Docket #0308 Date Filed: 4/27/2020

John Kingston (*pro hac vice*)
Michael Nepple (*pro hac vice*)
Brian Hockett (*pro hac vice*)
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Facsimile: (314) 552-7000

Counsel for Defendants Charter Communications, Inc. and Charter Communications Operating, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
WINDSTREAM HOLDINGS, INC., et al.,	Case No. 19-22312 (RDD)
Plaintiffs.	(Jointly Administered)
WINDSTREAM HOLDINGS, INC., et al.,	
Plaintiffs,	Adv. Pro. No. 19-08246
vs.	
CHARTER COMMUNICATIONS, INC. and CHARTER COMMUNICATIONS OPERATING, LLC,	
Defendants.	

DEFENDANTS' MOTION FOR JUDICIAL NOTICE OF FACTS THAT CAN BE ACCURATELY AND READILY DETERMINED FROM PUBLICLY AVAILABLE LEGAL DATABASES AND ELECTRONIC FILING SYSTEMS

Pursuant to Federal Rule of Evidence 201(c)(2), Defendants Charter Communications, Inc. and Charter Communications Operating, LLC (Defendants) respectfully request that this Court take judicial notice of the facts set forth in numbered paragraphs 1 through 30 below.

Defendants submit that the following facts are relevant to whether a prohibition on bankruptcy-related advertising is unambiguously stated within the "four corners" of 11 U.S.C. § 362(a)(3) and to the question of reasonable diligence.

To establish civil contempt in the Second Circuit, a plaintiff must establish, *inter alia*, "that the order not complied with is clear and unambiguous." *In re Masterwear Corp*., 229 B.R. 301, 310 (Bankr. S.D.N.Y. 1999) (Bernstein, J.) ("[M]ovant must show (1) that the order not complied with is clear and unambiguous, (2) the proof of the noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.") (citing *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995)).

"To be clear and unambiguous, the order must leave '**no uncertainty** in the minds of those to whom it is addressed, **who must be able to ascertain from the four corners of the order precisely what acts are forbidden**.'" *In re Treco*, No. 00-8137, 2001 WL 1566709, at *6 (Bankr. S.D.N.Y. Dec. 10, 2001) (Bernstein, J) (emphasis added) (quoting *King*, 65 F.3d at 1058). *See also Drywall Tapers & Pointers of Greater N.Y. v. Local 530 of Operative Plasterers*, 889 F.2d 389, 395 (2d Cir. 1989) (an essential element of civil contempt is that "the party enjoined must be able to ascertain from the **four corners** of the order precisely what acts are forbidden") (emphasis added);[1] *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1802 (2019)

[1] The necessity that the conduct underpinning a contempt sanction be clearly and unambiguously proscribed by the subject order is a Due Process requirement. *See Erhardt v. Prudential Grp., Inc.*, 629 F.2d 843, 846–47 (2d Cir. 1980).

In *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1105 (2d Cir. 1990), the Second Circuit established the standard for imposing non-contempt sanctions under § 362(k): "any deliberate act taken in violation of a stay, which the violator knows to be in existence." The Second Circuit unequivocally held that the lenient *Crysen/Montenay* standard applies "**ONLY**" to claims brought by natural persons: that standard does not apply to corporate claimants like the 205 plaintiffs asserting claims here. *See In re Chateaugay Corp.*, 920 F.2d 183, 186–87 (2d Cir. 1990) ("We now hold that a bankruptcy court may impose sanctions pursuant to § 362(h), under the standard set out in *Crysen/Montenay*, **only** for violating a stay as to debtors who are natural persons.") (emphasis added).

(instructing that "civil contempt is a severe remedy" and that basic principles of fairness require "that those enjoined receive **explicit notice** of what conduct is outlawed before being held in civil contempt") (emphasis added, internal punctuation omitted); *U.S. on behalf of I.R.S. v. Norton*, 717 F.2d 767, 774 (3d Cir. 1983) (reversing contempt order based on § 362(a) violation and instructing that "[a] party should not be held in contempt unless a court first gives fair warning that certain acts are forbidden; any ambiguity in the law should be resolved in favor of the party charged with contempt").

For the reasons set forth below, Defendants respectfully submit that judicial notice of the following facts is proper because they can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned. *See* FED. R. EVID. 201.

1. On February 25, 2019, the United States Bankruptcy Court for the Southern District of New York (Hon. Robert Drain) approved the following language for notifying creditors of the commencement of Plaintiffs' Chapter 11 cases:

> **This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.**
>
> The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Drywall was one of two Second Circuit decisions the *Chateaugay* court cited for the proposition that civil contempt was available for a stay violation. *Chateaugay*, 920 F.2d at 186–87. In the other, *Fid. Mortg. Inv'rs v. Camelia Builders, Inc.*, 550 F.2d 47, 51 (2d Cir. 1976), the court stated "It is, of course, true that, for a person to be held in contempt, the court order violated must 'be specific and definite.'" (quoting *In Re Rubin*, 378 F.2d 104, 108 (3d Cir. 1967)). Given its express holding that the lenient *Crysen/Montenay* standard is not available for corporate debtors and its reliance on decisions reiterating the "specific and definite" notice requirement and "four corner" rule, the Second Circuit's *Chateaugay* decision does not suggest that the civil contempt standard in bankruptcy court is any less demanding than the civil contempt standard in any other federal court.

> Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

See Exhibit 1, Case No. 19-22312-rdd, ECF 90 at 5, Order…Approving the Form and Manner of Notifying Creditors of Commencement of these Chapter 11 Cases (Mar. 3, 2019) (emphasis in original).

2. The word "advertising" does not appear in the language the United States Bankruptcy Court for the Southern District of New York approved for notifying creditors of the commencement of Plaintiffs' Chapter 11 cases. *See* Exhibit 1.

3. Section 362(a)(3), of Title 11, U.S.C., states that a petition filed under certain section of Title 11 "operates as a stay, applicable to all entities, of … any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362.

4. The word "advertising" does not appear in 11 U.S.C. § 362(a).

5. Section 362(a), of Title 11, U.S.C., does not include the phrases "deceptive trade practices," "unfair competition," or "false advertising."

6. There is no reference to competitive advertising (false or otherwise) in 2 A.L.R. Fed. 2d 459 "What Constitutes 'Willful Violation' of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient To Award Damages—Chapter 11 and 12 Cases" (West 2020) (originally published 2005, updated weekly). *See* Exhibit 2.

7. There is no reference to competitive advertising (false or otherwise) in 23 A.L.R. Fed. 2d 339 "What Constitutes 'Willful Violation' of Automatic Stay Provisions of Bankruptcy

Code (11 U.S.C.A. § 362(k)) Sufficient to Award Damages—Chapter 7 Cases" (West 2020) (Originally published in 2007, updated weekly). *See* Exhibit 3.

8. In *In re Golden Distributors, Ltd.*, 122 B.R. 15, 21–22 (Bankr. S.D.N.Y. 1990) a Bankruptcy Court in the Southern District of New York addressed a situation where a party was accused of wrongfully soliciting a debtor's customers and stated as follows: "The debtor's customers cannot be regarded as property of the debtor's estate within the meaning of 11 U.S.C. § 541 and the defendants' solicitation of business from such customers does not constitute an act to obtain possession of property of the estate or the exercise of control over property of the estate within the context of the automatic stay as imposed under 11 U.S.C. § 362(a)(3)."

9. On April 16, 2019, the United States Bankruptcy Court for the Southern District of New York (Hon. Robert Drain) entered a temporary restraining order that instructed Defendants to "Cease and desist from expressly or impliedly stating in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, direct mail, telephone and as part of any door-to-door campaign) that Windstream is in bankruptcy or Chapter 11 as part of an effort to persuade Windstream customers to switch their service to Spectrum." Dkt. No. 25 at 5-6, ¶1(k).

10. Section 362(a), of Title 11, U.S.C., does not include the phrases "cease and desist from expressly or impliedly stating in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, direct mail, telephone and as part of any door-to-door campaign) that debtor is in bankruptcy or Chapter 11 as part of an effort to persuade debtor's customers to switch their service to a competing entity." 11 U.S.C. § 362.

11. In a 2009 lawsuit involving a false advertising claim brought by Charter against DirecTV after the commencement of Charter's prepackaged Chapter 11 bankruptcy (the 2009 Lawsuit), Charter did not assert a claim for a violation of 11 U.S.C. § 362(a).[2] *See Charter Communications Holding Co., et al. v. DirecTV, Inc.*, No. 4:09-cv-00730, Dkt. No. 1 (E.D. Mo. May 11, 2009).

12. In the 2009 Lawsuit, the court did not enter an injunction prohibiting the defendant from "expressly or impliedly stating in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, direct mail, telephone and as part of any door-to-door campaign) that Charter is in bankruptcy or Chapter 11 as part of an effort to persuade Charter customers to switch their service to DirectTV." *Compare generally Charter Communications Holding Co., et al. v. DirecTV, Inc.*, No. 4:09-cv-00730 *to* Dkt. No. 25.

13. In the 2009 DirectTV lawsuit, the court did not enter an injunction prohibiting the defendant from asserting that bankruptcy entails uncertainty. *See Charter Communications Holding Co., et al. v. DirecTV, Inc.*, No. 4:09-cv-0073 Dkt. Nos. 16, 20, 28, 37, 55, 63, 65. Instead, the Court concluded that DirecTV could refer to the uncertainty of Charter's prepackaged bankruptcy, but could not publish statements suggesting the outcome of the uncertainty: "***there's no way*** [Charter will] be able to bring you the latest technology, more channels in HD, and new exclusive programming," "do you really think [Charter will] be able to

[2] Defendants recognize that they cannot seek judicial notice of the truth of the matters asserted by a claim or within an order and do not attempt to do so here. They merely request judicial notice of whether a claim was made or an order entered. Taking such notice is permissible. *See, e.g.*, *AQ Consulting WLL v. Branca*, No. 10 CIV 7496 AKH, 2011 WL 240812, at *1 (S.D.N.Y. Jan. 19, 2011 ("A court may take judicial notice of a document filed in another court; however, judicial notice may be taken, not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.") (internal quotations omitted); *Am. Home Assur. Co. v. Altman Specialty Plants, Inc.*, No. 08 CIV 7504(PGG), 2009 WL 222158, at *4 (S.D.N.Y. Jan. 26, 2009) ("Because this Court cannot reasonably question the accuracy of the docket in the California *Altman* action, it treats the existence and content of the Amended Complaint as judicially noticed facts.").

bring you the latest technology, more channels in HD or new exclusive programming? ***Probably not***" and "do you really think [Charter will] have the time to bring you the latest technology, more channels in HD or new exclusive programming? ***Probably not***." Exhibit 4, *Charter Communications Holding Co., et al. v. DirecTV, Inc.*, No. 4:09-cv-00730, Dkt. No. 16, Temporary Restraining Order, at 1-2 (emphasis added).

14. In the 2009 DirecTV lawsuit, the court did not enjoin DirecTV from making the following statements for which Charter sought an injunction:

a. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" print advertisements referencing Charter's bankruptcy filing and telling the public "now's the time to save yourself" or "we'll save the day" and "Get Help while you can," (Exhibit 5, *Charter Communications Holding Co., et al. v. DirecTV, Inc.*, Case No. 4:09-cv-00730, Dkt. No. 9-23 at 2, ¶ 2);

b. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "fire extinguisher" print advertisements directing the public to "Get Help while you can" and "instead of waiting to see how Charter's bankruptcy might affect you, just switch to DirecTV (*id*. at 2-3, ¶ 3);

c. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" billboard

advertisements referencing Charter's bankruptcy filing and telling the public to "SAVE YOURSELF" (*id*. at 3, ¶ 4);

d. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that because of Charter's bankruptcy, its customers are "probably thinking what does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels." (*id*. at 3, ¶ 5);

e. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's operations are in a "mess" because they filed for bankruptcy (*id*. at 3, ¶ 6);

f. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's bankruptcy filing is "not going to help [Charter's] customer service one bit." (*id*. at 3, ¶ 7);

g. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboard, and direct mail) any advertisements, or other such messages, claiming or implying that Charter, as a result of its Chapter 11 bankruptcy filing: (1) is going out of business, (2) is not able to continue to provide services to customers, (3) is not able to provide new services or content or

the latest technology, (4) is going to provide inferior customer service, or (5) that Charter's customers will be adversely impacted. (*id*. at 4, ¶ 8).[3]

15. Section 362(a), Title 11, U.S.C. does not include the phrase "uses deceptive representations or designations of geographic origin in connection with goods or services," which can be found in the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-372, et seq.

16. Section 362(a), Title 11, U.S.C. does not include the phrase "Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have," which can be found in the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-372, et seq.

17. Section 362(a), Title 11, U.S.C. does not include the phrase "Disparages the goods, services, or business of another by false or misleading representation of fact," which can be found in the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-372, et seq.

18. Section 362(a), Title 11, U.S.C. does not include the phrase "Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.," which can be found in the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-372, et seq.

19. Section 362(a), Title 11, U.S.C. does not include the phrase "uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact" which can be found in the Lanham Act, 15 U.S.C. § 1125, et seq.

[3] The Temporary Restraining Order (TRO) entered by the Court and Charter's proposed TRO are attached as Exhibits 4 and 5, respectively. The statement enjoined in the first paragraph of the TRO entered by the Court is identical to the statement Charter sought to be enjoined in the first paragraph of its proposed TRO. The remaining statements which the Court enjoined (¶¶ 2-3) were enjoined without a specific request from Charter and are highlighted in Exhibit 4. Similarly, the statements for which Charter sought an injunction in its proposed TRO but which the Court did not enjoin (¶¶ 2-7) are highlighted in Exhibit 5.

20. Section 362(a), Title 11, U.S.C. does not include the phrase "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce" which can be found in the North Carolina Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. § 75-1.1, et seq.

21. Section 362(a), Title 11, U.S.C. does not include the phrase "Uses deceptive representations or designations of geographic origin in connection with goods or services" which can be found in the Nebraska Uniform and Deceptive Trade Practices Act, NEB REV. STAT. § 87-302, et seq.

22. During an April 15, 2019 hearing on a motion for temporary restraining order, the United States Bankruptcy Court for the Southern District of New York (Hon. Robert Drain) informed counsel for Plaintiffs that "the stay violation is really quite different than the other Lanham Act relief you're seeking." Dkt. No. 84, April 15, 2019 Hearing Tr. at 82:15-17.

23. In its April 15, 2019 bench ruling on Plaintiffs' motion for temporary restraining order, the United States Bankruptcy Court for the Southern District of New York stated "I have before me a motion by the Debtor in these Chapter 11 cases, Windstream, for the entry of an order, A, enforcing the automatic stay in this case under Section 362(a) of the bankruptcy code; and B, under Lanham Act, 15 U.S.C. 1051 through 1127, temporarily restraining actions by Charter/Spectrum that under Section 1125 of that act either constitute in the vernacular false advertising or misrepresenting the nature, characteristics, qualities, or origin of Windstar's goods or, in this case, services and commercial activities." Dkt. No. 84, April 15, 2019 Hearing Tr. at 98:17-99:1.

24. In its April 15, 2019 bench ruling on Plaintiffs' motion for temporary restraining order, after stating that it had before it a motion for an order enforcing the automatic stay under §

362(a) and temporarily restraining actions by Charter/Spectrum under § 1125 of the Lanham Act, the United States Bankruptcy Court for the Southern District of New York described the basis for the standard for injunctive relief under the Lanham Act. Dkt. No. 84, April 15, 2019 Hearing Tr. at 99:2-100:5.

25. In its April 15, 2019 bench ruling on Plaintiffs' motion for temporary restraining order, after describing the standard for injunctive relief under the Lanham Act, the United States Bankruptcy Court for the Southern District of New York stated as follows: "Before turning to the facts and whether they support the issuance of an injunction under the Lanham Act, let me first deal with the first aspect of the relief sought which is simply to enforce the automatic stay which it is alleged in the complaint as well as Mr. Langston's affidavit in support of the Debtors' motion, Charter/Spectrum violated by, on or around March 14, 2019, disconnecting service to approximately 350 Windstream customers, based on allegedly Windstream's failure to pay certain prepetition amounts allegedly owing to Charter. It is clear to me that that allegation which was not refuted with any evidence does describe a violation of the automatic stay under Section 362(a), namely the attempt to enforce payment of a prepetition debt and/or to cease performance under a prepetition executory contract without relief from the automatic stay." Dkt. No. 84, April 15, 2019 Hearing Tr. at 100:6-15.

26. In its April 15, 2019 bench ruling on Plaintiffs' motion for temporary restraining order, the United States Bankruptcy Court for the Southern District of New York did not state that Plaintiffs' allegations and evidence regarding alleged false advertising supported a finding that Defendants had violated § 363(a)(3). Dkt. No. 84, April 15, 2019 Hearing Tr. *passim*.

27. On April 16, 2019, the United States Bankruptcy Court for the Southern District of New York (Hon. Robert Drain) entered a temporary restraining order that described a

violation of the Automatic Stay by Defendants as follows: "The legal and factual bases set forth in the Motion and at the hearing establish good and sufficient cause for granting the relief sought related to the Debtors' claim that Charter violated the automatic stay under Section 362(a) of the Bankruptcy Code because the Debtors have demonstrated that Charter violated the automatic stay of Section 362(a) of the Bankruptcy Code when Charter discontinued service to Windstream customers on or about March 14, 2019 as alleged in Paragraph 32 of the Complaint." Dkt. No. 25 at 3, ¶ E.

28. It is a violation of the Securities Act of 1933 and the Securities Exchange Act of 1934 for a telecommunications provider to inflate publicly reported subscriber accounts upon which stock analysists and public investors rely in making investment decisions. *See* Exhibit 6, *In re Kern*, Securities Act Release No. 8653, Exchange Act Release No. 53100, Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (Jan. 11, 2006).

29. Dkt. No. 12-3 in this adversary proceeding (Exhibit C to Defendants' Opposition to Debtors' Motion for Temporary Restraining Order) does not include the word "risk" or the word "uncertainty."

30. Plaintiffs' Trial Exhibit 30 does not include the phrase "Goodbye Windstream. **Hello, Spectrum**."

Argument

Judicial notice of legal matters is proper in these circumstances. *See City of Wichita, Kan. v. U.S. Gypsum Co.*, 72 F.3d 1491, 1496 (10th Cir. 1996) ("A matter of law can be

judicially noticed as a matter of fact; i.e., the court can look to the law not as a rule governing the case before it but as a social fact with evidential consequences.").

In adversary cases, courts routinely take notice of public filings in the parent bankruptcy case. *In re MSR Hotels & Resorts, Inc.*, No. 13-11512 (SHL), 2013 WL 5716897, at *1 (Bankr. S.D.N.Y. Oct. 1, 2013) ("A court is empowered to take judicial notice of public filings, including, in an adversary proceeding, those filed on its own dockets in the underlying bankruptcy case."). Further, courts routinely take judicial notice of public filings in other cases although such notice does not encompass the truth of the matters asserted in the extraneous litigation. *See, e.g.*, *Faulkner v. Verizon Commc'ns, Inc.*, 156 F.Supp. 2d. 384, 391 (S.D.N.Y. 2001) ("Pursuant to Fed. R. Evid 201(b), we may take judicial notice of pleadings in other lawsuits … as a matter of public record."); *Guzman v. U.S.*, No. 11 CIV. 5834 JPO, 2013 WL 543343, at *3 (S.D.N.Y. Feb. 14, 2013) ("It is common and entirely proper for courts to take judicial notice of other court proceedings.") (collecting cases).

Judicial notice is properly taken of "a fact that is not subject to reasonable dispute because it … can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(2). Judicial notice is mandatory when a party requests it and supplies the necessary information. FED. R. EVID. 201(c)(2) ("The court … must take judicial notice if a party requests it and the court is supplied with the necessary information."). The foregoing facts are not subject to reasonable dispute. Moreover, they can accurately and readily be determined from the electronic filing systems of the United States Bankruptcy Court for the Southern District of New York and the United States District Court for the Eastern District of Missouri and Westlaw's legal research database. Therefore, judicial notice is required under Rule 201.

For the foregoing reasons Defendants' respectfully request that this Court take judicial notice of the facts set forth in the numbered paragraphs 1 through 30 above.

Dated: April 26, 2020

Respectfully submitted,

/s/John Kingston

John Kingston (pro hac vice)
Michael Nepple (pro hac vice)
Brian Hockett (pro hac vice)
THOMPSON COBURN LLP
One U.S. Bank Plaza
St. Louis, MO 63101
314-552-6461
314-552-7000 (f)
jkingston@thompsoncoburn.com
mnepple@thompsoncoburn.com
bhockett@thompsoncoburn.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April 2020, I served a true and correct copy of the foregoing via operation of the Court's Electronic Filing System upon all counsel of record in the adversary proceeding.

/s/John Kingston

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
WINDSTREAM HOLDINGS, INC., *et al.*,[1]	)	Case No. 19-22312 (RDD)
Debtors.	)	(Jointly Administred)

ORDER (I) AUTHORIZING THE DEBTORS TO (A) PREPARE A LIST OF CREDITORS IN LIEU OF SUBMITTING A FORMATTED MAILING MATRIX AND (B) FILE A CONSOLIDATED LIST OF THE 50 LARGEST UNSECURED CREDITORS, (II) AUTHORIZING DEBTORS TO REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION FOR INDIVIDUAL CREDITORS, AND (III) APPROVING THE FORM AND MANNER OF NOTIFYING CREDITORS OF COMMENCEMENT OF THESE CHAPTER 11 CASES

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an order (this "Order") (a) authorizing the Debtors to: (i) prepare a consolidated list of creditors in lieu of submitting any required mailing matrix, (ii) file a consolidated list of the Debtors' 50 largest unsecured creditors, and (iii) mail initial notices through their Proposed Claims and Noticing Agent, (b) authorizing the Debtors to redact certain personal identification information for individual creditors, and (c) approving the form and manner of notifying creditors of commencement of the Debtors' chapter 11 cases; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of*

[1] The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/windstream. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Reference from the United States District Court for the Southern District of New York, dated February 1, 2012; and this Court having found that venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b) that this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances, and that no other notice need be provided; and upon the record of the hearing held by the Court on the Motion on February 26, 2019 (the "Hearing"); and the Court having considered the objection raised at the Hearing by the U.S. Trustee, which has been resolved by the terms of this Order; and after due deliberation this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish good and sufficient cause for the relief granted herein and that such relief is in the best interests of the Debtors and their estates, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The Debtors are authorized to file a consolidated list of the 50 largest unsecured creditors in these chapter 11 cases in lieu of each Debtor filing a list of its 20 largest unsecured creditors.

3. In lieu of submitting a formatted mailing matrix, the Debtors shall make available a single, consolidated list of all of the Debtors' creditors in electronic form to any entity who so requests and in non-electronic form at such requesting entity's sole cost and expense.

4. The Debtors are authorized to redact address information of individual creditors listed on the Creditor Matrix; *provided* that the Debtors shall provide an unredacted version of the Creditor Matrix to the Bankruptcy Court (to be filed under seal), the U.S. Trustee, and any official committee of unsecured creditors appointed in these chapter 11 cases; *provided, further* that

nothing in this Order shall preclude a party in interest from requesting access to an unredacted version of the Creditor Matrix upon a motion filed with the Bankruptcy Court and appropriate notice.

5. The Notice of Commencement of these chapter 11 cases, substantially in the form attached to this Order as **Exhibit 1**, is hereby approved.

6. The Debtors, with the assistance of the Proposed Claims and Noticing Agent (upon the Bankruptcy Court's approval of the Debtors' retention of the Proposed Claims and Noticing Agent), is authorized, but not directed, to undertake all mailings directed by the Bankruptcy Court, the U.S. Trustee, or as required by the Bankruptcy Code, including the Notice of Commencement of these chapter 11 cases, and any other correspondence that the Debtors may wish to send to creditors.

7. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: White Plains, New York
March 5, 2019

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Notice of Commencement

Information to identify the case:			
Debtor:	Windstream Holdings, Inc.	EIN:	46-2847717
	Name		
United States Bankruptcy Court for the Southern District of New York			
Case Number:	19-22312 (RDD)	Date case filed for Chapter 11:	02/25/2019

Official Form 309F (For Corporations or Partnerships)

Notice of Chapter 11 Bankruptcy Case

12/17

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

Debtors' full name: See chart below.

List of Jointly Administered Cases

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
1.	Windstream Holdings, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22312	46-2847717
2.	Windstream Business Holdings, LLC	6 International Drive Rye Brook, NY 10573	19-22310	46-4238089
3.	Allworx Corp.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22345	26-0259247
4.	American Telephone Company, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22349	20-5108783

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
5.	ARC Networks, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22362	11-3464934
6.	A.R.C. Networks, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22338	11-3240814
7.	ATX Communications, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22368	13-4078506
8.	ATX Licensing, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22371	23-3039838
9.	ATX Telecommunications Services of Virginia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22377	31-1773888
10.	Birmingham Data Link, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22382	26-3497422
11.	BOB, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22387	02-0754753
12.	Boston Retail Partners LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22392	27-0447904
13.	BridgeCom Holdings, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22403	13-4162965
14.	BridgeCom International, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22408	13-4123985
15.	BridgeCom Solutions Group, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22428	13-4123989
16.	Broadview Networks, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22456	16-1401082
17.	Broadview Networks of Massachusetts, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22440	11-3448054
18.	Broadview Networks of Virginia, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22454	06-1596404
19.	Broadview NP Acquisition Corp.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22461	51-0402734
20.	Buffalo Valley Management Services, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22463	84-1619403
21.	Business Telecom of Virginia, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22466	56-2131188
22.	Business Telecom, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22469	56-1426866
23.	BV-BC Acquisition Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22471	20-5377846
24.	Cavalier IP TV, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22474	20-2386185

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
25.	Cavalier Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22313	20-2047841
26.	Cavalier Telephone Mid-Atlantic, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22315	54-2028580
27.	Cavalier Telephone, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22317	54-1914822
28.	CCL Historical, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22319	23-3032245
29.	Choice One Communications of Connecticut Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22322	15-1564111
30.	Choice One Communications of Maine Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22324	16-1564112
31.	Choice One Communications of Massachusetts Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22326	16-1554916
32.	Choice One Communications of New York Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22329	15-1564111
33.	Choice One Communications of Ohio Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22331	16-1564113
34.	Choice One Communications of Pennsylvania Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22332	16-1554919
35.	Choice One Communications of Rhode Island Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22335	16-1563050
36.	Choice One Communications Resale L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22341	80-0364519
37.	Choice One Communications of Vermont Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22339	16-1564114
38.	Choice One of New Hampshire, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22344	16-1564110
39.	Cinergy Communications Company of Virginia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22353	20-8076097
40.	Conestoga Enterprises, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22356	23-2565087
41.	Conestoga Management Services, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22358	84-1619408
42.	Conestoga Wireless Company	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22360	23-2926187
43.	Connecticut Broadband, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22363	06-1459693
44.	Connecticut Telephone & Communication Systems, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22365	06-1122868

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
45.	Conversent Communications Long Distance, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22366	84-1530125
46.	Conversent Communications of Connecticut, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22369	84-1473088
47.	Conversent Communications of Maine, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22372	84-1473089
48.	Conversent Communications of Massachusetts, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22375	20-2643836
49.	Conversent Communications of New Hampshire, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22378	84-1485259
50.	Conversent Communications of New Jersey, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22380	84-1522507
51.	Conversent Communications of New York, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22384	84-1473087
52.	Conversent Communications of Pennsylvania, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22386	84-1473090
53.	Conversent Communications of Rhode Island, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22388	84-1485260
54.	Conversent Communications of Vermont, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22391	84-1473085
55.	Conversent Communications Resale L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22394	80-0364505
56.	CoreComm-ATX, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22401	23-3060529
57.	CoreComm Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22399	13-4072077
58.	CTC Communications Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22405	04-2731202
59.	CTC Communications of Virginia, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22407	54-1905656
60.	D&E Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22411	27-0147149
61.	D&E Management Services, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22414	88-0509645
62.	D&E Networks, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22417	25-1780894
63.	D&E Wireless, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22419	23-2896654
64.	Deltacom, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22423	63-0832070

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
65.	Earthlink Business, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22427	94-3331274
66.	Earthlink Carrier, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22430	58-1970339
67.	Equity Leasing, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22432	20-0810636
68.	Eureka Broadband Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22435	06-1506004
69.	Eureka Holdings, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22437	20-3341318
70.	Eureka Networks, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22438	20-3341244
71.	Eureka Telecom, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22445	13-3793720
72.	Eureka Telecom of VA, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22442	52-2325508
73.	Georgia Windstream, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22447	38-2027315
74.	Heart of the Lakes Cable Systems, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22451	41-1577709
75.	Infocore, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22314	23-2894188
76.	Info-Highway International, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22321	76-0438543
77.	InfoHighway Communications Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22318	76-0530551
78.	InfoHighway of Virginia, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22325	26-0291600
79.	Intellifiber Networks, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22328	54-1861675
80.	Iowa Telecom Data Services, L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22330	74-3083835
81.	Iowa Telecom Technologies, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22333	47-0937013
82.	IWA Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22336	20-8346096
83.	KDL Holdings, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22337	48-1251032
84.	LDMI Telecommunications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22342	38-2940840

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
85.	Lightship Telecom, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22346	06-1519100
86.	MASSCOMM, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22347	83-2381119
87.	McLeodUSA Information Services LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22350	76-0529757
88.	McLeodUSA Purchasing, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22352	42-1501014
89.	McLeodUSA Telecommunications Services, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22355	42-1407242
90.	MPX, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22357	16-1468411
91.	Nashville Data Link, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22361	04-3639722
92.	Network Telephone, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22364	59-3477521
93.	Norlight Telecommunications of Virginia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22367	26-3497118
94.	Oklahoma Windstream, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22370	73-0630965
95.	Open Support Systems, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22373	11-3409972
96.	PaeTec Communications of Virginia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22376	16-6486048
97.	PaeTec Communications, LLC	2700 Westchester Avenue, Suite 421, Purchase, New York 10577	19-22311	16-1551095
98.	PAETEC Holding, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22381	20-5339741
99.	PAETEC iTEL, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22385	47-0903254
100.	PAETEC Realty LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22389	27-1866972
101.	PAETEC, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22393	16-1551094
102.	PCS Licenses, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22396	88-0397829
103.	Progress Place Realty Holding Company, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22398	27-1255466
104.	RevChain Solutions, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22402	46-3139610

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
105.	SM Holdings, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22406	26-0970378
106.	Southwest Enhanced Network Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22409	75-2885419
107.	Talk America of Virginia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22412	54-1871946
108.	Talk America, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22416	23-2582790
109.	Teleview, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22420	58-2033040
110.	Texas Windstream, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22316	75-0984391
111.	The Other Phone Company, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22323	65-0705374
112.	TriNet, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22327	58-2183044
113.	TruCom Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22334	13-3940714
114.	US LEC Communications LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22340	56-2162051
115.	US LEC of Alabama LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22343	56-2104211
116.	US LEC of Florida LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22348	56-2046424
117.	US LEC of Georgia LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22351	56-2065537
118.	US LEC of Maryland LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22379	56-2117626
119.	US LEC of North Carolina LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22383	56-2091767
120.	US LEC of Pennsylvania LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22395	56-2117625
121.	US LEC of South Carolina LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22404	56-2056428
122.	US LEC of Tennessee LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22410	56-2065536
123.	US LEC of Virginia LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22415	56-2012173
124.	US Xchange Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22455	16-1590395

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
125.	US Xchange of Illinois, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22425	38-3388717
126.	US Xchange of Indiana, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22436	38-3377167
127.	US Xchange of Michigan, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22443	38-3442002
128.	US Xchange of Wisconsin, L.L.C.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22450	38-3342305
129.	Valor Telecommunications of Texas, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22460	52-2194219
130.	WaveTel NC License Corporation	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22465	30-0020203
131.	WIN Sales & Leasing, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22470	41-1340032
132.	Windstream Accucomm Networks, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22472	58-1579785
133.	Windstream Accucomm Telecommunications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22475	58-0641816
134.	Windstream Alabama, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22478	63-0364952
135.	Windstream Arkansas, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22483	71-0400407
136.	Windstream Buffalo Valley, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22487	23-2825123
137.	Windstream BV Holdings, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22494	11-3310798
138.	Windstream Cavalier, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22500	54-1946546
139.	Windstream Communications Kerrville, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22424	74-0724580
140.	Windstream Communications Telecom, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22429	74-2955898
141.	Windstream Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22433	74-2955898
142.	Windstream Concord Telephone, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22439	56-0186420
143.	Windstream Conestoga, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22446	23-0488700
144.	Windstream CTC Internet Services, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22448	52-2101328

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
145.	Windstream D&E Systems, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22452	23-2971125
146.	Windstream D&E, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22457	23-0520190
147.	Windstream Direct, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22459	41-1903994
148.	Windstream Eagle Holdings LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22464	N/A
149.	Windstream Eagle Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22467	82-3462246
150.	Windstream EN-TEL, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22390	41-1928105
151.	Windstream Finance Corp.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22397	47-3595713
152.	Windstream Florida, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22413	59-0717786
153.	Windstream Georgia Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22418	58-2046299
154.	Windstream Georgia Telephone, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22422	58-0802675
155.	Windstream Georgia, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22426	58-0202560
156.	Windstream Holding of the Midwest, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22431	47-0632436
157.	Windstream Iowa Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22434	27-1635465
158.	Windstream Iowa-Comm, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22441	42-1525756
159.	Windstream IT-Comm, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22444	35-2256532
160.	Windstream KDL, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22449	61-1196739
161.	Windstream KDL-VA, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22453	20-0817269
162.	Windstream Kentucky East, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22458	73-1621772
163.	Windstream Kentucky West, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22462	61-0487133
164.	Windstream Kerrville Long Distance, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22468	74-2228603

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
165.	Windstream Lakedale Link, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22473	41-1815232
166.	Windstream Lakedale, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22477	41-0643917
167.	Windstream Leasing, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22482	27-2348873
168.	Windstream Lexcom Communications, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22486	56-0298450
169.	Windstream Lexcom Entertainment, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22491	56-2261861
170.	Windstream Lexcom Long Distance, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22498	56-2261863
171.	Windstream Lexcom Wireless, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22502	56-2261865
172.	Windstream Mississippi, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22504	64-0323983
173.	Windstream Missouri, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22506	43-0690837
174.	Windstream Montezuma, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22508	42-0422100
175.	Windstream Nebraska, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22510	47-0223220
176.	Windstream Network Services of the Midwest, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22511	91-1772936
177.	Windstream New York, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22512	15-0306510
178.	Windstream Norlight, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22513	61-0927928
179.	Windstream North Carolina, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22514	56-0509132
180.	Windstream NorthStar, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22515	27-0297987
181.	Windstream NTI, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22516	39-1712867
182.	Windstream NuVox Arkansas, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22517	43-1830185
183.	Windstream NuVox Illinois, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22518	43-1861148
184.	Windstream NuVox Indiana, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22519	43-1861150

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
185.	Windstream NuVox Kansas, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22476	43-1830186
186.	Windstream NuVox Missouri, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22480	43-1830184
187.	Windstream NuVox Ohio, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22484	43-1861151
188.	Windstream NuVox Oklahoma, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22489	43-1850572
189.	Windstream NuVox, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22492	57-1072836
190.	Windstream of the Midwest, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22496	47-0803453
191.	Windstream Ohio, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22501	31-4265290
192.	Windstream Oklahoma, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22503	71-0406211
193.	Windstream Pennsylvania, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22505	25-1145739
194.	Windstream Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22400	20-0792300
195.	Windstream SHAL Networks, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22507	41-1701143
196.	Windstream SHAL, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22509	41-1858078
197.	Windstream Shared Services, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22479	51-0553722
198.	Windstream South Carolina, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22481	57-0140680
199.	Windstream Southwest Long Distance, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22485	75-2884847
200.	Windstream Standard, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22488	58-0445370
201.	Windstream Sugar Land, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22490	74-0672235
202.	Windstream Supply, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22493	31-4359937
203.	Windstream Systems of the Midwest, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22495	47-0650357
204.	Windstream Western Reserve, LLC	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22497	34-0614000

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
205.	Xeta Technologies, Inc.	4001 North Rodney Parham Road, Little Rock, Arkansas 72212	19-22499	73-1130045

All other names used in the last 8 years:	**See Rider 1.**	
Address:	**See chart above.**	
Debtors' attorneys:	**Stephen E. Hessler, P.C.** **Marc Kieselstein, P.C.** **Cristine Pirro Schwarzman** **Kirkland & Ellis LLP** **Kirkland & Ellis International LLP** **601 Lexington Avenue** **New York, New York 10022** **Telephone number: (212) 446-4800** **- and -** **James H.M. Sprayregen, P.C.** **Ross M. Kwasteniet, P.C.** **Brad Weiland** **John R. Luze** **Kirkland & Ellis LLP** **Kirkland & Ellis International LLP** **300 North LaSalle Street** **Chicago, Illinois 60654** **Telephone number: (312) 862-2000**	
Bankruptcy Clerk's Office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov	**US Bankruptcy Court** **Southern District of New York** **300 Quarropas Street** **Room 248** **White Plains, NY 10601** All documents in this case are available free of charge on the website of the Debtors' notice and claims agent at http://www.kccllc.net/windstream	**Hours Open: Monday - Friday 8:30 AM - 5:00 PM** **Contact phone: (914) 467-7088**
Meeting of Creditors	**Time and Date to be Determined**	**Location:**

The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.	The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	[_____] [_____]
Proof of claim deadline:	**Deadline for filing proof of claim:**	Not yet set. If a deadline is set, notice will be sent at a later time.
	A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. Your claim will be allowed in the amount scheduled unless: • Your claim is designated as disputed, contingent or unliquidated; • You file a proof of claim in a different amount; or • You receive another notice If your claim is not scheduled or if your claim is designated as disputed, contingent, or unliquidated, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled. You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	
Exception to discharge deadline The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.	You must start a judicial proceeding by filing a complaint if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A). **Deadline for filing the complaint: To be Determined**	
Creditors with a foreign address	If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult	

	an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.
Filing a Chapter 11 bankruptcy case	Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.
Discharge of debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge under 11 U.S.C. § 1141(d)(6)(A), you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

Rider 1
Other Names Used in the Last 8 Years

Current Entity Name	Former Names
Windstream Business Holdings, LLC	Earthlink, LLC
Windstream Holdings, Inc.	N/A
A.R.C. Networks, Inc.	N/A
Allworx Corp.	N/A
American Telephone Company LLC	N/A
ARC Networks, Inc.	N/A
ATX Communications, Inc.	N/A
ATX Licensing, Inc.	N/A
ATX Telecommunications Services of Virginia, LLC	N/A
Birmingham Data Link, LLC	N/A
BOB, LLC	BOB Merger Sub, LLC; Business Only Broadband; Windstream Fixed Wireless, LLC.
Boston Retail Partners, LLC	N/A
BridgeCom Holdings, Inc.	N/A
BridgeCom International, Inc.	N/A
BridgeCom Solutions Group, Inc.	N/A
Broadview Networks of Massachusetts, Inc.	N/A
Broadview Networks of Virginia, Inc.	N/A
Broadview Networks, Inc.	N/A
Broadview NP Acquisition Corp.	N/A
Buffalo Valley Management Services, Inc.	N/A
Business Telecom of Virginia, Inc.	N/A
Business Telecom, LLC	N/A
BV-BC Acquisition Corporation	N/A
Cavalier IP TV, LLC	N/A

Current Entity Name	Former Names
Cavalier Services, LLC	N/A
Cavalier Telephone Mid-Atlantic, L.L.C.	N/A
Cavalier Telephone, L.L.C.	N/A
CCL Historical, Inc.	N/A
Choice One Communications of Connecticut, Inc.	EarthLink Business; One Communications; One Communications Corp.
Choice One Communications of Maine, Inc.	EarthLink Business; EarthLink Business II; One Communications.
Choice One Communications of Massachusetts, Inc.	EarthLink Business; One Communications.
Choice One Communications of New York, Inc.	EarthLink Business; One Communications.
Choice One Communications of Ohio, Inc.	EarthLink Business; One Communications.
Choice One Communications of Pennsylvania, Inc.	EarthLink Business; One Communications.
Choice One Communications of Rhode Island, Inc.	EarthLink Business; One Communications.
Choice One Communications of Vermont, Inc.	EarthLink Business; EarthLink Business IV; One Communications.
Choice One Communications Resale, L.L.C.	EarthLink Business; One Communications.
Choice One of New Hampshire, Inc.	EarthLink Business; One Communications.
Cinergy Communications Company of Virginia, LLC	Cinergy Communications Company of Virginia
Conestoga Enterprises, Inc.	N/A
Conestoga Management Services, Inc.	N/A
Conestoga Wireless Company	N/A
Connecticut Broadband, LLC	EarthLink Business; One Communications.
Connecticut Telephone & Communication Systems, Inc.	EarthLink Business; One Communications.
Conversent Communications Long Distance, LLC	EarthLink Business; One Communications Long Distance of New Hampshire.
Conversent Communications of Connecticut, LLC	EarthLink Business; One Communications; One Communications Corp.

Current Entity Name	Former Names
Conversent Communications of Maine, LLC	EarthLink Business IV; One Communications IV.
Conversent Communications of Massachusetts, Inc.	EarthLink Business; One Communications.
Conversent Communications of New Hampshire, LLC	EarthLink Business; One Communications of New Hampshire.
Conversent Communications of New Jersey, LLC	EarthLink Business.
Conversent Communications of New York, LLC	EarthLink Business; One Communications.
Conversent Communications of Pennsylvania, LLC	EarthLink Business; One Communications.
Conversent Communications of Rhode Island, LLC	EarthLink Business IV; One Communications IV.
Conversent Communications of Vermont, LLC	EarthLink Business; EarthLink Business IV; One Communications.
Conversent Communications Resale, L.L.C.	EarthLink Business; EarthLink Business III; EarthLink Business IV; One Communications.
CoreComm Communications, LLC	N/A
CoreComm-ATX, Inc.	N/A
CTC Communications Corporation	EarthLink Business; EarthLink Business I; EarthLink Business IV; EarthLink Business Inc.; One Communications; One Communications Corp.
CTC Communications of Virginia, Inc.	N/A
D&E Communications, LLC	D&E Communications, Inc.
D&E Management Services, Inc.	N/A
D&E Networks, Inc.	N/A
D&E Wireless, Inc.	N/A
DeltaCom, LLC	DeltaCom, Inc.; EarthLink Business; EarthLink Business I; EarthLink Business IV; EarthLink Business Solutions.
EarthLink Business, LLC	EarthLink Business.
EarthLink Carrier, LLC	N/A

Current Entity Name	Former Names
Equity Leasing, Inc.	Equity Leasing of Illinois (Illinois only).
Eureka Broadband Corporation	N/A
Eureka Holdings, LLC	N/A
Eureka Networks, LLC	N/A
Eureka Telecom of VA, Inc.	N/A
Eureka Telecom, Inc.	N/A
Georgia Windstream, LLC	N/A
Heart of the Lakes Cable Systems, Inc.	N/A
Infocore, Inc.	N/A
InfoHighway Communications Corporation	N/A
Info-Highway International, Inc.	N/A
InfoHighway of Virginia, Inc.	N/A
Intellifiber Networks, LLC	Intellifiber Networks, Inc.
Iowa Telecom Data Services, L.C.	N/A
Iowa Telecom Technologies, LLC	N/A
IWA Services, LLC	N/A
KDL Holdings, LLC	N/A
LDMI Telecommunications, LLC	LDMI Telecommunications, Inc.; LDMI Telecommunications.
Lightship Telecom, LLC	EarthLink Business; EarthLink Business I; EarthLink Business IV; One Communications.
MASSCOMM, LLC	N/A
McLeodUSA Information Services LLC	N/A
McLeodUSA Purchasing, L.L.C.	N/A
McLeodUSA Telecommunications Services, L.L.C.	PaeTec Business Services.
MPX, Inc.	N/A
Nashville Data Link, LLC	N/A

Current Entity Name	Former Names
Network Telephone, LLC	Cavalier Telephone; Cavalier Telephone and TV; Cavalier Business Communications;.
Norlight Telecommunications of Virginia, LLC	Norlight Telecommunications of Virginia, Inc.
Oklahoma Windstream, LLC	N/A
Open Support Systems, LLC	N/A
PaeTec Communications of Virginia, LLC	N/A
PaeTec Communications, LLC	PaeTec Communications, Inc.
PAETEC Holding, LLC	PAETEC Holding Corp.
PAETEC iTel, L.L.C.	N/A
PAETEC Realty LLC	N/A
PAETEC, LLC	PAETEC Corp.
PCS Licenses, Inc.	N/A
Progress Place Realty Holding Company, LLC	N/A
RevChain Solutions, LLC	N/A
SM Holdings, LLC	N/A
Southwest Enhanced Network Services, LLC	Southwest Enhanced Network Services, LP
Talk America of Virginia, LLC	Talk America of Virginia, Inc.; Cavalier Telephone.
Talk America, LLC	Talk America, Inc.; Cavalier Telephone; Cavalier Business Communications.
Televiev, LLC	N/A
Texas Windstream, LLC	Texas Windstream, Inc.
The Other Phone Company, LLC	Cavalier Business Communications; The Phone Company.
Trinet, LLC	N/A
TruCom Corporation	N/A
US LEC Communications LLC	PaeTec Business Services.
US LEC of Alabama LLC	N/A

Current Entity Name	Former Names
US LEC of Florida LLC	N/A
US LEC of Georgia LLC	PAETEC Business Services.
US LEC of Maryland LLC	N/A
US LEC of North Carolina LLC	N/A
US LEC of Pennsylvania LLC	N/A
US LEC of South Carolina LLC	N/A
US LEC of Tennessee LLC	N/A
US LEC of Virginia LLC	PAETEC Business Services.
US Xchange of Illinois, L.L.C.	EarthLink Business; One Communications.
US Xchange of Indiana, L.L.C.	EarthLink Business; One Communications.
US Xchange of Michigan, L.L.C.	EarthLink Business; One Communications.
US Xchange of Wisconsin, L.L.C.	EarthLink Business; One Communications.
US Xchange, Inc.	EarthLink Business; One Communications; Choice One; Choice One Communications.
Valor Telecommunications of Texas, LLC	Windstream Communications Southwest.
WaveTel NC License Corporation	N/A
WIN Sales & Leasing, Inc.	Communications Sales and Leasing, Inc.
Windstream Accucomm Networks, LLC	N/A
Windstream Accucomm Telecommunications, LLC	N/A
Windstream Alabama, LLC	N/A
Windstream Arkansas, LLC	N/A
Windstream Buffalo Valley, Inc.	N/A
Windstream BV Holdings, LLC	Windstream BV Holdings, Inc.; Broadview Network Holdings, Inc.
Windstream Cavalier, LLC	N/A
Windstream Communications Kerrville, LLC	N/A
Windstream Communications Telecom, LLC	N/A

Current Entity Name	Former Names
Windstream Communications, LLC	Windstream Communications, Inc.
Windstream Concord Telephone, LLC	Windstream Concord Telephone, Inc.
Windstream Conestoga, Inc.	N/A
Windstream CTC Internet Services, Inc.	N/A
Windstream D&E Systems, LLC	Windstream D&E Systems, Inc.
Windstream D&E, Inc.	N/A
Windstream Direct, LLC	N/A
Windstream Eagle Holdings, LLC	Earthlink Holdings, LLC; EarthLink Holdings Corp.
Windstream Eagle Services, LLC	Earthlink Services, LLC
Windstream EN-TEL, LLC	N/A
Windstream Finance Corp.	N/A
Windstream Florida, LLC	Windstream Florida, Inc.
Windstream Georgia Communications, LLC	N/A
Windstream Georgia Telephone, LLC	N/A
Windstream Georgia, LLC	N/A
Windstream Holding of the Midwest, Inc.	N/A
Windstream Iowa Communications, LLC	Windstream Iowa Communications, Inc.
Windstream Iowa-Comm, LLC	Windstream Iowa-Comm, Inc.
Windstream IT-Comm, LLC	N/A
Windstream KDL, LLC	N/A
Windstream KDL-VA, LLC	N/A
Windstream Kentucky East, LLC	N/A
Windstream Kentucky West, LLC	N/A
Windstream Kerrville Long Distance, LLC	N/A
Windstream Lakedale Link, Inc.	N/A

Current Entity Name	Former Names
Windstream Lakedale, Inc.	**N/A**
Windstream Leasing, LLC	**N/A**
Windstream Lexcom Communications, LLC	**Windstream Lexcom Communications, Inc.**
Windstream Lexcom Entertainment, LLC	**N/A**
Windstream Lexcom Long Distance, LLC	**N/A**
Windstream Lexcom Wireless, LLC	**N/A**
Windstream Mississippi, LLC	**N/A**
Windstream Missouri, LLC	**Windstream Missouri, Inc.**
Windstream Montezuma, LLC	**Windstream Montezuma, Inc.**
Windstream Nebraska, Inc.	**N/A**
Windstream Network Services of the Midwest, Inc.	**N/A**
Windstream New York, Inc.	**N/A**
Windstream Norlight, LLC	**Windstream Norlight, Inc.**
Windstream North Carolina, LLC	**N/A**
Windstream NorthStar, LLC	**N/A**
Windstream NTI, LLC	**Windstream NTI, Inc.**
Windstream NuVox Arkansas, LLC	**Windstream NuVox Arkansas, Inc.**
Windstream NuVox Ilinois, LLC	**Windstream NuVox Illinois, Inc.**
Windstream NuVox Indiana, LLC	**Windstream NuVox Indiana, Inc.**
Windstream NuVox Kansas, LLC	**Windstream NuVox Kansas, Inc.**
Windstream NuVox Missouri, LLC	**Windstream NuVox Missouri, Inc.**
Windstream NuVox Ohio, LLC	**Windstream NuVox Ohio, Inc.**
Windstream NuVox Oklahoma, LLC	**Windstream NuVox Oklahoma, Inc.**
Windstream NuVox, LLC	**Windstream Nuvox, Inc.**
Windstream of the Midwest, Inc.	**N/A**

Current Entity Name	Former Names
Windstream Ohio, LLC	**N/A**
Windstream Oklahoma, LLC	**N/A**
Windstream Pennsylvania, LLC	**N/A**
Windstream Services, LLC	**Windstream Corporation**
Windstream SHAL Networks, Inc.	**N/A**
Windstream SHAL, LLC	**N/A**
Windstream Shared Services, LLC	**Earthlink Shared Services, LLC**
Windstream South Carolina, LLC	**N/A**
Windstream Southwest Long Distance, LLC	**N/A**
Windstream Standard, LLC	**N/A**
Windstream Sugar Land, LLC	**N/A**
Windstream Supply, LLC	**N/A**
Windstream Systems of the Midwest, Inc.	**N/A**
Windstream Western Reserve, LLC	**N/A**
XETA Technologies, Inc.	**N/A**

2 A.L.R. Fed. 2d 459 (Originally published in 2005)

American Law Reports | The ALR databases are made current by the weekly addition of relevant new cases.

