August 2025

THE CREDIT REPORT

A Publication by the IWIRC - Virginia Network

Inside this Edition:

Recent Developments	2
Dollars and Sense	7
Note from the Editor	7
Member News	8

Recent Developments

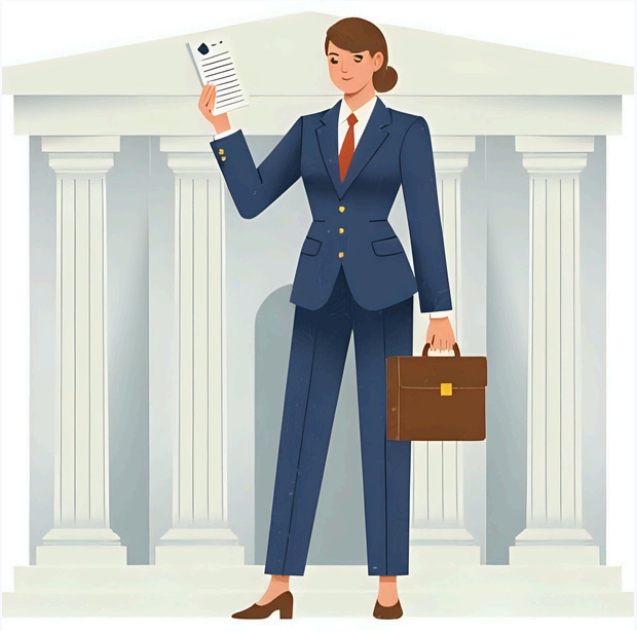
New Cases You Need to Know.

Bestwall LLC v. Official Comm. of Asbestos Claimants (In re Bestwall LLC), No. 24-1493, 2025 WL 2177391, 2025 U.S. App. LEXIS 19370 (4th Cir. Aug. 8, 2025) (Quattlebaum, J.): Georgia-Pacific LLC faced substantial asbestos liabilities from its acquisition of Bestwall Gypsum Co. To address these claims, Georgia-Pacific executed a "Texas two-step" divisional merger in 2017, splitting into two entities: a new Georgia-Pacific (retaining valuable assets) and Bestwall LLC (inheriting the asbestos liabilities and some assets of value). Bestwall then filed a chapter 11 petition and sought to establish a § 524(g) asbestos trust.

On this go around, the Official Committee of Asbestos Claimants moved to dismiss Bestwall's bankruptcy case for lack of subject-matter jurisdiction, arguing that federal courts lack constitutional authority to hear bankruptcy cases filed by solvent debtors. The Committee contended that the Bankruptcy Clause's original meaning limited bankruptcy relief to debtors who were "actually bankrupt"—unable or unwilling to pay their debts (among other descriptions batted about by the Committee)—and that Bestwall was financially solvent.

The bankruptcy court denied the Committee's motion, finding that although Congress determines subject-matter jurisdiction within constitutional limits, the history of bankruptcy legislation has been one of liberalizing access, and Congress enjoys substantial deference in defining bankruptcy. The bankruptcy court rejected the Committee's argument that financial distress is constitutionally required for bankruptcy jurisdiction.

Contined on page 3



Next Event!

MEMBER NIGHT AT THE DIAMOND

RSVP NOW!!!

Continued from page 2

On appeal, the Fourth Circuit affirmed the bankruptcy court's denial of the motion to dismiss. The Fourth Circuit held that federal courts have subject-matter jurisdiction over bankruptcy cases involving solvent debtors because the Constitution grants Article III judicial power over all cases arising under federal law, and the Bankruptcy Code is federal law. The Fourth Circuit explained that this opinion is not about whether a debtor's ability to pay debts is relevant in bankruptcy—the question more narrowly concerns Congress's power under Article I to make parties eligible for bankruptcy protection, not subject-matter jurisdiction. The Fourth Circuit distinguished between constitutional challenges to Congressional enactments (which federal courts can adjudicate) and jurisdictional questions, emphasizing that 28 U.S.C. § 1334 grants statutory jurisdiction within constitutional limits. The Fourth Circuit noted that no court has ever adopted the Committee's restrictive view of bankruptcy jurisdiction based on debtor solvency.

Writing separately, Judge Agee concurred, emphasizing that Supreme Court precedent supports broad interpretation of the Bankruptcy Clause and that the Committee failed to provide any concrete theory for determining which debtors would qualify under their proposed constitutional standard.

Judge King dissented, arguing that the majority's decision fundamentally departs from the bankruptcy system's purpose of providing relief to financially distressed debtors. He contended that Bestwall's strategic bankruptcy filing was designed to shield Georgia-Pacific from tort liability while allowing it to continue profitable operations, representing an abuse of the bankruptcy system that the Bankruptcy Clause was never intended to permit. Judge King, like the Committee, argued that bankruptcy should be limited to debtors who are "actually bankrupt" and that extending jurisdiction to solvent entities seeking tactical advantages violates both historical understanding and constitutional limits.

