

U.S. BANKRUPTCY CODE

TITLE 11

Chapter 1: General Provisions

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UNITED STATES CODE

BANKRUPTCY

Chapter 1: General Provisions

Sec. 101. Definitions

In this title the following definitions shall apply:

(1) The term “accountant” means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) The term “affiliate” means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) The term “assisted person” means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$256,800.

(4) The term “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) The term “bankruptcy assistance” means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

(5) The term “claim” means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) The term “commodity broker” means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) The term “community claim” means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

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- (7A) The term “commercial fishing operation” means—
- (A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or
- (B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).
- (7B) The term “commercial fishing vessel” means a vessel used by a family fisherman to carry out a commercial fishing operation.
- (8) The term “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose.
- (9) The term “corporation”—
- (A) includes—
- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but
- (B) does not include limited partnership.
- (10) The term “creditor” means—
- (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
- (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
- (C) entity that has a community claim.
- (10A) The term “current monthly income”—
- (A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—
- (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
- (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and
- (B)
- (i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and, in a joint case, the debtor’s spouse if not otherwise a dependent); and
- (ii) excludes—
- (I) benefits received under the Social Security Act;
- (II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;
- (III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and
- (IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.
- (V) [Deleted]
- (11) The term “custodian” means—
- (A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

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(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term "debt" means liability on a claim.

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"—

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

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(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee.

(16) The term "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) The term "equity security holder" means holder of an equity security of the debtor.

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$12,562,250 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding; the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$12,562,250 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed \$2,568,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

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(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii)

(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed \$2,568,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term “family fisherman with regular annual income” means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) The term “farmer” means (except when such term appears in the term “family farmer”) person that received more than 80 percent of such person’s gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.

(21) The term “farming operation” includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term “farmout agreement” means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) The term “Federal depository institutions regulatory agency” means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

(22) The term “financial institution” means—

(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a “customer”, as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

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(22A) The term “financial participant” means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or

(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(23) The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

(24) The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

(25) The term “forward contract” means—

(A) a contract (other than a commodity contract, as defined in section 761) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing

in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in this section)[,] consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562.

(26) The term “forward contract merchant” means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.

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(27) The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(27A) The term “health care business”—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any—

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any—

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

(27B) The term “incidental property” means, with respect to a debtor’s principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

(28) The term “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor’s property, or an equity security of the debtor.

(29) The term “indenture trustee” means trustee under an indenture.

(30) The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term “insider” includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

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(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

(32) The term “insolvent” means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership’s debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership’s property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner’s nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner’s nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) The term “institution-affiliated party”—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) The term “insured credit union” has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) The term “insured depository institution”—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection).

(35A) The term “intellectual property” means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law.

(36) The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(37) The term “lien” means charge against or interest in property to secure payment of a debt or performance of an obligation.

(38) The term “margin payment” means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments.

(38A) “master netting agreement”—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of

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the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term “master netting agreement participant” means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) The term “mask work” has the meaning given it in section 901(a)(2) of title 17.

(39A) The term “median family income” means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year.

(40) The term “municipality” means political subdivision or public agency or instrumentality of a State.

(40A) The term “patient” means any individual who obtains or receives services from a health care business.

(40B) The term “patient records” means any record relating to a patient, including a written document or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) The term “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986; shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(41A) The term “personally identifiable information” means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

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(42) The term “petition” means petition filed under section 301, 302, 303, or 1504 of this title, as the case may be, commencing a case under this title.

(42A) The term “production payment” means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) The term “purchaser” means transferee of a voluntary transfer, and includes immediate or immediate transferee of such a transferee.

(44) The term “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) The term “relative” means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

(46) The term “repo participant” means an entity that, at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.

(47) The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’

acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) The term “securities clearing agency” means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission, or whose business is confined to the performance of functions of a clearing agency with

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respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.

(48A) The term “securities self regulatory organization” means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) The term “security”—

(A) includes—

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) debenture;
- (vi) collateral trust certificate;
- (vii) pre-organization certificate or subscription;
- (viii) transferable share;
- (ix) voting-trust certificate;
- (x) certificate of deposit;
- (xi) certificate of deposit for security;
- (xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act [15 USCS § 77c(b)] from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as “security”; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term “security agreement” means agreement that creates or provides for a security interest.

