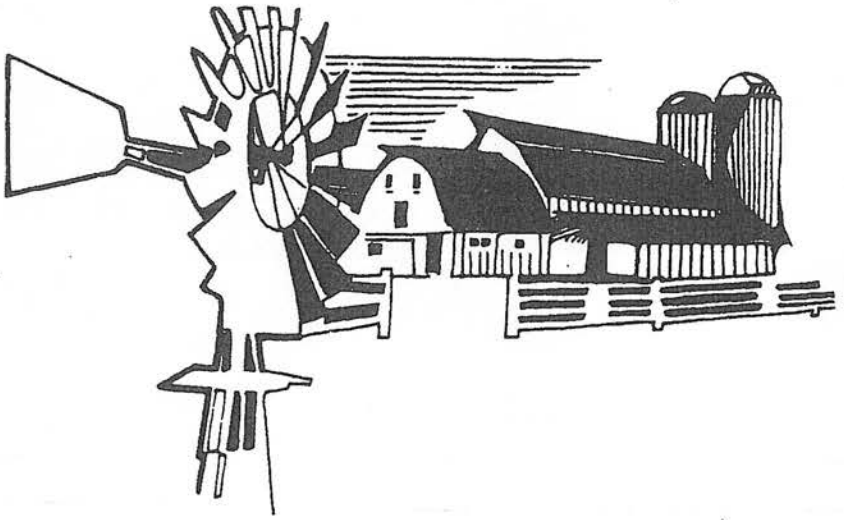

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CHAPTER 12 BANKRUPTCY
(AND RELATED CASES)

CASE LAW COMPILATION

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Chapter 12 Bankruptcy (And Related Cases) Case Law Compilation

Chapter 12 Bankruptcy (And Related Cases)
Case Compilation
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18. *In re Frusher, 124 B.R. 331 (D. Kan. 1991):* Debtor's status as farmer was affirmative defense required to be pled in answer to involuntary petition.

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20. *In re Sharp, BAP No. WO-06-013, 2007 Bankr. LEXIS 81 (10th Cir. BAP, Jan. 22, 2007):* Court granted the debtor's motion to dismiss the involuntary petition based, at least in part, on the debtor's tax return which showed that virtually all of the debtor's income derived from farming; case affirmed on basis that the debtor's tax return showed that more than 80 percent of the debtor's income came from farming, and the evidence of the debtor's business dealing demonstrated that the debtor was in the business of farming - appellate court noted that the bankruptcy court considered both the tax code test and the totality of the circumstances test when making its conclusions. Note: The decision does provide some support for using both the tax test and the totality of the circumstances test in determining eligibility for the exemption from involuntary bankruptcy by a farmer.

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l. *In re Vacuum Cleaner Corp. of Am., 58 B.R. 101 (Bankr. E.D. Pa. 1986):* Automatic stay prohibits only actions which arose prior to the filing of bankruptcy- Automatic stay did not prevent creditor, in this case, from instituting action against debtor which arose after bankruptcy filing.

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hh. *In re Spencer, 123 B.R. 858 (Bankr. N.D. Cal. 1991):* IRS summons for production of records violated automatic stay.

ii. *Anglemeyer v. U.S., 115 B.R. 510 (D. Md. 1990):* IRS assessments made during bankruptcy case void ab initio.

jj. *In re Weisberger, 205 B.R. 727 (Bankr. M.D. Pa. 1997):* IRS levy violated automatic stay; no damages awarded.

kk. *In re Craine, 206 B.R. 594 (Bankr. D. N.H. 1997):* Good faith violation of automatic stay by IRS agents where levy served pre-petition but executed post-petition.

ll. *In re Milto, 210 B.R. 687 (Bankr. D. Md. 1997):* IRS retention of properly levied bank account was violation of automatic stay; consequential damages allowed.

mm. *U.S. v. Reynolds, 764 F.2d 1004 (4th Cir. 1985), aff'g unrep. dec.:* IRS violated automatic stay by retaining portion of debtor's income tax refund to set off deficiencies from taxable years prior to filing of bankruptcy petition.

nn. *In re Hanratty, 907 F.2d. 1418 (3d Cir. 1990), aff'g 107 B.R. 55 (E.D. Pa. 1989):* Electric utility company allowed to require, 20 days after filing of bankruptcy petition, debtors to pay security deposit as condition of continued service although electric company did not otherwise require security deposits from customers.

oo. *In re Hill, 19 B.R. 375 (Bankr. N.D. Tex. 1982):* FmHA violated automatic stay by setting off Agricultural Stabilization and Conservation Service ("A.S.C.S") deficiency payments owed Ch. 11 debtor against debtor's indebtedness to FmHA even though setoff was required by FmHA regulations; court found that entitlement to ASCS deficiency payments occurs at harvest and not at commencement of crop year, making payments postpetition monies not available for setoff against prepetition indebtedness.

pp. *In re Hoffman, 51 B.R. 43 (Bankr. W.D. Ark. 1985):* Bank's placement of "administrative freeze" on debtors' demand accounts did not violate automatic stay.

qq. *In re Rinehart, 76 B.R. 746 (Bankr. D. S.D. 1987), aff'd, 88 B.R. 1014 (D. S.D. 1988):* Small Business Administration (SBA) not allowed setoff against ASCS payments due debtor; SBA collection of setoff check from ASCS held willful violation of automatic stay subject to damages even though SBA did not cash check from ASCS held willful violation of automatic stay subject to damages even though SBA did not cash check but held it pending resolution of setoff issue.

rr. *In re Ferguson, 83 B.R. 676 (Bankr. E.D. Mo. 1988):* IRS allowed offset of debtor's prepetition tax refund against taxes owed for prior year where IRS authorized to make such offset under General Court Order.

ss. *In re Carter, 125 B.R. 832 (Bankr. D. Kan. 1991):* Debtors sought to have setoff refunds allocated entirely to priority unsecured tax claims; court held that IRS could allocate setoff of refunds at its discretion.

tt. *In re Siebert Trailers, Inc., 91-2 U.S. Tax. Cas. (CCH) para. 50,308 (Bankr. E.D. Cal. 1991):* IRS allowed to credit prepetition overpayments of taxes generated by loss carry backs against debtor's prepetition tax liability; overpayments not considered refunds because debtor never entitled to payment.

uu. *In re Young, 144 B.R. 45 (Bankr. N.D. Tex. 1992):* Setoff of 1991 disaster payments against FmHA claims not allowed where debtor not entitled to disaster payments until 1991 Emergency Crop Loss Assistance Act signed postpetition.

vv. *In re Julien, 136 B.R. 765 (Bankr. W.D. Tenn. 1992):* Creditor who sold cotton for debtor not allowed setoff of claims for storage against proceeds of cotton where creditor acted only as bailee.

ww. *In re Lincoln, 144 B.R. 498 (Bankr. D. Mont. 1992):* FmHA not allowed setoff of Ch. 12 debtor's CRP payments where CRP payments necessary for successful reorganization.

xx. *In re Lund, 136 B.R. 237 (Bankr. D. N.D. 1990):* ASCS allowed setoff of claim against Ch. 12 debtor's postpetition price support program payments because price support contract performance complete prepetition.

yy. *In re Gerth, 991 F.2d 1428 (8th Cir. 1993), rev'g 136 B.R. 241 (Bankr. D. S.D. 1991):* ASCS allowed setoff of prepetition claim against Ch. 12 debtor's postpetition CRP payments because CRP contracts were executory with continuing obligations by both parties.

zz. *In re Mohar, 140 B.R. 273 (Bankr. D. Mont. 1992):* FmHA and CCC not entitled to setoff of prepetition claims against Ch. 12 debtor's postpetition CRP payments because CRP payments necessary for successful reorganization; however, FmHA and CCC allowed secured status for claims and CRP payments required to be paid to estate.

aaa. *In re Allen, 135 B.R. 856 (Bankr. N.D. Iowa 1992):* CCC allowed setoff of prepetition claims against Ch. 12 debtor's postpetition CRP payments because CRP contract complete and debtor did not demonstrate that CRP payment necessary for successful reorganization.

bbb. *In re Tillery, 179 B.R. 576 (Bankr. W.D. Ark. 1995):* creditor's motion to lift automatic stay granted because creditor satisfied set-off requirements of 11 U.S.C. §553, thus creditor could exercise its set-off rights in debtor's tax refund to apply toward debtor's past due taxes; while automatic stay provisions of 11 U.S.C. §362 bar set-off from being immediately made, creditor did not violate §362 by retaining refunds without formal set-off.

ccc. *In re Warwick, 179 B.R. 582 (Bankr. W.D. Ark. 1995):* IRS established good faith claim to debtors' tax refund as setoff against federal income taxes owed for prior years under 11 U.S.C §553(a) and I.R.C. §6402(a)) in spite of plan confirmation and administrative freeze on funds.

ddd. *In re Winchester, 191 B.R. 93 (Bankr. N.D. Miss. 1995):* setoff of disaster payments against amounts debtors owed to USDA violated stay.

eee. *In re Holden, 226 B.R. 809 (Bankr. D. Vt. 1998):* emotional distress damages were recoverable for IRS violation of automatic stay.

fff. *In re Jones, 230 B.R. 875 (M.D. Ala. 1997), aff'g, 212 B.R. 680 (Bankr. M.D. Ala. 1997):* Debtor allowed to recover only amounts offset by IRS which violated automatic stay.

ggg. *Matter of Fernandez, 171 B.R. 135 (M.D. Fla. 1994), rev'g unrep. Bankr. Ct. dec., on remand from 132 B.R. 775 (M.D. Fla. 1991), aff'g in part and rem'g 125 B.R. 317 (Bankr. M.D. Fla. 1991):* action against IRS for violation of automatic stay barred by sovereign immunity which had not been waived.

hhh. *In re Davis, 131 B.R. 50 (Bankr. E.D. Va. 1991):* IRS garnishment, notice of tax lien and attachment of refund of debtor violated automatic stay; debtor awarded compensatory damages, attorney fees and $3,525 in punitive damages.

iii. *U.S. v. Nordic Village, Inc., 503 U.S. 30 (1992), rev'g 915 F.2d 1049 (6th Cir. 1991):* action to recover prepetition payment of taxes barred by governmental immunity. Before passage of the 1994 Act, the US SC had held that Section 106(c) did not waive governmental immunity as to monetary recovery actions.

jjj. *In re Whittaker, 84 B.R. 934 (Bankr. E.D. Pa. 1988), aff'd, 92 B.R. 110 (E.D. Pa. 1988), aff'd, 882 F.2d 791 (3d Cir. 1989):* Failure of utility to reinstate debtor's service without prepayment of deposit was violation of discrimination rule.

kkk. *Lloyd v. Champaign Telephone Co., 52 B.R. 653 (Bankr. S.D. Ohio 1985):* Telephone company did not violate automatic stay in terminating debtors' telephone service where debtors failed to pay security deposit within 20 days after order for relief.

lll. *In re Cloverleaf Farmers Co-op., 114 B.R. 1010 (Bankr. D. S.D. 1990):* SBA not allowed administrative offset of amounts due against ASCS payments due debtor because SBA was unsecured creditor and offset would give SBA priority to ASCS proceeds, SBA and ASCS not similar government agencies such as to give rise to mutual obligations, and offset could not be accomplished because ASCS no longer had funds.

mmm. *Archer v. Macomb County Bank, 853 F.2d 497 (6th Cir. 1988):* debtor awarded actual damages for lost horse breeding and training contracts and punitive damages where mortgagor attempted foreclosure after notice of bankruptcy filing.

nnn. *In re Lile, 103 B.R. 830 (Bankr. S.D. Tex. 1989):* IRS held liable for actual and punitive damages for willful violation of the automatic stay where the debtor had informed the IRS of personal and corporate bankruptcy cases and, although corporation bankruptcy case had been dismissed, debtor had claimed personal ownership of business assets seized by IRS.

ooo. *In re Price, 103 B.R. 989 (Bankr. N.D. Ill. 1989):* IRS held liable for actual damages and attorney fees for willful violation of the automatic stay where IRS sent notice of threatened levy after confirmation of debtors' plan and IRS had filed allowed claim in case; punitive damages not awarded because no actual levy made.

ppp. *In re Woloschak Farms, 109 B.R. 736 (N.D. Ohio 1989), aff'g 74 B.R. 261 (Bankr. N.D. Ohio 1987):* Debtor not allowed to recover attorney fees from federal government for violation of automatic stay under 11 U.S.C. § 362(h) because government had not waived its sovereign immunity from prosecution under that section.

qqq. *In re Blue Water Bay, Inc., 89-2 U.S. Tax Cas.(CCH) para 9566 (Bankr. M.D. Fla. 1989):* Court declined to follow *Budget Serv. Co. v. Better Homes of Virginia, 804 F.2d 289 (4th Cir. 1986)* and *In re Randy Homes Corp., 84 B.R. 799 (Bankr. M.D. Fla. 1988)* which held that corporations may be considered "individuals" for this purpose.

rrr. *In re Dettler Farms, 58 B.R. 404 (Bankr. D. S.D. 1986):* Creditor enjoined from criminal prosecution of debtor in attempt to gain preference above other similarly situated creditors.

sss. *In re Fuller, 134 B.R. 945 (Bankr. 9th Cir. 1992):* Automatic stay prevented attachment of prepetition tax lien to the postpetition acquired inheritance.

ttt. *229 Main Street Ltd. Partnership v. Commonwealth, 251 B.R. 186 (D. Mass. 2000):* Perfection of lien for state environmental cleanup costs for debtor's property did not violate automatic stay.

uuu. *In re Moore, 131 B.R. 893 (Bankr. S.D. Fla. 1991):* Automatic stay did not stay prepetition action to determine tax liability of debtor, even where adversary proceeding involving same issues had been commenced in bankruptcy case.

vvv. *Erickson v. Polk, 921 F.2d 200 (8th Cir. 1990):* Notification of termination of lease of farmland did not violate automatic stay.

www. *In re Ahrens, 64 B.R. 5 (Bankr. E.D. Pa. 1986):* Where debtors failed to vacate property as of date of bankruptcy petition, lessor's claim for rent due from time of petition to time debtors vacated premises was postpetition claim not extinguished by debtor's discharge or stayed by automatic stay.

xxx. *Morgan Guaranty Trust Co. of N.Y. v. American Savings and Loan Ass'n, 804 F.2d 1487 (9th Cir. 1986), cert. denied, 482 U.S. 929:* presentment of notes to payor bank not in violation of automatic stay.

yyy. *In re Prange Foods Corp., 63 B.R. 211 (Bankr. W.D. Mich. 1986):* Automatic stay does not toll 30-day period for filing of notice under Perishable Agricultural Commodities Act for eligibility of producer for trust proceeds; in addition producer need not file motion to lift stay to file PACA claim.

zzz. *In re Monterey House, Inc., 71 B.R. 244 (Bankr. S.D. Tex. 1986):* Automatic stay not violated by filing of PACA notice because PACA trust funds not part of estate property.

aaaa. *U.S. v. Armory Hotel Assoc., 93 B.R. 1 (D. Me. 1988):* Stay did not apply to action to enforce Immigration Reform and Control Act, 8 USC §1324a.

bbbb. *In re SFW, Inc., 83 B.R. 27 (Bankr. S.D. Cal. 1988):* Guarantors of debts incurred by family farm corporation not protected by Ch. 12 stay of actions against co-debtors of consumer loans because guarantors not co-debtors and corporation cannot make consumer loans.

cccc. *In re River Family Farms, Inc., 85 B.R. 816 (Bankr. N.D. Iowa 1987):* Denial of injunction against creditor's execution of judgment against property of shareholders of family farm corporation debtor although execution would adversely affect corporation's ability to carry out confirmed Ch. 12 plan where no showing that creditor was only attempting to unduly pressure debtor.

dddd. *In re Hall, 123 B.R. 441 (Bankr. N.D. Ga. 1990):* Debtor may not enjoin IRS from levying against debtor's nondebtor spouse for joint taxes which were to be paid by debtor's plan.

eeee. *In re Shaffer, 315 B.R. 90 (Bankr. W.D. Mo. 2004):* Automatic stay against co-debtor did not apply to commercial loan for farm pickup truck.

ffff. *In re Circle Five, Inc., 75 B.R. 686 (Bankr. D. Idaho 1987):* Stay lifted against partners who were co-guarantors of Ch. 12 partnership debtor's debts where plan did not provide for full payment of debts.