ALR Federal 2d
Ann K. Wooster, J.D.

What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient To Award Damages—Chapter 11 and 12 Cases

In 1984, Congress amended the automatic stay provisions of the Bankruptcy Code to add 11 U.S.C.A. § 362(h), which states that a debtor who can prove injury due to a willful violation of the automatic stay can recover actual damages, including costs, attorney's fees, and potentially, punitive damages. In order to prove a willful violation of the stay, courts will typically examine whether the violator had knowledge of the bankruptcy case when acting, and whether the violator intended to carry out the proscribed act. Federal courts have addressed what constitutes a willful violation of the automatic stay provisions sufficient to award damages in Chapter 11 and 12 cases. For instance, in In re Sage Richmond, LLC, 297 B.R. 57, 41 Bankr. Ct. Dec. (CRR) 216, 2 A.L.R. Fed. 2d 759 (Bankr. E.D. Va. 2003), the court determined that an entity charged with operating a Chapter 11 debtor's nursing care facility had willfully violated the automatic stay by failing to deliver to the debtor an overpayment of benefits, so that sanctions could be imposed according to 11 U.S.C.A. § 362(h). *In re Sage Richmond*, and other cases which have addressed what constitutes a willful violation of the automatic stay provisions of the Bankruptcy Code, sufficient to award damages in Chapter 11 and 12 cases pursuant to 11 U.S.C.A. § 362(h), are collected in the following annotation.

TABLE OF CONTENTS

Article Outline
Index
Statutory Text
Table of Cases
Research References

ARTICLE OUTLINE

I PRELIMINARY MATTERS
§ 1 Scope
§ 2 Summary and comment
§ 3 Practice pointers
§ 3.5 General principles
II PARTICULAR ACTIONS CONSTITUTING WILLFUL VIOLATION OF AUTOMATIC STAY OF CHAPTER 11 OR 12 DEBTOR

A Collection Efforts Generally
§ 4 Initiating collection lawsuit
§ 5 Continuing collection lawsuit
§ 6 Refusal to remit accounts receivable
§ 7 Attempt to repossess financed property
§ 8 Repossession of financed property—Generally
§ 9 Repossession of financed property—Failure to return repossessed property
§ 10 Refusal to return seized collateral—Willful violation found
§ 11 Refusal to return seized collateral—Willful violation not found
§ 12 Sale of interest in debtor's assets
§ 13 Setoff of government payments
§ 14 Withholding government payments—Generally
§ 15 Withholding government payments—Prison wage withholding
§ 16 Failure to deliver overpayment of government benefits
§ 17 Improper use of team name
§ 18 Refusal to issue airline ticket stock
§ 19 Use of software program enhancements
B Bank Account Interference
§ 20 Offset generally
§ 21 Administrative freeze
§ 22 Attachment of funds
§ 23 Transfer of funds
§ 24 Credit card chargeback
C Collection Efforts Involving Real Estate
1 Leases
§ 25 Offset of rent due
§ 26 Sale of debtor's property on leased premises
§ 27 Attempt to terminate lease
§ 28 Attempt to evict from leased premises
§ 29 Eviction from leased premises—Willful violation found
§ 30 Eviction from leased premises—Willful violation not found
§ 31 Initiating unlawful detainer lawsuit
2 Mortgages
§ 32 Recording mortgage—Generally
§ 33 Recording mortgage—Mortgage assignment
§ 34 Pursuit of contempt proceeding
§ 35 Continuation of foreclosure proceeding
3 Other Actions Involving Real Estate
§ 36 Enforcement of municipal codes
§ 37 Recording judgment against real property
§ 38 Recording lien against real property—Generally
§ 39 Recording lien against real property—Refusal to expunge lien
§ 40 Withholding land contract installment payments
§ 41 Taking temporary possession of property
§ 42 Mailing auction notice
D Tax Collection Efforts
§ 43 Issuance of third-party summons
§ 44 Interference with tax refund
§ 45 Filing tax lien—Generally

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 46 Filing tax lien—Notice of lien
§ 47 Filing tax levy—Willful violation found
§ 48 Filing tax levy—Willful violation not found
§ 49 Refusal to return levied funds
§ 50 Seizure of debtor property
§ 51 Refusal to return seized property
§ 52 Conducting auction sale
§ 53 Holding tax foreclosure sale
E Collection Efforts Involving Insurance
§ 54 Refusal to endorse insurance check
§ 55 Receipt of insurance payments
§ 56 Misuse of insurance overpayment—Willful violation found
§ 57 Misuse of insurance overpayment—Willful violation not found
§ 58 Filing motion to compel arbitration of insurance claim
§ 59 Initiating insurance policy lawsuit
F Collection Efforts Involving Corporate Stock
§ 60 Retention of partner's distributive share
§ 61 Sale of stock securing loan
§ 62 Initiating suit to enjoin transfer of stock
§ 63 Precluding partnership from prosecuting action
§ 64 Initiating derivative lawsuit
G Collection Efforts Involving Freight
§ 65 Offset of freight payments
§ 66 Attempt to collect freight charges from consignees
§ 67 Assertion of lien; freight—Generally
§ 68 Assertion of lien; freight—Artisan's lien on vehicle
§ 69 Refusal to deliver or return freight
H Pursuit of Other Legal Action
1 Procedural Proceedings
§ 70 Motion for substitution of parties
§ 70.5 Motion for appointment of receiver
§ 71 Obtaining operating order
§ 72 Enforcement of temporary restraining order
§ 73 Proposed administrative order
§ 74 Filing action on behalf of debtor
§ 75 Filing third-party action—Against debtor
§ 76 Filing third-party action—Against third party
§ 77 Initiating action to alter official docket
§ 78 Pursuit of contempt proceedings
2 Substantive Proceedings
§ 79 Age discrimination lawsuit
§ 80 Breach of contract lawsuit—Willful violation found
§ 81 Breach of contract lawsuit—Willful violation not found
§ 82 De facto merger lawsuit
§ 83 Defamation and libel lawsuits
§ 84 Divorce judgment enforcement—Willful violation found
§ 85 Divorce judgment enforcement—Willful violation not found
§ 86 ERISA lawsuit—Generally
§ 87 ERISA lawsuit—Threat to suspend benefits

§ 88 Fair Labor Standards Act lawsuit
§ 89 Fraudulent transfer of assets lawsuit
§ 90 Malicious prosecution lawsuit
§ 91 Mechanic's lien enforcement—Willful violation found
§ 92 Mechanic's lien enforcement—Willful violation not found
§ 93 Product liability lawsuit—Willful violation found
§ 94 Product liability lawsuit—Willful violation not found
§ 95 Wrongful conspiracy lawsuit
§ 96 Professional malpractice action
§ 97 Unspecified lawsuit
Research References

INDEX

Accounts receivable, refusal to remit § 6
Action on behalf of debtor, filing § 74
Action to alter official docket, initiating § 77
Administrative freeze on bank account § 21
Administrative order, proposed § 73
Adversary proceeding asserting cause of action belonging to Chapter 11 debtor, filing § 74
Age discrimination lawsuit § 79
Airline ticket stock, refusal to issue § 18
Alter official docket, initiating action to § 77
Arbitration of insurance claim, filing of motion to compel § 58
Artisan's or mechanics' liens, assertion of § 68, 91, 92
Assignment of mortgage, recording § 33
Attachment of bank account funds § 22
Attempt to collect freight charges from consignees § 66
Attempt to evict from leased premises § 28
Attempt to repossess financed property § 7
Attempt to terminate lease § 27
Auction notice, mailing § 42
Auction sale, conducting § 52
Bank account interference § 20- 24
Breach of contract lawsuit § 80, 81
Chargeback, credit card § 24
Collateral, sale of interest in § 12
Collateral, seized, refusal to return § 10, 11
Collect freight charges from consignees, attempt to § 66
Collection efforts, generally § 4- 19
Collection lawsuit, continuing § 5
Collection lawsuit, initiating § 4
Comment and summary § 2
Compel arbitration of insurance claim, filing of motion to § 58
Conducting auction sale § 52
Consignees, attempt to collect freight charges from § 66
Conspiracy, wrongful, lawsuit § 95
Contempt proceedings, pursuit of § 34, 78

Continuation of foreclosure proceeding § 35
Continuing collection lawsuit § 5
Corporate stock, collection efforts involving § 60- 64
Credit card chargeback § 24
Debtor's property on leased premises, sale of § 26
De facto merger lawsuit § 82
Defamation and libel lawsuits § 83
Deliver or return freight, refusal to § 69
Deliver overpayment of government benefits, failure to § 16
Derivative lawsuit, initiating § 64
Distributive share of partner, retention of § 60
Divorce judgment enforcement § 84, 85
Docket, official, initiating action to alter § 77
Employee Retirement Income Security Act lawsuit § 86, 87
Endorse insurance check, refusal to § 54
Enforcement of divorce judgment § 84, 85
Enforcement of municipal codes § 36
Enforcement of temporary restraining order § 72
Enjoin transfer of stock, initiating suit to § 62
ERISA lawsuit § 86, 87
Eviction or attempt to evict from leased premises § 28- 30
Expunge lien on real property, refusal to § 39
Failure to deliver overpayment of government benefits § 16
Failure to return repossessed property § 9
Fair Labor Standards Act lawsuit § 88
Filing action on behalf of debtor § 74
Filing notice of lien § 46
Filing of motion to compel arbitration of insurance claim § 58
Filing tax levy § 47, 48
Filing tax lien § 45, 46
Filing third-party action § 75, 76
Financed property, attempt to repossess § 7
Financed property, failure to return repossessed property § 9
Financed property, repossession of, generally § 8
Foreclosure proceeding, continuation of § 35
Foreclosure sale, tax, holding § 53
Fraudulent transfer of assets lawsuit § 89
Freeze, administrative, on bank account § 21
Freight, collection efforts involving § 65- 69
Government benefits, failure to deliver overpayment of § 16
Government payments, setoff of § 13
Government payments, withholding of § 14, 15
Holding tax foreclosure sale § 53
Improper use of team name § 17
Installment payments, land contract, withholding § 40
Insurance, collection efforts involving § 54- 59
Insurance check, refusal to endorse § 54
Insurance overpayment, misuse of § 56, 57
Insurance payments, receipt of from debtor § 55

Insurance policy lawsuit, initiating § 59
Interference with bank account § 20- 24
Interference with tax refund § 44
Issuance of third-party summons § 43
Issue airline ticket stock, refusal to § 18
Judgment against real property, recording § 37
Land contract installment payments, withholding § 40
Lawsuit, collection, continuing § 5
Lawsuit, initiating, generally § 4, 31, 59, 62, 64, 75
Lease, attempt to terminate § 27
Leased premises, attempt to evict from § 28
Leased premises, eviction or attempt to evict from § 28- 30
Leased premises, sale of debtor's property on § 26
Leases, collection efforts involving real estate § 25- 31
Levied funds, refusal to return § 49
Levy, tax, filing § 47, 48
Libel and defamation lawsuits § 83
Lien, artisan's, assertion of § 68
Lien, mechanic's, enforcement of § 91, 92
Lien, tax, filing § 45, 46
Lien against real property, recording § 38, 39
Lien on freight, assertion of § 67, 68
Litigation, continuing collection lawsuit § 5
Litigation, initiating lawsuit, generally § 4, 31, 59, 62, 64, 75
Mailing auction notice § 42
Malicious prosecution lawsuit § 90
Malpractice action, professional § 96
Mechanic's or artisan's liens, assertion of § 68, 91, 92
Misuse of insurance overpayment § 56, 57
Mortgages § 32- 35
Motion for substitution of parties in action brought by debtor § 70
Motion to compel arbitration of insurance claim, filing of § 58
Municipal codes, enforcement of § 36
Notice of auction, mailing § 42
Notice of lien, filing of § 46
Obtaining operating order regarding debtor's business § 71
Official docket, initiating action to alter § 77
Offset of bank account § 20
Offset of freight payments § 65
Offset of rent due § 25
Operating order regarding debtor's business, obtaining § 71
Overpayment, insurance, misuse of § 56, 57
Overpayment of government benefits, failure to deliver § 16
Particular actions constituting willful violation of automatic stay § 4- 96
Partner's distributive share, retention of § 60
Partnership, precluding from prosecuting action § 63
Payments, freight, offset of § 65
Possession of debtor's real property, temporary, taking § 41
Practice pointers § 3

Precluding partnership from prosecuting action § 63
Preliminary matters § 1- 3
Prison wage withholding § 15
Product liability lawsuit § 93, 94
Professional malpractice action § 96
Proposed administrative order § 73
Real property, collection efforts involving § 25- 42
Real property, holding tax foreclosure sale of § 53
Receipt of insurance payments from debtor § 55
Recording judgment against real property § 37
Recording lien against real property § 38, 39
Recording mortgage or mortgage assignment, generally § 32, 33
Refusal to deliver or return freight § 69
Refusal to endorse insurance check § 54
Refusal to expunge lien on real property § 39
Refusal to issue airline ticket stock § 18
Refusal to remit accounts receivable § 6
Refusal to return levied funds § 49
Refusal to return seized collateral § 10, 11
Refusal to return seized property of debtor § 51
Remit accounts receivable, refusal to § 6
Rent due, offset of § 25
Repossessed financed property, failure to return § 9
Repossess financed property, attempt to § 7
Repossession of financed property, generally § 8
Restitution payments, withholding from debtor's prison wages § 15
Retention of partner's distributive share § 60
Return levied funds, refusal to § 49
Return or deliver freight, refusal to § 69
Return repossessed financed property, failure to § 9
Return seized collateral, refusal to § 10, 11
Return seized property of debtor, refusal to § 51
Sale, auction, conducting § 52
Sale of debtor's property on leased premises § 26
Sale of interest in debtor's assets § 12
Sale of stock securing loan § 61
Scope of annotation § 1
Securing loan, sale of stock § 61
Seized collateral, refusal to return § 10, 11
Seized property of debtor, refusal to return § 51
Seizure of debtor taxpayer's property § 50
Setoff of government payments § 13
Software program enhancements created by debtor, use of § 19
Stock, collection efforts involving § 60- 64
Substantive proceedings, other, pursuit of § 79- 96
Substitution of parties in action brought by debtor, motion for § 70
Summary and comment § 2
Summons regarding debtor taxpayer, third-party, issuance of § 43
Suspend ERISA benefits, threat to § 87

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Taking temporary possession of debtor's real property § 41
Tax collection efforts § 43- 53
Tax foreclosure sale, holding § 53
Tax levy, filing § 47, 48
Tax lien, filing § 45, 46
Tax refund, interference with § 44
Team name, improper use of § 17
Temporary possession of debtor's real property, taking § 41
Temporary restraining order, enforcement of § 72
Terminate lease, attempt to § 27
Third-party action, filing § 75, 76
Third-party summons regarding debtor taxpayer, issuance of § 43
Ticket stock, airline, refusal to issue § 18
Transfer of bank account funds § 23
Transfer of stock, initiating suit to enjoin § 62
Unlawful detainer lawsuit, initiating § 31
Use of software program enhancements created by debtor § 19
Withholding land contract installment payments § 40
Withholding of government payments § 14, 15
Wrongful conspiracy lawsuit § 95

STATUTORY TEXT

The relevant portion of 11 U.S.C.A. § 362 provides as follows:

§ 362. Automatic Stay

(a)-(g) [Omitted]

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Table of Cases

Supreme Court

Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 109 S. Ct. 2818, 106 L. Ed. 2d 76 (1989) — 3

First Circuit

A & J Auto Sales, Inc., In re, 223 B.R. 839 (D.N.H. 1998) — 50
Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265 (1st Cir. 1999) — 3
Nelson, In re, 994 F.2d 42 (1st Cir. 1993) — 3
Newport Offshore, Ltd., In re, 88 B.R. 566 (Bankr. D. R.I. 1988) — 13
Ocasio, In re, 272 B.R. 815 (B.A.P. 1st Cir. 2002) — 3
Vaca Brava Old San Juan, LLC, In re, 560 B.R. 376 (Bankr. D. P.R. 2016) — 3.5

Second Circuit

American Medical Utilization Management Corporation, In re, 494 B.R. 626 (Bankr. E.D. N.Y. 2013) — 5
AP Industries, Inc., In re, 117 B.R. 789 (Bankr. S.D. N.Y. 1990) — 89
Burgos, In re, 294 B.R. 210 (Bankr. D. Conn. 2003) — 30
Chateaugay Corp., In re, 112 B.R. 526 (S.D. N.Y. 1990) — 93
Chateaugay Corp., In re, 78 B.R. 713 (Bankr. S.D. N.Y. 1987) — 66

Crysen/Montenay Energy Co., In re, 902 F.2d 1098, 11 U.C.C. Rep. Serv. 2d 881 (2d Cir. 1990) — 64, 76

Elegant Concepts, Ltd., In re, 67 B.R. 914 (Bankr. E.D. N.Y. 1986) — 83, 90

Florio, In re, 229 B.R. 606 (S.D. N.Y. 1999) — 3

Heafitz, In re, 85 B.R. 274 (Bankr. S.D. N.Y. 1988) — 60

Hooker Investments, Inc., In re, 116 B.R. 375 (Bankr. S.D. N.Y. 1990) — 70

Liberty Mut. Ins. Co. v. Leroy Holding Co., Inc., 226 B.R. 746, 42 Fed. R. Serv. 3d 475 (N.D. N.Y. 1998) — 55

Maney v. Fischer, Pens. Plan Guide P 23942U, 1998 WL 151023 (S.D. N.Y. 1998) — 86

Marine Pollution Service, Inc., In re, 99 B.R. 210 (Bankr. S.D. N.Y. 1989) — 77

Neuman, In re, 128 B.R. 333 (S.D. N.Y. 1991) — 64

Operation Open City, Inc., In re, 170 B.R. 818 (S.D. N.Y. 1994) — 13

Ormond Beach Associates Ltd. Partnership, In re, 65 Fed. Appx. 340 (2d Cir. 2003) — 34

Saratoga Springs Plastic Surgery, PC., In re, 2005 WL 357207 (N.D. N.Y. 2005) — 84

Stockbridge Funding Corp., In re, 145 B.R. 797 (Bankr. S.D. N.Y. 1992) — 33

Tel-A-Communications Consultants, Inc., In re, 50 B.R. 250 (Bankr. D. Conn. 1985) — 8

Urban, In re, 1998 WL 9389 (S.D. N.Y. 1998) — 53

Third Circuit

Atlantic Business and Community Corp., In re, 901 F.2d 325 (3d Cir. 1990) — 26, 28

B. Cohen & Sons Caterers, Inc., In re, 108 B.R. 482 (E.D. Pa. 1989) — 26

B. Cohen & Sons, Inc., In re, 1991 WL 17874 (E.D. Pa. 1991) — 26

Boston Business Machines, In re, 87 B.R. 867 (Bankr. E.D. Pa. 1988) — 29

Coastal Group, Inc., Matter of, 100 B.R. 177 (Bankr. D. Del. 1989) — 81

Diamond Indus. Corp., In re, 265 B.R. 707 (Bankr. D. V.I. 2001) — 40

Edisto Resources Corp., Matter of, 158 B.R. 954 (Bankr. D. Del. 1993) — 64

Global Indus. Technologies, Inc., In re, 303 B.R. 753 (Bankr. W.D. Pa. 2004) — 59

Kaiser Aluminum Corp., In re, 303 B.R. 299 (D. Del. 2003) — 58

Lansdale Family Restaurants, Inc., In re, 977 F.2d 826 (3d Cir. 1992) — 65

Lehigh Valley Professional Sports Clubs, Inc., In re, 2001 WL 1188409 (Bankr. E.D. Pa. 2001) — 17

Micro Marketing Intern., Inc., In re, 150 B.R. 573 (Bankr. M.D. Pa. 1992) — 80, 82, 89, 95

Montgomery Ward, LLC, In re, 292 B.R. 49, 50 U.C.C. Rep. Serv. 2d 563 (Bankr. D. Del. 2003) — 80

New York City Shoes, Inc., In re, 78 B.R. 426 (Bankr. E.D. Pa. 1987) — 21

Orient River Investments, Inc., In re, 105 B.R. 790 (Bankr. E.D. Pa. 1989) — 21

Peregrine Systems, Inc., In re, 314 B.R. 31 (Bankr. D. Del. 2004) — 96

Solfanelli v. Corestates Bank, N.A., 203 F.3d 197, 40 U.C.C. Rep. Serv. 2d 914 (3d Cir. 2000) — 22

University Medical Center, In re, 973 F.2d 1065 (3d Cir. 1992) — 14

Wagner, In re, 74 B.R. 898 (Bankr. E.D. Pa. 1987) — 2, 3

Williams, In re, 100 B.R. 726 (Bankr. M.D. Pa. 1989) — 2

Fourth Circuit

Atlas Mach. & Iron Works, Inc., In re, 239 B.R. 322 (Bankr. E.D. Va. 1998) — 42

Bain, In re, 64 B.R. 581 (W.D. Va. 1986) — 92

Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289 (4th Cir. 1986) — 7

Georgetown Steel Co., LLC, In re, 318 B.R. 313 (Bankr. D. S.C. 2004) — 57
Hanna Coal Co., Inc. v. I.R.S., 218 B.R. 825 (W.D. Va. 1997) — 52

King, In re, 362 B.R. 226 (Bankr. D. Md. 2007) — 35

Mountaineer Coal Co., Inc., In re, 247 B.R. 633 (Bankr. W.D. Va. 2000) — 56

Red Ash Coal & Coke Corp., In re, 83 B.R. 399 (W.D. Va. 1988) — 5
Sage Richmond, LLC, In re, 297 B.R. 57, 2 A.L.R. Fed. 2d 759 (Bankr. E.D. Va. 2003) — 16

Wills, In re, 226 B.R. 369 (Bankr. E.D. Va. 1998) — 61

Fifth Circuit

Freemyer Industrial Pressure, Inc., In re, 281 B.R. 262 (Bankr. N.D. Tex. 2002) — 69
General Homes Corp., In re, 181 B.R. 870 (Bankr. S.D. Tex. 1994) — 74

Lile, In re, 161 B.R. 788 (S.D. Tex. 1993) — 50, 51

Nash Phillips/Copus, Inc., In re, 78 B.R. 798 (Bankr. W.D. Tex. 1987) — 91

U.S. Abatement Corp., Matter of, 39 F.3d 563 (5th Cir. 1994) — 81
Winchester, In re, 191 B.R. 93 (Bankr. N.D. Miss. 1995) — 13

Sixth Circuit

Academy Answering Service, Inc., In re, 100 B.R. 327 (N.D. Ohio 1989) — 48
Bello, In re, 612 B.R. 389 (Bankr. E.D. Mich. 2020) — 3.5, 70.5

Excel Engineering, Inc., In re, 224 B.R. 582 (Bankr. W.D. Ky. 1998) — 91
Falls Bldg., Ltd., In re, 94 B.R. 471 (Bankr. E.D. Tenn. 1988) — 63
Gurley, In re, 222 B.R. 124 (Bankr. W.D. Tenn. 1998) — 23, 37, 71
Huron Elec. Co., Inc., In re, 180 B.R. 496 (Bankr. N.D. Ohio 1995) — 6

Javens, In re, 107 F.3d 359, 1997 FED App. 0065P (6th Cir. 1997) — 36
Kolberg, In re, 199 B.R. 929 (W.D. Mich. 1996) — 11
LTV Steel Co., Inc., In re, 264 B.R. 455 (Bankr. N.D. Ohio 2001) — 45
Morgan, In re, 109 B.R. 297 (Bankr. W.D. Tenn. 1989) — 88
Republic Technologies Intern., LLC, In re, 283 B.R. 483 (Bankr. N.D. Ohio 2002) — 79

Seventh Circuit

A and C Elec. Co., Inc., In re, 188 B.R. 975 (Bankr. N.D. Ill. 1995) — 87
Alberto, In re, 119 B.R. 985, 18 Fed. R. Serv. 3d 273 (Bankr. N.D. Ill. 1990) — 78

Forty-Eight Insulations, Inc., In re, 54 B.R. 905 (Bankr. N.D. Ill. 1985) — 94
Mayberry, In re, 1996 WL 33406614 (Bankr. C.D. Ill. 1996) — 85
Prairie Trunk Ry., In re, 1991 WL 149601 (Bankr. N.D. Ill. 1991) — 12
Schonscheck, In re, 592 B.R. 679 (Bankr. E.D. Wis. 2018) — 3.5

Eighth Circuit

Hen House Interstate, Inc., In re, 136 B.R. 220 (Bankr. E.D. Mo. 1992) — 25

Jim Nolker Chevrolet-Buick-Oldsmobile, Inc., In re, 121 B.R. 20 (Bankr. W.D. Mo. 1990) — 6

Ketelsen, In re, 880 F.2d 990 (8th Cir. 1989) — 44

Knaus, In re, 889 F.2d 773 (8th Cir. 1989) — 10

Kroh Bros. Development Co., In re, 91 B.R. 525 (Bankr. W.D. Mo. 1988) — 27

Mewes, In re, 58 B.R. 124 (Bankr. D. S.D. 1986) — 20

Mueller, Matter of, 1994 WL 369573 (Bankr. D. Neb. 1994) — 65

National Marine Sales and Leasing, Inc., Matter of, 79 B.R. 442 (Bankr. W.D. Mo. 1987) — 29

NWFX, Inc., In re, 81 B.R. 500 (Bankr. W.D. Ark. 1987) — 75

Ogden Modulars, Inc., In re, 184 B.R. 575 (Bankr. E.D. Mo. 1995) — 6

Prime, Inc., In re, 44 B.R. 924 (Bankr. W.D. Mo. 1984) — 3

Sloan, In re, 1991 WL 1301288 (Bankr. D. N.D. 1991) — 32

U.S. Through Small Business Admin. v. Rinehart, 88 B.R. 1014 (D.S.D. 1988) — 13

Whitmarsh, In re, 383 B.R. 735 (Bankr. D. Neb. 2008) — 35

Ninth Circuit

Adkins, In re, 94 B.R. 703 (Bankr. D. Or. 1988) — 73

Camacho v. U.S., 190 B.R. 895 (D. Alaska 1995) — 49

Cinematronics, Inc., In re, 111 B.R. 892 (Bankr. S.D. Cal. 1990) — 72

Colortran, Inc., In re, 210 B.R. 823 (B.A.P. 9th Cir. 1997) — 67, 69

Goodman, In re, 991 F.2d 613 (9th Cir. 1993) — 31

International Forex of California, Inc., In re, 247 B.R. 284 (Bankr. S.D. Cal. 2000) — 75

Johnston, In re, 321 B.R. 262 (D. Ariz. 2005) — 84, 85

Karsh Travel, Inc., In re, 102 B.R. 778 (N.D. Cal. 1989) — 18

Leeds, In re, 589 B.R. 186 (Bankr. D. Nev. 2018) — 74

Lemons & Associates, Inc., In re, 69 B.R. 360 (Bankr. D. Nev. 1987) — 38

Mann, In re, 79 F.3d 1153 (9th Cir. 1996) — 41

MCEG Productions, Inc., In re, 133 B.R. 232 (Bankr. C.D. Cal. 1991) — 62

Spencer, In re, 123 B.R. 858 (Bankr. N.D. Cal. 1991) — 43

Zumbrun, In re, 88 B.R. 250 (B.A.P. 9th Cir. 1988) — 4

Tenth Circuit

American Freight System, Inc., In re, 1994 WL 114067 (D. Kan. 1994) — 68

T & D Management Co., In re, 40 B.R. 781, 19 Ed. Law Rep. 273 (Bankr. D. Utah 1984) — 3

Eleventh Circuit

Adell, In re, 328 B.R. 845 (Bankr. M.D. Fla. 2005) — 5

Carney & Sons Trucking Services, Inc., In re, 142 B.R. 497 (Bankr. M.D. Fla. 1992) — 54

Golan, In re, 600 B.R. 697 (Bankr. S.D. Fla. 2019) — 3.5

Health Science Products, Inc., In re, 181 B.R. 121 (Bankr. N.D. Ala. 1994) — 24

Henry, In re, 213 B.R. 45 (Bankr. M.D. Ala. 1997) — 15

In Matter of Allied Holdings, Inc., 355 B.R. 372 (Bankr. N.D. Ga. 2006) — 97

Livingston, In re, 1992 WL 12004360 (Bankr. S.D. Ga. 1992) — 35

Maas, Matter of, 69 B.R. 245 (Bankr. M.D. Fla. 1986) — 39

McGinty, In re, 119 B.R. 290 (Bankr. M.D. Fla. 1990) — 84

Miami General Hosp., Inc., Matter of, 77 B.R. 950 (Bankr. S.D. Fla. 1987) — 9
Santa Rosa Truck Stop, Inc., In re, 74 B.R. 641 (Bankr. N.D. Fla. 1987) — 46, 47, 49
Shickles, Matter of, 612 B.R. 444 (Bankr. N.D. Ala. 2019) — 3.5

Smith, In re, 180 B.R. 311 (Bankr. N.D. Ga. 1995) — 3

District of Columbia Circuit

U.S. v. Inslaw, Inc., 932 F.2d 1467 (D.C. Cir. 1991) — 19

I. PRELIMINARY MATTERS

§ 1. Scope

[Cumulative Supplement]

This annotation collects and analyzes those federal decisions which have addressed what constitutes a willful violation of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C.A. § 362(h), sufficient to award damages in Chapter 11 and 12 cases. Not included within the scope of this article are Chapter 13 cases and Chapter 7 cases discussing what constitutes a willful violation of the automatic stay. Similarly, those cases in which courts have addressed the remedies and damages available under 11 U.S.C.A. § 362(h) for violations of the automatic stay provisions are not within the scope of this annotation. [1]

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

CUMULATIVE SUPPLEMENT

Cases:

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) may impact the statute upon which this annotation is based—see Validity, Construction and Application of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 2005 A.L.R. Fed. 2d 3.

[Top of Section]

[END OF SUPPLEMENT]

§ 2. Summary and comment

The Bankruptcy Code, 11 U.S.C.A. § 362, clearly articulates the vital protections afforded a debtor in bankruptcy, specifically the automatic stay, which stops all collection efforts against the debtor during the pendency of the bankruptcy proceeding. [2] The expansion of the automatic stay was one of the major changes initiated by the 1978 Bankruptcy Reform Act. [3] Congress has recognized the importance of the automatic stay, declaring it one of the fundamental protections offered under the bankruptcy laws. [4] The imposition of the automatic stay serves several fundamental functions in bankruptcy, including protecting debtors from further collection efforts by their creditors, ensuring an equitable distribution of assets by protecting the creditors and making sure that no parties get more than their fair share of the bankruptcy estate, and ensuring that the liquidation and repayment of debts will be carried out in an orderly fashion. [5]

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Pursuant to 11 U.S.C.A. § 362(h), added as part of an amendment to the Bankruptcy Code in 1984,[6] a debtor who can prove injury due to a willful violation of the automatic stay can recover actual damages, including costs, attorney's fees, and potentially, punitive damages.[7] Recovery under this provision is mandatory, and therefore, the court has no discretion in deciding whether to award actual damages, but the question of whether to award punitive damages is squarely within the court's discretionary powers.[8] In order to prove a willful violation of the stay, courts will typically examine whether the violator had knowledge of the bankruptcy case, and whether the violator intended to carry out the proscribed act.[9] Intent to violate the stay is not required to prove a willful violation, as knowledge of the bankruptcy case puts the party on constructive notice of the automatic stay, and it is considered irrelevant whether a claimant had a good faith belief that it had a right to the bankruptcy estate property.[10]

Many federal courts have addressed the issue of what constitutes a willful violation of the automatic stay provisions in a Chapter 11 or 12 case sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h). Based on the facts and circumstances of each case, courts have considered whether the following types of general collection efforts constituted a willful violation of the automatic stay provisions in a Chapter 11 or 12 case: initiating a collection lawsuit (§ 4); continuing a collection lawsuit (§ 5); refusing to remit accounts receivable to a debtor (§ 6); attempting to repossess a debtor's financed property (§ 7); repossessing a debtor's financed property (§ 8); failing to return a debtor's repossessed property (§ 9); refusing to return a debtor's seized collateral, where some courts have found that such action constituted a willful violation of the automatic stay (§ 10), and others have determined that there was no willful violation (§ 11); selling an interest in a debtor's assets (§ 12); setting off government payments (§ 13); withholding government payments (§ 14); withholding from prison wages of a debtor (§ 15); failing to deliver an overpayment of government benefits (§ 16); improper use of a team name (§ 17); refusing to issue airline ticket stock (§ 18); and use of software program enhancements (§ 19). Courts have also examined whether these types of bank account interference constituted a willful violation of the automatic stay of a Chapter 11 or 12 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case: offset generally of a debtor's bank account (§ 20); an administrative freeze of a debtor's bank account (§ 21); attachment of funds in a debtor's bank account (§ 22); transfer of funds in a debtor's bank account (§ 23); and credit card chargebacks to a debtor's bank account (§ 24).

Collection efforts specifically involving real estate have also been considered, to determine whether they constituted a willful violation of the automatic stay of a Chapter 11 or 12 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case, including: an offset of rent due to a debtor (§ 25); the sale of a debtor's property on leased premises (§ 26); an attempt to terminate a debtor's lease (§ 27); an attempt to evict a debtor from leased premises (§ 28); evicting a debtor from leased premises, where some courts have decided that such action constituted a willful violation of the automatic stay (§ 29), but other courts have reached the opposite conclusion (§ 30); initiating an unlawful detainer lawsuit against a debtor tenant (§ 31); recording a mortgage on a debtor's real property (§ 32); recording a mortgage assignment on a debtor's real property (§ 33); pursuing a contempt proceeding against a debtor regarding a mortgage (§ 34); continuing a mortgage foreclosure proceeding against a debtor (§ 35); enforcing municipal codes regarding a debtor's real property (§ 36); recording a judgment against a debtor's real property (§ 37); recording a lien against a debtor's real property (§ 38); refusing to expunge a lien recorded against a debtor's real property (§ 39); withholding land contract installment payments from a debtor (§ 40); taking temporary possession of a debtor's real property (§ 41); and mailing an auction notice regarding a debtor's real property (§ 42). Similarly, courts have examined whether these types of tax collection efforts constituted a willful violation of the automatic stay of a Chapter 11 or 12 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case: issuing a third-party summons regarding a debtor (§ 43); interfering with a debtor's tax refund (§ 44); filing a tax lien against a debtor (§ 45); filing notice of a tax lien against a debtor (§ 46); filing a tax levy against a debtor, where some courts have found that there was a willful violation of the automatic stay (§ 47), while other courts have determined that there was no such willful violation (§ 48); refusing to return levied funds to a debtor (§ 49); seizing a debtor's property (§ 50); refusing to return a debtor's seized property (§ 51); conducting an auction sale of the debtor's property (§ 52); and holding a tax foreclosure sale of the debtor's property (§ 53).

Determining whether collection efforts involving insurance constituted a willful violation of the automatic stay of a Chapter 11 or 12 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), has been addressed by courts, based on the facts and circumstances of each case, with regard to these actions: refusing to endorse a debtor's insurance check (§ 54); receiving insurance payments from a debtor (§ 55); misusing the insurance overpayment of a debtor (§§ 56, 57);

filing a motion to compel arbitration of a debtor's insurance claim (§ 58); and initiating a lawsuit regarding a debtor's insurance policy (§ 59). Whether collection efforts involving the corporate stock of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), has also been discussed by courts, based on the facts and circumstances of each case, with regard to: retention of a debtor partner's distributive share (§ 60); sale of a debtor's stock securing a loan (§ 61); initiating suit to enjoin a debtor's transfer of stock (§ 62); precluding a debtor partnership from prosecuting an action (§ 63); and initiating a derivative lawsuit against a debtor (§ 64). In addition, courts have discussed whether collection efforts involving a Chapter 11 or 12 debtor's freight constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case, specifically with regard to these types of actions: the offset of a debtor's freight payments (§ 65); attempting to collect freight charges from a debtor's consignees (§ 66); asserting a lien against a debtor's freight (§ 67); asserting an artisan's lien on a debtor's freight vehicle (§ 68); and refusing to deliver or return a debtor's freight (§ 69).

Based on the facts and circumstances of each case, courts have also addressed whether the pursuit of other legal action constituted a willful violation of the automatic stay of a Chapter 11 or 12 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), including the pursuit of these procedural proceedings: moving for the substitution of parties in a debtor's lawsuit (§ 70); obtaining an operating order regarding a debtor's business (§ 71); enforcing a temporary restraining order against a debtor (§ 72); proposing an administrative order regarding a debtor (§ 73); filing an action on behalf of a debtor (§ 74); filing a third-party action against a debtor (§ 75); filing a third-party action against a third party related to a debtor (§ 76); initiating an action to alter the official docket in a debtor's case (§ 77); and pursuing contempt proceedings against a debtor (§ 78). Finally, courts have considered whether the pursuit of these substantive proceedings against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case: an age discrimination lawsuit (§ 79); a breach of contract lawsuit, where some courts have found that such action constituted a willful violation of the automatic stay (§ 80), and other courts have determined that there was no such willful violation (§ 81); a de facto merger lawsuit (§ 82); defamation and libel lawsuits (§ 83); divorce judgment enforcement, where some courts have decided that there was a willful violation of the automatic stay (§ 84), but others have concluded that such action did not constitute a willful violation (§ 85); an ERISA lawsuit (§ 86); a threat to suspend the ERISA benefits of a debtor's employees (§ 87); a Fair Labor Standards Act lawsuit (§ 88); a fraudulent transfer of assets lawsuit (§ 89); a malicious prosecution lawsuit (§ 90); mechanic's lien enforcement, where some courts have found that such action constituted a willful violation of the automatic stay (§ 91), while others have reached the opposite conclusion (§ 92); a product liability lawsuit, where some courts have determined that there was a willful violation of the automatic stay (§ 93), and other courts have decided that no such willful violation had occurred (§ 94); a wrongful conspiracy lawsuit (§ 95); and a professional malpractice action (§ 96).

§ 3. Practice pointers

Under the Bankruptcy Code, 11 U.S.C.A. § 362, a debtor has the burden of providing a creditor with actual notice of the automatic stay, and once the creditor receives actual notice, the burden shifts to the creditor to prevent violations of the automatic stay.[11] A debtor seeking to recover damages for willful violation of the automatic stay, pursuant to 11 U.S.C.A. § 362(h), does not have to prove his or her case by clear and convincing evidence, but rather the clear and convincing standard applies only when the debtor seeks an adjudication of contempt for violation of automatic stay.[12] Section 362(h) did not abrogate the civil contempt remedy traditionally available to aggrieved debtors for violations of the automatic stay.[13] The state of mind on the part of a creditor which the debtor must demonstrate to recover actual damages under § 362(h) is no different than state of mind which the debtor has to demonstrate to recover such damages in a contempt proceeding, and to the extent that the willfulness language in the statute requires a higher state of mind, that higher standard is relevant only in determining the propriety of an award of punitive damages.[14]

The United States Supreme Court has held that 11 U.S.C.A. § 362(h) does not apply to states because it contains no trigger words such as "creditor," "entity," or "governmental unit."[15] Evidence that a debtor's former wife had not willfully violated an automatic stay, in seeking to enforce rights granted by a divorce judgment against property which the debtor had transferred to his father prepetition, was held to be so strong as to warrant the imposition of sanctions against the debtor and the debtor's

attorneys for bringing a frivolous appeal from a bankruptcy court order dismissing the debtor's suit for damages, according to F.R.A.P. Rule 38.[16]

§ 3.5. General principles

[Cumulative Supplement]

The following authority considered general principles relating to the "willful violation" of the automatic stay provision of 11 U.S.C.A. § 362(k) in the context of Chapter 11 or 12 bamkruptcies.

CUMULATIVE SUPPLEMENT

Cases:

In order to prove a "willful" violation of the automatic stay, plaintiff must prove that defendant knew about the stay and intended the actions which constituted the violation. 11 U.S.C.A. § 362(k). In re Vaca Brava Old San Juan, LLC, 560 B.R. 376 (Bankr. D. P.R. 2016).

A violation of the automatic stay is willful as may warrant award of damages if the creditor deliberately carried out the prohibited act with knowledge of the debtor's bankruptcy case. 11 U.S.C.A. § 362(k)(1). In re Bello, 612 B.R. 389 (Bankr. E.D. Mich. 2020).

Stay violation is not "willful," and thus not sufficient to support damages award, without at least some minimal awareness of pending bankruptcy proceeding. 11 U.S.C.A. § 362(k). In re Schonscheck, 592 B.R. 679 (Bankr. E.D. Wis. 2018).

Violations of the automatic stay are willful if the violator (1) knew of the automatic stay and (2) intentionally committed the violative act, regardless of whether the violator specifically intended to violate the stay. 11 U.S.C.A. § 362(k). Matter of Shickles, 612 B.R. 444 (Bankr. N.D. Ala. 2019).

A violation of the automatic stay is willful if the violator knew of the bankruptcy case and intentionally committed the violative act; it does not matter whether the violator specifically intended to violate the stay. 11 U.S.C.A. § 362. In re Golan, 600 B.R. 697 (Bankr. S.D. Fla. 2019).

[Top of Section]

[END OF SUPPLEMENT]

II. PARTICULAR ACTIONS CONSTITUTING WILLFUL VIOLATION OF AUTOMATIC STAY OF CHAPTER 11 OR 12 DEBTOR

A. Collection Efforts Generally

§ 4. Initiating collection lawsuit

Whether initiating a collection lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), has been considered, based on the facts and circumstances.

Following the motion of a Chapter 11 debtor, the general partner in several limited partnerships, for the imposition of sanctions against creditors' law firm for a willful violation of the automatic stay, the court in In re Zumbrun, 88 B.R. 250, 18 Bankr. Ct. Dec. (CRR) 122 (B.A.P. 9th Cir. 1988), determined that the bankruptcy court had properly imposed sanctions against the creditors, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the law partnership representing the creditors had commenced a state court collection action after receiving notice of the debtor's bankruptcy filing. The law firm had also received sufficient notice of the debtor's motion for sanctions against it, although the motion specifically named only one partner as a party, in that the partnership was liable for acts of the partners that arose within the ordinary course of business, the court noted.

§ 5. Continuing collection lawsuit

[Cumulative Supplement]

There is authority, based on the particular facts and circumstances at issue, determining whether a violation of the automatic stay provision of 11 U.S.C.A. § 362(h) through the continuing prosecution of a collection lawsuit was "willful" within the meaning of the statute.

When a Chapter 11 debtor brought an adversary proceeding to recover for a state court judgment creditor's alleged violation of the automatic stay, the court in In re Red Ash Coal & Coke Corp., 83 B.R. 399, 18 Collier Bankr. Cas. 2d (MB) 1414 (W.D. Va. 1988), found that the bankruptcy court's finding that the creditor had willfully violated the stay, in continuing a collection lawsuit against the debtor and obtaining a state court judgment, was clearly erroneous, notwithstanding that the creditor had received notice of the debtor's bankruptcy petition, so that no sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h). No doubt existed that the creditor had technically violated the automatic stay by obtaining the default judgment against the debtor, commented the court, but contrary to the bankruptcy court's conclusions, the court was not convinced that the creditor's actions were willful. The evidence demonstrated that the creditor had employed local counsel unfamiliar with bankruptcy practice, and that although counsel had received notice of the debtor's bankruptcy petition, they did not have notice of its removal petition, observed the court. In drafting the default order, however, all local counsel had before them were the removal petitions, explained the court, and accordingly, they incorrectly thought that they had omitted the names of all the companies in bankruptcy. Local counsel was further confused by the similarity of the names of the related companies, believed the court. Upon consideration of the record, the court was convinced that no evidence existed that the creditor had willfully violated the stay or had failed to act in good faith, that the creditor's technical violation of the stay was inadvertent, and that the bankruptcy court's imposition of sanctions therefore was clearly erroneous.

CUMULATIVE SUPPLEMENT

Cases:

Attorney's inaction in failing to promptly act to vacate restraining notice after he was specifically advised of debtor's Chapter 11 filing was in nature of willful violation of automatic stay, even though attorney may have doubted whether debtor had in fact filed for bankruptcy, and though, at time trustee's counsel contacted attorney to advise him of debtor's bankruptcy, he was on vacation in Florida with his children; attorney did not contact clerk's office in attempt to verify that bankruptcy petition was filed, but instead decided to wait until he returned from vacation, despite fact that he was not in remote area without access to telephone or the internet and had been advised that, unless restraining notice were vacated, debtor would not be able to make payroll. 11 U.S.C.A. § 362(a). In re American Medical Utilization Management Corporation, 494 B.R. 626 (Bankr. E.D. N.Y. 2013).

Counsel for judgment creditor willfully violated the automatic stay, thus entitling debtor to monetary sanctions, including attorney fees and costs, when, following entry of order by federal district court in Florida which reversed a bankruptcy court order denying judgment creditor's motion to dismiss Chapter 11 case and granted the motion to dismiss, counsel sought, and ultimately obtained, appointment of a receiver for debtor's property from a Michigan bankruptcy court; district court's mere entry of order granting the motion to dismiss did not have the effect of dismissing the case, counsel, as an expert bankruptcy attorney, should have been aware that the case was never dismissed, even if in doubt, counsel should have sought stay relief from Florida bankruptcy court, and record did not support counsel's assertion that he relied in good faith on position taken by

Michigan bankruptcy court that the Chapter 11 case had been dismissed. Bankr.Code, 11 U.S.C.A. 362. In re Adell, 328 B.R. 845 (Bankr. M.D. Fla. 2005).

