

— October 2025 —

THE CREDIT REPORT

A Publication by the IWIRC - Virginia Network



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Recent Developments

New Cases You Need to Know.

Schultz v. Cheney, Case No. 1:25-CV-322 (LMB/IDD), 2025 WL 2722657, 2025 U.S. Dist. LEXIS 188721 (E.D. Va. Sept. 24, 2025):

Facing foreclosure on his property, the debtor filed a Chapter 13 petition, which was dismissed for failure to make payments. Two months later, he re-filed Chapter 11 to again block the foreclosure. The debtor admitted that his financial situation had not changed since the failed Chapter 13: he reported minimal income (about \$231/month) against nearly \$19,000 in monthly expenses.

The U.S. Trustee moved to convert or dismiss the debtor's chapter 11 case for cause under 11 U.S.C. § 1112(b) based on the debtor's failure to make mandatory disclosures, as well as a substantial or continuing loss or diminution of the estate and an

absence of a reasonable likelihood of rehabilitation. The bankruptcy court granted the motion and converted the case to Chapter 7, finding both bad faith and futility.

The debtor appealed the conversion order, alleging that the bankruptcy court erred because (1) the Chapter 11 was filed in good faith; (2) the debtor's violations of court orders did not amount to "cause" under § 1112(b); and (3) the debtor had sufficient assets to make a substantial distribution to creditors if the secured lender's lien was avoided.

The district court affirmed. The court emphasized that "cause" under § 1112(b)(4) includes: substantial or continuing loss to the estate; failure to comply with court orders; and failure to satisfy reporting requirements – all of which were met here.

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Next Event!

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The district court also found that this case was a bad faith filing. Under *Carolin Corp. v. Miller*, 886 F.2d 693, 699 (4th Cir. 1989), a case may be dismissed under § 1112(b) for cause as a bad faith filing if it involves objective futility (no realistic chance of reorganization) and subjective bad faith (filed for an improper purpose). Applying this test, the bankruptcy court found, and the district court agreed, that the debtor's case was objectively futile (he had a severe negative cash flow, no viable plan, and no path to rehabilitation) and his filing was in subjective bad faith (it was timed to stop foreclosure, not to reorganize, which is an improper purpose).

The district court also found that the bankruptcy court did not abuse its discretion in deciding to convert the debtor's case instead of dismissing it. Dismissal would have left creditors to pursue state-law remedies, while conversion ensured trustee oversight and potential recovery for all creditors. Given the deteriorating condition of the secured property and the debtor's bad faith in filing, conversion was favored to preserve estate value.

In re Parris, Case No. 23-72011-SCS, 2025 WL 2713141, 2025 Bankr. LEXIS 2381 (Bankr. E.D. Va. Sep. 23, 2025): Prior to bankruptcy, the pro se Chapter 7 debtor purchased her home, financing the transaction through a promissory note and deed of trust in favor of MERS, which was subsequently assigned to Nations Lending Corporation. In bankruptcy, the debtor disputed the validity of the Nations Lending's claim on a laundry list of grounds, including failure to prove the debt, lack of Nations Lending's standing, fraud, violations of consumer protection laws, and unenforceability due to securitization, unauthorized allonges, and as an unlawful bearer instrument. In a 58-page opinion, the Court granted summary judgment to Nations Lending, ruling that Nations Lending's claim was valid, secured, and enforceable against the debtor's property.

The Court engaged in a detailed analysis of the standard and enforceability of notes and deeds of trust under Virginia law. A bearer note is freely transferrable and enforceable by the holder. Nations Lending had sufficiently

demonstrated possession of the original “wet-ink” Note and Deed of Trust and, therefore, was entitled to enforce the same. The Court noted that Parris repeatedly demanded original documents but failed to attend the scheduled inspection arranged for her benefit. The Court emphasized that Parris’s refusal to inspect the originals did not negate their existence. The Court also found that the debtor had admitted to the existence of the secured claim through her bankruptcy schedules, statement of intention, and letters to Nations Lending’s CEO, even though the claim was marked as disputed. Finally, the Court determined that Nations Lending had sufficiently proven the amount of the claim, which the debtor had failed to rebut.

The Court also examined each of the debtor’s arguments against the validity of the debt, including that the Note was an unlawful security under federal securities law, promissory notes must be limited to nine months, Nations Lending lacked standing to enforce the debt, and the deed of trust and allonges were improperly executed. These arguments were described as irrelevant or misunderstandings of law.

In re Martinez, No. 20-10250-BFK, 2025 WL 2618116, 2025 Bankr. LEXIS 2248 (Bankr. E.D. Va. Sep. 8, 2025): At the time of filing, the Chapter 13 debtor was employed by NVR as a sales representative. During his Chapter 13 case, NVR terminated the debtor’s employment. The debtor was able to obtain new employment, but with a reduced salary. In light of his lower income, the debtor moved to modify his plan to reduce his monthly plan payments from \$2,000 to \$300. The bankruptcy court confirmed the modified plan, which the debtor successfully completed. The debtor received his discharge and the case was closed in April 2025.

While the debtor’s case was pending, in 2022, the debtor filed a charge of discrimination against NVR with the EEOC. In 2023, the debtor filed suit against NVR for alleged discrimination, breach of contract, and unjust enrichment, and seeking damages in excess of \$1 million. The debtor did not amend his schedules to disclose any potential post-petition claims against NVR.