2. Effect of Automatic Stay on Redemption Period for Foreclosures

a. *In re McCallen, 49 B.R. 948 (Bankr. D. Or. 1985):* Filing of bankruptcy petition stops running of redemption period on foreclosure sale of farm where purchaser must petition court for final foreclosure in violation of automatic stay and where contract of sale of farm treated as lien which is adequately protected by debtor's substantial equity in farm.

b. *Matter of Amant, 41 B.R. 156 (Bankr. D. Conn. 1984):* Filing of bankruptcy petition tolled period of redemption on Connecticut foreclosure.

c. *In re Carr, 52 B.R. 250 (Bankr. E.D. Mich. 1985):* Automatic stay tolled period of redemption on forfeiture of land sales contract where under state law debtor retained interest in forfeited property until redemption period expired; thus, debtor's interest passed to bankruptcy estate and protected by automatic stay.

d. *In re Carver, 71 B.R. 20 (D. S.D. 1986), rev'g 61 B.R. 824 (Bankr. D. S.D. 1986):* Filing of bankruptcy petition during redemption period stayed action to foreclose installment land contract.

e. *In re Josephs, 93 B.R. 151 (N.D. Ill. 1988), aff'g 85 B.R. 500 (Bankr. N.D. Ill. 1988):* Filing of bankruptcy petition during redemption period on foreclosed property prevented completion of mortgage foreclosure process.

f. *In re Cooke, 127 B.R. 784 (Bankr. W.D. N.C. 1991):* Redemption period not tolled where only action remaining was exchange of certificate of sale for deed.

g. *Johnson v. First Nat'l Bank of Montevideo, 719 F.2d 270 (8th Cir. 1983), cert. denied 464 U.S. 544 (1984):* In jurisdictions where the automatic stay does not toll the period of redemption in a forfeiture of a land sales contract, the redemption period may be extended only through the longer of the redemption period of 60 days after the filing of the bankruptcy petition.

h. *For above precedent, see also: In re Liddle, 75 B.R. 41 (Bankr. D. Mont. 1987); In re Byker, 64 B.R. 640 (Bankr. N.D. Iowa 1986):* Automatic stay does not toll running of statutory period for curing forfeiture of real estate contract. See also, *In re Vacation Village, Ltd., Partnership, 49 B.R. 590 (Bankr. N.D. Iowa 1984); In re Schmidt, 71 B.R. 618 (Bankr. D. ND. 1987); Matter of Tynan, 773 F. 2d 177 (7th Cir. 1985); Matter of Roberson, 53 B.R. 37 (Bankr. M.D. Fla. 1985); In re Lally, 38 B.R. 622 (Bankr. N.D. Iowa 1984), aff'd, 51 B.R. 204 (N.D. Iowa 1985); In re Kjeldahl, 52 B.R. 916 (D. Minn. 1985), on remand, 53 B.R. 926 (Bankr. D. Minn. 1985); In re Monforton, 75 B.R. 121 (Bankr. D. Mont. 1987).*

V. Ch. 12 Reorganization Specific Cases:

A. The Debtor:

1. Family Farmer and Family Fisherman Eligibility

a. *In re Campbell, 313 B.R. 871 (Bankr. 10th Cir. 2004):* Debtor could convert to Ch. 12 even though Ch. 12 had expired at original petition date but was retroactively reinstated in 2003 period which included petition date.

b. *In re Hoskins, 74 B.R. 51 (Bankr. C.D. Ill. 1987):* Farm partnership eligible for Ch. 12 where creditor failed to demonstrate that partnership income from nonfarm wages of partners not stable source of income.

c. *First Nat'l Bank V. Kerwin-White, 109 B.R. 627 (D. Vt. 1990):* Creditor not allowed to raise issue of whether debtor was family farmer eligible for Ch. 12 in appeal of confirmation of Ch. 12 plan.

d. *In re Buckingham, 197 B.R. 97 (Bankr. D. Mont. 1996):* Debtors not eligible for Ch. 12 because debtors transferred all livestock to creditors and most of income would come from nonfarm employment.

e. *In re Sorrell, 286 B.R. 798 (Bankr. D. Utah 2002):* Debtors, husband and wife, eligible for Ch. 12 even though plan funded primarily from nonfarm income of both debtors.

f. *In re Nelson, 291 B.R. 861 (Bankr. D. Idaho 2003):* Debtors eligible for Ch. 12 where debtors retained dairy farm and planed to continue farming as soon as financing obtained.

g. *In re Watford, 898 F.2d 1525 (11th Cir. 1990), aff'g in part and vac'g and rem'g on point, 92 B.R. 557 (M.D. Ga. 1988):* Debtors eligible for Ch. 12 where debtors caught and sold stone crab claws, stored and maintained soybeans grown on farm two years before filing bankruptcy and debtors intended to start catfish raising on farm.

h. *In re McNeal, 77 B.R. 315 (S.D. Ga. 1987), aff'd, 848 F.2d 170 (11th Cir. 1988):* Chicken coop cleaning service and sales of fertilizer not farming operation.

i. *In re Fogle, 87 B.R. 493 (Bankr. N.D. Ohio 1988):* Debtor engaged in farming where owned farmland and farmed land in joint venture with corporation owned by son.

j. *In re Turner, 87 B.R. 514 (Bankr. S.D. Ohio 1988):* Debtors eligible for Ch. 12 where debtors had formed corporation to manage farm but debtors owned assets administered in bankruptcy and owned more than 50 percent of equity in corporation.

k. *In re Est. of Grassman, 91 B.R. 928 (Bankr. D. Or. 1988):* Probate estate not eligible for Ch. 12.

l. *In re Showtime Farms, Inc., 267 B.R. 541 (Bankr. E.D. Tex. 2000):* Horse raising, breeding and training operation was eligible for Ch. 12 as farm.

m. *In re Quintana, 915 F.2d 513 (9th Cir. 1990), aff'g 107 B.R. 234 (Bankr. 9th Cir. 1989):* Debtors ineligible for Ch. 12 because aggregate debts exceeded $1.5 million; debot not reduced by reductions in judgment lien from creditor's agreement not to seek deficiency judgment and debtor's counterclaim against judgment.

n. *Matter of Lindsey, Stephenson & Lindsey, 995 F.2d 626 (5th Cir. 1993), aff'g 158 B.R. 75 (N.D. Tex. 1992):* Farm partnership not eligible for Ch. 12 where partnership had nonrecourse loan for over $1.5 million.

o. *In re Welch, 74 B.R. 401 (Bankr. S.D. Ohio 1987):* Husband and wife debtors eligible for Ch. 12 where each filed separately in two different years and cases consolidated; where debtors farmed for over 15 years before bankruptcy and in year of filing had income from miling contract, lease of land to son-in-law, sale of stored grain and planting work performed for third party and wife's income from teaching.

p. *In re Van Fossan, 82 B.R. 77 (Bankr. W.D. Ark. 1987):* Debtor not eligible for Ch. 12 where over 20 percent of debt arose from divorce property settlement and over 50 percent of gross income from sale of farm and other land.

q. *In re Plafcan, 93 B.R. 176 (Bankr. E.D. Ark. 1988):* Individual debtors who were not eligible for Ch. 12, because of lack of sufficient farm income, not eligible for Ch. 12 by consolidating case with bankruptcy of wholly owned farm corporation.

r. *In re Walton, 95 B.R. 514 (Bankr. S.D. Ohio 1989):* Debtor not eligible for Ch. 12 where debts exceeded limit.

s. *In re Howard, 212 B.R. 864 (Bankr. E.D. Tenn. 1997):* Farm assets of debtors' sons included in determining eligibility for Ch. 12 where sons materially participated in family farm for no compensation.

t. *In re Osborne, 2005 Bankr. LEXIS 679 (Bankr. D. Or. 2005):* Unsecured portion of loan discharged in previous Ch. 7 case not included in debts for purposes of eligibility for Ch. 12.

u. *Matter of Rinker, 75 B.R. 65 (S.D. Iowa 1987):* Debt arising from lawsuit over family division of property after deaths of debtor's parents constituted debt arising from farming operation.

v. *In re Lands, 85 B.R. 83 (Bankr. E.D. Ark. 1988):* $1.5 million debt limit includes debt on farm residence (and not only debts from farming operation); limit does not include liens against debtor's property for which debtors not personally liable.

w. *In re Reak, 92 B.R. 804 (Bankr. E.D. Wis. 1988):* Debtor's obligation to make payments on family farm awarded to former spouse in divorce decree was sufficiently farm related debt for purposes of eligibility for Ch. 12.

x. *Matter of Marlatt, 116 B.R. 703 (Bankr. D. Neb. 1990):* Same precedent as above.

y. *In re Vaughan, 100 B.R. 423 (Bankr. S.D. Ill. 1989):* Debtors not eligible for Ch. 12 because debts exceeded limit; contested debt included in aggregate debts for purpose of eligibility.

z. *In re Kan Corp., 100 B.R. 726 (Bankr. W.D. Okla. 1988):* Debtor not eligible for Ch. 12 where less than 80 percent of debt related to farming operations; loan obtained to purchase beer distributorship but used to pay off mortgage on farmland not debt arising from farm operation.

aa. *In re Ralph Faber Trust, 113 B.R. 599 (Bankr. D. N.D. 1990):* Irrevocable trust held to be land trust not eligible for Ch. 12 because trust did not operate farm or manage farming operation where farmer placed all farmland in trust with farmer's children and grandchildren as beneficiaries, trust owned no farm equipment and rented farmland to grantor, beneficiaries, and third parties.

bb. *In re Cloverleaf Farmers Co-op., 114 B.R. 1010 (Bankr. D. S.D. 1990):* Incorporated cooperative organization consisting of Hutterite colony of seven families eligible for Ch. 12 because 9/14 of stock owned by persons related within three generations from same ancestor.

cc. *In re Blackwelder Harvesting Co., Inc., 106 B.R. 301 (Bankr. M.D. Fla. 1989):* Corporation which employed unskilled laborers to harvest citrus crops of farmers was not farmer eligible for Ch. 12.

dd. *In re Garako Farms, Inc., 98 B.R. 506 (Bankr. E.D. Cal. 1988):* Farm corporation not eligible for Ch. 12 where shareholders were both dentists, did not live on farm, and formed corporation for purpose of developing pension plan.

ee. *Matter of LLL Farms, 111 B.R. 1016 (Bankr. M.D. Ga. 1990):* Partnership owned by three sisters who all had nonfarm jobs and more nonfarm income than income from farm partnership and operated by one of the sister's sons and two unrelated helpers eligible for Ch. 12.

ff. *In re Tobin Ranch, Inc., 80 B.R. 166 (Bankr. D. Neb. 1987):* Corporation not eligible for Ch. 12 where stock owned 50 percent by husband and wife and 50 percent by corporation owned by husband and three sisters; corporation not relative.

gg. *In re Schaurer Agric. Enters., 82 B.R. 911 (Bankr. S.D. Ohio 1988):* Partnership eligible for Ch. 12 where all farm assets owned by family members and all partnership assets related to farm operations; all general partners required to sign consent to petition.

hh. *In re Williams Land Co., Inc., 91 B.R. 923 (Bankr. D. Or. 1988):* Two corporation farm debtors not eligible for Ch. 12 where combined debts exceeded $1.5 million and where one corporation owned land leased to second corporation which operated farm and owned equipment, corporations shared shareholders and officers; cases had been consolidated and joint Ch. 12 plan had been proposed.

ii. *In re Cross Timbers Ranch, Inc., 151 B.R. 923 (Bankr. W.D. Mo. 1993):* Family farm corporation not eligible for Ch. 12 where corporation had more than $1.5 million in debts; postpetition agreement to reduce debt did not affect eligibility which was determined at time of petition.

jj. *In re McSwine Creek Farms, Inc., 276 B.R. 461 (Bankr. N.D. Minn. 2000):* Farm corporation debtor not eligible for Ch. 12 where owner transferred FSA debt to corporation in violation of FSA regulations; debt remained shareholder's individual obligation.

kk. *Matter of Schafroth, 81 B.R. 509 (Bankr. S.D. Iowa 1987):* Debtors who were officers, shareholders and employees of farm corporation eligible for Ch. 12 if debtors could show they received any income from corporation farm oerations.

ll. *In re Rancho Chamberino, Inc., 77 B.R. 555 (Bankr. W.D. Tex. 1987):* Court stated in dicta that a corporation with only one shareholder may qualify as a family farm corporation.

2. Gross Income from Farming or Fishing

a. *In re Hoskins, 74 B.R. 51 (Bankr. C.D. Ill. 1987):* Farm partnership eligible for Ch. 12 where creditor failed to demonstrate that partnership income from nonfarm wages of partners was not stable source of income.

b. *In re Tart, 73 B.R. 78 (Bankr. E.D. N.C. 1987):* Debtors not eligible for Ch. 12 where debtors disabled and did not intend to continue farming and had sold most farm assets prior to filing bankruptcy.

c. *In re Wagner, 808 F.2d 542 (7th Cir. 1986):* Court looked into Internal Revenue Code for Definition of gross income.

d. *In re Faber, 78 B.R. 934 (Bankr. S.D. Iowa 1987); In re Pratt, 78 B.R. 277 (Bankr. D. Mont. 1987):* Definition of gross income from farming for federal income tax purposes used to determine amount of gross income from farming for Ch. 12 purposes.

e. *In re Dutton, 86 B.R. 651 (Bankr. D. Colo. 1988):* Net loss from nonfarm business not subtracted from other nonfarm income; debtor not eligible for Ch. 12 where nonfarm income exceeded farm income.

f. *In re Gossett: 86 B.R. 941 (Bankr. S.D. Ohio 1988):* Debtor eligible for Ch. 12; gross income from farm supply store equals gross sales less cost of goods sold; gross income from farming equals value of property received for farm products sold less cost of products purchased for resale, here cattle purchased for resale.

g. *In re Fogle, 87 B.R. 493 (Bankr. N.D. Ohio 1988):* Use of federal definition of gross income.

h. *In re Cox, 93 B.R. 625 (Bankr. S.D. Ill. 1988):* Gross income from nonfarm enterprise defined as sales proceeds less cost of goods sold; debtors eligible for Ch. 12 where farm income exceeded nonfarm income.

i. *In re Snider, 99 B.R. 374 (Bankr. S.D. Ohio 1989):* Debtors not eligible for Ch. 12 where nonfarm employment wages exceeded farm gross income; farm gross income did not include value of grain produced but not sold or used during previous taxable year.

j. *In re Brown, 95 B.R. 800 (Bankr. N.D. Okla. 1989):* Debtor's nonfarm income from bar business calculated as gross sales less cost of goods sold.

k. *In re Vantiger-Witte, 2006 Bankr. LEXIS 3763 (Bankr. N.D. Iowa 2006):* Farmer eligible for Ch. 12 where gross income listed on IRS Sch. F exceeded 50 percent of debtor's total income.

l. *In re Koenegstein, 130 B.R. 281 (Bankr. S.D. Ill. 1991):* Gross income included social security benefits but not discharge of indebtedness income.

m. *In re Armstrong, 812 F.2d 1024 (7th Cir. 1987), cert. denied, 485 U.S. 1010 (1987)* See 11 U.S.C. §101(20) (definition of farming operation): Gross income from farming does not include value of barter goods received for labor on nondebtor's farm.

n. *In re Teolis, No. 08-12131, 2009 Bankr. LEXIS 3849 (Bankr. D. R.I. Oct. 26, 2009)*: court rejected *Armstrong* rationale as being too narrow and followed the "totality of the circumstances test" in a case where the court ultimately held that a debtor engaged in the business of selling plants and trees, including vegetables, shrubs and flowering plants, qualified as a "farmer" that was eligible for filing Chapter 12 upon satisfaction of other eligibility requirements."

o. *Matter of Burke, 81 B.R. 971 (Bankr. S.D. Iowa 1987):* Court allowed wages from working on a farm owned by the debtor's children as gross income from farming where the debtor supplied some of the machinery.

p. *In re Welch, 74 B.R. 401 (Bankr. S.D. Ohio 1987):* Income test to be applied at time of filing.

q. *In re Indreland, 77 B.R. 268 (Bankr. D. Mont. 1987):* Debtor eligible for Ch. 12 where family farmer test met at time of petition but under plan, debtor downsized operation such that farm income less than 50 percent of total income.

r. *In re Nelson, 73 B.R. 363 (Bankr. D. Kan. 1987):* Settlement payment for crop loss from previous year not included in farm income for following year for purposes of 50 percent farm income test.

s. *In re S Farms One, Inc., 73 B.R. 103 (Bankr. D. Colo. 1987):* Corporate debtor not eligible for Ch. 12 where corporation had not farmed before, debts had not arisen from farming operations and future farming operations dependent on borrowing funds which were not currently available.

t. *In re Fogle, 87 B.R. 493 (Bankr. N.D. Ohio 1988):* Gross income from farming of previous taxable year used where debtor filed bankruptcy on last day of current taxable year.

u. *In re Shepard, 75 B.R. 501 (Bankr. N.D. Ohio 1987):* ASCS payments were farm income. Gross income from farming has been held to include government farm program payments.

v. *In re Paul, 83 B.R. 709 (Bankr. D. N.D. 1988):* Conservation Reserve Program payments.

w. *In re Carpenter, 79 B.R. 316 (Bankr. S.D. Ohio 1987):* CCC loans included.

x. *In re Sohrakoff, 85 B.R. 848 (Bankr. E.D. Cal. 1988):* Income from sale of farmland not includible as gross income from farming.

y. *In re Barnett, 162 B.R. 535 (Bankr. W.D. Mo. 1993):* Gain from sale of equipment reported on IRS Form 1040, Sch. F).

z. *Cottonport Bank v. Dichiara, 193 B.R. 798 (W.D. La. 1996):* Proceeds from sale of farm machinery and cropshare income included in farm income because sales enabled debtors to continue farming.

aa. *In re Wilson, 2007 Bankr. LEXIS 359 (Bankr. D. Mont. 2007):* Proceeds from sale of truck and trailer included in farm income where equipment used primarily in farm operations.

bb. *In re Rott, 73 B.R. 366 (Bankr. D. N.D. 1987):* Gross income from farming includes rental payments from debtor's son for farm equipment used on son's farming operation; court found that payments subject to inherent risks of farming.

cc. *In re Pierce, 175 B.R. 153 (Bankr. D. Conn. 1994):* Guaranteed payments from partnership for debtor's management and breeding services to partnership were farm income.

dd. *In re Bircher, 241 B.R. 11 (Bankr. S.D. Iowa 1999):* Court included in farm income the income from the sale of a portion of the debtors' farmland which was required by a lender in order for the debtors to continue farming.

ee. *In re Ross, 270 B.R. 710 (Bankr. S.D. Ill. 2001):* Proceeds of sale of land to golf course developer not income from farming because proceeds not used to continue farming operation

ff. *In re McKillips, 72 B.R. 565 (Bankr. N.D. Ill. 1987):* Debtor not family farmer eligible for Ch. 12 where over 50 percent of gross income came from horse training and showing; only breeding, raising and selling of bred and raised horses farming operations for purposes of Ch. 12.

gg. *In re Cluck, 100 B.R. 691 (Bankr. E.D. Okla. 1989):* Debtors not eligible for Ch. 12 because breeding, training, and boarding of horses primarily owned by other parties not farming operation.

