 1881 U.S. LEXIS 1980 (1881), which generally requires that lawsuits against court-supervised officers such as bankruptcy trustees be channeled through the supervising courts, was implicated by the claims asserted against the removed trustee. If some or all of the claims fell within the scope of the Barton doctrine, then that conclusion might be used to ground the final adjudicatory power of a bankruptcy court in its capacity as the supervising court. It may be that this issue was not raised in the briefing and did not independently occur to the court, and thus understandably went unaddressed in the opinion.

2. *Woolsey v. Citibank, N.A. (In re Woolsey)*, 696 F.3d 1266; 2012 U.S. App. LEXIS 18597 (10th Cir. 2012)

The court addresses a dispute about whether a wholly underwater second mortgage may be stripped off in a chapter 13 case. The debtors oddly rested their entire position on Bankruptcy Code section 506(d) and affirmatively refused to ground their desired result in Bankruptcy Code section 1322(b)(2) despite a NACBA amicus brief that "ably argued the point." *See* 696 F.3d at 1279. The court held the debtors to their stated position. *See id.* ("There's a potentially promising argument for the Woolseys, one suggested by their own amicus, but it is one they want no part of. Whatever our power to tackle the § 1322(b)(2) question in these circumstances, nothing *requires* us to do so, to foist on litigants arms they so avidly refuse to take up in the adversarial arena. So in deference to their wishes, we opt today against forcing a § 1322(b)(2) argument onto the unwilling Woolseys and leave that statute and meaning for another day when a bankruptcy petitioner actually wants to pursue the question."). Because the court concludes that the debtors' interpretation of section 506(d) is precluded by the Supreme Court's decision in *Dewsnup v. Timm*, 502 U.S. 410, 116 L. Ed. 2d 903; 1992 U.S. LEXIS 375 (1992) (despite substantial grounds to question the holding of *Dewsnup*, *see* 696 F.3d at 1272-74), the court held that the debtors are unable to strip off the underwater mortgage. *See id.* at 1278 ("We do not doubt a strong argument can be made that the language and logic of § 506 permit the Woolseys to void not only Citibank's lien but any lien to the extent it is unsupported by value in the collateral. But we fail to see any principled way we might, as lower court judges, get there from here. *Dewsnup* may be a gnarled bramble blocking what should be an open path. But it is one only the Supreme Court and Congress have the power to clear away.").

The analytical approach taken in this case—holding the debtors to their litigation position and following *Dewsnup* notwithstanding misgivings about the correctness of that opinion—is nearly identical to the approach the Supreme Court itself subsequently took in *Bank of America, N.A. v. Caulkett*, 135 S. Ct. 1995; 2015 U.S. LEXIS 3579 (2015).

3. *TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495; 2011 U.S. App. LEXIS (10th Cir. 2011)

The court overturns its prior precedent (with en banc approval), bringing itself into alignment with nine other circuit courts and the *Collier* treatise, regarding the application of the automatic stay to appellate proceedings in which the debtor has appealed a judgment entered in litigation against the debtor. From the date of this opinion forward, the rule in the Tenth Circuit is that the automatic

stay operates on all appeals in actions originally brought against the debtor, regardless which side is appealing. *See* 661 F.3d at 497.

4. *United States v. Dawes (In re Dawes)*, 652 F.3d 1236; 2011 U.S. App. LEXIS 124777 (10th Cir. 2011), *cert. denied*, 566 U.S. 1017 (2012)

The court considers the relative priority of taxes arising from the postpetition sale of a farm in a chapter 12 case and concludes that such taxes are not "incurred" by the bankruptcy estate under Bankruptcy Code section 503(b)(1)(B)(i), which means the resulting claims "are not eligible for treatment as unsecured claims under § 1222(a)(2)(A)." *See* 652 F.3d at 1244. This conclusion is supported by a detailed examination of the relevant Bankruptcy Code and Internal Revenue Code provisions. *See id.* at 1240-43.

In a 5-4 decision, the Supreme Court subsequently reached substantially the same conclusion using substantially the same analytic approach. *See Hall v. United States*, 132 S. Ct. 1882, 182 L. Ed. 2d 840 (2012).