(51) The term “security interest” means lien created by an agreement.

(51A) The term “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor and has not elected that subchapter V of chapter 11 of this title shall apply.

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(51D) The term “small business debtor”—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$3,424,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include—

(i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$3,424,000 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

(iii) any debtor that is an affiliate of a corporation described in clause (ii).¹

(52) The term “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial

lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term “stockbroker” means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person’s own account.

(53B) The term “swap agreement”—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement;

(VIII) a weather swap, option, future, or forward agreement;

(IX) an emissions swap, option, future, or forward agreement; or

(X) an inflation swap, option, future, or forward agreement;

¹ The Bankruptcy Threshold Adjustment and Technical Corrections Act (“BTATC Act”), signed into law on June 21, 2022, Pub. L. No. 117-151, has made some small but important changes to the Bankruptcy Code. The BTATC Act makes a few technical corrections to the Bankruptcy Code. For instance, the Act clarifies that certain debtors who seemed to be prohibited from filing under the Small Business Reorganization Act (“SBRA”) (because they have affiliates that may qualify as “issuers” under the Securities Exchange Act of 1934) may indeed qualify as SBRA debtors. Certain bankruptcy-related provisions of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) and COVID-19 Bankruptcy Relief Extension Act of 2021 (“2021 Extension Act”) have been extended by and through June 21, 2024. The BTATC Act sunsets in two years on June 21, 2024.

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(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge

or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(53C) The term “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

[(53C.1)] (56A) The term “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term “transfer” means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor’s equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

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(54A) The term “uninsured State member bank” means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

In re Clark, 921 F.3d 566 (5th Cir. 2019, **Judge Carolyn Dineen King**) (Illinois Department of Healthcare and Family Services, not child support claimants, was the “creditor” of debtor).

Section 101(5)

Midland Funding, LLC v. Johnson, 581 U.S. 224, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (2017, **Justice Stephen G. Breyer**) (the filing of a time-barred proof of claim is not “false, deceptive, or misleading” or “unfair” or “unconscionable” under the Fair Debt Collection Practice Act).

Section 101(10)

Matter of Technicool Sys., Inc., 896 F.3d 382 (5th Cir. 2018, **Judge Don. R. Willett**) (The owner of a debtor in Chapter 7 bankruptcy proceeding held to lack standing to object to the appointment of a special counsel as a creditor, where the owner did not purchase a proof of claim until after trustee had sought to employ the special counsel and the bankruptcy court had held a hearing on the owner’s objection, while his appeal was pending before district court.).

Section 101(12A)

Milavetz v. U.S., 559 U.S. 229, 130 S. Ct. 1324, 176 L. Ed. 2d 79 (2010, **Justice Sonia Sotomayor**) (attorneys are “debt relief agencies” within the meaning of section 101(12A)).

Hersh v. U.S., 553 F.3d 743 (5th Cir. 2008) (**Judge William Lockhart Garwood**) (attorneys qualify as “debt relief agencies,” as defined by section 101(12A)).

Hersh v. U.S., 347 B.R. 19 (N.D. Tex., July 26, 2006, **Judge David C. Godbey**) (the term “debt relief agency,” as used in BAPCPA in section 101(12A), includes bankruptcy attorneys).

Section 101(16)

Carrier v. Jobs.Com, Inc., 301 B.R. 187 (N.D. Tex., Oct. 31, 2003, **Judge John H. McBryde**) (shareholders’ rights to require a Chapter 11 debtor to repurchase their shares of preferred stock was held to be a right to sell a security, and therefore shareholders had, in their preferred stock and attendant contractual rights, “equity securities” as defined by section 101(16) of the Bankruptcy Code).

... (the rights of holders of preferred stock warrants issued by a Chapter 11 debtor to demand that the debtor repurchase such warrants at a particular price were held to fall within Bankruptcy Code’s definition of “equity security,” contained in section 101(16), in that warrants were securities and the definition of “equity security” includes a warrant or a right to sell a security).

... (the equity security status of a shareholder’s interests in a Chapter 11 debtor, arising from rights to redemption of a debtor’s preferred stock and to demand repurchase of a debtor’s preferred stock warrants at a particular price, were held to prevail over the debt/claim status of such interests, and thus were held to warrant the disallowance of the shareholder’s claims in their entirety).