hh. *In re Wolline, 74 B.R. 208 (Bankr. E.D. Wis. 1987):* Horse riding stables and dairy operation eligible for Ch. 12 as family farm operation where horses raised by debtor, feed for horses and cows raised by debtor and horse and dairy operations combined.

ii. *In re Guinnane, 73 B.R. 129 (Bankr. D. Mont. 1987):* Debtor eligible for Ch. 12; debtor's income from hauling cattle for third parties was farming income because related to debtor's own cattle operations.

jj. *In re Sugar Pine Ranch, 100 B.R. 28 (Bankr. D. Or. 1989):* The raising and harvesting of timber on a sustained yield basis as part of a crop and livestock operation have been held to be a farming operation.

kk. *In re Miller, 122 B.R. 360 (Bankr. N.D. Iowa 1990):* Debtors' logging and sawmill operations not farming.

ll. *In re Glenn, 181 B.R. 105 (Bankr. E.D. Okla. 1995):* Income from farming included income from sales of timber where debtors owned and managed timber land.

mm. *In re Hampton, 100 B.R. 535 (Bankr. D. Or. 1987):* Debtors' income from custom farming of land leased by corporation owned by debtors owned not gross income from farming.

nn. *In re Smith, 109 B.R. 241 (Bankr. W.D. Ky. 1989):* The insurance proceeds from the loss of a combine have been held not to be includible in gross income from farming.

oo. *In re Richardson, 113 B.R. 28 (Bankr. D. Colo. 1990):* The income from a crop spraying and lawn spraying business was held not to be income from farming for purposes of eligibility for Ch. 12.

pp. *In re Way, 120 B.R. 81 (Bankr. S.D. Tex. 1990):* Federal farm program benefits were considered gross income from farming although the debtor elected to treat the payments as nontaxable state and federal cost-sharing payments. Court held that debtor could not

include in gross income from farming compensation received as director of two farm corporations.

qq. *In re Mary Freese Farms, Inc., 73 B.R. 508 (Bankr. N.D. Iowa 1987):* Corporate landlord not eligible for Ch. 12 where corporation only negotiated leases and collected cash rent from leased farms.

rr. *Matter of Haschke, 77 B.R. 223 (Bankr. D. Neb. 1987):* Debtors not found to be engaged in farming at time of petition for relief where debtors cash rented all farmland except residence.

ss. *In re Cobb, 76 B.R. 557 (Bankr. N.D. Miss. 1987):* Conversion allowable as matter of law but debtor not qualified for Ch. 12 where farmland cash leased to son and less than 50 percent of income from farming.

tt. *In re Maschhoff, 89 B.R. 768 (Bankr. S.D. Ill. 1988):* Income from rental of houses on farmland not income from farming.

uu. *In re Reak, 92 B.R. 804 (Bankr. E.D. Wis. 1988):* Debtor's obligation to make payments on family farm to former spouse in divorce decree was sufficiently farm related debt for purposes of eligibility for Ch. 12.

vv. *In re Morgan Strawberry Farm, 98 B.R. 584 (Bankr. M.D. Fla. 1989):* Farm partnership not eligible for Ch. 12 where farmland cash rented to unrelated party for over three years, partners had obtained nonfarm employment, and no indication that debtors intended to return to farming.

ww. *In re Swanson, 289 B.R. 372 (Bankr. D. Ill. 2003):* Debtor not eligible for Ch. 12 where more than 50 percent of pre-petition income came from cash rent of farmland.

xx. *Matter of Jessen, 82 B.R. 490 (Bankr. S.D. Iowa 1988):* Cash rent considered gross income from farming where debtors had personally operated farm before need to cash rent and debtors had not abandoned intent to return to farming.

yy. *In re Hettinger, 95 B.R. 110 (Bankr. E.D. Mo. 1989):* Debtor eligible for Ch. 12 where income from cash renting of farm necessary to save farming business and debtor intended to continue farming.

zz. *In re Couston, 98 B.R. 280 (Bankr. E.D. Mich. 1989.* (Same as above).

aaa. *In re Creviston, 157 B.R. 380 (Bankr. S.D. Ohio 1993):* Cash rent of farmland included in gross income from farming where farmland rented to corporation owned by debtor's spouse and farm operated by debtor.

bbb. *In re Mikkelsen Farms, Inc., 74 B.R. 280 (Bankr. D. Or. 1987):* Corporate debtor eligible for Ch. 12 where corporation had farmed land in year previous to filing, shareholders lived on farm corporation owned equipment and cash leases of farmland for year after petition were short term even though majority of farmland would be cash leased.

ccc. *In re Gibson, 355 B.R. 807 (Bankr. E.D. Calf. 2006):* Cash rent from lease of vineyard during period before residential development of land not farm income where debtor in business of investing in real property for development.

ddd. *In re Easton, 118 B.R. 676 (Bankr. N.D. Iowa 1990): on rem. from, 883 F.2d 630 (8th Cir. 1989), rev'g and rem'g, 104 B.R. 111 (N.D. Iowa 1988), aff'g, 79 B.R. 836 (Bankr. N.D. Iowa 1988):* In determining whether debtors met farming income test for Ch. 12, income from rental of farmland is "farm income" only if debtor "had some significant degree of engagement in, played some significant operational role in, or had ownership interest in the crop production which took place in the acreage that they rented"; case remanded to determine debtor's amount of participation in operation of rented farmland; on remand, debtor held to have contributed significantly to operation of crop production on rented acres.

eee. *In re Rott, 73 B.R. 366 (Bankr. D. N.D. 1987):* Cash rent was income from farming; tenant was debtor's son and court viewed overall operation as family farm.

fff. *In re Vernon, 101 B.R. 87 (Bankr. E.D. Mo. 1989):* Cash rent of farmland was gross income from farming where debtor rented land temporarily with intent to return to farming and debtor terminated lease within six months; proceeds of commodity loan included as gross income from farming where loan declared as income on federal income tax return.

ggg. *In re Voelker, 123 B.R. 749 (Bankr. E.D. Mich. 1990):* Cash rent from lease of farmland to corporation owned by debtor was gross income from farming because of debtor's participation in farming operation and use of corporation and cash lease as method of passing farm to son; lease not strict cash lease because in lean years, rent partially forgiven if corporation did not have enough income.

hhh. *In re Lamb, 209 B.R. 759 (Bankr. M.D. Ga. 1997):* Income from cash lease of pasture included in income from dairy farm because rental related to dairy farming.

iii. *In re Maynard, 295 B.R. 437 (Bankr. S.D. N.Y. 2003):* Farmland cash rent income paid by S corporation owned by debtor included in debtor's gross income from farming where debtor active in farm operation.

jjj. *In re Tim Wargo & Sons, Inc., 74 B.R. 469 (Bankr. E.D. Ark. 1987), aff'd, 86 B.R. 150 (E.D. Ark. 1988):* Crop share lease deemed to be passive income; operation not eligible for Ch. 12.

kkk. *Matter of Burke, 81 B.R. 971 (Bankr. S.D. Iowa 1987):* Income from crop share rental of farmland includible in gross income from farming.

lll. *In re Osborne, 323 B.R. 489 (Bankr. D. Or. 2005):* Debtors were farmers where debtors crop share leased land for mint crop which required substantial capital and labor involvement in farm.

mmm. *In re Easton, 118 B.R. 676 (Bankr. N.D. Iowa 1990), on remand from 883 F.2d 630 (8th Cir. 1989), rev'g and rem'g 104 B.R. 111 (N.D. Iowa 1988), aff'g 79 B.R. 836 (Bankr. N.D. Iowa 1988):* In determining whether debtors met farming income test for Ch. 12, income from rental of farmland is "farm income" only if debtor "had some significant degree of engagement in, played some significant operational role in, or had ownership interest in the crop production which took place in the acreage that they rented"; case remanded to determine debtor's amount of participation in operation of rented farmland; on remand, debtor held to have contributed significantly to operation of crop production on rented acres.

nnn. *Matter of Krueger, 104 B.R. 223 (Bankr. D. Neb. 1988):* Crop share rental of farmland was income from farming but cash rent of pasture was not because debtor had none of risks inherent in farming.

ooo. *In re Osborne, 2005 Bankr. LEXIS 679 (Bankr. D. Or. 2005):* Eligible for Ch. 12 where debtors actively participated in risk from crop share leases.

3. Debts Arising from farming:

   a. *In re Labig, 74 B.R. 507 (Bankr. S.D. Ohio 1987):* Unsuccessful attempt to list debts as disputed. Debt limit test is applied at the time the petition is filed.

   b. *In re Kan Corp., 100 B.R. 726 (Bankr. W.D. Okla. 1988):* Debtor not eligible for Ch. 12 where less than 80 percent of debt related to farming operations; loan obtained to purchase beer distributorship but used to pay off mortgage on farmland not debt arising from farm operation

   c. *Matter of Reines, 846 F.2d 1012 (5th Cir. 1988):* Debt on principal farm residence included in $1.5 million debt limit.

   d. *In re Douglass, 77 B.R. 714 (Bankr. W.D. Mo. 1987):* Liens on debtors' urban residence and gas station held qualified for 80 percent farm-arising debt rule where proceeds of liens used in farm operations.

   e. *In re Lands, 85 B.R. 83 (Bankr. E.D. Ark. 1988):* Debt on residence included but not liens against property for which debtor not personally liable.

   f. *In re Stedman, 72 B.R. 49 (Bankr. D. N.D. 1987):* Court dismissed Ch. 12 case without prejudice and debtor able to refile when aggregate debts reduced below $1.5 million.

4. Separate Chapter 12 petitions necessary?

   a. *In re Johnson, 73 B.R. 107 (Bankr. S.D. Ohio 1987):* Husband and wife not allowed separate Ch. 12 petitions where joint debts exceeded $1.5 million limit.

5. Debtor in Possession:

a. *Matter of Jessen, 82 B.R. 490 (Bankr. S.D. Iowa 1988):* Debtors in possession not removed for gross mismanagement where land not rented because tenant wary of bankruptcy disputes or where debtor disclaimed inheritance of 160 acres.

b. In re Teigen, 123 B.R. 887 (Bankr. D. Mont. 1991): Ch. 12 trustee did not have any power to bring action to avoid prepetition transfer while debtor remained debtor in possession. A debtor may be reinstated in possession upon request of a party in interest and after notice and a hearing. Ch. 12 debtor's plan provided for direct payments to three impaired creditors, FmHA Farm Credit Services and Farm Credit Bank of Spokane because of sophistication of creditors, lack of objection by creditors and remedies available to these creditors under plan in case of default.

6. Trustee Powers:

a. *In re Brookover, 259 B.R. 884 (Bankr. N.D. Ohio 2001), aff'd sub nom., Robiner v. Demczyk, 269 B.R. 167 (N.D. Ohio 2001):* Standing Ch. 12 trustee could not resign without prior notice and hearing.

b. *In re Graven, 84 B.R. 630 (Bankr. W.D. Mo. 1988):* Trustee ordered to investigate debtors' transfer of property to new corporations.

c. *In re Gross, 121 B.R. 587 (Bankr. D. S.D. 1990):* Trustee not allowed postconfirmation examination of debtor where trustee had no specific facts of debtor's concealment of assets.

7. Fee Cases

a. *In re Schollett, 980 F.2d 639 (10th Cir. 1992):* The percentage fee is a maximum and apparently cannot be lowered by the court. 10 percent standing trustee fee not reviewable nor reducible by court.

b. *In re Marriot, 156 B.R. 803 (Bankr. S.D. Ill. 1993) (same); In re Roesner, 153 B.R. 328 (Bankr. D. Kan. 1993):* Trustee fee of six percent in confirmed plan could not be increased.

c. *In re BDT Farms, Inc., 21 F.3d 350 (8th Cir. 1996), aff'g, 197 B.R. 82 (E.D. Mo. 1996), aff'g 167 B.R. 531 (Bankr. E.D. Mo. 1994):* 11.1 percent fee rejected. It is noted that the standing trustee's fee under ch. 13 for the pilot U.S. Trustee districts could not be modified by the bankruptcy court.

d. *In re Savage, 67 B.R. 700 (D. R.I. 1986), rev'g 60 B.R. 10 (Bankr. D. R.I. 1986):* After the aggregate amount of payments made under the plan exceeds $450,000, the fee is not to exceed 3 percent. That is in addition to base compensation and "actual, necessary expenses incurred."

e. *In re Palombo, 144 B.R. 516 (Bankr. D. Colo. 1992):* Payment of bankruptcy-related attorney fees monthly over five years of Ch. 12 plan allowed; court held that language of §1226(b) allowing payment of administrative expenses "before or at the time of" payments made to creditors allowed installment payment of administrative expenses.

f. *In re Winter, 151 B.R. 278 (Bankr. W.D. Okla. 1993):* Trustee's fees and postconfirmation administrative expenses not payable from funds to be paid unsecured creditors but are debtor's liability.

g. *In re Ryan, 228 B.R. 746 (Bankr. D. Or. 1999):* Allowed installment payments of administrative tax claims over life of plan.

h. *In re Erickson Partnership, 77 B.R. 738 (Bankr. S.D. 1987), appeal dismissed, 871 F.2d 1092 (8th Cir. 1989):* Payments mad outside of plan for claims not modified by plan or modified by agreement of creditor not subject to trustee's fee.

i. *Matter of Cross, 197 B.R. 321 (D. Neb. 1996), aff'g 182 B.R. 42 (Bankr. D. Neb. 1995):* Court had no authority to order trustee fees that were not required for direct payments to creditors. The courts have generally recognized that payments on fully secured claims that are not modified by the bankruptcy plan can be paid directly to the creditor.

j. *In re Jennings, 190 B.R. 863 (Bankr. W.D. Mo. 1995):* No trustee fees for direct plan payments to creditors.

k. *Matter of Logemann, 88 B.R. 938 (Bankr. S.D. Iowa 1988):* Contract payments to creditor subject to trustee's fees where farmland conveyed to secured creditor in satisfaction of debt and sold back to debtor on contract.

l. *In re Hildebrandt, 79 B.R. 427 (Bankr. D. Minn. 1987):* Confirmation of plan denied where plan provided for payments to some unsecured creditors outside plan in order to avoid trustee's fee.

m. *Matter of Sutton, 91 B.R. 184 (Bankr. M.D. Ga. 1988):* Debtor required to pay trustee fees on payments made directly to creditors on impaired claims.

n. *In re Overholt, 125 B.R. 202 (S.D. Ohio 1990):* Ten factors to be weighed in determining whether debtor could make payments directly to secured creditors without payment of trustee fee.

o. *In re Golden, 131 B.R. 201 (Bankr. N.D. Fla. 1991):* Direct payments allowed only to sophisticated creditors who actively participated in confirmation of plan and who agreed to direct payments.

p. *In re Westpfahl, 168 B.R. 337 (Bankr. C.D. Ill. 1994), 171 B.R. 330 (Bankr. C.D. Ill. 1994):* Long-term debts and real estate taxes could be paid outside of plan free of trustee's fees; short-term debts paid through trustee and subject to fee.

q. *In re Cannon, 93 B.R. 746 (Bankr. N.D. Fla. 1988):* Trustee's fees for payments made directly to creditors set at one-half trustee's fee for payments made through trustee.

r. *In re Schneekloth, 186 B.R. 713 (Bankr. D. Mont. 1995):* Turnover of collateral to secured creditor not subject to trustee's fees.

s. *In re Schollett, 980 F.2d 639 (10th Cir. 1992):* U.S. Court of Appeals held that a Ch. 12 debtor may not bypass the trustee when making payments on impaired claims.

t. *In re Fulkrod, 973 F.2d 801 (9th Cir. 1992):* Court affirmed per curiam a decision of the Bankruptcy Appellate Panel hodlign that payments could not be made directly to creditors to avoid the trustee's fee. The court was influenced by the argument that "Congress clearly intended that the trustee in bankruptcy play a significant role in the administration of estates under Ch. 12" and found that allowing direct payments to creditors without payment of the trustee's fee "is hardly an outcome Congress would have intended."

u. *In re Wagner, 36 F.3d 724 (8th Cir. 1994):* Court approved payments to impaired secured creditors with no trustee's fees paid. The debtors' plan contained language that appeared to exclude the payments from trustee's fees where payments were made directly to the creditors. Court agreed that the debtors' plans permitted them to make direct payments to their impaired secured creditors and held that such payments were not in conflict with the Bankruptcy Code. Trustee's fees only required for payments "received by" the trustee.

v. *In re Beard, 45 F.3d 113 (6th Cir. 1995):* Held that a Ch. 12 debtor may bypass the trustee and pay the secured portion of an undersecured debt to the creditor. Court agreed with *Wagner* court that a direct payment is not "received by" the trustee and thus the trustee is not entitled to a percentage of the payment.

w. *In re Haden, 212 F.3d 466 (8th Cir. 2000), aff'g, No. 296CV00092 ERW (E.D. Mo. 1998), aff'g Nos. 94-20111-293, 94-20178-293, 93-20183-293 (Bankr. E.D. Mo. 1996):* 8th Cir. reiterated its holding in *Wagner*, holding that a Ch. 12 plan could provide for payments directly to sophisticated secured creditors, so long as the plan was feasible.