[Top of Section]

[END OF SUPPLEMENT]

§ 6. Refusal to remit accounts receivable

Based on the facts and circumstances, the courts in the following cases have determined whether refusing to remit accounts receivable to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Attorney's fees which were incurred in a Chapter 11 debtor's attempt to collect its accounts receivable were warranted, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), for a creditor's willful violation of the automatic stay, the court concluded in In re Huron Elec. Co., Inc., 180 B.R. 496, 33 Collier Bankr. Cas. 2d (MB) 658 (Bankr. N.D. Ohio 1995), where the creditor had notice of the debtor's bankruptcy, but refused to remit the accounts receivable balance due to the debtor, despite the fact that the debtor's business was teetering on the brink of insolvency, liquidation, and unemployment of all its employees.

In In re Ogden Modulars, Inc., 184 B.R. 575, 27 Bankr. Ct. Dec. (CRR) 688 (Bankr. E.D. Mo. 1995), when a Chapter 11 debtor filed a motion for contempt and sanctions against creditors based upon the creditors' postpetition collection activity of a prepetition debt, the court concluded that the creditors had willfully violated the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by refusing to relinquish the debtor's accounts receivable, since the creditors had refused to cease collection activity with respect to the prepetition debt following written notice of the commencement of the debtor's bankruptcy case, had refused to provide an accurate and complete accounting of assets collected postpetition, and had refused to turn over estate property after the reasonable demand of the debtor. Letters had been sent to the debtor's receivable accounts directing that future payments involving the debtor were to be made directly to the trustee, noted the court, but the creditors had refused to take any action to reverse their directives in prepetition letters, had collected and received payments from the debtor's receivable accounts, and had accepted the return of certain personal property that had originally been under lease from the debtor.

For right to damages purposes under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court found in In re Jim Nolker Chevrolet-Buick-Oldsmobile, Inc., 121 B.R. 20, 21 Bankr. Ct. Dec. (CRR) 26 (Bankr. W.D. Mo. 1990), a creditor had deliberately and willfully violated the automatic stay when, in response to a demand letter by a Chapter 11 debtor's counsel to collect the debtor's outstanding accounts receivable, the creditor had offset and tendered a check only for the amount due after deducting the offset. Exercising its equitable powers, the court believed it had the authority to punish the creditor for its violation of the automatic stay by availing itself of a legally unavailable self-help remedy.

§ 7. Attempt to repossess financed property

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has decided whether violation of the automatic stay by attempting to repossess financed property from a Chapter 11 or 12 debtor was willful, based on the facts and circumstances.

Sanctions had been properly assessed against a creditor lessor pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), for a willful violation of automatic stay, the court found in Budget Service Co. v. Better Homes of Virginia, Inc., 804 F.2d 289, 15 Bankr. Ct. Dec. (CRR) 666, 15 Collier Bankr. Cas. 2d (MB) 1025, Bankr. L. Rep. (CCH) ¶ 71494 (4th Cir. 1986), based on ample evidence to support the conclusion that the creditor lessor knew of a debtor's pending Chapter 11 bankruptcy petition, yet had intentionally attempted to repossess the debtor's vehicles in spite of this knowledge.

§ 8. Repossession of financed property—Generally

The following authority has determined whether repossession of property financed by a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

In In re Tel-A-Communications Consultants, Inc., 50 B.R. 250, 13 Bankr. Ct. Dec. (CRR) 119, 12 Collier Bankr. Cas. 2d (MB) 1375, Bankr. L. Rep. (CCH) ¶ 70600 (Bankr. D. Conn. 1985), where a Chapter 11 debtor sought an order for turnover of a repossessed leased vehicle and sanctions for violation of the automatic stay, the court concluded that the lessor's repossession of the vehicle was a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), considering unrefuted testimony that the lessor's president had actual knowledge that the debtor had filed a bankruptcy petition before and at the time he ordered the vehicle to be repossessed, and that there was ample basis for concluding that the president had little regard for the authority of bankruptcy law. Notwithstanding the lessor's claim that it had acted in the good faith belief that the postpetition repossession was justified, the facts clearly demonstrated that the lessor's agents had not only acted intentionally but also with arrogant defiance of federal law, believed the court.

§ 9. Repossession of financed property—Failure to return repossessed property

Whether failing to return the repossessed financed property of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), has been considered by the following authority, based on the facts and circumstances.

A hearing was held to show cause why the lessor of a minivan should not be held in contempt for violation of the automatic stay, and the court in Matter of Miami General Hosp., Inc., 77 B.R. 950 (Bankr. S.D. Fla. 1987), determined that the lessor of the minivan had willfully violated the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by removing the van from the possession, custody and control of a Chapter 11 bankruptcy trustee without authorization, and in failing to return it upon demand. The lessor was on telephone notice that the order for relief had been entered in the bankruptcy case, that the trustee had been appointed and that the automatic stay prohibited the repossession of the minivan without authorization, observed the court, and after the minivan had been taken by the lessor, the lessor was given an opportunity to return it before the trustee's motion for an order to show cause was filed, but had failed to do so, all of which the court found to be in willful violation of the automatic stay.

§ 10. Refusal to return seized collateral—Willful violation found

Violation of the automatic stay by refusing to return the seized collateral of a Chapter 11 or 12 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has concluded, based on the facts and circumstances.

Where a Chapter 11 debtor purchased certain merchandise from a lumber company on credit, and upon nonpayment, the creditor had obtained a judgment in a state court and thereafter had filed a writ of execution under which the sheriff had seized grain and equipment belonging to the debtor, then while the property was in the possession of the sheriff before the sale, the debtor had filed for bankruptcy, the court in In re Knaus, 889 F.2d 773, 19 Bankr. Ct. Dec. (CRR) 1691, Bankr. L. Rep. (CCH) ¶ 73117 (8th Cir. 1989), found that the creditor's violation of the automatic stay, by failing to turn over the assets seized prepetition, was willful, thereby warranting an award of attorney's fees according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), as the debtor had informed the creditor of his bankruptcy filing and had requested turnover, but the creditor had refused deliberately and with knowledge of the petition. The evidence showed that the creditor's president had attempted to persuade the debtor's church elders to excommunicate the debtor from the church for filing the bankruptcy petition, added the court.

§ 11. Refusal to return seized collateral—Willful violation not found

Refusing to return the seized collateral of a Chapter 11 or 12 debtor was not a willful violation of the automatic stay, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has found, based on the facts and circumstances.

Chapter 12 debtors brought a proceeding against a creditor that had a crop lien on their soybeans, alleging that the creditor had violated the automatic stay by failing to turn over the seized soybeans postpetition and continuing to exercise control over property of the estate, and the court in In re Kolberg, 199 B.R. 929 (W.D. Mich. 1996), found that the creditor had not willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the creditor had not acted egregiously or in bad faith, but instead had justifiably retained its possession of the soybeans to protect its security interest in the crop. After obtaining adequate protection for its security interest, the creditor had no longer withheld the soybeans, the court noted, and the Chapter 12 trustee testified that the creditor had turned over the soybeans on court order.

§ 12. Sale of interest in debtor's assets

The willfulness of a violation of the automatic stay, based on the sale of an interest in a Chapter 11 or 12 debtor's collateral, the following authority has decided, based on the facts and circumstances, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The purchaser of assets of a Chapter 11 debtor moved to hold a secured creditor in contempt for violating the automatic stay and sought sanctions, and the court in In re Prairie Trunk Ry., 1991 WL 149601 (Bankr. N.D. Ill. 1991), concluded that the secured creditor's selling of its interest in various railroad cars to enforce its perfected security interest, without court approval, was a willful violation of the automatic stay, as required for an award of damages under the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the debtor had effectively consented to the sales, since the secured creditor had not obtained court authorization, it had acted with knowledge of the pending bankruptcy, and its actions were done deliberately. The secured creditor should have filed a motion for relief from the automatic stay and received an appropriate order before proceeding to liquidate its interest in the collateral, the court clarified.

§ 13. Setoff of government payments

The following courts have decided, based on the facts and circumstances of each case, whether the setoff of government payments to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

In In re Newport Offshore, Ltd., 88 B.R. 566, 17 Bankr. Ct. Dec. (CRR) 1337, 19 Collier Bankr. Cas. 2d (MB) 591 (Bankr. D. R.I. 1988), where a Chapter 11 debtor sought to hold the United States Army in contempt for the Army's alleged violation of the automatic stay and of an order enjoining it from taking any steps to enforce claims against the debtor, the court decided that the Army's willful violation of the automatic stay, for purposes of the Bankruptcy Code, 11 U.S.C.A. § 362(h), by attempting to setoff the Army's claims against other government payments owing to the debtor, subjected it to monetary and other sanctions pursuant to the contempt powers of the bankruptcy court.

A Chapter 11 debtor's official unsecured creditors committee initiated a turnover proceeding against the state to recover funds which were the subject of the state's alleged improper setoff in violation of the automatic stay, and the court in In re Operation Open City, Inc., 170 B.R. 818, 25 Bankr. Ct. Dec. (CRR) 1659, Bankr. L. Rep. (CCH) ¶ 76090 (S.D. N.Y. 1994), concluded that where rather than relying on the authority of the bankruptcy court to determine the appropriate distribution of the funds of the bankrupt, the state chose to setoff monies owed to it by the debtor against payments due to the debtor, a nonprofit organization which rehabilitated residential buildings, this constituted a willful violation of the automatic stay under the Bankruptcy Code, 11 U.S.C.A. § 362(h). By withholding money when making full and final payment to the debtor, by

way of the setoff, the state ran afoul of the Bankruptcy Code, 11 U.S.C.A. § 362(a)(7), the court explained. Although the state contended that the debtor had acquiesced in the retention of the funds and thus, there was no violation of the automatic stay, the court found this argument unpersuasive, because in bankruptcy law, even if a setoff is authorized by the parties, such setoff is expressly forbidden after a debtor files a bankruptcy petition.

Chapter 12 debtor farmers filed an adversary proceeding against the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC), alleging willful violation of the automatic stay as the result of a setoff against soybean disaster payments of an overpayment of rice disaster payments, and the court in In re Winchester, 191 B.R. 93 (Bankr. N.D. Miss. 1995), determined that for assessment of attorney's fees purposes under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the CCC and the ASCS had willfully violated the automatic stay when they caused amounts owed to the Chapter 12 debtor farmer on a soybean disaster entitlement to be withheld, on the ground that the farmer was not entitled to advance rice payments made under a rice disaster program, without court approval. The government agencies had never tendered money to the registry of the court or to the Chapter 12 trustee, the court clarified, and the setoff had occurred at a time before the final administrative determination had been made as to the correctness of a county committee's decision to deny the farmer the rice disaster payment.

The United States Small Business Administration (SBA) sought to setoff the amount of Chapter 11 debtors' Agricultural Stabilization and Conservation Service—Commodity Credit Corporation check against the amount the debtors owed the SBA, and the court in U.S. Through Small Business Admin. v. Rinehart, 88 B.R. 1014 (D.S.D. 1988), judgment aff'd in part, rev'd in part on other grounds, 887 F.2d 165, 19 Bankr. Ct. Dec. (CRR) 1508, 21 Collier Bankr. Cas. 2d (MB) 917, Bankr. L. Rep. (CCH) ¶ 73125 (8th Cir. 1989), determined that in retaining the debtors' check without obtaining relief from the automatic stay, the SBA had willfully violated the automatic stay, and the debtors were therefore entitled to damages, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 14. Withholding government payments—Generally

The following authority has determined, based on the facts and circumstances, whether withholding government payments due to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The Department of Health and Human Services' (HHS) violation of a hospital's Chapter 11 automatic stay by withholding interim payments due for Medicare services rendered postpetition in order to recover prepetition overpayments, the court concluded in In re University Medical Center, 973 F.2d 1065, 38 Soc. Sec. Rep. Serv. 482, 23 Bankr. Ct. Dec. (CRR) 628, 27 Collier Bankr. Cas. 2d (MB) 800, Bankr. L. Rep. (CCH) ¶ 74791 (3d Cir. 1992) (rejected on other grounds by, In re St. Johns Home Health Agency, Inc., 173 B.R. 238, 46 Soc. Sec. Rep. Serv. 52 (Bankr. S.D. Fla. 1994)), was not willful so as to entitle the debtor hospital to attorney's fees and costs under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the Secretary of HHS had persuasive legal authority supporting his position, and the actions of the Secretary were not in defiance of the court order.

§ 15. Withholding government payments—Prison wage withholding

Based on the facts and circumstances, the following authority has determined whether withholding restitution payments from a Chapter 11 or 12 debtor's prison wages constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A Chapter 11 debtor inmate began participating prepetition in a voluntary financial responsibility program, whereby he contributed a percentage of his prison wages toward payment of court-ordered restitution in exchange for specified privileges, and subsequently allowed the restitution payments to continue postpetition, so that when the debtor filed an adversary proceeding seeking damages for the Bureau of Prisons' alleged automatic stay violation in withholding restitution payments from his wages and for the Department of Health and Human Services' acceptance of the restitution payments, the court in In re Henry, 213

B.R. 45 (Bankr. M.D. Ala. 1997), found that even if the wage withholding and acceptance of such payments could be construed as a stay violation, the payments would at most constitute a mere technical violation, not a willful violation for which damages could issue under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 16. Failure to deliver overpayment of government benefits

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has decided whether violation of the automatic stay by failing to deliver an overpayment of government benefits to a Chapter 11 or 12 debtor was willful, based on the facts and circumstances.

The disbursing agent for a Chapter 11 estate moved for an award of actual and punitive damages for an alleged willful automatic stay violation by an entity that was charged with the management and operation of the Chapter 11 debtor's nursing care facility, and the court in In re Sage Richmond, LLC, 297 B.R. 57, 41 Bankr. Ct. Dec. (CRR) 216 2 A.L.R. Fed. 2d 759 (Bankr. E.D. Va. 2003), concluded that the good faith of the entity, when it returned to the state Department of Medical Assistance Services an overpayment of benefits relating to medical services performed by the debtor, did not preclude an award of damages against it for willfully violating the automatic stay by failing to deliver this overpayment to the debtor, under the Bankruptcy Code, 11 U.S.C.A. § 362(h). A creditor may willfully violate automatic the stay, even if the creditor believes itself justified in taking the action found to be violative of stay, the court held.

§ 17. Improper use of team name

The following authority considered, based on the facts and circumstances, whether the improper use of a team name belonging to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Before the court in In re Lehigh Valley Professional Sports Clubs, Inc., 2001 WL 1188409 (Bankr. E.D. Pa. 2001), was the motion of a baseball league for a declaration that a debtor's automatic stay did not apply, and the motion of an official committee of unsecured creditors for damages against the baseball league for violation of the automatic stay, and the court decided that the baseball league's violation of the stay, by improperly using the debtor's team name while aware of the pending Chapter 11 case and the stay imposed, was willful, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h). Declaring the baseball league's actions wrongful and requiring the league to prove its entitlement to operate the team using the debtor's property, including compensating the debtor for its use of the property, did not impose a nonsensical result, such as the repetition of a sheriff's sale on a defaulted mortgage where the outcome would be the same with the imposition of unnecessary costs, the court believed. Rather, the refusal to validate the baseball league's unlawful conduct would allow the court to assess the damages, if any, to the debtor from the league's wrongful action and determine the appropriate course of action for the balance of the baseball season, the court concluded.

§ 18. Refusal to issue airline ticket stock

The willfulness of a violation of the automatic stay, based on the refusal to issue airline ticket stock to a Chapter 11 or 12 debtor, has been decided by the following authority, based on the facts and circumstances, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

When an independent travel agency, a Chapter 11 debtor, brought an action seeking to assume a contract with an airline ticket clearinghouse and alleging that the clearinghouse had violated the automatic stay, the court in In re Karsh Travel, Inc., 102 B.R. 778 (N.D. Cal. 1989), appeal dismissed, judgment vacated in part on other grounds, 942 F.2d 792 (9th Cir. 1991), concluded that the finding that the airline ticket clearinghouse had violated automatic the stay by refusing to issue new ticket stock to the debtor travel agent unless its prepetition debts were paid, thereby warranting an imposition of damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), was sufficiently supported by evidence that the clearinghouse knew of the stay and that its acts which violated the stay were intentional.

§ 19. Use of software program enhancements

The following authority has decided whether using software program enhancements created by a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

A software developer filed for Chapter 11 reorganization and brought an adversary proceeding to establish its proprietary interest in computer program enhancements it had developed through the use of private funds, seeking to enjoin the Department of Justice (DOJ) from misappropriating the enhancements in alleged violation of the parties' licensing agreement, and the court in U.S. v. Inslaw, Inc., 932 F.2d 1467, 21 Bankr. Ct. Dec. (CRR) 1077, Bankr. L. Rep. (CCH) ¶ 74056, 37 Cont. Cas. Fed. (CCH) ¶ 76104 (D.C. Cir. 1991), concluded that the DOJ's continuing use of the intangible enhancements to the software program after the software developer had filed for bankruptcy would not be considered an exercise of control over property of the estate that would support a finding of willful violation of the stay, under the Bankruptcy Code, 11 U.S.C.A. § 362(h), by the DOJ.

B. Bank Account Interference

§ 20. Offset generally

Based on the facts and circumstances, the following authority has determined whether the offset of a Chapter 11 or 12 debtor's bank account constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

On a complaint for violation of the automatic stay by a creditor bank and for turnover of property to an estate filed on behalf of Chapter 11 debtors, the court in In re Mewes, 58 B.R. 124 (Bankr. D. S.D. 1986), found that the bank's setoff of the debtors' ranch account was not willful within the meaning of the Bankruptcy Code, 11 U.S.C.A. § 362(h), which provided for damages to an individual injured by willful violation of the automatic stay, because neither bank officers nor bank employees had actual notice of the debtors' Chapter 11 filing prior to the offset.

§ 21. Administrative freeze

The courts in the following cases have decided whether placing an administrative freeze on the bank account of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

In In re Orient River Investments, Inc., 105 B.R. 790 (Bankr. E.D. Pa. 1989), a Chapter 11 debtor brought an action against a bank, alleging wrongful setoff and seeking the turnover of funds in the debtor's accounts, and the court concluded that the bank's violation of the automatic stay was willful, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the bank had had knowledge of the debtor's bankruptcy filing and had consciously chosen nevertheless to administratively freeze the debtor's bank accounts. The bank could not exercise a right of setoff as to postpetition deposits made by the debtor and had no right of setoff as to amounts deposited by the debtor prepetition which were in excess of the bank's prepetition claims against the debtor, stated the court.

When a bank, which had administratively frozen funds deposited with it against delinquent accounts owed to it by a Chapter 11 debtor, moved for relief from the automatic stay and to prevent the debtor from using cash collateral without providing adequate protection, the court in In re New York City Shoes, Inc., 78 B.R. 426, 16 Bankr. Ct. Dec. (CRR) 596, 17 Collier Bankr. Cas. 2d (MB) 694 (Bankr. E.D. Pa. 1987), found that although the bank could freeze the Chapter 11 debtor's prepetition deposits, to which the bank arguably had a valid right of setoff, and thus to which it had a quasi-security interest, until the bank was

provided with adequate protection, the bank's freeze of postpetition deposits was a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), absent court authorization.

§ 22. Attachment of funds

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether the attachment of a Chapter 11 or 12 debtor's bank account was a willful violation of the automatic stay, based on the facts and circumstances.

Chapter 11 debtors sued a secured creditor, a bank, alleging a willful violation of the automatic stay, and the court in Solfanelli v. Corestates Bank, N.A., 203 F.3d 197, 35 Bankr. Ct. Dec. (CRR) 163, 40 U.C.C. Rep. Serv. 2d 914 (3d Cir. 2000), concluded that the creditor bank's violation of the automatic stay, in attaching the Chapter 11 debtors' bank accounts containing postpetition funds, was willful, for purposes of awarding punitive damages for the stay violation under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the bank had been aware of the stay and had intentionally garnished the accounts containing postpetition funds.

§ 23. Transfer of funds

The following authority decided, based on the facts and circumstances, the willfulness of a violation of the automatic stay, based on transferring the bank account funds of a Chapter 11 or 12 debtor for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A Chapter 7 debtor brought an adversary proceeding against the trustee of the separate bankruptcy estate of her husband, and the court in In re Gurley, 222 B.R. 124 (Bankr. W.D. Tenn. 1998), as amended on reh'g, (June 15, 1998), found that the trustee's causing $289,000 to be transferred to himself from the debtor's bank account, although a technical violation of the automatic stay, did not constitute a willful violation of the stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), where despite the fact that the trustee had knowledge of the debtor's bankruptcy petition at the time he caused the transfer of funds, the trustee's actions were taken based upon a legitimate dispute concerting the funds.

§ 24. Credit card chargeback

The following authority has considered, based on the facts and circumstances, whether debiting the bank account of a Chapter 11 or 12 debtor to cover credit card charge backs constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Following a Chapter 11 debtor's motion for injunctive relief and to compel turnover and to hold a creditor bank in contempt, after the bank debited the debtor's bank accounts for charge backs under a credit card merchant agreement due to a customer's refusal to pay for equipment purchased from the debtor with a charge card, the court in In re Health Science Products, Inc., 181 B.R. 121 (Bankr. N.D. Ala. 1994), decided that the bank had not willfully violated the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by debiting the debtor's bank account for the credit card chargebacks, where it appeared that the debtor had knowingly acquiesced to such transfers by performing under the credit card merchant agreement postpetition and allowing the bank to do likewise.

C. Collection Efforts Involving Real Estate

1. Leases

§ 25. Offset of rent due

Based on the facts and circumstances, the following authority has determined whether the offset of rent due to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

In In re Hen House Interstate, Inc., 136 B.R. 220, 22 Bankr. Ct. Dec. (CRR) 850 (Bankr. E.D. Mo. 1992), where a lessor which had also leased back a portion of the premises to a Chapter 11 debtor filed a motion, seeking to offset its rent due to the debtor with an unpaid prorated portion of the previous quarter's rent allegedly owed to it by the debtor, the court concluded that the lessor had willfully violated the automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), when it sought to offset the postpetition rent it owed the debtor with the prorated portion of the quarterly rent attributable to the part of the quarter that had expired before the debtor filed its bankruptcy petition.

§ 26. Sale of debtor's property on leased premises

The courts in the following cases have decided, based on the facts and circumstances, whether the sale of a Chapter 11 or 12 debtor's property located on leased premises constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Following a Chapter 11 debtor tenant's bringing suit, seeking damages for a creditor landlord's violation of the automatic stay, the court in In re B. Cohen & Sons, Inc., 1991 WL 17874 (E.D. Pa. 1991), judgment aff'd without reported opinion, 944 F.2d 896 (3d Cir. 1991), concluded that since the landlord had been aware of the bankruptcy proceedings at all times relevant to the action, the landlord had willfully violated the stay order issued in the underlying bankruptcy proceedings, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), by selling various articles of the debtor's property that remained on the leased premises after the lease had expired. Despite the landlord creditor's argument that there was no evidence that it had engaged in any intentional or deliberate act done with knowledge that the act was in violation of the stay, the court found that there was little doubt that the actions of the landlord were willful within the meaning of section 362(h), as it had been interpreted by the court. The landlord clearly knew about the debtor's bankruptcy, clarified the court, and certain of its agents were completely aware of the automatic stay and its impact, having litigated two motions seeking relief from the same.

Comment

The court in *B. Cohen § Sons* noted that although it agreed with the landlord creditor that an act performed with the specific intent of violating the stay could be a willful violation of the stay provisions, the court did not read In re Atlantic Business and Community Corp., 901 F.2d 325, 20 Bankr. Ct. Dec. (CRR) 637, 22 Collier Bankr. Cas. 2d (MB) 1176, Bankr. L. Rep. (CCH) ¶ 73341 (3d Cir. 1990) (rejected on other grounds by, In re Just Brakes Corporate Systems, Inc., 108 F.3d 881, 37 Collier Bankr. Cas. 2d (MB) 985, Bankr. L. Rep. (CCH) ¶ 77332 (8th Cir. 1997)), see § 28, to suggest that such a finding was the only means on which a willfulness determination could be predicated. Under *Atlantic Business*, if the landlord's actions violating the stay were intentional, or if such acts were conducted with intent to violate the stay, a finding of willfulness would be appropriate, held the court.

Violation of a Chapter 11 debtor lessee's automatic stay by a lessor was willful, warranting an award under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court found in In re B. Cohen & Sons Caterers, Inc., 108 B.R. 482 (E.D. Pa. 1989), where, having obtained relief from the stay to regain possession of the leased premises, the lessor creditor had disposed of the debtor's property on the premises in satisfaction of a rent arrearage. The court held that violation of the automatic stay is willful, for purposes of awarding damages, if it is deliberate or intentional, and has been found where a party acts with knowledge of

a pending bankruptcy proceeding. Relief from the stay in this case was simply for the landlord to regain possession, not for it to convert and destroy the debtor's property, reasoned the court.

§ 27. Attempt to terminate lease

The following authority, based on the facts and circumstances, has decided whether an attempt to terminate a Chapter 11 or 12 debtor's lease constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Punitive damages were recoverable by a tenant in the tenant's general partner's Chapter 11 bankruptcy, based upon a creditor landlord's willful violation of the automatic stay, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by filing a declaratory judgment action against the tenant's general partner, seeking a determination that the ground lease was terminated, determined the court in In re Kroh Bros. Development Co., 91 B.R. 525, 18 Bankr. Ct. Dec. (CRR) 366 (Bankr. W.D. Mo. 1988), where the landlord's officers, who were experienced commercial lawyers, had acted with conscious disregard of the tenant's rights, had continued their efforts to seize rents in a shopping center even after expressly being informed of obviously fatal defects in the default notice, and had acted in knowing violation of the automatic stay in the bankruptcy case of the tenant's general partner.

§ 28. Attempt to evict from leased premises

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether attempting to evict a Chapter 11 or 12 debtor from leased premises constituted a willful violation of the automatic stay, based on the facts and circumstances.

A Chapter 11 debtor sought sanctions against its landlord for violation of the automatic stay after the landlord terminated the debtor's tenancy at sufferance, and the court in In re Atlantic Business and Community Corp., 901 F.2d 325, 20 Bankr. Ct. Dec. (CRR) 637, 22 Collier Bankr. Cas. 2d (MB) 1176, Bankr. L. Rep. (CCH) ¶ 73341 (3d Cir. 1990) (rejected on other grounds by, In re Just Brakes Corporate Systems, Inc., 108 F.3d 881, 37 Collier Bankr. Cas. 2d (MB) 985, Bankr. L. Rep. (CCH) ¶ 77332 (8th Cir. 1997)), found that the landlord's attempts to evict the Chapter 11 debtor from a radio station, even after the bankruptcy court had entered an order restraining the landlord from further interference with the operations of the radio station, constituted a willful violation of the automatic stay, warranting the imposition of punitive damages, attorney's fees and costs, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 29. Eviction from leased premises—Willful violation found

The courts in the following cases, have found that evicting a Chapter 11 or 12 debtor from leased premises constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

When a Chapter 11 debtor moved to hold a lessor in contempt for violation of the automatic stay and sought to assume a lease belatedly, the lessor moved to annul the automatic stay, and the court in In re Boston Business Machines, 87 B.R. 867, 19 Collier Bankr. Cas. 2d (MB) 435 (Bankr. E.D. Pa. 1988), determined that the lessor's admitted knowledge of the bankruptcy filing established that the lessor had knowledge of the stay at the time the debtor was evicted from the premises, and thus established a willful violation of the stay entitling the debtor to actual damages, according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

After a Chapter 11 trustee brought an adversary action to obtain a turnover order and to obtain compensatory damages for violation of the automatic stay, the court in Matter of National Marine Sales and Leasing, Inc., 79 B.R. 442 (Bankr. W.D. Mo. 1987), found that the evidence, including the testimony of the Chapter 11 debtor's employees, established that creditor

lessors had intentionally and willfully violated the automatic stay by causing the employees of the debtor to leave the leased premises, thus warranting the imposition of $1,000 actual and $1,500 punitive damages, according to the Bankruptcy Code, 11 U.S.C.A. § 362(h). The court noted that the debtor's employees testified that they had told the lessor of the bankruptcy filing during the course of the creditor's efforts to evict the employees, and that the lessor had expressed a disdain for any legal technicalities.

§ 30. Eviction from leased premises—Willful violation not found

Violation of the automatic stay by evicting a Chapter 11 or 12 debtor from leased premises was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has concluded, based on the facts and circumstances.

Even assuming that the actions which a city took with respect to church property, following the entry of a state court judgment of eviction roughly one hour prior to the commencement of a debtor's Chapter 11 case, could be found to have violated the automatic stay, the court in In re Burgos, 294 B.R. 210 (Bankr. D. Conn. 2003), decided that any such violation was not willful, as required for an award of damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the city was acting on the authority of the prepetition state court judgment.

§ 31. Initiating unlawful detainer lawsuit

The willfulness of a violation of the automatic stay, based on initiating an unlawful detainer lawsuit against a Chapter 11 or 12 debtor tenant, has been decided by the following authority, based on the facts and circumstances, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Proceeding was brought to recover damages for creditor landlords' alleged willful violation of the automatic stay, arising out of a subtenant's Chapter 11 bankruptcy filing, and the court in In re Goodman, 991 F.2d 613, 24 Bankr. Ct. Dec. (CRR) 300, 28 Collier Bankr. Cas. 2d (MB) 1261, Bankr. L. Rep. (CCH) ¶ 75229 (9th Cir. 1993), found that the creditor lessors had willfully violated the stay, within the meaning of the statute providing for an award of damages, 11 U.S.C.A. § 362(h), when, with knowledge of the debtor sublessee's bankruptcy filing, it had intentionally instituted a state court unlawful detainer action to recover possession of the leased property. The court observed that the creditors had been aware of the debtor's bankruptcy petition as well as the automatic stay, and that the debtor's attorney had sent the creditors a letter indicating that the debtor could take no immediate action to cure code violations because the debtor had filed a bankruptcy petition, and the automatic stay would have to be lifted before the debtor could proceed. Notwithstanding this explicit admonition, the creditors had thereafter served notices and then filed the unlawful detainer complaint seeking to recover possession of the leased property, stated the court. The reason given by the creditors' counsel for his chosen course of action—that the bankruptcy court was slow—did not help the creditors escape the conclusion that their actions were willful, held the court, and although the lessors may not have had the specific intent to violate the automatic stay, the lessors knew of the automatic stay and their actions were intentional, thus satisfying the definition of a willful violation of the automatic stay.

2. Mortgages

§ 32. Recording mortgage—Generally

The following authority has considered, based on the facts and circumstances, whether the recording of a mortgage on a Chapter 11 or 12 debtor's real property constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

On a Chapter 12 debtors' motion for summary judgment, seeking to avoid a creditor's postpetition recording of a mortgage, the court in In re Sloan, 1991 WL 1301288 (Bankr. D. N.D. 1991), found that the creditor's recording of the mortgage constituted a violation of the automatic stay that was willful, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A.

§ 362(h), since the creditor had recorded the mortgage with full knowledge that a bankruptcy petition had been filed. To excuse the creditor's conduct because he lacked knowledge of the existence and scope of the automatic stay would undermine the purpose of 11 U.S.C.A. § 362(a), believed the court, and render its effect less certain.

§ 33. Recording mortgage—Mortgage assignment

Based on the facts and circumstances, the following authority has determined whether recording a mortgage assignment on a Chapter 11 or 12 debtor's real property constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

An adversary proceeding was brought seeking a determination concerning the validity, extent, and priority of a lien on a Chapter 11 debtor's real property, and when the trustee asserted a counterclaim against the debtor's counsel and others, asserting violations of the automatic stay, the court in In re Stockbridge Funding Corp., 145 B.R. 797, 23 Bankr. Ct. Dec. (CRR) 989 (Bankr. S.D. N.Y. 1992), and order aff'd in part, vacated in part on other grounds, 158 B.R. 914 (S.D. N.Y. 1993), decided that the counsel's recordation of a mortgage assignment in the Chapter 11 debtor's real property, although ineffectual in improving their legal rights under state law, nevertheless constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 34. Pursuit of contempt proceeding

The following authority has decided whether pursuit of a contempt proceeding against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

When a Chapter 11 debtor-partnership moved for sanctions against a mortgage holder and the mortgage holder's attorney, for their alleged willful violations of the automatic stay in prosecuting a state court contempt action against the debtor contrary to the terms of a prior bankruptcy court order modifying the automatic stay, the court in In re Ormond Beach Associates Ltd. Partnership, 65 Fed. Appx. 340 (2d Cir. 2003) (not designated for publication), determined that insufficient evidence was presented of any bad faith by the mortgagee or its counsel, and thus, sanctions would not be imposed pursuant the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 35. Continuation of foreclosure proceeding

[Cumulative Supplement]

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether continuing a foreclosure proceeding against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances.

A debtor-in-possession in a Chapter 11 case brought an adversary proceeding against a mortgagee creditor, seeking an award of damages against the mortgagee for an alleged violation of the automatic stay, and the court in In re Livingston, 1992 WL 12004360 (Bankr. S.D. Ga. 1992), determined that because the mortgagee knew of the debtor's petition and with that knowledge, had proceeded with a foreclosure action against the debtor in another forum, the creditor's actions constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

CUMULATIVE SUPPLEMENT

Cases:

Mortgage foreclosure sale conducted in violation of co-debtor stay was void and of no effect, just as if it had been conducted in violation of automatic stay. 11 U.S.C.A. §§ 362(a), 1301(a). In re King, 362 B.R. 226 (Bankr. D. Md. 2007).

Letters sent to Chapter 13 debtors by mortgage loan servicer did not warrant damages or sanctions for violations of automatic stay, given that lender had received stay relief to proceed with foreclosure and to offer debtors alternatives to foreclosure, that letters were not clearly prohibited demands for payment, but instead appeared to have been sent to keep lender in compliance with state foreclosure and contract law, federal collection law, and federal law regarding status of debtors' escrow account and to advise debtors of status of loan, and that lender, until it completed foreclosure, had to comply with applicable law, notwithstanding debtors' stated intention to surrender mortgaged property. 11 U.S.C.A. § 362(a), (k)(1). In re Whitmarsh, 383 B.R. 735 (Bankr. D. Neb. 2008).

[Top of Section]

[END OF SUPPLEMENT]

3. Other Actions Involving Real Estate

§ 36. Enforcement of municipal codes

The following authority has decided, based on the facts and circumstances, the willfulness of a violation of the automatic stay, based on the enforcement of municipal codes regarding a Chapter 11 or 12 debtor's real property for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Even assuming that a bankruptcy court had erroneously determined that the automatic stay did not apply so as to prevent municipalities from enforcing building and fire codes with regard to Chapter 11 debtors' condemned properties, the debtors were not entitled to damages under the statute providing for recovery for a willful violation of the automatic stay, 11 U.S.C.A. § 362(h), the court decided in In re Javens, 107 F.3d 359, 30 Bankr. Ct. Dec. (CRR) 541, 37 Collier Bankr. Cas. 2d (MB) 950, 1997 FED App. 0065P (6th Cir. 1997), inasmuch as the municipalities could not be found to have willfully violated stays that the bankruptcy court orders declared did not exist.

§ 37. Recording judgment against real property

The following authority has considered, based on the facts and circumstances, whether the recording of a judgment against the real property of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The court in In re Gurley, 222 B.R. 124 (Bankr. W.D. Tenn. 1998), as amended on reh'g, (June 15, 1998), found that although the trustee of the separate bankruptcy estate of a Chapter 11 debtor's husband certainly had knowledge of the debtor's bankruptcy petition at the time he caused certified copies of the amended judgment against the debtor's husband to be recorded in various jurisdictions, the trustee had not willfully violated the automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since his actions were taken based upon a legitimate dispute concerning the property. With respect to the real property which was the subject of the amended judgment, added the court, while the trustee's recording of certified copies of the amended judgment had been ineffective to create judgment liens in favor of the trustee except upon real property located in Florida, the trustee's recordation of the deeds had been effective to give constructive notice of the equitable interests of the trustee sufficient to prevent the debtor in possession from obtaining the status of a bona fide purchaser.

§ 38. Recording lien against real property—Generally

Based on the facts and circumstances, the following authority has determined whether recording a lien against a Chapter 11 or 12 debtor's real property constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Sanctions would not be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(h), for a violation of the automatic stay occurring when an unsecured creditor of an individual had attempted to obtain an interest in estate property which had been effectively conveyed to the trustee of a corporate Chapter 11 debtor by the individual who had owned the real property, by obtaining a default judgment which was recorded before the trustee had recorded the conveyance of a residence provided for in a compromise, decided the court in In re Lemons & Associates, Inc., 69 B.R. 360 (Bankr. D. Nev. 1987), where the violation did not appear to have been willful, with the creditor arguing that the transfer from the individual without the signature of a former spouse who was also a record titleholder did not convey any interest in the real property to the trustee, and the former spouse not having signed the deed conveying the real property to the trustee until after the creditor had recorded the judgment lien against the real property.

§ 39. Recording lien against real property—Refusal to expunge lien

The following authority has decided whether the refusal to expunge a lien on the real property of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

Even if a violation of the automatic stay by a condominium association had begun innocently when it had recorded a lien on a Chapter 11 debtor's condominium, decided the court in Matter of Maas, 69 B.R. 245 (Bankr. M.D. Fla. 1986), the continuing violation of the automatic stay after the condominium association had been notified of the bankruptcy filing and had refused to expunge the lien from the record was willful, warranting the imposition of sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), for the debtor's legal services incurred in enforcing the automatic stay.

§ 40. Withholding land contract installment payments

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether withholding land contract installment payments from a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, or whether there was a reasonable probability the debtor would succeed on the merits of its willful violation claim, based on the facts and circumstances.

In an adversary proceeding brought against the purchasers of lots for their alleged automatic stay violation, a Chapter 11 debtor-real estate developer filed a motion for a preliminary injunction, seeking to prohibit the purchasers from withholding land contract installment payments owed to the debtor but deposited in an account under their attorney's control, and to turn over all amounts in the account, and the court in In re Diamond Indus. Corp., 265 B.R. 707, 38 Bankr. Ct. Dec. (CRR) 66 (Bankr. D. V.I. 2001), concluded that there was a reasonable probability that the debtor would succeed on the merits of its claim that the lot purchasers had willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), when they had intentionally withheld installment payments owed to the debtor and had instead deposited them into an account controlled by their attorney, since the purchasers had actual notice of the bankruptcy filing before they had withheld the installment payments. Because the purchasers had acted on the advice of their attorney, it could be reasonably inferred that they also had constructive knowledge that their actions violated the automatic stay and that the debtor therefore had a reasonable probability of succeeding on the merits of its § 362(h) cause of action, added the court.

§ 41. Taking temporary possession of property

The willfulness of a violation of the automatic stay, based on taking temporary possession of a Chapter 11 or 12 debtor's real property, has been decided by the following authority, based on the facts and circumstances, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Since creditors had knowledge that the automatic stay was in place when they had temporarily taken possession of Chapter 11 debtors' mini market, the court in In re Mann, 79 F.3d 1153 (9th Cir. 1996) (unpublished Table disposition), decided that the creditors' violation of the automatic stay was willful, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h). The court noted that the Chapter 11 trustee had provided the creditors with oral notice and had offered to produce documents indicating that the debtors had filed for bankruptcy, and that the automatic stay was therefore in place.

§ 42. Mailing auction notice

The following authority has considered, based on the facts and circumstances, whether mailing an auction notice with regard to the real property of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A deed of trust creditor could not be held liable on an agency theory for willfully violating a Chapter 11 debtor's automatic stay, under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on communications mailed out by auctioneers without the creditor's knowledge or consent, decided the court in In re Atlas Mach. & Iron Works, Inc., 239 B.R. 322 (Bankr. E.D. Va. 1998), in light of uncontradicted evidence that the creditor, upon learning of these communications, had promptly taken steps to halt them.

D. Tax Collection Efforts

§ 43. Issuance of third-party summons

Based on the facts and circumstances, the following authority has determined whether issuing a third-party summons regarding a Chapter 11 or 12 debtor taxpayer constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Proceeding was brought for a determination of whether third-party summonses issued by the Internal Revenue Service (IRS) violated the automatic stay of a Chapter 11 debtor, and the court in In re Spencer, 123 B.R. 858 (Bankr. N.D. Cal. 1991) (abrogated on other grounds by, In re Pinkstaff, 974 F.2d 113, 23 Bankr. Ct. Dec. (CRR) 732, Bankr. L. Rep. (CCH) ¶ 74905, 92-2 U.S. Tax Cas. (CCH) ¶ 50502, 70 A.F.T.R.2d 92-5688 (9th Cir. 1992)), determined that the IRS's issuance of a third-party summons to the Chapter 11 debtor's bank to obtain financial information concerning the debtor was a willful violation of the stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), notwithstanding the IRS's good-faith reliance upon advice of counsel that the stay did not apply, where the IRS had issued the summons even though it had been advised of the pendency of the bankruptcy case and had been asked to desist from doing so.

§ 44. Interference with tax refund

The following authority has decided whether interfering with the tax refund of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

Chapter 12 debtors filed an adversarial action seeking return of their income tax refund seized by the Farmers Home Administration (FmHA), damages, attorney's fees, and costs, and the court in In re Ketelsen, 880 F.2d 990 (8th Cir. 1989), found that the FmHA had willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), through its actions and inactions in seizing the Chapter 12 debtors' income tax refund as an offset of a past-

due obligation, since the FmHA had received notice of the debtors' bankruptcy proceedings and had subsequently participated in the bankruptcy proceedings before seizing the debtors' refund.

§ 45. Filing tax lien—Generally

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether filing a tax lien on the property of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances.

Where a Chapter 11 debtor moved to enforce the automatic stay, and to obtain a declaratory judgment as to the invalidity of tax liens obtained while the stay was in effect, to obtain an order requiring state tax officials to remove the liens, and to enjoin future stay violations, the court in In re LTV Steel Co., Inc., 264 B.R. 455, 38 Bankr. Ct. Dec. (CRR) 12 (Bankr. N.D. Ohio 2001), concluded that the state taxing authority's violations of the automatic stay, in filing tax liens against the Chapter 11 debtor's property for payment of a taconite production tax while the automatic stay was in effect, had to be regarded as willful, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the state tax officials who had filed the liens had done so intentionally after the petition date, and with knowledge that the stay was in effect, regardless of whether these officials believed that their acts were subject to the stay.

§ 46. Filing tax lien—Notice of lien

The following authority has decided, based on the facts and circumstances, the willfulness of a violation of the automatic stay, based on filing notice of a tax lien on a Chapter 11 or 12 debtor's property for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The Internal Revenue Service (IRS) would be held in civil contempt for willful violation of the automatic stay of a Chapter 11 debtor and subjected to damages under the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the individuals taking various postpetition collection actions on behalf of the IRS allegedly had not had actual notice of the corporate debtor's Chapter 11 filing, concluded the court in In re Santa Rosa Truck Stop, Inc., 74 B.R. 641 (Bankr. N.D. Fla. 1987), where the debtor's president had told a local IRS officer working on the debtor's file of the plan to file Chapter 11 and of an actual filing a few days later, and written notice of the Chapter 11 filing had been sent to the IRS offices, but the collection actions, including the filing of two tax lien notices, had occurred postpetition, and it was not until three days prior to the hearing on the contempt motion that the liens had been lifted.

§ 47. Filing tax levy—Willful violation found

Violation of the automatic stay by filing a tax levy on the property of a Chapter 11 or 12 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has found, based on the facts and circumstances.

The court in In re Santa Rosa Truck Stop, Inc., 74 B.R. 641 (Bankr. N.D. Fla. 1987), determined that the Internal Revenue Service (IRS) would be held in civil contempt for willful violation of the automatic stay of a Chapter 11 debtor and subjected to damages under the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the individuals taking various postpetition collection actions on behalf of the IRS allegedly had not had actual notice of the corporate debtor's Chapter 11 filing, where the debtor's president had told a local IRS officer working on the debtor's file of the plan to file Chapter 11 and of an actual filing a few days later, and written notice of the Chapter 11 filing had been sent to IRS offices, but the collection actions, including a levy on the debtor's bank account, had occurred postpetition.

§ 48. Filing tax levy—Willful violation not found

Filing a tax levy on the property of a Chapter 11 or 12 debtor did not constitute a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has concluded, based on the facts and circumstances.

The inadvertence of the Internal Revenue Service (IRS) in failing to timely modify computer software to accommodate changes in the law, decided the court in In re Academy Answering Service, Inc., 100 B.R. 327, 89-2 U.S. Tax Cas. (CCH) ¶ 9424, 63 A.F.T.R.2d 89-1302 (N.D. Ohio 1989), did not result in a willful violation of the stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the IRS's levy on a Chapter 11 debtor's bank account and offset of prepetition overpayments against the prepetition tax liability of the debtor without seeking relief from the stay, and the debtor was thus not entitled to recover attorney's fees from the United States.

§ 49. Refusal to return levied funds

The courts in the following cases have decided, based on the facts and circumstances of each case, whether refusing to return levied funds to a Chapter 11 or 12 debtor taxpayer constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Chapter 11 debtors brought adversary proceedings against the Internal Revenue Service (IRS), challenging an IRS levy on one of the debtor's permanent fund dividend from the state of Alaska and seeking damages for violation of the automatic stay, and the court in Camacho v. U.S., 190 B.R. 895, 96-1 U.S. Tax Cas. (CCH) ¶ 50103, 77 A.F.T.R.2d 96-777 (D. Alaska 1995), determined that the existence of a bona fide dispute between the Chapter 11 trustee and the IRS, as to whether the levied funds which were the subject of the trustee's turnover request were property of the estate subject to turnover, did not preclude a finding that the IRS, in refusing to turn the funds over, was willfully violating the automatic stay, within the meaning of the bankruptcy statute, 11 U.S.C.A. § 362(h), permitting an award of actual and punitive damages for any willful violation of the stay.

Although individuals taking various postpetition collection actions on behalf of the Internal Revenue Service (IRS) allegedly did not have actual notice of a corporate debtor's Chapter 11 filing, because the debtor's president had told a local IRS officer working on the debtor's file of the plan to file Chapter 11 and of an actual filing a few days later, and because written notice of the Chapter 11 filing had been sent to IRS offices, the court in In re Santa Rosa Truck Stop, Inc., 74 B.R. 641 (Bankr. N.D. Fla. 1987), found that since the IRS's collection actions had occurred postpetition, and since it was not until three days prior to the hearing on the contempt motion that the funds collected in a bank account levy had been returned to the debtor, there had been a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 50. Seizure of debtor property

The courts in the following cases have determined whether seizing the property of a Chapter 11 or 12 debtor taxpayer constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

The Internal Revenue Service (IRS) had willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), when following its prepetition seizure of a Chapter 11 debtor-taxpayer's cars, the IRS had taken steps to change the nature of its possession from constructive to actual possession by having the cars towed from the debtor's premises while the stay was in effect, decided the court in In re A & J Auto Sales, Inc., 223 B.R. 839, 98-1 U.S. Tax Cas. (CCH) ¶ 50416, 81 A.F.T.R.2d 98-2002 (D.N.H. 1998), since the IRS knew and had been specifically advised of the debtor's bankruptcy filing, regardless of the IRS's alleged good faith in believing that the stay did not apply because the vehicles had already been seized prepetition. The court rejected the IRS's argument that the court should apply a stricter standard for finding a willful violation, requiring actual knowledge that the act in question violated the stay.