... (the equity security status of an interest will prevail over the claim status of the same interest if it is an interest in the debtor).

In re Search Fin. Servs. Acceptance Corp., 2000 WL 256889, 43 Collier Bankr. Cas. 2d 1412 (N.D. Tex. 2000). **Judge A. Joe Fish** (unredeemed warrants requiring redemption by the debtor if the warrants were not exercised within a certain period of time were properly characterized as “equity securities” under section 101(16), as

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opposed to “claims,” because a warrant providing for mandatory redemption becomes a liability only after it expires).

Section 101(20)

In re Fonke, 310 B.R. 809 (Bankr. S.D. Tex. 2004, **Judge Marvin Isgur**) (the term “gross income,” as used in the section 101(20) definition of “farmer” as any debtor who derives at least 80 percent of his gross income from farming operation over defined period of time, includes all income from whatever source derived, including gains derived from dealings in property).

Section 101(25)

Williams v. Morgan Stanley Cap. Grp., Inc. (Matter of Olympic Nat. Gas Co.), 294 F.3d 737, 39 Bankr. Ct. Dec. 221, Bankr. L. Rep. P 78,683 (5th Cir. 2002, **Judge Emilio M. Garza**) (certain pre-petition payments made by the debtor within 90 days of bankruptcy held to qualify as “settlement payments” under a “forward contract,” so as to create a defense to a preference action under section 546(e)).

... (in order to qualify for an exemption to a preference action under section 546(e), a party must establish both that it is a “forward contract merchant,” and that the transfer sought to be avoided is a “settlement payment”).

... (the distinction between forward contracts and commodity contracts, for purposes of qualifying under the preference defense contained in section 546(e), is that commodity contracts encompass purchases and sales of commodities for future delivery on, or subject to the rules of, a contract market or board of trade, and leverage transactions, and that, by contrast, forward contracts are contracts for the future purchase or sale of commodities that are not subject to the rules of a contract market or board of trade).

Section 101(32)(C)

In re Town of Westlake, Tex., 211 B.R. 860, 38 Collier Bankr. Cas. 2d 1046, 31 Bankr. Ct. Dec. 407, 11 Tex. Bankr. Ct. Rep. 394 (Bankr. N.D. Tex. 1997). **Judge Robert C. McGuire** (a municipality held not “insolvent” under the meaning of section 101(32)(C), and therefore not qualified to be a Chapter 9 debtor under section 921(c)).

Section 101(43)

Singleton v. Abussad (In re Abussad), 309 B.R. 895 (Bankr. N.D. Tex. 2004, **Judge Harlin D. Hale**) (the section 549(c) exception to the trustee’s avoidance powers applies, by definition of “purchaser” contained in section 101(43), only to transferees in a voluntary sale).

Section 101(49)(a)(xiv)

In the Matter of Linn Energy, L.L.C., 936 F.3d 334 (5th Cir. 2019, **Judge Edith Brown Clement**) (claimant’s right to receive, as “deemed dividend,” a percentage of bankrupt company’s profits was in nature of “security”; requisite but-for nexus existed between damages claim and prior securities transaction, and thus the claim had to be subordinated).

Section 101(51A)

Williams v. Morgan Stanley Cap. Grp., Inc. (Matter of Olympic Nat. Gas Co.), 294 F.3d 737, 39 Bankr. Ct. Dec. 221, Bankr. L. Rep. P 78,683 (5th Cir. 2002, **Judge Emilio M. Garza**) (the definition of settlement payments in section 101(51A) was intended to be broad).

Section 101(51B)

Ad Hoc Grp. of Timber Noteholders v. The Pac. Lumber Co. (In re Scotia Pac. Co., LLC), 2007 WL 3349093 (5th Cir. 2007) (**Judge W. Eugene Davis**) (a Chapter 11 debtor was a single asset real estate debtor, as that term is defined in section 101(51B) of the Bankruptcy Code, subject

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Sec. 102. Rules of Construction

to expedited reorganization procedures set forth in section 362(d)(3)).

... (court adopted a definition of a single asset real estate debtor under section 101(51B) according to an active-versus-passive criterion that inquires into the nature of revenue generation on and by the property, that is, whether the revenue is the product of entrepreneurial, active labor and effort—and thus is not single asset real estate—or is simply and passively received as investment income by the debtor as the property’s owner and thus is single asset real estate. Real property that, for the generation of revenues, requires the active, day-to-day employment of workers and managers other than or additional to the principals of the debtor, and that would not generate substantial revenue without such labor and efforts, should not be regarded as single asset real estate).

