Commercial Law Developments

2007

Prepared by
Professor Stephen L. Sepinuck

updated 11/21/19

SECURED TRANSACTIONS

Scope Issues

1. *In re Shangin,*
2007 WL 2903020 (Bankr. D. Alaska 2007)
The exclusion of security interests in commercial tort claims in the pre-revision version of Article 9 does not prevent a security interest from attaching to such a claim, it merely means that the matter is governed by the common law.

2. *Cisneros v. McDonald*,
2007 WL 9711700 (N.D. Ala. 2007)
A transaction structured as a nine-year lease of a mobile home, after which the lessee would become the owner, could be a secured transaction for the purposes of the federal Truth in Lending Act as long as the lessee was not able to terminate the lessee without penalty. The lessee did have a right to terminate, but because it was unclear if the lessee would remain obligated for all the lease payments, it was not clear whether the lessee could terminate without penalty.

Attachment Issues

3. *Peoples Bank v. Cornerstone Bank*,
504 F.3d 549 (5th Cir. 2007)
Security agreement signed by individual would grant security interest in business assets if the business was a sole proprietorship, but not if the business was operated as a partnership or LLC. Filing against individual debtor's nickname would be effective if security interest has attached. Just as a security interest in inventory presumptively includes after-acquired inventory, so too does a security interest in a cattle dealer's livestock.

4. *Manufacturers and Traders Trust v. Wyoming Sand and Stone*,
223 Fed. Appx. 146 (3d Cir. 2007)
Secured creditor that signed and delivered to auctioneer a release of lien to facilitate auction of motor vehicles serving as collateral did not have a lien on the proceeds still held by the auctioneer when the debtor filed for bankruptcy protection.

5. *In re Oelrich*,
378 B.R. 416 (6th Cir. BAP 2007)
Creditor had a valid security interest in the debtor's right to distributions from a testamentary trust that lacked a spendthrift provision, and the trustee had not violated a fiduciary duty by recognizing the validity of the security interest.

6. *In re Mahan*,
2007 WL 4387420 (Bankr. N.D. Okla. 2007)
Lender's security interest attached under the composite document rule even though the debtors never authenticated the security agreement because, when the lender sent the debtor the security and a loan check, it included a statement that signing and negotiating the check was assent to the security agreement, the debtors did sign and negotiate the check, and the debtors understood the secured nature of the transaction and intended to create a security interest.

7. *Engel v. Bay Winds Federal Credit Union*,
2007 WL 1491877 (Mich. Ct. App. 2007)
Security interest attached to car owned by father and two children even though authenticated security agreement did not describe the car because all three also signed an application for a certificate of title for the car which referenced the security interest.

8. *In re Batsell*,
2007 WL 846523 (Bankr. D. Or. 2007)
Although authenticated security agreement failed to identify the collateral, the description of "accounts receivable" and "equipment" in the financing statement and "inventory" in an addendum were sufficient for the security interest to attach to such property.

9. *Universal Guaranty Life Insurance Co. v. Coughlin*,
481 F.3d 458 (7th Cir. 2007)
Dragnet clause in security agreement extended to later borrowing even though later borrowing did not reference the secured nature of the obligation; the purpose of a dragnet clause is to protect a creditor against the possibility that it might forget to execute a security agreement.

10. *In re Shemwell*,
378 B.R. 166 (Bankr. W.D. Ky. 2007)
Dragnet clause in open-ended line of credit granted to consumer is enforceable, and thus collateral secures all obligations of the consumer to the creditor.

11. *Wooding v. Cinfed Employees Credit Union*,
872 N.E.2d 959 (Ohio Ct. App. 2007)
Although auto loan agreement provided that car would secure all obligations the borrower owed to the lender, nothing specifically indicated that the car would secure the borrower's credit card account obligations and thus there was "no meeting of the minds with respect to the cross-collateralization of the automobile."

12. *In re Yelverton*,
2007 WL 841393 (Bankr. M.D. Ala. 2007)
Neither first loan agreement, which included a clause indicating that collateral securing other loans also secures this one, nor second loan agreement, which included a clause purporting to make the collateral secure all other debts of the borrowers, was adequate to make the collateral granted in the second agreement secure the debt created in the first. The first loan was made more than 10 days before the debtor acquired the collateral and the second loan was made to three co-debtors whereas the first loan was made to only one of them.

13. *Peoples Bank v. Bryan Bros. Cattle Co.*,
504 F.3d 549 (5th Cir. 2007)
Security agreement signed by individual would grant security interest in business assets if the business was a sole proprietorship, but not if the business was operated as a partnership or LLC. Filing against individual debtor's nickname would be effective if security interest has attached. Just as a security interest in inventory presumptively includes after-acquired inventory, so too does a security interest in a cattle dealer's livestock.

14. *In re Emergency Monitoring Technologies, Inc.*,
366 B.R. 476 (Bankr. W.D. Pa. 2007)
Security agreement covering "all monitoring accounts and contracts," "all accessions, parts, accessories," and "replacements and additions thereto" did not cover after-acquired monitoring contracts.

15. *Allete, Inc. v. GEC Engineering, Inc.*,
726 N.W.2d 520 (Minn. Ct. App. 2007)
Security agreement covering inventory and equipment at a particular location did not cover similar property of the debtor located elsewhere and subsequent filing of authenticated financing statement covering equipment at second location was inadequate to amend the security agreement because it lacked granting language.

16. *McMurphy v. Three Rivers Planning and Development District, Inc.*,
966 So. 2d 192 (Miss. Ct. App.)
Pledge of "1552 shares of Stock, . . . in the amount of $49,664" gave secured party an interest in the shares themselves, including all subsequent appreciation, and was not limited to merely the dollar amount listed.

17. *In re Sarah Michaels, Inc.*,
358 B.R. 366 (Bankr. N.D. Ill. 2007).
Secured party should have amended its security agreement to include new commercial tort claims because the agreement's general reference to commercial tort claims was not a sufficient description.

18. *In re Singh*,
2007 WL 2917235 (Bankr. D.N.J. 2007)
Creditor did not have a security interest in corporate stock despite possession of the stock certificate because the stock was purportedly issued a few days before the corporation was formed, and thus was invalid.

19. *In re Dreiling*,
2007 WL 172364 (Bankr. W.D. Mo. 2007)
Debtor's interest in a limited liability company was a general intangible, not a security, because the LLC interest was not traded on an exchange and the LLC agreement did not provide that the interests were securities.

20. *In re Weiss*,
376 B.R. 867 (Bankr. N.D. Ill. 2007)
Debtor could not grant security interest in his LLC and limited partnership interests because the operating agreements prohibited any transfer of the interest of a member or limited partner without the consent of the manager or general partner and no consent was provided until years later. No discussion or reference to § 9-408.

21. *In re Brown*,
2007 WL 2029498 (Bankr. D. Kan. 2007)
Medical patient's right to receive payment from automobile insurer for injuries sustained in accident is not a health-care insurance receivable because it is not for health-care goods or services provided.

22. *Insurance Company of the State of Pennsylvania v. HSBC Bank of USA*,
829 N.Y.S.2d 511 (N.Y. App. Div. 2007)
Secured party with blanket lien who seized all of the assets of the debtor, a cigarette wholesaler, had to account to the state's subrogee for the commingled but traceable tax proceeds of cigarette sales because no security interest could attach to such funds.

23. *In re Furr's Supermarkets, Inc.*,
378 B.R. 418 (10th Cir. BAP 2007)
Consignor's inability to trace proceeds of consigned inventory rendered the proceeds unidentifiable and thus not subject to the consignor's security interest. Subsequent payments to the consignor during the preference period were therefore avoidable.

24. *Liberty Life Assurance Co. of Boston v. Gilbert*,
507 F.3d 952 (6th Cir. 2007)
Lender to whom borrower assigned an interest in borrower's rights to payment under an annuity issued in a structured settlement of a tort action did not obtain a security interest in the rights to payment because the borrower did not own the annuity and the annuity contract expressly prohibited the beneficiary from assigning the rights to payment. The lender was not entitled to an equitable assignment because it was aware of the contractual prohibition on assignment yet took deceptive steps to obtain an assignment without the issuer's knowledge. There was no mention of the anti-assignment rules of § 9-406 or § 9-408.

25. *Bank Rhode Island v. Mixitforme, Inc.*,
2007 R.I. Super Lexis (R.I. Super. Ct. 2007)
Funds paid out of collateralized deposit account into court registry were free of the depositary's security interest, but debtor's residual interest in the registry was proceeds of the deposit account and the depositary's security interest could and did attach to that beneficial interest.

26. *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*,
2007 WL 114497 (S.D. Tex. 2007)
Preliminary injunction granted against assignee of annuities used to fund structured settlements of tort claims because assignee used arbitration clause in assignment as a way of bypassing the statutes in 43 states that require court approval of such an assignment. *See also Fidelity and Guaranty Life Ins. Co. v. Harrod*, 2007 WL 2847966 (Md. 2007) (imposing sanctions on Rapid Settlements for its meritless argument that it had obtained a security interest in a structured settlement even though it had not obtained the required court approval); *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 234 S.W.3d 788 (Tex. Ct. App. 2007) (affirming lower court's injunction against efforts to use arbitration to bypass judicial approval requirement for transfer of structured settlement); *R & Q Reinsurance Co. v. Rapid Settlements, Ltd.*, 2007 WL 2330899 (S.D. Fla. 2007) (ruling that enforcement of arbitration award regarding structured settlement would violate Florida Protection Act); *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, 2007 WL 1643211 (S.D. Tex. 2007) (holding Rapid Settlement in contempt of court for violating injunction against using arbitration to bypass judicial approval requirement); *Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, 2007 WL 1377667 (E.D. Pa. 2007) (refusing to enforce arbitration award relating to transfer of structured settlement after state court refused to approve of the transfer agreement); *In re Rapid Settlements, Ltd.*, 2007 WL 925698 (Tex. Ct. App. 2007) (refusing to order arbitration against issuer of annuity for structured settlement).

