Citation: **First Financial Bank v. Clark,** 18-390 (N.D. Ind. Mar. 19, 2021)

Issue: Whether the 30-day automatic stay for repeat bankruptcy filers under § 362(c)(3)(A) ends entirely when that time runs or terminates solely as to the debtor and his property but not as to the bankruptcy estate's property.

Statute: "[I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, . . . the stay under subsection (a) *with respect to* any action taken *with respect to* a debt or property securing such debt or with respect to any lease shall terminate *with respect to* the debtor on the 30th day after the filing of the later case." 11 U.S.C. § 362(c)(3)(A)

Case Summary:

Lawrence Clark filed a voluntary Chapter 13 petition one month after his previous case was dismissed for failure to comply with his confirmed plan. When the debtor failed to move to continue his automatic stay, it terminated 30 days later under 11 U.S.C. § 362(c)(3)(A). The debtor was indebted to First Financial Bank (FFB) who held a mortgage on his real property. FFB held a prepetition state court judgment and decree of foreclosure on the house, but the sale was canceled because of the bankruptcy filing. FFB moved for a comfort order under 11 U.S.C. § 362(j) to confirm the absence of the automatic stay. The bankruptcy court ruled that the stay terminated as to the debtor individually and as to his property, but not as to any real property of the bankruptcy estate. FFB appealed.

The district court acknowledged a circuit split on whether 362(c)(3)(A) was ambiguous; however, it concluded that just because "a statute is poorly drafted, as courts at times lament when reading this section of the Bankruptcy Code, doesn't give the court leeway to restructure its meaning." The court noted that the majority approach held that the state would terminate only as to the debtor and the debtor's property, but not as to property of the bankruptcy estate. A minority approach allowed that the stay would terminate in its entirety.

Section 362(a) stays three different types of actions: those against the debtor; the debtor's property; and property of the bankruptcy estate. The district court concluded that "Congress knows full well the difference between the debtor and the estate and could have added 'and the property of the estate' as it did multiple times in § 362(a), but it didn't." "Similarly, Congress could have eliminated 'with respect to the debtor' and thus written a statute that terminated the entire stay after 30 days, but … didn't." Congress knows how to eliminate the stay in its entirety when it wants to and has done so in other sections.

The court dismissed FFB's argument that "with respect to the debtor" means that the automatic stay's termination applies only to the serial-filing debtor when a joint case is filed by a serial-filing debtor and a non-serial filing debtor, or at least that this creates an ambiguity in the statute. Referencing a similar application in 11 U.S.C. § 362(c)(4)(A)(i), the court noted the absence of "with respect to the debtor" limiting language.

Other Courts:

Majority (terminates solely as to debtor and his property): Rose v. Select Portfolio Servicing, Inc., 945 F.3d 226, 231 (5th Cir. 2019); In re Holcomb, 380 B.R. 813, 816 (10th Cir. B.A.P. 2008).

Minority (terminates entirely): In re Smith, 910 F.3d 576, 591 (1st Cir. 2018); In re Reswick, 446 B.R. 362, 373 (9th Cir. B.A.P. 2011).

NJ: Majority - In re Guilford, 2020 WL 4346660 (Bankr. D.N.J. July 28, 2020)(J. Poslusny); In re Mortimore, 2011 WL 6717680 (D.N.J. Dec. 21, 2011)(J. Bumb); In re Simonson, 2007 WL 703542 (Bankr. D.N.J. Mar. 2, 2007)(J. Kaplan).

Citation: **In re Somerset Regional Water Resources**, LLC, 949 F.3d 837, 2020 WL 628542 (3d Cir.

Feb. 11, 2020)

Issue: Post-petition lender moved for release of funds from personal tax refund of owner of Chapter 11 debtor LLC, in which lender asserted an interest pursuant to terms of earlier cash collateral order.