***Martin v. Parker* (*In re Parker*), 141 F.4th 583 (4th Cir. 2025) (Benjamin, J.):** In affirming the district court's reversal, the Fourth Circuit more narrowly interpreted the requirements for a non-dischargeable debt based on alleged embezzlement. Embezzlement, as used in § 523(a)(4) of the Bankruptcy Code, requires proof by a preponderance of the evidence of the debtor's fraudulent intent in addition to conversion. In turn, case law defines "fraudulent intent" to mean intent to defraud, deceive, or act in bad faith.

In this case, the bankruptcy court erred in finding that the debtor had the requisite fraudulent intent. The evidence adduced at trial indicated that the debtor had a good faith belief that she was entitled to the converted funds. Although the debtor knew about the existence of her father's will, which provided for a different distribution, she reasonably relied on the bank's representation that her status as a joint account holder entitled her to the funds.

***Gunkova v. Cheney*, No. 1:25-CV-00626-MSN-WBP, 2025 WL 1850591, 2025 U.S. Dist. LEXIS 126608 (E.D. Va. July 2, 2025) (Nachmanoff, J.):** At the time of filing her Chapter 11 petition, the pro se debtor owned her residence by fee simple. Post-petition and facing non-dischargeability litigation by a creditor, the debtor transferred the home for no consideration to herself and her mother as joint tenants. The case was subsequently converted to Chapter 7. The United States Trustee then sought a denial of the debtor's discharge under 11 U.S.C. § 727(a)(2)(B).

The bankruptcy court granted summary judgment in favor of the United States Trustee and against the pro se debtor, finding that the debtor's post-petition , pre-conversion transfer of her home was made with intent to delay, defraud or hinder her creditors. Accordingly, the court denied the debtor's discharge.

On appeal, among other things, the debtor alleged that the bankruptcy court committed reversible error by failing to properly consider her motive in effectuating the transfer. The Fourth Circuit clarifies the distinction between motive and intent: "Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done." *United States v. Brown*, 908 F.2d 968 (4th Cir. 1990). Determining that the evidence unequivocally supported the bankruptcy court's finding that the debtor had intended to hinder her creditors by putting the house out of their reach, the District Court affirmed the judgment below.

***Lee v. Park (In re Park)*, A.P. No. 25-01021-BFK, 2025 WL 2214055, 2025 Bankr. LEXIS 1859 (Bankr. E.D. Va. July 31, 2025) (Kenney, C.J.):** The plaintiff invested $300,000 with the debtor, who represented himself as a Mass Mutual executive. The debtor used the investment as part of a $700,000 down payment to purchase real property titled as tenants by the entirety with his wife. The plaintiff filed an adversary proceeding seeking, among other claims, the imposition of a constructive trust or equitable lien on the property (Count IV) and injunctive relief under § 105 (Count VIII). The chapter 7 trustee—who had filed a separate adversary proceeding to avoid the $700,000 transfer as fraudulent or, alternatively to avoid the deed creating the tenancy by the entirety—moved to dismiss the Count IV. The bankruptcy court analyzed the matter addressing dismissal of both Count IV and Count VIII, because Count VIII depended on the constructive trust and equitable lien asserted in Count IV.

The bankruptcy court held that § 541(d), which excludes property where the debtor holds only legal title, does not provide a basis to elevate equitable claims over the trustee's avoidance powers. Section 541(d) applies only to property coming into the estate under § 541(a)(1) and (2), not to property recovered through the trustee's avoidance powers under § 541(a)(3) and (4).

Alternatively, the bankruptcy court held that if the trustee successfully avoided the deed creating the tenancy by the entirety, the trustee would have the

Continued on page 5

Continued from page 4

rights of a bona fide purchaser under § 544(a)(3). The bankruptcy court concluded that under Virginia law, both constructive trusts and equitable liens are unrecorded interests that cannot prevail against a bona fide purchaser. The bankruptcy court therefore dismissed both Count IV (constructive trust/equitable lien) and Count VIII (injunctive relief).

***Copeland v. Brown* (*In re Brown*), A.P. No. 25-07006, 2025 WL 2180200, 2025 Bankr. LEXIS 1835 (Bankr. W.D. Va. July 31, 2025) (Black, C.J.):** Copeland, a zoning administrator, inspected property recently purchased by the Browns in his official capacity. The Browns publicly accused Copeland on Facebook of being a child predator, making child pornography, stalking, peeping, and trespassing. They also filed police reports and attempted to have Copeland prosecuted on these allegations. The Sheriff's Department investigated and found all allegations unfounded, and criminal charges against Copeland were dismissed or nolle prossed. Copeland sued the Browns for defamation, malicious prosecution, and unlawful dissemination of his personal information, obtaining a $25,000 judgment plus $1,500 in attorney's fees.

The Browns subsequently filed a Chapter 13 petition. Copeland filed an adversary proceeding claiming the debt was nondischargeable under § 1328(a)(4) because the Browns willfully or maliciously caused him personal injury. The Browns moved to dismiss, arguing that § 1328(a)(4) requires allegations of physical harm and that Copeland's complaint contained only conclusory allegations of personal injury.

