

**TACR Quarterly  
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**Preemption of State Statutes of Repose.** Trustee sued debtor's law firm for pre-petition negligence within the limitations period of § 108 but beyond the one-year period afforded by the state's statute of repose. Defendant argued that, unlike a limitations period, which bars enforcement of a legal right, the expiration of a statute of repose extinguishes the substantive right itself and § 108 cannot revive that right. Noting an absence of authority on point, court held that § 108 preempted the statute of repose. Bankruptcy law takes precedence over state law by virtue of bankruptcy and supremacy clauses, and broad language and policy of § 108 demonstrate intent that it reaches "any action," including those controlled by statutes of repose. *Stanley v. Trincharad*, 579 F.3d 515 (5<sup>th</sup> Cir. 2009).

**Section 502(d) Not a Bar to § 503(b) Expenses.** In a matter of first impression, court held that § 502(d) does not bar allowance of post-petition administrative expenses under § 503(b). Looking at relevant statutory provisions, especially §§ 502 and 503, including the distinctions between filing a proof of claim and requesting administrative expenses, the court determined that both the language and structure of the Code evidence an intent that administrative expenses not be subject to disallowance under § 502(d). In a footnote, the court expressly mentioned that it was not addressing the interaction between § 503(b)(9), the expense priority for goods delivered pre-petition, and § 502(d), in part because the former was inapplicable to the underlying case. *ASM Capital, LP v. Ames Dep't Stores, Inc. (In re Ames Dep't Stores, Inc.)*, 2009 U.S. App. LEXIS 20764 (2d Cir. Sept. 18, 2009).

**Revocation of *Pro Hac Vice* Admission.** Attorney was admitted *pro hac vice* as plaintiff's lead counsel in a denial of discharge proceeding. Once admitted, the attorney engaged in a pattern of inappropriate behavior toward the presiding judge, including rolling his eyes and making faces while the judge was speaking, engaging in inappropriate and disrespectful arguments with the judge and refusing to comply with a court order directed at the attorney's behavior. *Pro hac vice* admission was revoked; plaintiff's assertion that the attorney would withdraw did not render the court's revocation action moot. *In re Hake*, 2009 U.S. App. LEXIS 18171 (6<sup>th</sup> Cir. Aug. 14, 2009).

**Company Name Lien Searches.** Debtor granted lender a security interest on all assets, including accounts receivable, which debtor agreed it would not sell for less than face value. Subsequently, debtor entered into a factoring agreement. Although factor omitted "Inc." from its lien search, results produced a filing on debtor's full name, including "Inc.," but not lender's security interest. In priority dispute between factor and lender, bankruptcy court found factor's failure to search full name amounted to lack of good faith under the U.C.C. *Held*, a commercially reasonable lien search is a search of the records of the relevant state or county

filing office, under the debtor's correct name, using the filing office's standard search logic, which may not require inclusion of "Inc." or similar words or abbreviations at the end of the company's name. *Wawel Savings Bank v. Jersey Tractor Trailer Training, Inc. (In re Jersey Tractor Trailer Training, Inc.)*, 580 F.3d 147 (3d Cir. 2009).

**Auctioneer Liability for Sanctions.** Bidder at failed auction sought sanctions against the estate's auctioneer alleging that auctioneer engaged in improper conduct by failing to comply with certain provisions of the bidding procedures approved by the court. Because sanctions motion alleged civil contempt for auctioneer's violation of an outstanding court order, movant bore burden by clear and convincing standard, which it failed to do. Confusion arising in bidding process could not be attributed to auctioneer and auctioneer's failure to start bidding at correct amount or to accept proper bid increments did not harm movant and was cured by debtor's restart of auction process. *In re New River Boat Club, Inc.*, 2009 Bankr. LEXIS 3067 (Bankr. S.D. Fla. Sept. 30, 2009).

**Sale of Chrysler's Assets.** Following the Supreme Court's refusal to intervene in the sale of Chrysler's assets, the Second Circuit issued a written opinion on its earlier ruling affirming the bankruptcy court's approval of the sale. The court rejected movants' argument that the sale was an impermissible *sub rosa* plan of reorganization, finding that Chrysler, which had found just one potential buyer, shuttered its plants and was burning cash, fit *Lionel's* "melting ice cube" paradigm for § 363 sales. The court also held that plaintiffs lacked standing to challenge the use of TARP funds by the government to fund Chrysler's bankruptcy. *Ind. State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC)*, 576 F.3d 108 (2d Cir. 2009).