Case Summary:

Larry Mostoller was the sole owner of the debtor, Somerset Regional Water Resources, LLC, a water transportation S corporation that serviced gas and oil wells, that was facing a cash flow shortage and lease default due to falling oil prices. Somerset Trust Co. was the debtor's largest creditor (at >$3 million) and held a blanket lien on most of the debtor's assets as well as a personal guarantee from Mostoller. SRWR filed Chapter 11 but had liquidity issues and was overleveraged.

To obtain new financing, the debtor's management talked Mostoller into offering his rights to an anticipated personal tax refund estimated to be approximately $1 million as new collateral. The debtor had approximately $6.5 million in 2015 losses that would pass through to Mostoller who could then amend his 2013 and 2014 personal tax returns to carry back the losses and offset his income. This was expected to result in a $1 million refund for him. Following "hasty negotiations," the parties quickly reached an agreement for the Trust to lend the debtor an additional $1 million in exchange for Mostoller's pledge as collateral "any rights or interest in the 2015 Federal tax refund due him individually, but attributable to the operating losses of the Debtor." The additional collateral was the basis for the new extension of credit. The bankruptcy court approved the deal as a consent order. The debtor defaulted and the case was converted to Chapter 7.

Mostoller initially refused to file his amended 2013 and 2014 returns and his 2015 return, but finally agreed when the Trust agreed to accept only half of the refund due after taxes. He received $1.12 million from the IRS and attempted to keep it, but his accountant deposited it with the court. Mostoller challenged the turnover of half of the money to the Trust, arguing that he only agreed to turnover the refund for the 2015 year, and in the alternative that the agreement was void because his wife did not sign it. The Trust argued that the agreement language was ambiguous and offered affidavits in support. The bankruptcy court found for the Trust. The District Court affirmed.

The Third Circuit resolved the jurisdiction challenge noting that the matter was core because it involved "orders with respect to obtaining credit," and the matter could only have arisen in the bankruptcy court. The Circuit agreed that the language was ambiguous given that it was "subject to multiple reasonable interpretations." Accordingly, it turned to parol evidence. It concluded that: (1) without valuable new collateral, the Trust would not have lent the Debtor more money; (2) the parties expected Mostoller to receive a refund of approximately $1 million after offsetting his tax liabilities, and (3) although the method was not specified because of the speed of negotiations, everyone expected that the 2015 losses would trigger a refund of $1 million. Mostoller received $126,000 for 2015, $143,000 for 2013, and $1.8 million for 2014, minus $900,000 for other tax obligations for a total refund of $1.12 million. Mostoller argued that the language was for only the 2015 refund, but acknowledged it would be worthless after his other tax obligations.

The Circuit agreed with the Trust's position that parol evidence supported a reasonable reading that the agreement reached the entire refund amount. The court also dismissed Mostoller's argument that the agreement was invalid because his spouse did not sign the agreement. Turning to federal tax law, the

Circuit noted that the refund was only tied to Mostoller's sole interest in the company, and state law entireties law does not change who is entitled to the refund. Since it was deposited directly with the court, there was no opportunity for the money to be comingled.

Citation: **Rodriguez v. Federal Deposit Insurance Corporation**, 140 S.Ct. 713 (2020)

Issue: What law or rule should be used to determine how corporate tax refunds should be distributed among an affiliated group

Case Summary:

Chapter 7 trustee for bankruptcy estate of parent bank holding company brought adversary proceeding against FDIC, in its capacity as receiver for affiliate bank, requesting a declaratory judgment that a $4,081,335 tax refund arising as a result of consolidated tax returns filed by a holding company was property of the bankruptcy estate, requesting the turnover of the tax refund, and objecting to the FDIC's proof of claim.

The IRS allows an affiliated group of corporations to file a consolidated return, and any refund is directed as a single payment to the group's designated agent. The federal rules and IRS regulations do not specify how the refund should be allocated among the affiliated members. Some corporations execute their own tax allocation agreements to resolve this issue. They usually specify how much each member has to pay toward the assessed tax, and how much each is entitled to if there is a refund. If there is no such agreement, most courts turn to state law to determine the answer.