A finding that the Internal Revenue Service (IRS) had willfully violated a Chapter 11 debtor's automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by seizing property belonging to the debtor in an effort to collect payroll taxes owed by a corporation of which the debtor was the sole shareholder was not clearly erroneous, found the court in In re Lile, 161 B.R. 788, 93-2 U.S. Tax Cas. (CCH) ¶ 50641, 72 A.F.T.R.2d 93-5289 (S.D. Tex. 1993), aff'd in part without reported opinion, 43 F.3d 668, 95-1 U.S. Tax Cas. (CCH) ¶ 50031, 75 A.F.T.R.2d 95-394 (5th Cir. 1994), where the IRS had seized the property after learning of the debtor's pending bankruptcy and after learning that the corporation's lease was in the debtor's name.

§ 51. Refusal to return seized property

The following authority has considered, based on the facts and circumstances, whether refusing to return the seized property of a Chapter 11 or 12 debtor taxpayer constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

By retaining seized property belonging to a Chapter 11 debtor in an effort to collect payroll taxes owed by a corporation of which the debtor was the sole shareholder, the Internal Revenue Service (IRS) had willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), concluded the court in In re Lile, 161 B.R. 788, 93-2 U.S. Tax Cas. (CCH) ¶ 50641, 72 A.F.T.R.2d 93-5289 (S.D. Tex. 1993), aff'd in part without reported opinion, 43 F.3d 668, 95-1 U.S. Tax Cas. (CCH) ¶ 50031, 75 A.F.T.R.2d 95-394 (5th Cir. 1994), where the IRS had refused to return the seized property after learning of the debtor's pending bankruptcy and after learning that the corporation's lease was in the debtor's name.

§ 52. Conducting auction sale

Based on the facts and circumstances, the following authority has determined whether conducting an auction sale to recover taxes owed by a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The Internal Revenue Service (IRS) had reason to know that some mining equipment it was selling at an auction sale to collect a mining operation's delinquent employment taxes belonged to a Chapter 11 debtor-equipment lessor, as opposed to the mining operation and, thus, the IRS had willfully violated the automatic stay by conducting the sale, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court found in Hanna Coal Co., Inc. v. I.R.S., 218 B.R. 825, 97-2 U.S. Tax Cas. (CCH) ¶ 50947, 80 A.F.T.R.2d 97-8075 (W.D. Va. 1997), where the mining operation's former co-owner testified that he had moved the debtor's equipment to the mining operation's site, the debtor and the mining operation had negotiated the possible purchase of the equipment by the mining operation, the debtor had told the IRS of its ownership claims as well as its bankruptcy filing, and the debtor had provided the IRS with Uniform Commerce Commission filings listing the debtor's assets and providing serial numbers for some specific items, the manufacturer's names for others, and the generic names and quantities for yet others, so that the IRS had been put on notice that there was a question as to ownership, even if the debtor had not provided conclusive evidence of its ownership.

§ 53. Holding tax foreclosure sale

The following authority has decided whether holding a tax foreclosure sale of a Chapter 11 or 12 debtor's real property constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

When a Chapter 11 debtor pro se appealed from the bankruptcy court's refusal to void a tax foreclosure sale of certain real property in which the debtor claimed an ownership interest, contending that the sale was void by operation of the automatic stay, and that the seller of the property, as well as the buyer, were liable for damages and sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), for having willfully violated the automatic stay imposed, the court in In re Urban, 1998 WL 9389 (S.D. N.Y. 1998), found that notwithstanding the debtor's contention that the buyer and seller had been fully aware that the debtor owned

either all or some of the land described in the foreclosure deed and that they had colluded to deprive him of his rights to that land by taking part in the foreclosure sale, the debtor had failed to demonstrate that the seller or buyer had known that some of the debtor's property was sold at the foreclosure sale or that they had acted willfully despite their knowledge. Indeed, the court observed, the debtor's argument was premised on the assumption that a negligent bookkeeper who worked for the seller had relied on an incorrect deed in preparing the foreclosure deed. Similarly, notwithstanding the debtor's belief that the buyer had behaved in a scandalous, blatant and willful manner, there was no evidence that the seller knew about the debtor's claim of ownership in the property or acted willfully to deprive him of that ownership, believed the court.

E. Collection Efforts Involving Insurance

§ 54. Refusal to endorse insurance check

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether refusing to endorse a Chapter 11 or 12 debtor's insurance check constituted a willful violation of the automatic stay, based on the facts and circumstances.

After a Chapter 11 debtor filed a motion for sanctions against a secured creditor which had failed to endorse an insurance check for damages to collateral, the court in In re Carney & Sons Trucking Services, Inc., 142 B.R. 497, 23 Bankr. Ct. Dec. (CRR) 321, 27 Collier Bankr. Cas. 2d (MB) 492 (Bankr. M.D. Fla. 1992), concluded that the secured creditor had willfully violated the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by refusing to endorse the insurance check for damage to collateral, and by instead requesting the return of such collateral, where the creditor was fully aware of the existence of the automatic stay, since the creditor had previously filed a motion for relief from the stay.

§ 55. Receipt of insurance payments

The following authority has decided, based on the facts and circumstances, The willfulness of a violation of the automatic stay, based on the receipt of insurance payments from a Chapter 11 or 12 debtor, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A judgment creditor, an insurance company, commenced actions to hold a nondebtor corporation that had managed a Chapter 11 debtor prepetition liable for a judgment against the debtor and to equitably subordinate the nondebtor corporation's bankruptcy claim, and the court in Liberty Mut. Ins. Co. v. Leroy Holding Co., Inc., 226 B.R. 746, 42 Fed. R. Serv. 3d 475 (N.D. N.Y. 1998), concluded that an award of costs and attorney's fees against the creditor that had received insurance payments from the debtor in violation of the automatic stay, according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), was not justified, where the creditor held a secured interest, the payments were received from the Chapter 11 debtor-in-possession, the payments were disclosed in the required filings, and there was a possibility that the payments would be returned to the creditor in whole or in part. The court held that an award of costs, disbursements, and attorney's fees incurred in prosecuting an automatic stay violation claim is authorized for willful violations of the stay, but if the stay violation is technical or inadvertent, such an award is inappropriate.

§ 56. Misuse of insurance overpayment—Willful violation found

The following authority held that the misuse of an insurance overpayment from a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), under the facts and circumstances presented.

An insurer which had issued a single workers' compensation policy to a Chapter 11 debtor and its sister corporation, as multiple named insureds, had improperly exercised control over the property of the estate in willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court concluded in In re Mountaineer Coal Co., Inc., 247 B.R. 633 (Bankr. W.D. Va. 2000), when, with knowledge of the debtor's bankruptcy petition,

the insurer had used the debtor's postpetition overpayment in order to reduce its claim against the sister company for a premium associated with its own postpetition operations.

§ 57. Misuse of insurance overpayment—Willful violation not found

The following authority held that the misuse of an insurance overpayment from a Chapter 11 or 12 debtor did not constitute a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), under the facts and circumstances presented.

The court in In re Georgetown Steel Co., LLC, 318 B.R. 313 (Bankr. D. S.C. 2004), held that a Chapter 11 debtor did not prove by clear and convincing evidence that the creditor, the defendant's workers' compensation insurance carrier, willfully violated the automatic stay where the creditor's computer automatically sent a notice to the debtor to cancel its policy if the debtor did not pay a prepetition claim for which the debtor had previously issued a check that was not honored, and the creditor sent a letter to the debtor, based upon communications between the parties and requested by the debtor for calculations with respect to a refund of premium, that referenced a reduction of the refund by the amount of the pre-petition claim.

§ 58. Filing motion to compel arbitration of insurance claim

The following authority has reached a determination, based on the facts and circumstances, of whether filing a motion to compel a Chapter 11 or 12 debtor's arbitration of insurance claims constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

When a Chapter 11 debtor moved to enforce the automatic stay against its insurer, and the insurer moved to lift the stay and to compel arbitration on the question of whether its policy provided coverage for the asbestos claims asserted against the debtor, the court in In re Kaiser Aluminum Corp., 303 B.R. 299 (D. Del. 2003), decided that the insurer's stay violation, in filing a motion to compel arbitration during the pendency of the automatic stay, was willful, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), as the insurer had refused to withdraw its motion upon the request of the debtor after being informed of the automatic stay.

§ 59. Initiating insurance policy lawsuit

Based on the facts and circumstances, the following authority has determined whether initiating an insurance contract lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Insurers' automatic stay violation, in commencing a state court action that threatened to impact on a Chapter 11 debtor's interest in insurance policies which it shared with the corporation from which it had been spun off, had to be regarded as willful, so as to support an award of damages against the insurers pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court determined in In re Global Indus. Technologies, Inc., 303 B.R. 753, 42 Bankr. Ct. Dec. (CRR) 120 (Bankr. W.D. Pa. 2004), vacated in part, modified in part on other grounds, 2004 WL 555418 (Bankr. W.D. Pa. 2004), where the state court complaint filed by the insurers made it clear that the insurers knew that these same policies were also at issue in adversary proceedings filed in the bankruptcy case. A good faith belief on the part of a party violating the automatic stay that its course of action is lawful is not relevant to whether its stay violation was willful, or whether compensation must be awarded against the party, the court clarified.

F. Collection Efforts Involving Corporate Stock

§ 60. Retention of partner's distributive share

The following authority has decided whether the retention of a Chapter 11 or 12 debtor partner's distributive share constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

In In re Heafitz, 85 B.R. 274 (Bankr. S.D. N.Y. 1988), where the trustee of a reorganization trust of a Chapter 11 debtor partner requested that the partnership and copartners be directed to turn over to the trustee distributions allegedly owed to the partner, and requested attorney's fees, costs, and punitive damages, the court concluded that the partnership should not have retained the debtor partner's distributive share as a self-help recoupment without seeking relief from the stay, and therefore the partnership had willfully violated the automatic stay, according to the Bankruptcy Code, 11 U.S.C.A. § 362(h). Although the partner's obligation to pay accrued interest and principal on notes he had executed in lieu of making an immediate cash contribution, as well as the partnership's obligation to make distributions to the partner, were related obligations such that retention of the partner's distributive share constituted recoupment, rather than setoff, acknowledged the court, the recoupments were not exempt from the stay and were disallowed by 11 U.S.C.A. § 362(a)(6), prohibiting any act to collect, assess, or recover a claim against a debtor that arose before the commencement of the case. The partnership's violation of the stay could not be excused on the ground that the partnership believed its actions constituted valid recoupments that were exempt from the stay, and the partnership would accordingly be held liable for the trustee's attorney's fees in the amount of $3,000, the costs of the proceeding in the amount of $150, and punitive damages in the amount of $1,000, held the court, since the partnership and its attorneys were sophisticated and familiar with the broad application of the stay, and there had been no effort on the part of the partnership to seek clarification by the court as to the respective rights of the parties involved in the action.

§ 61. Sale of stock securing loan

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether the sale of a Chapter 11 or 12 debtor's stock securing a loan constituted a willful violation of the automatic stay, based on the facts and circumstances.

Bringing an adversary proceeding against a creditor, a Chapter 11 debtor alleged that the creditor had violated the automatic stay by selling the debtor's stock, and the court in In re Wills, 226 B.R. 369 (Bankr. E.D. Va. 1998), found that the creditor had willfully violated the automatic stay by selling the stock that secured its loan to the Chapter 11 debtor without first seeking stay relief, thus warranting an award of actual damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the creditor stated that it believed at the time of the sale that it had received a good price for the shares, where the creditor had previously asked for stay relief to sell different stock, and so it knew of the stay, and it had clearly intended to act. The creditor's mistaken belief that its actions did not require court approval could not be a factor in the court's analysis of whether it had willfully violated the automatic stay, the court added.

§ 62. Initiating suit to enjoin transfer of stock

The willfulness of a violation of the automatic stay, based on initiating suit to enjoin the transfer of a Chapter 11 or 12 debtor's stock, has been decided below, based on the facts and circumstances, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Corporate Chapter 11 debtors and a claimant entered into a compromise agreement involving a debtor's transfer of stock of a nondebtor subsidiary, and other claimants who had opposed the transaction brought a state court suit seeking to enjoin completion of the transfer or acquisition of the corporate debtor or its subsidiaries or related companies, and after the debtors and the compromising claimant alleged a violation of the stay, the court in In re MCEG Productions, Inc., 133 B.R. 232, 22 Bankr. Ct. Dec. (CRR) 332, 25 Collier Bankr. Cas. 2d (MB) 1189 (Bankr. C.D. Cal. 1991), found that for damages purposes under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the claimants' state court suit to enjoin completion of the transfer or acquisition of the corporate debtor or its subsidiaries or related companies constituted a willful violation of the stay, although no debtors were named as defendants, since the injunctive action affected the debtors' interest in the compromise and sale agreement. The court noted that the claimants knew of the stay, as they had participated in bankruptcy proceedings concerning the compromise and

transfer agreement, and their injunctive action was filed the day after the hearing for approval of the compromise and transfer at which the claimants had presented opposition.

§ 63. Precluding partnership from prosecuting action

The following authority, based on the facts and circumstances, has reached a determination of whether precluding a Chapter 11 or 12 debtor partnership from prosecuting an action constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Limited partners, who filed an interpleader action to determine who was entitled to installment payments that had been due to a Chapter 11 debtor partnership under notes, and who had thereafter obtained a temporary restraining order precluding the partnership from prosecuting an action to collect under the notes in disregard of the automatic stay, were in willful violation of the stay, for purposes of awarding damages, costs, and attorney's fees under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court concluded in In re Falls Bldg., Ltd., 94 B.R. 471 (Bankr. E.D. Tenn. 1988), where the limited partners were aware of the filing of the partnership's bankruptcy petition, and had actual knowledge of the stay.

§ 64. Initiating derivative lawsuit

The courts in the following cases have decided, based on the facts and circumstances of each case, whether initiating a derivative lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Shareholders brought a derivative action against a parent corporation, of whose stock a Chapter 11 debtor and his wife owned 78%, and its nondebtor wholly owned subsidiaries, and the court in In re Neuman, 128 B.R. 333, Bankr. L. Rep. (CCH) ¶ 73915 (S.D. N.Y. 1991), determined that the shareholders' violation of the automatic stay by bringing the derivative action was not in bad faith, and thus, no willful violation of the automatic stay existed upon which an award of sanctions could be based for purposes of the Bankruptcy Code, 11 U.S.C.A. § 362(h). Although the shareholders were aware of the debtor's bankruptcy, they had immediately withdrawn from state court a motion for an order restraining the debtor from acting on behalf of the corporation and had informed the state court that there was a proceeding in the bankruptcy court, and the law was unclear regarding the applicability of the stay, clarified the court.

Caution

The *Neuman* court held that the Second Circuit's decision in In re Crysen/Montenay Energy Co., 902 F.2d 1098, 20 Bankr. Ct. Dec. (CRR) 807, 22 Collier Bankr. Cas. 2d (MB) 1385, Bankr. L. Rep. (CCH) ¶ 73394, 11 U.C.C. Rep. Serv. 2d 881 (2d Cir. 1990), see § 76, that damages may be imposed for a willful violation of the automatic stay even if a creditor acts in good faith but does not first seek a declaration from the bankruptcy court, would not be applied retroactively to the shareholders who had instituted the derivative action in violation of the stay several months before the *Crysen/Montenay* decision.

Majority shareholders of a Chapter 11 debtor filed an adversary proceeding seeking damages and injunctive relief for an alleged violation of the automatic stay which resulted when minority shareholders had filed a state court derivative action on behalf of a nondebtor corporation, and the court in Matter of Edisto Resources Corp., 158 B.R. 954, 24 Bankr. Ct. Dec. (CRR) 1070 (Bankr. D. Del. 1993), decided that although the automatic stay had been violated, punitive damages were not warranted

for a willful violation under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the law underlying the applicability of the automatic stay was not well settled, and the minority shareholders had cooperated in not prosecuting the derivative action.

G. Collection Efforts Involving Freight

§ 65. Offset of freight payments

The courts in the following cases have determined whether offsetting freight payments by a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

In In re Lansdale Family Restaurants, Inc., 977 F.2d 826, Bankr. L. Rep. (CCH) ¶ 74946 (3d Cir. 1992), a Chapter 11 debtor restaurant filed a complaint seeking turnover of postpetition payments made to a food supply service for delivery charges, on the ground that they had been applied to a prepetition debt in violation of the automatic stay, and the court found that the restaurant debtor's payments of delivery charges to the food supply business had been applied to reduce the debtor's prepetition debt in willful violation of automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the creditor knew that the debtor had filed a petition in bankruptcy when it began imposing the delivery charges and the only logical permissible factual finding was that such charges were intended to produce funds to pay down the debtor's prebankruptcy debt. Willfulness for damages for stay violation purposes does not require that a creditor intend to violate the automatic stay, held the court, but rather it requires that acts which violate the stay be intentional. The creditor's acts of applying the delivery payments to prepetition debt reduction was intentional on the records kept by the creditor, the court concluded.

Following the commencement of an owner-operator truck driver's Chapter 11 bankruptcy case, a licensed motor carrier creditor which had leased trailers to the debtor and had transported freight according to lease agreements with the debtor refused to turn over monies due to the debtor and instead retained these monies as a prepetition setoff against monies allegedly owned to the creditor by the debtor, and the court in Matter of Mueller, 1994 WL 369573 (Bankr. D. Neb. 1994), decided that the creditor's violation of the automatic stay was willful, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the creditor was aware of the debtor's bankruptcy case at the time of his refusal to turn over the monies due to the debtor, and the only defense raised by the creditor was his belief that the debtor owed him money and his suggestion that he had a right to offset the compensation due to the debtor against this amount. It was irrelevant whether the creditor believed in good faith that he had a right to an offset before the bankruptcy filing, the court explained, because the creditor was not entitled to take such an offset respecting amounts found to be due and owing in the adversary proceeding.

§ 66. Attempt to collect freight charges from consignees

The following authority has considered, based on the facts and circumstances, whether attempting to collect freight charges from the consignees of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

On the complaint of Chapter 11 debtors seeking a determination that a carrier's attempt to collect freight charges directly from the debtors' consignees violated the automatic stay, the court in In re Chateaugay Corp., 78 B.R. 713 (Bankr. S.D. N.Y. 1987), decided that the carrier's attempt to collect prepaid freight charges directly from the debtors' consignees amounted to a willful violation of the automatic stay, and thus, the carrier was liable to the debtor for attorney's fees and costs, according to the Bankruptcy Code, 11 U.S.C.A. § 362(h). There was not doubt that the carrier was aware of the debtors' bankruptcy filing prior to its actions, the court stated, and in addition, the carrier's familiarity with the law in the jurisdiction could be assumed due to its appearance as a named defendant in another case. If the carrier had any questions as to the applicability of the automatic stay under the facts of the case, noted the court, the proper course of action for it would have been to raise that issue initially before the court.

§ 67. Assertion of lien; freight—Generally

The following authority has decided whether asserting a lien on a Chapter 11 or 12 debtor's freight constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

A freight forwarder, which was shipping a Chapter 11 debtor-manufacturer's goods when the debtor filed its bankruptcy petition, asserted a lien on the goods and refused to deliver them until the debtor had paid a past-due bill on a previous shipment, and the court in In re Colortran, Inc., 210 B.R. 823, 38 Collier Bankr. Cas. 2d (MB) 862 (B.A.P. 9th Cir. 1997), aff'd in part, vacated in part on other grounds, 165 F.3d 35 (9th Cir. 1998), concluded that the freight forwarder's actions in asserting a lien on the goods constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the freight forwarder allegedly had a good-faith belief that it had the right to possess the goods.

§ 68. Assertion of lien; freight—Artisan's lien on vehicle

Based on the facts and circumstances, the following authority has determined whether asserting an artisan's lien on a Chapter 11 or 12 debtor's freight delivery vehicle constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

In In re American Freight System, Inc., 1994 WL 114067 (D. Kan. 1994), the court affirmed the bankruptcy court's judgment in an appeal arising from an adversary proceeding filed by a Chapter 11 debtor, a trucking company, in the underlying bankruptcy, deciding that a creditor had not violated the automatic stay willfully, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the creditor asserted that it had an artisan's lien on the debtor's tractor for the cost of repairs performed on it. The debtor asserted that the creditor had refused to turn over a tractor which had been sent to the creditor for repair, after receiving notice of the bankruptcy filing and being advised to turn the vehicle over to the debtor, but the creditor had a right to retain the vehicle until it was paid or otherwise offered adequate protection for returning the vehicle to the debtor, the court believed, since a proof of claim filed by the creditor for a prepetition debt provided proof that the creditor had performed the repairs prepetition.

§ 69. Refusal to deliver or return freight

The following courts have decided, based on the facts and circumstances of each case, whether refusal to deliver or return freight to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

On an order to show cause why a creditor delivery service and its counsel should not be held liable for willfully violating the automatic stay, the court in In re Freemyer Industrial Pressure, Inc., 281 B.R. 262 (Bankr. N.D. Tex. 2002), found that the creditor's continuing refusal to deliver or return a water blaster system to a Chapter 11 debtor until funds were wire transferred to it in the amount of $5,697.19, in payment of a prepetition debt and interest and the cost of the postpetition delivery, constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h). The court noted that by continuing with its efforts to collect a prepetition debt after it had been orally advised by the debtor of the commencement of the debtor's Chapter 11 case, without making an appropriate inquiry to verify the debtor's bankruptcy petition, and by failing, once it had obtained written proof of the bankruptcy from the debtor, to return to the debtor any prepetition sums collected, the creditor, with the approval and encouragement of its counsel, had willfully violated the stay.

The court in In re Colortran, Inc., 210 B.R. 823, 38 Collier Bankr. Cas. 2d (MB) 862 (B.A.P. 9th Cir. 1997), aff'd in part, vacated in part on other grounds, 165 F.3d 35 (9th Cir. 1998), found that the freight forwarder's actions in retaining possession of a shipment of goods belonging to a Chapter 11 debtor manufacturer which were estate property, and refusing to release the goods until the prepetition, past-due bill was paid, constituted a willful violation of the automatic stay, for purposes of imposing

sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the freight forwarder allegedly had a good-faith belief that it had the right to possess the goods. A creditor who fails to return estate property after it knows of a debtor's bankruptcy is subject to sanctions for willful violation of the automatic stay, the court held.

H. Pursuit of Other Legal Action

1. Procedural Proceedings

§ 70. Motion for substitution of parties

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether a motion for substitution of parties in an action brought by a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances.

An attorney for a Chapter 11 corporate debtor's co-plaintiff had willfully violated the automatic stay by substituting the co-plaintiff as the plaintiff in the parties' suit, and would be held liable for compensatory damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), determined the court in In re Hooker Investments, Inc., 116 B.R. 375, 23 Collier Bankr. Cas. 2d (MB) 588 (Bankr. S.D. N.Y. 1990), where counsel was forewarned that the substitution would violate the stay, and the substitution motion constituted an attempt to exercise control over or deprive the debtor of property of the estate over which the debtor had already sought to exercise its right of dominion.

§ 70.5. Motion for appointment of receiver

[Cumulative Supplement]

The following authority considered whether a motion for appointment of a receiver in a non-bankruptcy case constituted a willful violation of an automatic stay issued in a Chapter 11 case.

CUMULATIVE SUPPLEMENT

Cases:

Creditors willfully violated the automatic stay by filing motion seeking appointment of receiver of corporation in non-bankruptcy case, when Chapter 11 debtor had 100% shareholder interest in corporation, warranting award of actual damages for debtor; creditors knew about the bankruptcy case, having actively participated in it, and they deliberately filed the receivership motion. 11 U.S.C.A. § 362(k)(1). In re Bello, 612 B.R. 389 (Bankr. E.D. Mich. 2020).

[Top of Section]

[END OF SUPPLEMENT]

§ 71. Obtaining operating order

The following authority has decided, based on the facts and circumstances, the willfulness of a violation of the automatic stay, based on obtaining an operating order regarding a Chapter 11 or 12 debtor's business, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

While the trustee of the separate bankruptcy estate of a Chapter 11 debtor's husband was in technical violation of the automatic stay, for seeking and obtaining an operating order from the bankruptcy court after the filing of the debtor's petition, authorizing the trustee to operate the debtor's business, the debtor was not entitled to any damages against the trustee, who had been granted

an equitable interest in the assets as the result of a constructive trust imposed by a state bankruptcy court prior to the debtor's Chapter 11 filing, the court concluded in In re Gurley, 222 B.R. 124 (Bankr. W.D. Tenn. 1998), as amended on reh'g, (June 15, 1998), since while the trustee certainly had knowledge of the debtor's Chapter 11 petition, his actions were taken based upon a legitimate dispute concerning the property and did not rise to the level of willfulness required to impose sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 72. Enforcement of temporary restraining order

The following authority, based on the facts and circumstances, has reached a determination of whether enforcing a temporary restraining order against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A Chapter 11 trustee brought an action against a creditor for alleged violations of the automatic stay, and on the creditor's motion to dismiss, the court in In re Cinematronics, Inc., 111 B.R. 892 (Bankr. S.D. Cal. 1990), decided that the creditor's action in filing a motion for a temporary restraining order and acquiring and enforcing such order against the trustee constituted an act to obtain possession of property of the estate, and thus violated the automatic stay, and that since the creditor had knowledge of the Chapter 11 proceeding at the time of the filing, the violation could be held willful, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h). The fact that a year had passed since the creditor had gained knowledge of the Chapter 11 proceeding did not relieve or excuse the creditor from further inquiring as to whether the bankruptcy case was still pending before filing suit, added the court.

§ 73. Proposed administrative order

The following authority has considered, based on the facts and circumstances, whether a proposed administrative order regarding a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

To the extent that a proposed administrative order, declaring Chapter 11 debtors to be a noncomplying employer with regard to state workers' compensation law, could be regarded as an implied threat to violate the automatic stay, found the court in In re Adkins, 94 B.R. 703, Bankr. L. Rep. (CCH) ¶ 72557 (Bankr. D. Or. 1988), the state had not acted willfully, as required for an award of damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), as there was no evidence that general notice to the state of the bankruptcy had actually filtered down to the agency prior to the proposed order of the agency or that the agency had intended to use the order to coerce the debtors into waiving their rights under the stay.

§ 74. Filing action on behalf of debtor

[Cumulative Supplement]

The following authority has decided whether filing an action on behalf of a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

Order to show cause was issued as to why an official unsecured creditors committee and their proposed special litigation counsel should not be sanctioned for automatic stay violations, for filing an adversary proceeding asserting a cause of action belonging to the Chapter 11 debtor without the bankruptcy court's approval, and the court in In re General Homes Corp., 181 B.R. 870, 33 Collier Bankr. Cas. 2d (MB) 445 (Bankr. S.D. Tex. 1994), determined that the committee's filing of an adversary proceeding constituted a willful violation of the automatic stay, subject to contempt sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the special counsel certainly understood its own acts, the committee members were made aware by special and regular counsel that the course of action they had chosen was likely a violation of the stay, and the committee's regular counsel specifically advised against filing the suit without prior court authorization.

CUMULATIVE SUPPLEMENT

Cases:

Bankruptcy trustee is not considered to be an individual who is eligible to seek sanctions for violation of the automatic stay. 11 U.S.C.A. § 362(k). In re Leeds, 589 B.R. 186 (Bankr. D. Nev. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 75. Filing third-party action—Against debtor

The courts in the following cases have determined whether filing a third-party action against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

The action of filing a third-party complaint against a Chapter 11 debtor constituted a violation of the automatic stay for which sanctions could be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(h), concluded the court in In re NWFX, Inc., 81 B.R. 500 (Bankr. W.D. Ark. 1987), notwithstanding a creditor's assertion that the complaint was not filed with willful intent to violate the automatic stay, but rather, as an attempt to establish the amount of the filer's financial loss, where the filer of the third-party complaint, the debtor's agent, had knowledge of the pending bankruptcy proceeding and the automatic stay. The debtor's agent had received telephonic notice of the bankruptcy filing, mail-o-gram notice of the proceedings, notice of hearings and other pertinent dates, including the notice setting the date for the first meeting of creditors and the notice of automatic stay, noted the court. More importantly, and emphasizing the agent's blatant violation of the automatic stay, was the fact that a discussion of the debtor's bankruptcy proceeding was contained in the complaint for injunction served on the debtor's agent in the state case, stated the court, since exhibits were attached to the complaint for injunction consisting of orders of the court, news articles regarding the bankruptcy proceeding and notice of hearings. In spite of its knowledge of the bankruptcy filing and the automatic stay, the debtor's agent had filed the third party complaint against the debtor and had even attached a copy of the complaint for injunction filed against it to the third party complaint, observed the court.

Creditors who had been injured in their pursuit of a state court lawsuit against a Chapter 11 corporate debtor's officer, when the officer filed a third-party complaint for indemnification against the debtor, in alleged violation of the automatic stay, solely in a purported attempt to bring the debtor into the suit and thereby to prevent it from proceeding, sued to recover damages for the stay violation, and the court in In re International Forex of California, Inc., 247 B.R. 284, 35 Bankr. Ct. Dec. (CRR) 271, Bankr. L. Rep. (CCH) ¶ 78155 (Bankr. S.D. Cal. 2000), found that the officer's conduct had to be regarded as a willful stay violation, of the kind which would support an award of damages under the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the officer, who was responsible for filing the debtor's bankruptcy petition, unquestionably knew of the debtor's bankruptcy and had allegedly filed the third-party complaint for the express purpose of staying the creditors' lawsuit. Knowledge of the automatic stay shall be imputed to a creditor, for the purpose of holding it liable for actual damages sustained by the debtor due to its stay violation, where the creditor intentionally carried out the prohibited act with knowledge of the debtor's bankruptcy, recognized the court, and neither a good faith belief by a creditor that it had a right to the debtor's property, nor a creditor's good faith reliance upon advice of counsel, is relevant in deciding whether the creditor willfully violated the stay, so as to be liable for damages.

§ 76. Filing third-party action—Against third party

Based on the facts and circumstances, the following authority has been decided whether filing a third-party action against a third party related to a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A Chapter 11 debtor corporation which acted as a commissions broker in connection with the sale of oil brought an adversary proceeding against a buyer, seeking to recover the purchase price of missing oil, and filed a motion to enforce the automatic stay against a supplier which had commenced its own direct action against the buyer, and the court in In re Crysen/Montenay Energy Co., 902 F.2d 1098, 20 Bankr. Ct. Dec. (CRR) 807, 22 Collier Bankr. Cas. 2d (MB) 1385, Bankr. L. Rep. (CCH) ¶ 73394, 11 U.C.C. Rep. Serv. 2d 881 (2d Cir. 1990), found that although the debtor's oil supplier had violated the automatic stay in pursuing a third-party tort action against the debtor's buyer for the missing oil, the imposition of sanctions was not warranted, where the legal standard governing the imposition of sanctions regarding violation of the stay, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), was unsettled at the time the action was initiated. Any deliberate act taken in violation of the automatic stay, which a violator knows to be in existence, justifies an award of actual sanctions, held the court, and an additional finding of maliciousness or bad faith on the part of an offender warrants further imposition of punitive damages. This standard encourages would-be violators to obtain declaratory judgments before seeking to vindicate their interests in violation of an automatic stay, and thereby protects debtors' estates from incurring potentially unnecessary legal expenses in prosecuting stay violations, the court clarified.

§ 77. Initiating action to alter official docket

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has been determined whether initiating an action to alter the official docket in a Chapter 11 or 12 debtor's bankruptcy case constituted a willful violation of the automatic stay, based on the facts and circumstances.

A creditor's violation of the automatic stay of a Chapter 11 debtor, by commencing an action in state court to have a county clerk alter an official docket to show that the creditor's judicial lien arose earlier than originally recorded, was willful, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court decided in In re Marine Pollution Service, Inc., 99 B.R. 210 (Bankr. S.D. N.Y. 1989), where the creditor had actual notice of the bankruptcy filing and, as a sophisticated commercial institution, should have been quite familiar with the broad application of the automatic stay.

§ 78. Pursuit of contempt proceedings

The following authority, based on the facts and circumstances, has decided the willfulness of a violation of the automatic stay, based on pursuit of contempt proceedings against a Chapter 11 or 12 debtor, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

A creditor had willfully violated the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), when with knowledge of a Chapter 11 debtor's pending bankruptcy case, the creditor had initiated civil contempt proceedings in a district court action against the debtor for filing a bankruptcy plan and disclosure statement, determined the court in In re Alberto, 119 B.R. 985, 24 Collier Bankr. Cas. 2d (MB) 748, 18 Fed. R. Serv. 3d 273 (Bankr. N.D. Ill. 1990), since the creditor's actions were deliberately done with knowledge that the bankruptcy case was pending and the creditor did not dispute that its postpetition actions in the district court action had been taken to enforce its judgment against the debtor.

2. Substantive Proceedings

§ 79. Age discrimination lawsuit

The following authority, based on the facts and circumstances, has reached a determination of whether pursuit of an age discrimination lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

When a Chapter 11 debtor sued for a declaratory judgment that a creditor had willfully violated the stay, the court in In re Republic Technologies Intern., LLC, 283 B.R. 483 (Bankr. N.D. Ohio 2002), found that an ex-employee's commencement of

an age discrimination lawsuit against the debtor had to be regarded as a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the state court complaint had specifically acknowledged that the debtor was attempting to reorganize under Chapter 11. The court believed that in attempting to hold the debtor's former managerial employees liable for his alleged discriminatory discharge, not based upon any overt acts of discrimination by managers but solely because they were present when he first learned of his dismissal and presumably had some part therein, the ex-employee was attempting to perform an end run around the automatic stay.

§ 80. Breach of contract lawsuit—Willful violation found

Violation of the automatic stay by pursuing a breach of contract lawsuit against a Chapter 11 or 12 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), courts in the following cases have found, based on the facts and circumstances of each case.

Where a Chapter 11 debtor brought an adversary proceeding to recover for a creditor's alleged violation of the automatic stay, on cross motions for summary judgment, the court in In re Montgomery Ward, LLC, 292 B.R. 49, 41 Bankr. Ct. Dec. (CRR) 47, 49 Collier Bankr. Cas. 2d (MB) 1928, 50 U.C.C. Rep. Serv. 2d 563 (Bankr. D. Del. 2003), determined that the creditor's stay violation was willful, and rendered it liable for any damages the Chapter 11 debtor had sustained as a result under the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the creditor had pursued its state court breach of contract action to recover on a prepetition debt even after it had been notified by the debtor that its actions violated the stay. The creditor's mistaken belief that the debt arose postpetition did not detract from the willfulness of the stay violation, the court added.

Continued pursuit of a state court action, alleging that a Chapter 11 debtor's transfer of assets represented a breach of contract, satisfied the requirements for the imposition of sanctions for a willful violation of the automatic stay pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court concluded in In re Micro Marketing Intern., Inc., 150 B.R. 573 (Bankr. M.D. Pa. 1992), even if the initial filing of the complaint might not have been willful because of the complainant's lack of knowledge of the bankruptcy filing.

§ 81. Breach of contract lawsuit—Willful violation not found

Pursuit of a breach of contract lawsuit against a Chapter 11 or 12 debtor did not constitute a willful violation of the automatic stay, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), courts in the following cases have concluded, based on the facts and circumstances of each case.

The filing of an adversary proceeding by a creditor against a Chapter 11 debtor, based on a prepetition breach of contract claim, was not a willful violation of the automatic stay, and thus sanctions would not be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), the court found in Matter of Coastal Group, Inc., 100 B.R. 177 (Bankr. D. Del. 1989), where there was a scintilla of a suggestion in the case law supporting such a filing. The creditor was obviously aware that it could not proceed in any other court absent relief from the stay, the court observed, and based upon a cursory review of the case prior to filing its complaint, the creditor had gambled on a ruling that its case fell within the definition of an adversary proceeding if the filing was disputed.

Where a Chapter 11 debtor requested contempt sanctions against a creditor and its attorneys for violating the automatic stay, the court in Matter of U.S. Abatement Corp., 39 F.3d 563, 26 Bankr. Ct. Dec. (CRR) 364, 32 Collier Bankr. Cas. 2d (MB) 769, Bankr. L. Rep. (CCH) ¶ 76209 (5th Cir. 1994), concluded that the debtor's offensive contractual counterclaims in litigation commenced prepetition were not subject to the automatic stay, and, thus, the creditor's motion to reinstate and obtain summary judgment on those counterclaims was not a willful violation of the automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 82. De facto merger lawsuit

The following authority, based on the facts and circumstances, has considered whether pursuit of a de facto merger lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Even if the initial filing of a de facto merger complaint against a Chapter 11 debtor might not have been willful because of the complainant's lack of knowledge of the debtor's bankruptcy filing, the court in In re Micro Marketing Intern., Inc., 150 B.R. 573 (Bankr. M.D. Pa. 1992), found that continued pursuit of the state court action, alleging that the Chapter 11 debtor's transfer of assets represented a de facto merger, satisfied the requirements for the imposition of sanctions for a willful violation of the automatic stay, pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 83. Defamation and libel lawsuits

The following authority, based on the facts and circumstances, has reached a determination of whether pursuit of a defamation or libel lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The court in In re Elegant Concepts, Ltd., 67 B.R. 914, 15 Bankr. Ct. Dec. (CRR) 476 (Bankr. E.D. N.Y. 1986), concluded that where an attorney was chargeable with knowledge of the protection that the bankruptcy laws afforded a Chapter 11 debtor, and after a hearing in bankruptcy court, she knew that in naming the debtor as a defendant in a state court defamation and libel action, she had violated the automatic stay, yet she did nothing and took no action to delete the debtor from the state court action, the attorney's actions constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 84. Divorce judgment enforcement—Willful violation found

The following authority has concluded that the pursuit of divorce judgment enforcement against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances.

In In re Saratoga Springs Plastic Surgery, PC., 2005 WL 357207 (N.D. N.Y. 2005), the court held that a former wife and her attorney willfully violated the automatic stay that arose in connection with a Chapter 11 proceeding involving the former husband's professional corporation, of which he was the sole principal. The former wife obtained judgments against her former husband for arrears for previously court-ordered child support, spousal maintenance, and counsel fees, and a state court order was issued providing that all money judgments entered in the matrimonial action were to be filed against the former husband personally and against his plastic surgery professional corporation. The professional corporation subsequently filed for Chapter 11, following which the state court ordered judgment against the former husband for more than $150,000. The former wife's attorney duly recorded the judgment, caused restraining orders to be issued against the bank accounts of the husband and the debtor corporation, and immediately moved for the bankruptcy court for relief from the automatic stay. The attorney refrained from any further actions to enforce the judgment against the debtor corporation pending a ruling on the motion for relief from the stay. At the time the debtor's bank account was restrained, it contained only $0.27. The bankruptcy court denied the stay. The former wife's attorney withdrew the income execution against the husband and the debtor and re-issued it for execution solely against the husband. By mistake, however, the amended income execution, though directed against the former husband, referenced the debtor corporation in the body of the text. The court concluded that because the former wife's attorney acted purposefully in obtaining the judgment and executing it against the debtor's operating account in the first instance, with knowledge that the stay was in effect constituted a willful violation of the automatic stay. The court also found that, as to the second instance, the wife's attorney was aware of the stay and issued the income execution, albeit by mistake, constituting a second willful violation of the stay. Under the circumstances, however, the court concluded that the debtor was not injured by either violation of the stay, and thus, it was not entitled to damages.

The court in In re Johnston, 321 B.R. 262 (D. Ariz. 2005), held that a Chapter 11 debtor's former wife and her attorney did not willfully violate the automatic stay, in proceedings to enforce the debtor's support obligation, at the time a state court order was entered in the matter, where the state court acted on its own in issuing the order which found the debtor in contempt and mandated that he immediately satisfy a large judgment in the former wife's favor or face incarceration, given evidence that the former wife's attorney, upon learning of the debtor's petition filing, suggested that a state-court hearing be limited to a determination of whether the debtor had failed to comply with a prior support order and determination of arrearages, with any remaining issues to be reserved for a future date, and that the state court judge had agreed, indicating that the issue of sanctions against the debtor would not be considered until the effect of the automatic stay could be established. Further actions by the former wife and her attorney, however, were found to constitute a willful violation of the automatic stay (§ 85).

Where a Chapter 11 debtor moved to hold his former spouse and the spouse's attorney in contempt for their alleged violations of the stay, the court in In re McGinty, 119 B.R. 290 (Bankr. M.D. Fla. 1990), found that the former spouse, the spouse's attorney, and the attorney's paralegal had willfully and knowingly violated the automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), by seeking additional temporary support on behalf of the former spouse and a determination by the divorce court that an attorney's fees award was in the nature of alimony and support and not dischargeable in bankruptcy, after having been previously advised of the debtor's Chapter 11 filing.

§ 85. Divorce judgment enforcement—Willful violation not found

Based on the facts and circumstances, the following cases have found that the pursuit of divorce judgment enforcement against a Chapter 11 or 12 debtor did not constitute a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

When the issue was whether a Chapter 12 debtor's ex-wife had violated the automatic stay when she sought and received a postpetition judgment in state court for past due alimony and support, the court in In re Mayberry, 1996 WL 33406614 (Bankr. C.D. Ill. 1996), found that the ex-wife's violation of the automatic stay had not been willful, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), since the debtor had not included his ex-wife as a creditor in his bankruptcy schedule, so that the ex-wife had not received formal notice of the debtor's bankruptcy filing, and moreover, the evidence indicated that the ex-wife had not received informal notice of the bankruptcy filing.

While certain actions of a Chapter 11 debtor's former wife and her attorney did not willfully violate the automatic stay (§ 84), the court in In re Johnston, 321 B.R. 262 (D. Ariz. 2005), held that the former wife and her attorney did willfully violate the automatic stay when, despite being notified by the debtor's counsel that a state-court order, finding the debtor in contempt for failing to pay his support obligation and mandating that the debtor immediately satisfy the judgment in his former wife's favor or face incarceration, violated the automatic stay, the former wife and her attorney failed to take affirmative action to have the state court's order stayed or vacated and opposed the debtor's requests for a stay of the order in state appellate court, notwithstanding that the enforcement action was commenced in the state court prepetition, that the former wife and her attorney did not seek to enforce the order by executing upon or taking control of the debtor's estate or non-estate property, and that the former wife and her attorney believed in good faith that the order was excepted from the automatic stay.

§ 86. ERISA lawsuit—Generally

For purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has determined whether pursuing an ERISA lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances.

Trustees of three multiemployer and welfare benefits funds brought an action under the Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. §§ 1001 et seq., against the former officers and shareholders of a debtor employer, which had apparently filed for Chapter 11 bankruptcy, and three related corporations, seeking to collect unpaid ERISA contributions owed

to the funds by the employer under various collective bargaining agreements, and the court in Maney v. Fischer, Pens. Plan Guide P 23942U, 1998 WL 151023 (S.D. N.Y. 1998), found that the debtor employer was not entitled to damages under the Bankruptcy Code, 11 U.S.C.A. § 362(h), because there had been no willful violation of the automatic stay within the meaning of the Bankruptcy Code.

§ 87. ERISA lawsuit—Threat to suspend benefits

The following authority, based on the facts and circumstances, has decided the willfulness of a violation of the automatic stay, based on threatening to suspend the ERISA benefits of a Chapter 11 or 12 debtor's employees, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Violation of a Chapter 11 debtor's automatic stay by the trustees of a union employee benefit plan, established according to the Employee Retirement Income Security Act, 29 U.S.C.A. § 1002(3), in sending a letter to the debtor's employees informing them that the debtor's delinquent plan contributions would result in the suspension of benefits to the employees if the employees continued to work for the debtor, concluded the court in In re A and C Elec. Co., Inc., 188 B.R. 975 (Bankr. N.D. Ill. 1995), decision aff'd on other grounds, 193 B.R. 856 (N.D. Ill. 1996), was not a willful and intentional violation of the automatic stay and did not warrant damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), where the effective date of suspension of benefits had not yet occurred. However, the court noted, the trustees' violation of the stay would be deemed willful and intentional as of a specified date, unless the trustees filed a motion to modify the automatic stay to permit the trustees to take such acts necessary to pursue the suspension of benefits, or until the trustees delivered a letter to the employees rescinding the prior letter's threat to suspend benefits.

§ 88. Fair Labor Standards Act lawsuit

The following authority, based on the facts and circumstances, has reached a determination of whether the pursuit of a Fair Labor Standards Act lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Bringing an adversary proceeding against the Department of Labor (DOL), a Chapter 11 debtor alleged that the DOL had violated the automatic stay by filing for the expansion of injunctive relief to require a nondebtor corporation, which was the successor to the corporation owned by the debtor, to comply with a judgment arising out of violations of the Fair Labor Standards Act, 29 U.S.C.A. §§ 201 et seq., and the court in In re Morgan, 109 B.R. 297, 21 Collier Bankr. Cas. 2d (MB) 1431, 29 Wage & Hour Cas. (BNA) 996, 113 Lab. Cas. (CCH) ¶ 35301 (Bankr. W.D. Tenn. 1989), found that there was no conduct that could be construed as willful by the DOL, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

§ 89. Fraudulent transfer of assets lawsuit

The courts in the following cases have decided, based on the facts and circumstances of each case, whether pursuing a fraudulent transfer of assets lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

The holder of a Chapter 11 corporate debtor's debentures, the holder's attorney, and the attorney's law firm had willfully violated the automatic stay, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), and thus actual damages, including costs and attorney's fees, would be assessed against them, decided the court in In re AP Industries, Inc., 117 B.R. 789 (Bankr. S.D. N.Y. 1990), where the holder, the holder's attorney, and the law firm had actual knowledge of the pendency of the debtor's Chapter 11 case when they commenced state court actions alleging fraudulent transfers of the debtor's assets, their contention that the commencement of the actions was not in violation of the stay was unsubstantiated by well settled

case law on the issues, and they elected to continue prosecution of the actions, notwithstanding cautionary actual notice by the debtor's counsel that in his opinion those actions involved property of the estate and were violative of the automatic stay.

The court in In re Micro Marketing Intern., Inc., 150 B.R. 573 (Bankr. M.D. Pa. 1992), found that continued pursuit of a state court action, alleging that a Chapter 11 debtor's transfer of assets represented fraud, satisfied the requirements for the imposition of sanctions for a willful violation of the automatic stay pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), even if the initial filing of the complaint might not have been willful because of the complainant's lack of knowledge of the bankruptcy filing.

§ 90. Malicious prosecution lawsuit

The following authority, based on the facts and circumstances, has considered whether the pursuit of a malicious prosecution lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Evidence established that an attorney and her husband client had violated a Chapter 11 debtor's automatic stay, that the attorney had done so intentionally and deliberately, and therefore willfully, for purposes of the Bankruptcy Code, 11 U.S.C.A. § 362(h), and that the attorney had persisted in disregarding the stay, failing to rectify her violation of it as she had promised to do, the court found in In re Elegant Concepts, Ltd., 67 B.R. 914, 15 Bankr. Ct. Dec. (CRR) 476 (Bankr. E.D. N.Y. 1986), where the attorney was chargeable with knowledge of the protection that the bankruptcy laws afforded the debtor, and after a hearing in bankruptcy court, she knew that in naming the debtor as a defendant in a state court malicious prosecution action, she had violated the automatic stay, yet she did nothing and took no action to delete the debtor from the state court action.

§ 91. Mechanic's lien enforcement—Willful violation found

The courts in the following cases have found that enforcing a mechanic's lien against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), based on the facts and circumstances of each case.

In In re Nash Phillips/Copus, Inc., 78 B.R. 798 (Bankr. W.D. Tex. 1987), judgment entered, 2 Tex. Bankr. Ct. Rep. 60 (Bankr. W.D. Tex. Oct. 15, 1987), where a Chapter 11 debtor corporation sought a preliminary injunction against a materialman which had brought a state court action seeking foreclosure of mechanic's liens, naming the debtor corporation as a defendant, the court determined that the materialman's action was willful and deliberate, for purposes of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h), for a willful violation of the automatic stay.