... (Fifth Circuit found that Bankruptcy Rule 101(51B) provides 3 requirements that must all be met for a debtor to be considered a single asset real estate debtor: (1) the debtor must have real property constituting a single property or project (other than residential real property with fewer than 4 residential units), (2) which generates substantially all of the gross income of the debtor, and (3) on which no substantial business is conducted other than the business of operating the real property and activities incidental thereto. If a debtor fails to meet any prong, it is not a single asset real estate debtor.).

... (in order to be single asset real estate, the revenues received by the owner must be passive in nature; the owner must not be conducting any active business, other than merely operating the real property and activities incidental thereto. Under the prior jurisprudence, those passive types of activities are the mere receipt of rent and truly incidental activities such as arranging for maintenance or perhaps some marketing activity, or ... mowing the grass and waiting for the market to turn).

Section 101(52)

Commonwealth of Puerto Rico v. Franklin California Tax-Free Tr., 579 U.S. 115, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016, **Justice Clarence Thomas**) (the definition of “State,” section 101(52), as amended in 1984, includes Puerto Rico, except for the purpose of defining who may be a debtor under Chapter 9).

Sec. 102. Rules of Construction

In this title

(1) “after notice and a hearing”, or a similar phrase

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) “claim against the debtor” includes claim against property of the debtor;

(3) “includes” and “including” are not limiting;

(4) “may not” is prohibitive, and not permissive;

(5) “or” is not exclusive;

(6) “order for relief” means entry of an order for relief;

(7) the singular includes the plural;

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and

(9) “United States trustee” includes a designee of the United States trustee.

In re Lentino, 1999 WL 77140, 41 Collier Bankr. Cas. 2d 1044, Bankr. L. Rep. P 77, 902 (5th Cir. 1999). **Judge Jerry E. Smith** (the phrase “after

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Sec. 103. Applicability of Chapters

notice and a hearing” does not require a hearing in every case in which relief is sought from an automatic stay; rather, “after notice and a hearing” means “after such notice is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances”).

Sec. 103. Applicability of Chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(o), 555 through 557, and 559 through 562 apply in a case under chapter 15.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockholder.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) Scope of application. Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act [12 USCS §§ 611 et seq.], which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a debtor (as defined in section 1182) elects that subchapter V of chapter 11 shall apply.

(j) Chapter 13 of this title applies only in a case under such chapter.

(k) Chapter 12 of this title applies only in a case under such chapter.

(l) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

Sec. 104. Adjustment of Dollar Amounts²

(a) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1182(1), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28 immediately before such April 1 shall be adjusted—

(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) to round to the nearest \$25 the dollar amount that represents such change.

² The Bankruptcy Threshold Adjustment and Technical Corrections Act (“BTATC Act”), signed into law on June 21, 2022, Pub. L. No. 117-151, has made some small but important changes to the Bankruptcy Code. The BTATC Act amends Section 104 to add Section 1182(1) to the sections of the Bankruptcy Code that are adjusted every three years on April 1 to reflect the Department of Labor’s Consumer Price Index for the prior year. Section 1182(1) defines who can be a debtor under Subchapter V. The Act sunsets in two years on June 21, 2024.

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Sec. 105. Power of Court

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1182(1), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28.

(c) Adjustments made in accordance with subsection (a) shall not apply with respect to cases commenced before the date of such adjustments.

Sec. 105. Power of Court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

Matter of Whitley (Baker v. Cage), 737 F.3d 980 (5th Cir. 2013, **Judge Stephen A. Higginson**) (While a bankruptcy court has broad authority to discipline attorneys and to award or disgorge fees paid in connection with bankruptcy proceedings, it must use the least restrictive sanction necessary to deter the inappropriate behavior when imposing a disciplinary sanction.).

Di Ferrante v. Young (In re Young), 416 Fed. App'x 392 (5th Cir. 2011, **Per Curiam**) (bankruptcy court erred when it used section 105 to dismiss a creditor's adversary proceeding because, while section 105 affords bankruptcy judges broad discretionary powers, it does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity).