Some federal courts have fashioned their own federal common law rule, now referred to as the Bob Richards rule (from In re Bob Richards Chrysler-Plymouth Corp., 473 F.2d 262 (1973)). This rule provides that in the absence of a tax allocation agreement, the refund belongs to the group member responsible for the losses that led to it. Over time, the rule has been expanded to set the general rule unless "the parties' tax allocation agreement unambiguously specifies a different result." In this case, there was a tax allocation agreement, and the Tenth Circuit applied the expanded version of the Bob Richards rule to conclude the refund should go to the FDIC.

Upon review, the U.S. Supreme Court stated expressly that there is no federal common law, and that "only limited areas exist in which federal judges may appropriately craft the rule of decision." Absent express direction from Congress, federal common lawmaking must be necessary to protect a uniquely federal interest. The Court could find no such interest here. There was an interest in receiving taxes, and delivering refunds, but once delivered to the appropriate agent, the government no longer holds an interest. Since corporations are generally creations of state law, such property rights should be left to state law. The Court declined to determine the final outcome, instead vacating and remanding to the circuit to apply state law.

In re Benitez, 2020 WL 1272258 (Bankr. E.D. NY March 13, 2020)

Trustee applied for retention of his counsel *nunc pro tunc* by approximately 11 months. Counsel had provided modest services during the period it was not retained, but wanted compensation for those services. Court acknowledged that it is "impractical and possibly detrimental to the estate" for the professional to wait for the entry of a retention order before rendering services. Citing to the Supreme Court's decision in *Roman Catholic Archdiocese v. Acevedo*, the Court said it will no longer enter *nunc pro tunc* retention orders. However, the Court goes on to say that "neither the code nor the Rules preclude an award of 'reasonable compensation' or reimbursement for 'actual, necessary expenses' pursuant to section 330 for services rendered prior to an order approving retention of the professional." The Court rled that "late filed" retention applications would be subject to scrutiny, including a disclosure of the extent of services rendered prior to the application,

but there would not be a blanket prohibition on compensation for services that predate the entry of an order.

In re Thompson, 2021 WL 726070 (Bankr. E.D. Mich February 23, 2021)
Trustee sued Debtor's daughter to recover money and property allegedly fraudulently transferred. Debtor's counsel stepped in to defend daughter. Trustee moved to disqualify counsel claiming that he did not consent to dual representation. The Court focused on the fact that there was an issue of insolvency. By filing the petition, counsel was taking the position that the Debtor was insolvent. The defense that the daughter was presenting was that the Debtor was not insolvent at the time of the transfers (which were very close to the petition date). The Court found that these contrary positions placed counsel in a conflict that could not be waived. *Query*: The Trustee clearly controls the privilege and waiver in a corporate case. But does this same rule apply in individual cases? Does the Trustee need to consent to allowing corporate counsel to step up to defend the principals? What about cases filed simultaneously (small business & individual)?

In re On-Site Fuel Service, Inc., 2021 WL 926283 (Bankr. S.D. Miss. February 26, 2021)
Trustee retained counsel on a "hybrid reverse contingent fee", i.e., counsel agreed to accept a reduced hourly rate, plus a percentage of the "funds recovered". The cause of action being pursued was a lender liability suit. At the time of retention, all parties implicitly understood that it was unlikely that the defendant would "cut a check" to the Estate. Rather, the more likely outcome was that the lender would waive its lien on funds held by the Trustee. That is exactly what happened. When counsel filed its fee application calculated based upon the release of lien, the UST objected contending that these funds were not properly characterized as "recovered". The Trustee's position was that the waiver of the lien was the equivalent of paying the money into the Estate. The UST objection was overruled.