5. *United States v. Krause (In re Krause)*, 637 F.3d 1160; 2011 U.S. App. LEXIS 6749 (10th Cir. 2011)

The court reviews and affirms decisions allowing the IRS to avoid as fraudulent transfers assets conveyed to various trusts and shell companies. In the process, the court draws a distinction "between finding an entity to be a nominee holding fraudulently conveyed assets and finding an entity to be the debtor's alter ego under reverse veil piercing doctrine"; nominee status is limited to particular assets, whereas an alter ego is exposed to liability on all its assets generally, including those it may possess in its own right. *See* 637 F.3d at 1165.

The court further enforces "the person aggrieved requirement as a matter of prudential standing" to deny appellate standing to certain individuals who had only an indirect interest in the outcome of the case. *See id.* at 1168-69.

6. *C & M Props., L.L.C. v. Burbidge (In re C & M Props., L.L.C.)*, 563 F.3d 1156; 2009 U.S. App. LEXIS 9106 (10th Cir. 2009)

The court is presented with a procedural quagmire arising from substantial litigation (including multiple rulings and appeals) in a bankruptcy court and a district court, all of which postdated an order remanding the litigation to state court. The court concludes that it—along with the bankruptcy court and the district court—lack jurisdiction over the case after the remand order. The lack of jurisdiction means that "any further litigation by the parties in federal court is beside the point, something like playing 'air guitar' rather than the real thing, a sort of mimesis of litigation rather than an actual case or controversy," and therefore any subsequent federal court "order putatively deciding any aspect of a claim remanded to state court is but an advisory opinion, the expression of stray sentiments by a court powerless to decide anything, or, as one circuit has put it, 'so much hot air.'" *See* 563 F.3d at 1162 (quoting *Daniels v. Liberty Mut. Ins. Co.*, 484 F.3d 884, 888; 2007 U.S. App. LEXIS 9124 (7th Cir. 2007)). The court accordingly determines to "grant a writ of

mandamus and remand this matter to the district court with instructions to vacate all orders entered by it and the bankruptcy court in this case after the . . . remand order." *Id.* at 1168.

The court's closing paragraph notes that the duration and complexity of this litigation "might induce a faint feeling of familiarity in the wards of Jarndyce and Jarndyce" from the Dickens' classic *Bleak House*. *Id.* at 1167 & n.5. Chief Justice Roberts would later use the same metaphor when describing litigation relating to Anna Nicole Smith's bankruptcy case. *See Stern v. Marshall*, 564 U.S. 462, 468, 180 L. Ed. 2d 475; 2011 U.S. LEXIS 4791 (2011).

7. *Taumoepeau v. Mfrs. & Traders Trust Co. (In re Taumoepeau)*, 523 F.3d 1213; 2008 U.S. App. LEXIS 8716 (10th Cir. 2008)

After a lengthy discussion of the "separate document" rule and appellate jurisdiction, the court swiftly disposes of chapter 13 debtors' argument that a "bankruptcy plan was designed to address, or somehow implicitly did address, post-petition arrears and superseded the stipulation designed by the parties, and approved by the court just days earlier, to address those arrears." 523 F.3d at 1219. Accordingly, the court affirmed the bankruptcy court and BAP decisions that the creditor properly foreclosed on the debtors' residence.

8. *Morris v. St. John Nat'l Bank (In re Haberman)*, 516 F.3d 1207; 2008 U.S. App. LEXIS 3755 (10th Cir. 2008)

The court considers the scope of Bankruptcy Code section 551 and holds "that a bankruptcy trustee who successfully avoids a lien pursuant to 11 U.S.C. §§ 544 and 551 preserves for the bankruptcy estate the value of the avoided lien, but does not automatically assume other rights the original lienholder may have against the debtor." 516 F.3d at 1208. The court reaches this conclusion through a close reading of the statutory text and in reliance on "the generally recognized (if sometimes hazardous to define) line between property and contract relations." *See id.* at 1210-12. The court notes that "[i]f the Trustee wishes greater authority, it seems to us his petition must be directed to those who make the law, not those who apply it." *Id.* at 1212.