B. The Ch. 12 Reorganization Plan:

1. Filing the Plan:

a. *Matter of Novak, 95 B.R. 24 (Bankr. E.D. N.Y. 1989):* Creditor not entitled to relief from automatic stay where debtor still had 30 days to file plan.

b. *In re Lawless, 74 B.R. 54 (Bankr. W.D. Mo. 1987):* Ch. 12 case dismissed where debtor failed to file plan within 90 days and filed motion for extension 99 days after petition filed.

c. *In re Offield, 77 B.R. 222 (Bankr. W.D. Mo. 1987):* Ch. 12 case dismissed where no plan filed after 110 days and open-ended extension request filed on 99th day.

d. *In re Raylyn Ag, Inc., 72 B.R. 523 (Bankr. S.D. Iowa 1987):* Ch. 12 case not dismissed where debtor filed plan one day late but before creditor moved to dismiss for failure to file plan timely.

e. *In re Ryan, 69 B.R. 598 (M.D. Fla. 1987):* Although Ch. 12 does not provide for withdrawal of a proposed plan, this court allowed Ch. 12 debtor to withdraw a submitted plan in order to resubmit a plan within the 90 days after the order for relief was entered.

f. *In re Danelson, 77 B.R. 261 (Bankr. D. Mont. 1987):* Ch. 12 plan not confirmed where no provision for trustee's fees.

g. *In re Oster, 152 B.R. 960 (Bankr. D. N.D. 1993):* Ch. 12 plan not confirmed where plan failed to include (1) payment of trustee fees on impaired claims paid by debtor directly; (2) source of operating funds for restarting debtor's dairy and livestock operations; and (3) several expense items.

h. *Matter of Herr, 80 B.R. 135 (Bankr. S.D. Iowa 1987):* Ch. 12 plan not required to pay interest on deferred payment of federal tax lien.

i. *In re Robinson Ranch, Inc., 75 B.R. 606 (Bankr. D. Mont. 1987):* Ch. 12 plan may not release guarantors of claim not fully paid under plan.

j. *Matter of Lauck, 76 B.R. 717 (Bankr. D. Neb. 1987):* Ch. 12 debtor allowed to "purchase" homestead portion of farm from creditor and pay balance on remaining land over time under plan.

k. *In re McKinney, 84 B.R. 748 (Bankr. D. Kan. 1987), aff'd, 84 B.R. 751 (Bankr. D. Kan 1988):* Mortgage default may not be cured by Ch. 12 plan after entry of foreclosure judgment.

l. *Matter of C.R. Druse, Sr., Ltd., 82 B.R. 1013 (Bankr. D. Neb. 1988):* Ch. 12 plan may modify deferred federal estate tax installment payments.

m. *In re Miller, 98 B.R. 311 (Bankr. N.D. Ohio 1989), amended on other point, 106 B.R. 136 (Bankr. N.D. Ohio 1989):* Plan could be confirmed which increased term of oversecured Farm Credit Bank loan from 24 to 30 years where 30 year term for similar loans not uncommon; plan not confirmed for other reason.

n. *In re Kuether, 158 B.R. 151 (Bankr. D. N.D. 1993):* Debtors had obtained possession of farmland subject to liens granted by former owners which were foreclosed, leaving debtors only with right to redeem; Ch. 12 plan could not modify terms of payment of original loans secured by liens because debtors only had right of redemption.

o. *In re Bland, 149 B.R. 977 (Bankr. D. Kan. 1992):* Ch. 12 plan could restructure secured debt over life of plan where creditor had foreclosed on farm but had not sold farm.

p. *Matter of Lech, 80 B.R. 1001 (Bankr. D. Neb. 1987):* Debtor eligible for CCC grain storage program under terms of Ch. 12 plan, although not eligible under CCC regulations, where CCC failed to object to plan.

q. *Matter of Arthur, 86 B.R. 98 (Bankr. W.D. Mich. 1988):* Ch. 12 plan may provide for surrender of Federal Land Bank and Production Credit Association stock.

r. *In re Coleman, 125 B.R. 621 (Bankr. D. Mont. 1991):* Plan which provided for 30 year term for originally 20 year loan not confirmed where industry practice limited farm loans to 20 years; court provided compromise term of 15 years with payments amortized over 30 years.

s. *In re Greseth, 78 B.R. 936 (D. Minn. 1987):* Ch. 12 plan allowed to redeem Land Bank stock prior to full payment of debt to bank.

t. *In re Ivy, 86 B.R. 623 (Bankr. W.D. Mod. 1988):* same as above.

u. *In re Wright, 103 B.R. 905 (Bankr. M.D. Tenn. 1989):* Ch. 12 plan allowed to provide that debtor redeem Federal Land Bank stock in partial satisfaction of debt to bank.

v. *In re Davenport, 40 F. 3d 298 (9th Cir. 1994), vac'g 153 B.R. 551 (Bankr. 9th Cir. 1993), aff'g 158 B.R. 830 (Bankr. E.D. Cal. 1992):* Ch. 12 plan allowed to redeem FLB stock in partial satisfaction of debt to FLB; after debtors dismissed case, case vacated as moot to remove precedential effect.

w. *In re Massengil, 100 B.R. 276 (E.D. N.C. 1989), rev'g 73 B.R. 1008 (Bankr. D. N.C. 1987):* Debtor not allowed in Ch. 12 plan to redeem Land Bank and PCA stock to offset debts to Land Bank and PCA prior to full payment of debts to those creditors.

x. *In re Shannon, 100 B.R. 913 (S.D. Ohio 1989):* Ch. 12 plan not confirmed where plan required Land Bank to retire debtor's stock in exchange for credit on bank's claim.

y. *In re Miller, 106 B.R. 136 (Bankr. N.D. Ohio 1989), amending 98 B.R. 311 (Bankr. N.D. Ohio 1989):* Plan could not provide for abandonment of Federal Land Bank stock in partial satisfaction of bank's claim.

z. *In re Carter, 165 B.R. 518 (Bankr. M.D. Fla. 1994):* Redemption of FCA stock allowed.

aa. *In re Crook, 966 F.2d 539 (10th Cir. 1992):* Ch. 12 debtor's plan was allowed to write-down a mortgage of farm property to the commissioners of the Oklahoma Land Office as secured only as to the fair market value of the property.

bb. *In re Speidel, 752 F.2d 1382 (9th Cir. 1985):* Ch. 12 obligations which had matured by their own terms may not be decelerated.

cc. *In re Davis, 77 B.R. 313 (M.D. Ga. 1987):* Debtor liable only for actual and reasonable attorney fees incurred by creditor from default and not fees established by loan agreement where default cured by Ch. 12 plan.

dd. *Justice v. Valley Nat'l Bank, 849 F.2d 1078 (8th Cir. 1988):* Confirmation of plan denied where plan provided for redemption of property, which had been sold at foreclosure sale, over life of plan which extended beyond redemption period. See also, In re Demers, 853 F.2d 605 (8th Cir. 1988).

ee. *In re Gossett, 86 B.R. 941 (Bankr. S.D. Ohio 1988):* Creditor may not compel lengthening of Ch. 12 plan from three to five years in order to increase dividend to unsecured creditors where three year plan complies with Ch. 12 requirements for confirmation.

ff. *In re O'Farrell, 74 B.R. 421 (Bankr. N.D. Fla. 1987):* 30 year payout on realty reasonable. Limitation does not apply to the payment of secured claims or to long-term

claims where the default is cured within a reasonable time and regular payments are resumed. Two other courts did not hold period reasonable. They are:

gg. *In re Indreland, 77 B.R. 268 (Bankr. D. Mont. 1987):* Ch. 12 plan not confirmed where debtor failed to demonstrate reasonableness of 30 year installment payment of secured claim. *In re Foster, 79 B.R. 906 (Bankr. D. Mont. 1987):* Plan not confirmed where contract for purchase of farmland extended under plan to 30 years which was unreasonable given usual length of such contracts to be 10 to 15 years. *In re Koch, 131 B.R. 128 (Bankr. N.D. Iowa 1991):* Plan not confirmed where industry practice was to allow maximum of 20 years for ag loans.

hh. *In re Citrowske, 72 B.R. 613 (Bankr. D. Minn. 1987):* Ch. 12 plan must provide schedule of payments sufficient for trustee to determine whether payments are being timely made.

2. Procedural Matters Involving Confirmation:

   a. *In re. Miller, 140 B.F. 499 (Bankr. E.D. Ark. 1992):* New confirmation hearing set to allow FmHA to appear where debtor sent notice to FmHA national office and not to state office as requested by FmHA.

   b. *In re Ivy, 76 B.R. 147 (Bankr. W.D. Mo. 1987):* Failure of court to hold confirmation hearing within 45 days of filing of plan did not deprive court of jurisdiction or cause automatic confirmation of plan.

3. Cases Involving Good Faith Filing

   a. *In re Zurface, 95 B.R. 527 (Bankr. S.D. Ohio 1989):* Ch. 12 plan not confirmed and case converted to Ch. 7 where plan not proposed in good faith which provided for only 3 percent dividend on general unsecured claims and where debtors fraudulently transferred for inadequate consideration substantial amount of assets to wholly owned corporation just prior to bankruptcy with intent to defraud creditors.

   b. *In re Marshall, 108 B.R. 195 (Bankr. C.D. Ill. 1989):* Plan not confirmed where plan not proposed in good faith because debtor's parents had transferred farmland to debtors without debtors assuming parents' mortgage and parents filed Ch. 7.

   c. *In re Braxton, 124 B.R. 870 (Bankr. N.D. Fla. 1991):* Plan not confirmed where plan did not provide for payments to unsecured creditors equal to what they would receive under Ch. 7; debtors did not provide evidence of sufficient income to fund plan, even as proposed; and plan not proposed in good faith where plan provided for transfer of scattered parcels of worthless land to secured creditor in partial buy-down of principal owed.

   d. *In re Hoffman, 169 B.R. 608 (Bankr. N.D. Ohio 1994):* Confirmation denied and case dismissed for lack of good faith where debtor proposed five plans, none of which met requirements for confirmable plan.

   e. *In re Euerle Farms, Inc., 861 F. 2d. 1089 (8th Cir. 1988):* Case dismissed where corporate farm debtor's plan not proposed in good faith because projected income not consistent with

history of losses and corporation had transferred unencumbered land to shareholders just over one year before bankruptcy filing.

f. *Matter of McKeag, 77 B.R. 716 (Bankr. D. Neb. 1987):* Plan not confirmed where debtor sold nonexempt assets and borrowed additional funds to purchase exempt annuity prior to bankruptcy but failed to provide full information about annuity or include income from annuity in disposable income; court found that absent such information, court could not decide whether plan was proposed in good faith.

g. *Matter of Rose, 135 B.R. 603 (Bankr. N.D. Ind. 1991):* Plan not confirmed where secured creditor was 69 years old and plan provided for payment of secured portion of claim over 30 years.

h. *In re Snider, 83 B.R. 1003 (Bankr. N.D. Ind. 1988):* Plan not confirmed where projections of expenses and income left little room for error and not supported by established historical crop yields.

4. Payment to Creditors:

a. *In re Willingham, 83 B.R. 552 (Bankr. S.D. Ill. 1988):* Ch. 12 plan not confirmed where unsecured creditor would not receive payments under plan at least equal to what would be received if debtor liquidated in Ch. 7.

b. *In re Kjerulf, 82 B.R. 123 (Bankr. D. Or. 1987):* Ch. 12 plan approved where unsecured creditors to receive little or no payment but plan distributes all of debtor's disposable income.

c. *In re Foster, 84 B.R. 707 (Bankr. D. Mont. 1988):* Amendment of plan to decrease payment to unsecured creditors not approved where debtors would retain property but unsecured creditors would receive less than under liquidation.

5. Disposable Income:

a. *Matter of Schwarz, 85 B.R. 829 (Bankr. S.D. Iowa 1988):* Plan not confirmed where provided for payment of disposable income to unsecured creditor only for length of one-year plan; debtor required to pay disposable income over three years.

b. *In re Borg, 88 B.R. 288 (Bankr. D. Mont. 1988):* Although plan distributed all of the debtor's disposable farm income during plan, plan not confirmed where objecting unsecured creditor would not receive as much as under Ch. 7 liquidation.

c. *Matter of Schwarz, 85 B.R. 829 (Bankr. S.D. Iowa 1988):* plan not confirmed where provided for payment of disposable income to unsecured creditor only for length of one-year plan; debtor required to pay disposable income over three years

d. *In re Fauth, 79 B.R. 491 (Bankr. N.D. Fla. 1987):* Plan confirmed over unsecured creditor's objection where all of debtor's disposable income.

e. *Matter of Roberts, 133 B.R. 1004 (Bankr. N.D. Ind. 1991):* Creditor allowed to file objection to discharge because of debtors' failure to pay all disposable income where all other plan payments made and discharge requested by debtors.

f. *In re Rowley, 22 F.3d 190 (8th Cir. 1994), aff'g unrep. D. Ct. dec., aff'g 143 B.R. 547 (Bankr. D. S.D. 1992):* Ch. 12 debtor not relieved from payment of all disposable income during plan where plan provided for payment of all projected income but projected income equal to zero.

g. *In re Coffman, 90 B.R. 878 (Bankr. W.D. Tenn. 1988):* Disposable income does not include amounts needed for maintenance and continuation of debtor's farming operation for following year.

h. *In re Fleshman, 123 B.R. 842 (Bankr. W.D. Mo. 1990*): Accumulated disposable income ordered paid to trustee for distribution to unsecured creditors.

i. *In re Kuhlman, 118 B.R. 731 (Bankr. D. S. D. 1990):* Burden of proof of disposable income on debtor; debtor allowed hearing to rebut trustee's evidence of additional disposable income during two years of plan.

j. *In re Wood, 122 B.R. 107 (Bankr. D. Idaho 1990):* Debtors did not have more disposable income than anticipated in plan because debtors had increased operating costs and would need all income for funding farm operation and living expenses as provided in plan.

k. *In re Hart, 151 B.R. 84 (Bankr. N.D. Tex. 1993):* Disposable income did not include inheritance received by debtor after plan payments made but before order approving disposable income payments where delay in obtaining order not fault of debtor.

l. *In re Meyer 173 B.R. 419 (Bankr. D. Kan. 1994):* Plan not confirmed where debtors did not fully account for all income nor fully justify all expenses so as to account for all disposable income.

m. *In re Berger, 61 F.3d 624 (8th Cir. 1995):* disposable income included race car expenses, increase in equity from forgiveness of loan but not tractor purchased with proceeds of exempt life insurance policy.

n. *In re Broken Bow Ranch, Inc., 33 F.3d 1005 (8th Cir. 1994):* Disposable income included postplan farm program payments which related to plan year crops; debtor not entitled to keep sufficient funds to completely finance next year's crop.

o. *In re Hammrich, 98 F.3d 388 (8th Cir. 1996):* Post-plan farm program payments included in disposable income; creditors allowed to seek modification of plan to increase plan payments and length of plan.

p. *In re Gage, 159 B.R. 272 (Bankr. D. S.D. 1993):* Profit from sale of assets owned during bankruptcy case included in disposable income.

q. *In re Hammrich, 98 F.3d 388 (8th Cir. 1996):* Value of pre-market weight calves included in disposable income to extent of value at end of plan.

r. *Agribank, FCB v. Honey, 167 B.R. 540 (W.D. Mo. 1994):* Disposable income included inheritance which debtor became entitled to during plan period.

s. *Matter of Weber, 25 F.3d 413 (7th Cir. 1994):* Disposable income determined on annual basis and not netted over period of plan.

t. *In re Linden, 174 B.R. 769 (C.D. Ill. 1994):* Disposable income not decreased by income tax depreciation deductions; disposable income calculated on annual basis.

u. *In Coffman, 90 B.R. 878 (Bankr. W.D. Tenn. 1988):* Disposable income does not include amounts needed for maintenance and continuation of debtor's farming operation for following year.

v. *In re Schmidt, 145 B.R. 983 (Bankr. D. S.D. 1991):* Disposable income would not include funds necessary for financing next year's crop if debtor could demonstrate that other financing not available or feasible.

w. *In re Stottlemyre, 146 B.R. 234 (Bankr. W.D. Mo. 1992):* Disposable income did not include (1)$9,000 necessary for financing next year's farm operations, (2) increase in number of cattle; and (3) tithing to church which was within income of debtor projected in plan.

x. *In re Gage, 159 B.R. 272 (Bankr. D. S.D. 1993):* Debtors' personal living expenses in excess of five percent annual increase not reasonably necessary and were included in disposable income; investment in hog business included in disposable income because debtors failed to show need for investment; and money used for equipment purchases not included in disposable income because purchases within reasonable expectations of operating farm.

y. *In re Meyer, 186 B.R. 267 (Bankr. D. Kan. 1995):* Disposable income did not include costs of maintaining hog facility for sale; commuting expenses where commuting less costly than second residence; and reasonable wages for debtors' children's labor.

z. *In re Lynch, 299 B.R. 776 (W.D. N.C. 2003):* Parochial school tuition included in disposable income where debtors refused to extend plan and claimed other excessive expenses.

aa. *Matter of Wobig, 73 B.R. 292 (Bankr. D. Neb. 1987):* Ch. 12 plan required to be modified to require payment of disposable income under plan where proposed plan used disposable income to pay remaining principal of secured claims first.

6. Liquidation Test:

a. *In re Perdue, 95 B.R. 475 (Bankr. W.D. Ky. 1988):* Liquidation test applied as of date of confirmation of plan.

b. *In re Mush, 99 B.R. 448 (Bankr. D. Kan. 1988):* Same as above.

c. *In re Foos, 121 B.R. 778 (Bankr. S.D. Ohio 1990):* Date for determination of property included in liquidation test is date of confirmation hearing; crops harvested and sold

postpetition and prior to confirmation included in test but crops unharvested as of date of confirmation hearing not included.

d. *In re Novak, 252 B.R. 487 (Bankr. D. N.D. 2000):* Liquidation calculation included value of crops plated post-petition but not harvested prior to confirmation.