In re Concepts America, Inc., 2021 WL 811581 (Bankr. N.D.Ill March 2, 2021)
Creditor in an involuntary sought allowance of a substantial contribution claim in excess of $200,000 under 503(b)(3)(D). 503(b)(3(D) makes it clear that substantial contribution claims are on available "in a case under chapter 9 or 11". The creditor contended that the use of the word "including" at the end of subsection (b) should be imposed on the subsection (3)(D). Through painstaking statutory analysis, the Court held that this was not the case. By including "chapter 9 and 11", Congress specifically excluded chapter 7 from being subjected to substantial contribution claims. In case you think that there is no issue here, there are a minority of opinions that hold otherwise. See *In re Connolly N.Am, LLC*, 802 F.2d 810, 822 (6th Cir. 2015). The Court also held that creditors can try to use other sections of the Code to prove an entitlement to payment for benefit conferred on a Chapter 7 Estate, but 105 cannot be used to provide a general right to an administrative claim.

In re Horvath, 2021 WL 371771 (Bankr. N.D. Ohio February 2, 2021)
Debtors filed Motion to reopen their 2010 bankruptcy to avoid a judgment lien of First Ohio Community Federal Credit Union. Debtors contend that they knew about the judgment lien at the time of their bankruptcy filing. The judgment lien had been filed in November, 2009; they filed in February 2010. The Court was troubled by the fact that Debtors' counsel did not run a judgment lien search (an easy process under Ohio law) as part of his pre-filing due diligence ("The importance of an attorney's prepetition due diligence, including lien searches, cannot be understated.") Citing to section 707(b)(4), the Court found that debtors' counsel has an obligation to do a reasonable investigation which is "driven by the facts and circumstances of the case". Here, a judgement lien search was required. The secured creditor was prejudiced by the passage of time

and the Debtors are held responsible for the failure of their counsel, according to Supreme Court precedent. *Dreier v. Love*, 3 Fed.Appx. 497, 498 (6ht Cir. 2001), citing *Pioneer Servs. Co. v. Burnswick Associates Ltd. P'ship*, 507 U.S. 380, 396-97 (1993). Motion to reopen denied.

In re Fulton, 141 S. Ct. 585 (2021)

In Fulton, a unanimous United States Supreme Court resolved a split among Circuits regarding whether the failure to return estate property constitutes a violation of the automatic stay. City of Chicago v. Fulton, 141 S. Ct. 585, 589 (2021). Writing for the Court, Justice Alito adopted what had been the minority view, holding that "mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code" (the "Code"). 141 S. Ct. at 592. This case arose from the practice of the City of Chicago (the "City") to repossess and to impound cars for nonpayment of parking tickets and other violations. In re Fulton, 926 F.3d 916, 920 (7th Cir. 2019). Upon the filing of a Chapter 13 case, debtors would request that their vehicles be returned. In re Fulton, 926 F.3d at 921. The City refused, and that refusal prompted several debtors to seek orders from the Bankruptcy Court to return their vehicles and to penalize the City for violating the automatic stay. Id. In each instance, the Bankruptcy Court found that the City's refusal to return the vehicle violated the automatic stay. Id. at 931. The City appealed and the Seventh Circuit affirmed the Bankruptcy Court's ruling. Id. at 920.

In vacating and remanding the Seventh Circuit decision, the Supreme Court cleared up the ambiguity in the lower courts regarding the text and meaning of § 362(a)(3). First, the Court held that § 362(a)(3) does not create an automatic obligation to turn over estate property upon commencement of a bankruptcy case. City of Chicago v. Fulton, 141 S. Ct. at 590. To support this holding, the Court read § 362(a)(3) naturally to "prohibit[] affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed." Id. Second, the Court turned its attention to § 542, regarding the turnover of estate property. If the Court were to read § 362(a)(3) to "cover mere retention of property" and require its turnover, it would render § 542 superfluous. Id. at 591. In further support of its ruling, the Court noted that "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." Id. at 591 (citing Yates v. United States, 574 U.S. 528 (2015)). Consequently, the Court held that mere retention of estate property after the filing of a petition does not violate § 362(a)(3) of the Bankruptcy Code. Id. The Court did not address whether the retention of collateral by a secured creditor violates section (a)(4)(prohibiting any act to create, perfect or enforce a lien against estate property) or section (a)(6)(prohibiting any act to collect, assess or recover a claim against a debtor). These questions will have to await further clarification, though it is probably fair to say that the Court did not consider them dispositive.