Unpublished Opinions

1. *Patriot Mfg., LLC v. Hartwig, Inc.*, 613 Fed. Appx. 753; 2015 U.S. App. LEXIS (10th Cir. 2015)

The court declines to consider arguments about judicial estoppel—which were premised on statements and disclosures made during a bankruptcy case—when the appealing party "failed to make them when responding to [a] motion for summary judgment in district court and has, accordingly, forfeited the chance to win reversal using them in this court." 613 Fed. Appx. at 754.

2. *ClearOne Commc'ns, Inc. v. Bowers*, 509 Fed. Appx. 798; 2013 U.S. App. LEXIS 2489(10th Cir. 2013)

In an opinion addressing an array of unrelated issues, the court explains that the automatic stay did not prohibit a district court from assessing an award of fees after the stay had been lifted, even

though some of the fees had been incurred when the stay was in effect. *See* 509 Fed. Appx. at 803. The court further notes in passing that "it may be that the district court could have brought [the debtor] to account for his contempt even while the automatic stay was in place, so long as its main purpose was to punish a contemnor and uphold the dignity of the court rather than to effect the collection of a judgment." *Id.* (citation, internal quotation marks, and alterations omitted).

3. *Wallin v. Martel (In re Martel)*, 328 Fed. Appx. 585; 2009 U.S. App.LEXIS 10407 (10th Cir. 2009)

The court affirms the dismissal of a *pro se* litigant's appeal for failing to pay filing and docketing fees, noting that "[w]hile the dismissal of Mr. Wallin's appeal for a potentially curable procedural fault is unfortunate, the BAP is not free to ignore Congress's direction regarding the proper venue for fee waiver requests and it gave Mr. Wallin more than four months, two written warnings, and very clear directions on how to solve his problem." 328 Fed. Appx. at 586.

4. *Tollefsen v. US Bank Nat'l Ass'n (In re Tollefsen)*, 315 Fed. Appx. 683; 2009 U.S. App. LEXIS 4190 (10th Cir. 2009)

The court affirms the BAP's decision against a *pro se* appellant "based on his failure to provide that court with an adequate appendix," including because his Tenth Circuit appeal brief failed to address the BAP's ruling, which "forfeited his right to a review of the BAP's decision." *See* 315 Fed. Appx. at 685.

5. *Ardese v. DCT, Inc.*, 280 Fed. Appx. 691; 2008 U.S. App. LEXIS 11494 (10th Cir. 2008)

The court affirms the dismissal of litigation claims against a debtor's former employer "because she failed to disclose them as assets during her bankruptcy" case, relying on the principle stated in *Eastman v. Union Pacific Railroad Co.*, 493 F.3d 1151; 2007 U.S. App. LEXIS 16032 (10th Cir. 2007). *See* 280 Fed. Appx. at 692.

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Conference. Professor Klee was included in "The Best Lawyers in America" 2015 edition and has been included for at least 25 years. He was named by *Who's Who Legal* in 2012, 2013, and 2014 as one of the top ten insolvency & restructuring attorneys in the world and was named by *The Legal 500* as one of the top nine leading attorneys in the municipal bankruptcy field for 2014. From 2003 to 2011 he was named by the *Daily Journal* as one of California's Top 100 Lawyers. Professor Klee is an author or co-author of four books: *Bankruptcy and the Supreme Court: 1801*-2014 (with Whitman L. Holt) (West Academic 2015); *Bankruptcy and the Supreme Court* (LexisNexis 2008); *Business Reorganization in Bankruptcy* (West 1996; 2d ed. 2001; 3d ed. 2006; 4th ed. 2012); and *Fundamentals of Bankruptcy Law* (ALI-ABA 4th ed. 1996). He has authored or co-authored 32 law review articles on bankruptcy law. Professor Klee currently represented defendants Anadarko Petroleum Corp. and Kerr McGee in *Tronox v. Anadarko* (Bankr. S.D.N.Y). During the summer of 2010, Professor Klee served as the appointed Examiner in the Tribune chapter 11 cases. He also represented Jefferson County, Alabama, in its successful Chapter 9 case from 2011 to 2014. Professor Klee also serves clients as an expert witness, mediator, arbitrator, attorney, or consultant in his Chapter 11 business reorganization practice.

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The views stated herein are those of the authors individually, not of the UCLA School of Law; Klee, Tuchin, Bogdanoff & Stern LLP; or any client.