7. Plan Feasibility:

a. *In re Chaney, 87 B.R. 131 (Bankr. D. Mont. 1988):* Plan confirmed as feasible based on debtor's historical income and expenses form wheat farming.

b. *In re Land, 82 B.R. 572 (Bankr. D. Colo. 1988):* Plan confirmed which provided 20 year payment of secured claim by 74 year old debtor where debtor's son guaranteed plan payments.

c. *In re Eber-Acres Farm, 82 B.R. 889 (Bankr. S.D. Ohio 1987):* Ch. 12 plan not confirmed and case dismissed where debtor failed to establish power or right of court to sell assets belonging to debtor's partners, debtor failed to identify assets owned by debtor's partners, failed to set dates and amounts of payments under plan, and failed to present evidence as to feasibility of plan.

d. *In re Crowley, 85 B.R. 76 (W.D. Wis. 1988):* Feasibility of plan could be determined using past production of debtor's dairy; plan not confirmed where plan would require nearly doubling of per cow production.

e. *In re Townsend, 90 B.R. 498 (Bankr. M.D. Fla. 1988):* Ch. 12 plan not confirmed where debtor failed to demonstrate sufficient income to fund plan.

f. *In re Bartlett, 92 B.R. 142 (E.D. N.C. 1988):* Ch. 12 plan not confirmable where debtor had insufficient income to make plan payments for first year of plan.

g. *In re Adam, 92 B.R. 732 (Bankr. E.D. Mich. 1988):* Plan not confirmable where debtor failed to provide sufficient factual support for projected income from sugar beet crops in excess of historical prices and yields.

h. *Matter of Bluridg Farms, Inc., 93 B.R 648 (Bankr. S.D. Iowa 1988):* Plan confirmable although debtor's income during plan not guaranteed to meet plan requirements.

i. *In re Butler, 100 B.R. 566 (Bankr. E.D. Ark. 1989):* Ch. 12 plan not confirmed and case dismissed where debtor's income projection sufficient to fund first year of plan.

j. *In re Cluck, 100 B.R. 691 (Bankr. E.D. Okla. 1989):* Ch. 12 plan not confirmed where debtor demonstrated no ability or willingness to successfully operate horse breeding, training, and boarding operation.

k. *In re Novak, 102 B.R. 22 (Bankr. E.D. N.Y. 1989):* Ch. 12 plan not confirmed where unsecured creditors received no payments under plan yet debtors retained equity in property and where debtors failed to demonstrate ability to make payments under plan because salaries dependent upon success of two corporations also in Ch. 12 bankruptcy.

l. *In re Rape, 104 B.R. 741 (W.D. N.C. 1989):* Ch. 12 plan confirmed where sufficient evidence that debtors would have enough income from their grain farming operations, with more than $80,000 cushion, to make plan payments.

m. *In re Kuether, 158 B.R. 151 (Bankr. D. N.D. 1993):* Plan not confirmed where debtors' income projections were too speculative given poor income history and failure of debtors to demonstrate availability of funding for cattle or sheep operation.

n. *In re Soper, 152 B.R. 985 (Bankr. D. Kan. 1993):* Ch. 12 debtor could include nondebtor spouse's nonfarm income in income projections for plan.

o. *In re Barnett, 162 B.R. 535 (Bankr. W.D. Mo. 1993):* Debtor's nonfarm income included in determination of plan feasibility.

p. *In re Gough, 190 B.R. 455 (Bankr. M.D. Fla. 1995):* Plan not confirmed where debtors overly optimistic as to projected revenues and did not provide sufficient living expenses.

q. *In re Nauman, 213 B.R. 355 (Bankr. 9th Cir. 1997):* Although debtors' income projection exceeded historical income of ranch, plan confirmed because debtors had made improvements; negative amortization of installment payments allowed where creditor adequately protected.

r. *In re Honeyman, 201 B.R. 533 (Bankr. D. N.D. 1996):* Plan not confirmed where debtor failed to provide reasonable estimate of farm and ranch income.

s. *In re Howard, 212 B.R. 864 (Bankr. E.D. Tenn. 1997):* Plan not confirmed where farm income and expense estimates were unreasonable given history of farm and one secured creditor would receive payments less than interst on debt.

t. *In re Sauer, 223 B.R. 715 (Bankr. D. N.D. 1998):* Plan not confirmed because unrealistic where projected income was 155 percent of historical income.

u. *In re Clark, 288 B.R. 237 (Bankr. D. Kan. 2003):* Ch. 12 plan not confirmed where most of plan payments to come from CRP rent but debtor had not signed up for CRP by date of plan confirmation.

v. *In re Nelson, 291 B.R. 861 (Bankr. D. Idaho 2003):* Ch. 12 plan not confirmed where payments were to come from leasing farm land but no leases executed at time of plan confirmation.

w. *In re Rice, 357 B.R. 514 (Bankr. 8th Cir. 2006):* Plan not confirmed where plan required FSA to forgive loans and failed to provide adequate evidence to support proposed income sufficient to make plan payments.

x. *In re Kowalzyk, 2006 Bankr. LEXIS 2806 (Bankr. D. Minn. 2006):* Plan not confirmed because of failure of debtor to provide sufficient information to determine accuracy or reliability of debtor's income and expense projections that would provide sufficient income to fund plan payments.

y. *In re Noe, 76 B.R. 675 (N.D. Iowa 1987):* While an objecting creditor claimed that the debtors' annual operational cash flows were exaggerated, the creditor failed to introduce evidence challenging the figures and computations used in the cash flow projections and the projections were reasonable on their face; plan confirmed upon amendment.

z. *In re Bowlby, 113 B.R. 983 (Bankr. S.D. Ill. 1990):* Ch. Debtors allowed to retain from income of last year of plan amounts necessary for continuing farm operation in following year; debtors required to provide evidence of expenses and income from projected crop and availability of operating loans in order for court to determine amount necessary for continuing debtors' farming operations.

aa. *In re Tamcke, No. 09-60833-12, 2010 Bankr. LEXIS 168 (Bankr. Mont. Jan. 14, 2010)*: Chapter 12 plan denied confirmation based on feasibility

bb. *In re Potts, No. 09-6053 (8th Cir. Jan. 12, 2010)*: Debtors' Chapter 13 plan confirmed over creditor's argument that plan not feasible because debtors' projected income from cattle sales speculative due to condition of cattle herd; creditor failed to identify any objective fact clearly establishing that bankruptcy court erred in determining that plan was feasible based on debtors' projections; plan permissibly modified creditor's default remedies and plan does not "bifurcate" the claim into secured and unsecured portions.

8. Valuation Issues:

a. *In re Felten, 95 B.R. 629 (Bankr. N.D. Iowa 1988):* Value of real estate collateral set at fair market value and not liquidation value under Agricultural Credit Act of 1987 where farm not liquidated.

b. *In re Case, 115 B.R. 666 (Bankr. 9th Cir. 1990):* Value of farmland not decreased by costs of foreclosure where debtor to retain possession of collateral under plan; court held that provisions of Ag Credit Act of 1987 do not apply to bankruptcy provisions regarding valuation.

c. *In re Mikkelsen Farms, Inc., 74 B.R. 280 (Bankr. D. Or. 1987):* Value of collateral to be determined at date of confirmation of plan; thus, transfer of collateral to bankruptcy estate postpetition increased secured amount of creditor's claim.

d. *Speck v. U.S. Through Farmers Home Admin., 104 B.R. 1021 (D. S.D. 1989):* For purposes of determining amount of secured creditor's claim in collateral farmland, Ch. 12 debtor's farmland valued at best use as crop land and not as pasture, use intended by debtor during Ch. 12 plan.

e. *In re Hopwood, 124 B.R. 82 (E.D. Mo. 1991):* Valuation of farm to be determined as of effective date of Ch. 12 plan.

f. *In re Branch, 127 B.R. 891 (Bankr. N.D. Fla. 1991):* Value of farmland to be deeded to secured creditor valued as separate parcels because transferred land differed in type and quality.

g. *In re Bremer, 104 B.R. 999 (Bankr. W.D. Mo. 19989):* Ch. 12 plan not confirmed where debtor failed to include value of growing crops and future CRP payments as of the effective date of the plan in determining the value of assets available to be distributed to unsecured creditors.

9. Interest Rate/Interest:

a. *Matter of Wichmann, 77 B.R. 718 (Bankr. D. Neb. 1987):* Interest rate in Ch. 12 case to be interest rate on Treasury bonds with similar remaining maturity and average balance plus 2 percent.

b. *In re Hansen, 77 B.R. 722 (Bankr. D. N.D. 1987):* Plan not confirmed where no interest scheduled for deferred payment of unsecured claims. *In re Lewis, 147 B.R. 37 (Bankr. W.D. Mo. 1992):* Undersecured creditor entitled to interest on claim only from date of confirmation of Ch. 12 plan.

c. *In re Hardzog, 901 F.2d 858 (10th Cir. 1990), rev'g 77 B.R. 840 (W.D. Okla. 1987), aff'g 74 B.R. 701 (Bankr. W.D. Okla. 1987):* Case remanded for determination of market rate for similar loans in region.

d. *In re Janssen Charolais Ranch, Inc. 73 B.R. 125 (Bankr. D. Mon. 1987):* Ch. 12 plan not confirmable where debtor failed to demonstrate fairness of interest rate on deferred payment of secured claim.

e. *In re O'Farrell, 74 B.R. 421 (Bankr. N.D. Fla. 1987):* 11 percent interest rate set for deferred payments on secured claim based on prevailing market rate of Federal Land Bank creditor for loan of term equal to payout period with due consideration to quality of security and lower risk of default resulting from discharge in Ch. 12.

f. *In re Edwardson, 74 B.R. 831 (Bankr. D. ND. 1987):* 12 percent interest rate on plan payments to secured creditor allowed where that was interest rate charged by creditor for best farm secured loans.

g. *In re Lenz, 74 B.R. 413 (Bankr. C.D. Ill. 1987):* Oversecured creditor entitled to contract rate of interest up to effective date of plan and market rate of interest for payments under plan.

h. *In re Robinson Ranch, Inc. , 75 B.R. 606 (Bankr. D. Mont. 1987):* Market rate of 9 percent interest on 20 year installment payments on secured claim allowed in plan.

i. *In re Noe, 76 B.R. 675 (Bankr. N.D. Iowa 1987):* Plan allowing payment of interest at 10 percent over 25 years on creditor's claim and at 10 percent over 20 years on creditor's unsecured claim fair and equitable under 11 U.S.C. §1129(b). *In re Conrad, 142 B.R. 34 (Bankr. E.D. Ark. 1992):* Secured creditor entitled, under section 506(b) to postpetition, preconfirmation interest and attorney fees on its claim whether or not such amounts listed in confirmed Ch. 12 plan.

j. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc., 484 U.S. 365 (1988) and In re Lewis, 147 B.R. 37 (Bankr. W.D. Mo. 1992):* Creditor not entitled to postpetition/preconfirmation interest on claim, but may receive postconfirmation interest.

k. *In re Shannon, 100 B.R. 913 (S.D. Ohio 1989):* Ch. 12 plan not confirmed and case remanded to determine interest rate on plan deferred payment equal to market rate for similar loans made by regional and local lenders.

l. *In re Burris, 102 B.R. 822 (Bankr. E.D. Okla. 1989):* Interest rate on deferred Ch. 11 plan payments to be set at market rate, calculated as cost of money to creditor plus reasonable rate of return.

10. Sale of Collateral

a. *In re Borg, 88 B.R. 288 (Bankr. D. Mont. 1988):* Debtor allowed to sell collateral foxes and crops raised through additional services provided by debtor.

b. *Matter of Milleson, 83 B.R. 696 (Bankr. D. Neb. 1988):* Confirmation denied where plan allowed debtors to sell collateral except to extent of 110 percent of secured creditor's lien; extra 10 percent held insufficient adequate protection; creditor held to have perfected security interest in value of collateral in excess of secured claim.

c. *In re Underwood, 87 B.R. 594 (Bankr. D. Neb. 1988):* Same as above; Plan not confirmed where plan allowed debtor to sell collateral and use proceeds for cattle operation without giving creditor line on proceeds.

d. *In re Lyon, 161 B.R. 1013 (Bankr. D. Kan. 1993):* Creditor bound by plan provision which failed to retain cross-collateralization of debtor's farm equipment.

e. *In re Watkins, 240 B.R. 735 (Bankr. C.D. Ill. 1999):* State board criticism of real estate appraiser was insufficient grounds to challenge confirmed plan which was based on appraisal by criticized appraiser.

11. Determining "Present Value":

a. *In re Smith, 4 B.R. 12 (Bankr. E.D. N.Y. 1980):* Court stated present value requirement entitled creditor to amount that would have been realized had claim been paid in full on effective date of plan.

b. *In re Turner, 87 B.R. 514 (Bankr. S.D. Ohio 1988):* Interest rate for Ch. 12 plan payments set at contract rate. See also, *In re Rogers, 6 B.R. 471 (Bankr. S. D. Iowa 1980); In re Clements, 11 B.R. 38 (Bankr. N.D. Ga. 1981); In re Bar L O Farms, West, 87 B.R. 125 (Bankr. D. Idaho 1988)*

c. *In re Miller, 106 B.R. 136 (Bankr. N.D. Ohio 1989), amending 98 B.R. 311 (Bankr. N.D. Ohio 1989):* Interest rate on deferred payments on secured claims of creditor was set at 12.75 %, equaling current interest rate under loan contract.

d. *In re DeSanto, 178 B.R. 634 (Bankr. M.D. Pa. 1994):* Plan not confirmed where interest rate on deferred payments below contract rate and did not equal market rate for similar loans.

e. *In re Yett, 306 B.R. 287 (Bankr. 9th Cir. 2004):* Contract rate on loan used for plan payments on loan; loan default rate was applied prior to bankruptcy filing but court held that contract rate was more indicative of market rate which applied for bankruptcy plan payment purposes.

f. *In re Anderson, 6 B.R. 601 (Bankr. S. D. Ohio 1980):* Rate stated in consensual contract best measure of factors relevant to setting discount rate.

g. *Matter of Johnson, 44 B.R. 667 (Bankr. S.D. Ohio 1984):* State legal judgment rate of 9 percent applied.

h. *In re Crockett, 3 B.R. 365 (Bankr. N.D. Ill. 1980):* Current legal rate considered to be convenient rate for discounting future payments.

i. *Matter of Fleshman, 82 B.R. 994 (Bankr. W.D. Mo. 1987):* Legal rate of 9 percent on Federal Land Bank undersecured loan.

j. *In re Zeigler, 6 B.R. 3 (Bankr. S.D. Ohio 1980):* 12 percent IRS rate viewed as "reasonably responsive to current economic conditions".

k. *In re Candle, 13 B.R. 29 (Bankr. W.D. Tenn. 1981):* contract rates ranging over 25 percent; IRS rate selected as an equitable alternative

l. *In re Fi-Hi Pizza, 40 B.R. 258 (Bankr. D. Mass. 1984):* IRS rate plus 2.5 percent adjustment for risks of bankruptcy.

m. *In re Tacoma Recycling, Inc., 23 B.R. 547 (Bankr. W.D. Wash. 1982):* Court adopted federal civil judgment rate.

n. *In re Fisher, 29 B.R. 542 (Bankr. D. Kan. 1983):* Court used federal civil judgment rate with an additional amount as a risk factor.

o. *In re Moore, 25 B.R. 131 (Bankr. N.D. Tex 1982):* Court utilized expert testimony in setting the discount rate, often because the expert testimony was believed to produce a rate more responsive to market conditions.

p. *In re Roso, 76 F.3d 179 (8th Cir. 1996):* Plan could not use rate based on special FmHA subsidized rate for new farmers because special rate not market rate.

q. *In re Cooper, 11 B.R. 391 (Bankr. S.D. Ga. 1981):* Rate that would have been charged had creditor financed particular claim involved.

r. *In re Landscape Assocs., Inc., 81 B.R. 485 (Bankr. E.D. Ark. 1987):* Debtor not allowed to use prime rate as interest rate on deferred Ch. 11 plan payments where prime rate not equal to prevailing rate of interest on loans on real estate held for investment

s. *In re Butler, 97 B.R. 508 (Bankr. E.D. Ark. 1988):* Interest rate of plan proposed by debtor allowed where rate exceeded current market rate for similar loans.

t. *In re Batchelor, 97 B.R. 993 (Bankr. E.D. Ark. 1988):* Plan not confirmed which did not provide interest rate for deferred payments equal to rate of creditor Land Bank for similar loan.

u. *In re Miller, 106 B.R. 136 (Bankr. N.D. Ohio 1989), amending 98 B.R. 311 (Bankr. N.D. Ohio 1989):* Interest rate on deferred payments on secured claims of creditor set at 12.75%, equaling current interest rate under loan contract.

v. *U.S. v. Arnold, 878 F.2d 925 (6th Cir. 1989):* Interest rate on deferred payments to secured creditor set at current market rate for similar loans where plan reduced claim to value of collateral.

w. *Farm Credit Bank v. Hurd, 105 B.R. 430 (W.D. Tenn. 1989):* In determining whether income of Ch. 12 debtor during execution of plan is disposable income, court is to first obtain calculations from trustee and then provide debtor and creditors with opportunity to object under 11 U.S.C. §1229(a)(1).

x. *In re Wright, 103 B.R. 905 (Bankr. M.D. Tenn. 1989):* Plan not confirmed where debtor failed to provide sufficient evidence that interest rate of 11.4 percent on payment of deferred claim of bank was equal to market rate for similar loans; debtor failed to demonstrate how interest rates on FmHA loans, Federal Farm Credit rate, and 30 year Treasury bill rate applicable to market rate for 30 year loan involving farmland.

y. *In re Mason, 129 B.R. 990 (Bankr. W.D. N.Y. 1991):* Interest rates of 5 and 7 percent not sufficient.

z. *In re Foertsch, 167 B.R. 555 (Bankr. D. N.D. 1994):* Market rate of interest used for deferred payments on oversecured claim.

aa. *In re Zerr, 167 B.R. 953 (Bankr. D. Kan. 1994), appeal dismissed, 180 B.R. 281 (D. Kan. 1995):* Market rate of interest with no increase for risk.

bb. *In re Showtime Farms, Inc., 267 B.R. 541 (Bankr. E.D> Tex 2000):* Plan not confirmed where debtor failed to show that lower interest rate on secured claim was market rate of interest for similar loans.