The Supreme Court's holding in Fulton and the requirement that turnover actions must be brought by adversary proceeding, Fed. R. Bankr. P. 7001(1); In re Denby-Peterson, 941 F.3d 118, 129 (3d Cir. 2019), have important consequences for debtors, as the adversary proceeding process is more lengthy and expensive than a motion, as was noted by Justice Sotomayor in her concurrence. See Fulton, 141 S. Ct. at 592-95. Because a debtor, and particularly an individual debtor, will often need his or her repossessed property back quickly, the adversary proceeding requirement could prove to be an ineffective or impractical way of obtaining possession of repossessed property. Many commentators have suggested that a streamlined procedure needs to be developed to address this situation, a suggestion that is being considered in this District.

In re Marinari, 2021 WL 162352 (Fed. App'x Jan. 19, 2021)

Until recently, the Third Circuit appeared to have the issue of whether a Chapter 13 debtor's right to dismiss his or her case is absolute under 11 U.S.C. § 1307(b) before it in the case of In re Marinari, 596 B.R. 809; order aff'd, 610 B.R. 87 (E.D. Pa. 2019), aff'd, 2021 WL 162352, at *2 (3d Cir. Jan. 21, 2021) (scheduled for publication in Federal Appendix). Some courts have held that the right is absolute, while others have ruled that the right is qualified, particularly if the debtor is acting in bad faith. Some of the cases standing for the position that the right is absolute are: In re Barbieri, 199 F.3d 616, 619 (2d Cir. 1999); In re Procel, 467 B.R. 297, 308 (S.D.N.Y. 2012); In re Williams, 435 B.R. 552, 560 (Bankr. N.D. Ill. 2010). Other cases have taken the position that the right is qualified where the debtor is acting in bad faith: In re Molitor, 76 F.3d 218, 220-21 (8th Cir. 1996); In re Armstrong, 408 B.R. 559, 560 (Bankr. E.D.N.Y. 2009); In re Armstrong, 409 B.R. 629, 634-35 (Bankr. E.D.N.Y. 2009) (ultimately finding no bad faith); In re Rosson, 545 F.3d 764, 773-74 (9th Cir. 2008); In re Jacobsen, 609 F.3d 647, 652 (5th Cir. 2010).

In Marinari, the Bankruptcy Court granted the Chapter 13 debtor's motion for voluntary dismissal under 11 U.S.C. § 1307(b), on the basis that the debtor's right to dismiss is absolute under § 1307(b) (among other grounds). In doing so, the Court also denied a pro se judgment creditor's motion for reconsideration (the creditor argued that the debtor forfeited her right to dismiss by acting in bad faith and should remain in Chapter 13; creditor later argued for conversion). In re Marinari, 596 B.R. at 816-17.