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Sec. 105. Power of Court

In re Mirant Corp., 296 B.R. 427, 41 Bankr. Ct. Dec. 193 (Bankr. N.D. Tex. July 16, 2003, **Judge Dennis Michael Lynn**) (under particular facts of the case, the court did not require a Chapter 11 debtor to obtain advance approval from the bankruptcy court as a prerequisite to providing preferential payment of prepetition claims of certain “critical vendors,” instead entering an order providing guidelines under which such payments could be made without such pre-approval).

In re Four Seasons Marine & Cycle, Inc., 263 B.R. 764 (Bankr. E.D. Tex. 2001). **Judge Bill G. Parker** (Where a Chapter 11 debtor-in-possession misuses a secured lender’s cash collateral in violation of section 363, and the case is later converted to a Chapter 7 liquidation, section 105(a) authorizes a bankruptcy court to grant a judgment against the debtor’s principal officers responsible for the misuse of the cash collateral.).

In re Barron, 264 B.R. 833 (Bankr. E.D. Tex. 2001). **Judge Bill G. Parker** (a bankruptcy court may utilize section 105 to grant a partial discharge of a student loan debt in absence of any statutory language in section 523(a)(8) recognizing such a remedy).

Toles v. Powers, 1999 WL 1261453 (N.D. Tex. 1999). **Judge A. Joe Fish** (a bankruptcy court may sua sponte convert a Chapter 13 case to a Chapter 7 case).

Section 105(a)

Matter of Highland Cap. Mgmt, L.P., 132 F.4th 353 (5th Cir. 2025, **Judge Jennifer Walker Elrod**) (gatekeeper provision that protected parties other than the parties who could be exculpated was violative of Supreme Court and Fifth Circuit precedent).

Harrington v. Purdue Pharma L.P., 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024, **Justice Neil M. Gorsuch**) (The Bankruptcy Code does not authorize a bankruptcy court to approve, as part of a plan of reorganization under Chapter 11, a release and injunction that extinguishes claims

against non-debtor third parties without the consent of affected claimants, which would effectively extend to non-debtors the benefits of a bankruptcy discharge.).

... (Section 105(a) of the Bankruptcy Code, which authorizes a bankruptcy court to issue any order that is necessary or appropriate to carry out the provisions of the Code, serves only to carry out authorities expressly conferred elsewhere in the Code.).

Matter of UTSA Apartments 8, L.L.C., 886 F.3d 473 (5th Cir. 2018, **Judge Edward C. Prado**), *reh’g denied* (July 17, 2018) (even the broad powers of bankruptcy courts to fashion equitable remedies must be exercised only within the confines of the Bankruptcy Code).

Law v. Siegel, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014, **Justice Antonin Scalia**) (The bankruptcy court exceeded its statutory and inherent sanction powers by surcharging debtor’s exempt homestead under section 105(a).).

...(Section 105(a) and the court’s inherent powers do not permit a bankruptcy court to deny an exemption on a ground not specified in the Bankruptcy Code.).

...(A bankruptcy court may not exercise its authority to “carry out” the provisions of the Code under section 105(a) or its inherent power to sanction abusive litigation practices, by taking action prohibited elsewhere in the Code.).

In re Mirant Corp., 299 B.R. 152 (Bankr. N.D. Tex., Sept. 23, 2003, **Judge Dennis Michael Lynn**) (under section 105(a), the bankruptcy court, in exercise of its authority to enter “necessary or appropriate” orders, has authority to enjoin the Federal Energy Regulatory Commission from taking certain action against Chapter 11 debtor-utilities or their property that would otherwise have been permitted under “police or regulatory power” exception to the automatic stay under section 362(b)(4)).

U.S. BANKRUPTCY CODE

TITLE 11

Sec. 106. Waiver of Sovereign Immunity

In re Coserv, L.L.C., 273 B.R. 487 (Bankr. N.D. Tex. 2002, **Judge Dennis Michael Lynn**) (in order for a Chapter 11 debtor to pay pre-petition critical vendors under the Doctrine of Necessity, the debtor must show three elements are present. First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim).

In re Dansereau, 274 B.R. 686 (Bankr. W.D. Tex. 2002, **Judge John C. Akard**) (bankruptcy court sanctioned a claimant for repeatedly filing baseless priority claims in bankruptcy cases, and enjoined the claimant from the future filing of such baseless claims).