27. *In re Thomas*,
362 B.R. 478 (10th Cir. BAP 2007)
Under Kansas law, manufactured home affixed to realty remains personal property until procedure for eliminating the certificate of title is followed.

28. *In re Ryan*,
360 B.R. 50 (Bankr. W.D.N.Y. 2007)
Security interest can exist in bathtub installed in home because tub is not the equivalent of ordinary building materials, which become realty when incorporated into a structure.

29. *In re Flores*,
363 B.R. 799 (Bankr. N.D. Tex. 2007)
Security interest in motor vehicle covered by prepaid extended warranty extends to that warranty.

30. *Price v. Nationwide Mutual Insurance Co. of Des Moines*,
152 P.3d 1274 (Kan. Ct. App. 2007)
Money received from insurer in settlement of insurance claim resulting from theft of tractor was proceeds of tractor and therefore covered by security interest in tractor.

31. *CPC Acquisitions, Inc. v. Helms*,
2007 WL 4365342 (N.D. Ill. 2007)
Settlement against insurance company for negligent failure to include damaged collateral in the list of insured collateral was proceeds of the collateral, but amounts for business interruption losses was not. Security interest did not attach to commercial tort claim because even though the security agreement gave the secured party permission to amend the schedule of collateral to include commercial tort claims upon receiving notification of the claim from the debtor, the secured party failed to make such an amendment.

32. *In re Zych*,
379 B.R. 857 (Minn. Ct. App. 2007)
Creditor's security interest does not attach to a commercial tort claim that was neither described in the security agreement nor existing when the security agreement was executed, even though the commercial tort claim might be proceeds of other collateral.

33. *In re QMECT, Inc.*,
373 B.R. 100 (Bankr. N.D. Cal. 2007)
While an account receivable generated by the sale of a piece of inventory may constitute the proceeds of the inventory and the cash collected in payment of an account receivable may constitute the proceeds of the account receivable, new inventory acquired and new accounts generated postpetition are not necessarily proceeds of prior assets of the same type produced in the operation of the debtor's business even if the secured party holds a blanket lien – debtor's electroplating business involved the creation of accounts primarily through the provision of services.

34. *In re Delco Oil Co.*,
365 B.R. 246 (Bankr. M.D. Fla. 2007)
Although debtor diverted liquid funds to depositary bank with which secured party did not have a control agreement, all such deposits were identifiable proceeds so that secured party held a perfected security in them and was entitled to relief from the stay upon conversion of the debtor's bankruptcy case to Chapter 7.

35. *In re Flager*,
2007 WL 1701812 (Bankr. M.D. Ga. 2007)
Debtor's signature on title application for truck that identified creditor as lienholder, coupled with debtor's testimony that he understood he was giving creditor a security interest in the truck, qualifies as an effective security agreement.

36. *In re Ryalls*,
2007 WL 1228789 (Bankr. N.D. Cal. 2007)
Contract clause providing that "[i]f borrower cannot refinance their current mortgage to cover this amount, or, if another source of funds is unavailable, Borrowers agree to sell their mobile home in order to repay Lender" was inadequate to create a security interest; there is a difference between promising to sell property and granting a security interest.

37. *In re Rowe*,
369 B.R. 73 (Bankr. D. Mass. 2007)
Description of truck as "collateral" for lessee's obligation in lease agreement covering other equipment, notation of security interest on truck's certificate of title, and power of attorney authorizing third party to sign documents necessary to "secure" truck were collectively inadequate as a security agreement because of the absence language purporting to grant a security interest.

Perfection Issues

38. *In re Jim Ross Tires, Inc.*,
379 B.R. 670 (Bankr. S.D. Tex. 2007)
Two creditors' filings against Jim Ross Tires, Inc. were ineffective to perfect – one included "dba HTC Tires & Automotive Centers" after the debtor's correct name and the other omitted the "s" in "Tires" – because the parties did not dispute that a search under the debtor's correct name would not disclose the filings. The court rejected an argument that because a search using wildcards would have disclose the filings, the filings were effective.

39. *In re John's Bean Farm of Homestead, Inc.*,
378 B.R. 385 (Bankr. S.D. Fla. 2007)
Filing that identified the debtor as "John Bean Farms, Inc." instead of its registered name, John's Bean Farm of Homestead, Inc.," was ineffective because an on-line search of the filing office's database did not produce the filing unless the searcher pushed "previous" 60 times.

40. *In re Fuell*,
2007 WL 4404643 (Bankr. D. Idaho 2007)
Filing against Andrew Fuell that identified the debtor as "Andrew Fuel" was ineffective to perfect because the debtor's on-line search failed to produce the filing.

41. *In re Borden*,
2007 WL 2407032 (D. Neb. 2007)
A filing against "Michael R. Borden" that identified him as "Mike Borden" was seriously misleading because the filing apparently was not disclosed in a search using the longer first name, which the court identified as the debtor's "legal name" and, therefore, his "correct name" under § 9-506(c).

42. *In re Augusta Mill, LLC*,
2007 WL 2572451 (Bankr. M.D.N.C. 2007)
Court was unable to rule on whether a filing that improperly identified the debtor as "Augusta Mills, LLC" instead of "Augusta Mill, LLC" was sufficient to perfect because it could not determine on the record before it whether the standard search logic as: (i) an on-line search using the debtor's correct name, which did not reveal the filing; (ii) an on-line stem search for the debtor's name, which did reveal the filing; or (iii) a certified search by the filing office, which did not disclose the filing in the body of the search report but which did disclose it as additional information about filings against debtors with similar names.

43. *Maxus Leasing Group, Inc. v. Kobelco America, Inc.*,
2007 WL 655779 (N.D.N.Y. 2007)
Financing statement that omitted one digit of a crane's serial number but otherwise correctly indicated the crane's year, make, and model, was effective to perfect; the error was minor and not seriously misleading.

44. *In re Cain*,
356 B.R. 787 (10th Cir. BAP 2007)
Filing new financing statements after the originals lapsed is effective to re-perfect the security interests.

45. *In re Amron Technologies, Inc.*,
2007 WL 917236 (Bankr. M.D. Ga. 2007)
Only one of four joint creditors – the one who had filed a financing statement – was perfected – because there was no express or implied agency agreement among the creditors that might make the filer's financing statement effective for the other creditors.

46. *In re Coldwave Systems LLC.*,
368 B.R. 91 (Bankr. D. Mass. 2007)
Filing with Patent Office is ineffective to perfect a security interest in a patent; a UCC filing is required to perfect.

47. *In re Phoenix Systems & Components, Inc.*,
2007 Bankr. Lexis 603 (Bankr. D. Neb. 2007)
A filed financing statement describing the collateral as general intangibles is sufficient to perfect a security interest in patents (parties stipulated that federal law did not control).

48. *D.B. Zwirn Special Opportunities, Ltd. v. Eastern Display Acquisition, Inc.*,
2007 R.I. Super. Lexis 168 (R.I. Super. Ct. 2007)
One-year period to re-file in the jurisdiction in which an equipment buyer was located began upon physical transfer of the goods – which is when the buyer became the "debtor" – not when the buyer later agreed to assume the obligation, and thereby became a "obligor."

49. *In re Phillips-Camper*,
359 B.R. 659 (Bankr. N.D. Ohio 2007)
Secured party who took possession of collateralized coin collection had a perfected security interest even though the security agreement authorized the secured party to require the debtor to execute a financing statement.

50. *In re Southern Air Transport, Inc.*,
511 F.3d 526 (6th Cir. 2007)
Possessory mechanic's lien on leased aircraft need not be filed with FAA Aircraft Registry in order to be perfected and the lien has priority over the rights of both the lessor and the lessee under § 2A-306.

51. *In re Ozark Airlines, Inc.*,
2007 WL 43742 (Bankr. N.D. Okla. 2007)
Security interest in aircraft and in aircraft spare parts maintained by a certified air carrier for installation in such aircraft can be perfected only by filing with the Federal Aircraft Registry.

52. *In re Palmer*,
365 B.R. 816 (Bankr. S.D. Ohio 2007)
Creditor with a purchase-money security interest in tractor and front loader was automatically perfected because it was entitled to rely on the debtor's written representation in the security agreement that the goods would be used for personal, family or household purposes, and thus the goods qualified as consumer goods.

53. *In re Harper*,
2007 WL 45918 (10th Cir. BAP 2007)
Security interest in motor vehicle was unperfected even though noted on certificate of title issued by Native American nation because no tribal law expressly provides that such act perfects the security interest.

54. *In re Hat*,
2007 WL 2580688 (Bankr. E.D. Cal. 2007)
Security interest in trailers that debtor used to haul grapes, that were previously registered for use on only a partial-year basis, and for which certificates of title were issued were held as equipment, not inventory, and could be perfected only through compliance with the certificate of title statute.

55. *In re Hicks*,
491 F.3d 1136 (10th Cir. 2007)
While filing a notice of security interest with state Division of Motor Vehicles perfects a PMSI in a motor vehicle until the Division issue a certificate of title, issuance of the certificate without a lien notation destroys that temporary perfection.

56. *In re Johnson*,
380 B.R. 455 (6th Cir. BAP 2007)
For the purposes of a bankruptcy avoidance action, a secured party is perfected in an automobile only when the state issues the certificate of title, even though the certificate of title statute expressly provides that the security interest is "deemed perfected" upon attachment if the secured party tenders the documents and appropriate fee within 20 days of attachment, which the secured party did in this case.

