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Recent Supreme Court Decisions

The Court ruled on fee enhancements in a non-bankruptcy case, holding that there is a strong presumption that the lodestar amount is sufficient. Fee enhancements beyond the lodestar are appropriate only in those rare circumstances when some other factor should be considered. The burden is on the party seeking the enhancement to identify a factor that the lodestar does not adequately take into account and proving with specificity that an enhanced fee is justified. *Perdue v. Kenny A.*, ___ U.S. ___, 130 S. Ct. 1662 (2010).

The meaning of “projected disposable income” in chapter 13 cases was clarified, with the Court holding that a mechanical application of the means test was not required to fix the amount of a debtor’s monthly plan payments. Bankruptcy courts may account for changes in income or expenses that are “known or virtually certain” at plan confirmation. *Hamilton v. Lanning*, ___ U.S. ___, 2010 U.S. LEXIS 4568 (June 7, 2010).

Bankruptcy Rule 4003’s time limit for a trustee to object to a debtor’s claimed exemption does not apply to the value attributed to the exemption. Where a debtor listed the value of an exemption as the value of the property, she did not sufficiently express her intent to fully exempt the property. The trustee was therefore permitted to recover the value in excess of the amount claimed as exempt. *Schwab v. Reilly*, ___ U.S. ___, 2010 U.S. LEXIS 4974 (June 17, 2010).

Workers’ Compensation and Administrative Priority. Although parties agreed that workers’ compensation insurance benefitted estate, expense was not actual because insurer had not made payment on any claims. Binding precedent requires that insurers’ claims become actual only after claim is paid and insurer reimbursement is sought, which could be years after confirmation of plan. *Nat’l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835 (6th Cir. 2010).

Collection of Confirmed Plan Debt. Pre-petition debt had been restructured and plan provided terms for payment of debt; creditor, therefore, was not prohibited from drawing on post-confirmation letter of credit to satisfy plan debt notwithstanding pre-confirmation order barring it from collecting on pre-petition invoices due and owing. *Elec. Reliability Council of Texas, Inc. v. May (In re Texas Commercial Energy)*, 607 F.3d 153 (5th Cir. 2010).

Avoidance of Preferential Security Interest. Based on response of Kentucky Supreme Court to certification of question on state law perfection on certificates of title, court held perfection vehicle does not occur until physical notation is made on the title. Submission of required

paperwork and fee to the clerk does not effectuate perfection. *Brock v. Branch Banking & Trust Co. (In re Johnson)*, 2010 U.S. App. LEXIS 13588 (6th Cir. July 2, 2010).

Preservation of Security Interest in Transferred Funds. Where debtor placed proceeds of accounts receivable in which lender held a security interest into debtor's checking account and debtor transferred to trustee full balance of checking account as of the petition date, such transfer did not terminate security interest. Although transfer may affect lender's right of setoff, there was no waiver or avoidance of the underlying security interest. *Limor v. First Nat'l Bank of Woodbury (In re Cumberland Molded Products, LLC)*, 2010 Bankr. LEXIS 1853 (6th Cir. B.A.P. June 23, 2010).

Sale of § 544(b) Causes of Action. Bankruptcy court erred in determining that reverse veil piercing and state law fraudulent transfer causes of action were not permitted to be sold by estate to creditor; those causes of action are property of the estate by virtue of § 544(b) that may be sold if trustee articulates business justification or sound business reasons for proposed sale. Bankruptcy court abused its discretion in approving settlement of claims over objection of major creditor, which offered to purchase causes of action at price significantly higher than amount of settlement. *Cadle Co. v. Mims (In re Moore)*, 2010 U.S. App. LEXIS 11118 (5th Cir. June 2, 2010).