In July 2025, NVR demanded the debtor dismiss his lawsuit for failure to disclose it in the

bankruptcy case. In response, the debtor in turn moved to reopen his bankruptcy case for the purpose of amending his schedules to list and exempt the post-petition cause of action. Both NVR and the Chapter 13 trustee opposed the motion to reopen on the grounds that the claims were not properly disclosed while the case was open and may not be exempt.

First, the bankruptcy court declined to determine whether NVR had standing to object to the motion to reopen. Typically, parties to non-bankruptcy litigation who are not creditors do not have standing to oppose a motion to reopen. However, NVR had filed a counterclaim in the state court litigation, asserting that it overpaid the debtor. NVR argued that it was a creditor by virtue of their counterclaim under § 1305(a) of the Bankruptcy Code. 11 U.S.C. § 1305(a)(2) (allowing post-petition claims for consumer debts that arise after the petition date and are for property or services necessary for the debtor's performance under the plan). While the bankruptcy court seemed skeptical that the counterclaim was a "consumer

debt," the court found that NVR's standing was immaterial to its determination of the motion to reopen.

A case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). In determining whether to reopen a case, the court should refrain from addressing the merits of the underlying dispute. Applying this standard, the bankruptcy court held that the case should be reopened to allow the opportunity for the debtor to seek to amend his schedules to disclose and exempt the cause of action. Then the matter would be ripe for determination of whether the asset could be exempted.

Before reaching this conclusion, the Bankruptcy Court engaged in two separate inquiries: (1) whether the debtor had an obligation to disclose the claim; and (2) whether the claim could be exempt.

The debtor argued that the his claims were post-petition claims that need not be disclosed, urging the bankruptcy court to revisit its decision in *In re Ilyev*, No. 17-12987-KHK, 2022 WL 2965029,

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2022 Bankr. LEXIS 2046 (Bankr. E.D. Va. July 26, 2022) (imposing a duty of disclosure for post-petition substantial and unanticipated changes) and instead adopt the reasoning of *In re Boyd*, 618 B.R. 133 (Bankr. D.S.C. 2020) (finding no duty to disclose exempt post-petition cause of action). The bankruptcy court interpreted *Ilyev* to require the disclosure of post-petition causes of action, particularly where it was unclear if the claim may be fully exempt.

While the court ultimately declined to make any specific findings as that would be a substantive ruling on the merits, the court indicated that some portion of the claim may not be exempt. As the claim may not be fully exempt, the bankruptcy court determined that creditors may be better served by reopening the case. Accordingly, the bankruptcy court granted the motion and reopened the case.

IWIRC NIGHT AT THE DIAMOND

On September 9, members of IWIRC gathered to watch the Richmond Flying Squirrels take on the Hartford Yard Goats in one of the final games at the Diamond. Many thanks to Hunton Andrews Kurth for their sponsorship of this event and to Jen Wuebker for organizing.

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Tina's Wish *Virginia Gathering*

Thursday, October 9, 2025 • 6PM
6031 Saint Andrews Lane, Richmond

Mary Lake (McMichael Taylor Gray) and Donna Hall (Schoenberg & Associates), as members of the Virginia Committee, ask for your attendance at the 2025 Virginia Gathering on Thursday, October 9th.

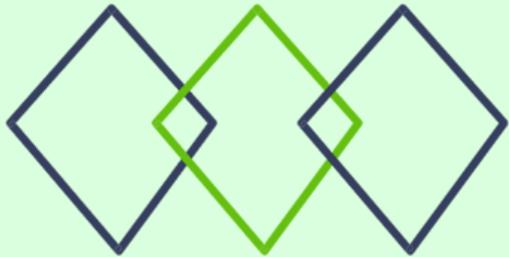
It will be a meaningful evening raising awareness and funds for early detection ovarian cancer research. There will be mingling, cocktails, dinner by the bite, and a powerful program.

This year, Shannon Daily, Virginia Committee Co-Chair, will moderate a conversation between R.J. Gilson, Virginia Committee Member, and Johnny Hyde Jr., MD, Gynecologic Oncologist at Bon Secours. R.J. is speaking in loving memory of his wife, Angie Gilson, who passed from ovarian cancer in 2024. Dr. Hyde was Angie's gynecologic oncologist throughout her journey.

Happy Hour & Annual Meeting

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RESOURCES

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Great success! The slate proposed by the nominating committee was approved by unanimous vote. The board would like to thank Brandy Rapp, Donna Hall, and Klementina Pavlova for their service and welcomes Hannah Hutman, Kelly Barnhart, and Nancy Schlichting! Here's to another productive year!

NOTE from the EDITOR

We received tons of positive feedback on our inaugural issue, but yet minimal contributions. Help us make this a success by sending in anything and everything you think might be of use to our members.

Contact me at

Rachel_Greenleaf@vaeb.uscourts.gov

Looking forward to seeing you all at Tina's Wish!

*In solidarity,
Rachel Greenleaf*



Meet the 2026 BOARD



Rachel Greenleaf
Chair



Sara John
Vice Chair



Kelly Barnhart
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Nancy Schlichting
At-Large Director



Hannah Hutman
At-Large Director



Hon. Rebecca Connelly
Judicial Liaison

Member News



Congratulations to IWIRC members Hon. Rebecca B. Connelly, Doug Foley, Rachel Greenleaf, Hannah Hutman, Nisha Patel, and Brandy Rapp, who had the opportunity to speak at the 40th Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice on September 25-26, 2025, in Charlottesville. These speakers kept up the tradition of a informative and engaging program!



UPCOMING EVENTS

October 18

Hike in the Blue Ridge Mountains

December 4

Board Meeting and Holiday Party

Not a member?

Join today!

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