57. *McCarthy v. BMW Bank of North America*,
509 F.3d 528 (D.C. Cir. 2007)
Because common-law rules and principles cannot be used to supplement Article 9's rules on perfection, creditor's PMSI in automobile was not perfected until the Department of Motor Vehicles issued certificate of title with lien notation on it; mere receipt by Department of application with applicable fee is not adequate.

58. *In re Villa*,
2007 WL 397373 (Bankr. D. Kan. 2007)
Secured party did not perfect its purchase-money security interest in mobile home because its notice of security interest was not "timely" mailed to the Division of Motor Vehicles pursuant to state statute.

59. *In re Gaiser*,
2007 WL 643314 (Bankr. D. Kan. 2007)
Creditor's security interest in automobile was not perfected because even though the creditor had submitted the proper documents to have the lien noted on the certificate of title, the certificate was issued without the lien so noted. *See also In re Kierl*, 2007 WL 3355501 (Bankr. D. Kan. 2007) (ruling similarly).

60. *University of Wisconsin Credit Union v. Middleton Motors, Inc.*,
731 N.W.2d 384 (Wis. Ct. App. 2007)
Secured party perfected its security interest in automobile when the Department of Transportation received the title application and titling fee, even though the check in payment of the fee was returned because it was inadequate to cover the cost of the vanity license plate that the debtor had requested.

61. *In re O'Neill*,
370 B.R. 332 (10th Cir. BAP 2007)
PMSI in motor vehicle is perfected when county clerk inputs lien notice into electronic certificate of title records, not when application and notice is delivered to the clerk. Hence, if debtor files for bankruptcy protection after delivery of the application to the clerk but before the clerk enters the data, the security interest in unperfected and the trustee may avoid the lien. The relation-back rule of § 9-317(e) does not apply.

62. *In re Anderson*,
2007 WL 1839699 (D. Ariz. 2007)
Security interest in automobile is not perfected under Arizona law merely by submitting the relevant documents to the Motor Vehicle Department; perfection requires endorsement of the title application by the MVD. Because the MVD rejected the application because the debtor owed a $50 fine, the secured party was not perfected.

63. *In re McAlister*,
371 B.R. 923 (Bankr. E.D. Wis. 2007)
Seller of automobile did not have a perfected security interest in the car after the original financier released its lien and returned the loan to the seller even though the financier's interest was still noted on the certificate of title. The seller was not an assignee and had to have its interest noted on the certificate to be perfected.

64. *United States v. Tanner*,
2007 WL 1287898 (W.D. Wash. 2007)
Financing statements filed against IRS personnel in retaliation for their tax collection efforts were false and unauthorized, and hence were null and void.

PMSI Status

65. *In re Winchester*,
2007 WL 420391 (Bankr. N.D. Iowa 2007)
Bank's security interest in piano dolly was not a PMSI because debtor had purchased the dolly two weeks before the bank made the secured loan.

66. *In re Trejos*,
374 B.R. 210 (9th Cir. BAP 2007)
Auto dealer's assignment of PMSI in car to finance company did not destroy purchase-money status of the security interest.

67. *In re Cole*,
2007 WL 3302112 (Bankr. C.D. Ill. 2007)
When a PMSI is consolidated with other loans – whether PMSI or not – payments are allocated on a first-in-first-out basis. As a result, the creditor's PMSI status was lost and the security interest was avoidable under § 522(f)(1)(B) of the Bankruptcy Code.

68. *In re Price*,
363 B.R. 734 (Bankr. E.D.N.C. 2007)
Secured obligation incurred to purchase used car, acquire gap insurance, and cover negative equity on trade-in car was not a PMSI even in part because it is virtually impossible to determine what portion of the total debt is truly allocable to the price of the car purchased.

69. *In re Tuck*,
2007 WL 4365456 (Bankr. M.D. Ala. 2007)
Financing used to cover negative equity in trade-in vehicle is not part of the price of the new vehicle and therefore not part of the purchase-money obligation. Because the security agreement lacked a provision on how to allocate payments between the PMSI and non-PMSI obligations, the transformation rule applies and no part of the security interest retains purchase-money status.

70. *In re Westfall*,
365 B.R. 755 (Bankr. N.D. Ohio 2007)
Secured obligation incurred to purchase car and cover negative equity in vehicle traded in was not a PMSI even in part under Ohio law.

71. *In re Westfall*,
376 B.R. 210 (Bankr. N.D. Ohio 2007)
The reference to a purchase-money security interest in § 1325 of the Bankruptcy Code should be interpreted as a matter of federal law and the UCC definition does not apply. For federal purposes the dual-status rule is appropriate and while negative equity in a trade-in car is not part of the price of the new vehicle, it does not undermine PMSI status for the remainder of the secured obligation. Payments will be deemed to have been made and interest to have accrued ratably, so that the percentage of the secured obligation qualifying as a PMSI will remain constant.

72. *In re Sanders*,
377 B.R. 836 (Bankr. W.D. Tex. 2007)
Financing of negative equity in trade-in car is neither part of the "price" of the new car nor "value given to enable the debtor" to acquire the new car. Whether state would follow dual-status rule or transformation rule for the portion of the secured obligation that was for the price of the new car is immaterial; for the purposes of § 1325(a), the PMSI must secure the whole debt or the claim may be modified.

73. *Citifinancial Auto v. Hernandez-Simpson*,
369 B.R. 36 (D. Kan. 2007)
Portion of car loan used to finance negative equity in trade-in car was not a PMSI but remainder of loan did have PMSI status, in part because Kansas has statutorily adopted the "dual status rule" for consumer transactions.

74. *In re Johnson*,
380 B.R. 236 (Bankr. D. Or. 2007)
Financing of negative equity in trade-in car is neither part of the "price" of the new car nor "value given to enable the debtor" to acquire the new car, and thus is not a purchase-money obligation. Given the purposes of § 1325(a), it is appropriate to use the dual-status rule to treat the remainder of the secured obligation as a purchase-money and prevent modification of it.

75. *In re Lavigne*,
2007 WL 3469454 (Bankr. E.D. Va. 2007)
Credit extended to finance negative equity in a trade-in vehicle is not part of the price of the new car because it was pre-existing debt. Credit used to purchase extended service contract and gap insurance are also not part of the price of the new car. However, the dual status rule applies and the remainder of the secured obligation is secured by a PMSI. Payments and penalties will be applied pro rata to the PMSI and non-PMSI obligations.

76. *In re Conyers*,
379 B.R. 576 (Bankr. M.D.N.C. 2007)
Portion of new car loan used to finance negative equity in a trade-in vehicle is not part of the price of the new car but the dual status rule applies and the remainder of the secured obligation is secured by a PMSI. Payments will be deemed to have been made on the PMSI and non-PMSI obligation in proportion to the relative size of those obligations.

77. *In re Hayes*,
376 B.R. 655 (Bankr. M.D. Tenn. 2007)
Neither amounts loaned to finance negative equity in trade-in car nor to purchase gap insurance were part of the purchase-money obligation, but the dual status rules applies and thus the remaining portion of the secured obligation has PMSI status.

78. *In re Pajot*,
371 B.R. 139 (Bankr. E.D. Va. 2007)
Choosing to adopt the dual status rule for consumer transactions and then treating the negative as not part of the price but also as not undermining the PMSI status of the remainder of the loan.

79. *In re Acaya*,
369 B.R. 564 (Bankr. N.D. Cal. 2007)
Portion of new car financing to cover debtor's negative equity in trade-in car did not have PMSI status, but remainder did pursuant to the "dual status rule, which the court adopted in part because the California Automobile Sales Finance Act requires sellers to itemize the amounts financed and thus makes apportionment possible.

80. *In re Bray*,
365 B.R. 850 (Bankr. W.D. Tenn. 2007)
A security interest in a consumer transaction can qualify in part as a PMSI if the transaction documents provide a method for apportioning the debt and allocating payments between the PMSI and non-PMSI portions; the portion of the debt used to finance "negative equity" on a trade-in case is not a purchase-money obligation.

81. *In re Weiser*,
381 B.R. 263 (Bankr. W.D. Mo. 2007)
Amounts financed to cover negative equity in trade-in vehicle, gap insurance, and an extended warranty were all value given to enable the debtor to acquire the new car and are thus all part of the purchase-money obligation. The fact that the collateral includes, in addition to the new car, the "proceeds and premium refunds" of the gap insurance and extended warranty contract does not prevent the debt from being a PMSI secured by a motor vehicle for the purposes of § 1325(a).

82. *General Motors Acceptance Corp. v. Peaslee*,
373 B.R. 252 (W.D.N.Y. 2007)
Debt owed on trade-in car which was included in amount financed in debtor's purchase of new car was incurred in connection with the debtor's acquisition of rights in the new car, is thus part of the price of the new car, and therefore the lender had a PMSI securing the entire obligation.

83. *Graupner v. Nuvell Credit Corp.*,
2007 WL 1858291 (M.D. Ga. 2007)
Creditor's financing of the negative equity in the debtor's trade-in car along with the sticker price of a new car was all part of the "price" of the new car, and thus creditor had a PMSI securing the entire obligation.

84. *In re Macon*,
376 B.R. 778 (Bankr. D.S.C. 2007)
Credit extended in connection with a motor vehicle purchase to buy a service contract and gap insurance and to cover an administrative fee were all part of the purchase-money obligation and therefore all covered by the lender's PMSI.

85. *In re Spratling*,
377 B.R. 941 (Bankr. M.D. Ga. 2007)
Amounts financed for extended service contract and gap insurance were part of the "price" of a new car, and thus covered by a PMSI.

86. *In re Honcoop*,
377 B.R. 719 (Bankr. M.D. Fla. 2007)
Gap insurance is not part of the "price" of a new car but the dual status rule applies and the remainder of the secured obligation is covered by a PMSI. Because the contract does not expressly provide how payments are to be allocated, payments will be deemed to go first toward the PMSI obligation, leaving the entire amount for gap insurance remaining due.