cc. *In re Neff, 60 B.R. 38 (Bankr. N.D. Tex. 1985), aff'd, 785 F.2d 1033 (5th Cir. 1986):* Rate charged by PCA to other customers.

dd. *In re Willis, 6 B.R. 55 (Bankr. N.D. Ill. 1980):* One-half point over federal short-term rate.

ee. *In re Janssen Charolais Ranch, Inc., 73 B.R. 125 (Bankr. D. Mont. 1987:* Court favored rates based on market conditions. *In re Janssen Charolais Ranch, Inc., 83 B.R. 743 (Bankr. D. Mont. 1988):* Interest rate of prime rate (8.75 %) plus 2.5% approved.

ff. *In re Kloberdanz, 83 B.R. 767 (Bankr. D. Colo. 1988):* Market rate of 11.5% approved.

gg. *In re Brach, 127 B.R. 891 (Bankr. N.D. Fla. 1991):* Plan not confirmed which did not provide for market rate of interest in deferred payments.

hh. *In re Doud, 74 B.R. 865 (Bankr. S.D. Iowa 1987), aff'd, 869 F.2d 1144 (8th Cir. 1989):* Treasury bill rate plus two percentage points for risk for all but FmHA loans.

ii. *Matter of Wichmann, 77 B.R. 718 (Bankr. D. Neb. 1987): same. But see, Matter of Milleson, 83 B.R. 696 (Bankr. D. Neb. 1988):* Court held Wichmann rate of interest (treasury rate plus 2%) inadequate and set interest rate at 12.5%; value of secured creditor's claim set on date of confirmation. Wichmann rate has subsequently been used for loans on farm equipment and real estate, Wichmann rate plus 2.5% has been used for loan on cattle because of fluctuations in cattle market.

jj. *In re Paddock, 81 B.R. 51 (Bankr. D. Mont. 1987):* Interest rate for Federal Land Bank loan set at prime rate of 8.75% plus 1.5 percent for risk factor; survey of other commercial lenders' interest rates for high risk, low credit rating ag borrowers not applicable to FLB debt.

kk. *In re Michels, 305 B.R. 868 (Bankr. 8th Cir. 2004), aff'g, 391 B.R. 9 (Bankr. D. Iowa 2003):* Plan not confirmed where plan provided for 5.75 % interest on plan payments; court required at least U.S. Treasury bond rate of 5.48% plus 2 percentage points for risk.

ll. *U.S. v. Camino Real Landscape Mainenance Contractors, Inc., 818 F.2d 1503, 1506 (9th Cir. 1987):* Market based discount rate seems to be contemplated with a focus upon debtor's specific situation and characteristics.

mm. *In re Bergbower, 81 B.R. 15 (Barnk. S.D. Ill. 1987):* Interest rate set at Treasury bond rate plus two percentage points.

nn. *In re Big Hook Land & Cattle Co., 81 B.R. 1001 (Bankr. D. Mont. 1988):* Interest rate set at prime rate plus 2 percent.

oo. *In re Cool, 81 B.R. 614 (Bankr. D. Mont. 1987):* Interest rate on deferred plan payments set at prime rate plus 1.25 percent.

pp. *In re Lockard, 234 B.R. 484 (Bankr. W.D. Mo. 1999):* Plan not confirmed where plan provided for 20 year repayment of loan at 7 percent where debtor was 69 years old; interest rate had to be at least 5.5 percent riskless rate plus two percent for risk.

qq. *Till v. SCS Credit Corp., 541 U.S. 465 (2994), rev'g, 301 F.3d 583 (7th Cir. 2002):* Method endorsed by U.S. Supreme court in a Ch. 13 case in 2004. Debtor proposed payment of truck loan at an interest rate equal to prime rate plus 1.5% for risk instead of contract rate of 21 percent. 7th Circuit had held that proper rate was to be determined by the evidence. S.C. rejected method and endorsed the use of the prime rate plus a component for risk because it provided a simpler and more efficient method of determining the interest rate to be charged for bankruptcy plan installment payments while providing debtors and creditors with the opportunity to provide evidence to support

the adequate risk factor. Court noted that rate should be high enough to compensate creditor, but not so high to doom plan.

rr. *In re Goodyear, 218 B.R. 718 (Bankr. D. Vt. 1998):* Interest rate on payments on oversecured claims equal to rate for U.S. Treasury instruments of similar duration.

ss. *In re Fisher, 930 F.2d 1361 (8th Cir. 1991):* FmHA entitled to market rate of interest.

tt. *In re Cool, 81 B.R. 614 (Bankr. D. Mont. 1987):* FmHA interest rate set at 5.75 % under FmHA regulations.

uu. Matter of Simmons, 86 B.R. 160 (Bankr. S.D. Iowa 1988).

vv. *In re Schaal, 93 B.R. 644 (Bankr. W.D. Ark. 1988):* interest rate on deferred plan payments on FmHA loan set at market rate applied by FmHA on similar loans secured by real estate.

12. Issues Involving Liens:

a. *In re Zabel, 249 B.R. 764 (Bankr. E.D. Wis. 2000):* Junior undersecured lien extinguished by discharge where Ch. 12 debtors had filed Section 506 motion to void lien and had not included claim in plan as secured claim.

b. *In re Holloway, 261 B.R. 490 (M.D. Ala. 2001), aff'g, 254 B.R. 289 (Bankr. M.D. Ala. 2000):* Lien on farm property not extinguished by creditor's failure to object to plan which did not mention lien.

c. *In re Rott, 73 B.R. 366 (Bankr. D. N.D. 1987):* Plan may not require the new mortgage be substituted for mortgage securing creditor's claim; statute requires that existing lien be maintained.

d. *In re Stacy Farms, 78 B.R. 494 (Bankr. S.D. Ohio 1987):* Replacement lien on new crop insufficient adequate protection.

e. *In re Liming, 797 F.2d 895 (10 th Cir. 1986)*: debtor allowed to avoid lien on tractor used in debtor's farming operation even though loan for which tractor was pledged as collateral was obtained by use of false financial statement.

13. Plan Modification:

a. *In re Pearson, 96 B.R. 990 (Bankr. D. S.D. 1989)*: debtors won lottery after Chapter 12 plan confirmed and court allowed modification of plan to provide for full payment to general creditors.

14. Miscellaneous:

a. *Gribbons v. Federal Land Bank of Louisville, 106 B.R. 113 (W.D. Ky. 1989):* Valuation date was date confirmation hearing held.

b. *In re Winter, 151 B.R. 278 (Bankr. W.D. Okla. 1993):* Amount paid to unsecured creditors could not be reduced by trustee fees and post-confirmation administrative because these amounts were separate liability of debtor.

c. *In re Ayers, 137 B.R. 397 (Bankr. D. Mont. 1992):* Creditor objected to the debtor's Ch. 12 plan as failing to provide unsecured creditors with as much payment as would be received under a Ch. 7 liquidation. Creditor argued that, because the trustee would abandon certain oversecured property to the debtor, the tax recognized from the sale of the property would be a liability of the debtor and not the estate; therefore, the Ch. 12 plan had to provide for that reduced tax liability of the estate. The court held that the tax consequences of abandonment of estate property had to be included in the Ch. 12 plan if the property would be abandoned by Ch. 7, however, the court allowed the debtor to provide rebuttal as to whether the property would be subject to abandonment.

d. *In re Courson, 243 B.R. 288 (Bankr. E.D. Tenn. 1999):* Ambiguity in amount of monthly payments to creditor insufficient to revoke confirmation of plan where creditor had experience with Ch. 12 plan.

e. *In re Hilgers, 279 Fed. Appx. 662 (10th Cir. 2008)*: 11 U.S.C. §541(c)(2) which excludes from the bankruptcy estate a debtor's beneficial interest in a spendthrift trust held inapplicable to debtor's one-fourth distributional share of assets in parents' spendthrift revocable trusts; trusts terminated upon death of surviving parent under Kansas law.

f. *Rechtzigel v. Fidelity National Title Insurance Company of New York, 748 N.W.2d 312 (Minn. Ct. App. 2008)*: title insurance does not cover monetary losses incurred by insured arising out of bankruptcy of qualified intermediary used in I.R.C. §1031 exchange absent claims asserting threat to marketability of title; thus, unless bankruptcy trustee's preference action against insured does not implicate marketability of title or other risks specified in policy, title insurer has no duty to defend under policy.

g. *In re Houston, 385 B.R. 268 (Bankr. N.D. Iowa 2008)*: debtor's transfer of one-half interest in farmland to mother within five months of filing bankruptcy does not constitute actual fraud under11 U.S.C. §548(a)(1)(A), but is constructive fraud under 11 U.S.C. §548(a)(1)(B); debtor had interest in the land, voluntarily transferred it to his mother within a year of filing bankruptcy, received less that equivalent value for the deed and became insolvent as a result of the transfer; bankruptcy trustee entitled to sell the farmland to pay mother for her interest and also entitled to debtor's share of CRP payments related to the farmland.

h. *Coop v. Lasowski, 384 B.R. 205 (8th Cir. 2008)*: bankruptcy debtor may only deduct the actual amounts necessary to repay 401(k) loans when calculating disposable income, and once the loans are repaid, the debtor must redirect the funds used to repay the loans to unsecured creditors; bankruptcy court erred in allowing debtor to keep the funds.

i. *In re Acceptance Insurance Companies, Inc. v. Granite Reinsurance Company, Ltd., 383 B.R. 128 (Bankr. D. Neb. 2008)*: reinsurer sought unpaid premium for reinsurance of crop loss insurance issued by subsidiary of bankrupt debtor, and debtor sought return of premium amounts previously paid; court determined that it was clear that parties intended and

understood the contract to provide reinsurance coverage and be supported by consideration; although subsidiary did not sign reinsurance contract, contract defined reinsurance to include both debtor and its subsidiary and debtor signed contract on subsidiary's behalf; reinsurer entitled to full premium amount.

j. *In re Zeitler, No. 06-00034-lmj, 2008 Bankr. LEXIS 554 (Bankr. S.D. Iowa Feb. 29, 2008:* (spendthrift trust containing farm property invalid under Iowa law; debtor retained enough control over trust corpus such that trust property included in bankruptcy estate.

k. *In re Fischer, No. BK08-40125-TJM, 2008 Bankr. LEXIS 581 (Bankr. D. Neb. Feb. 28, 2008:* (debtor's motion for permission to sell calves and milo and use proceeds plus additional proceeds from earlier milo sales to pay crop insurance premium, with balance used in farm operation granted; bank adequately protected and debtor could not obtain crop insurance for 2008 crop unless premium paid for 2007 crop year.

l. *In re Burival, 406 B.R. 548 (8th Cir. 2009), rev'g, 392 B.R. 793 (Bankr. D. Neb. 2008):* debtors, tenants under a farm lease, made first lease payment before filing bankruptcy but did not make payment due after bankruptcy filing; deceased landlord's estate filed claim for unpaid farm rent; bankruptcy court prorated estate's claim into pre-petition and post-petition components and calculated farm rent on daily basis; bankruptcy court reversed on appeal - 11 U.S.C. §365(d)(3) required debtors to perform all obligations under lease until lease rejected and because lease not rejected, post-petition rental obligation remained and landlord's estate entitled to full payment as administrative expense.

m. *In re DFI Proceeds, No. 08-1226, 2009 Bankr. LEXIS 2199 (Bankr. N.D. Ind. Aug. 21, 2009)*: unsecured creditors' committee seeks to avoid, as a transfer made for less than reasonably equivalent value, an alleged disproportionate allocation of proceeds of the sale of the debtor's assets; motion denied because there was no transfer before petition date, but merely an agreement to transfer multiple properties owned by different entities and allocate purchase price.

n. *Lyons State Bank v. Bracht Feedyards, Inc., et al., No. 09-4060, 2009 U.S. Dist. LEXIS 74478 (D. Kan. Aug. 21, 2009)*: plaintiff, Kansas bank, had banking relationship with a Kansas feedyard that went bankrupt; plaintiff alleged tort of conversion against two Nebraska cattle feeding operations who engaged in cattle transactions with Kansas feedyard; defendant moved to dismiss or transfer venue due to lack of personal jurisdiction; motion denied because defendants had minimum contacts with Kansas via continuing business relationship with Kansas feedyard.

o. *Beler v. Blatt, Hassenmiller, Leibsker & Moore, LLC, No. 06-2707, 2007 U.S. App. LEXIS 5260 (7th Cir. Mar. 7, 2007):* The plaintiff bought products from JC Penney using a credit card. When she didn't make her payments, the creditor started collection actions (on an unpaid balance of $731). A judgment was entered against the plaintiff, but she didn't pay, appeal or file bankruptcy. The creditor, through its law firm, sent a Citation to Discover Assets to the plaintiff's bank where she had a checking account with a balance that exceeded the judgment amount. The law firm instructed the bank not to turn over the plaintiff's exempt assets. Since the bank wasn't sure which assets were exempt and which

were not, it froze the plaintiff's account. The plaintiff's claimed that the entire balance was exempt because all of her income consisted of Social Security disability payments. The creditor didn't challenge that assertion, but the plaintiff refused to pay the balance due on the credit card. She did, however, pay the bank a $70 processing fee and her lawyer $1,000. She then sued the law firm under the Debt Collection Practices Act (Act) on the basis that the law firm is a "debt collector" under the Act, and the law firm's complaint filed in the state court litigation violated the Act because their description of the contracts among JCPenney and the credit companies was not clear enough for an unsophisticated consumer to understand - she was confused by the description of the relationship between the seller, transaction processor and creditor. The court held that while the law firm is a "debt collector" for purposes of the Act, the Act has no application to the contents of complaints, affidavits and other papers filed in state court. That was the case because of a recent amendment to the Act specifying that legal pleadings need not be preceded or accompanied by verification. Instead, the Act prohibits a debt collector from using any false, deceptive or misleading representation or means in connection with collecting a debt. Legalese in complaint, the court reasoned, did not make the complaint deceptive. Indeed, the court pointed out that it was the judge, rather than the plaintiff, that had to determine to whom the debt was owed and prepare the judgment to which the prevailing party is entitled.

p. *In re Kasparek, No. 07-13019, 2009 Bankr. LEXIS 2140 (D. Kan. Jul. 29, 2009)*: bankruptcy trustee brought adversary action to sell 80 acres of farmland in which debtor was a joint tenant with his brother and their father; father's funds were used to buy the land and sons' names put on deed as surviving joint tenants merely for estate planning purposes; court held that debtor's bankruptcy estate has no interest in the land for purposes of 11 U.S.C. Sec. 363(h) and that 11 U.S.C. Sec. 541(d) limits estate's interest to debtor's bare legal title; strong-arm powers of 11 U.S.C. Sec. 544(a)(3) are limited to recovery of transfers made by a debtor and do not include recovery of an equitable interest in real property held by debtor's father as joint tenant; even assuming 11 U.S.C. Sec. 544(a) would allow the avoidance of equitable interests, trustee has notice of father's equitable interest and is not a bona fide purchaser for value who could purchase debtor's interest in the land free of the father's interest.

q. *In re Poe, No. 08-906, 2009 Bankr. LEXIS 2068 (Bankr. N.D. W.V. Jul. 29, 2009)*: debtors not eligible for Chapter 12 bankruptcy; part of debtors' business involving raising of horses constitutes "farming operation" but portion of business involving horse boarding/training services does not constitute "farming operation"; income from horse raising activity only constituted approximately 12 percent of debtors' gross income during applicable timeframe.

r. *Velde v. Kirsch, 543 F.3d 469 (8th Cir. 2008)*: bankruptcy trustee claimed that check received by farmer from debtor in replacement of dishonored check constituted payment made within 90-day period before bankruptcy filing and, thus, was prohibited preference under 11 U.S.C. §547(b); court held that because replacement check resulted in release of farmer's security interest in collateral, it was a contemporaneous exchange for new value falling within exception to trustee's avoidance powers.

s. *In re Smith, 402 B.R. 887 (8th Cir. 2009)*: bankruptcy court did not err in ordering debtor to turn over to bankruptcy trustee commissions earned in connection with farm real estate sale contracts that were entered into pre-petition; commissions earned post-petition and became property of bankruptcy estate.

t. *Young v. Allred, No. CIV. 09-5024-RHB, 2009 U.S. Dist. LEXIS 69401 (D. S.D. Aug. 5, 2009)*: trustee filed action against debtors for turn-over of non-exempt property to the estate; court agreed with trustee – debtor's real estate commissions paid post-petition on properties that were under pre-petition agreements, thus commissions were earned pre-petition.

u. *Fee v. Eccles, 407 B.R. 338 (8th Cir. 2009)*: bankruptcy court did not err in concluding that debt in question had been incurred as a result of actual fraud and, therefore, was not dischargeable under 11 U.S.C. Sec. 523(a)(2)(A); 11 U.S.C. Sec. 523 (a)(2)(A) does not require the creditor to prove that its reliance on debtor's misrepresentation was reasonable, but only that such reliance was justifiable - which does not require an investigation on the creditor's part.

v. *In re Gateway Ethanol, L.L.C., 415 B.R. 486 (Bankr. D. Kan. 2009)*: thermal oxidizer provided to debtor under an "Agreement"; "Agreement" determined to be true lease that bankruptcy trustee could assume or reject under 11 U.S.C. Sec. 365.

w. *In re Sunbelt Grain WKS, LLC, 406 B.R. 918 (Bankr. D. Kan. 2009)*: lender's perfected security interest in debtor's grain "inventory, accounts and proceeds thereof" took priority over ownership claims of grain purchaser who had prepaid for certain quantity of grain; no documents of title showing purchaser's ownership of grain and any course of dealing ineffective to alter terms of delivery contract for future goods; no showing that debtor had sufficient grain at time of prepayment to satisfy contract requirements and lender's security interest attached to grain when grain acquired by debtor and before delivery to purchaser.

x. *In re Breezy Ridge Farms, Inc., No. 08-12038, 2009 Bankr. LEXIS 1396 (Bankr. M.D. Ga. May 29, 2009)*: type of debts defined in 11 U.S.C. Sec. 523(a) excludible in Chapter 12 porceeding regardless of whether debtor a corporation or individual; even though Sec. 523(a) could not be harmonized with Sec. 1228, Sec. 1228 controlling because it was more specific, applicable only in Chapter 12, than Sec. 523(a) which applies regardless of chapter.

y. *In re Costas, 555 F.3d 790 (B.A.P. 9th Cir. 2009)*: debtor's pre-petition disclaimer as trust beneficiary of $34,000 interest in family trust does not qualify as a "transfer of an interest of the debtor in property" under the federal fraudulent conveyance provision in the Bankruptcy Code.