In re Freemyer Indus. Pressure, Inc., 7 T.B.D. 118; 281 B.R. 262 (Bankr. N.D. Tex. 2002, **Judge Dennis Michael Lynn**) (a bankruptcy court may award attorneys fees and sanctions in favor of a corporate debtor against a creditor and its attorney, pursuant to section 105(a) and 28 U.S.C. § 1927, for willful violation of the automatic stay).

... (a bankruptcy court may award attorneys fees and sanctions in favor of a corporate debtor against a creditor and its attorney, pursuant to section 105(a) and 28 U.S.C. § 1927 for willful violation of the automatic stay despite the fact that section 362(h) allows only "individual" debtors to recover such damages against a creditor for a willful violation of the automatic stay).

Sec. 106. Waiver of Sovereign Immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a

governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

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TITLE 11

Sec. 106. Waiver of Sovereign Immunity

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin, 599 U.S. 382, 143 S. Ct. 1689, 216 L. Ed. 2d 342 (2023, **Justice Ketanji Brown Jackson**) (section 106 of the Bankruptcy Code unequivocally abrogates the sovereign immunity of any and every government that possesses the power to assert such immunity, including federally recognized Indian tribes, through its abrogation of the sovereign immunity of all governmental units and its expansive and comprehensive definition of that term, which contains a long list of governments that vary in geographic location, size, and nature and concludes with the broad catchall phrase, “other foreign or domestic governments,” even though the Bankruptcy Code does not specifically mention Indian tribes).

In re Murphy, 271 F.3d 629, 2001 WL 1334741, 38 Bankr. Ct. Dec. 171, Bankr. L. Rep. P 78,539 (5th Cir. 2001). **Judge Carl E. Stewart** (a state is entitled to Eleventh Amendment immunity from an adversary proceeding to determine the dischargeability of a student loan debt under section 523(a)(8)).

In re Blue Cactus Post, L.C., 229 B.R. 379, 33 Bankr. Ct. Dec. 1005, 13 Tex. Bankr. Ct. Rep. 50 (Bankr. N.D. Tex. 1999). **Judge Harold C. Abramson** (a county appraisal district is not an arm of the State of Texas, so as to qualify for the protection of sovereign immunity under the Eleventh Amendment).

Section 106(a)

United States v. Miller, 604 U.S. 518, 145 S. Ct. 839, 221 L. Ed. 2d 373 (2025, **Justice Ketanji Onyika Brown**) (waiver of sovereign immunity pursuant to section 106(a) only applies to a section 544(b) claim itself and not to state-law claims utilized through section 544(b) . . . without a waiver of sovereign of immunity trustee could not identify

a creditor that could sue the IRS for the alleged fraudulent transfer and thus the trustee could meet the actual creditor requirement of Utah’s fraudulent transfer statute).

Matter of Fernandez, 130 F.3d 1138, 12 Tex. Bankr. Ct. Rep. 71 (5th Cir. 1997). **Judge Patrick E. Higginbotham** (holding that section 106(a) of the Bankruptcy Code, providing that “sovereign immunity is abrogated as to a governmental unit,” is unconstitutional).

Section 106(b)

Zayler v. U.S., 279 F. Supp. 2d 805 (E.D. Tex. 2003, **Judge Davis**) (section 106(b), which grants a limited waiver of sovereign immunity, is based on the equitable principle that it would be unfair for a governmental unit to participate in the distributions of a bankruptcy case while at the same time shielding itself from liability).

. . . (the substantive provisions of the Federal Tort Claims Act, including the discretionary function exception, apply to claims relying on the waiver of sovereign immunity under section 106).

Section 106(c)

Zayler v. U.S. (Matter of Supreme Beef Processors), 468 F.3d 248, 47 Bankr. Ct. Dec. 56, Bankr. L. Rep. P 80,752 (5th Cir. 2006, **Judge Edith H. Jones, En Banc**) (certain tort claims that a debtor had against the government were held to be barred under the discretionary function exception to the waiver of sovereign immunity under the Federal Tort Claims Act, notwithstanding waiver of sovereign immunity contained in section 106(c)).

. . . (section 106(c) permits the assertion of counterclaims or offsets against the federal government in bankruptcy cases notwithstanding sovereign immunity, but it does not determine the law that substantively governs claims against the governmental units).