87. *In re Blakeslee*,
377 B.R. 724 (Bankr. M.D. Fla. 2007)
Negative equity is not part of the "price" of a new car and – unlike situations involving gap insurance – the transformation rule is appropriate because the price of the new car may well be affected by an unreasonably low allowance on the trade-in vehicle.

88. *In re Burt*,
378 B.R. 352 (Bankr. D. Utah 2007)
Credit extended to finance negative equity in trade-in vehicle, an extended service contract, and gap insurance is all part of the "price" of the new car, and thus covered by a PMSI.

89. *In re Wall*,
376 B.R. 769 (Bankr. W.D.N.C. 2007)
Negative equity is part of the "price."

90. *In re Cohrs*,
373 B.R. 107 (Bankr. E.D. Cal. 2007)
Negative equity is part of the "price." *See also In re Watson*, 2007 WL 2873434 (Bankr. E.D. Cal. 2007) (following *Cohrs*).

91. *In re Petrocci*,
370 B.R. 489 (Bankr. W.D.N.Y. 2007)
Disagreeing with *In re Peaslee* 358 B.R. 545 (Bankr. N.D.N.Y. 2006), *rev'd*, 373 B.R. 252 (W.D.N.Y. 2007) and concluding that financing of negative equity in trade in is part of the "price."

92. *In re Huddle,*
2007 WL 2332390 (Bankr. E.D. Va. 2007)
PMSI status in consumer-goods transaction was lost when loan was refinanced and some proceeds were used to bring separate loan current.

Priority Issues

93. *Provident Bank v. Community Home Mortgage Corp.*,
498 F. Supp. 2d 558 (E.D.N.Y. 2007)
Mortgage broker issued duplicate original notes and mortgages to two unrelated warehouse lenders for each of nine loans. Priority between the two warehouse lenders was determined not by first to record an assignment of the mortgage, but by first to file or perfect under Article 9 (by taking possession of the note assigned to it) and by status as a holder in due course.

94. *In re Jersey Tractor Trailer Training, Inc.*,
2007 WL 2892956 (Bankr. D.N.J. 2007)
Purchaser of accounts who searched under an incorrect name of the debtor and therefore failed to discover a proper filing by a previous secured party could not qualify as a holder in due course of the proceeds because it had failed to exercise reasonable commercial standards, and had not acted in good faith. Nevertheless, the purchaser's collection of accounts did not constitute conversion or tortious interference with business relations and thus the purchaser was entitled to retain the amounts already collected.

95. *Fordham Financial Services, Inc. v. Ventramex S.A. de C.V.*,
2007 WL 1598084 (S.D. Ohio 2007)
Assignee of accounts was not subject to clause in agreement between debtor and account debtor choosing Mexico as the forum for litigating because the forum selection clause was potentially unreasonable and possibly the product of overreaching.

96. *Rentenbach Constructors, Inc. v. CM Partnership*,
639 S.E.2d 16 (N.C. Ct. App. 2007)
Secured party had priority in accounts as the first to file or perfect despite subsequent filing of an amendment purporting to make a partial assignment of its security interest.

97. *Greenfield Commercial Credit LLC v. Catlettsburg Refining LLC*,
2007 WL 97068 (E.D. La. 2007)
Debtor's instruction to customer to pay assignee of debtor's accounts which misidentified the debtor as "Pipeworks Reserve, Inc." instead of "Pipeworks, Inc." was nevertheless effective in part because the accompanying wiring instructions referred to the correct debtor.

98. *Epicenter Strategic Corp.-Michigan v. Cleveland Construction, Inc.*,
2007 WL 715297 (E.D. Mich. 2007)
Creditor with security interest in defunct subcontractor's accounts and who brought a collection action against the general contractor had no right to answer contractor's third-party complaint against subcontractor for breach of contract and contractor was entitled to a default judgment; creditor was entitled merely to defend the main claim or move to intervene in the third-party action.

99. *In re North End Timber Productions, LLC*,
2007 WL 4468706 (Bankr. D. Mont. 2007)
Subordination agreement extends to insurance proceeds of the collateral. Subordination of first lienor's interest to third lienor's lienor has no effect on second lienor, thus: (i) Set aside the amount of first lienor's claim; (ii) From that, pay the third lienor the amount of its claim and then pay the first lienor to the extent of any amount balance; (iii) Pay the second lienor the amount of its claim; (iv) Distribute any remaining balance first to the third lienor and then to the first lienor.

100. *In re Advanced Marketing Services, Inc.*,
360 B.R. 421 (Bankr. D. Del. 2007)
Seller of goods was not entitled to reclaim them because the buyer's secured party had a security interest in them.

101. *In re Incredible Auto Sales LLC*,
2007 WL 927615 (Bankr. D. Mont. 2007)
Floor plan financier's security interest in car dealer's inventory prevented seller of automobiles from reclaiming cars for which the dealer had paid with checks that bounced; however, seller could reclaim the one car for which the dealer had never delivered a check.

102. *Searcy Farm Supply, LLC v. Merchanys & Planters Bank*,
2007 WL 1290246 (Ark. 2007)
Seed supplier with PMSI in farmer's seed did not have priority over bank with earlier perfected security interest in farmer's future crops because crops were not proceeds of the seed and because the jurisdiction had not enacted the alternative provisions of revised Article 9 on production-money security interests.

103. *In re Evans*,
370 B.R. 138 (Bankr. S.D. Ohio 2007)
Creditor with security interest in mobile home that had been permanently affixed to real estate lost priority to subsequent mortgagee because even though secured creditor's interest remained noted on certificate of title, creditor's financing statement had lapsed.

104. *Greentree Servicing LLC v. Decanio*,
948 So. 2d 1033 (Fla. Ct. App. 2007)
Mobile home in which creditor held a perfected security interest became realty – and thus subject to real estate taxes – when permanently affixed to land. The creditor was not entitled to notice of a tax sale free and clear of the creditor's security interest because, even though its interest remained perfected by notation on the certificate of title, the creditor never recorded a mortgage or otherwise notified the tax collector of its interest.

105. *In re TXNB Internal Case*,
483 F.3d 292 (5th Cir. 2007)
Buyer who took gas in part in payment of prior debt and was therefore not a buyer in ordinary course was not liable for conversion for selling the gas to purchasers who were buyers in ordinary course because it had no knowledge or notice of the lien and was not liable for conversion of the sale proceeds because and action for conversion of money requires a segregated fund or a transfer for safekeeping; the buyer may, however, be liable in a collection action.

106. *In re Western Iowa Limestone, Inc.*,
375 B.R. 518 (8th Cir. BAP 2007)
While buyers might qualify as buyers in ordinary course of business if they have constructive possession of the goods, constructive possession requires some visible step sufficient to inform the world that the seller no longer has possession; mere identification of the goods to the contract as an undivided share in an identified fungible bulk is insufficient.

107. *First National Bank of Picayune v. Pearl River Fabricators, Inc.*,
971 So. 2d 372 (La. 2007)
Secured party retroactively lost perfection because it did not refile in new state within one year after debtor sold collateralized equipment to a buyer located in the new state, and thus the buyer took free of the security interest even though the buyer knew of the security interest when it purchased.

108. *Fordyce Bank & Trust Co. v. Bean Timberland, Inc.*,
2007 WL 615115 (Ark. 2007)
Buyers of cut timber were buyers in ordinary course and therefore had no duty to conduct search for filed financing statements against the timber seller.

109. *Sterling Savings Bank v. Air Wisconsin Airlines Corp.*,
492 F. Supp. 2d 1256 (E.D. Wash. 2007)
Prepaying buyer who never received the goods could not recover money from seller's bank/secured lender either under Article 4A or principles of restitution.

110. *In re Borden*,
361 B.R. 489 (8th Cir. BAP 2007)
Artisan with possessory lien who involuntarily lost possession to debtor but later reacquired it remained perfected and retained priority over creditor with a security interest.

111. *Storage and Office Systems, LLC v. United States*,
490 F. Supp. 2d 955 (S.D. Ind. 2007)
IRS cannot use principles of successor liability to make buyer of taxpayer's assets liable for unpaid taxes if buyer took free of the tax lien under I.R.C. § 6323.

112. *WFS Financial, Inc. v. Mayor and City Council of Baltimore*,
935 A.2d 385 (Md. 2007)
Absent fraud or collection between the vehicle owner and lienholder or the lienholder's knowledge of the illegal activities giving rise to governmental seizure of the collateral, a lienholder is not required to pay towing and storage costs to obtain release of the property seized.

Enforcement & Liability Issues

113. *Freibert v. Merrill Lynch Business Financial Services*,
230 Fed. Appx. 531 (6th Cir. 2007)
Secured party owed no fiduciary duty to third party who pledged securities to secure a loan and was not liable for allowing another pledgor to withdraw assets from his own pledged securities account.

114. *Rush v. U.S. Bancorp Equipment Finance, Inc.*,
742 N.W.2d 266 (S.D. 2007)
Secured party who failed to perfect its security interest in trucks that the debtor resold to buyer and who therefore suffered a loss in the buyer's bankruptcy could nevertheless still collect from the debtor and the debtor had no cause of action against the secured party because of its failure to perfect.

115. *Landmark Credit Union v. Borum*,
742 N.W.2d 76 (Wis. Ct. App. 2007)
Secured party may replevy car even if it did not perfected its security interest in the car by having its interest noted on the certificate of title.

116. *Fortress Credit Corp. v. Alarm One, Inc.*,
511 F. Supp. 2d 367 (S.D.N.Y. 2007)
Although security agreement gave secured party right to seek *ex parte* the appointment of a receiver upon debtor's default, court declined to appoint one on an *ex parte* basis because the defaults occurred about two years ago and because the application was motivated by an unrelated request for a received by a tort creditor in a different state, but that request had already been denied.