The bankruptcy court thus confronted an issue of first impression for the Western District of Virginia: the definition of "personal injury" under § 1328(a)(4). After reviewing three judicial approaches—narrow (physical harm only), intermediate (physical and non-physical harm but excluding business/financial injuries), and broad (including business injuries if defined as personal injury torts)—the bankruptcy court adopted the intermediate approach. The bankruptcy court found that Congress knew how to specify "personal bodily injury" when it intended to (as in § 522(d)(11)(D)) but chose not to in § 1328(a)(4). The Court held that "personal injury" includes both physical and non-physical injuries such as defamation, emotional distress, and reputational damage, but excludes property damage. Finding that Copeland sufficiently alleged personal injury from the Browns' willful or malicious conduct, the Court denied the motion to dismiss.

***In re BV Mgmt. LLC*, No. 22-10662-BFK, 2025 WL 1942986, 2025 Bankr. LEXIS 1682 (Bankr. E.D. Va. July 15, 2025) (Kenney, C.J.):** The proposed final report filed by the Chapter 7 trustee in this converted case provided no distribution to two creditors (the "G2 creditors") on the grounds that they had claims fully secured by collateral not administered by the trustee. The G2 creditors objected to the final report on the grounds that the value of their collateral was such that their claims were either undersecured or unsecured. The G2 creditors argued that they should be entitled to distribution on account of their deficiency claims. To that end, the

Continued on page 6

Continued from page 3

day before the hearing on the trustee's final report, the G2 creditors amended their proofs of claim to specifically provide for unsecured deficiency claims.

The bankruptcy court determined that the amended proofs of claim were timely, as they sufficiently related back under Federal Rule of Civil Procedure 15. The Court also declined to impose a deadline for amending proofs of claim prior to approval of the final report. Given that the G2 creditors properly amended their proofs of claim which claims were not addressed in the proposed final report, the court sustained the objection.

***In re Sorrells*, No. 21-50632, 2025 WL 1829138, 2025 Bankr. LEXIS 1597 (Bankr. W.D. Va. July 2, 2025) (Connelly, J.):** The mother of one of the Chapter 13 debtors died post-petition, generating an immediate inheritance of $26,000 as the beneficiary of his mother's 401(k), as well as a share of her estate once settled. The Chapter 13 trustee moved to modify the debtors' confirmed Chapter 13 plan to account for the total anticipated inheritance.

The bankruptcy court found that the inheritance of the 401(k) funds was a substantial and unanticipated change in circumstances requiring plan modification. However, the court declined to order the entirety of the inheritance be used as plan funding. A future inheritance right was too speculative to include. The court also found it appropriate to deduct immediate critical household needs (such as house and vehicle repairs) from the inherited retirement funds, determining that those repairs were necessary to render the modified plan payments feasible.

Time to Shine

Are you ready to get more involved?

Nominate yourself or others for IWIRC- VA board positions TODAY!

For more information or to nominate, contact the Nominating Committee (Donna Hall, Sara John, & Mary Lake).

Proposed slate will be presented for a vote at the September Mid-Atlantic Happy Hour.

Dollars & Sense

Western District

The Eleventh Annual Western District of Virginia Bankruptcy Conference was held on May 30, 2025. Access to the conference materials is publicly available on the Court's website and linked here.

Eastern District

NEW Standing Order 25-4 requires all sealed documents to be filed in paper form with the Clerk's Office. ECF users are no longer able to electronically file a sealed document. Existing procedures for redacted documents and motions to restrict are unaffected.

NEW Standing Order 25-3, which prohibits the use of flash drives to file various documents with the Clerk's Office.

Practical practice pointers you can use!

NOTE from the EDITOR

I hope you enjoy our inaugural newsletter. As the latest initiative in member benefits, our goal is to provide you with a periodic update on anything and everything you might want or need to know.

To help make this a valuable resource for you and your practice, I welcome any feedback you may have as well as any and all contributions. Contact me at Rachel_Greenleaf@vaeb.uscourts.gov

In solidarity,
Rachel Greenleaf

Member News

Multiple members have the distinction of speaking at the 40th Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice scheduled for September 25-26, 2025, in Charlottesville:

- Doug Foley (*Ethics: Respect in the Profession and Professional Welhness*);
- Rachel Greenleaf (*Recent Developments for Advanced Bankruptcy Practitioners*);
- Hannah Hutman (*Merchant Cash Advances*);
- Nisha Patel (*Consumer Hot Topics*); and
- Brandy Rapp (*Lender Protections in Loan Documents and Workout Agreements*).

Congratulations to Nisha Patel and Klementina Pavlova on their recent career changes. Nisha is now serving as career law clerk to the Honorable Elizabeth L. Gunn, United States Bankruptcy Court for the District of Columbia. Klementina has moved in house with the financial institution Kapitus LLC.

UPCOMING EVENTS

September 9	Member's Only Event at the Richmond Flying Squirrels
September 24	Opening Happy Hour at the Mid-Atlantic Conference
October 18	Hike in the Blue Ridge Mountains

Not a member?

Join today!

SCAN THE QR CODE OR GO TO IWIRC.COM FOR MORE INFORMATION