After the case was reassigned to a different bankruptcy judge, the case again came before the Bankruptcy Court on the creditor's second motion for reconsideration. The Bankruptcy Court noted that her predecessor had held as a matter of law that the debtor had an absolute right to dismiss under 11 U.S.C. § 1307(b). In re Marinari, 596 B.R. at 820-21 n.16 ("Judge FitzSimon's position that § 1307(b) confers a chapter 13 debtor with the absolute right to voluntarily dismiss his or her case is supported by a plethora of case law"). The Bankruptcy Court also observed that neither the Third Circuit nor the U.S. Supreme Court had "weighed in" on the § 1307(b) debate since then. In re Marinari, 596 B.R. at 820.[1] As there had been no substantive change in law or in facts, the Bankruptcy Court denied the creditor's second motion for reconsideration on the grounds that the creditor failed to articulate any basis for reconsideration under Fed. R. Civ. P. 59(e), 52(b) or 60(b). In re Marinari, 596 B.R. at 817. The District Court affirmed in In re Marinari, 610 B.R. 87, 92-94 (D.N.J. 2019) and held in most relevant part, "The Court agrees with the Bankruptcy Court that Marinari has an absolute right to a voluntary dismissal under § 1307(b)." Id. at 92.

The Third Circuit, in a non-precedential opinion, affirmed the District Court but did not directly address the issue. Instead, the Court held that: (i) even assuming for the sake of argument that § 1307(b) does have a bad faith exception to absolute dismissal, the creditor had failed to allege bad faith and dismissed the creditor's other arguments on appeal, which were primarily procedural in nature. In re Marinari, 2021 WL 162352, at *1-*2. In so ruling,

[1] The Bankruptcy Court in In re Marinari stated: "While the Third Circuit has confirmed that a bankruptcy court has the authority to issue a filing injunction even when approving a debtor's § 1307(b) voluntary dismissal, it has abstained from taking a position on the ultimate issue of whether the right to dismissal is absolute. In re Ross, 858 F.3d 779, 781, 783-85 (3d Cir. 2017)." In re Marinari, 596 B.R. at 820.

the Third Circuit expressly noted that it had not decided the issue of whether there is an absolute right to dismiss or has a bad faith exception. Id. at *1-*2, n.2. Thus, resolution of this issue will have to await further definitive guidance from our appellate courts.

In re Polanco, 622 B.R. 631 (Bankr. D.N.J. 2020) and **In re Stahlberger**, 2021 WL 509849 (Bankr. D.N.J. Feb. 10, 2021)

In both In re Polanco and In re Stahlberger, the pertinent issue before the Court was whether the filing of a lis pendens related to a tax foreclosure action that took place before the applicable avoidance period prevents a trustee or debtor from prevailing on a preference or fraudulent transfer action when title to the property is transferred during the avoidance period. In re Polanco, 622 B.R. at 634; In re Stahlberger, 2021 WL 509849, at *1. In those cases, the creditor argued that, under New Jersey law, the filing of the lis pendens perfected the foreclosing party's interest in the properties under §547(e)(1) and §548(d)(1) at the time of its filing, as applicable. In other words, the date of the transfer relates back to the date that the foreclosing party filed its lis pendens, which was before the applicable avoidance period (90 days for a preference; two years for a fraudulent transfer). In re Polanco, 622 B.R. at 636; In re Stahlberger, 2021 WL 509849, at *1.

Both Courts analyzed the issue by referring to the Code and New Jersey law. First, the Court referred to §547(e)(1) and 548(d)(1), which generally provide that a party has perfected its interest in property for avoidance purposes when a "bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee." In re Polanco, 622 B.R. at 637; In re Stahlberger, 2021 WL 509849, at *2-3 (citing 11 U.S.C. § 547(e)(1)(A) and § 548(d)(1). Next, the Courts addressed the issue of whether the filing a lis pendens under New Jersey law grants the filer an interest that meets the requirements of those sections. Both Courts answered in the affirmative, finding, for avoidance purposes, that the interest of both foreclosing parties was properly perfected prior to the avoidance period. In re Polanco, 622 B.R. at 641; In re Stahlberger, 2021 WL 509849, at *7. Consequently, because the transfer in question related back to the filing of the lis pendens, and those dates were prior to the applicable avoidance period, the debtors could not prevail on their avoidance actions. In re Polanco, 622 B.R. at 642; In re Stahlberger, 2021 WL 509849, at *7-*8.

