

## **CASE LAW UPDATE**

**By: Bradley M. Saxton & C. Andrew Roy, Winderweede, Haines, Ward & Woodman, P.A.**

### **Eleventh Circuit Cases**

#### ***In re Monson***

\_\_\_ Fed. Appx. \_\_\_, 2016 WL 6833332 (11th Cir. Nov. 21, 2016).

The Eleventh Circuit held that debtor's actions in removing computer equipment, which was subject to a security interest by a creditor, and setting up a new business with the equipment after receiving notice from the creditor and demand to liquidate the collateral, was non-dischargeable under § 523(a)(6) as a "willful" and "malicious" injury.

### **Bankruptcy Court Cases**

#### ***In re Carbide Industries, LLC***

2016 WL 6803703 (Bankr. M.D. Fla. Nov. 10, 2016) (Jennemann, J.).

A post-confirmation debtor, Carbide, sued to foreclose its mechanic's lien, which was recorded prior to filing its Chapter 11 petition. The defendant moved to dismiss the claim as untimely, arguing that the two year extension under §108 does not apply to a "post-confirmation" debtor. The Court, although denying the motion on other grounds, found that since Carbide was no longer a debtor-in-possession acting for the benefit of all creditors, but was rather a reorganized debtor acting in its own interest, it could not rely on §108(a) for an extension of time to file the complaint, where the confirmed plan stated that all property reverted in the debtor and did not provide that recoveries from any adversary proceedings would fund the estate post-confirmation.

#### ***In re Macquarrie***

2016 WL 6647741 (Bankr. M.D. Fla. Nov. 9, 2016) (Jennemann, J.).

In what the Court described as "sufficiently extraordinary" circumstances to warrant the granting of a motion to vacate an Order under F.R.Civ. P. 60, the Court vacated its order granting a motion to avoid a judicial lien where the lender was not given notice of the motion, had no opportunity to respond, and, because the case had been dismissed, the order had been entered in error.

#### ***In re Exume***

2016 WL 7076982 (Bankr. M.D. Fla. Dec. 5, 2016) (May, J.)

**Court Connection**  
**Volume No. 6 – Issue No. 1**  
**January 2017**

Where Debtors received \$17,000 of insurance proceeds from automobile insurance carrier after Chapter 13 petition was filed but prior to conversion to Chapter 7, Court held the insurance proceeds were subject to turnover under §542. The Court relied on the fact that the insured vehicle was property of the estate upon the filing of the Chapter 13 petition, and the insurance policy also was property of the estate. Therefore, the funds paid under the policy, in excess of the debtor's claimed exemption, became property of the Chapter 13 estate. If the insurance proceeds went into the debtor's bank account before the date of conversion, and could be traced to the purchase of a replacement vehicle, or any other assets, then the replacement vehicle, and any other assets as well as any remaining insurance proceeds would be property of the Chapter 7 estate in accordance with §348(f)(1)(A).