When a sewer district brought an interpleader action to determine the party entitled to funds for work done on a construction project, naming as defendants a debtor-general contractor, which had apparently filed for bankruptcy under Chapter 11, a subcontractor, and an insurer on the project's indemnity bond, and the debtor-general contractor moved to show cause why the sewer district and subcontractor should not be held in contempt for violating the automatic stay, the court in In re Excel Engineering, Inc., 224 B.R. 582 (Bankr. W.D. Ky. 1998), decided that the subcontractor had committed a willful violation of the automatic stay, warranting sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), when, with knowledge of the debtor-general contractor's bankruptcy case, it had filed and pursued a state court lawsuit in which it sought funds that were owed to the debtor by the sewer district in connection with a public improvement project by seeking to perfect and enforce a mechanic's lien it had attempted to create postpetition.

§ 92. Mechanic's lien enforcement—Willful violation not found

The following authority, based on the facts and circumstances, has concluded enforcing a mechanic's lien against a Chapter 11 or 12 debtor did not constitute a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Chapter 11 debtors filed a motion requesting that a creditor be found in violation of the automatic stay for attempting to enforce a mechanic's lien without first obtaining relief from the stay, and the court in In re Bain, 64 B.R. 581 (W.D. Va. 1986), determined that the creditor was not liable for costs and attorney's fees for violating the automatic stay, where there was no evidence that the creditor's violation was willful, for purposes of the Bankruptcy Code, 11 U.S.C.A. § 362(h). It appeared that the creditor had made a good faith attempt to comply with what it viewed as a requirement of state law, and while the creditor was plainly wrong in doing what it did, the court could not uphold a finding that its conduct was an attempt to circumvent the jurisdiction of the bankruptcy court.

§ 93. Product liability lawsuit—Willful violation found

The following authority, based on the facts and circumstances, has determined violation of the automatic stay by pursuing a product liability lawsuit against a Chapter 11 or 12 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Subsequent to a Chapter 11 debtor corporation's filing of a bankruptcy petition, a legal clinic which handled litigation on behalf of merchant seamen exposed to asbestos during their seafaring days, filed with the bankruptcy court proofs of claim on behalf of 157 maritime asbestos claimants, each claimant alleging that the debtor was indebted to him in the amount of $1 Million, and the court in In re Chateaugay Corp., 112 B.R. 526 (S.D. N.Y. 1990), order rev'd on other grounds, 920 F.2d 183, 21 Bankr. Ct. Dec. (CRR) 206, Bankr. L. Rep. (CCH) ¶ 73764 (2d Cir. 1990), decided that a computer error resulting in the legal clinic's filing of complaints against a known debtor constituted a willful violation of the automatic stay for purposes of the Bankruptcy Code, 11 U.S.C.A. § 362(h), although the programming error had been made by a nonlawyer. A willful violation of the automatic stay may be found where there is a general intent to take actions which have the effect of violating the automatic stay, even if there is no specific intent to violate the stay, the court held.

§ 94. Product liability lawsuit—Willful violation not found

There was no willful violation of the automatic stay based on pursuit of a product liability lawsuit against a Chapter 11 or 12 debtor or its insurer, and thus, sanctions could not be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(h), the following authority has concluded, based on the facts and circumstances.

An asbestos claimant, in attempting to sue the insurers of a Chapter 11 debtor on claims arising out of the debtor's manufacture and sale of asbestos insulation, did not willfully violate the automatic stay so as to subject the claimant and his attorney to sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h), found the court in In re Forty-Eight Insulations, Inc., 54 B.R. 905 (Bankr. N.D. Ill. 1985), notwithstanding that the claimant should have requested the bankruptcy court to lift the stay before pursuing the debtor's insurers in state court, as he had a colorable argument that the automatic stay did not enjoin him from so proceeding.

§ 95. Wrongful conspiracy lawsuit

Based on the facts and circumstances, the following authority has decided whether pursuit of a wrongful conspiracy lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

Alleging that a Chapter 11 debtor's transfer of assets represented a wrongful conspiracy, a complainant brought a state court action against the debtor, and the court in In re Micro Marketing Intern., Inc., 150 B.R. 573 (Bankr. M.D. Pa. 1992), concluded

that the continued pursuit of such action constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h), even if the initial filing of the complaint might not have been willful because of the complainant's lack of knowledge of the bankruptcy filing.

§ 96. Professional malpractice action

Based on the facts and circumstances, the following authority has decided whether pursuit of a professional malpractice action against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(h).

In In re Peregrine Systems, Inc., 314 B.R. 31, 43 Bankr. Ct. Dec. (CRR) 156 (Bankr. D. Del. 2004), the court held that a German accounting firm against which Chapter 11 debtors had filed a state court malpractice action committed a willful violation of the automatic stay when, with knowledge of the debtors' bankruptcy proceedings, the accounting firm commenced a German declaratory judgment action against the debtors in a deliberate attempt to preempt the debtors' choice of forum by having its complaint served before the debtors could effect service of an accounting malpractice complaint based on the same prepetition conduct, so as to warrant an award of actual damages in the amount of $110,368.21, based on legal fees and costs that the debtors incurred in retaining German counsel and attempting to enforce the stay against the accounting firm. In so holding, the court commented that a party's good faith belief that it had a right to take the action found to violate the automatic stay is not relevant to whether its stay violation was "willful," or to whether compensation must be awarded.

§ 97. Unspecified lawsuit

[Cumulative Supplement]

The following authority, based on the facts and circumstances, has reached a determination of whether pursuit of an unspecified lawsuit against a Chapter 11 or 12 debtor constituted a willful violation of the automatic stay, for purposes of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(h).

CUMULATIVE SUPPLEMENT

Cases:

Personal injury claimant willfully violated the automatic stay when, after he was informed of debtors' bankruptcy filing, he refused to vacate his postpetition default judgment against Chapter 11 debtor or, at a minimum, to immediately file a motion to annul the stay. 11 U.S.C.A. §§ 105(a), 362(h). In Matter of Allied Holdings, Inc., 355 B.R. 372 (Bankr. N.D. Ga. 2006).

[Top of Section]

[END OF SUPPLEMENT]

RESEARCH REFERENCES

West's Key Number Digest

- West's Key Number Digest, Attorney and Client 30
- West's Key Number Digest, Bankruptcy 2186, 2393, 2394.1, 2395, 2461, 2462, 2464, 2465.1, 2465.2, 2467, 2468

Westlaw Databases

- Andrews Bankruptcy Litigation Reporter Court Documents (ANBKRLR-DOC)
- Bankruptcy Forms Combined (BKR-FORMS)
- Bankruptcy Law Fundamentals (BKRFUND)
- Federal Bankruptcy Briefs (FBKR-BRIEF)
- International Insolvency (INTINSOLV)
- Trial Motions (MOTIONS)
- Norton Creditors' Rights Handbook (NRTN-CRRTH)
- Trial Pleadings (PLEADINGS)
- Reorganizations Under Chapter 11 (REORG11B)
- WESTLAW® Search Query: (("11 USC" "11 USCA" "11 U.S.C." "11 U.S.C.A.") /5 362(h)) & (WILLFUL! /P STAY) & "CHAPTER 11" "CHAPTER 12"

Primary Authority

- 11 U.S.C.A. § 362(h), notes 633 to 40

A.L.R. Library

- A.L.R. Index: Automatic Stay
- A.L.R. Index: Bankruptcy and Insolvency
- A.L.R. Index: Damages
- A.L.R. Index: Stay of Action or Proceeding
- A.L.R. Index: Willful Violation
- West's A.L.R. Digest, 2461, 2467
- What Constitutes "Repeated" or "Willful" Violation for Purposes of State Occupational Safety and Health Acts, 17 A.L.R.6th 715

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

- What Constitutes "Repeated" or "Willful" Violation for Purposes of State Occupational Safety and Health Acts, 2003 A.L.R.5th 18
- Availability and Application of Laches to Claims of Violation of Bankruptcy Automatic Stay, 11 U.S.C.A. § 362, 32 A.L.R. Fed. 3d Art. 2
- What Constitutes "Cause" for Dismissal of Chapter 12 Bankruptcy Case Under 12 U.S.C.A. § 1208(c), 14 A.L.R. Fed. 3d Art. 4
- Construction and Application of 11 U.S.C.A. § 362(b)(3), Providing for Exception to Automatic Stay for Any Act to Perfect, or to Maintain or Continue Perfection of, Interest in Property to Extent that Trustee's Rights and Powers are Subject to Such Perfection Under 11 U.S.C.A. § 546(b) or to Extent that Such Act Is Accomplished Within Period Provided Under 11 U.S.C.A. § 547(e)(2)(A), 9 A.L.R. Fed. 3d Art. 8
- Assessment of "Feasibility" of Proposed Chapter 12 Bankruptcy Plan, 8 A.L.R. Fed. 3d Art. 8
- Construction and Application of Phrase "With Respect to the Debtor" of Bankruptcy Code, 11 U.S.C.A. § 362(c)(3)(A), Terminating Automatic Stay of Execution for Debtors Commencing Second Bankruptcy, 3 A.L.R. Fed. 3d Art. 7
- Validity, Construction and Application of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 2005 A.L.R. Fed. 2d 3
- Abrogation of Absolute Priority Rule in Individual Chapter 11 Bankruptcy Cases by Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), 78 A.L.R. Fed. 2d 531
- Validity and Effect of Prepetition Agreements Waiving Protection of Bankruptcy Automatic Stay, 66 A.L.R. Fed. 2d 385
- Construction and Application of "Forward Contract" and "Forward Contract Merchant" Under Bankruptcy Code, 11 U.S.C.A. § 101(25), (26), 58 A.L.R. Fed. 2d 273
- What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(k)) Sufficient to Award Damages—Chapter 7 Cases, 23 A.L.R. Fed. 2d 339
- Bankruptcy Rule 9011 Sanctions in Chapter 7 Bankruptcy Proceedings, 11 A.L.R. Fed. 2d 435
- What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient to Award Damages—Chapter 13 Cases, 8 A.L.R. Fed. 2d 433
- What constitutes "willful" violation for purposes of secs. 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.A. sec. 666(a) or sec. 666(e)), 161 A.L.R. Fed. 561
- Remedies and damages for violations of the automatic stay provisions of the Bankruptcy Code (11 U.S.C.A. sec. 362(h)), by parties other than the Federal Government, 153 A.L.R. Fed. 463
- Federal Government's liability for damages under 11 U.S.C.A. sec. 362(h) for willful violation of automatic stay in bankruptcy, 117 A.L.R. Fed. 1
- What is "willful" violation of Age Discrimination in Employment Act (29 U.S.C.A. secs. 621-634) for purpose of extension to 3 years of 2-year limitations period for filing action, 82 A.L.R. Fed. 377
- "Who is "party in interest" entitled to request relief from automatic stay provision of bankruptcy code of 1978 (11 U.S.C.A. sec. 362(d)), 73 A.L.R. Fed. 324
- What constitutes lack of "adequate protection" of interest in property of estate for which relief may be granted from automatic stay provision of Bankruptcy Code of 1978 (11 U.S.C.A. sec. 362(a)), 66 A.L.R. Fed. 505
- What are proceedings by governmental units to enforce police or regulatory powers which are excepted from operation of automatic stay provisions of Bankruptcy Code of 1978 (11 U.S.C.A. sec. 362(b)(4), (5)), 58 A.L.R. Fed. 282
- Violation of automatic stay provisions of 1978 Bankruptcy Code (11 U.S.C.A. sec. 362) as contempt of court, 57 A.L.R. Fed. 927
- Application of 11 U.S.C.A. sec. 362 of Bankruptcy Code of 1978 (automatic stay provisions) to cancellation of franchise or license agreement, 53 A.L.R. Fed. 622

Legal Encyclopedias

- Am. Jur. 2d, Bankruptcy §§ 476, 651, 1760 to 1765
- C.J.S., Bankruptcy §§ 65, 83, 101

Treatises and Practice Aids

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

- Resnick, Bankruptcy Law Manual § 2:46 (5th ed.)
- Drake, Bankruptcy Practice for the General Practitioner (3d ed.), §§ 3:6, 9:2
- 2B Bankruptcy Service, Lawyer's Edition §§ 19:1420 to 19:17142B Bankruptcy Service, Lawyer's Edition §§ 19:1420 to 19:1714
- Rome, Business Workouts Manual (2d ed.) § 21:3
- Federal Procedure, L.Ed. §§ 9:379 to 9:383, 9:1159 to 9:1165
- Dunaway, The Law of Distressed Real Estate § 28:21
- Norton Bankruptcy Law & Practice 2d §§ 36:43, 75:1075:10, 118:1, 118:3
- Boelter, Representing The Bankrupt Taxpayer §§ 8:15, 8:18

Trial Strategy

- Liability of Creditor and Repossession Agent for Wrongful Repossession and Tortious Acts Committed During Repossession, 42 Am. Jur. Proof of Facts 3d 355
- Relief From Automatic Stay—Debtor's Lack of Equity in Residential property, 21 Am. Jur. Proof of Facts 3d 769
- Relief From Automatic Stay—Inadequate Protection of Secured Interest, 20 Am. Jur. Proof of Facts 3d 521
- Action for Harassment of Debtor, 16 Am. Jur. Trials 619

Forms

- Am. Jur. Pleading and Practice Forms, Bankruptcy §§ 180 to 192
- Federal Procedural Forms §§ 9:890 to 9:892

Law Reviews and Other Periodicals

- McCullough, Emotional Distress Damages: Should They Be Permitted Under The Bankruptcy Code for a Willful Violation of the Stay, 1 DePaul Bus. & Com. L.J. 339 (2003)
- Moss, The Risks of Purchasing and Collecting Consumer Debt, 10 Am. Bankr. Inst. L. Rev. 643 (2002)
- Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002)

Westlaw. © 2020 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 See Remedies and damages for violations of the automatic stay provisions of the Bankruptcy Code (11 U.S.C.A. sec. 362(h)), by parties other than the Federal Government, 153 A.L.R. Fed. 463.

2 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002).

3 See Bankruptcy Reform Act of 1978, 11 U.S.C.A. §§ 101 to 1330 (1978). Niccolini, The Voidability of Actions Taken in Violation of The Automatic Stay: Application of The Information-Forcing Paradigm, 45 Vand. L. Rev. 1663 (1992). For a brief discussion of the nature of this expansion, see Keating, Offensive Uses of the Automatic Stay, 45 Vand. L. Rev. 71 (1992).

4 H.R. Rep. 95-595, at § 362 (Sept. 8, 1977). See Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002).

5 H.R. Rep. 95-595, at § 362; Barnes, Student Author, The Plain Meaning of the Automatic Stay in Bankruptcy: The Void/Voidable Distinction Revisited, 57 Ohio St. L.J. 291, 299 (1996). See Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002).

6 Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353 § 304, 98 Stat. 333, 352.

7 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002).

8 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002). Prior to the enactment of § 362(h), sanctions for violations of the automatic stay were pursued in a civil contempt proceeding pursuant to the Bankruptcy Court's discretionary power under 11 U.S.C.A. § 105(a).

9 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002).

10 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of The Automatic Stay, 24 Whittier L. Rev. 3 (2002), citing In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987) (holding that knowledge of bankruptcy filing is legal equivalent of knowledge of stay), see § 3; but see In re Williams, 100 B.R. 726 (Bankr. M.D. Pa. 1989) (holding that debtor could not recover damages where it failed to file notice in correct recorder's office, since mortgagee holding sheriff's sale post-petition had no notice of bankruptcy).

11 Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265, 35 Bankr. Ct. Dec. (CRR) 45, Bankr. L. Rep. (CCH) ¶ 78044 (1st Cir. 1999); In re Ocasio, 272 B.R. 815 (B.A.P. 1st Cir. 2002); In re Smith, 180 B.R. 311 (Bankr. N.D. Ga. 1995).

12 In re Florio, 229 B.R. 606 (S.D. N.Y. 1999).

13 In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987), see § 2.

14 In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987), see § 2.

15 Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 109 S. Ct. 2818, 106 L. Ed. 2d 76, 26 Soc. Sec. Rep. Serv. 175, 19 Bankr. Ct. Dec. (CRR) 514, 20 Collier Bankr. Cas. 2d (MB) 1204, Bankr. L. Rep. (CCH) ¶ 72856 (1989). Citing In re Prime, Inc., 44 B.R. 924 (Bankr. W.D. Mo. 1984); In re T & D Management Co., 40 B.R. 781, 12 Bankr. Ct. Dec. (CRR) 1, 10 Collier Bankr. Cas. 2d (MB) 1000, 19 Ed. Law Rep. 273, Bankr. L. Rep. (CCH) ¶ 69898 (Bankr. D. Utah 1984).

16 In re Nelson, 994 F.2d 42, Bankr. L. Rep. (CCH) ¶ 75285 (1st Cir. 1993).

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

23 A.L.R. Fed. 2d 339 (Originally published in 2007)

American Law Reports | The ALR databases are made current by the weekly addition of relevant new cases.

ALR Federal 2d
Ann K. Wooster, J.D.

What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(k)) Sufficient to Award Damages—Chapter 7 Cases

In 1984, Congress amended the automatic stay provisions of the Bankruptcy Code to add what is now 11 U.S.C.A. § 362(k), which states that a debtor who can prove injury due to a willful violation of the automatic stay can recover actual damages, including costs and attorney's fees, and, potentially, punitive damages. In order to prove a willful violation of the stay, courts will typically examine whether the violator had knowledge of the bankruptcy case when acting, and whether the violator intended to carry out the proscribed act. Federal courts have addressed what constitutes a willful violation of the automatic stay provisions sufficient to award damages in Chapter 7 cases. For instance, in In re Gossett, 369 B.R. 361, 23 A.L.R. Fed. 2d 751 (Bankr. N.D. Ill. 2007), the court held that where a secured creditor learned of the Chapter 7 debtor's bankruptcy filing on the date it had its agent repossess the debtor's vehicle, the repossession constituted a technical violation of the automatic stay, but the creditor's actions were not "willful," as required for the imposition of sanctions under 11 U.S.C.A. § 362(k)(1). This and other cases that have addressed what constitutes a willful violation of the automatic stay provisions of the Bankruptcy Code, sufficient to award damages in Chapter 7 cases pursuant to 11 U.S.C.A. § 362(k), are collected in the following annotation.

TABLE OF CONTENTS

Article Outline
Index
Statutory Text
Table of Cases
Research References

ARTICLE OUTLINE

I Preliminary Matters
§ 1 Scope
§ 2 Summary and comment
§ 3 Practice pointers
§ 3.5 General principles
II Particular Actions Constituting Willful Violation of Automatic Stay
A Collection Efforts Generally
§ 4 Billing statement—Willful violation found
§ 5 Billing statement—Willful violation not found
§ 6 Collection letter—Willful violation found
§ 7 Collection letter—Willful violation not found
§ 8 Telephone call—Willful violation found

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 9 Telephone call—Willful violation not found
§ 10 Referral to collection agency
§ 11 Filing credit report information
§ 12 Initiating collection lawsuit—Willful violation found
§ 13 Initiating collection lawsuit—Willful violation not found
§ 14 Continuing collection lawsuit—Willful violation found
§ 15 Continuing collection lawsuit—Willful violation not found
§ 16 Reaffirmation agreement—Collection—Willful violation found
§ 17 Reaffirmation agreement—Collection—Willful violation not found
§ 18 Reaffirmation agreement—Solicitation of agreement
§ 19 Harassment and coercion—Generally—Willful violation found
§ 20 Harassment and coercion—Generally—Willful violation not found
§ 21 Harassment and coercion—Conduct toward third party—Willful violation found
§ 22 Harassment and coercion—Conduct toward third party—Willful violation not found
§ 23 Failure to notify assignee of debt of bankruptcy
§ 24 Unspecified contact with debtor
B Bank Account Interference
§ 25 Offset generally
§ 26 Administrative freeze—Willful violation found
§ 27 Administrative freeze—Willful violation not found
§ 28 Failure to terminate automatic deductions—Willful violation found
§ 29 Failure to terminate automatic deductions—Willful violation not found
§ 30 Presentment of postdated check
§ 31 Refusal to release judicial lien on bank account funds
C Wage Garnishment
§ 32 Pursuit of garnishment proceedings—Willful violation found
§ 33 Pursuit of garnishment proceedings—Willful violation not found
§ 34 Garnishment of wages—Willful violation found
§ 35 Garnishment of wages—Willful violation not found
§ 36 Garnishment of wages—Reduction in pension payments
§ 37 Failure to discontinue wage garnishment
§ 38 Refusal to return garnished wages—Willful violation found
§ 39 Refusal to return garnished wages—Willful violation not found
§ 40 Interference with garnished wages
D Collection Efforts Involving Real Estate
1 Leases
§ 41 Attempt to collect rent from debtor's tenant—Willful violation found
§ 42 Attempt to collect rent from debtor's tenant—Willful violation not found
§ 43 Collection of rent from debtor's tenant
§ 44 Removal of debtor's property from leased premises—Willful violation found
§ 45 Removal of debtor's property from leased premises—Willful violation not found
§ 46 Disposal of debtor's property on leased premises
§ 47 Eviction from leased premises
2 Mortgages
§ 48 Collection of mortgage debt generally
§ 49 Default on promissory note action
§ 50 Initiation of foreclosure proceeding
§ 51 Continuation of foreclosure proceeding
§ 52 Foreclosure sale—Willful violation found

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 53 Foreclosure sale—Willful violation not found
§ 54 Foreclosure sale—Purchase at foreclosure sale
§ 55 Eviction proceedings
§ 56 Registration of deed of trust
3 Other Actions Involving Real Estate
§ 57 Attempt to transfer property
§ 58 Renegotiation of listing agreements
§ 59 Request for lien on real property
§ 60 Reattachment of lien on debtor property
§ 61 Withdrawal of escrowed earnest money
E Repossession of Financed Property
§ 62 Attempt to repossess financed property—Willful violation found
§ 63 Attempt to repossess financed property—Willful violation not found
§ 64 Repossession of financed property—Willful violation found
§ 65 Repossession of financed property—Willful violation not found
§ 66 Failure to return repossessed property—Willful violation found
§ 67 Failure to return repossessed property—Willful violation not found
§ 68 Sale of repossessed property—Willful violation found
§ 69 Sale of repossessed property—Willful violation not found
§ 70 Taking possession of other property
F Tax Collection Efforts
§ 71 Filing proceeding to seize debtor property
§ 72 Moving forward with proceeding to enforce debtor's tax liability
§ 73 Seizure of debtor property
§ 74 Refusal to return personal property seized
§ 75 Auction of debtor property
§ 76 Lien on debtor property—Generally
§ 77 Lien on debtor property—Failure to remove lien
§ 78 Levy on debtor property—Generally
§ 79 Levy on debtor property—Notice of intent to levy
§ 80 Wage levy—Willful violation found
§ 81 Wage levy—Willful violation not found
§ 82 Failure to return levied funds
§ 83 Interference with tax refund—Willful violation found
§ 84 Interference with tax refund—Willful violation not found
§ 85 Suspension of professional license
G Pursuit of Other Action
1 Generally
§ 86 Assignment of insurance claim
§ 87 Cancellation of service contract
§ 88 Deferred payment arrangement
§ 89 Participation in Medicare program precluded
§ 90 Public sale of collateral
§ 91 Recording of mechanic's lien
§ 92 Sale of property subject to lien
§ 93 Refusal to release lien
§ 94 Refusal to relinquish accounts receivable
§ 95 Refusal to restore utility services
§ 96 Refusal to turn over contract proceeds

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 97 Takeover of debtor business
§ 98 Transfer of radio call sign license
§ 99 Withholding academic transcript
§ 100 Refusal to allow debtor to register for classes
§ 101 Seeking to perfect security interest
§ 102 Refusal to do business with debtor
§ 103 Entering into insurance settlement agreement with debtor
§ 104 Sale of note subject to repurchase agreement
§ 105 Offsetting money owed to debtor against prepetition debt—Willful violation found
§ 106 Offsetting money owed to debtor against prepetition debt—Willful violation not found
2 Legal Action
a Procedural Proceedings
§ 107 Filing action on behalf of debtor
§ 108 Filing motion to release settlement proceeds
§ 109 Filing petition for certiorari
§ 110 Continuation of proceedings
§ 111 Bringing citation action
§ 112 Request to conduct Fed. R. Bankr. P. 2004 examination
§ 113 Pursuit of contempt proceedings—Willful violation found
§ 114 Pursuit of contempt proceedings—Willful violation not found
§ 115 Failure to vacate writ of execution—Generally
§ 116 Failure to vacate writ of execution—Failure to return seized property
§ 117 Provoking criminal prosecution
§ 118 Arrest warrant enforcement—Generally
§ 119 Arrest warrant enforcement—Failure to quash warrant—Willful violation found
§ 120 Arrest warrant enforcement—Failure to quash warrant—Willful violation not found
§ 121 Seeking appointment of receiver
§ 122 Demand that debtor submit to postpetition examination under oath
§ 123 Service of summons and complaint on debtor
b Substantive Proceedings
§ 124 Abuse of process claim
§ 125 Breach of fiduciary duty claim
§ 126 Breach of promissory note claim
§ 127 Creation of constructive trust claim
§ 128 Divorce judgment enforcement—Willful violation found
§ 129 Divorce judgment enforcement—Willful violation not found
§ 130 Proceeding seeking reduction of support obligation
§ 131 Fraud claim—Willful violation found
§ 132 Fraud claim—Willful violation not found
§ 133 Fraudulent conveyance of assets claim
§ 134 Interstate Commerce Commission petition
Research References

INDEX

Abuse of process claim § 124
Academic transcript, withholding of § 99
Accounts receivable, refusal to relinquish § 94

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Action on behalf of debtor, filing § 107
Actions constituting willful violation of automatic stay § 4 to 134
Administrative freeze on bank account § 26, 27
Appointment of receiver, seeking § 121
Arrest warrant enforcement § 118 to 120
Assignment of insurance claim § 86
Auction of debtor property to collect tax debt § 75
Automatic deductions from bank account, failure to terminate § 28, 29
Bank account interference § 25 to 31
Billing statement § 4, 5
Breach of fiduciary duty claim § 125
Breach of promissory note claim § 126
Cancellation of service contract § 87
Certiorari, filing petition for § 109
Chiropractor's license, suspension of § 85
Citation action, bringing § 111
Classes, refusal to allow debtor to register for § 100
Coercion and harassment § 19 to 22
Collateral, public sale of § 90
Collection agency, referral to § 10
Collection efforts, generally § 4 to 24
Collection efforts involving real estate § 41 to 61
Collection efforts involving taxes § 71 to 85
Collection letter § 6, 7
Comment and summary § 2
Complaint and summons, service of on debtor § 123
Constructive trust, claim of creation of § 127
Contempt proceedings against debtor, pursuit of § 113, 114
Continuation of foreclosure proceeding § 51
Continuation of proceedings against debtor § 110
Continue doing business with debtor, refusal to § 102
Continuing collection lawsuit § 14, 15
Continuing with foreclosure sale § 52, 53
Continuing with proceeding to enforce debtor's tax liability § 72
Contract proceeds, refusal to turn over § 96
Creation of constructive trust claim § 127
Credit report information, filing § 11
Criminal prosecution, provoking § 117
Deed of trust, registration of § 56
Default on mortgage promissory note action § 49
Deferred payment arrangement § 88
Discontinue wage garnishment, failure to § 37
Disposal of debtor's property on leased premises § 46
Divorce judgment enforcement § 128, 129
Do business with debtor, refusal to § 102
Earnest money, escrowed, withdrawal of § 61
Enforcement of arrest warrant § 118 to 120
Enforcement of taxes § 71 to 85
Entering into insurance settlement agreement with debtor § 103

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Escrowed earnest money, withdrawal of § 61
Eviction § 47, 55
Examination of debtor § 112, 122
Execution, failure to vacate writ of § 115, 116
Fed. R. Bankr. P. 2004 examination of debtor, request for § 112
Fiduciary duty, claim of breach of § 125
Filing abuse of process claim § 124
Filing action on behalf of debtor § 107
Filing credit report information § 11
Filing fraud claim against debtor § 131, 132
Filing Interstate Commerce Commission petition § 134
Filing motion to release settlement proceeds § 108
Filing notice of intent to levy on debtor property § 79
Filing petition for certiorari § 109
Filing proceeding to seize debtor property in satisfaction of unpaid taxes § 71
Filing tax lien § 76
Financed property, repossession of § 62 to 70
Foreclosure proceeding, continuation of § 51
Foreclosure proceeding, initiation of § 50
Foreclosure sale § 52 to 54
Fraud claim against debtor, filing § 131, 132
Fraudulent conveyance of assets claim § 133
Freeze, administrative, on bank account § 26, 27
Garnishment of wages § 32 to 40
Harassment and coercion § 19 to 22
Initiation of collection lawsuit § 12, 13
Initiation of foreclosure proceeding § 50
Insurance claim, assignment of § 86
Insurance settlement agreement, entering into with debtor § 103
Interference with bank account § 25 to 31
Interference with garnished wages § 40
Interference with tax refund § 83, 84
Interstate Commerce Commission petition, filing § 134
Judicial lien on bank account funds, refusal to release § 31
Leased premises, removal of debtor's property from § 44, 45
Leases, collection efforts involving § 41 to 47
Legal action § 107 to 134
Letter, collection § 6, 7
Levied funds, failure to return § 82
Levy on debtor property § 78, 79
Levy on wages § 80, 81
License, professional, suspension of § 85
License, radio call sign, transfer of § 98
Lien, refusal to release § 31, 93
Lien, sale of property subject to § 92
Lien, tax, on debtor property § 76, 77
Lien on debtor property, reattachment of § 60
Lien on real property, request for § 59
Listing agreements, renegotiation of § 58

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Mechanic's lien, recording of § 91
Medicare program, precluding participation in § 89
Mortgages, collection efforts involving § 48 to 56
Motion to release settlement proceeds, filing § 108
Moving forward with proceeding to enforce debtor's tax liability § 72
Note, sale of subject to repurchase agreement § 104
Notice of intent to levy on debtor property § 79
Notify assignee of debt of bankruptcy, failure to § 23
Offset involving bank account § 25
Offsetting money owed to debtor against prepetition debt § 105, 106
Participation in Medicare program, precluding § 89
Particular actions constituting willful violation of automatic stay § 4 to 134
Pension payments reduction § 36
Perfect security interest, seeking to § 101
Petition for certiorari, filing § 109
Postdated check, presentment of § 30
Practice pointers § 3
Preliminary matters § 1 to 3
Presentment of postdated check § 30
Procedural proceedings § 107 to 123
Proceedings against debtor, continuation of § 110
Proceeding seeking reduction of support obligation § 130
Proceeding to seize debtor property in satisfaction of unpaid taxes, filing § 71
Proceeding with foreclosure sale § 52, 53
Proceeds, contract, refusal to turn over § 96
Professional license, suspension of § 85
Promissory note, claim of breach of § 126
Promissory note action, default on § 49
Property subject to lien, sale of § 92
Provoking criminal prosecution § 117
Public sale of collateral § 90
Purchase at foreclosure sale § 54
Pursuing breach of promissory note action § 126
Pursuit of contempt proceedings against debtors § 113, 114
Pursuit of garnishment proceedings § 32, 33
Quash arrest warrant, failure to § 119, 120
Radio call sign license, transfer of § 98
Reaffirmation agreement § 16 to 18
Real estate, collection efforts involving § 41 to 61
Reattachment of lien on debtor property § 60
Receiver, seeking appointment of § 121
Recording of mechanic's lien § 91
Reduction in pension payments § 36
Reduction of support obligation, proceeding seeking § 130
Referral to collection agency § 10
Refund, tax, interference with § 83, 84
Refusal to allow debtor to register for classes § 100
Refusal to do business with debtor § 102
Refusal to release lien § 31, 93

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Refusal to relinquish accounts receivable § 94
Refusal to restore utility services § 95
Refusal to return garnished wages § 38, 39
Refusal to return personal property seized in satisfaction of unpaid taxes § 74
Refusal to turn over contract proceeds § 96
Register for classes, refusal to allow debtor to § 100
Registration of deed of trust § 56
Release lien, refusal to § 31, 93
Release settlement proceeds, filing motion to § 108
Relinquish accounts receivable, refusal to § 94
Removal of debtor's property from leased premises § 44, 45
Remove tax lien on debtor property, failure to § 77
Renegotiation of real property listing agreements § 58
Rent, collection or attempt to collect from debtor's tenant § 41 to 43
Repossession of financed property § 62 to 70
Repurchase agreement, sale of note subject to § 104
Request for lien on real property § 59
Request to conduct Fed. R. Bankr. P. 2004 examination of debtor § 112
Restore utility services, refusal to § 95
Return garnished wages, refusal to § 38, 39
Return levied funds, failure to § 82
Return repossessed property, failure to § 66, 67
Return seized property, failure or refusal to § 74, 116
Sale, foreclosure § 52 to 54
Sale of collateral, public § 90
Sale of note subject to repurchase agreement § 104
Sale of property subject to lien § 92
Sale of repossessed property § 68, 69
Scope of annotation § 1
Security interest, seeking to perfect § 101
Seize debtor property in satisfaction of unpaid taxes, filing proceeding to § 71
Seized property, failure or refusal to return § 74, 116
Seizure of debtor property in satisfaction of unpaid taxes § 73
Service contract, cancellation of § 87
Service of summons and complaint on debtor § 123
Settlement agreement, insurance, entering into with debtor § 103
Settlement proceeds, filing motion to release § 108
Solicitation of reaffirmation agreement § 18
Substantive proceedings § 124 to 134
Summary and comment § 2
Summons and complaint, service of on debtor § 123
Support obligation, proceeding seeking reduction of § 130
Suspension of professional license § 85
Takeover of debtor business § 97
Taking posession of other property during repossession of financed property § 70
Tax collection efforts § 71 to 85
Tax refund, interference with § 83, 84
Telephone call, collection efforts § 8, 9
Telephone service, refusal to restore § 95

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Tenant of debtor, collection or attempt to collect rent from § 41 to 43
Terminate automatic deductions from bank account, failure to § 28, 29
Third party, harassment and coercion of § 21, 22
Transcript, academic, withholding of § 99
Transfer of radio call sign license § 98
Transfer property of debtor, attempt to § 57
Turn over contract proceeds, refusal to § 96
University, refusal to allow debtor to register for classes § 100
University, withholding of academic transcript § 99
Unspecified contact with debtor, collection efforts § 24
Utility services, refusal to restore § 95
Vacate writ of execution, failure to § 115, 116
Wage garnishment § 32 to 40
Wage levy § 80, 81
Withdrawal of escrowed earnest money § 61
Withholding academic transcript § 99
Writ of execution, failure to vacate § 115, 116

STATUTORY TEXT

The relevant portions of 11 U.S.C.A. § 362 provide as follows:

§ 362. Automatic stay

(a) to (j) [Omitted]

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

—

Table of Cases

Supreme Court

Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 116 S. Ct. 286, 133 L. Ed. 2d 258 (1995) — 26
Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 109 S. Ct. 2818, 106 L. Ed. 2d 76 (1989) — 3

First Circuit

Adams, In re, 212 B.R. 703 (Bankr. D. Mass. 1997) — 43
Baker, In re, 57 Collier Bankr. Cas. 2d (MB) 185, 2006 WL 3370864 (Bankr. D. Mass. 2006) — 6
Baker, In re, 183 B.R. 30 (Bankr. D. R.I. 1995) — 18, 64
Barboza, In re, 211 B.R. 450 (Bankr. D. R.I. 1997) — 118
Boudakian, In re, 137 B.R. 89 (Bankr. D. R.I. 1992) — 129
Brigham, In re, 2001 BNH 48, 2001 WL 1868123 (Bankr. D. N.H. 2001) — 4
Cadle Co. v. McKernan, 207 B.R. 971 (D. Mass. 1997) — 42
Carlson, In re, 265 B.R. 346 (Bankr. D. R.I. 2001) — 112
Carrigg, In re, 216 B.R. 303 (B.A.P. 1st Cir. 1998) — 66
Diaz Rodriguez, In re, 357 B.R. 691 (Bankr. D. P.R. 2006) — 22

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Fisher, In re, 144 B.R. 237 (Bankr. D. R.I. 1992) — 64
Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265 (1st Cir. 1999) — 3, 50, 51
Flynn, In re, 143 B.R. 798 (Bankr. D. R.I. 1992) — 18
Gilford, In re, 567 B.R. 412 (Bankr. D. Mass. 2017) — 3.5
Internal Revenue Service v. Murphy, 564 B.R. 96 (D. Me. 2016) — 3.5
Johnson, In re, 138 B.R. 352 (Bankr. D. R.I. 1992) — 86
Kim, In re, 554 B.R. 304 (Bankr. D. Mass. 2016) — 3.5, 55
Latanowich, In re, 207 B.R. 326 (Bankr. D. Mass. 1997) — 16
Nelson, In re, 994 F.2d 42 (1st Cir. 1993) — 3, 129
Ocasio, In re, 272 B.R. 815 (B.A.P. 1st Cir. 2002) — 3
Parker, In re, 334 B.R. 529, 204 Ed. Law Rep. 639 (Bankr. D. Mass. 2005) — 100
Pico Vidal v. Ruiz Alvarado, 377 B.R. 788 (D.P.R. 2007) — 24
Rielly, In re, 545 B.R. 435 (Bankr. D. Mass. 2016) — 3.5
Roman-Perez, In re, 527 B.R. 844 (Bankr. D. P.R. 2015) — 3.5
Shadduck v. Rodolakis, 221 B.R. 573 (D. Mass. 1998) — 76, 79
Soiett v. U.S. Veteran's Admin., 92 B.R. 563 (Bankr. D. Me. 1988) — 37
Whitman-Nieves, In re, 519 B.R. 1 (Bankr. D. P.R. 2014) — 3, 3.5

Second Circuit

Bailey, In re, 2007 WL 2049007 (Bankr. S.D. N.Y. 2007) — 6, 106
Baker, In re, 140 B.R. 88 (D. Vt. 1992) — 64
Baumblit, In re, 15 Fed. Appx. 30 (2d Cir. 2001) — 10
Beckford, In re, 572 B.R. 61 (Bankr. D. Conn. 2017) — 3.5, 14
Brizinova, In re, 588 B.R. 311 (Bankr. E.D. N.Y. 2018) — 132
Campbell, In re, 398 B.R. 799 (Bankr. D. Vt. 2008) — 2
Eskenazi v. Klein, 1995 WL 362460 (E.D. N.Y. 1995) — 125, 126, 127, 133
Flores, In re, 291 B.R. 44 (Bankr. S.D. N.Y. 2003) — 53
Florio, In re, 229 B.R. 606 (S.D. N.Y. 1999) — 3
Fugazy Exp., Inc., Matter of, 124 B.R. 426 (S.D. N.Y. 1991) — 98
Ghartey v. Chrysler Credit Corp., 1992 WL 373479 (E.D. N.Y. 1992) — 65
Grinspan, In re, 597 B.R. 725 (Bankr. E.D. N.Y. 2019) — 3.5, 113
Henry, In re, 328 B.R. 664 (Bankr. E.D. N.Y. 2005) — 26
Killmer, In re, 513 B.R. 41 (Bankr. S.D. N.Y. 2014) — 3.5
McGrath, In re, 2005 WL 1030424 (Bankr. D. Vt. 2005) — 101
North, In re, 128 B.R. 592 (Bankr. D. Vt. 1991) — 85
Parry, In re, 328 B.R. 655 (Bankr. E.D. N.Y. 2005) — 26
Robinson, In re, 228 B.R. 75 (Bankr. E.D. N.Y. 1998) — 51
Salem v. Paroli, 260 B.R. 246 (S.D. N.Y. 2001) — 110
Sherlock Homes of W.N.Y, Inc., In re, 246 B.R. 19 (Bankr. W.D. N.Y. 2000) — 58
Siskin, In re, 231 B.R. 514 (Bankr. E.D. N.Y. 1999) — 119
Wright, In re, 328 B.R. 660 (Bankr. E.D. N.Y. 2005) — 26

Third Circuit

Bernard v. Attorney General United States, 682 Fed. Appx. 108 (3d Cir. 2017) — 3.5
Bowen, In re, 2000 WL 708961 (Bankr. E.D. Pa. 2000) — 44

Exhibit 3

Conference of African Union First Colored Methodist Protestant Church, In re, 184 B.R. 207 (Bankr. D. Del. 1995) — 114
Encarnacion, In re, 1988 WL 131934 (Bankr. E.D. Pa. 1988) — 26
Express America, Inc., In re, 132 B.R. 535 (Bankr. W.D. Pa. 1991) — 94
Fox, In re, 1989 WL 112790 (Bankr. E.D. Pa. 1989) — 124, 131
Hollinger, In re, 1990 WL 41882 (Bankr. E.D. Pa. 1990) — 26
Lightfoot, In re, 399 B.R. 141 (Bankr. E.D. Pa. 2008) — 3, 24
Malloy, In re, 572 B.R. 551 (Bankr. E.D. Pa. 2017) — 3.5, 20
M.J. Shoearama, Inc., In re, 137 B.R. 182 (Bankr. W.D. Pa. 1992) — 46
Rusnak, In re, 184 B.R. 459, 101 Ed. Law Rep. 941 (Bankr. E.D. Pa. 1995) — 89
Stansbury, In re, 1990 WL 59180 (Bankr. E.D. Pa. 1990) — 47
Traversa, In re, 585 B.R. 215 (Bankr. E.D. Pa. 2018) — 3.5
U.S. Physicians, In re, 2002 WL 31866247 (E.D. Pa. 2002) — 94
Valez, In re, 601 B.R. 351 (Bankr. M.D. Pa. 2019) — 3.5
Vu, In re, 591 B.R. 596 (Bankr. E.D. Pa. 2018) — 3.5, 44
Wagner, In re, 74 B.R. 898 (Bankr. E.D. Pa. 1987) — 2, 3
Weisberg, In re, 218 B.R. 740 (Bankr. E.D. Pa. 1998) — 128
Weisberger, In re, 205 B.R. 727 (Bankr. M.D. Pa. 1997) — 78
Whitt, In re, 79 B.R. 611 (Bankr. E.D. Pa. 1987) — 5
Williams, In re, 100 B.R. 726 (Bankr. M.D. Pa. 1989) — 2
Zunich, In re, 88 B.R. 721 (Bankr. W.D. Pa. 1988) — 39

Fourth Circuit

Banks, In re, 577 B.R. 659 (Bankr. E.D. Va. 2017) — 3.5
Bennett, In re, 317 B.R. 313 (Bankr. D. Md. 2004) — 92
Brantley, In re, 116 B.R. 443 (Bankr. D. Md. 1990) — 60
Brian Johnson Motor Co., Inc., In re, 180 B.R. 104 (Bankr. D. S.C. 1995) — 26
Bulldog Trucking, Inc., In re, 68 F.3d 459 (4th Cir. 1995) — 134
Chavis, In re, 213 B.R. 462 (Bankr. E.D. N.C. 1997) — 6
Clarkson, In re, 168 B.R. 93 (Bankr. D. S.C. 1994) — 75
Collins, In re, 2002 WL 31051032 (Bankr. M.D. N.C. 2002) — 66
Everett, In re, 127 B.R. 781 (Bankr. E.D. N.C. 1991) — 34
Haan, In re, 93 B.R. 439 (Bankr. W.D. N.C. 1988) — 63
Nelco, Ltd., In re, 264 B.R. 790 (Bankr. E.D. Va. 1999) — 83
Outlaw, In re, 66 B.R. 413 (Bankr. E.D. N.C. 1986) — 115
Preston, In re, 333 B.R. 346 (Bankr. M.D. N.C. 2005) — 129
Robb, In re, 399 B.R. 171 (Bankr. N.D. W. Va. 2008) — 3
Skillforce, Inc. v. Hafer, 509 B.R. 523 (E.D. Va. 2014) — 110
Tolbert, In re, 2001 WL 1739142 (Bankr. D. Md. 2001) — 52
Wright, In re, 608 B.R. 648 (Bankr. W.D. Va. 2019) — 3.5, 6

Fifth Circuit

Holder, In re, 376 B.R. 802 (S.D. Tex. 2007) — 7
Homer Nat. Bank v. Namie, 96 B.R. 652 (W.D. La. 1989) — 46

Exhibit 3

Nissan Motor Acceptance Corp. v. Baker, 239 B.R. 484 (N.D. Tex. 1999) — 66, 68, 87
Okedokun, In re, 593 B.R. 469 (Bankr. S.D. Tex. 2018) — 3.5, 57, 59

Sherk, Matter of, 918 F.2d 1170, 18 Fed. R. Serv. 3d 1019 (5th Cir. 1990) — 133

Walker, In re, 180 B.R. 834 (Bankr. W.D. La. 1995) — 37
Walker, In re, 168 B.R. 114 (E.D. La. 1994) — 68

Sixth Circuit

Banks, In re, 253 B.R. 25 (Bankr. E.D. Mich. 2000) — 115

Beair, In re, 168 B.R. 633 (Bankr. N.D. Ohio 1994) — 64
Bilfield, In re, 494 B.R. 292 (Bankr. N.D. Ohio 2013) — 123

Briggs, In re, 143 B.R. 438 (Bankr. E.D. Mich. 1992) — 16

Brock, Matter of, 58 B.R. 797 (Bankr. S.D. Ohio 1986) — 128

Davis, In re, 247 B.R. 690 (Bankr. N.D. Ohio 1999) — 45

Dorsey, In re, 373 B.R. 528 (Bankr. N.D. Ohio 2007) — 117

Dungey, In re, 99 B.R. 814 (Bankr. S.D. Ohio 1989) — 38
Dunning, In re, 269 B.R. 357 (Bankr. N.D. Ohio 2001) — 25

Flack, In re, 239 B.R. 155 (Bankr. S.D. Ohio 1999) — 6, 9, 30
Gordon v. Dennis Burlin Sales, Inc., 174 B.R. 257 (Bankr. N.D. Ohio 1994) — 20
Grace, In re, 85 B.R. 464 (Bankr. S.D. Ohio 1988) — 62

Harris, In re, 374 B.R. 611 (Bankr. N.D. Ohio 2007) — 4
Hatfield, In re, 354 B.R. 499 (Bankr. N.D. Ohio 2006) — 23
Holman, In re, 92 B.R. 764 (Bankr. S.D. Ohio 1988) — 66
Houseworth, In re, 177 B.R. 557 (Bankr. N.D. Ohio 1994) — 29

Jacobs, In re, 100 B.R. 357 (Bankr. S.D. Ohio 1989) — 10, 19

Kortz, In re, 283 B.R. 706 (Bankr. N.D. Ohio 2002) — 48

Markey, In re, 144 B.R. 738 (Bankr. W.D. Mich. 1992) — 50
Mathews, In re, 209 B.R. 218, 1997 FED App. 0004P (B.A.P. 6th Cir. 1997) — 81
Maxey, In re, 1998 WL 940302 (N.D. Ohio 1998) — 28

Medlin, In re, 201 B.R. 188 (Bankr. E.D. Tenn. 1996) — 56

Miel, In re, 134 B.R. 229 (Bankr. W.D. Mich. 1991) — 84
Mitchell, In re, 545 B.R. 209 (Bankr. N.D. Ohio 2016) — 12
Newberry, In re, 604 B.R. 37 (Bankr. E.D. Mich. 2019) — 3.5, 83
Nicole Gas Production, Ltd., In re, 502 B.R. 508 (Bankr. S.D. Ohio 2013) — 107
Perry, In re, 124 B.R. 50 (Bankr. N.D. Ohio 1990) — 49

Perviz, In re, 302 B.R. 357 (Bankr. N.D. Ohio 2003) — 6, 8

Printup, In re, 264 B.R. 169 (Bankr. E.D. Tenn. 2001) — 64

Sermersheim, In re, 97 B.R. 885 (Bankr. N.D. Ohio 1989) — 128

Sielaff, Matter of, 164 B.R. 560 (Bankr. W.D. Mich. 1994) — 64

Skeen, In re, 248 B.R. 312 (Bankr. E.D. Tenn. 2000) — 9
Smith, In re, 170 B.R. 111 (Bankr. N.D. Ohio 1994) — 95
Stringer, In re, 586 B.R. 435 (Bankr. S.D. Ohio 2018) — 3.5

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Timbs, In re, 178 B.R. 989 (Bankr. E.D. Tenn. 1994) — 37