117. *In re Britt*,
369 B.R. 526 (Bankr. D. Ariz. 2007)
Car dealer's warranty to financing bank to provide "perfected first lien security interest" in car sold, free of any defense, offset or counterclaim by the buyer, was not breached when dealer perfected the security interest more than 30 days after the sale, the buyer filed for bankruptcy protection less than 90 days thereafter, and the trustee avoided the security interest.

118. *Merrell v. Consumer Portfolio Services, Inc.*,
2007 WL 530784 (W.D. Mo. 2007)
Although obligation not to breach the peace is a nondelegable duty – and thus secured party can be liable for independent contractor's breach of the peace during repossession – secured party is not liable for other torts committed by independent contractor during repossession, such as trespass and conversion of property other than the collateral.

119. *Fleming-Dudley v. Legal Investigations, Inc.*,
2007 WL 952026 (N.D. Ill. 2007)
Debtor sufficiently state a claim for breach of the peace by alleging that repossession agent impersonated a police officer and threatened to file criminal charges against debtor.

120. *Santiago v. Reliable Financial Services, Inc.*,
526 F. Supp. 2d 226 (D.P.R. 2007)
Debtor has potential § 1983 action for use of police officers in repossession – without judicial process – of automobile in a manner that threats, intimidation, harassment, and the seizure of unencumbered property inside the car.

121. *Terry v. Nuvell Credit Corp.*,
2007 WL 2746919 (W.D. Okla. 2007)
Debtor's expenses incurred and injuries suffered in defending unsuccessful prosecution for felonious pointing of a firearm during attempted repossession were not recoverable from repossession agents under the U.C.C. because the proximate cause was the debtor's own conduct.

122. *St. Helena Community Partners v. CMR Mortgage Fund LLC*,
2007 WL 53821 (Cal. Ct. App. 2007)
Amounts expended by lender to extend real estate purchase option serving as collateral for the loan was a reasonable expense to preserve the collateral and hence secured by the collateral.

123. *CIT Group Equipment Financing, Inc v. FRS Farms, Inc.*,
745 N.W.2d 88 (Wis. Ct. App. 2007)
Secured party did not conduct a commercially reasonable disposition of specialized collateral because the consultants it hired lacked expertise about the collateral, the sale was structured as a sale to the consultants, thereby creating a possible conflict of interest if the consultants marked up the price to the real buyers by more than their intended commission, and the price was far below estimate fair market value. However, there is no election of remedies problem in using judicial process to replevy the collateral and then Article 9 to dispose of it.

124. *CIT Group/Equipment Financing, Inc. v. Landreth*,
2007 WL 4554224 (E.D. Tenn. 2007)
Because secured party disposed of the collateralized buses by posting notice of the sale on its website, by listing the buses in a weekly email message sent to all previous clients, and by listing the buses in trade magazines, the secured party sold the buses in the usual manner on recognized markets and in conformity with reasonable commercial practices. Secured party is entitled to deficiency judgment even though one of its employees allegedly assured the debtor that its surrender of the buses would be in satisfaction of the debt because the statutory requirements for a strict foreclosure were not satisfied and therefore the employee's purported assurance "carries no legal force."

125. *In re Eckert*,
2007 WL 3243922 (D.N.J. 2007)
Secured party acted in a commercially unreasonable manner in not seeking to foreclose on collateralized inventory and accounts that the trustee had abandoned and which the debtor still possesses, and thus secured party's claim was properly zeroed out.

126. *Ford Motor Credit Corp. v Updegraff*,
218 S.W.3d 617 (Mo. Ct. App. 2007)
Creditor's petition for a deficiency judgment following disposition of the collateral should have been dismissed for failure to plead facts showing compliance with commercially reasonable sale requirement.

127. *Striker Golf Co. v. First Security Bank of Lexington, Inc.*,
242 S.W.2d 688 (Ky. Ct. App. 2007)
Debtor and secondary obligor must do more than simply object to the sale in order to put the commercial reasonableness of the sale at issue.

128. *Triple J. Saipan, Inc. v. Sanchez*,
2007 WL 4197303 (N. Mar. I. 2007)
Creditor that spent $3,660 to repair repossessed automobile, put it on its lot, and sold it a year later for only $2,080 acted in a commercially reasonable manner.

129. *Daimler/Chrysler Truck Financial v. Kimball*,
2007 WL 4358476 (Ohio Ct. App. 2007)
Dicta that a dealers-only internet sale is a commercially reasonable private sale.

130. *Auto Credit of Nashville v. Wimmer*,
231 S.E.3d 896 (Tenn. 2007)
Creditor gave reasonable notification of disposition even though creditor sold the collateral before learning whether the debtor received the notification.

131. *RP Machine Enterprises, Inc. v. UPS Capital Business Credit*,
2007 WL 2475871 (D. Mass. 2007)
Prospective buyer of goods from foreclosing secured party had no cause of action for breach of contract against the secured party even though secured party failed to give proper notification of the sale and because of that a lower court invalidated the sale.

132. *Bertin v. Grant Automotive, Inc.*,
2007 WL 1257183 (C.D. Ill. 2007)
Automobile seller that repossessed the car subject to a conditional sale when the buyer's financing fell through was not required to give the buyer notification of a resale because the seller resold the car pursuant to its ownership interest, not its security interest.

133. *GAMC v. Stoval*,
872 N.E.2d 91 (Ill. Ct. App. 2007)
Notification of disposition is required even after a replevin action. Although secured party testified that such notification was sent, its failure to produce a copy of the computer-generated notification, coupled with the debtor's testimony that notification was not received, was sufficient for the trial court to conclude that the secured party failed to satisfy its burden of proving that notification was sent.

134. *Bank of Guam v. Del Priore*,
2007 WL 2460763 (Guam 2007)
Because security agreement provided for how secured party was to notify the debtor of a disposition of collateral and that provision was not manifestly unreasonable, the secured party had to plead and prove compliance with that provision – not merely that its notification was reasonable – or be barred from getting a deficiency judgment under old Article 9.

135. *Reno Financial, Ltd v. Valleroy*,
229 S.W.3d 622 (Mo. Ct. App. 2007)
Manufactured home is not property traded on a recognized or that threatens to decline speedily in value, and thus secured party must send the debtor notification of a disposition and failure to do so bars action for a deficiency.

136. *Wood v. Arkinson*,
2007 WL 9782518 (W.D. Wash. 2007)
Even if the secured party failed to provide the required notification of his foreclosure on the debtor's partnership interest, the three-year limitations period started to run when the debtor learned of the foreclosure, and had expired prior to the debtor's commencement of an action against the secured party.

137. *Title Max of Birmingham v. Edwards*,
973 So. 2d 1050 (Ala. 2007)
Arbitrator had to decide scope of arbitration clause – specifically, whether it covered borrower's claim against creditor for repossessing unpledged property – because arbitration clause expressly granted arbitrator authority to decide issues of arbitrability.

138. *Folks v. Tuscaloosa County Credit Union*,
2007 WL 4463986 (Ala. Ct. App. 2007)
Alabama follows the setoff rule for computing the damages in a consumer transaction when the secured party conducts a commercially unreasonable disposition; the consumer cannot get both actual damages under § 9-625(b) and statutory damages under § 9-625(c).

139. *JCB, Inc. v. Union Planters Bank*,
2007 WL 2317542 (E.D. Mo. 2007)
Junior secured party committed trespass when it entered senior secured party's premises without authorization and repossessed the collateral, and it was liable for conversion for selling the collateral.

140. *Vital Basics, Inv. v. Vertrue, Inc.*,
515 F. Supp. 2d 170 (D. Me. 2007)
Judgment creditor could levy on collateralized accounts via a writ of execution as long as the secured party has not declared a default.

141. *Noble Systems Corp. v. ACI Telecentrics, Inc.*,
2007 WL 9735468 (D. Minn. 2007)
A computer seller that had an unperfected security interest in hardware and software sold to the debtor had no claim for conversion or for tortious interference with business against a subsequent lender that obtained and perfected a security interest in the hardware, or against the buyer which after default, purchased the hardware from at a disposition. It did not matter whether the subsequent lender or the buyer knew of the prior unperfected security interest as long as neither caused the debtor to breach its contract with the seller.

BANKRUPTCY

Property of the Estate

142. *In re Magnacom Wireless, LLC*,
503 F.3d 984 (9th Cir. 2007), *cert. denied,* 128 S. Ct. 2076 (2008)
Funds generated by the FCC's sale of new broadcast licenses after it cancelled the bankruptcy debtor's licenses for nonpayment were not proceeds of the debtor's licenses and thus the funds were not property of the estate; the FCC's actions were based on its regulatory authority, not on its status as a secured creditor.

143. *In re Big Idea Productions, Inc.*,
372 B.R. 388 (Bankr. N.D. Ill. 2007)
Surety which issued bond so that principal could obtain preliminary injunction, and which paid on bond when trial court ruled that injunction was improperly issued, was subrogated to the rights of the principal when an appellate court overruled the trial court, despite the principal's intervening bankruptcy; the right to restitution of the amounts paid was not property of the estate.

144. *In re Wagers*,
514 F.3d 1021 (10th Cir. 2007)
Prepetition retainer that debtor provided to attorneys was property of the estate and the attorneys could not draw on it for postpetition services unless they were employed pursuant to § 327.

145. *In re Mortgage Lenders Network USA, Inc.*,
380 B.R. 131 (Bankr. D. Del 2007)
Properties acquired in foreclosure by and titled in the name of originator of mortgages, who also functioned as servicing agent for mortgage buyers, were not property of the estate of the originator; they were held in trust for the benefit of the mortgage buyers.

Claims

146. *Travelers Casualty & Surety Co. v. Pacific Gas & Electric Co.*,
127 S. Ct. 1199 (2007)
Attorneys' fees incurred postpetition in litigating issues of federal bankruptcy law are includable in a creditor's claim if provided for in contract with the debtor.

