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Creditor Granted Derivative Standing to Pursue § 544(b) Action. Creditor alleged in a pre-petition lawsuit that debtor's majority owners, who also held majority interests in two other dealerships, schemed to transfer debtor's property to dealership that had no obligation to creditor. Later, creditor filed an involuntary chapter 7 petition against debtor. Creditor sought court authority to pursue fraudulent transfer claims under § 544(b) after the trustee, citing a lack of funds, declined to do so. Siding with courts that have addressed the issue, court held that *Hartford Underwriters* does not bar a grant of derivative standing. Courts had been doing so for more than a century and Congress is presumed aware of the practice in enacting the 1978 Code. Also, § 503(b)(3)(B) would be rendered meaningless if it did not apply to actions brought derivatively by creditors. Finally, court held that derivative standing is not limited to chapter 11 cases, but applies to those filed under chapter 7 as well. *Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair, Inc. (In re Trailer Source, Inc.)*, 555 F.3d 231 (6th Cir. 2009).

Employer Not Liable under WARN Act. Where employer's largest customer was company with whom employer had 31-year relationship, company expressed interest in continuing relationship despite disruptions in employer's operations and bank remained positive about new loan to employer, company's termination of employer as primary supplier to company was unforeseeable business circumstance that excepted employer from WARN Act requirements. *Gross v. Hale-Halsell Co.*, 554 F.3d 870 (10th Cir. 2009).

Creditor as Non-Statutory Insider. In a matter of first impression, court held that actual control of debtor is not a requirement in finding creditor to be non-statutory insider of debtor. Affirming bankruptcy court's ruling against defendant, court agreed that, among other things, transactions between parties were not at arms' length, defendant coerced debtor into purchasing equipment well in advance of when it would be needed, if ever, and defendant used debtor as a captive buyer in order to inflate defendant's own reported revenue. Therefore, bankruptcy court did not err in avoiding payment made to defendant more than 90 days before the petition or in equitably subordinating a portion of defendant's claims against the estate. *Shubert v. Lucent Techs., Inc. (In re Winstar Communs., Inc.)*, 554 F.3d 382 (3d Cir. 2009).

Resetting of Time to Appeal/Sanctions Upheld. Attorney's appeal of sanctions judgment against him was filed beyond 30-day appeal period, but within such period attorney filed a motion for reconsideration in the district court, which was denied. Defendants contended that attorney's Rule 59 motion should have no bearing on the time to appeal because it lacked merit. Court rejected defendants' argument, holding that the

filing of a Rule 59 or Rule 60 motion will reset the 30-day appeal period without regard to the motion's substance. *Held*, further, that a violation of § 1927 is an intentional tort and, therefore, ability of sanctioned attorney to pay is irrelevant. *Shales v. General Chauffeurs, Sales Drivers & Helpers Local Union No. 330*, 2009 U.S. App. LEXIS 4237 (7th Cir. Feb. 27, 2009).

Limit on Immunity of Court-Appointed Receiver. Receiver, appointed in contentious divorce to collect assets in which husband held ownership interest, seized corporation in which husband was 25 percent shareholder. Corporation sued receiver, but lower court dismissed complaint for failure to state a claim on ground that receiver enjoyed absolute immunity. *Held*, receiver enjoys quasi-judicial immunity only when acting within scope of his authority. On Rule 12(b)(6) motion to dismiss, facts are to be taken as true and where facts set forth in complaint allege receiver exceeded scope of authority, dismissal on basis of immunity is improper. *Teton Millwork Sales v. Schlossberg*, 2009 U.S. App. LEXIS 2578 (10th Cir. Feb. 10, 2009).

Failure to Disclose Retainers Mandates Disgorgement. Law firm, appointed as debtor's special litigation counsel, failed to disclose two of three retainers received from debtor's father, and drew down from retainers amounts owing for pre- and post-petition work without court approval. Firm later filed fee application requesting approval of amounts already drawn and compensation for additional services performed. Court ordered termination of firm's representation of debtor because failure to disclose pre-petition retainer and work rendered it not disinterested. Although court stated that firm did not act with callous disregard of disclosure rules, fee application was denied in its entirety and firm was ordered to disgorge amounts drawn from retainer. That retainers were received from debtor's father rather than debtor was irrelevant; retainer was held in trust for debtor and was property of the estate irrespective of its source. *In re Stone*, 2009 Bankr. LEXIS 280 (Bankr. W.D. Ky. Mar. 3, 2009)