Tipton, In re, 257 B.R. 865 (Bankr. E.D. Tenn. 2000) — 128

Tyson, In re, 450 B.R. 754 (Bankr. W.D. Tenn. 2011) — 24

Ulinski, In re, 317 B.R. 716 (Bankr. E.D. Ky. 2004) — 93

Walton, In re, 158 B.R. 943 (Bankr. N.D. Ohio 1993) — 84

Williamson-Blackmon, In re, 145 B.R. 18 (Bankr. N.D. Ohio 1992) — 117

Witham, In re, 579 B.R. 787 (Bankr. E.D. Ky. 2017) — 3.5, 28

Wright, In re, 1992 WL 101793 (Bankr. N.D. Ohio 1992) — 13

Yost, In re, 2007 WL 184674 (Bankr. N.D. Ohio 2007) — 117

Seventh Circuit

Arthur B. Adler and Associates, Ltd., In re, 588 B.R. 864 (Bankr. N.D. Ill. 2018) — 3.5, 94

Baggs, In re, 283 B.R. 726 (Bankr. C.D. Ill. 2002) — 6

Benalcazar, In re, 283 B.R. 514 (Bankr. N.D. Ill. 2002) — 113

Betts, In re, 165 B.R. 233 (Bankr. N.D. Ill. 1994) — 111

Cochonour, In re, 2007 WL 2245735 (Bankr. S.D. Ill. 2007) — 131

Conley, In re, 1997 WL 33479039 (Bankr. C.D. Ill. 1997) — 5

Cox v. Zale Delaware, Inc., 242 B.R. 444 (N.D. Ill. 1999) — 17

Erickson, In re, 216 B.R. 938 (Bankr. C.D. Ill. 1998) — 27

Garofalo's Finer Foods, Inc., In re, 164 B.R. 955, 22 U.C.C. Rep. Serv. 2d 1117 (Bankr. N.D. Ill. 1994) — 25

GGSI Liquidation Inc., In re, 355 B.R. 691 (Bankr. N.D. Ill. 2006) — 104

GGSI Liquidation Inc., In re, 351 B.R. 529, 60 U.C.C. Rep. Serv. 2d 1133 (Bankr. N.D. Ill. 2006) — 104

Gonzales v. Checker Taxi Co., 165 F.3d 32 (7th Cir. 1998) — 65, 67, 69

Gossett, In re, 369 B.R. 361, 23 A.L.R. Fed. 2d 751 (Bankr. N.D. Ill. 2007) — 65

Gustin, In re, 343 B.R. 909 (Bankr. W.D. Wis. 2005) — 13

Harris, In re, 310 B.R. 395 (Bankr. E.D. Wis. 2004) — 130

Hart, In re, 2003 WL 1193700 (Bankr. C.D. Ill. 2003) — 120

Koch, In re, 197 B.R. 654 (Bankr. W.D. Wis. 1996) — 35

Kuzniewski, In re, 508 B.R. 678 (Bankr. N.D. Ill. 2014) — 3.5

Lyckberg, In re, 310 B.R. 881 (Bankr. N.D. Ill. 2004) — 122

Martin, In re, 1997 WL 33479086 (Bankr. C.D. Ill. 1997) — 66

McCready v. eBay, Inc., 51 Collier Bankr. Cas. 2d (MB) 1586, 2004 WL 626142 (N.D. Ill. 2004) — 102

Omni Graphics, Inc., In re, 119 B.R. 641 (Bankr. E.D. Wis. 1990) — 90

Patton v. Shade, 263 B.R. 861 (C.D. Ill. 2001) — 19

Price v. Rochford, 947 F.2d 829, 21 Fed. R. Serv. 3d 1409 (7th Cir. 1991) — 13

Radcliffe, In re, 372 B.R. 401 (Bankr. N.D. Ind. 2007) — 105

Rice, In re, 2001 WL 34072900 (Bankr. C.D. Ill. 2001) — 6, 19

Skaggs, In re, 1996 WL 33406652 (Bankr. C.D. Ill. 1996) — 66

Sumpter, In re, 171 B.R. 835 (Bankr. N.D. Ill. 1994) — 44

Swindle, In re, 584 B.R. 259 (Bankr. N.D. Ill. 2018) — 3.5

Waltjen, In re, 150 B.R. 419 (Bankr. N.D. Ill. 1993) — 33

Yantis, In re, 553 B.R. 351 (Bankr. N.D. Ind. 2016) — 3.5

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Zick, In re, 123 B.R. 825 (Bankr. E.D. Wis. 1990) — 128

Eighth Circuit

Adams, In re, 2002 WL 844350 (Bankr. N.D. Iowa 2002) — 70
Alcock, In re, 2003 WL 22110446 (Bankr. N.D. Iowa 2003) — 28
Atkins, In re, 176 B.R. 998 (Bankr. D. Minn. 1994) — 120
Brooks, In re, 132 B.R. 29 (Bankr. W.D. Mo. 1991) — 38
Burke, In re, 147 B.R. 955 (Bankr. W.D. Mo. 1992) — 51, 54
Crispell, In re, 73 B.R. 375 (Bankr. E.D. Mo. 1987) — 27, 29
Cullen, In re, 329 B.R. 52 (Bankr. N.D. Iowa 2005) — 26
Dencklau, In re, 158 B.R. 796 (Bankr. N.D. Iowa 1993) — 40
Emmons, In re, 349 B.R. 780 (Bankr. W.D. Mo. 2006) — 110
Goodfellow, In re, 298 B.R. 358 (Bankr. N.D. Iowa 2003) — 6, 11, 19
Gray, In re, 519 B.R. 767 (B.A.P. 8th Cir. 2014) — 3.5
Graycarr, Inc., In re, 330 B.R. 741 (Bankr. W.D. Ark. 2005) — 79
Howard, In re, 307 B.R. 659 (Bankr. D. Minn. 2004) — 31
Hromidko, In re, 302 B.R. 629 (Bankr. N.D. Iowa 2003) — 21
Huebbe, In re, 56 Collier Bankr. Cas. 2d (MB) 1397, 2006 WL 3000132 (Bankr. N.D. Iowa 2006) — 103
Joens, In re, 2003 WL 22839822 (Bankr. N.D. Iowa 2003) — 4, 6
Kaiser, Matter of, 158 B.R. 808 (Bankr. D. Neb. 1993) — 55
Kramer, In re, 2004 WL 3235816 (Bankr. N.D. Iowa 2004) — 72
Lankford, In re, 305 B.R. 297 (Bankr. N.D. Iowa 2004) — 47
M & J Feed Mill, Inc., In re, 112 B.R. 985 (Bankr. W.D. Mo. 1990) — 91
Nichols, In re, 1991 WL 539972 (Bankr. E.D. Mo. 1991) — 71, 73, 74
Pearce, In re, 400 B.R. 126 (Bankr. N.D. Iowa 2009) — 117
Prime, Inc., In re, 44 B.R. 924 (Bankr. W.D. Mo. 1984) — 3
Rhodes, In re, 155 B.R. 491 (W.D. Ark. 1993) — 77
Rose, In re, 113 B.R. 534 (W.D. Mo. 1990) — 57
Rosengren v. GMAC Mortg. Corp., Bankr. L. Rep. (CCH) ¶ 78512, 2001 WL 1149478 (D. Minn. 2001) — 48
See, In re, 301 B.R. 549 (Bankr. N.D. Iowa 2003) — 37
Siharath, In re, 285 B.R. 299 (Bankr. D. Minn. 2002) — 7, 10, 13
Westman, In re, 300 B.R. 338 (Bankr. D. Minn. 2003) — 116

Ninth Circuit

Abrams, In re, 127 B.R. 239 (B.A.P. 9th Cir. 1991) — 66
Achterberg, In re, 573 B.R. 819 (Bankr. E.D. Cal. 2017) — 3.5
Bair Island Marina & Office Center, In re, 116 B.R. 180 (Bankr. N.D. Cal. 1990) — 61
Bloom, In re, 875 F.2d 224 (9th Cir. 1989) — 14, 76, 79
Bourke, In re, 543 B.R. 657 (Bankr. D. Mont. 2015) — 3.5
Bradford, In re, 112 B.R. 347 (B.A.P. 9th Cir. 1990) — 68
Breul, In re, 533 B.R. 782 (Bankr. C.D. Cal. 2015) — 59
Campion, In re, 294 B.R. 313 (B.A.P. 9th Cir. 2003) — 37
Carlsen, In re, 63 B.R. 706 (Bankr. C.D. Cal. 1986) — 80

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Cordle, In re, 187 B.R. 1 (Bankr. N.D. Cal. 1995) — 96
Daniels, In re, 316 B.R. 342 (Bankr. D. Idaho 2004) — 119
Dingley, In re, 514 B.R. 591 (B.A.P. 9th Cir. 2014) — 3.5
Eash, In re, 225 B.R. 489 (Bankr. D. Idaho 1998) — 8, 21
Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210 (9th Cir. 2002) — 12
Fingers, In re, 170 B.R. 419 (S.D. Cal. 1994) — 83
Forty-Five Fifty-Five, Inc., In re, 111 B.R. 920 (Bankr. D. Mont. 1990) — 14
Gorringe, In re, 348 B.R. 789 (Bankr. D. Idaho 2006) — 6
Gray, In re, 567 B.R. 841 (Bankr. W.D. Wash. 2017) — 3.5, 14
Gustafson, In re, 111 B.R. 282, 59 Ed. Law Rep. 89 (B.A.P. 9th Cir. 1990) — 99
Henry, In re, 266 B.R. 457 (Bankr. C.D. Cal. 2001) — 48
Hill, In re, 523 B.R. 704 (Bankr. D. Mont. 2014) — 3.5
Kinsey, In re, 349 B.R. 48 (Bankr. D. Idaho 2006) — 123
McHenry, In re, 179 B.R. 165 (B.A.P. 9th Cir. 1995) — 8, 64
Merrick, In re, 175 B.R. 333 (B.A.P. 9th Cir. 1994) — 132
Ozenne, In re, 337 B.R. 214 (B.A.P. 9th Cir. 2006) — 92
Pace, In re, 67 F.3d 187 (9th Cir. 1995) — 108
Paine, In re, 283 B.R. 33 (B.A.P. 9th Cir. 2002) — 59
Perl, In re, 513 B.R. 566 (B.A.P. 9th Cir. 2014) — 3.5
Risner, In re, 317 B.R. 830 (Bankr. D. Idaho 2004) — 4
Sanchez, In re, 241 F.3d 1148 (9th Cir. 2001) — 88
Silva, In re, 215 B.R. 73 (Bankr. D. Idaho 1997) — 128
Soll, In re, 181 B.R. 433 (Bankr. D. Ariz. 1995) — 97
Venegas, In re, 257 B.R. 41 (Bankr. D. Idaho 2001) — 35
Weidner, In re, 384 B.R. 9 (Bankr. D. Alaska 2008) — 4

Tenth Circuit

Cain, In re, 272 B.R. 304 (Bankr. D. Wyo. 2001) — 9, 14
Coons, In re, 123 B.R. 649 (Bankr. N.D. Okla. 1991) — 95
Escobedo, In re, 513 B.R. 605 (Bankr. D. N.M. 2014) — 3.5
Fisher, In re, 1996 WL 695401 (D. Kan. 1996) — 32
Flanders, In re, 517 B.R. 245 (Bankr. D. Colo. 2014) — 129
Fontaine, In re, 603 B.R. 94 (Bankr. D. N.M. 2019) — 3.5, 51
Gagliardi, In re, 290 B.R. 808 (Bankr. D. Colo. 2003) — 55
Jimenez, In re, 335 B.R. 450 (Bankr. D. N.M. 2005) — 26
Progressive Motors, Inc. v. Frazier, 220 B.R. 476, 153 A.L.R. Fed. 753 (D. Utah 1998) — 64
Pulliam, In re, 262 B.R. 539 (Bankr. D. Kan. 2001) — 37
Reed, In re, 102 B.R. 243, 10 U.C.C. Rep. Serv. 2d 611 (Bankr. E.D. Okla. 1989) — 68
Schafer, In re, 315 B.R. 765 (Bankr. D. Colo. 2004) — 26
Skinner, In re, 90 B.R. 470 (D. Utah 1988) — 69
Slater, In re, 573 B.R. 247 (Bankr. D. Utah 2017) — 3.5
Spagner v. Latham, Stall, Wagner, Steel & Lehman, P.C., 2005 WL 1950364 (W.D. Okla. 2005) — 34

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Eleventh Circuit

Adell, In re, 328 B.R. 845 (Bankr. M.D. Fla. 2005) — 121

Alley Cassetty Companies, Inc. v. Wren, 502 B.R. 609 (N.D. Ga. 2013) — 3.5

Atlas, In re, 222 B.R. 656 (S.D. Fla. 1998) — 107

Banderas, In re, 236 B.R. 841 (Bankr. M.D. Fla. 1999) — 41, 109, 114

Banks, In re, 521 B.R. 417 (Bankr. M.D. Ga. 2014) — 3.5

Brannen, In re, 1990 WL 10007473 (Bankr. S.D. Ga. 1990) — 21

Brodgen, In re, 588 B.R. 625 (Bankr. M.D. Ala. 2018) — 64

Cardillo, In re, 172 B.R. 146 (Bankr. N.D. Ga. 1994) — 100

Chastang, In re, 116 B.R. 833 (Bankr. M.D. Fla. 1990) — 82

Davis, In re, 201 B.R. 835 (Bankr. S.D. Ala. 1996) — 78

Driggers, In re, 204 B.R. 70 (Bankr. N.D. Fla. 1996) — 4, 6

Esposito, In re, 154 B.R. 1011 (Bankr. N.D. Ga. 1993) — 64

Freigo, In re, 149 B.R. 224 (Bankr. M.D. Fla. 1992) — 36

Harsh, In re, 277 B.R. 833 (Bankr. M.D. Ga. 2001) — 66

Herbst, In re, 167 B.R. 983 (Bankr. N.D. Fla. 1994) — 64, 66

Kavoosi, In re, 55 B.R. 120 (Bankr. S.D. Fla. 1985) — 117

Keen, In re, 301 B.R. 749 (Bankr. S.D. Fla. 2003) — 14, 15

Kilby, In re, 100 B.R. 579 (Bankr. M.D. Fla. 1989) — 47

Kinney, In re, 2005 WL 419723 (Bankr. M.D. Fla. 2005) — 24

Levine, In re, 132 B.R. 475 (Bankr. M.D. Fla. 1991) — 21

Lickman, In re, 297 B.R. 162 (Bankr. M.D. Fla. 2003) — 19

Lord, In re, 270 B.R. 787 (Bankr. M.D. Ga. 1998) — 37

Malcomson, In re, 2005 WL 419724 (Bankr. M.D. Fla. 2005) — 24

Matthews, In re, 184 B.R. 594 (Bankr. S.D. Ala. 1995) — 79

Morris, In re, 514 B.R. 658 (Bankr. N.D. Ala. 2014) — 9

Newgent Golf, Inc., In re, 402 B.R. 424 (Bankr. M.D. Fla. 2009) — 32

Novak, In re, 223 B.R. 363 (Bankr. M.D. Fla. 1997) — 25

Owen, In re, 519 B.R. 869 (Bankr. N.D. Ala. 2014) — 3

Perry, In re, 521 B.R. 370 (Bankr. N.D. Ala. 2014) — 24

Premier Sports Tours, In re, 283 B.R. 598 (Bankr. M.D. Fla. 2002) — 12

Sciortino, In re, 561 B.R. 569 (Bankr. N.D. Ga. 2016) — 3.5

Sciortino, In re, 561 B.R. 260 (Bankr. N.D. Ga. 2016) — 3.5, 4

Smith, In re, 180 B.R. 311 (Bankr. N.D. Ga. 1995) — 3, 113

Smith, In re, 185 B.R. 871 (Bankr. M.D. Fla. 1994) — 21

Spinner, In re, 398 B.R. 84 (Bankr. N.D. Ga. 2008) — 2

Sutton, In re, 250 B.R. 771 (Bankr. S.D. Fla. 2000) — 12

Tarrant, In re, 190 B.R. 704 (Bankr. S.D. Ga. 1995) — 95

Trull, In re, 1995 WL 17005344 (Bankr. S.D. Ga. 1995) — 62

District of Columbia Circuit

Johnson, In re, 230 B.R. 466, 40 U.C.C. Rep. Serv. 2d 462 (Bankr. D. D.C. 1999) — 66

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Stancil, In re, 487 B.R. 331 (Bankr. D. D.C. 2013) — 2

I. Preliminary Matters

§ 1. Scope

This annotation collects and analyzes those federal decisions that have addressed what constitutes a willful violation of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C.A. § 362(k), sufficient to award damages in Chapter 7 cases. Not included within the scope of this article are Chapter 13 cases discussing what constitutes a willful violation of the automatic stay provisions,[1] or Chapter 11 and 12 cases examining what constitutes a willful violation of the automatic stay provisions.[2] Similarly, those cases in which courts have addressed the remedies and damages available under 11 U.S.C.A. § 362(k) for violations of the automatic stay provisions are not within the scope of this annotation.[3]

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and comment

[Cumulative Supplement]

The Bankruptcy Code, 11 U.S.C.A. § 362, clearly articulates the vital protections afforded a debtor in bankruptcy, specifically the automatic stay, which stops all collection efforts against the debtor during the pendency of the bankruptcy proceeding.[4] The expansion of the automatic stay was one of the major changes initiated by the 1978 Bankruptcy Reform Act.[5] Congress has recognized the importance of the automatic stay, declaring it one of the fundamental protections offered under the bankruptcy laws.[6] The imposition of the automatic stay serves several fundamental functions in bankruptcy, including protecting debtors from further collection efforts by their creditors, ensuring an equitable distribution of assets by protecting the creditors and making sure that no parties get more than their fair share of the bankruptcy estate, and ensuring that the liquidation and repayment of debts will be carried out in an orderly fashion.[7]

Pursuant to former 11 U.S.C.A. § 362(h), added as part of an amendment to the Bankruptcy Code in 1984, a debtor who could prove injury due to a willful violation of the automatic stay could recover actual damages, including costs and attorney's fees, and, potentially, punitive damages.[8] The Bankruptcy Abuse Prevention and Consumer Protection Act of 2006 amended 11 U.S.C.A. § 362 by deleting old subsection (h) and replacing it with new subsection (k), which provides:

> (k) Except as provided in paragraph (2) an individual injured by any willful violation of a stay provided by this section shall recover actual damages including costs and attorney's fees and in appropriate circumstances may recover punitive damages.
>
> (2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection shall be limited to actual damages.

Exhibit 3

New 11 U.S.C.A. § 362(h) deals with the filing of a statement of intent with respect to leased property. Thus, it would seem that, even after amendment, the basis for recovery remains the same.[9] Recovery under this provision is mandatory, and therefore, the court has no discretion in deciding whether to award actual damages, but the question of whether to award punitive damages is squarely within the court's discretionary powers.[10] In order to prove a willful violation of the stay, courts will typically examine whether the violator had knowledge of the bankruptcy case, and whether the violator intended to carry out the proscribed act.[11] Intent to violate the stay is not required to prove a willful violation, as knowledge of the bankruptcy case puts the party on constructive notice of the automatic stay, and it is considered irrelevant whether a claimant had a good-faith belief that it had a right to the bankruptcy estate property.[12]

Many federal courts have addressed the issue of what constitutes a willful violation of the automatic stay provisions in a Chapter 7 case sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h). Based on the facts and circumstances of each case, courts have considered whether the following types of general collection efforts constituted a willful violation of the automatic stay provisions in a Chapter 7 case: sending a billing statement, where some courts have found a willful violation of the stay (§ 4), and others have determined there was no willful violation (§ 5); sending a collection letter, where some courts have decided that there was a willful violation of the automatic stay (§ 6), but others have concluded the violation was not willful (§ 7); making a telephone call, where some courts have found a willful violation of the stay (§ 8), while others have determined there was no willful violation (§ 9); referral to a collection agency (§ 10); filing credit report information (§ 11); initiating a collection lawsuit, where some courts have decided that there was a willful violation of the automatic stay (§ 12), and others have concluded that the violation was not willful (§ 13); continuing a collection lawsuit, where some courts have found that there was a willful violation of the stay (§ 14), but others have reached the opposite conclusion (§ 15); collecting a debt based on the terms of a reaffirmation agreement, where some courts have found that the violation of the automatic stay was willful (§ 16), while other courts have determined that there was no such willfulness (§ 17); soliciting a reaffirmation agreement (§ 18); harassing and coercing a debtor, where some courts have decided that there was a willful violation of the stay (§ 19), and others have concluded that there was no willful violation (§ 20); harassing and coercing a third party, with some courts finding a willful violation (§ 21) and others finding no willful violation (§ 22); failing to notify an assignee of a debt of the debtor's bankruptcy, with the result that the assignee made attempts to collect the debt (§ 23); and engaging in unspecified contact with a debtor (§ 24).

Courts have also examined whether these types of bank account interference constituted a willful violation of the automatic stay of a Chapter 7 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case: offsetting against a debtor's bank account generally (§ 25); placing an administrative freeze on the debtor's account, where some courts have found that there was a willful violation of the automatic stay (§ 26), but other courts have reached the opposite conclusion (§ 27); failing to terminate automatic deductions from a debtor's bank account, where some courts have concluded that there was a willful violation of the stay (§ 28), while others have found that such a violation was not willful (§ 29); presenting a debtor's postdated check (§ 30); and refusing to release a judicial lien on bank account funds (§ 31). Whether the garnishment of a Chapter 7 debtor's wages constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has also been discussed by courts, based on the facts and circumstances of each case, with regard to: pursuit of garnishment proceedings, where some courts have determined that there was a willful violation of the automatic stay (§ 32), and others have decided that there was no willful violation (§ 33); garnishment of the debtor's wages, where some courts have concluded that a violation of the automatic stay was willful (§ 34), but others have reached the opposite conclusion (§ 35); reduction in a debtor's pension payments (§ 36); failure to discontinue the garnishment of a debtor's wages (§ 37); refusal to return the debtor's garnished wages, where some courts have found that there was a willful violation of the stay (§ 38), while other courts have determined that there was no willful violation (§ 39); and interference with a debtor's garnished wages (§ 40).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Collection efforts involving real estate have also been considered, to determine whether they constituted a willful violation of the automatic stay of a Chapter 7 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case, including: attempting to collect rent from a debtor's tenant, where some courts have decided that there was a willful violation of the automatic stay (§ 41), and others have concluded that such a violation was not willful (§ 42); collecting rent from a debtor's tenant (§ 43); removing a debtor's property from leased premises, where some courts have found that there was a willful violation of the stay (§ 44), but other courts have reached the opposite conclusion (§ 45); disposing of a debtor's property on leased premises (§ 46); evicting a debtor from leased premises (§ 47); collecting a mortgage debt generally (§ 48); bringing an action against the debtor for defaulting on a promissory mortgage note (§ 49); initiating a foreclosure proceeding against a debtor's mortgaged property (§ 50); continuing a foreclosure proceeding against a debtor's mortgaged property (§ 51); proceeding with a foreclosure sale of a debtor's mortgaged property, where some courts have determined that there was a willful violation of the automatic stay (§ 52), while other courts have decided that no such willful violation had taken place (§ 53); purchasing a debtor's mortgaged property at a foreclosure sale (§ 54); bringing proceedings to evict a debtor from mortgaged property (§ 55); registering a deed of trust on a debtor's mortgaged property (§ 56); attempting to transfer a debtor's real property (§ 57); renegotiating a debtor's real estate listing agreements (§ 58); requesting a lien on a debtor's real property (§ 59); reattaching a lien on a debtor's real property (§ 60); and withdrawing earnest money escrowed to purchase a debtor's real property (§ 61).

Determining whether actions involving the repossession of a Chapter 7 debtor's financed property constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered by courts, based on the facts and circumstances of each case, with regard to these actions: attempting to repossess a debtor's financed property, where some courts have concluded that there was a willful violation of the automatic stay (§ 62), and other courts have found that there was no such willful violation (§ 63); repossessing a debtor's financed property, where some courts have determined that such action constituted a willful violation of the stay (§ 64), but others have decided that there was no willful violation (§ 65); failing to return a debtor's repossessed property, where some courts have concluded that there was a willful violation of the automatic stay (§ 66), while other courts have reached the opposite conclusion (§ 67); selling a debtor's repossessed property, where some courts have concluded that there was a willful violation of the stay (§ 68), and others have found that such a violation was not willful (§ 69); and taking possession of other property belonging to a debtor while repossessing the debtor's financed property (§ 70). Similarly, courts have examined whether these types of tax collection efforts constituted a willful violation of the automatic stay of a Chapter 7 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case: filing a proceeding to seize a debtor's property (§ 71); moving forward with a proceeding to enforce a debtor's tax liability (§ 72); seizing a debtor's property (§ 73); refusing to return the seized personal property of a debtor (§ 74); auctioning a debtor's property (§ 75); filing a lien on a debtor's property (§ 76); failing to remove a lien on a debtor's property (§ 77); levying against a debtor's property (§ 78); sending or filing a notice of intent to levy against a debtor's property (§ 79); levying against a debtor's wages, where some courts have determined that there was a willful violation of the automatic stay (§ 80), but other courts have decided that such a violation was not willful (§ 81); failing to return levied funds to a debtor (§ 82); interfering with a debtor's tax refund, where some courts have concluded that such a violation of the automatic stay was willful (§ 83), while other courts have reached the opposite conclusion (§ 84); and suspending a debtor's professional license (§ 85).

Based on the facts and circumstances of each case, courts have also addressed whether the pursuit of other action constituted a willful violation of the automatic stay of a Chapter 7 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), including generally: assigning a debtor's insurance claim (§ 86); canceling a debtor's service contract (§ 87); entering into a deferred payment arrangement with a debtor (§ 88); precluding a debtor's participation in the Medicare program (§ 89); holding a public sale of a debtor's collateral (§ 90); recording a mechanic's lien against a debtor (§ 91); selling property subject to a lien (§ 92); refusing to release a lien (§ 93); refusing to relinquish a debtor's accounts receivable (§ 94); refusing to restore a debtor's utility services (§ 95); refusing to turn over a debtor's contract proceeds (§ 96);

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

taking over a debtor's business (§ 97); transferring a debtor's radio call sign license (§ 98); withholding a debtor's academic transcript (§ 99); refusing to allow a debtor to register for classes (§ 100); seeking to perfect a security interest (§ 101); refusing to do business with the debtor (§ 102); entering into an insurance claim settlement with the debtor (§ 103); selling a note that is subject to a repurchase agreement with the debtor (§ 104); and offsetting money owed to the debtor against prepetition debt, where some courts have decided that violation of the automatic stay was willful (§ 105), and other courts have determined that such a violation was not willful (§ 106). In addition, courts have discussed whether the pursuit of other legal action constituted a willful violation of the automatic stay of a Chapter 7 debtor, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case, specifically with regard to these types of procedural proceedings: filing an action on behalf of the debtor (§ 107); filing a motion to release a debtor's settlement proceeds (§ 108); filing a petition for certiorari in an action brought against a debtor (§ 109); continuing proceedings brought against a debtor (§ 110); bringing a citation action against the debtor (§ 111); requesting to conduct a Fed. R. Bankr. P. 2004 examination of the debtor (§ 112); pursuing contempt proceedings against the debtor, where some courts have found that there was a willful violation of the automatic stay (§ 113), and other courts have determined that such a violation was not willful (§ 114); failing to vacate a writ of execution issued against the debtor (§ 115); failing to return property seized pursuant to a writ of execution to a debtor (§ 116); provoking criminal prosecution of a debtor (§ 117); enforcing an arrest warrant issued against a debtor (§ 118); failing to quash an arrest warrant issued against a debtor, where some courts have decided that violation of the automatic stay was willful (§ 119), but other courts have reached the opposite conclusion (§ 120); seeking the appointment of a receiver (§ 121); demanding that a debtor submit to examination under oath (§ 122); and serving a summons and complaint on a debtor (§ 123). Finally, based on the facts and circumstances of each case, courts have considered whether the pursuit of these substantive proceedings against a Chapter 7 debtor constituted a willful violation of the automatic stay, sufficient to award damages pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h): an abuse of process claim (§ 124); a breach of fiduciary duty claim (§ 125); a breach of promissory note claim (§ 126); a creation of a constructive trust claim (§ 127); divorce judgment enforcement, where some courts have found that there was a willful violation of the automatic stay (§ 128), while others have determined that such a violation was not willful (§ 129); a claim seeking to reduce a support obligation (§ 130); a fraud claim, where some courts have decided that violation of the automatic stay was willful (§ 131), and other courts have concluded that there was no willful violation (§ 132); a fraudulent conveyance of assets claim (§ 133); and an Interstate Commerce Commission petition (§ 134).

CUMULATIVE SUPPLEMENT

Cases:

Creditor's stay violation is "willful," if creditor (1) has knowledge of bankruptcy petition; and (2) act which violates the stay was intentional. In re Campbell, 398 B.R. 799 (Bankr. D. Vt. 2008).

"Willful" violation of automatic stay does not require a specific intent to violate stay; it is enough that party has knowledge of the stay and intends the acts which constitute the violation. 11 U.S.C.A. § 362(k). In re Spinner, 398 B.R. 84 (Bankr. N.D. Ga. 2008).

Violation of the automatic stay is generally considered "willful" if a party knew of the automatic stay, and its actions in violation of the stay were intentional. 11 U.S.C.A. § 362(k). In re Stancil, 487 B.R. 331 (Bankr. D. D.C. 2013).

[Top of Section]

[END OF SUPPLEMENT]

Exhibit 3

§ 3. Practice pointers

[Cumulative Supplement]

Under the Bankruptcy Code, 11 U.S.C.A. § 362, a debtor has the burden of providing a creditor with actual notice of the automatic stay, and once the creditor receives actual notice, the burden shifts to the creditor to prevent violations of the automatic stay.[13] A debtor seeking to recover damages for willful violation of the automatic stay, pursuant to 11 U.S.C.A. § 362(k), does not have to prove his or her case by clear and convincing evidence, but rather the clear and convincing standard applies only when the debtor seeks an adjudication of contempt for violation of automatic stay.[14] Section 362(k) did not abrogate the civil contempt remedy traditionally available to aggrieved debtors for violations of the automatic stay.[15] The state of mind on the part of a creditor that the debtor must demonstrate to recover actual damages under § 362(k) is no different than the state of mind that the debtor has to demonstrate to recover such damages in a contempt proceeding, and to the extent that the willfulness language in the statute requires a higher state of mind, that higher standard is relevant only in determining the propriety of an award of punitive damages.[16]

The U.S. Supreme Court has held that 11 U.S.C.A. § 362(k) does not apply to states because it contains no trigger words such as "creditor," "entity," or "governmental unit."[17]

Evidence that a debtor's former wife had not willfully violated an automatic stay, in seeking to enforce rights granted by a divorce judgment against property that the debtor had transferred to his father prepetition, was held to be so strong as to warrant the imposition of sanctions against the debtor and the debtor's attorneys for bringing a frivolous appeal from a bankruptcy court order dismissing the debtor's suit for damages, according to Fed. R. App. P. 38.[18]

CUMULATIVE SUPPLEMENT

Cases:

Debtor has the burden of providing the creditor with actual notice of the automatic stay; once the creditor receives actual notice, the burden shifts to the creditor to prevent violations of the automatic stay. 11 U.S.C.A. § 362. In re Whitman-Nieves, 519 B.R. 1 (Bankr. D. P.R. 2014).

"Willful" violation of automatic stay does not require a specific intent to violate stay. 11 U.S.C.A. § 362(k). In re Lightfoot, 399 B.R. 141 (Bankr. E.D. Pa. 2008).

In some instances, creditor's inaction in failing to take steps to undo its innocent violation of automatic stay or discharge injunction, before it had any notice of debtor's bankruptcy filing or discharge, can itself constitute a "willful" violation of automatic stay and/or of discharge injunction. 11 U.S.C.A. §§ 362(k), 524(a). In re Robb, 399 B.R. 171 (Bankr. N.D. W. Va. 2008).

Individual Chapter 7 debtor lacked standing to pursue cause of action against creditor for its alleged willful violation of automatic stay in repossessing motor vehicle that debtor had not claimed as exempt, and that had not been properly abandoned by trustee or otherwise; only trustee had standing to pursue such a claim. 11 U.S.C.A. § 362(k). In re Owen, 519 B.R. 869 (Bankr. N.D. Ala. 2014).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

[Top of Section]

[END OF SUPPLEMENT]

§ 3.5. General principles

[Cumulative Supplement]

The following authority considered general principles relating to the "willful violation" of the automatic stay provision of 11 U.S.C.A. § 362(k).

CUMULATIVE SUPPLEMENT

Cases:

Willfulness by the IRS in the violation of the provision relating to the automatic stay or relating to the effect of discharge, which allows for the recovery of damages, is satisfied if the taxes at issue were discharged, the IRS knew of the bankruptcy discharge, and the IRS thereafter engaged in collection efforts, regardless of good faith. 11 U.S.C.A. §§ 362, 524; 26 U.S.C.A. § 7433(e). Internal Revenue Service v. Murphy, 564 B.R. 96, 118 A.F.T.R.2d 2016-5710 (D. Me. 2016).

Specific intent to violate automatic stay is not required in order for a stay violation to be "willful," nor is creditor's good faith belief that it has a right to property relevant to whether its actions in attempting to obtain possession of this property from debtor is in nature of "willful" violation of automatic stay. 11 U.S.C.A. § 362(k)(1). In re Gilford, 567 B.R. 412 (Bankr. D. Mass. 2017).

Creditor's willful violation of automatic stay does not require a specific intent to violate the stay, rather, the creditor need only intend the act that violates the stay. 11 U.S.C.A. § 362. In re Kim, 554 B.R. 304 (Bankr. D. Mass. 2016).

"Willful" violation of automatic stay does not require a specific intent to violate the stay. 11 U.S.C.A. § 362(k). In re Rielly, 545 B.R. 435 (Bankr. D. Mass. 2016).

"Willful" violation of automatic stay does not require a specific intent to violate the stay, but only knowledge of the stay and an intent to take the actions which constituted the violation. 11 U.S.C.A. § 362(k). In re Roman-Perez, 527 B.R. 844 (Bankr. D. P.R. 2015).

Standard for a willful violation of the automatic stay is met if there is knowledge of the stay and the defendant intended the actions which constituted the violation. 11 U.S.C.A. § 362(k)(1). In re Whitman-Nieves, 519 B.R. 1 (Bankr. D. P.R. 2014).

Creditor's stay violation is willful, as required to permit damages award against creditor, if creditor knows of the filing of bankruptcy petition, and hence of the automatic stay, and has the general intent simply to perform the act found to violate the stay; no specific intent to violate stay is required. 11 U.S.C.A. § 362(k)(1). In re Beckford, 572 B.R. 61 (Bankr. D. Conn. 2017).

Willful stay violation requires a deliberate act undertaken in violation of the stay, which the violator knows to be in existence. 11 U.S.C.A. § 362(k). In re Grinspan, 597 B.R. 725 (Bankr. E.D. N.Y. 2019).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Party can be charged with willful violation of automatic stay as long as party has knowledge of debtor's bankruptcy filing and possesses general intent in taking actions which have the effect of violating the stay. 11 U.S.C.A. § 362. In re Killmer, 513 B.R. 41 (Bankr. S.D. N.Y. 2014).

Alien's conviction of criminal sale of heroin, by itself, made him ineligible for any relief from removal other than under the Convention Against Torture (CAT), so that alien's counsel was not ineffective for failing to object to other grounds for inadmissibility that allegedly impacted on alien's eligibility to apply for asylum or withholding of removal. Immigration and Nationality Act § 208(b)(2)(A)(ii), 8 U.S.C.A. § 1158(b)(2)(A)(ii); 8 C.F.R. § 1208.16(d)(2). Bernard v. Attorney General United States, 682 Fed. Appx. 108 (3d Cir. 2017).

Stay violation is "willful," so as to support award of damages against creditor violating the stay, when creditor violates the stay with knowledge that bankruptcy petition has been filed. 11 U.S.C.A. § 362(k)(1). In re Vu, 591 B.R. 596, 66 Bankr. Ct. Dec. (CRR) 111 (Bankr. E.D. Pa. 2018).

Specific intent to violate automatic stay is not required for a stay violation to be "willful" and to support damages award against the offending creditor; rather, debtor needs to show only that creditor deliberately took the action that violated the stay while knowing of the bankruptcy's existence. 11 U.S.C.A. § 362(k)(1). In re Traversa, 585 B.R. 215, 65 Bankr. Ct. Dec. (CRR) 200 (Bankr. E.D. Pa. 2018).

Violation of the automatic stay is "willful" when a creditor violates the stay with the knowledge that the bankruptcy petition has been filed. 11 U.S.C.A. §§ 362(a), 362(k). In re Malloy, 572 B.R. 551 (Bankr. E.D. Pa. 2017).

A willful violation of the automatic stay does not require that the creditor intended to violate the automatic stay provision, just that the creditor's act which violated the stay was intentional. 11 U.S.C.A. § 362(k)(1). In re Valez, 601 B.R. 351, 67 Bankr. Ct. Dec. (CRR) 105 (Bankr. M.D. Pa. 2019).

"Willful" violation of the automatic stay does not require specific intent to violate the stay, only knowledge of the stay and an intentional act. 11 U.S.C.A. §§ 362(a), 362(k)(1). In re Banks, 577 B.R. 659 (Bankr. E.D. Va. 2017).

Willfulness describes the intentional nature of action taken in violation of the automatic stay, rather than the specific intent to violate the stay. 11 U.S.C.A. § 362(k). In re Wright, 608 B.R. 648 (Bankr. W.D. Va. 2019).

"Willful" violation of automatic stay, of kind supporting damages award, does not require a specific intent to violate the stay. 11 U.S.C.A. § 362(k). In re Okedokun, 593 B.R. 469 (Bankr. S.D. Tex. 2018).

Creditor does not need to have a specific intent to violate the automatic stay in order for stay violation to be "willful" and thus to subject creditor to liability for debtor's damages; rather, a violation of automatic stay can be "willful" where creditor knew of the stay and violated the stay by an intentional act. 11 U.S.C.A. § 362(k)(1). In re Witham, 579 B.R. 787 (Bankr. E.D. Ky. 2017).

Creditor's good faith belief that it had a right to the property is not relevant to whether the act was willful or whether damages should be imposed for violation of the automatic stay. 11 U.S.C.A. § 362(k)(1). In re Newberry, 604 B.R. 37 (Bankr. E.D. Mich. 2019).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Any deliberate act taken with mere knowledge of the pendency of the bankruptcy case is almost universally interpreted to be a willful violation of the stay. 11 U.S.C.A. § 362. In re Stringer, 586 B.R. 435 (Bankr. S.D. Ohio 2018).

Stay violation is "willful," as required to support damages award, where the party violating the stay: (1) had actual notice of debtor's bankruptcy filing and (2) acted deliberately when violating the stay. 11 U.S.C.A. § 362(k)(1). In re Arthur B. Adler and Associates, Ltd., 588 B.R. 864 (Bankr. N.D. Ill. 2018).

Even an innocent stay violation, i.e., one committed without knowledge of automatic stay, will become "willful" if creditor fails to remedy the violation after receiving notice of the stay. 11 U.S.C.A. § 362(k). In re Swindle, 584 B.R. 259 (Bankr. N.D. Ill. 2018).

"Willful" violation of the automatic does not require specific intent to violate the stay; it is sufficient that the creditor takes questionable action despite the awareness of a pending bankruptcy proceeding. 11 U.S.C.A. § 362(k). In re Kuzniewski, 508 B.R. 678 (Bankr. N.D. Ill. 2014).

For a violation of the automatic stay to be "willful," there is no requirement that the creditor act with the intent to violate the stay; acting with knowledge of the bankruptcy and the stay is all that is necessary. 11 U.S.C.A. § 362(k)(1). In re Yantis, 553 B.R. 351 (Bankr. N.D. Ind. 2016).

Willful violation of automatic stay does not require finding of specific intent; if creditor is aware of debtor's bankruptcy filing, then any intentional act that results in a violation of stay is "willful violation." 11 U.S.C.A. § 362(k). In re Gray, 519 B.R. 767 (B.A.P. 8th Cir. 2014).

Test for determining whether violation of automatic stay was "willful" is (1) whether party engaging in acts violative of automatic stay knew of stay; and (2) whether the act violating the stay was intentional. 11 U.S.C.A. § 362(k). In re Dingley, 514 B.R. 591, 59 Bankr. Ct. Dec. (CRR) 250, Bankr. L. Rep. (CCH) P 82675 (B.A.P. 9th Cir. 2014).

That creditor believes in good faith that it has right to engage in conduct found to violate automatic stay is irrelevant to whether stay violation is "willful." 11 U.S.C.A. § 362(k). In re Perl, 513 B.R. 566 (B.A.P. 9th Cir. 2014).

"Willful" violation does not require a specific intent to violate the automatic stay; rather, the Bankruptcy Code provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. 11 U.S.C.A. §§ 362(a), 362(k). In re Achterberg, 573 B.R. 819 (Bankr. E.D. Cal. 2017).

Once creditor or other actor learns or is put on notice of debtor's bankruptcy filing, any actions intentionally taken thereafter in violation of automatic stay are in nature of "willful" stay violations. 11 U.S.C.A. § 362(k). In re Bourke, 543 B.R. 657 (Bankr. D. Mont. 2015).

Creditor who attempts collection of prepetition debt after it learns of debtor's bankruptcy filing is subject to sanctions for willful violation of automatic stay. 11 U.S.C.A. § 362(k). In re Hill, 523 B.R. 704 (Bankr. D. Mont. 2014).

Stay violation is "willful," and sufficient to support a damages award against party violating the stay, if this party knew of the stay, and if its actions violating the stay were intentional. 11 U.S.C.A. § 362(k). In re Gray, 567 B.R. 841 (Bankr. W.D. Wash. 2017).

Exhibit 3

For a stay violation to be considered willful, creditor must know that the automatic stay is in place and intend to take the actions that violate the automatic stay; however, a specific intent to violate the stay is not required. 11 U.S.C.A. § 362(k)(1). In re Fontaine, 603 B.R. 94 (Bankr. D. N.M. 2019).

To show that a stay violation is "willful," the debtor must establish that the creditor knew of the automatic stay and intended the actions that constituted the violation; no specific intent is required. 11 U.S.C.A. § 362(k). In re Escobedo, 513 B.R. 605 (Bankr. D. N.M. 2014).

Creditor's good faith is not relevant when deciding whether there was a violation of the automatic stay or the discharge injunction. 11 U.S.C.A. §§ 362, 524, 524(a)(2). In re Slater, 573 B.R. 247 (Bankr. D. Utah 2017).

Test for whether violation of automatic stay was willful merely requires inquiry into (1) whether creditor knew of the stay; and (2) whether the actions violating the stay were intentional. 11 U.S.C.A. § 362(k). Alley Cassetty Companies, Inc. v. Wren, 502 B.R. 609, 70 Collier Bankr. Cas. 2d (MB) 1 (N.D. Ga. 2013).

"Knowledge" of the invocation of the automatic stay, as required to find that a stay violation was willful, requires only knowledge of the bankruptcy; it does not require either specific knowledge of the automatic stay itself or comprehension of its legal effect. 11 U.S.C.A. § 362(k). In re Banks, 521 B.R. 417 (Bankr. M.D. Ga. 2014).

Violation of the automatic stay is willful if the creditor (1) knew the automatic stay was invoked and (2) intended the actions which violated the stay. 11 U.S.C.A. § 362. In re Sciortino, 561 B.R. 569 (Bankr. N.D. Ga. 2016).

Stay violation is willful if defendants: (1) knew the automatic stay was invoked, and (2) intended the actions which violated the stay. 11 U.S.C.A. § 362(k). In re Sciortino, 561 B.R. 260 (Bankr. N.D. Ga. 2016).

[Top of Section]

[END OF SUPPLEMENT]

II. Particular Actions Constituting Willful Violation of Automatic Stay

A. Collection Efforts Generally

§ 4. Billing statement—Willful violation found

[Cumulative Supplement]

In the following cases, courts have found that sending a billing statement to a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Based on a Chapter 7 debtor's testimony and the documentary evidence presented, the court in In re Brigham, 2001 BNH 48, 2001 WL 1868123 (Bankr. D. N.H. 2001), determined that a creditor hospital's conduct constituted a willful violation of the automatic stay provision of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the hospital had sent the debtor three postpetition statements for services rendered, and after the first statement was received, the debtor's counsel had notified the

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

hospital by letter that it was in violation of the automatic stay and that it should cease further collection efforts. Furthermore, after the second statement was received, a staff member of the debtor's counsel had telephoned the hospital, noted the court.

The court in In re Harris, 374 B.R. 611 (Bankr. N.D. Ohio 2007), held that a creditor willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k)(1), when the creditor sent two billing statements for medical services provided prepetition to the Chapter 7 debtor after receiving notice of the debtor's bankruptcy filing. The court explained that it was irrelevant that the creditor had no specific intent to violate the stay and had sent the billing statements by mistake.

Monthly billing statements sent to Chapter 7 debtors, seeking cure of their default on a home equity loan, found the court in In re Joens, 2003 WL 22839822 (Bankr. N.D. Iowa 2003), constituted a deliberate postpetition attempt to collect a debt in willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor had notice of the debtors' bankruptcy case and its conduct in contacting the debtors postpetition by mail was intentional.

Where the billing agent for a medical clinic was already on notice, at the time it generated two bills and mailed them to the Chapter 7 debtors for prepetition medical services not covered by their insurance, of the debtors' bankruptcy filing, as demonstrated by its conduct in "zeroing out" the debtors' account when it received notice of the debtors' bankruptcy filing before the $100 charge in question was posted to the debtors' account by the medical clinic, the court in In re Risner, 317 B.R. 830 (Bankr. D. Idaho 2004), held that the billing agent's actions in mailing out the two bills were in the nature of a willful violation of the automatic stay, such as might support damages under former 11 U.S.C.A. § 362(h).

Chapter 7 debtors moved to hold a credit card issuer in contempt for its alleged violations of the automatic stay, and the court in In re Driggers, 204 B.R. 70 (Bankr. N.D. Fla. 1996), determined that the credit card issuer had willfully violated the automatic stay, so as to be liable for damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by continuing to send bills to the Chapter 7 debtors even after entry of the discharge order, and even after the debtors' attorney had mailed a letter to the issuer notifying it of the debtors' bankruptcy. Once the credit card issuer received notice of the debtors' Chapter 7 case, its continued attempts to collect a prepetition debt had to be regarded as willful, stated the court, even if no particular individual employee of the credit card issuer had specifically intended to violate the stay.

CUMULATIVE SUPPLEMENT

Cases:

Unlisted creditor willfully violated the automatic stay when it sent Chapter 7 debtor a bill demanding payment for prepetition telephone and Internet service despite having actual notice of debtor's bankruptcy filing; although debtor had not initially listed creditor on his bankruptcy schedules, the bill subsequently sent by creditor violated the stay because creditor knew about the bankruptcy when it sought payment, and once creditor knew of the bankruptcy, it was subject to the stay regardless of whether its claim was scheduled or not. 11 U.S.C.A. § 362(a)(6), (k)(1). In re Weidner, 384 B.R. 9 (Bankr. D. Alaska 2008).

Evidence that, on the date county water department sent an invoice for prepetition water service to Chapter 7 debtor, county and department knew the automatic stay was in effect, and that department intentionally sent the invoice, satisfied the "willfulness" requirement for recovery for a willful violation of the automatic stay under the Bankruptcy Code. 11 U.S.C.A. § 362(k). In re Sciortino, 561 B.R. 260 (Bankr. N.D. Ga. 2016).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

[Top of Section]

[END OF SUPPLEMENT]

§ 5. Billing statement—Willful violation not found

The courts in the following cases decided, based on the facts and circumstances of each case, that sending a billing statement to a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Although a public housing authority had violated the automatic stay of a Chapter 7 debtor by sending the tenant debtor bills that included amounts for dischargeable prepetition rent, even though the bills had been computer-generated, the court in In re Whitt, 79 B.R. 611 (Bankr. E.D. Pa. 1987), decided that this violation was not willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where there was no evidence of any actions that the court would deem such serious violations of the automatic stay that damages could be presumed.