147. *In re Amron Technologies, Inc.*,
376 B.R. 49 (Bankr. M.D. Ga. 2007)
Oversecured creditor is entitled to postpetition attorneys' fees provided for in the security agreement even though such fees would not be recoverable under nonbankruptcy law because the creditor failed to send the statutorily required notice of her intent to collect them.

148. *In re National Energy & Gas Transmission, Inc.*,
492 F.3d 297 (4th Cir. 2007)
Prohibition on allowance of claim for unmatured interest prohibited creditor from allocating postpetition payment from surety first as interest and then as principal, so as to leave some amount of the debt remaining due.

149. *In re Urban Communicators PCS LP*,
379 B.R. 232 (Bankr. S.D.N.Y. 2007)
Oversecured creditor is generally entitled to postpetition interest at the default rate, compounded quarterly, as provided for in the contract but because that apparently brings the simple interest rate above the usury threshold, interest will be capped at the usury threshold.

150. *In re Kirkland*,
379 B.R. 341 (10th Cir. BAP 2007)
Section 502(b) provides the exclusive bases for disallowing a claim and a claimant's failure to provide supporting documentation for its proof of claim is not one of them.

151. *In re Solutia, Inc.*,
379 B.R. 343 (Bankr. S.D.N.Y. 2007)
Creditors' efforts to waive default and de-accelerate notes that were accelerated automatically by the filing of the bankruptcy petition was ineffective because it was not authorized by the contact and because the action violated the automatic stay. In determining the amount of the note holders' claims, original issue discount should be treated as interest and unmatured interest is disallowed under § 502(b)(2).

152. *In re Brown & Cole Stores, LLC*,
375 B.R. 873 (9th Cir. BAP 2007)
Administrative expense priority under § 503(b)(9) for goods received by the debtor during the 20 days preceding the bankruptcy petition does apply even of the claim is secured.

153. *In re Solutia, Inc.*,
2007 WL 1302609 (Bankr. S.D.N.Y. 2007)
Bondholders who acquired an equal and ratable lien when the debtor's secured financing rose above a set level, but who lost the lien when the secured financing was restructured a few weeks before the debtor's bankruptcy filing, were not entitled to an equitable lien for the debtor's alleged breach of the duty of good faith.

154. *In re Winstar Communications, Inc.*,
2007 WL 1232185 (D. Del. 2007)
Insider's claims could be equitably subordinated not merely to other claims but also to equity interests even though the harm caused by the insider's conduct is not readily quantifiable.

155. *In re Enron*,
379 B.R. 425 (S.D.N.Y. 2007)
Purchaser of bankruptcy claim is not subject to equitable subordination or disallowance under § 502(d) based on conduct of seller, but a mere assignee may be.

Automatic Stay

156. *In re Campbell*,
361 B.R. 831 (Bankr. S.D. Tex. 2007)
Mortgagee violated automatic stay by increasing the required monthly payment to cover shortage in real estate tax escrow because the mortgagee's contractual right to do so was a prepetition claim.

157. *In re Allred*,
2007 WL 2916194 (Bankr. D. Utah 2007)
Although the debtor may have a cause of action against the secured party for hastily selling the collateral two days after repossessing it and without sending prior notification to the debtor, because the disposition occurred before the debtor filed for bankruptcy protection, the creditor did not violate the stay.

158. *In re Suggs*,
377 B.R. 198 (8th Cir. 2007)
Local bankruptcy rule that permits a secured party to repossess the debtor's car without a court order after the insurance has lapsed if the debtor fails to provide proof of insurance after receiving notification from the secured party and the secured party follows up by later filing a motion for relief from the stay violates § 362 and is invalid.

Leases & Executory Contracts

159. *Thompson v. Lil' Joe Records, Inc.*,
476 F.3d 1294 (11th Cir. 2007)
Debtor in possession, which had rejected prepetition contract with musician under which debtor acquired copyright to songs and agreed to pay royalties, was not liable for copyright infringement for postpetition use because copyright did not revert back to musician upon rejection of the contract.

160. *In re Ground Round, Inc.*,
482 F.3d 15 (1st Cir. 2007)
Lessor of realty used as a restaurant, who also essentially leased liquor license along with the real estate, was entitled to return of the liquor license upon rejection of the lease by the lessee/debtor.

161. *In re Federal-Mogul Global, Inc.*,
222 Fed. Appx. 196 (3d Cir. 2007)
Bankruptcy court could not prorate rent due for month in which debtor/lessee rejects lease.

162. *In re James River Coal Co.*,
360 B.R. 139 (Bankr. E.D. Va. 2007)
Assumption of executory contract by debtor in possession precludes later effort to avoid prepetition payments pursuant to that contract.

163. *In re Gateway Access Solutions, Inc.*,
368 B.R. 428 (Bankr. M.D. Pa. 2007)
Fact that creditor had a perfected security interest in the debtor's right to receive payment under a contract to sell certain FCC leases did not prevent the debtor from rejecting that contract; the debtor need not provide substitute collateral or any other form of adequate protection.

Avoidance Powers

164. *In re Lazarus*,
478 F.3d 12 (1st Cir. 2007)
Neither the earmarking doctrine nor the defense for contemporaneous transfers saves from avoidance a mortgage granted in connection with a refinancing and which was perfected outside the relation-back period specified in § 547(e)(2).

165. *In re Flanagan*,
503 F.3d 171 (2d Cir. 2007)
Earmarking doctrine applies when the debtor borrows funds from one creditor to pay another, even if the debtor temporarily acquires possession of the funds, provided the debtor is obligated to use the funds to pay an antecedent debt, but only to the extent the estate is not diminished by the transfers. Thus, to the extent the new debt is secured but the old debt was not, the earmarking doctrine does not apply.

166. *In re Shelton*,
244 Fed. Appx. 634 (6th Cir. 2007)
Earmarking doctrine protects creation of unauthorized postpetition mortgage because the mortgage loan was incurred and used to pay off preexisting mortgage debt.

167. *Caillouet v. First Bank & Trust*,
368 B.R. 520 (E.D. La. 2007)
Earmarking doctrine protects prepetition pay off of unsecured bridge loan but not to the extent of the value of the collateral provided to the new lender, because to that extent the estate was diminished.

168. *VFB LLC c. Campbell Soup Co.*,
482 F.3d 624 (3d Cir. 2007)
Market capitalization – after concealed information is disclosed – is more reliable evidence of a corporation's solvency than subjective estimates of expert witnesses. Directors of wholly owned, solvent subsidiary who are also directors of the parent corporation owe no duty of loyalty to the subsidiary as against the parent.

169. *In re Iridium Operating LLC*,
373 B.R. 283 (Bankr. S.D.N.Y. 2007)
The public markets are a better guide in valuing a company for fraudulent transfer purposes than opinions of litigation experts whose valuation work is performed after the fact and from a advocate's point of view.

170. *In re Rocor International, Inc.*,
380 B.R. 567 (10th Cir. BAP 2007)
For the purpose of preference analysis, prepetition payment to insurance premium financier has no preferential effect if financier was fully secured by unearned premiums on the date payment was made, even if its collateral dissipated by the time the bankruptcy petition was filed.

171. *In re Bake-Line Group, LLC*,
359 B.R. 566 (Bankr. D. Del. 2007)
Transfer during preference period to intended payee of check which debtor had erroneously received and deposited was not avoidable because the debtor never acquired rights in the proceeds of the check.

172. *In re Rocor International, Inc.*,
366 B.R. 158 (W.D. Okla. 2007)
Debtor's purchase of health insurance for employees with check that was honored nine days later was an avoidable preference because the transfer occurred when the honored and the insurer did not have a new value defense because the insurance was provided to the debtor's employees, not to the debtor.

173. *Velde v. Reinhardt*,
366 B.R. 894 (D. Minn. 2007)
Debtor's payment for goods by checks, after previous checks were dishonored, was nevertheless a contemporaneous exchange for new value because the seller's secured party did not release its lien in the goods until it received payment.

174. *In re MS55, Inc.*,
477 F.3d 1131 (10th Cir. 2007)
Chapter 7 trustee could not bring preference or fraudulent transfer claims against creditor because the debtor had waived such claims in the DIP financing order prior to conversion of the case.

175. *In re Broadway City LLC*,
358 B.R. 628 (Bankr. S.D.N.Y. 2007)
Statement in cash collateral order that lien was valid did not preclude trustee, after conversion of the case, from seeking to avoid the lien as a fraudulent transfer.

176. *In re Millivision, Inc.*,
474 F.3d 4 (1st Cir. 2007)
Trustee could avoid security interest of lenders who loaned $500,000 to a cash-strapped borrower the day before the borrower's creditors filed an involuntary petition against it because the lenders did not pre-file their financing statement.

177. *In re Globe Building Materials, Inc.*,
484 F.3d 946 (7th Cir. 2007)
Provision of goods or services in fulfillment of preexisting contractual obligation to the debtor is not "new value" for the purposes of the § 547(c)(4) preference defense.

178. *In re Qmect, Inc.*,
2007 WL 4357566 (Bankr. N.D. Cal. 2007)
For the purposes of the § 547(c)(5) preference defense, the amount of the debt includes non-advances – such as interest that accrues during the preference period – not merely new value provided to the debtor.

179. *In re American Pie, Inc.*,
361 B.R. 318 (Bankr. D. Mass. 2007)
Trustee may make use strong arm powers in objecting to secured status of claim even after statute of limitations has run on avoidance action.

180. *In re Arkansas Catfish Growers, LLC*,
2007 WL 215815 (E.D. Ark. 2007)
Noninsider who received security interest more than 90 days but less than one year before the debtor's bankruptcy petition to secure a preexisting debt guaranteed by insiders was not an indispensable party to a preference action against the insider guarantors; the insiders could be sued directly and the initial transferee was insulated from liability by § 547(i).