Millennium Lab Holdings II, LLC., 945 F.3d 126 (3rd Cir. 2019) and other cases addressing third party releases and exculpations.

Third party releases and exculpations, contained either in 363 Sales or Plans of Reorganization has been perhaps the most controversial bankruptcy topic in Chapter 11 cases over the last few years. In Millennium, the Third Circuit refrained from broadly sanctioning the permissibility of non-consensual third-party releases, but, based upon the specific exceptional facts of that case, upheld the lower Court decision confirming a Plan that contained non-consensual third-party releases. Other Courts across the country have taken different approaches. We will take a broad view of the evolution and status of this issue.

Roman Catholic Archdiocese of San Juan Puerto Rico v. Acevedo Feliciano, 140 S.Ct. 696, 206 L.Ed. 2d 1. Although, not the primary holding of this Supreme Court Decision, one aspect of the Court's Opinion has "raised eyebrows" and caused concerns with practitioners and Bankruptcy Courts across the country. That one aspect deals with the issuance of nunc pro tunc orders by the

Courts. In Acevedo, the Supreme Court stated "nunc pro tunc orders by District Courts are not some Orwellian vehicle for revision history that create "facts" that never occurred . . . " We will examine how Courts across the country have grappled with this holding by the Supreme Court.

In re Wilton Armetale, Inc., 968 F.3d 273 (3rd Cir. 2020). This important Third Circuit Decision clarifies that Bankruptcy Code "standing" is not constitutional standing, but instead refers to a litigant's statutory authority to assert claims in Bankruptcy. The Court held that notwithstanding the Bankruptcy filing, individual creditors generally have constitutional standing to bring fraudulent transfer claims or State Law claims against insolvent Debtors' fiduciaries. Notwithstanding the holding that individual creditors have constitutional standing, the Court held that only the Trustee had the statutory authority to bring these claims on behalf of creditors of the Bankruptcy Estate.

In re Orexigen Therapeutics, Inc. 990 F. 3d 748 (3rd Cir. 2021). The Third Circuit addressed the issue of triangular setoffs., A triangular setoff occurs in a situation in which party A owes party B who owes party C, who then owes party A. The issue dealt with the mutuality requirement of setoffs. The Court analyzed the requirement of mutuality under §553 and determined that there was no mutuality and disallowed any setoff.

In re Antonia Andrade-Garcia, 17—15277 (Bankr. D. NV. 2020). In this Chapter 13 case addressed issues related to the Supreme Court opinion of Midland Funding LLC v. Johnson, 137 S. Ct. 1407 (2017). In that case, the Supreme Court ruled that filing a stale claim in a bankruptcy case does not violate the Fair Debt Collection Practices Act. The Nevada court addressed issues relating to stale claims that had been purchased from the original creditors which were more than a decade old. Although the Trustee did not object, the Debtor filed an objection to those claims asserting that the claims were barred by the six-year Nevada statute of limitations. In light of the age of the claims and the frivolous defenses raised by the claimants the court awarded attorneys under a fee-shifting rationale.

In re: Energy Future Holdings Corp., No. 19-3492 (3rd Cir. 2021). In this case, the Debtor's most valuable asset was a significant economic interest in Texas' largest electric and power transmission and distribution company, which the appellant agreed to buy through a merger agreement. The sale was never consummated and the issue before the court was whether the proposed buyer should be paid for the work it did in trying to consummate the transaction. The Third Circuit addressed issues raised in its prior seminal cases of In re O'Brien Envt'l Energy, Inc. 181 F. 3d 527 (3rd Cir. 1999) and In re Reliant Entergy Channelview LP, 594 F. 3d 200 (3rd Cir. 2010 and ultimately, after an extensive analysis, remanded the case to the bankruptcy court for a determination of whether the actual benefit conferred on the estate outweighed the costs imposed, such that the appellant was entitled to administrative fees.