C. Conversion or Dismissal

1. Conversion

a. *Matter of Roeder Land & Cattle Co., 82 B.R. 536 (Bankr. D. Neb. 1988):* Conversion from Ch. 12 to Ch. 11 not allowed. But, see *Matter of Bird, 80 B.R. 861 (Bankr. W.D. Mich.*

1987): Ch. 12 case may be converted to Ch. 11 at discretion of court where such conversion does not prejudice creditors. See also, *In re Gregerson, 269 B.R. 36 (Bankr. N.D. Iowa 2001):* Ch. 12 case could be converted to Ch. 11 if original filing in good faith; case dismissed or converted to Ch. 7 because debtor knew that debtor had insufficient farm income to file for Ch. 12.

b. *In re Stumbo, 301 B.R. 34 (S.D. Iowa 2002):* Debtors could not convert Ch. 12 case to Ch. 11 where debtors not eligible for Ch. 12.

c. *In re Foster, 121 B.R. 961 (N.D. Tex. 1990):* Involuntary conversion of Ch. 12 case to Ch. 7 where debtor abused bankruptcy proceeding in order to hinder, delay or defraud creditors.

d. *In re White, 35 F.3d 931 (10th Cir. 1994):* Funds in debtors' bank account and accounts receivable resulting from postconfirmation sales of crops were estate property upon conversion of Ch. 12 case to Ch. 7.

e. *In re Plata, 958 F.2d 918 (9th Cir. 1992):* Payments to be made under Ch. 12 plan became estate property upon conversion of case to Ch. 7 and eligible for exemptions.

f. *In re Graven, 186 F.3d 871 (8th Cir. 1999):* Ch. 12 case could be involuntarily converted to Ch. 7 where debtors had made fraudulent transfers.

g. *In re Kloubec, 247 B.R. 246 (Bankr. N.D. Iowa 2000):* Case converted to Ch. 7 where debtors attempted to defraud creditors by concealing assets and had made several preferential transfers.

h. *Matter of Bird, 80 B.R. 861 (Bankr. W.D. Mich. 1987):* Ch. 12 case may be converted to Ch. 11 at discretion of court where conversion does not prejudice creditors.

i. *In re Groth, 69 B.R. 90 (Bankr. D. Minn. 1987):* Court raised issue sua sponte where no interested party objected to conversion.

j. *In re Glazier, 69 B.R. 666 (Bankr. W.D. Okla. 1987):* No conversion from Ch. 13 to Ch. 12 case allowed.

k. *In re Ridgely, 93 B.R. 683 (Bankr. E.D. Mo. 1988):* Conversion of Ch. 11 case to Ch. 12 not allowed where debtor did not qualify for Ch. 12 at time of filing Ch. 11 petition.

l. *In re Starkey, 179 B.R. 687 (Bankr. N.D. Okla. 1995):* Ch. 7 debtors did not have absolute right to convert to Ch. 12 where debtors' exotic bird business was losing money and debtors obstructed trustee's operation of businesss.

m. *In re Feely, 93 B.R. 744 (Bankr. S.D. Ala. 1988):* Debtor allowed to convert case from Ch. 11 to Ch. 12 where amount of debt reduced to amount for qualifying Ch. 12.

n. *In re Erickson Partnership, 68 B.R. 819 (Bankr. D. S.D 1987):* debtors allowed to convert pending pre-Ch. 12 Act cases.

o. *In re Henderson, 69 B.R. 982 (Bankr. N.D. Ala. 1987):* Conversion to Ch. 12 allowed where Ch. 11 filing occurred within two months of effective date of Ch. 12 statute.

p. *In re Nelson, 73 B.R. 363 (Bankr. D. Kan. 1987):* Conversion allowed but debtor not qualified for Ch. 12.

q. *In re Cobb, 76 B.R. 557 (Bankr. N.D. Miss. 1987):* Conversion allowable as matter of law but debtor not qualified for Ch. 12 where farmland cash leased to son and less than 50 percent of income from farming.

r. *Matter of Sinclair, 870 F.2d 1340 (7th Cir. 1989):* Conversion not allowed; dismissal of Ch. 11 case for refilling under Ch. 12 not allowed.

2. Dismissal:

a. *In re Dennis, 90 B.R. 607 (W.D. N.Y. 1988):* Dismissal of Ch. 11 case not prohibited on possibility that debtors would refile in Ch. 12.

b. *In re Olson, 102 B.R. 147 (C.D. Ill. 1989):* Ch. 12 case dismissed where debtor's previous Ch. 11 case, on motion of creditor, dismissed one day before Ch. 12 filing in attempt to circumvent conversion rule.

c. *Central Trust Co. v. Creditor's Committee, 454 U.S. 354 (1982):* Dismissed after enactment of Bankruptcy Act of 1978 merely for pusposes of refilling under new Act not allowed by §403(a) of 1978 Act.

d. *In re Goza, 142 B.R. 766 (Bankr. S.D. Miss. 1992):* Where Ch. 12 trustee sought accounting from debtor in possession because trustee had not received any information about debtor's conduct of farming business postpetition debtor required to file accounting before dismissal of case after trustee had time to examine accounting for any fraud.

e. *In re Davenport, 175 B.R. 355 (Bankr. E.D. Cal. 1994):* Order for debtor-requested dismissal delayed to allow creditor to prove fraud to support conversion to Ch. 7.

f. *In re Reinbold, 942 F.2d 1304 (8th Cir. 1991):* Court found that debtor had turned over to creditors substituted and inferior machinery and had sold original machinery to third party in violation of Ch. 12 plan; court held debtor's actions to be fraudulent and ordered case converted to Ch. 7.

g. *In re Hyman, 82 B.R. 23 (Bankr. D. S.C. 1987):* Third Ch. 12 petition dismissed for cause and debtor prohibited from filing another petition for one year where debtor failed to demonstrate changed circumstances since last petition dismissed.

h. *In re Galloway Farms, Inc., 82 B.R. 486 (Bankr. S.D. Iowa 1987):* Petition dismissed for bad faith filing where petition was third in seven years and made with intent to delay secured creditor from enforcing rights.

i. *In re Caldwell, 100 B.R. 727 (Bankr. D. Utah 1989):* Ch. 12 case converted to Ch. 7 where debtor failed to list almost 50 percent of assets on asset schedules.

j. *In re Walton, 116 B.R. 536 (Bankr. N.D. Ohio 1990):* Ch. 12 case dismissed because debtor had no income and had debts exceeding $1.5 million; case also dismissed for bad faith filing and debtor prohibited from future filings for two years where debtor had filed three times in three years, had not income, and filed current case only to prevent imminent foreclosure sale of debtor's property.

k. *In re Burger, 254 B.R. 692 (Ohio S.D. 2999):* Ch. 12 case dismissed for cause because debtor not qualified for Ch. 12, debtor failed to prove that horses were estate property, petition filed solely to halt sale of horses, debtor did not list horses as estate property and did not timely file bankruptcy schedules, and debtor's schedules demonstrated that debtor had minimal debt and did not need reorganization.

l. *Novak v. DeRosa, 934 F.2d 401 (2d Cir. 1991):* Ch. 12 case dismissed for unreasonable delay where debtors failed to submit amended plan within 170 days after being ordered to file amended plan.

m. *In re Suthers, 173 B.R. 570 (W.D. Va. 1994):* Case dismissed for unreasonable delay where six unapproved plans submitted, debtors sold collateral without permission, allowed insurance on collateral to lapse and incurred additional debt without permission of court.

n. *In re Lubbers, 73 B.R. 440 (Bankr. D. Kan. 1987):* Ch. 12 case dismissed where debtors failed to comply with most rules and deadlines for initiating a case and filing plan.

o. *In re Ames, 973 F.2d 849 (10th Cir. 1992):* Case dismissed after debtor filed two plans which were both rejected.

p. *In re Weber, 297 B.R. 567 (Bankr. N.D. Iowa 2003):* Plan not confirmed and case dismissed where debtor's fifth plan proposal not consistent with historical income and expenses.

q. *In re Fennig, 174 B.R. 475 (Bankr. N.D. Ohio 1994):* Case dismissed for default of plan where modification not sought before default.

r. *In re Wald, 211 B.R. 359 (Bankr. D. N.D. 1997):* Third Ch. 12 case dismissed where debtors had defaulted on previous plans, filing violated court-approved plan which prohibited subsequent filings, and debtors had no chance of successful reorganization.

s. *In re Pretzer, 96 B.R. 790 (Bankr. N.D. Ohio 1989):* Case dismissed where proposed plan infeasible, no likelihood of successful reorganization and case over two years. Told.

t. *In re Borg, 105 B.R. 56 (Bankr. D. Mont. 1989):* Ch. 12 case dismissed for failure to file in good faith where present case was third ch. 12 filing within short time of attempted foreclosure by creditors and present case filed while dismissal of previous Ch. 12 case still under appeal by debtor.

u. *In re Barger, 233 B.R. 80 (Bankr. 8th Cir. 1999):* Case dismissed where debtor failed to propose confirmable plan, omitting payments to creditor as ordered by court.

v. *Matter of Howe, 913 F.2d 1138 (5th Cir. 1990):* Ch. 11 debtors sought dismissal because of default on plan payments; court held that material default had not occurred because plan

provided for remedy, deeding to creditor land securing claim for which payment not made, if debtors failed to make scheduled plan payments.

w. *Weizhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017 (D. S.D. 1990):* Ch. 12 case dismissed for bad faith filing where filed to prevent sale of collateral cattle repossessed because of debtor's default on Ch. 11 plan payments; creditor awarded all costs incurred by delay in sale of cattle and attorney fees in prosecution of Ch. 12 dismissal.

D. Protection of Farmer Interests

1. Authority to Operate Farm Business or Commercial Fishing Operation

a. *In re Befort, 137 B.R. 56 (Bankr. D. Kan. 1992):* Ch. 11 case dismissed which was filed after confirmation of debtor's Ch. 12 plan but during Ch. 12 plan payment period.

b. *In re Utne, 146 B.R. 242 (Bankr. D. S.D. 1992):* Ch. 12 case dismissed where filed before completion of Ch. 11 plan.

2. Authority to Sell Property

a. *In re Earley, 65 B.R. 658 (Bankr. C.D. Ill. 1986):* Ch. 11 debtor who participated in CCC farm price support program and exercised option to return sealed grain to CCC not entitled to recover post-petition storage costs from CCC as costs not incurred primarily for CCC's benefit.

b. *Brookfield Production Credit Ass'n v. Barron, 738 F.2d 951 (8th Cir. 1984):* Debtors not entitled to costs of preserving creditor's collateral under §506c allowing offset from property securing allowed secured claim, or reasonable and necessary costs of preserving livestock collateral as debtors rather than creditors benefitted where debtors applied proceeds to pay other expenses rather than applying proceeds to retire creditor's debt.

c. *In re Brandon, 93 B.R. 1002 (Bankr. D. Idaho 988):* Use of case collateral proceeds of crop denied where repayment over five years with lien on next five years' crops.

3. Adequate Protection

a. *In re Lewis, 83 B.R. 682 (Bankr. W.D. Mo. 1988):* section 362d guidelines do not apply to Ch. 12 case because of section 1225(b)(2) where debtor allowed to "write down" debt to fair market value of assets and pay unsecured portion under plan from disposable income thus matching exactly debt and value of assets; creditor not allowed relief from automatic stay to foreclose on collateral farmland.

b. *Matter of Milleson, 83 B.R. 696 (Bankr. D. Neb. 1988):* Confirmation denied where plan allowed debtors to sell collateral except to extent of 110 percent of secured creditor's lien; extra 10 percent held insufficient adequate protection; creditor held to have perfected security interest in value of collateral in excess of secured claim.

c. *In re Rennich, 70 B.R. 69 (Bankr. D. S.D. 1987):* Ch. 12 debtor required to make adequate protection payments only to compensate creditor for depreciation of retained collateral and not for lost opportunity costs.

d. *In re Timbers of Inwood Forest, Ltd., 484 U.S. 365 (1998):* Adequate protection payments for "lost opportunity" costs for undersecured creditors denied because such costs amount to postpetition interest which is not allowed for undersecured creditors.

e. *Orlando Trout Creek Ranch, 80 B.R. 190 (Bankr. N.D. Cal. 1987):* Increasing value of debtor's cattle was adequate protection for depreciation of other collateral; debtor not allowed adequate protection payments for lost opportunity costs where value of collateral increasing. In Raylyn Ag, Inc., 72 B.R. 523 (Bankr. S.D. Iowa 1987): Undersecured creditor in Ch. 12 case not entitled to adequate protection for decline in farmland value.

f. *In re Westcamp, 78 B.R. 834 (Bankr. S.D. Ohio 1987):* Debtor allowed to use cash collateral proceeds from previous crop for planting expenses for next year's crop where adequate protection provided by lien on crop, crop insurance, assignment of deficiency payments to secured creditor and right of inspection of debtor's books and premises granted secured creditor.

E. Discharge

1. *In re Leverett, 145 B.R. 709 (Bankr. W.D. Okla. 1992):* Discharge caused avoidance of unsecured portion of secured creditor's claim which would be paid in installments after discharge where avoidance provided by plan.

2. *In re Sealey Bros., 158 B.R. 801 (Bankr. W.D. Mo. 1993):* Liability of partners for partnership debt not affected by avoidance of unsecured claim against partnership farmland in partnership bankruptcy case.

3. *In re Drebes, 182 B.R. 873 (Bankr. D. Kan. 1995):* County tax liability not paid from estate where not claim filed and plan did not provide for payment of tax.

4. *Matter of Roberts, 133 B.R. 1004 (Bankr. N.D. Ind. 1991):* Creditor allowed to file objection to discharge because of debtors' failure to pay all disposable income where all other play payments and discharge requested by debtors.

5. *In re Zilka, 407 B.R. 684 (Bankr. W.D. Pa. 2009)*: debts owed to creditor not discharged merely because creditor issued account statements indicating zero balances on loans which were charged off and issued tax forms (1099-Cs) to report the cancellation of indebtedness; issuance of account statements indicating zero balance not legal equivalent of discharging liability on the debt, and issuance of tax forms did not discharge the debts, but just an informational filing that didn't, by themselves, satisfy state law for discharging debt.

6. *In re Hicks, 384 B.R. 443 (Bankr. N.D. Tex. 2008)*: Portion of farmer's debts held not non-dischargeable under 11 U.S.C. §§523(a)(2)(A) or 523(a)(4); evidence unclear as to whether debtor made misrepresentations.

7. *In Re Hampton, 407 B.R. 443 (B.A.P. 10th Cir. 2009), aff'g, No. 07-40605, 2008 Bankr. LEXIS 1943 (Bankr. D. Kan. Jun. 27, 2008)*: Plaintiffs lost money in livestock venture and failed to meet burden of proof under 11 U.S.C. §523(a)(2)(A) to prove existence and amount of debt owed to plaintiffs by debtor; debtor's poor management of venture and lack of communication insufficient basis for debt to be excepted from discharge.

8. *In re Ghere, 393 B.R. 209 (Bankr. W.D. Mo. 2008):* Chapter 7 farm debtor's debt non-dischargeable under 11 U.S.C. §523(a)(2) and discharge denied pursuant to 11 U.S.C. §727(a)(5); credit received based on submission of false financial information.

9. *In re Miller, 409 B.R. 299 (E.D. Pa. 2009)*: Debtor failed to meet undue hardship test of 11 U.S.C. Sec. 523(a)(8) to have student loan indebtedness discharged; debtor had sufficient income to maintain a minimal standard of living and pay the student loan debt.

10. *In re Williamson, 414 B.R. 895 (Bankr. S.D. Ga. 2009):* Debtor, in previous case, converted from Chapter 12 case to Chapter 7; same factors showing debtor's fraudulent conduct warranted granting bankruptcy trustee summary judgment resulting in debtor being denied a discharge).

F. Modification of Plans

1. *In re Dittmer, 82 B.R. 1019 (Bankr. D. N.D. 1988):* Modification of plan denied where debtor's increased income projection unrealistic in view of failure to meet lesser amounts projected for plan's first year.

2. *In re B & G Farms, Inc. 82 B.R. 549 (Bankr. D. Mont. 1988):* Debtor allowed to amend plan by deleting one of two secured creditors in same class where collateral abandoned in complete payment to deleted creditor.

3. *In re Hart, 90 B.R. 150 (Bankr. E.D. N.C. 1988):* Modified plan to increase amount of installments may provide for payments over period longer than five years where original plan provided for installments over period longer than five years.

4. *U.S. v. Novak, 86 B.R. 625 (D. S.D. 1988):* Denial of modification of plan to decrease FmHA secured interest due to drop in farmland value where two years of payments made under plan.

5. *In re Whitby, 146 B.R. 19 (Bankr. D. Idaho 1992):* After debtors defaulted on first plan payments, modification not allowed and case to be dismissed or converted.

6. *In re Harry and Larry Maronde Partnership, 256 B.R. 913 (Bankr. D. Neb. 2000):* Second Ch. 12 case dismissed as attempt to modify previous Ch. 12 plan which was still in operation.