181. *In re Sophisticated Communications, Inc.*,
369 B.R. 689 (Bankr. S.D.N.Y. 2007)
A bank's grant of provisional credit on deposited instruments which the debtor then accessed so as to result in a collected funds overdraft is not an antecedent debt and, even if it were, the bank's subsequent collection on those items would still not be preferential because it has a security interest in them. However, deposits that satisfy a ledger balance overdraft can be avoidable preferences.

182. *In re Phoenix Restaurant Group, Inc.*,
373 B.R. 541 (M.D. Tenn. 2007)
Postpetition payments to supplier under critical vender order do not diminish supplier's new value preference defense because they were postpetition but supplier's successful postpetition reclamation of goods delivered prepetition does prevent supplier from using the value of such goods in its new value preference defense.

183. *Askenaizer v. Seacoast Redimix Concrete LLC*,
2007 WL 959612 (D.N.H. 2007)
Prepetition payment to creditor whose debt was supported by a payment bond issued by surety is not an avoidable preference if the surety had security for its subrogation claim but is preferential if the surety's subrogation claim is unsecured.

184. *In re American Pad & Paper Co.*,
478 F.3d 546 (3d Cir. 2007)
One-year extension of statute of limitations for avoidance actions if creditors elect trustee before normal two-year limitations period expires does not apply to appointment of initial trustee upon conversion from Chapter 11 to Chapter 7.

185. *In re Lyon*,
360 B.R. 749 (Bankr. E.D.N.C. 2007)
Look-back period for fraudulent transfer claim (*e.g.,* time between transfer and petition date) is not a statute of limitations and thus is not tolled pursuant to § 108(c) during a prior bankruptcy proceeding.

186. *In re Edgewater Medical Center*,
373 B.R. 845 (Bankr. N.D. Ill. 2007)
Expiration of purchase option is not a "transfer" for the purpose of fraudulent transfer law.

187. *In re Plassein International Corp.*,
366 B.R. 318 (Bankr. D. Del. 2007)
Purchases of stock in privately held corporations as part of a leveraged buyout and consummated by wire transfers from a bank were "settlement payments" under § 546(e) and thus insulated from fraudulent transfer avoidance.

188. *Glimcher Supermall Venture, LLC v. Coleman Co.,*
739 N.W.2d 813 (S.D. 2007)
Corporation that paid down debt to a related corporation just before it discontinued operations, thereby leaving its landlord unpaid, engaged in both actual and constructively fraudulent transfers; satisfaction of debt owed to the related corporation was not reasonably equivalent value from the unpaid landlord's perspective.

189. *Thompson v. Hanson*,
174 P.3d 120 (Wash. Ct. App. 2007)
Transferees who received realty worth $465,000 from wholly owned corporation did not give reasonably equivalent value merely by assuming a the mortgage debt of $325,000.

190. *In re Manhattan Investment Fund Ltd.*,
2007 WL 4440360 (S.D.N.Y. 2007)
Margin payments to broker from client engaged in a massive Ponzi scheme are presumed to be made with fraudulent intent and broker is not a mere conduit but is instead an initial transferee for fraudulent transfer purposes. As to whether the broker received the payments in good faith, broker was on inquiry notice of the problem because it knew of a substantial discrepancy between the actual performance of client's investments and the performance being reported to client's potential investors, but whether broker satisfied its duty of good faith by conducting a diligent investigation is a factual issue to be resolved at trial.

191. *In re Brun*,
360 B.R. 669 (Bankr. C.D. Cal. 2007)
Trustee is entitled under § 550 to recover the full current value of property subject to a fraudulent transfer avoidable under a combination of § 544(b) and state law, even though state law limits liability to the debtor's nonexempt equity on the date of the transfer.

192. *In re Allserve Systems, Inc.*,
2007 WL 1464407 (Bankr. D.N.J. 2007)
Trustee pled causes of action against secured lender for recovery of a fraudulent transfer by alleging that borrower was the alter ego of the bankruptcy debtor and that the secured lender knew this when it acquired its security interest to secure a pre-existing debt postpetition.

193. *In re Fleming Packaging Corp.*,
2007 WL 4556985 (Bankr. C.D. Ill. 2007)
Trustee may avoid prepetition sale of collateral for less than reasonably equivalent value even though the secured party approved of the transaction and received all the sale proceeds, and even though the secured party was undersecured, as long as estate may have been injured. Because a sale for a higher price would have further reduced the secured party's unsecured claim and there may be a bankruptcy distribution to unsecured claimants, injury to the estate had been alleged.

194. *In re Lombardo*,
370 B.R. 506 (Bankr. E.D.N.Y. 2007)
Debtor who misled divorce attorney into providing substantial services without prepayment and who then filed a bankruptcy petition to prevent the attorney from perfecting a lien on the debtor's divorce recovery acted in bad faith, warranting dismissal of the Chapter 7 case.

195. *In re American Business Financial Services*,
362 B.R. 135 (Bankr. D. Del. 2007)
Trustee stated a claim against indenture trustee for aiding and abetting a constructively fraudulent transfer.

Reorganization Plans

196. *Iridium Operating LLC v. Official Committee of Unsecured Creditors*,
478 F.3d 452 (2d Cir. 2007)
Pre-confirmation settlement of litigation cannot normally be used to alter the Code's priorities.

197. *In re Harbin*,
486 B.R. 510 (9th Cir. 2007)
In determining feasibility of proposed Chapter 11 plan, Bankruptcy Court must evaluate the likelihood and consequences of creditors' success in appeal of adverse state trial court ruling in action brought against the debtor. The Bankruptcy Court may retroactively approve postpetition secured financing provided: (i) the transaction benefits the estate; (2) the creditor has adequately explained its failure to seek prior approval; (3) the requirements of § 364(c)(2) are satisfied; and (4) retroactive approval is otherwise appropriate.

198. *In re Wiersma*,
227 Fed. Appx. 603 (9th Cir. 2007)
Bankruptcy court properly ruled that debtors' plan, which proposed to use proceeds from destruction of their dairy herd to purchase new cows, lease an operating facility in a different state, and relocate their business, was not feasible because it was essentially a start-up enterprise with a high debt burden and no capital reserves.

International Proceedings

199. *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund*,
374 B.R. 122 (Bankr. S.D.N.Y. 2007)
Cayman Islands insolvency proceeding was not a foreign main proceeding because the center of the fund's main interests was not in the Cayman Islands and it was not a nonmain proceeding because the fund had no establishment there, and thus the case could not proceed under Chapter 15.

GUARANTIES & RELATED MATTERS

200. *Lavender v. Bunch*,
216 S.W.3d 548 (Tex. Ct. App. 2007)
Guarantor who purchased note from creditor was entitled to contribution from co-guarantors in proportion to their number, not to full payment from them.

201. *Irish v. Woods*,
864 N.E.2d 1117 (Ind. Ct. App. 2007)
Co-maker of note was an accommodation party and therefore had right of recourse against other maker, but was not entitled to contribution from guarantor; guarantor was a subsurety not a co-surety.

202. *Morgan Creek Residential v. Kemp*,
153 Cal. App. 4th 675 (2007)
Applicant that paid issuer of letter of credit after issuer paid beneficiary was subrogated under § 5-117(b) to beneficiary's rights against the debtor but not against guarantors and applicant also had not equitable right to contribution from guarantors.

LENDING, CONTRACTING & COMMERCIAL LITIGATION

203. *Commercial Money Center Inc. v. Illinois Union Insurance Co.*,
508 F.3d 327 (6th Cir. 2007)
Contract by which insurer provided collateral insurance coverage in securitization transaction and promised payment to deal trustee as additional insured irrespective of any fraud by the insured was in substance a surety contract, not an insurance contract even though the insured may have retained a remainder interest in the collateral. As a result, the insurer could not rescind the contract due to the insured's fraud because the creditor did not know of or participate in the fraud.

204. *McKenna v. First Horizon Home Loan Corp.*,
475 F.3d 418 (1st Cir. 2007)
Class certification is not available for rescission claims under the TILA.

205. *Oppong v. First Union Mortgage Corp.*,
215 Fed. Appx. 114 (3d Cir. 2007)
Mortgage lender is a "debt collector" within the meaning of the Fair Debt Collection Practices Act because it regularly collects the debts of others even though collecting debts for others was only a small percentage of its business.

206. *Nutracea v. Langley Park Investments PLC*,
2007 WL 135699 (E.D. Cal. 2007)
Clauses in stock purchase agreement selecting New York law as the governing law and New York as the forum for all litigation between the parties were unenforceable because of California's strong policy in preventing fraud on California corporations and New York's minimal interest in the litigation.

207. *Highland Capital Management LP v. Schneider*,
866 N.E.2d 1020 (N.Y. 2007)
Eight privately issued promissory notes qualified as securities under Article 8 and thus an alleged contract for sale of them is excluded from the Article 1 statute of Frauds.

208. *Faust Printing,Inc. v. MAN Capital Corp.*,
2007 WL 4442325 (N.D. Ill. 2007)
Fraudulent inducement claim may be basis to avoid liability under a "hell or high water" clause of a finance lease.

209. *Meincke v. Northwest Bank & Trust Co.*,
745 N.W.2d 95 (Iowa Ct. App. 2007)
Subordination agreement was not supported by consideration because subordinating creditor did not understand the agreement and thus there was no bargained-for exchange.

210. *Eastman Kodak Co. v. Wachovia Bank*,
2007 WL 2406919 (W.D.N.Y. 2007)
Junior secured party stated claims against senior for breach of contract, fraud, and tortious interference with business relations by alleging that senior, in violation of the intercreditor agreement, failed to disclose the debtor's failure to comply with loan covenants and because senior arranged for the debtor to violate a new loan agreement with the junior by requiring the debtor to use all the new loan proceeds to pay the senior.