In In re Conley, 1997 WL 33479039 (Bankr. C.D. Ill. 1997), the issue before the court was whether a university should be sanctioned for violating the stay of a Chapter 7 debtor when it tried to collect a prepetition tuition bill from the debtor, and the court decided that the university's violation of the stay had not been willful, and thus sanctions were not appropriate under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since it was not at all clear that the university had received notice of the bankruptcy before it sent a billing statement to the debtor, no action had been taken by the debtor or his attorney upon receipt of the bill, and the university had a good-faith belief that its debt was nondischargeable.

§ 6. Collection letter—Willful violation found

[Cumulative Supplement]

Sending a collection letter to a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases concluded, based on the facts and circumstances of each case.

Where a creditor sent four collection letters to a Chapter 7 debtor after receiving notice of the debtor's bankruptcy filing, the court in In re Baker, 57 Collier Bankr. Cas. 2d (MB) 185, 2006 WL 3370864 (Bankr. D. Mass. 2006), held that the creditor violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), despite the fact that the creditor mailed the collection letters by accident. The creditor, in explaining that its stay violation was not willful, stated that the four collection letters it sent were sent by accident, the result of an outdated computer system and the failure of any of its employees to notice before putting the letters in the mail that no collection letters were to be sent to this particular debtor. The court found that the fact that a creditor's actions may have been unintentional did not relieve it of liability for violating the automatic stay. The court opined that once a creditor receives notice of a debtor's bankruptcy filing, it has the burden of ensuring that stay violations do not occur.

Where the Social Security Administration (SSA) sent a collection letter to the Chapter 7 debtor to recoup disability benefits paid to the debtor on behalf of her disabled child who had died four months earlier and the letter threatened garnishment of the debtor's wages or federal income tax refunds, the court in In re Bailey, 2007 WL 2049007 (Bankr. S.D. N.Y. 2007), held that the SSA willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k)(1), as the SSA directed its demand for repayment of past overpayments to the debtor and any overpayment

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

would necessarily have to be made out of the debtor's assets, as the disabled child had died and the claim could not be satisfied out of future benefit payments.

Moving for an award of sanctions against a creditor hospital, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), a Chapter 7 debtor alleged that the hospital had repeatedly violated the automatic stay, and the court in In re Chavis, 213 B.R. 462, 31 Bankr. Ct. Dec. (CRR) 714 (Bankr. E.D. N.C. 1997), concluded that the hospital had willfully violated the automatic stay by sending a collection letter to the debtor after it had received notice of the debtor's bankruptcy, by failing to respond to the debtor's first motion for sanctions or to attend the hearing thereon, by failing to comply with the court's initial nonmonetary sanctions order in not acknowledging the court's warning or giving assurances that the collection activity would terminate, by continuing to send two more collection letters to the debtor, and by not responding to the debtor's second motion for sanctions.

Despite the fact that a corporate creditor had separate departments, with separate mailing addresses, for the receipt of customer payments and for the processing of information received from customers, such as notices of their bankruptcy filings, and that notice of debtors' Chapter 7 filing had erroneously been sent to the department that processed payments, the court in In re Perviz, 302 B.R. 357 (Bankr. N.D. Ohio 2003), found that the creditor's acts in continuing, over several months, to send mailings to the debtors' home in an attempt to collect a prepetition debt constituted a willful violation of the automatic stay, so that sanctions could be imposed against the creditor pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

The court in In re Flack, 239 B.R. 155 (Bankr. S.D. Ohio 1999), concluded that a creditor's postpetition collection letter sent to a Chapter 7 debtor willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where telephone conversations between the creditor's representative and the debtor, and the representative and the debtor's counsel, prior to the issuance of the collection letter had provided the creditor with reasonable, actual notice of the bankruptcy filing, even though the creditor had not received more formal notification of the filing. It is not for creditors to decide when they will respect the rights of debtors and/or to interpret the applicability of the stay provisions, held the court, and instead, immediately upon receipt of reasonable, actual notice, creditors must stop collection, and if there is some doubt, file a motion for modification of the stay. Creditors will not be shielded from liability by turning a blind eye to reasonable, actual notice of a filing, stated the court.

Where a Chapter 7 debtor filed an adversary complaint, seeking to recover punitive damages and attorney's fees for a creditor's alleged stay violation, the court in In re Baggs, 283 B.R. 726 (Bankr. C.D. Ill. 2002), found that the creditor had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since despite having received notice of the Chapter 7 debtor's bankruptcy filing, as well as a letter from the debtor's counsel reminding it of the bankruptcy filing and the effect of the automatic stay, the creditor had sent the debtor two postpetition collection statements containing thinly veiled threats of criminal action if the debt was not paid in full immediately.

A creditor and its employee had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), believed the court in In re Rice, 2001 WL 34072900 (Bankr. C.D. Ill. 2001), where the creditor had been properly scheduled in a Chapter 7 debtor's bankruptcy petition and had received notice of the bankruptcy filing, and one of its representatives had even appeared at the meeting of creditors, but the creditor had nevertheless sent two dunning letters to the debtor following the filing of the petition.

Mailing collection letters requesting a cure of the default on a creditor's undersecured claim on a home equity loan that was the second lien on Chapter 7 debtors' homestead real estate constituted a violation of the automatic stay that was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), concluded the court in In re Joens, 2003 WL 22839822 (Bankr. N.D. Iowa 2003), where the creditor had notice of the debtors' bankruptcy case and its conduct in contacting the debtors by mail postpetition was intentional. The letters sent to the debtors seeking cure of their default on the home equity loan constituted deliberate postpetition attempts to collect a debt in violation of the automatic stay, determined the court.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

By continuing to send a Chapter 7 debtor invoices and other types of collection letters, a creditor had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), determined the court in In re Goodfellow, 298 B.R. 358 (Bankr. N.D. Iowa 2003), since the creditor had been properly served with notice of the bankruptcy case, and the debtor had repeatedly informed the creditor's representatives of the pendency of her bankruptcy case and of her bankruptcy attorney's name.

Where a creditor sent several collection letters to the Chapter 7 debtor after the debtor had filed a bankruptcy petition, the court in In re Gorringe, 348 B.R. 789 (Bankr. D. Idaho 2006), noting that the creditor received adequate notice of the debtor's bankruptcy filing and was duty-bound to inquire further of the court about the identity of the debtor, held that the creditor willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by intentionally engaging in conduct directed at collecting a debt from the debtor after receiving notice of the debtor's bankruptcy petition from the bankruptcy court.

A credit card issuer had willfully violated the automatic stay, found the court in In re Driggers, 204 B.R. 70 (Bankr. N.D. Fla. 1996), so as to be liable for damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by continuing to send dunning letters to Chapter 7 debtors even after the entry of their discharge order, and even after the debtors' attorney had mailed a letter to the issuer at the address indicated in the dunning letters notifying it of the debtors' bankruptcy. Even if no particular individual employee of the credit card issuer had specifically intended to violate the stay, explained the court, once the credit card issuer had received notice of the debtors' Chapter 7 case, its continued attempts to collect a prepetition debt had to be regarded as willful.

CUMULATIVE SUPPLEMENT

Cases:

Claimant willfully violated the automatic stay by contacting Chapter 7 debtor by e-mail, after receiving notice of the bankruptcy filing, and threatening to take criminal action if the she did not pay claimant $2,000, and making continued phone calls to debtor. 11 U.S.C.A. § 362(k). In re Wright, 608 B.R. 648 (Bankr. W.D. Va. 2019).

[Top of Section]

[END OF SUPPLEMENT]

§ 7. Collection letter—Willful violation not found

[Cumulative Supplement]

It has been found, based on the facts and circumstances, that sending a collection letter to a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Because a creditor's undisclosed knowledge of a Chapter 7 debtor's bankruptcy could not be imputed to its agent, a firm retained to collect the debt, the court in In re Siharath, 285 B.R. 299, 40 Bankr. Ct. Dec. (CRR) 108 (Bankr. D. Minn. 2002), determined that the collection firm did not willfully violate the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it sent the debtor collection notices postpetition.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

CUMULATIVE SUPPLEMENT

Cases:

Bankruptcy court did not clearly err in finding that computer-generated form letters that were sent to Chapter 7 debtor by the Texas Department of Public Safety (DPS) in response to debtor's inquiries about reinstatement of his driver's license did not constitute willful violations of automatic stay, though these letters referenced the surcharges imposed on debtor for various traffic law violations; debtor did not dispute that letters were primarily informational regarding requirements for reinstatement of debtor's license, and debtor offered no competent evidence or convincing argument that these automatically-generated, generally-informational letters demonstrated any willful disregard of automatic stay. 11 U.S.C.A. § 362(h). In re Holder, 376 B.R. 802 (S.D. Tex. 2007).

[Top of Section]

[END OF SUPPLEMENT]

§ 8. Telephone call—Willful violation found

Based on the facts and circumstances of each of the following cases, courts have decided that a telephone call to a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Chapter 7 debtors moved to recover damages for a creditor's alleged willful violations of the automatic stay under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), and the court in In re Perviz, 302 B.R. 357 (Bankr. N.D. Ohio 2003), concluded that the mere fact that the corporate creditor had separate departments, with separate mailing addresses, for the receipt of customer payments and for the processing of information received from customers, such as notices of their bankruptcy filings, and that notice of the debtors' Chapter 7 filing had erroneously been sent to the department that processed payments, did not detract from the willful nature of the creditor's acts in continuing, over several months, to make phone calls to the debtors' home in an attempt to collect a prepetition debt, especially where the debtors, in response to the phone calls, had informed the creditor's representative of their bankruptcy, and where the debtor's attorney had also written numerous letters to the creditor advising it of the debtors' bankruptcy. Even though, in some instances, the fact that a creditor has separate departments with their own mailing addresses and that notice of bankruptcy is sent to a department other than that responsible for processing bankruptcy notices may in the very short term mitigate against a finding that the creditor, by continuing with its debt collection activity after notice is received, willfully violated the automatic stay, conceded the court, all creditors, whether large or small, are obligated to have in place procedures to ensure that formal bankruptcy notices sent to an internally improper, but otherwise valid, corporate address are forwarded in a prompt and timely manner to the correct department, so that the creditor's organizational structure will not detract from the willful nature of a stay violation except over a very short term.

Following the rejection of their application for an award of attorney's fees and damages based on a secured creditor's alleged violation of the automatic stay, Chapter 7 debtors appealed, and the court in In re McHenry, 179 B.R. 165 (B.A.P. 9th Cir. 1995), concluded that the creditor's automatic stay violation, in calling the debtors regarding delinquent car payments, was willful, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditors had notice of the bankruptcy filing and the action of the creditor's employee in making the phone call was intentional.

Debtors, who had apparently filed for bankruptcy under Chapter 7, moved for an order finding creditors in contempt for violation of the automatic stay, and the court in In re Eash, 225 B.R. 489 (Bankr. D. Idaho 1998), concluded that by filing no opposition to the debtors' motion, and by failing to appear on the scheduled hearing on the motion, despite the bankruptcy court's express

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

admonishment at the time of an earlier hearing, the creditors had not put any of the debtors' factual allegations at issue, thus warranting a finding of a willful stay violation, subjecting the creditors to a damages award pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), for their continuing postpetition collection efforts, including making phone calls to the debtors. The record established that the creditors were listed on the bankruptcy schedules and had received notice of the filing of the case, and that such notice specifically advised the creditors of the existence of the automatic stay and that collection activities were prohibited, found the court. Despite this notice, subsequent to the debtors' bankruptcy filing, the creditors had contacted the debtors in an attempt to collect their debt, noted the court.

§ 9. Telephone call—Willful violation not found

[Cumulative Supplement]

A telephone call to a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases concluded, based on the facts and circumstances of each case.

There was no willful violation of the automatic stay, and sanctions could not be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Flack, 239 B.R. 155 (Bankr. S.D. Ohio 1999), where a creditor had made a postpetition telephone call to the debtor, since prefiling attempts by the debtor's attorney to communicate with the creditor orally and in writing were not sufficient to constitute reasonable, actual notice of the debtor's bankruptcy filing as required to find willfulness on the part of the creditor when it made the call. The court believed that debtor's counsel, rather than relying upon a prepetition letter to the creditor, should have ensured that immediately after the filing, a copy of the petition was faxed or hand-delivered to all creditors holding postdated checks.

The frequency of a creditor's contacts with debtors in the days immediately preceding their Chapter 7 filing supported a finding that a postpetition telephone call, which formed the basis of the debtors' motion to recover damages for the creditor's alleged willful violation of the automatic stay, had occurred early in the bankruptcy process, at a time when the creditor had not yet received notice of the debtors' Chapter 7 filing, and not several weeks later, as indicated in the debtor's testimony, after an extended period of inaction by the creditor in following up on its prior collection efforts, found the court in In re Skeen, 248 B.R. 312 (Bankr. E.D. Tenn. 2000), so that although the creditor had violated the stay by telephoning the debtor postpetition, its violation was not willful, and did not support an award for any such damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

The court in In re Cain, 272 B.R. 304 (Bankr. D. Wyo. 2001), determined that a creditor had not willfully violated the automatic stay of a pro se Chapter 7 debtor, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though a representative of the creditor had telephoned the debtor postpetition, where notice of the bankruptcy case had been received by the creditor after the phone call was made, and after the creditor received the notice and entered the bankruptcy case information into its electronic database, no further collection activity had been taken. Even though the call was made postpetition, it was made without knowledge of the bankruptcy case and was not willful as a matter of law, held the court.

CUMULATIVE SUPPLEMENT

Cases:

Chapter 7 debtor's allegations that creditor's employee made phone calls to debtor with "veiled threats" and "rudeness" were insufficient to support claim for "willful" violation of automatic stay, absent explanation of what was allegedly threatened, how

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

the alleged rudeness was manifested, and how the veiled threats and rudeness were connected with any action that actually violated the stay. 11 U.S.C.A. § 362. In re Morris, 514 B.R. 658 (Bankr. N.D. Ala. 2014).

[Top of Section]

[END OF SUPPLEMENT]

§ 10. Referral to collection agency

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined whether violation of the automatic stay by referring the debt of a Chapter 7 debtor to a collection agency was willful, based on the facts and circumstances of each case.

Referral by a creditor to the bad debt collection unit (BCU) of the district attorney's office of markers representing a Chapter 7 debtor's gambling debts, found the court in In re Baumblit, 15 Fed. Appx. 30 (2d Cir. 2001) (not designated for publication), was not the commencement of a criminal action or proceeding as required to fall under the exception from the automatic stay provision, but rather constituted a deliberate, willful violation of the automatic stay entitling the debtor to actual damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor knew of the stay, the BCU administered a program that attempted to collect payment of bad checks through the threat of prosecution, a different unit of the district attorney's office had to make a decision as to whether to prosecute and a separate criminal complaint had to be drafted by the prosecutor if a decision was made to prosecute, and referral to the BCU did not toll the statute of limitations for filing a criminal complaint.

A credit card issuer's engagement of two collection agencies in an attempt to collect a prepetition debt from a Chapter 7 debtor, determined the court in In re Jacobs, 100 B.R. 357 (Bankr. S.D. Ohio 1989), constituted a willful violation of the stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor had ample notice of the pendency of the debtor's bankruptcy proceeding when it engaged the collection agencies.

After a Chapter 7 debtor filed an adversary complaint against a creditor and a firm retained by the creditor to collect a debt, seeking damages for alleged violations of the automatic stay, the court in In re Siharath, 285 B.R. 299, 40 Bankr. Ct. Dec. (CRR) 108 (Bankr. D. Minn. 2002), found that the creditor, which had knowledge of the commencement of the Chapter 7 debtor's case yet continued, through its agent, to attempt collection of its debt, had willfully violated the automatic stay, and sanctions could therefore be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 11. Filing credit report information

It has been determined whether the filing of credit report information constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

Where a creditor had been properly served with notice of a Chapter 7 debtor's bankruptcy case, and the debtor had repeatedly informed the creditor's representatives of the pendency of her bankruptcy case and of her bankruptcy attorney's name, the court in In re Goodfellow, 298 B.R. 358 (Bankr. N.D. Iowa 2003), concluded that the creditor had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it placed information concerning the debtor in various credit report agency files.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 12. Initiating collection lawsuit—Willful violation found

[Cumulative Supplement]

Initiating a collection lawsuit against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), the courts in the following cases found, based on the facts and circumstances of each case.

A creditor and its collection agent filed a postpetition state court collection action against a Chapter 7 debtor, and the court in Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 40 Bankr. Ct. Dec. (CRR) 117, Bankr. L. Rep. (CCH) ¶ 78742 (9th Cir. 2002), decided that the creditor's collection agent had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), based on evidence that the agent had been promptly notified of the debtor's Chapter 7 filing, that lawyers at the agent's firm had refused to take telephone calls from the debtor's counsel, that debtor's counsel left a message with a legal assistant and faxed to an agent a request to stay its state action, and that the agent had not dismissed its state collection action until nine days later. The lawyers at the agent's firm made no attempt to explain its delay to debtor's counsel prior to that time, the agent demonstrated no indication that it was attempting to move expeditiously to cure the automatic stay violation, and the agent's claims of alleged problems with its process server and a missing case number lacked merit, clarified the court.

In In re Premier Sports Tours, 283 B.R. 598 (Bankr. M.D. Fla. 2002), where a Chapter 7 trustee brought a motion to hold a creditor in contempt of court for filing suit against the trustee in a federal district court in a different circuit, the court concluded that the creditor's suit against the Chapter 7 trustee, relating to property of the estate, initiated without leave from the bankruptcy court and seeking relief from the bankruptcy court's order in a federal district court in a different circuit, was a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the district court had granted the creditor some relief. The record left no doubt that filing a complaint in another state was a willful and knowing violation of the automatic stay, especially in light of the fact that counsel for the trustee put the creditor on notice that if he did proceed with the hearing, counsel for the estate would seek contempt against him.

Where a Chapter 7 debtor filed a motion for sanctions against a creditor, an attorney who had served as guardian ad litem for the debtor's minor child in prepetition dissolution proceedings, alleging that the creditor had violated the automatic stay in attempting to collect attorney's fees that had been awarded to her by the state court, the court in In re Sutton, 250 B.R. 771 (Bankr. S.D. Fla. 2000), found that the creditor, who had been awarded attorney's fees for her services as guardian ad litem, had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where, despite her knowledge of the debtor's bankruptcy filing, the creditor had sought and obtained a state court order granting her motion to compel payment of the fees without first obtaining stay relief.

CUMULATIVE SUPPLEMENT

Cases:

Creditor's prosecuting multiple lawsuits against Chapter 7 debtor in state courts constituted willful violation of the automatic stay, where creditor had knowledge of debtor's bankruptcy filing and intentionally filed documents in state court. 11 U.S.C.A. § 362(a). In re Mitchell, 545 B.R. 209 (Bankr. N.D. Ohio 2016).

[Top of Section]

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

[END OF SUPPLEMENT]

§ 13. Initiating collection lawsuit—Willful violation not found

Violation of the automatic stay by initiating a collection lawsuit against a Chapter 7 debtor was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined, based on the facts and circumstances of each case.

After filing a petition for bankruptcy under Chapter 7, a debtor brought an adversary proceeding against a creditor, alleging a willful violation of the automatic stay, and the court in In re Wright, 1992 WL 101793 (Bankr. N.D. Ohio 1992), found that the creditor's postpetition initiation of a state court action for collection on a debt did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor did not have notice or knowledge of the debtor's bankruptcy petition at the time it commenced the state court lawsuit.

For the purposes of a debtor's right to damages and attorney's fees according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), creditors had not willfully violated the automatic stay by bringing various lawsuits against the debtor, who had apparently filed for bankruptcy under Chapter 7, found the court in Price v. Rochford, 947 F.2d 829, 22 Bankr. Ct. Dec. (CRR) 405, Bankr. L. Rep. (CCH) ¶ 74340, 21 Fed. R. Serv. 3d 1409 (7th Cir. 1991), absent evidence that the creditors had been aware of the debtor's three bankruptcy filings that were subsequently dismissed by the bankruptcy court. The court noted that the debtor had not given the bankruptcy court an acceptable list of creditors to notify, and did not claim to have made any systematic effort to reach the creditors himself.

In In re Gustin, 343 B.R. 909 (Bankr. W.D. Wis. 2005), the court held that although a judgment creditor's state court action against the Chapter 7 debtor may have been commenced in violation of the automatic stay, there was no indication that the violation was willful, as would support a claim for damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the debtor failed to notify the judgment creditor of her bankruptcy filing, there was no evidence that the creditor had actual notice of the filing, and upon learning of the bankruptcy, the creditor appeared to have halted pursuit of her state court claim, not resuming it until the automatic stay was no longer in effect.

The court in In re Siharath, 285 B.R. 299, 40 Bankr. Ct. Dec. (CRR) 108 (Bankr. D. Minn. 2002), determined that where a collection firm retained by a creditor to collect the debt of a Chapter 7 debtor did not have knowledge of the debtor's bankruptcy, the collection firm had not willfully violated the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it commenced suit against the debtor postpetition and sought a default judgment. Although the creditor had knowledge of the debtor's bankruptcy, the creditor's undisclosed knowledge could not be imputed to its agent, the collection firm, held the court.

§ 14. Continuing collection lawsuit—Willful violation found

[Cumulative Supplement]

In the following cases, courts have found that continuing a collection lawsuit against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

When a Chapter 7 debtor sought sanctions for a willful violation of the automatic stay, on the creditor's appeal from an award of compensatory damages, attorney's fees, and punitive damages, the court in In re Bloom, 875 F.2d 224, 19 Bankr. Ct. Dec. (CRR) 590 (9th Cir. 1989), concluded that the creditor's action in moving to compel the debtor to comply with a prebankruptcy consent decree, moving to strike the debtor's claim of wage exemption, and in filing a motion to withdraw the reference had

Exhibit 3

violated the automatic stay willfully, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor had made numerous filings and representations after being warned by debtor's counsel that the creditor was violating the automatic stay.

Chapter 7 debtors sought sanctions for creditors' violation of the automatic stay, and the court in In re Forty-Five Fifty-Five, Inc., 111 B.R. 920 (Bankr. D. Mont. 1990), concluded that the creditors and their counsel, who knew of the debtors' bankruptcy filings and, in spite of such knowledge, had continued a state court action to secure an injunction against the debtors, had committed a willful violation of the automatic stay, entitling the debtors to damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

After filing her pro se Chapter 7 petition for bankruptcy, a debtor alleged that a creditor had violated the automatic stay, and the court in In re Cain, 272 B.R. 304 (Bankr. D. Wyo. 2001), considered the testimony and other evidence in finding that the creditor had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor had knowledge of the automatic stay, but it had not notified a state court of the bankruptcy filing, resulting in the state court's setting a hearing on the creditor's motion for summary judgment in a civil collection action and sending notice of the hearing to the debtor. The creditor had an affirmative obligation and was in the best position to notify the court, rather than relying on chance or notice by the debtor, reasoned the court.

The court in In re Keen, 301 B.R. 749 (Bankr. S.D. Fla. 2003), decided that where a Chapter 7 debtor brought an adversary proceeding against a creditor and the creditor's attorney for their alleged willful violations of the automatic stay, the creditor was liable for sanctions for willfully violating the stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), based on its actions in failing to take steps to undo the default judgment that it had recorded against the debtor in state court collection litigation after being notified of the debtor's bankruptcy. See § 15, where the court found that the creditor had not willfully violated the automatic stay by moving for the default judgment in the state court litigation that was pending on the petition date.

CUMULATIVE SUPPLEMENT

Cases:

Attorney who represented Chapter 7 debtor's ex-wife in marital dissolution action was presumed to be an authorized agent of ex-wife for purposes of receiving notice of debtor's bankruptcy filing, such that attorney's stay violation, after receiving notice of debtor's Chapter 7 petition, in filing postpetition contempt motion in state court to enforce provisions of dissolution decree, was in nature of 'willful' violation of automatic stay, of kind supporting damages award against him; it was no excuse that attorney was divorce attorney unfamiliar with bankruptcy law, as he was presumed to have sufficient knowledge and training to apprise himself of bankruptcy rules. 11 U.S.C.A. § 362(k)(1). In re Beckford, 572 B.R. 61 (Bankr. D. Conn. 2017).

Judgment creditor and creditor's counsel were jointly and severally liable for willful stay violation that occurred when, after learning of judgment debtors' Chapter 7 filing, they failed to take prompt action to quash warrants obtained for debtors' arrest based on their failure to appear at supplemental proceedings relating to judgment debt. 11 U.S.C.A. § 362(k). In re Gray, 567 B.R. 841 (Bankr. W.D. Wash. 2017).

[Top of Section]

[END OF SUPPLEMENT]

§ 15. Continuing collection lawsuit—Willful violation not found

Exhibit 3

Based on the facts and circumstances, it has been concluded that the continuation of a collection lawsuit against a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where a creditor had not been included on a Chapter 7 debtor's schedules, and had no notice or knowledge of the debtor's bankruptcy, apart from oral statements previously made by the debtor about the possibility that he might file for bankruptcy relief, the court in In re Keen, 301 B.R. 749 (Bankr. S.D. Fla. 2003), determined that the creditor had not willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), in moving for a default judgment against the debtor in state court collection litigation that was pending on the petition date. See § 14, where the court concluded that the creditor had willfully violated the automatic stay by failing to take steps to undo the default judgment after being notified of the debtor's bankruptcy.

§ 16. Reaffirmation agreement—Collection—Willful violation found

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined that collecting a debt from a Chapter 7 debtor pursuant to a reaffirmation agreement constituted a willful violation of the automatic stay, based on the facts and circumstances of each case.

In In re Latanowich, 207 B.R. 326, 30 Bankr. Ct. Dec. (CRR) 886 (Bankr. D. Mass. 1997), a Chapter 7 debtor moved to reopen his case to seek relief from a debt that he had listed in his schedules and that appeared to have been discharged, but that a creditor was collecting pursuant to a reaffirmation agreement, and after a hearing on an order to show cause why sanctions should not be imposed on the creditor for inviting the debtor to pay the discharged debt, the court found that the creditor's conduct in billing the Chapter 7 debtor, assessing interest, and accepting payments on the prepetition debt, pursuant to the invalid reaffirmation agreement, which occurred before entry of the discharge, were willful violations of the automatic stay for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

In In re Briggs, 143 B.R. 438, 27 Collier Bankr. Cas. 2d (MB) 874 (Bankr. E.D. Mich. 1992), where a Chapter 7 debtor brought an action against a credit union, alleging violation of the automatic stay, the court determined that the credit union's violation of the stay, by refusing to relinquish control of a reaffirmation agreement and implying that the debtor had to take affirmative action to stop automatic loan payments, was willful, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). It was obvious that the credit union's actions were intentional, believed the court, and there could be no doubt that the credit union was aware of the pending stay, so that the credit union had acted willfully in violating the automatic stay.

§ 17. Reaffirmation agreement—Collection—Willful violation not found

Collecting a debt from a Chapter 7 debtor pursuant to a reaffirmation agreement did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been concluded, based on the facts and circumstances.

In Cox v. Zale Delaware, Inc., 242 B.R. 444 (N.D. Ill. 1999), aff'd on other grounds, 239 F.3d 910, 37 Bankr. Ct. Dec. (CRR) 112, Bankr. L. Rep. (CCH) ¶ 78358 (7th Cir. 2001), a former Chapter 7 debtor asserted a claim for a creditor's alleged willful violation of the automatic stay, and the court determined that the creditor's conduct in entering into a reaffirmation agreement with the debtor that appeared to be reasonable on its face, and that complied with all the statutory requirements except for the fact that it was never filed with the court, did not subject it to sanctions for willfully violating the automatic stay, under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it thereafter accepted the debtor's payments in accordance with the agreement that he had voluntarily executed while he was represented by counsel.

Exhibit 3

§ 18. Reaffirmation agreement—Solicitation of agreement

The courts in the following cases decided whether, based on the facts and circumstances of each case, solicitation of a reaffirmation agreement with a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where a creditor had extended a loan for furniture purchased by a Chapter 7 debtor, the creditor's attorney intentionally and willfully violated the automatic stay, subjecting the attorney and creditor to punitive damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), determined the court in In re Baker, 183 B.R. 30 (Bankr. D. R.I. 1995), by having direct conversations with the debtor in order to renegotiate a reaffirmation agreement. Although the creditor's attorney contended that the debtor's relationship with her attorney had broken down, the creditor's attorney was aware of the automatic stay and of the fact that another attorney was the debtor's counsel of record while he was having direct conversations with the debtor, and the creditor's attorney had telephoned the debtor twice to ascertain her intentions as to reaffirmation.

Solicitation by a credit union of Chapter 7 debtors' reaffirmation of a debt constituted a willful violation of the automatic stay provision prohibiting acts to collect prepetition debts, warranting the assessment of compensatory and punitive damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), concluded the court in In re Flynn, 143 B.R. 798 (Bankr. D. R.I. 1992), where on two occasions, officers of the credit union had communicated directly with the debtor, with full knowledge that she was represented by counsel, for the specific purpose of obtaining reaffirmation of the debt. Considered in their totality, these circumstances, together with the fact that the debtor reasonably felt threatened regarding her continued employment with the credit union, gave rise to a sanctionable claim for damages under § 362(h), believed the court.

§ 19. Harassment and coercion—Generally—Willful violation found

Harassment or coercion of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the cases that follow have found, based on the facts and circumstances of each case.

Despite ample notice of the pendency of a Chapter 7 debtor's bankruptcy proceeding, a creditor had repeatedly harassed the debtor in an attempt to collect its prepetition debt, found the court in In re Jacobs, 100 B.R. 357 (Bankr. S.D. Ohio 1989), and such behavior constituted a willful violation of the stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court noted that the creditor had engaged two collection agencies that had employed threatening and embarrassing tactics against the debtor.

When a Chapter 7 debtor moved for sanctions against a creditor and its representative, alleging that an incident in which the debtor was accosted by the creditor's representative in the courthouse hallway following a creditors' meeting and repeatedly asked why she was not going to pay her debt to the creditor had violated the automatic stay, the court in Patton v. Shade, 263 B.R. 861 (C.D. Ill. 2001), determined that the bankruptcy court had authority to issue sanctions for the automatic stay violation against the creditor and its representative, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), inasmuch as there was no dispute that the automatic stay was in effect when the representative had badgered the debtor, and that his conduct had been willful.

It was clear that that a creditor and its employee had willfully violated the automatic stay of a Chapter 7 debtor, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), believed the court in In re Rice, 2001 WL 34072900 (Bankr. C.D. Ill. 2001), where the creditor had been properly scheduled in the bankruptcy petition and had received

Exhibit 3

notice of the bankruptcy filing, and one of its representatives had even appeared at the meeting of creditors, but nevertheless, the creditor's employee had called various members of the debtor's family and had even harassed the debtor at her place of employment, all in an effort to collect a debt that was listed in the debtor's bankruptcy.

The postpetition conduct of a creditor in making threatening telephone calls to the debtor in an attempt to get her to pay off her debt, found the court in In re Goodfellow, 298 B.R. 358 (Bankr. N.D. Iowa 2003), constituted a willful violation of the automatic stay for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor had been properly served with notice of the bankruptcy case, and the debtor had repeatedly informed the creditor's representatives of the pendency of her bankruptcy case and of her bankruptcy attorney's name.

A Chapter 7 trustee brought an adversary proceeding to recover for an alleged violation of the automatic stay, and the court in In re Lickman, 297 B.R. 162 (Bankr. M.D. Fla. 2003), decided that the Chapter 7 debtor, her male companion and her attorneys had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by making repeated telephone calls to the trustee and her counsel in an attempt to intimidate them into abandoning a cause of action as an asset of the estate, by filing disciplinary complaints against the trustee with the Florida Bar, by seeking relief from the state court, and by otherwise attempting to wrest control of this estate asset from the trustee, without seeking clarification from the court as to whether their conduct violated the stay, and without amending their conduct, or attempting to remedy their past stay violations, when told that their actions were wrongful. Once a party is put on notice of a debtor's bankruptcy filing, held the court, he or she is under a duty to seek further information that should reveal the applicability and scope of the automatic stay, and risks being assessed for damages for willfully violating the stay if, due to his or her failure to obtain clarification from the bankruptcy court, he or she engages in acts that violate the stay. Notice of a bankruptcy petition, such as a creditor must have in order to be liable for damages for willfully violating the automatic stay, does not have to come through formal means, added the court.

§ 20. Harassment and coercion—Generally—Willful violation not found

[Cumulative Supplement]

It has been determined, based on the facts and circumstances, that violation of the automatic stay by harassing or coercing a Chapter 7 debtor was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Denigrating and distasteful words allegedly directed against Chapter 7 debtors by a prepetition creditor who had obtained a judgment in state court on a promissory note were, without more, insufficient to constitute a willful violation of the automatic stay for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in Gordon v. Dennis Burlin Sales, Inc., 174 B.R. 257 (Bankr. N.D. Ohio 1994), where there was no clearly manifested attempt to recover on the claim or accomplish any other proscribed act.

CUMULATIVE SUPPLEMENT

Cases:

Chapter 7 debtor failed to show that harassing communications constituted efforts to collect nondischargeable debt owed to judgment creditor or that judgment creditor was responsible for the communications, and so debtor failed to establish judgment creditor's willful violation of the automatic stay; none of the anonymous communications made express request for payment of the subject debt, e-mail sent to debtor's employer referred only to professional disciplinary proceedings involving her husband and, even if sent to embarrass or 'pay back' debtor, did not violate the stay, debtor failed to link e-mail's authorship to judgment

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

creditor either through timing of e-mail, purported name of its sender, or allegedly 'small universe of people' who knew about her husband's suspension from the practice of law, and neither vulgar letter sent to debtor's husband nor subsequent letter sent to debtor as well referenced the debt but, instead, spoke only of husband's professional misconduct. 11 U.S.C.A. §§ 362(a)(6), 362(k). In re Malloy, 572 B.R. 551 (Bankr. E.D. Pa. 2017).

[Top of Section]

[END OF SUPPLEMENT]

§ 21. Harassment and coercion—Conduct toward third party—Willful violation found

The courts in the following cases held that the harassment or coercion of a third party related to a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of presented.

Moving for sanctions against a creditor and its collection agent for alleged violations of the automatic stay, a Chapter 7 debtor sought actual damages, punitive damages, and attorney's fees, and the court in In re Hromidko, 302 B.R. 629 (Bankr. N.D. Iowa 2003), found that postpetition contacts by the creditor's collection agent with the Chapter 7 debtor's employer were willful, and thus supported sanctions for an automatic stay violation according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), in that the agent's actions were deliberate and were taken with knowledge of the debtor's bankruptcy case, given imputation to the agent of the creditor's prior knowledge of the Chapter 7 case. The court observed that the agent had contacted the debtor's employer, a third party, and that the agent had misrepresented the liability of both the employer and his wife on the debtor's credit card account, and had also insinuated that the debtor had and was using a credit card that she had obtained under false pretenses as a business account, thereby injuring the debtor's employment relationship.

Where, after the first meeting of creditors in debtors' bankruptcy case, apparently filed pursuant to Chapter 7, creditors had contacted the debtors' parents, by phone and in person, in a further attempt to collect the obligation owed by the debtors, the court in In re Eash, 225 B.R. 489 (Bankr. D. Idaho 1998), determined that the creditors had willfully violated the automatic stay, and sanctions could therefore be imposed according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the record established that the creditors were listed on the bankruptcy schedules and had received notice of the filing of the case, and that such notice specifically advised the creditors of the existence of the automatic stay and that collection activities were prohibited.

For attorney's fees and costs purposes, a creditor had willfully violated the automatic stay according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Smith, 185 B.R. 871 (Bankr. M.D. Fla. 1994), by sending a postpetition letter to a Chapter 7 debtor's employer concerning an unpaid claim, suggesting that the debtor's employment with the company be reconsidered. The letter was a willful attempt to retaliate against and harass the debtor, believed the court, and the legislative history of the automatic stay provisions of the Bankruptcy Code, 11 U.S.C.A. § 362(a)(1), (a)(6), indicated that it was Congress' intent to protect debtors from all forms of harassment.

Chapter 7 debtors moved for contempt sanctions for a violation of the automatic stay against a creditor's attorney, and the court in In re Levine, 132 B.R. 475 (Bankr. M.D. Fla. 1991), found that the creditor's attorney had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by writing a letter advising a company from which the debtors had purchased various annuities of the pendency of the debtors' bankruptcy case, and contending that the company could be held legally culpable for any disbursement to the debtors. There could be no doubt that the letter sent by the attorney to the company was intended to, and in fact did, coerce the company to cease making annuity payments to the debtors, stated the court, and the fact that the letter was directed to the company rather than the debtors was of no import because the letter was designed to affect the debtors' right in the annuity. Furthermore, the attorney's letter to the

Exhibit 3

debtors' attorney, which stated that he had never instructed the company not to disburse proceeds to the debtors, but had merely informed the company that it might be held liable if the debtors liquidated the assets, could not serve to exculpate the attorney from the consequences of his original letter, reasoned the court.

Action was brought by a creditor seeking denial of the discharge of a Chapter 7 debtor from his debts, and after the debtor filed a counterclaim against the creditor, alleging that the creditor had violated the automatic stay, the court in In re Brannen, 1990 WL 10007473 (Bankr. S.D. Ga. 1990), concluded that the creditor's agent had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by going to the debtor's home on behalf of the creditor with knowledge of the debtor's bankruptcy petition and threatening the debtor's wife with a scandal if the debtor failed to pay the creditor. A creditor who pressures a third party to force a Chapter 7 debtor to pay a debt violates the automatic stay, held the court, and any act to collect, assess, or recover a claim against the debtor that arose before the commencement of a case under the Bankruptcy Code is stayed.

§ 22. Harassment and coercion—Conduct toward third party—Willful violation not found

The following authority held that the harassment or coercion of a third party related to a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of presented.

Where a creditor and the creditor's agent attempted to collect a debt by misrepresenting to third parties that they were officers of the court with legal authority to garnish funds owing to the debtor, the court in In re Diaz Rodriguez, 357 B.R. 691 (Bankr. D. P.R. 2006), held that the Chapter 7 debtor, who admittedly ignored the correct mailing address for the creditor in his bankruptcy schedules, failed to show that the creditor had actual knowledge of the case, as required to establish a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court noted that the debtor should have and could have determined the proper address for the creditor, as he had done to serve the summons in his adversary proceeding against the creditor for its alleged stay violation.

§ 23. Failure to notify assignee of debt of bankruptcy

Whether a creditor's failure to notify a third party to which a Chapter 7 debtor's obligation had been assigned prepetition of the debtor's bankruptcy, with the result that the third party made efforts to collect the debt postpetition, constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

The court in In re Hatfield, 354 B.R. 499 (Bankr. N.D. Ohio 2006), held that a creditor's failure, upon receiving notice of the commencement of the Chapter 7 debtor's bankruptcy case, to advise a third party to which the debtor's obligation had been assigned prepetition of the debtor's bankruptcy filing, with the result that the third party made efforts to collect the debt postpetition, was not a willful violation of the automatic stay on the part of the creditor, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), as the creditor was under no obligation to advise its assignee of the debtor's bankruptcy. The debtor argued that there is a duty on creditors to notify their assignees upon receiving notice of a debtor's bankruptcy, as the creditor, as opposed to the debtor, is in the best position to know of the pertinent information surrounding an assignment. The court declined to create such an obligation, however, where it found no support for such an obligation in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

§ 24. Unspecified contact with debtor

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

[Cumulative Supplement]

Whether unspecified contact with a Chapter 7 debtor for the purposes of collecting a debt constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where a creditor continued initiating unspecified contact with the Chapter 7 debtor for the purposes of collecting a debt after receiving notice of the debtor's bankruptcy filing, the court in In re Malcomson, 2005 WL 419724 (Bankr. M.D. Fla. 2005), held that the creditor's violation of the automatic stay was willful, for the purpose of imposing sanctions including actual and punitive damages on the creditor under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Comment

To similar effect, see In re Kinney, 2005 WL 419723 (Bankr. M.D. Fla. 2005).

CUMULATIVE SUPPLEMENT

Cases:

"Willful" violation of automatic stay occurs when there is knowledge of stay, and defendant intends the actions which constitute the violation. 11 U.S.C.A. § 362(k). Pico Vidal v. Ruiz Alvarado, 377 B.R. 788 (D.P.R. 2007).

Conduct which violates automatic stay is "willful," if party acts with knowledge that bankruptcy petition has been filed. 11 U.S.C.A. § 362(k). In re Lightfoot, 399 B.R. 141 (Bankr. E.D. Pa. 2008).

It is irrelevant to court faced with imposing sanctions for willful violation of automatic stay whether defendant actually intended to violate automatic stay, and so long as defendant had knowledge of debtor's bankruptcy case and took deliberate act in violation of automatic stay, bankruptcy court must award debtor actual damages. 11 U.S.C.A. § 362(k). In re Tyson, 450 B.R. 754 (Bankr. W.D. Tenn. 2011).

City was not properly scheduled in Chapter 7 debtor's bankruptcy case, as debtor provided the wrong address for the city and city did not receive notice of the bankruptcy filing, and thus, any action taken by city to collect debt relating to business license and occupational tax charges prior to discharge, if the action could be considered a violation of the automatic stay, was not a "willful" violation. 11 U.S.C.A. § 362. In re Perry, 521 B.R. 370 (Bankr. N.D. Ala. 2014).

[Top of Section]

[END OF SUPPLEMENT]

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

B. Bank Account Interference

§ 25. Offset generally

Based on the facts and circumstances of each of the following cases, courts have determined whether an offset involving a Chapter 7 debtor's bank account constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

In In re Dunning, 269 B.R. 357 (Bankr. N.D. Ohio 2001), where a bank moved for reconsideration of an order imposing sanctions for its alleged willful stay violation, the court found that the bank's application of a Chapter 7 debtor's deposit to eliminate a negative balance in the debtor's checking account as of the bankruptcy filing date constituted a willful violation of the automatic stay, so that sanctions could be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). There was no evidence to rebut the debtor's contention that a copy of the bankruptcy petition had actually been shown to bank personnel at two separate branches, and the bank's own evidence indicated that it offset the debtor's account from the debtor's postpetition deposit, to pay a prepetition debt, observed the court. The court believed that the bank had simply ignored its notice of the debtor's filing and had set off the bank account, but that the bank had considered the deposit a voluntary payment and that no demand or collection activity had been undertaken by the bank to collect the money.

A Chapter 7 trustee brought an adversary proceeding against a Chapter 7 debtor's bank to set aside and recover alleged unauthorized transfers to the bank, and the court in In re Garofalo's Finer Foods, Inc., 164 B.R. 955, 30 Collier Bankr. Cas. 2d (MB) 1433, Bankr. L. Rep. (CCH) ¶ 75779, 22 U.C.C. Rep. Serv. 2d 1117 (Bankr. N.D. Ill. 1994), decision aff'd in part, rev'd in part on other grounds, 186 B.R. 414, 27 Bankr. Ct. Dec. (CRR) 843 (N.D. Ill. 1995), decided that the creditor bank had willfully violated the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when with knowledge of the debtor's Chapter 7 filing, the bank applied funds that the debtor had deposited in the account to repay an overdraft credit the bank had provided to the debtor, even after the bank had refused to provide any further such credit.

Violation of a Chapter 7 debtor's automatic stay by a creditor bank was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), determined the court in In re Novak, 223 B.R. 363, 40 Collier Bankr. Cas. 2d (MB) 838 (Bankr. M.D. Fla. 1997), when, based solely on its untested belief that the debtor's obligation to it was not dischargeable in Chapter 7, the bank had knowingly retained the debtor's funds in partial satisfaction of a prepetition debt without ever moving for relief from the stay or filing a nondischargeability complaint, even though the bank had twice been notified of the debtor's Chapter 7 filing.

§ 26. Administrative freeze—Willful violation found

In the following cases, courts have found that an administrative freeze placed on a Chapter 7 debtor's bank account constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

A creditor, which had notice of the Chapter 7 debtor's bankruptcy filing, willfully violated the automatic stay by failing to remove liens the creditor had placed on four of the debtor's bank accounts, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), held the court in In re Parry, 328 B.R. 655 (Bankr. E.D. N.Y. 2005), where although the creditor faxed a general release letter the bank just days after learning of the debtor's bankruptcy filing, the liens remained on the accounts, as it was the creditor's responsibility, not the debtor's, to ensure that the liens had been

Exhibit 3

removed, and the creditor failed to co-ordinate with the bank or otherwise take the necessary steps to ensure that the liens were immediately released.

Comment

To similar effect, involving the same creditor and nearly identical facts and circumstances, see In re Wright, 328 B.R. 660 (Bankr. E.D. N.Y. 2005), and In re Henry, 328 B.R. 664, 54 Collier Bankr. Cas. 2d (MB) 1128 (Bankr. E.D. N.Y. 2005).

Where a Chapter 7 debtor, a young single mother of children aged 8 and 5, filed voluntary bankruptcy, and a creditor credit union effected a freeze of the debtor's account, the court in In re Hollinger, 1990 WL 41882 (Bankr. E.D. Pa. 1990), decided that the credit union's knowledge of the bankruptcy, coupled with its affirmative acts in violation of the stay, rendered its actions willful for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court noted that the credit union's belief that its conduct was not violative of the stay did not shield it from an award of actual damages and reasonable attorney's fees under former § 362(h). Furthermore, stated the court, the policy of the credit union was to refuse any party, including the depositor, access to a debtor's account upon advice of the debtor's bankruptcy filing, and this process obviously effected an administrative freeze of the account. Since other creditors were all prevented from seizing any of the debtor's assets by the automatic stay, the credit union's purported rationale for effecting the freeze was meritless, reasoned the court.

Following oral argument on Chapter 7 debtors' motion for release of funds that had been frozen in a share account by a credit union, a creditor of the debtors, the court in In re Encarnacion, 1988 WL 131934 (Bankr. E.D. Pa. 1988), concluded that the credit union was not entitled to hold or freeze the debtors' funds without first seeking relief from the automatic stay, and that such conduct constituted a willful violation of the automatic stay for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Although a creditor bank was entitled to set off the balance of a Chapter 7 debtor's checking account, the court in In re Brian Johnson Motor Co., Inc., 180 B.R. 104 (Bankr. D. S.C. 1995), determined that the bank had willfully violated the automatic stay by placing a postpetition administrative freeze on the account, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the bank knew of the debtor's bankruptcy case at the time of the freeze and intended to place the freeze, the bank did not move for relief from the stay in order to assert its setoff rights until one month after placing the freeze, and the bank did not seek ex parte relief or seek an expedited hearing.

The court in In re Cullen, 329 B.R. 52 (Bankr. N.D. Iowa 2005), held that the creditor willfully violated the automatic stay for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by placing an indefinite hold on two savings accounts held in joint tenancy by the Chapter 7 debtor and his nondebtor father, where it was intended that the freeze would continue indefinitely until the bankruptcy case was closed, at which time the creditor would take control of the money in the accounts. The court noted that the creditor did not seek relief from the stay in order to assert its setoff rights for 40 days after placing the holds and only after the debtor complained that the freezing the accounts was a stay violation. Furthermore, explained the court, the creditor attempted to use the account holds as leverage to pressure the debtor to reaffirm the debt.