7. *In re Webb, 932 F.2d 155 (2d Cir. 1991):* Debtor allowed to sell negative easement with sufficient proceeds to pay off all secured creditors.

8. *In re Hagen, 95 B.R. 708 Bankr. D. N.D. 1989):* Denial of modifications of plan to correct material default in first-year payments where cash flow projections for remainder of plan unrealistic.

9. *In re Larson, 122 B.R. 417 (Bankr. D. Idaho 1991):* Modification of Ch. 12 plan denied where, although feasibility of initial plan not raised in confirmation, proposed modification and inability of debtors to meet projected income and expenses demonstrated that debtors' plan not feasible, even with proposed modifications.

10. *In re Koch, 131 B.R. 128, 134 (Bankr. N.D. Iowa 1991):* Debtors granted 15 days from date of order denying confirmation of Ch. 12 plan to file amended Ch. 12 plan shortening the repayment period to secured creditor whose collateral was land from 30 years to 20 years in conformity with court's findings in order denying confirmation; order provided that, upon timely amendment, plan would be confirmed without further hearings.

VI. Bankruptcy Taxation

A. Chapter 12 Tax Issues – 11 U.S.C. §1222(a)(2)(A)

1. *Knudsen, et al. v. IRS, 581 F.3d 696 (8th Cir. 2009)*: Even though Chapter 12 does not create a bankruptcy estate separate from the debtor, Chapter 12 debtor may treat post-petition income taxes triggered during pendency of case as administrative expense under 11 U.S.C. Sec. 503; debtors' pre-petition sale of slaughter hogs constitute sale of a "farm asset" that is "used in the debtor's farming operation under 11 U.S.C. Sec. 1222(a)(2)(A) - dissenting opinion on this point based on plain language of the statute and that 11 U.S.C. Sec. 1222(a)(2)(A) better analyzed by Internal Revenue Code capital gain provision than by Bankruptcy Code provision that operates in different context; debtor's "marginal method" is the correct method to determine the allocation of taxes between priority and non-priority claims under 11 U.S.C. Sec. 1222(a)(2)(A) - dissent on this point noted that U.S. Supreme Court has rejected the notion that the Bankruptcy Code is a "remedial statute" that should be construed liberally in favor of debtors.

2. *In re Gartner, No. BK06-40422-TLS, 2008 Bankr. LEXIS 3525 (Bankr. D. Neb. Dec. 29, 2008)*: Post-petition taxes triggered by sale of real estate eligible for non-priority treatment under 11 U.S.C. §1222(a)(2)(A) provision.

3. *In re Uhrenholdt, No. BK06-40787-TLS, 2009 Bankr. LEXIS 144 (Bankr. D. Neb. Jan. 26, 2009)*: Post-petition taxes triggered on sale of corn eligible for non-priority treatment under 11 U.S.C. §1222(a)(2)(A) because corn sold to debtor's custom cattle feeding operation and not to third party buyer.

4. *In re Dawes, 415 B.*R. 815 (D. Kan. 2009): 11 U.S.C. §1222(a)(2)(A) applies to post-petition tax claims, and such claims can be treated as an administrative expense in the bankruptcy estate.

5. *In re Hall, 393 B.*R. 857 (D. Ariz. 2008): 11 U.S.C. §1222(a)(2)(A) applies to taxes incurred upon sale of farm in furtherance of reorganization of farming business; taxes can be treated as administrative expense and plan could treat tax claim as unsecured claim not entitled to priority.

6. *In re Rickert, No.* BK06-40253-TLS, 2008 Bankr. LEXIS 3522 (Bankr. D. Neb. Dec. 29, 2008): Taxes triggered upon sale of breeding stock and equipment used in debtors' farming operation were an unsecured claim not entitled to priority pursuant to 11 U.S.C. §1222(a)(2)(A).

7. *In re Ficken, No. 05-52940, 2009 Bankr. LEXIS 3008 (Bankr. D. Colo. Jul. 30, 2009):* Post-petition sale of cattle herd triggered taxes; sale of breeding livestock were "used in the debtor's farming business" as required by 11 U.S.C. §1222(a)(2)(A) and were "property used in the trade or business as defined by I.R.C. §1231(b)(3); 11 U.S.C. 1222(a)(2)(A) applies to post-petition asset sales, and tax generated from calf inventory also governed by 11 U.S.C. §1222(a)(2)(A); debtors' marginal approach to be used to determine amount of tax eligible for non-priority (unsecured) treatment.

B. Miscellaneous

1. *In re Landgrebe, et ux., No. 08-26271, 2009 Bankr. LEXIS 3216 (Bankr. D. Colo. Sept. 23, 2009)*: Non-refundable child tax credit is not exempt property under Colorado law; debtor's claimed exemption for child tax credit disallowed and debtor ordered to turn over prepetition portion of 2008 income tax refund to bankruptcy estate.

2. *In re Worldcom, Inc., et al., No. 07-cv-7414, 2009 U.S. Dist. LEXIS 69364 (S.D. N.Y. Aug. 7, 2009):* IRS tax claim for telecommunications excise tax under I.R.C. Sec. 4251, *et seq.*, with respect to central office based remote access upheld; bankruptcy court reversed. *In re Bourguignon, 416 B.R. 745 (Bankr. D. Idaho 2009)*: debtors (married couple) opened Section 529 Education Savings Plan for daughter and deposited $14,500 into account; daughter's grandmother later added $40,000 to account with debtors filing Chapter 7 bankruptcy two weeks later; debtors did not list the account in Schedule B or on their exemptions; debtors held to have a legal interest in account as of petition date and account was property of bankruptcy estate and not excluded under 11 U.S.C. Sec. 541(c)(2) because that exception concerns restrictions on transfer "of a beneficial interest of the debtor in a trust" and there was inadequate proof of a qualifying trust interest of debtors; even if debtors had a contingent interest in the account due to potentially becoming a beneficiary, account does not contain requisite anti-alienation and anti-assignment provisions required under non-bankruptcy law that is recognized by 11 U.S.C. Sec. 541(c)(2); account also not excluded under 11 U.S.C. Sec. 541(b)(6); because that provision only excludes Sec. 529 accounts on a sliding scale - contribututions made more than 720 before filing are excluded and contributions made between 365 and 720 days before filing are excluded to extent below $5,475, and any amounts contributed within one year are not excluded; $40,000 contributed by daughter's mother also estate property - exclusion from estate for certain Sec. 529 funds based on timing of contribution rather than source of contribution.

3. *American Express Bank FSB v. Cook, et ux., 416 B.R. 284 (Bankr. W.D. Va. 2009)*: Plaintiff granted partial summary judgment in adversary proceeding against debtor for amount debtor charged on credit card to pay employment taxes and penalties owed by his business; debt incurred to pay a nondischargeable tax debt.

a. *Nichols v. Birdsell, No. 05-15554, 2007 U.S. App. LEXIS 10919 (9th Cir. May 9, 2007):* Taxpayers overpaid state and federal tax liability, elected to have refund applied to future tax liability and filed bankruptcy 16 days later; bankruptcy trustee claimed that the overpayments should be included in the bankruptcy estate, but taxpayers disagreed and applied the 2001 overpayments to their 2002 tax liability; bankruptcy court held that the overpayment was an asset of the bankruptcy estate and appellate court affirmed on basis that tax overpayment

constituted a credit toward future taxes and was property of the bankruptcy estate at the time of the bankruptcy filing.

4. *Geiger v. Internal Revenue Service, No. 1:08-cv-01340 (C.D. Ill. Jun. 14, 2009)*: Plaintiff's pre-petition tax liabilities not dischargeable because plaintiff willfully attempted to evade or defeat payment of taxes.

5. *In re LandAmerica Financial Group, Inc., et al., No. 08-35994-KHR, 2009 Bankr. LEXIS 940 (Bankr. E.D. Va. Apr. 15, 2009)*: Plaintiff is qualified intermediary holding funds for clients engaged in I.R.C. Sec. 1031 exchanges; plaintiff filed bankruptcy before exchanges completed and court rejected customers' claim that plaintiff held funds in escrow or in trust outside of bankruptcy; the words "trust" and "escrow" never appeared in the written exchange agreements the customers entered into with plaintiffs and exchange agreement transferred to plaintiff "sole & exclusive possession, dominion, control and use of the Exchange funds" and specified that the exchanging party had "no right, title or interest in or to the exchange funds or any earning thereon."

Note: (1) IRS stated in Information Letters issued in 2009 that if a taxpayer incurs a *loss* when a qualified intermediary goes belly-up, the loss is deductible from gross income in the year the loss is sustained. Also, in the Information Letters, IRS said it is considering some type of relief for taxpayers caught-up in the bankruptcy of a qualified intermediary.

(2) In *Rev. Proc. 2010-14, 2010 I.R.B. LEXIS 103,* IRS provided a safe harbor method or reporting gain or loss for taxpayers who fail to complete a like-kind exchange due to a qualified intermediary's bankruptcy. With the Rev. Proc., IRS says that a taxpayer who relies in good faith on a qualified intermediary to complete a like kind exchange, but can't complete the exchange because the qualified intermediary ended up in bankruptcy or receivership does not have recognized gain from the exchange until the tax year in which the taxpayer receives a payment attributable to the relinquished property. So, the safe harbor basically utilizes the same rules that apply to money received under an installment sale. To qualify for the safe harbor relief, the taxpayer must have transferred property in accordance with the like-kind exchange regulations; must have timely identified the replacement property; must not have completed the exchange because the qualified intermediary wound up in bankruptcy or receivership; and must not have had actual or constructive receipt of the proceeds from the disposition of the relinquished property before the qualified intermediary filed bankruptcy or went into receivership (but, being relieved of a liability under the exchange agreement before the qualified intermediary failed is ignored). If a taxpayer meets those four tests, the taxpayer doesn't have any gain or loss to report until the tax year in which payment (from the qualified intermediary, the qualified intermediary's bankruptcy or receivership estate, or the qualified intermediary's insurer or bonding company or any other person) is received. In that year, of course, the taxable amount of any funds received is a

function of the taxpayer's basis in the property – and that's a function of the taxpayer's gross profit percentage and the contract price. The Rev. Proc. lays out further details concerning the definition of "contract price" and "gross profit" and "satisfied indebtedness." As for imputed interest, IRS says that the property is deemed to be sold when the bankruptcy plan is confirmed (or upon any other court order resolving the taxpayer's claims against the qualified intermediary). That means there is no imputed interest if the only payment that fully satisfies the taxpayer's claim is received within six months after the safe harbor date – which is January 1, 2009.

VII. Exemptions

A. *Redmond v. Kester, No. 97,627, 2007 Kan. LEXIS 355 (Kan. Sup. Ct.Jun. 8, 2007):* Debtors (a married couple) purchased their home in 1994 and transferred it to a revocable trust in 1996 with the wife serving as the trustee and both the husband and wife named as beneficiaries; couple filed joint bankruptcy petition and claimed residence as an exempt homestead and trustee objected on the basis that the debtors did not "own" the residence at the time of the bankruptcy filing; bankruptcy court ruled against the trustee as did the bankruptcy appellate panel; bankruptcy trustee appealed to the U.S. Court of Appeals for the Tenth Circuit, which declined to rule on the case and instead sent the case to the Kansas Supreme Court for a ruling on the application of the Kansas statutory homestead exemption to a residence that has been transferred to the debtors' own revocable trust before filing of the bankruptcy petition; court concluded that the homestead exemption could be claimed by debtors having any interest in the homestead, whether legal or equitable title, as long as the debtor still occupies the property or does not intend to abandon occupancy - thus, the debtors' residence was exempt from the bankruptcy estate as a homestead.

B. *Addison v. Seaver, No. 06-6060MN, 2007 Bankr. LEXIS 972 (BAP 8th Cir. Mar. 30, 2007):* Before filing bankruptcy, the debtor used $8,000 of non-exempt funds to establish Roth IRAs for his wife and himself; later, the debtor used another $11,500 of non-exempt funds to pay down a note secured by a mortgage on his primary residence and filed Chapter 7 bankruptcy petition later the same day claiming the IRA and equity in the house as exempt assets under the Minnesota exemption statute; debtor had also established two education savings accounts (I.R.C. §529 plans) for his children and claimed them as either not property of the bankruptcy estate or exempt assets; bankruptcy trustee objected to the homestead and IRA exemptions and also claimed that the education accounts were property of the bankruptcy estate and bankruptcy court agreed; case affirmed on appeal - education savings accounts not specifically excluded from the debtor's bankruptcy estate at time of filing; as to homestead exemption court noted that the evidence pointed to fraud insomuch as debtor's business was failing at time of transfer, the debtor was insolvent, a creditor had taken legal action against the debtor on the personal guarantee and the transfer was made earlier the same day the debtor filed bankruptcy; concerning the IRA's court noted that the IRAs were acquired only a few months before the bankruptcy filing and were the first time that the debtor had ever acquired IRAs, even though he had been advised to start utilizing IRAs on prior occasions, and court didn't believe the debtor's testimony that he purchased the IRAs as a retirement planning device because he was only 37 years old at the time, and had never done any retirement planning before.

C. *In re Willis, No. 07-11010, 2009 Bankr. LEXIS 2160 (Bankr. S.D. Fla. Aug. 6, 2009)*: Debtor's IRA *not* exempt asset and is reachable by creditors; debtor had previously (and many years in the past) engaged in prohibited transactions with the IRA (related to borrowing from the IRA and improper distributions and contributions.

D. *In re Cleaver, 407 B.R. 354 (8th Cir. 2009)*: Debtors who exempted a motor vehicle under state (Iowa) exemption statute are entitled to prove that vehicle is tool of the trade under 11 U.S.C. §522(f)(1)(B)(ii) in attempt to avoid nonpurchase-money security interest in the vehicle; bankruptcy court's determination that debtors could not exempt truck as tool of trade under state law and could not avoid lien under Bankruptcy Code lien avoidance provisions in error.

E. *Barrows v. Christians, 408 B.R. 239 (8th Cir. B.A.P. 2009)*: Debtors acted in bad faith upon failing to disclose in bankruptcy filings their borrowing of $17,000 from 401K account and depositing the sum in their checking account; fact that debtors could have exempted the funds if they had accurately reported the loan does not change the conclusion that they acted in bad faith and bankruptcy court did not abuse discretion in disallowing debtors' attempt to amend their exemptions because of the bad faith.

F. *In re Wilmoth, 397 B.R. 915 (8th Cir. B.A.P. 2008)*: Debtors had no intent to hinder, delay or defraud creditors upon converting non-exempt assets on the eve of bankruptcy filing to increase the value of their homestead exemption to its fullest; while some badges of fraud present, no extrinsic evidence present of intent to hinder, delay or defraud.

G. *In re Sadler, 327 B.R. 654 (Bankr. N.D. Iowa 2005)*: Feed exemption not available for debtor's corn because debtor had no animals to feed.

H. *In re Zimmel, 185 B.*R. *786 (Bankr. D. Minn. 1995)*: Married couple each qualified as "farmer" under MN exemption statute for farm machines and implements used in farming.

I. *In re Henke, 294 B.R. 105 (Bankr. D. N.D. 2003)*: Farm equipment not exempt as tool of the trade where debtor had no reasonable prospect of returning to farming.

J. *In re Curry, No. 09-41307, 2009 Bankr. LEXIS 4187 (Bankr. D. Kan. Dec. 22, 2009)*: Debtors demonstrated establishment of homestead and had intent to return to the homestead; trustee failed to carry burden to show that debtors had permanently left the homestead and that they did not intend to return to it; court overruled trustee's objection to confirmation, trustee's objection to exemption of the homestead and motion to dismiss).

/III. Miscellaneous

A.In re Buffalo Coal Co., No. 06-366, 2010 Bankr. LEXIS 473 (Bankr. N.D. W. Va. Feb. 26, 2010): court grants creditor's motine in limine prohibiting testimony at trial or presenting evidence concerning whether creditor's action in terminating coal supply agreement with debtor was "commercially reasonable"; debtor was insolvent and unable to pay debts as they became due, as such proposed testimony concerning good faith termination or commercial reasonableness not relevant.

B. *In re Ray, No. 06-82165, 2010 Bankr. LEXIS 238 (Bankr. C.D. Ill. Feb. 3, 2010):* Creditor brought adversary proceeding seeking to enforce agister's lien for care and feeding of cattle against sales proceeds of debtor's cattle; issue involved amount of lien and creditor's motion for partial summary judgment denied because factual issues remained.

C. *In re Baldwin, No. 06-7083 (10th Cir. Jan. 26, 2010)*: Debtor owned 99 percent interest in limited partnership at time of bankruptcy filing and case revolved around what rights the bankruptcy trustee had with respect to the debtor's partnership interest; while limited partnership created as estate planning tool for debtor's father, partnership business of owning, managing and developing undeveloped land still ongoing, general partner did not act improperly, and judicial dissolution of partnership not allowed; however, trustee's withdrawal notice and buy/sell offer were valid and enforceable under partnership agreement.

D. *In re Patriot Seeds Incorporated, No. 03-84217, 2010 Bankr. LEXIS 294 (Bankr. C.D. Ill. Jan. 20, 2010):* Case involves trustee's action to recover preferential transfers; debtor was in business of buying seed corn and seed beans from farmers.

E. *In re Chilton (Bankr. E.D. Tex. Mar. 5, 2010):* Inherited IRA, unlike traditional IRA, is not an exempt asset in bankruptcy because account funds not "retirement funds" in hands of person who inherits the funds and because funds not exempt from tax under I.R.C. Sec. 408; likely that inherited plan assets would be treated likewise and court's opinion follows *Robertson v. Deeb and RBC Wealth Management, No. 2D08-6428 (Fla. Sup. Ct. Aug. 14, 2009)*(state law exemption for IRA account funds inapplicable to inherited IRAs), but is contrary to *In re Nessa,* (Bankr. D. Minn. Jan. 11, 2010)(inherited IRA protected from debtor's creditors under federal exempt property scheme).