211. *In re Musicland Holding Corp.*,
374 B.R. 113 (Bankr. S.D.N.Y. 2007)
Trade creditors who had contractually subordinated their security interest to lenders with a revolving loan had no claim against lenders when the lenders amended their credit facility to include an unrelated terms loan by a single lender because the original loan documents contemplated later amendments and encompassed all types of indebtedness.

212. *Deutsche Bank AG v. JPMorgan Chase Bank*,
2007 WL 2823129 (S.D.N.Y. 2007)
Although eight of the nine banks in a $2 billion credit facility could not amend the credit agreement to provide that they would be paid off before the ninth bank, which had breached the agreement by refusing to fund its commitment, distributions could nevertheless be allocated in such a manner as to account for the fact that the ninth bank had not funded all of its commitment and such distribution is "ratable," as required by the agreement.

213. *Dessert Beauty, Inc. v. Platinum Funding Corp.*,
519 F. Supp. 2d 410 (S.D.N.Y. 2007)
Alternative fee structure in factoring agreement – which imposes a higher percentage fee if the total amount of accounts sold falls below a base amount – is an agreed-upon method of performance, not an unenforceable penalty, because failure to meet or exceed the base amount is not a breach of the agreement.

214. *Coppola v. Bear Stearns & Co.*,
499 F.3d 144 (2d Cir. 2007)
Creditor can incur WARN Act liability only if the creditor operates the debtor's business as the *de facto* owner, not if exercises control merely to protect its security interest and preserve the business for sale, and thus recoup some or all of what is owed.

215. *Smith Int'l, Inc. v. The Egle Group LLC*,
490 F.3d 380 (5th Cir. 2007)
Although breach and misrepresentation claim against sellers of business accrued when buyer was sued by third party, buyer's claim for indemnity did not accrue for statute of limitations purposes until judgment was entered against buyer in favor of third party.

216. *Beal Savings Bank v. Sommer*,
865 N.E.2d 1210 (N.Y. 2007)
Individual creditors had no right to pursue direct action against guarantors without authorization from a super majority of creditors under credit facility.

217. *Arena Development Group, LLC v. Naegele Communications, Inc.*,
2007 WL 2506431 (D. Minn. 2007)
There is no cause of action – outside of bankruptcy – for declaratory relief to recharacterize debt as equity or for equitable subordination.

218. *Bremer Ban v. John Hancock Life Insurance Co.*,
2007 WL 1057056 (D. Minn. 2007)
Majority loan participant in aircraft financing deal may have violated owner participant's rights by instructing indenture trustee to conduct a commercially unreasonable sale or by failing to pursue remedies against bankrupt lessee in violation of equity squeeze protection clause.

219. *In re Delta Air Lines. Inc.*,
2007 WL 2932774 (Bankr. S.D.N.Y. 2007)
Owner-participant in aircraft lease was not entitled to indemnification from debtor-lessee for tax loss resulting when owner-participant sold its interest because the sale was not "attributable" to the exercise of foreclosure remedies even though it was prompted by a foreclosure effort.

220. *McCullough v. Goodrich & Pennington Mortgage Fund, Inc.*,
644 S.E.2d 43 (S.C. 2007)
Mortgage loan servicer owed no duty of care to mortgage lender's secured creditor and thus could not be liable for negligent impairment of collateral.

221. *White Plains Coat & Apron Co. v. Cintas Corp.*,
867 N.E.2d 381 (N.Y. 2007)
A general economic interest in soliciting business for profit is not a valid defense to a claim of tortious interference with an existing contract; the economic interest defense applies only when the defendant acts to protect its own legal or financial stake in the breaching party's business, such as would be true if the defendant were a significant stockholder in the breaching party, the defendant and the breaching party had a parent-subsidiary relationship; the defendant was a creditor of the breaching party, or the defendant had a managerial contract with the breaching party.

222. *Geoffroy v. Washington Mutual Bank*,
484 F. Supp. 2d 1115 (S.D. Cal. 2007)
Arbitration clause in fine print on depositary's form signature card signed by customers to open a checking account was unconscionable, in part due to: (i) a fee splitting term, which potentially required depositors to pay for vindicating their rights, (ii) the depositary's unilateral right to modify or terminate the clause; and (iii) the lack of mutuality because the depositary could affect setoff without pursuing arbitration.

223. *Paragon Ltd., Inc. v. Boles*,
2007 WL 4464880 (Ala. 2007)
Builder did not waive contractual right to arbitrate by filing mechanic's lien three days after owner brought judicial action and before builder answered the complaint.

224. *Deutsche Bank Trust Co. v. Tri-Links Investment Trust,*
837 N.Y.S.2d 15 (N.Y. App. Div. 2007)
Lenders' agent who settled claim brought against it does not waive attorney-client privilege in seeking indemnification from majority lender pursuant to credit facility even though the agent's good faith, the reasonableness of the settlement, and the reasonableness of its own defense costs were thereby put in issue.

225. *North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007)
Creditor of corporation in the "zone of insolvency" may not assert a direct cause of action against corporate directors for breach of fiduciary duty; creditors of an insolvent corporation may assert derivative claims against corporate officers for breach of fiduciary duty, but not a direct claim.

226. *In re The Topps Company Shareholders Litigation*, 926 A.2d 58 (Del. Ch. Ct. 2007)
Court enjoined company from enforcing contractual promise of public silence against main competitor who was also potential suitor so that competitor could comment on its interest in acquiring the company before the company's shareholders voted on proposed merger with a different suitor.

227. *In re Lear Corporation Shareholder Litigation*, 926 A.2d 94 (Del. Ch. Ct. 2007)
Stockholder vote on merger enjoined until stockholders are informed of CEO's overtures to the Board of Directors concerning his retirement benefits, because the CEO negotiated the proposed merger and that overture suggests a personal interest in the outcome.

228. *Sherwood Partners, Inc. v. EOP Marine Business Center L.L.C.*, 62 Cal. Rptr. 3d 896 (Cal. Ct. App. 2007)
Assignee for benefit of creditors is not personally liable for attorneys' fees incurred by assignee's landlord despite clause in lease granting landlord attorney' fees incurred in litigating disputes under the lease even though the assignee was the one who initiated the litigation.

229. *Douglas v. U.S. District Court*, 495 F.3d 1062 (9th Cir. 2007)
Service provider cannot modify service contract merely by posting modifications on its web site. Customers must be given notification of the proposed change and an opportunity to give or withhold consent.

230. *Fortress Systems, L.L.C. v. Bank of the West*, 2007 WL 2407025 (D. Neb. 2007)
Commitment letter signed by bank was not a contractual promise to lend, even if the prospective borrower understood it to be so, and thus bank was entitled to summary judgment on prospective borrower's beach of contract and bad faith claims. The court did not dismiss or discuss prospective borrower's promissory estoppel claim.

231. *Genesco, Inc. v. The Finish Line, Inc.*,
Memorandum & Order, Civil No. 07-2137-11(III) (Tenn. Ch. Ct. Dec. 27, 2007)
Although target company in merger agreement had experienced a Material Adverse Effect since execution of the merger agreement, order requiring acquiring company to specifically perform was in order because MAE was attributable to changes in the general economy that did not have disproportionate effect on the target.

232. *Office Depot, Inc. v. Zuccarini*,
2007 WL 2688460 (N.D. Cal. 2007)
Internet domain names are property and may be levied upon by a judgment creditor. Their situs for the purpose of such a levy is the location of either the registry or any of the registrars.

233. *Mystic Color Labs, Inc. v. Auctions Worldwide, LLC* ,
934 A.2d 227 (Conn. 2007)
Auctioneer that failed to remit proceeds of sale to seller was not liable for conversion or civil theft because the auctioneer was a debtor with respect to the sale proceeds, not a bailee, because the proceeds had been commingled and the agreement provided that the buyers were to pay the auctioneer directly.

234. *United Rentals, Inc. v. RAM Holdings, Inc.*,
937 A.2d 810 (Del. Ch. Ct. 2007)
Corporation which had offered itself up for sale had standing to bring breach of contract action against shell corporation, established by private equity firm for the purpose of merging with corporation, but under the "forthright negotiator principle," claim for specific performance was barred because corporation knew or should have known that shell corporation and private equity firm understood that the merger agreement barred specific performance but said nothing during the negotiations.

235. *Sewchez International Ltd. v. The CIT Group/Commercial Services, Inc.*,
2007 WL 9753114 (C.D. Cal. 2007)
A seller of goods had no cause of action for breach of contract against the buyer's secured lender for refusing, as the applicant for several letters of credit, to waive discrepancies in seller's documentary presentations, even though some of the letters were issued after the deadline for presentation had passed and the secured lender had regularly waived such discrepancies in the past. The seller also had no cause of action against the secured lender for conversion based on the lender's foreclosure on the goods sold and retention of the proceeds because title to the goods passed to the buyer upon the buyer's receipt of the goods.

PAYMENTS

236. *Zengen, Inc. v. Comerica Bank*,
158 P.3d 800 (Cal. 2007)
To properly object under § 4A-405 to the payment of a payment order, the objector must do more than notify the bank that the payment order was fraudulent, the objector must object in some manner to the action of the bank in paying the payment order to fulfill the purpose of notifying the bank that the customer believes the bank is liable for the loss.

237. *Siemens Building Tech. Inc. v. PNC Financial Services*,
226 Fed. Appx. 192 (3d Cir. 2007)
Bank is not liable in a common-law fraud action under the doctrine of *respondeat superior* for the actions of its employee, who conspired with the drawer's employee to cash fraudulently endorsed checks, because the employee had no intent to serve the bank's interests. The court did not analyze §§ 3-405 or 3-404 because the statute of limitations on Article 3 claims for conversion had expired.