In In re Schafer, 315 B.R. 765 (Bankr. D. Colo. 2004), the court held that a credit union willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it placed an administrative freeze on the Chapter 7 debtor's checking and savings accounts for six weeks before seeking stay relief to effect

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

a setoff, where the funds in the accounts included the debtor's postpetition payroll deposits in addition to the credit union's cash collateral, the amount of the funds represented almost all of the debtor's two-week paycheck, the credit union's action were coupled with repeated requests for reaffirmation of the debt, and the combined effect of the credit union's actions was to exert coercive pressure on the debtor. The court explained that this case was distinguishable from Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 116 S. Ct. 286, 133 L. Ed. 2d 258, 28 Bankr. Ct. Dec. (CRR) 97, 33 Collier Bankr. Cas. 2d (MB) 869, Bankr. L. Rep. (CCH) ¶ 76666A (1995), wherein the U.S. Supreme Court held that a bank could institute a temporary freeze on a Chapter 13 debtor's bank account while the bank sought stay relief to effect a setoff. The court explained that the instant case was distinguishable from *Strumpf* because the credit union withheld funds that represented the debtor's postpetition paycheck and made repeated requests for reaffirmation of the debt, without bringing the matter before the court for over six weeks. The court opined that this conduct could not help but exert coercive force upon the debtor, even if that was not the credit union's intention. The court noted that the credit union had made every effort to conform its conduct to that required under the law, by seeking advice from counsel as to how to avoid violating the automatic stay. The court stated, however, that the credit union's lack of intent to violate the stay was irrelevant. The court expressed the opinion that in order to avoid liability under former § 362(h), a bank should bring a motion for stay relief before the court at the earliest opportunity whenever it seeks to effect a setoff.

The court in In re Jimenez, 335 B.R. 450, 55 Collier Bankr. Cas. 2d (MB) 1133 (Bankr. D. N.M. 2005), held that a bank, which was not a creditor of the depositor and had received no notice of her Chapter 7 fling, but that had acquired actual knowledge of the bankruptcy case, willfully violated the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by placing an administrative freeze on the debtor-depositor's accounts, notwithstanding the bank's assertion that it was merely trying to preserve the status quo and avoid improper disbursal of funds of the bankruptcy estate. The debtor had a checking and a savings account with the bank. Upon searching electronic records for account holders who had filed for bankruptcy and discovering the debtor-depositor's filing, the bank placed administrative freezes on the debtor's accounts and sent letters to the trustee informing her of the freezes and informing her that the bank would not disburse any funds from the accounts until receiving instructions from the trustee as to what should be done. The bank also sent letters to the debtor's attorney for each account stating that the accounts were in bankruptcy status and that the debtor would no longer have access to the funds until the trustee informed the bank what should be done with them. When the debtor brought an action alleging an automatic stay violation, the bank explained that it was its policy to place administrative freezes on accounts belonging to Chapter 7 debtors in order to avoid improperly disbursing bankruptcy estate funds. The bank alleged that it did not violate the stay because it was not a creditor and was not attempting to exercise a right of setoff against the deposited funds. Rather, the bank claimed it was merely attempting to maintain the status quo in aid of the bankruptcy system. The court found that the bank was incorrect to believe that the Bankruptcy Code required this course of action. The court stated that the freeze was in the nature of an act to exercise control over property of the estate and if the bank had really been concerned about liability for improper disbursal of estate funds, it could have merely closed the account and turned the funds over to the trustee.

§ 27. Administrative freeze—Willful violation not found

An administrative freeze placed on a Chapter 7 debtor's bank account did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the cases that follow have decided, based on the facts and circumstances of each case.

The Chapter 7 debtors' bank moved for relief from the automatic stay in order to effect a setoff against the debtors' account, while the debtors filed a complaint against the bank for its alleged violation of the stay in placing an administrative hold on the account, and the court in In re Erickson, 216 B.R. 938, 39 Collier Bankr. Cas. 2d (MB) 352 (Bankr. C.D. Ill. 1998), concluded that the bank had not willfully violated the automatic stay, and was not liable for damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), simply by placing an administrative hold on the debtors' account and promptly moving for relief from the stay.

Exhibit 3

A bank's violation of the automatic stay by freezing Chapter 7 debtors' checking account for an eight-day period without turning over the funds in the account to a trustee or requesting the court to allow it to exercise its right of setoff was not willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Crispell, 73 B.R. 375, 15 Bankr. Ct. Dec. (CRR) 1139 (Bankr. E.D. Mo. 1987), where the bank, acting on advice of counsel, had requested instructions from the trustee and had turned over the funds to the debtors upon learning of the estate's lack of interest in the funds. The bank did not know that the debtors' funds on deposit consisted entirely of postpetition earnings and thus did not know it had no right to setoff when it imposed the freeze on the account, clarified the court.

§ 28. Failure to terminate automatic deductions—Willful violation found

[Cumulative Supplement]

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined that violation of the automatic stay by failing to terminate automatic deductions from a Chapter 7 debtor's bank account was willful, based on the facts and circumstances of each case.

Filing an amended motion to show cause why a creditor bank should not be held in contempt because the bank had removed funds from a checking account postpetition and applied them to a prepetition mortgage loan under a prepetition automatic draw agreement, a Chapter 7 debtor requested sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), and the court in In re Maxey, 1998 WL 940302 (N.D. Ohio 1998), concluded that since the bank had knowledge of the bankruptcy filing and the automatic stay, and had even noted the filing in the debtor's loan history, but had continued the automatic deductions, the bank was liable for a damage award according to the federal statute. The court dismissed the bank's argument that the acts were not willful because they were done by computer as particularly unconvincing, because a human being had programmed the computer to sweep the account automatically and a human being could have changed the computer instruction to prevent the automatic sweep postpetition. The decision not to do so was one for which the bank was responsible under the Bankruptcy Code, held the court.

Debtors, who had apparently filed for bankruptcy under Chapter 7, asked the court to assess damages against a creditor for violating the automatic stay by having automatic payments withdrawn from their bank account subsequent to the filing of the bankruptcy petition, and the court in In re Alcock, 2003 WL 22110446 (Bankr. N.D. Iowa 2003), concluded that the creditor's violation of the stay was willful, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor was aware of the bankruptcy proceeding involving the debtors before the automatic withdrawals from the debtors' bank account were executed. The creditor was listed on the debtors' bankruptcy petition and received notice of the debtors' filing, noted the court, and the creditor had also been made aware of the bankruptcy proceeding through telephone calls from the debtors, so that the creditor's behavior was willful and unco-operative. Furthermore, stated the court, the creditor's status as a sophisticated creditor was a factor to be considered, where since it was a repeat player in the credit industry, the creditor was aware of the mechanisms afforded to both creditors and debtors under state and federal laws, as well as which actions were permissible and which were prohibited by a creditor when a debtor sought relief in bankruptcy. The debtors had attempted to resolve this matter privately with the creditor, but the creditor had refused to take any action to remedy the violation, and had not responded to communications from the debtors and their attorney, added the court.

CUMULATIVE SUPPLEMENT

Cases:

Creditor that, six weeks before it debited Chapter 7 debtors' bank account to recover on alleged prepetition debt, had been mailed two notices of debtors' bankruptcy filing, had to be regarded as having willfully violated automatic stay, so as to be liable for any resulting damages; even assuming that creditor had not received these two notices, it certainly received notice of debtors'

Exhibit 3

bankruptcy filing when debtor called its store manager to complain of charges, and when its agent received certified letter from debtors' counsel, but refused to reverse these postpetition charges and, according to debtor, indicated an intention to continue debiting debtors' account. 11 U.S.C.A. § 362(k)(1). In re Witham, 579 B.R. 787 (Bankr. E.D. Ky. 2017).

[Top of Section]

[END OF SUPPLEMENT]

§ 29. Failure to terminate automatic deductions—Willful violation not found

Violation of the automatic stay by failing to terminate automatic deductions from a Chapter 7 debtor's bank account was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have concluded, based on the facts and circumstances of each case.

The court in In re Houseworth, 177 B.R. 557 (Bankr. N.D. Ohio 1994), decided that a Chapter 7 debtor was not entitled to attorney's fees pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), as damages for a creditor bank's violation of the stay by continuing to receive automatic withdrawals from the debtor's account in payment of a prepetition debt, even though the bank had knowledge of the debtor's bankruptcy and had not obtained a clear indication from the debtor that the debtor wished the automatic withdrawals to continue, where the bank may have been misled by a letter from the debtor's attorney indicating the debtor's willingness to reaffirm the debt that was the subject of the automatic withdrawals, and where the debtor could have prevented the misunderstanding by advising the bank that the automatic withdrawals should cease.

Chapter 7 debtors brought an adversary proceeding against a bank, alleging willful violation of the automatic stay, and the court in In re Crispell, 73 B.R. 375, 15 Bankr. Ct. Dec. (CRR) 1139 (Bankr. E.D. Mo. 1987), concluded that although the bank's three automatic debits of the debtors' checking account constituted setoffs in violation of the automatic stay, the violation was not willful, for the purpose of imposing attorney's fees and punitive damages as sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the first debit was made prior to the bank's notice of the debtors' bankruptcy, and the other two debits were made by reason of the banker's oversight in not terminating the automatic debit feature of the debtors' account.

§ 30. Presentment of postdated check

Whether presentment of a Chapter 7 debtor's postdated check to a bank constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

A creditor's postpetition presentment of a Chapter 7 debtor's postdated check to a bank, which was subsequently dishonored by the bank, was not a willful violation of the automatic stay, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Flack, 239 B.R. 155 (Bankr. S.D. Ohio 1999), where under the circumstances, prefiling attempts by the debtor's attorney to communicate with the creditor orally and in writing were not sufficient to constitute reasonable, actual notice of the debtor's bankruptcy filing, as required to find willfulness on the part of the creditor. The debtor should have made herself available to file for bankruptcy as soon as possible and should not have waited until the day before the check at issue was due to be presented, reasoned the court, and debtor's counsel, rather than relying upon a prepetition letter to the creditor, should have ensured that immediately after the bankruptcy filing, a copy of the petition was faxed or hand-delivered to all creditors holding postdated checks.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 31. Refusal to release judicial lien on bank account funds

Whether a creditor's refusal to release a judicial lien on a Chapter 7 debtor's bank account constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where a judgment creditor obtained a prepetition judicial lien on the Chapter 7 debtor's bank account, the court in In re Howard, 307 B.R. 659 (Bankr. D. Minn. 2004), held that the creditor's continued attempts to collect on the underlying debt, by reaffirming the validity of its lien despite the bankruptcy court's grant of a discharge and precedent indicating the lien was invalid, while repeating the same legal arguments that had previously been rejected as to why the automatic stay and discharge injunction did not apply, willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 262(h). The court noted that the creditor's actions were of a particularly vexatious quality, in that the creditor apparently attempted to make similar legal arguments as to why its liens were valid in many prior cases, which were always rejected under existing precedent, but which the creditor never appealed, and continued to make the same arguments in ensuing cases, insisting that debtors with limited financial resources litigate the matter anew.

C. Wage Garnishment

§ 32. Pursuit of garnishment proceedings—Willful violation found

[Cumulative Supplement]

Pursuit of garnishment proceedings against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

When a hospital filed suit against a Chapter 7 debtor to recover an existing indebtedness for hospital services previously provided to the debtor, requesting and receiving a prejudgment garnishment order, the court in In re Fisher, 1996 WL 695401 (D. Kan. 1996), determined that the hospital had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), with regard to receiving a state court pay-in order against a garnishee insurance company in the amount of $5,497.23, which was to cover charges for services provided by the hospital during a certain period of time, since the garnishment was based on the debt from an earlier hospitalization and the automatic stay had not been lifted.

CUMULATIVE SUPPLEMENT

Cases:

As sanction for their willful violations of automatic stay, in continuing to prosecute state court action against debtor and third-party garnishee and in convincing state court to order release of proceeds of debtor's accounts receivable to garnishing creditor without ever notifying state court of debtor's Chapter 7 filing, creditor and law firm that represented it would be held jointly and severally liable for the return of proceeds paid to creditor, as well as for payment of all costs and fees that trustee incurred in pursuing claims against creditor and firm. 11 U.S.C.A. §§ 105(a), 362(k). In re Newgent Golf, Inc., 402 B.R. 424 (Bankr. M.D. Fla. 2009).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

[Top of Section]

[END OF SUPPLEMENT]

§ 33. Pursuit of garnishment proceedings—Willful violation not found

It has been concluded that pursuit of garnishment proceedings against a Chapter 7 debtor did not constitute a willful violation of the automatic stay, and that sanctions could not be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

Following a Chapter 7 debtor's filing of a motion to recover sanctions for a judgment creditor's asserted violation of the automatic stay, the court in In re Waltjen, 150 B.R. 419 (Bankr. N.D. Ill. 1993), found that the creditor had not willfully violated the automatic stay by pursuing state court garnishment proceedings against the debtor, so that sanctions would not be imposed under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since after learning of the automatic stay created by the debtor's bankruptcy filing, the creditor had offered to counsel, who represented both the debtor and the debtor's employer, only to accept withheld wages in settlement of a motion against the employer for a judgment based on the employer's failure to fulfill its duty to answer garnishment interrogatories, and those efforts did not violate the stay. Furthermore, noted the court, the state court had never entered any order that was prejudicial to the debtor, and the withheld wages had not been transferred from the employer to the creditor.

§ 34. Garnishment of wages—Willful violation found

Garnishing the wages of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been decided by the courts in the following cases, based on the facts and circumstances.

Chapter 7 debtors requested damages for a willful violation of the automatic stay by the United States Postal Service (USPS), based on its postpetition withholding from the wages of one debtor, and the court in In re Everett, 127 B.R. 781, 21 Bankr. Ct. Dec. (CRR) 1317, 24 Collier Bankr. Cas. 2d (MB) 2098, Bankr. L. Rep. (CCH) ¶ 74029 (Bankr. E.D. N.C. 1991), determined that the withholding of postpetition payments of $799.54 by the USPS from wages owed the Chapter 7 debtor, based upon the debtor's prior agreement to make payments for missing funds through payroll deductions, was a willful violation of the automatic stay, warranting compensatory damages of $799.54, attorney's fees of $500, and punitive damages of $799.54, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Where a creditor had a continuing wage garnishment prior to the Chapter 7 debtor filing a bankruptcy petition and, when notified of the debtor's bankruptcy filing, waited until three days after it received another garnishment check from the debtor's employer before returning the checks to the debtor and releasing the garnishment, the court in Spagner v. Latham, Stall, Wagner, Steel & Lehman, P.C., 2005 WL 1950364 (W.D. Okla. 2005), held that the creditor's actions constituted a willful violation of the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), as the creditor had an obligation to cease its collection efforts immediately upon receiving notification of the debtor's bankruptcy petition. The court noted that even if a garnishment became effective prior to a debtor's bankruptcy filing, garnishing creditors are required to take all necessary action to release their garnishments as soon as they learn that a garnishee has filed for bankruptcy. Shortly after the debtor had filed for bankruptcy, the creditor received a garnishment check, and shortly thereafter received a letter from the debtor's attorney advising it of the bankruptcy filing and requesting return of the check. At that point, the creditor did nothing, and a second garnishment check arrived in the mail. Only after an additional three business days had passed, opined the court, did the creditor return both checks to the debtor and release the garnishment. The court explained that positive action is

Exhibit 3

required on the part of creditors to ensure that the automatic stay is effectuated. Creditors may not pass the buck to the garnishee or the court in which the garnishment is filed to effectuate the stay, stated the court.

§ 35. Garnishment of wages—Willful violation not found

Based on the facts and circumstances of each of the following cases, courts have determined that garnishing the wages of a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Koch, 197 B.R. 654 (Bankr. W.D. Wis. 1996), decided that a creditor who had supplied a Chapter 7 debtor with construction materials and who had subsequently garnished the debtor's wages four days after the debtor filed the bankruptcy petition was required to return the wages to the debtor, but was not required to pay punitive damages or attorney's fees pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor's violation of the automatic stay was more technical, rather than willful.

Inadvertent violation of the automatic stay by a judgment creditor who had not been notified of a Chapter 7 debtor's bankruptcy filing, when she obtained a garnishment order directed to the debtor's employer and had the sheriff serve the garnishment order on the employer, resulting in a total of $905.85 being deducted from the debtor's wages over a period of six months, concluded the court in In re Venegas, 257 B.R. 41, Bankr. L. Rep. (CCH) ¶ 78369 (Bankr. D. Idaho 2001), did not warrant the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor had never been properly notified of the filing of the debtor's bankruptcy and had no knowledge of the automatic stay.

§ 36. Garnishment of wages—Reduction in pension payments

It has been determined whether reduction in pension payments to a Chapter 7 debtor constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

Following a Chapter 7 debtor's motion for sanctions against a city, his former employer, for violating the automatic stay by reducing his pension payments based on a workers' compensation award, the court in In re Freigo, 149 B.R. 224 (Bankr. M.D. Fla. 1992), decided that the city's reduction of pension benefits to the Chapter 7 debtor based on a lump-sum workers' compensation award to the debtor was a willful violation of the automatic stay, warranting sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the city was scheduled as an unsecured, nonpriority creditor holding a $20,000 claim and had received notice of the bankruptcy filing. For a violation of the automatic stay to qualify as willful so as to mandate compensatory damages, held the court, the conduct need only have been deliberate, and specific intent to violate a court order is not a prerequisite.

§ 37. Failure to discontinue wage garnishment

In the following cases, courts have decided whether failure to discontinue garnishment of a Chapter 7 debtor's wages constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Seeking to recover setoff and damages for contempt against the United States Veterans Administration (VA) for violating the automatic stay, a Chapter 7 debtor filed a complaint, and the court in Soiett v. U.S. Veteran's Admin., 92 B.R. 563 (Bankr. D. Me. 1988), determined that the VA was in contempt for willful violation of the automatic stay, and as such, was liable for sanctions

Exhibit 3

pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the VA had adequate notice of the debtor's insolvency and had continued to collect a debt by setting off prepetition debts against the debtor's postpetition earnings. The court noted that debtor's counsel had written to the VA demanding that the VA cease any further attempt to collect the debt, refund any amounts deducted from the debtor's paycheck postfiling, reimburse the debtor for any sick or annual leave improperly set off, and provide an accounting, but the VA had continued to violate the automatic stay. Had the VA any legal basis for collecting a prefiling debt against a postfiling asset of the debtor, it could have and should have petitioned the court for relief from the stay to proceed on its claim, reasoned the court.

The court in In re Walker, 180 B.R. 834 (Bankr. W.D. La. 1995), found that where a former Chapter 7 debtor moved to reopen the bankruptcy case for an award of compensatory and punitive damages, attorney's fees and costs, based on his former employer's alleged willful violations of the automatic stay in attempting to collect a debt previously discharged in Chapter 7, the creditor employer's continuing to retain money automatically from the debtor's paycheck constituted a willful violation of the automatic stay for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The record was deficient of any affirmative manifestation on the part of the debtor to repay the debt voluntarily through the postpetition withdrawals, noted the court, and the creditor employer did not purport to have received the debtor's consent either orally or in writing. Moreover, stated the court, the employer proffered no evidence demonstrating the procedure to commence or stop payroll deductions, and the debtor may have perceived some pressure to appease his employer to retain his job.

Chapter 7 debtors moved for an award of damages against a collection agency's attorney for willfully violating the automatic stay by failing to take affirmative steps to halt the garnishment of the debtor's wages, and the court in In re Timbs, 178 B.R. 989 (Bankr. E.D. Tenn. 1994), decided that the collection agency's attorney had willfully violated the automatic stay for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, with knowledge of the judgment debtor's Chapter 7 filing and after the collection agency's attorney had been advised by the debtor's attorney of his obligation to take affirmative steps to stop the garnishment, the collection agency's attorney had deliberately chosen to take no action to stop the garnishment that he had put in place prepetition. The mere fact that the collection agency's attorney may have misunderstood his obligations under the law did not affect the willfulness of his acts, held the court, particularly where the debtor's attorney had cited him to relevant case law.

In In re See, 301 B.R. 549 (Bankr. N.D. Iowa 2003), where a Chapter 7 debtor applied for an order to show cause why a creditor bank should not be sanctioned for its alleged willful violations of the automatic stay in connection with the continuing garnishment of the debtor's wages, the court determined that since the bank had continued to garnish the debtor's wages postpetition and had filed an application to condemn the garnished funds despite having been scheduled as a creditor and receiving notice of the debtor's Chapter 7 filing, the bank's violation of the automatic stay was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court noted that the bank was a creditor well versed in the rights and duties of borrowers and lenders, and had failed to correct its stay violations even after receiving communication from the debtor's attorney, thereby causing added delay and expense for the debtor.

Bringing an adversary proceeding to recover for a debt collector's alleged willful violation of the automatic stay, a debtor who had filed for bankruptcy, apparently pursuant to Chapter 7, moved for an award of attorney's fees, and the court in In re Campion, 294 B.R. 313, 41 Bankr. Ct. Dec. (CRR) 135, 50 Collier Bankr. Cas. 2d (MB) 737 (B.A.P. 9th Cir. 2003), found that the debt collector had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by continuing to garnish the debtor's wages because its computer had failed to recognize a variation of the debtor's name in its database. The failure on the part of the debt collector's computer to recognize, after the creditor had received notice of the debtor's bankruptcy filing and had placed a notice in the file bearing the debtor's surname and a less formal variant of the debtor's first name, that this was the same individual against whom the debt collector had instituted garnishment proceedings under the debtor's formal name, held the court, did not affect the willfulness of the debt collector's stay violation, as one resulting from an intentional act of garnishment effected after it had received notice of the debtor's bankruptcy. The evidence revealed that the debt collector had actually equated the two names before it violated the automatic stay, observed

Exhibit 3

the court, and the stay violation had occurred because the debt collector had later forgotten this information. The debt collector's mistake was mere forgetfulness that was not of a character that would deprive it of knowledge for the purposes of former § 362(h) willfulness, believed the court, since once a creditor knows of the existence of the automatic stay, forgetting about it does not erase the knowledge, nor was it any excuse that the debt collector was betrayed by its computer, because a creditor's internal disorder does not excuse it from violating the automatic stay, reasoned the court.

Chapter 7 debtors moved to have a judgment creditor held in contempt for alleged violation of the automatic stay, and the court in In re Pulliam, 262 B.R. 539, 37 Bankr. Ct. Dec. (CRR) 248 (Bankr. D. Kan. 2001), found that the judgment creditor had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it had refused to release prepetition garnishment of the Chapter 7 debtor's wages upon learning of the bankruptcy case, thereby requiring the debtor's employer to withhold the debtor's wages for any pay period ending during 30 days following service of the order, given that the creditor had no reason to delay releasing the garnishment and its excuse for not doing so, that it did not know the exact amount of postpetition wages that had been garnished from the debtor's paychecks until it received an answer from the debtor's employer, was not the type of administrative delay that could excuse the stay violation.

A law firm that had been employed by a judgment creditor to collect a debt from a Chapter 7 debtor had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by failing to stop the garnishment of the debtor's postpetition wages, concluded the court in In re Lord, 270 B.R. 787 (Bankr. M.D. Ga. 1998), even though the law firm's staff had failed to give notice of the debtor's bankruptcy to the proper attorney, since the firm had received notice of the debtor's bankruptcy filing and a notice had been placed in the debtor's file at the firm, but the firm had failed to stop the garnishment until some six weeks after the debtor had filed for bankruptcy relief.

§ 38. Refusal to return garnished wages—Willful violation found

Courts in the cases that follow have concluded, based on the facts and circumstances of each case, that refusal to return the garnished wages of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

A Chapter 7 debtor filed a motion for sanctions against a creditor for willful violation of the automatic stay, and the court in In re Dungey, 99 B.R. 814 (Bankr. S.D. Ohio 1989), decided that the creditor's conduct, in refusing to return $140 of the debtor's garnished wages after learning of the debtor's Chapter 7 petition, warranted the imposition of sanctions for a willful violation of the automatic stay, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Despite the creditor's argument that inasmuch as it had taken no affirmative collection action postpetition, the imposition of sanctions would not be appropriate, the court believed that this argument was patently absurd. Upon learning of the filing of a bankruptcy petition, a creditor has an affirmative obligation to halt all collection activity and restore the status quo that was altered by its actions, stated the court.

Seeking the return of automatic wage deductions paid to a credit union postpetition, Chapter 7 debtors brought an adversary proceeding, and the court in In re Brooks, 132 B.R. 29 (Bankr. W.D. Mo. 1991), found that although the credit union's application of the postpetition payroll deductions to a debt constituted only a technical violation of the automatic stay, the credit union's refusal to disgorge the payments on demand provided the basis for finding that the violation of the stay was willful, thereby warranting sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 39. Refusal to return garnished wages—Willful violation not found

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Refusal to return the garnished wages of a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

Chapter 7 debtors filed a motion for contempt against a creditor, who had retained and deposited garnished funds, and the court in In re Zunich, 88 B.R. 721, Bankr. L. Rep. (CCH) ¶ 72403 (Bankr. W.D. Pa. 1988), concluded that the violation of the automatic stay by the creditor was not willful, and thus, did not warrant the imposition of sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor's counsel had proceeded under the belief that the creditor's actions were excepted from the stay, and there were no previously decided cases on point from which the creditor might have taken guidance. The court observed that the debtors and creditor had entered into a stipulation for settlement and entry of a consent judgment, and that the creditor's counsel had caused a writ of execution to issue against the garnishee of funds belonging to the debtors to enforce the consent judgment. The creditor did not act with the clear knowledge that its actions were violative of § 362, nor were its actions egregious or aggressive, observed the court.

§ 40. Interference with garnished wages

It has been determined, based on the facts and circumstances, whether interference with the garnished wages of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

A Chapter 7 debtor moved for an order of contempt against a county sheriff and a creditor for violation of the automatic stay after the county sheriff took possession of garnished wages held by the debtor's employer, deducted his costs, and turned the balance over to the creditor following filing of the debtor's bankruptcy petition, and the court in In re Dencklau, 158 B.R. 796 (Bankr. N.D. Iowa 1993), concluded that the sheriff's conduct, in calling the Chapter 7 debtor's employer to tell it to stop garnishment of the debtor's wages and to forward the garnished funds to the sheriff's office after the sheriff found out about the debtor's bankruptcy filing, was a willful violation of the automatic stay, as required to support an award of damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

D. Collection Efforts Involving Real Estate

1. Leases

§ 41. Attempt to collect rent from debtor's tenant—Willful violation found

Violation of the automatic stay by attempting to collect rent from a Chapter 7 debtor's tenant was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

When a Chapter 7 debtor moved for an award of sanctions for a judgment creditor's alleged willful violations of the automatic stay, the court in In re Banderas, 236 B.R. 841 (Bankr. M.D. Fla. 1999), found that the creditor had engaged in a willful violation of the automatic stay, of the kind that warranted an award of sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), in seeking to garnish rent from the Chapter 7 debtor's tenants, since the creditor had never obtained sequestration of the rents, such that all of these rents constituted the property of the debtor.

§ 42. Attempt to collect rent from debtor's tenant—Willful violation not found

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Attempting to collect rent from a Chapter 7 debtor's tenant did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been decided, based on the facts and circumstances.

A creditor, as successor-in-interest to the Federal Deposit Insurance Corporation and current owner of loan documents executed by a Chapter 7 debtor, brought an adversary proceeding challenging the debtor's collection of rents, and seeking a determination that the loan debt fell within the fraud exception to discharge, and the court in Cadle Co. v. McKernan, 207 B.R. 971 (D. Mass. 1997), concluded that the bankruptcy court's finding that the creditor knew of the debtor's bankruptcy filing, but had nevertheless sent a letter to one of the debtor's tenants demanding that rents owed to the debtor's wife be remitted to it, did not show an adequate set of subsidiary findings about the intended consequences to satisfy the definition of willful, within the meaning of the automatic stay sanctions provision, former 11 U.S.C.A. § 362(h). Sending a letter that violates a stay may be intentional with respect to sending the letter, but not intentional with respect to violating the stay, explained the court.

§ 43. Collection of rent from debtor's tenant

It has been determined, based on the facts and circumstances, whether the collection of rent from a Chapter 7 debtor's tenant constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where a town water pollution control authority obtained a prepetition state judgment against a Chapter 7 debtor for unpaid water and sewer charges relating to a multifamily property owned by the debtor, and after a receiver of rents was appointed, the receiver collected rents from the tenants, as well as from a corporation that was providing federal "Section 8" rental assistance payments for one tenant, until learning of the debtor's Chapter 7 filing, and where the receiver also received some rent payments postpetition, deposited them in the bank, and made several telephone calls in connection with his duties, and following the trustee's abandonment of the property, the receiver resumed the collection of rents and his other duties, the court in In re Adams, 212 B.R. 703, 38 Collier Bankr. Cas. 2d (MB) 1381 (Bankr. D. Mass. 1997), held that the debtor was not entitled to sanctions for a willful violation of the automatic stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Even had the court found that the debtor was entitled to the rents upon the trustee's abandonment of the property, the equitable doctrine of laches would bar any recovery to the debtor for a willful violation of the automatic stay by the receiver, added the court. The court noted that the debtor had made no attempts to collect rents from the property, had not contacted the receiver to inform him that he had no right to the rents or to make demand for the rents, and had asserted no proprietary interest in the property for 19 months after the receiver had resumed his receivership duties. The receiver had been prejudiced by the debtor's silence, believed the court, because he had continued to collect the rents, and thus the actual damages for which he was potentially liable to the debtor under former § 362(h) had continued to grow.

§ 44. Removal of debtor's property from leased premises—Willful violation found

[Cumulative Supplement]

Based on the facts and circumstances of each of the following cases, courts have concluded that removal of a Chapter 7 debtor's property from leased premises constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Upon the motion of a Chapter 7 debtor to hold a creditor landlord in contempt of court for willful violation of the automatic stay, the court in In re Bowen, 2000 WL 708961 (Bankr. E.D. Pa. 2000), concluded that the creditor's removal of the debtor's estate property from the leased premises, depriving the debtor and his clients of access to their files, constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

having received notice from the bankruptcy court of the debtor's filing, the landlord was well aware of the bankruptcy case before he had engaged in the intentional acts that violated the stay. When the landlord engaged in his self-help remedy of removing the property from the premises, the meeting of the creditors had yet to be held, observed the court, and therefore the landlord's conduct violated the automatic stay of 11 U.S.C.A. § 362(a)(3).

Creditors violated a Chapter 7 debtor's automatic stay willfully, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by continuing postpetition to effect the removal of the debtor's personal property from the front yard of a residence from which the debtor had been evicted prepetition, found the court in In re Sumpter, 171 B.R. 835, Bankr. L. Rep. (CCH) ¶ 76104 (Bankr. N.D. Ill. 1994), where the creditors had acted deliberately, with knowledge that the debtor's bankruptcy case was pending, in using off-duty sheriff's deputies to move the debtor's personalty to a storage facility.

CUMULATIVE SUPPLEMENT

Cases:

Landlord's violation of automatic stay, in excluding Chapter 7 debtor from leased restaurant by changing locks while stay was in effect, and in ignoring requests of debtor's counsel and denying debtor access to personal property located inside restaurant, was in nature of willful stay violation, of kind supporting award of damages against landlord, where landlord was aware of debtor's bankruptcy filing at time that he changed locks and ignored requests of debtor's attorney. 11 U.S.C.A. § 362(k)(1). In re Vu, 591 B.R. 596, 66 Bankr. Ct. Dec. (CRR) 111 (Bankr. E.D. Pa. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 45. Removal of debtor's property from leased premises—Willful violation not found

Removal of a Chapter 7 debtor's property from leased premises did not constitute a willful violation of the automatic stay, so that sanctions could not be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

Where a Chapter 7 debtor, who rented a mobile home lot from a creditor, had been physically removed from his mobile home postpetition pursuant to a prepetition forcible entry and detainer action brought by the creditor, and the debtor subsequently brought an adversary proceeding, alleging that the court bailiff's removal of him and his possessions from the trailer pursuant to a writ of restitution constituted a willful violation of the automatic stay by the creditor, the court in In re Davis, 247 B.R. 690 (Bankr. N.D. Ohio 1999), found that the creditor's postdischarge removal of the debtor's trailer from the lot was not a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). To determine whether a creditor can be found liable for the postpetition actions of a judicial officer in executing a writ of restitution against a debtor, it must be determined whether the creditor's conduct could be characterized as willful under the standards of the Bankruptcy Code's automatic stay provision, explained the court.

§ 46. Disposal of debtor's property on leased premises

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

The courts in the following cases determined whether the disposal of a Chapter 7 debtor's property on leased premises constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Bringing an adversary proceeding, a Chapter 7 trustee alleged that a landlord creditor had violated the automatic stay in locking the debtor out of its place of business prior to the filing of the bankruptcy petition and taking possession of the debtor's inventory and store fixtures, then subsequent to the debtor's filing the bankruptcy petition, disposing of the inventory and fixtures without first seeking authorization of the court to do so, and the court in In re M.J. Shoearama, Inc., 137 B.R. 182 (Bankr. W.D. Pa. 1992), found that the creditor's violation of the automatic stay was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

A creditor brought an action against a second creditor for willful violation of the automatic stay of a Chapter 7 debtor, the corporate lessee of a mobile home park, and the court in Homer Nat. Bank v. Namie, 96 B.R. 652 (W.D. La. 1989), determined that the second creditor's postpetition seizure of property and sale of collateral, a mobile home situated on the property, constituted a willful violation of the stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the second creditor testified that he had received notice of the filings from the bankruptcy court before the sale and thus, the second creditor had actual knowledge of the filing, yet committed numerous acts violating the automatic stay. The court noted that although the secured creditor had relied on advice of counsel in ignoring the bankruptcy filing, a violation of the automatic stay could be willful even if it occurred on the advice of an attorney.

§ 47. Eviction from leased premises

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined whether evicting a Chapter 7 debtor from leased premises constituted a willful violation of the automatic stay, based on the facts and circumstances of each case.

In In re Stansbury, 1990 WL 59180 (Bankr. E.D. Pa. 1990), a Chapter 7 debtor commenced an adversary proceeding, seeking an order preliminarily restoring her and her children to her former unit in public housing leased to her by a creditor landlord, from which the debtor and her family had been evicted, and the court determined that the landlord had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when the landlord removed the debtor's furnishings and clothing during the eviction and failed to act as expeditiously as was warranted under the circumstances to undo the consequences of the eviction on the debtor. There was no question that the landlord was made aware of the debtor's bankruptcy filing and the attendant automatic stay shortly after the eviction was completed, explained the court, but it took eight days and the filing of a legal action by the debtor in order for the debtor to recover possession of the premises from the landlord, and another eight days and another legal motion for the debtor to recover most of her personalty from its custody. The debtor was entitled to all of these things immediately, stated the court, and while the reaction of the landlord did not evince defiance of the debtor's rights, the landlord failed to satisfy the duty to act with swift dispatch to prevent an indigent tenant and her five children from suffering from homelessness and deprivation of virtually all of their property for an extended period. The court could not say that the landlord had acted in a reasonable time with reasonable measures to undo its violation of the stay in these circumstances.

Chapter 7 debtor-tenants filed an adversary complaint, seeking damages for their former landlord's alleged stay violation, and the court in In re Lankford, 305 B.R. 297 (Bankr. N.D. Iowa 2004), concluded that the former landlord had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by filing a forcible entry and detainer action against the debtors, moving the debtors' belongings out of their rental house, and locking them out of the house, where the former landlord had proper notice of the debtors' bankruptcy filing, yet failed to request stay relief prior to proceeding against them.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

A creditor landlord's choice not to respect the automatic stay of a Chapter 7 debtor-tenant, and instead retake possession of her rental property by engaging in conduct prohibited under state and federal law, was tantamount to a willful violation of the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when the landlord had actual knowledge of the debtor's bankruptcy filing, determined the court in In re Kilby, 100 B.R. 579, Bankr. L. Rep. (CCH) ¶ 72901 (Bankr. M.D. Fla. 1989), so that the landlord was liable for damages that the tenant-debtor suffered as a direct result of the landlord's conduct, through theft of household belongings placed on the street and left without supervision in the course of the debtor's eviction.

2. Mortgages

§ 48. Collection of mortgage debt generally

Courts in the following cases have decided, based on the facts and circumstances of each case, whether collection efforts with regard to the mortgage debt of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Chapter 7 debtors moved for an award of sanctions against a second mortgagee for its alleged willful violations of the automatic stay, and the court in In re Kortz, 283 B.R. 706 (Bankr. N.D. Ohio 2002), decided that the second mortgagee had willfully violated the stay and was liable for an award of damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, despite having received notice of the debtors' bankruptcy and despite statements to the second mortgagee by the debtors that they had filed for bankruptcy, the second mortgagee had made a series of telephone calls to the debtors' residence, and had called the debtor-husband out of a meeting at work, in an attempt to intimidate the debtors into paying the mortgage debt by threatening, among other things, to garnish the debtor-husband's wages and to take action that might result in the loss of the debtor-husband's job.

Despite a creditor mortgagee's argument that a Chapter 7 debtor's lawsuit alleging violation of the automatic stay should be dismissed because the mortgagee's contacts with the debtor during the pendency of his bankruptcy did not constitute a willful violation of the automatic stay, but rather were a courtesy and response to the debtor's expressed desire to make up his late mortgage payment and keep his house, the court in Rosengren v. GMAC Mortg. Corp., Bankr. L. Rep. (CCH) ¶ 78512, 2001 WL 1149478 (D. Minn. 2001), found that the creditor's violation was willful, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since it was undisputed that the creditor was aware that the debtor had petitioned for bankruptcy at the time its employees had telephoned the debtor and exerted pressure on him to bring his account current. This record of the creditor's repeated intentional contact with the debtor despite its knowledge of his bankruptcy compelled the conclusion that the creditor had willfully violated the automatic stay, stated the court.

After a purported class action was brought by Chapter 7 debtors against a first mortgage holder in a district court, which referred several issues to the bankruptcy court for determination, the court in In re Henry, 266 B.R. 457 (Bankr. C.D. Cal. 2001), decided that the first mortgage holder's conduct after the date on which it had learned that the Chapter 7 debtors had filed the bankruptcy petition was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where despite learning that the debtors had filed the petition, invoking the automatic stay, the first mortgage holder had taken many direct, harassing, coercive collection actions.

§ 49. Default on promissory note action

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Whether filing an action for a Chapter 7 debtor's default on a mortgage promissory note constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where a Chapter 7 debtor brought an adversary proceeding to recover for a mortgagee's alleged willful violation of the stay, the court in In re Perry, 124 B.R. 50 (Bankr. N.D. Ohio 1990), concluded that the mortgagee had willfully violated the stay, and thus was liable for the debtor mortgagor's actual damages, costs, and attorney's fees according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), to the extent that the mortgagee had deliberately filed an action seeking redress for the debtor's default on a promissory note secured by a second mortgage after it had received notice of the bankruptcy petition and stay.

§ 50. Initiation of foreclosure proceeding

In the cases that follow, courts have determined whether initiating a foreclosure proceeding against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

The court in Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265, 35 Bankr. Ct. Dec. (CRR) 45, Bankr. L. Rep. (CCH) ¶ 78044 (1st Cir. 1999), found that where a discharged Chapter 7 debtor sued a mortgage company, seeking compensatory and punitive damages for an alleged willful violation of the automatic stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), the mortgage company had committed a willful violation of the automatic stay, since the mortgage company's predecessor had retained a law firm to initiate foreclosure proceedings against the debtor after the bankruptcy court had denied its motion for relief from the stay to pursue foreclosure. Although the mortgage company contended that its actions were not willful because they were not taken with flagrant or reckless disregard for its legal obligations, the court declined to recognize a new standard for willfulness and similarly rejected the mortgage company's argument that it was immune from sanctions because its predecessor had made a mistake in forwarding the file to the law firm.

By filing a state court foreclosure action against a debtor vendee, a land contract vendor's attorney had willfully violated a Chapter 7 debtor's automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Markey, 144 B.R. 738 (Bankr. W.D. Mich. 1992), where the attorney admitted knowledge of the bankruptcy filing, and the attorney's actions were, at best, taken in reliance upon a series of erroneous assumptions about the bankruptcy law premised upon the comments of another attorney representing another party in the case with an interest different and potentially adverse to that of the vendor. The request of the land contract vendor's attorney, in the state court foreclosure complaint, for a money judgment against the debtor vendee in the event that the property foreclosed upon did not satisfy the balance owed violated the automatic stay and was direct evidence of a willful violation of stay, clarified the court. The predicates that must be satisfied to find that a violation of the automatic stay was willful, held the court, are that the act taken in violation of the automatic stay must have been deliberate and that the party must have been aware of the bankruptcy. A finding that the action was taken with intent to violate the stay is not necessary, added the court.

§ 51. Continuation of foreclosure proceeding

[Cumulative Supplement]

Based on the facts and circumstances of each of the following cases, courts have determined whether the continuation of foreclosure proceedings against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Where a discharged Chapter 7 debtor sued a mortgage company, seeking compensatory and punitive damages for an alleged willful violation of the automatic stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), the court in Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265, 35 Bankr. Ct. Dec. (CRR) 45, Bankr. L. Rep. (CCH) ¶ 78044 (1st Cir. 1999), found that the mortgage company had committed a willful violation of the automatic stay, since the law firm retained by the mortgage company's predecessor to initiate foreclosure proceedings against the debtor had failed to dismiss the foreclosure suit for six weeks, despite receiving notice of the stay violation from the debtor's attorney. A willful violation of the automatic stay does not require a specific intent to violate the stay, held the court, and the standard for a willful violation of the automatic stay is met if there is knowledge of the stay and the violator intended the actions that constituted the violation.

A law firm representing a secured creditor failed to rebut an evidentiary presumption of receipt of notice of a Chapter 7 debtor's bankruptcy filing, and thus, the debtor established the law firm's and creditor's willful violation of the automatic stay for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Robinson, 228 B.R. 75, 3 Bankr. Ct. Dec. (CRR) 730 (Bankr. E.D. N.Y. 1998), where it was undisputed that the law firm, on behalf of the creditor, had deliberately requested and obtained entry of a postpetition judgment in a foreclosure proceeding against the debtor in violation of the stay. The affidavit submitted by the law firm failed to describe the law firm's standardized procedures, if any, to ensure that correspondence was properly handled, noted the court, and since the law firm's knowledge of the bankruptcy filing could be imputed to the creditor, it could be inferred that the creditor itself received notice of the filing. To recover an award of either actual damages or punitive damages for a willful stay violation, a debtor must prove by a preponderance of the evidence that the violator had knowledge of the bankruptcy petition, held the court, and the failure of the creditor's employees in this case to follow proper procedures upon receiving notice of the debtor's bankruptcy filing did not preclude a finding that the creditor had willfully violated the automatic stay.

When a Chapter 7 trustee brought an action against a mortgagee and its attorney, alleging willful violation of the automatic stay, the court in In re Burke, 147 B.R. 955 (Bankr. W.D. Mo. 1992), concluded that because the mortgagee had actual notice of the bankruptcy, it had willfully violated the automatic stay by foreclosing on the debtor's home, and thus was liable for compensatory damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Similarly, the court found that the mortgagee's attorney, even if without actual knowledge of the pending bankruptcy, had willfully violated the automatic stay by foreclosing on the property, since the attorney had regularly engaged in foreclosure actions and should have discovered the lis pendens filed by the bankruptcy trustee, as well as the bankruptcy judgment impressing the lien in the trustee's favor on the property.

CUMULATIVE SUPPLEMENT

Cases:

While bank was unaware of fact that debtor-mortgagor had filed for Chapter 7 relief one day before written foreclosure judgment was entered, bank's violation of automatic stay became willful, and thus a proper basis for entry of damages award against it, when bank, after learning of debtor's bankruptcy filing, never sought or obtained order from bankruptcy court either determining that automatic stay did not apply to foreclosure judgment or annulling the automatic stay. 11 U.S.C.A. § 362(k)(1). In re Fontaine, 603 B.R. 94 (Bankr. D. N.M. 2019).

[Top of Section]

[END OF SUPPLEMENT]

§ 52. Foreclosure sale—Willful violation found

Exhibit 3

Violation of the automatic stay by proceeding with the foreclosure sale of a Chapter 7 debtor's real property was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been concluded, based on the facts and circumstances.

The court in In re Tolbert, 2001 WL 1739142 (Bankr. D. Md. 2001), found that a creditor bank's foreclosure sale of a Chapter 7 debtor's real property was a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where although the debtor had consented to the lifting of the automatic stay by stipulation and consent order, the debtor's wife, a co-owner of the real property, had initiated her own bankruptcy petition and the effect of filing the case was to create a new automatic stay, thereby preventing the sale of the property. Following a second order lifting the automatic stay, the debtor had filed another motion, and even though the creditor had become aware of this filing on the morning of the foreclosure sale, it had made no attempt to seek emergency relief of the automatic stay that arose on account of the filing, and instead chose to proceed with the foreclosure, hoping to get approval from the court after the fact, observed the court.

§ 53. Foreclosure sale—Willful violation not found

Proceeding with the foreclosure sale of a Chapter 7 debtor's real property was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

A debtor moved to set aside a mortgage foreclosure sale conducted one day after he had filed his latest Chapter 7 bankruptcy petition, less than 180 days following entry of an order dismissing a prior Chapter 13 case based on the debtor's substantial arrears in payments to the trustee, and the court in In re Flores, 291 B.R. 44 (Bankr. S.D. N.Y. 2003), found that although the foreclosure sale the day after the debtor's pro se filing under Chapter 7 was a violation of the automatic stay, it appeared that the violation was unwitting, in that neither the mortgage company creditor nor its counsel had actual notice or knowledge of the debtor's filing prior to the foreclosure sale, so that the violation was not willful for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Upon learning that the debtor had filed for bankruptcy prior to the foreclosure sale, the mortgage company creditor should have promptly applied to the bankruptcy court either for relief from the automatic stay or for dismissal of the bankruptcy case nunc pro tunc, so as to erase the effect of the automatic stay and thereby validate the foreclosure sale, reasoned the court, and by failing to do so, the mortgage company had risked sanctions for violating 11 U.S.C.A. § 362(a). Nevertheless, the court concluded that on the facts of the case, the relief sought by the debtor, an order vacating the foreclosure sale, was not warranted, since the debtor had ample experience in the bankruptcy court, having filed two prior cases under Chapter 13 represented in each case by experienced bankruptcy counsel, and the debtor had ample opportunity to oppose the trustee's motion to dismiss his case with prejudice, or to show that his default was not willful and that the dismissal should not be with prejudice under 11 U.S.C.A. § 109(g), but he had failed to do so. Furthermore, pointed out the court, the debtor had an opportunity after filing but before the foreclosure sale to notify the mortgage company of his third bankruptcy filing, but he had not done so. The debtor, although at that point represented by competent bankruptcy counsel, had not shown that the foreclosure sale deprived him or his creditors of any equity in the property, believed the court, and the property was sold at the foreclosure sale to an independent third party, whose rights would be affected by an order voiding the foreclosure sale as a violation of the automatic stay.

§ 54. Foreclosure sale—Purchase at foreclosure sale

It has been determined, based on the facts and circumstances, whether the purchase of a Chapter 7 debtor's real property at a foreclosure sale constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

A foreclosure sale purchaser had willfully violated the automatic stay of a Chapter 7 debtor and its trustee, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even if the purchaser had no actual notice of the bankruptcy estate's interest in the property, found the court in In re Burke, 147 B.R. 955 (Bankr. W.D. Mo. 1992), where he purchased with record notice of the trustee's interest, since the purchaser, as a regular buyer of foreclosure property, was held to a higher standard of knowledge than an innocent consumer who purchased property for a residence.

§ 55. Eviction proceedings

[Cumulative Supplement]

The courts in the following cases determined whether commencing eviction proceedings against a Chapter 7 debtor constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

The court in Matter of Kaiser, 158 B.R. 808 (Bankr. D. Neb. 1993), found that a mortgagee's violation of the automatic stay, by entering a Chapter 7 debtor's home without permission, then removing and disposing of the debtor's personal property, was willful, and therefore, the debtor was entitled to recover actual damages, including costs and attorney's fees and, if appropriate, punitive damages, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the mortgagee took these actions after receiving notice of the pendency of the debtor's bankruptcy case.

Automatic stay violations were willful and warranted an award of actual damages, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), against a deed of trust holder, a loan servicer, and their attorneys, found the court in In re Gagliardi, 290 B.R. 808, 41 Bankr. Ct. Dec. (CRR) 26 (Bankr. D. Colo. 2003), where the parties had notice of debtors' Chapter 7 filing from various sources prior to commencing eviction proceedings, yet took no steps to reverse their actions and restore the status quo even when the subject of the debtors' bankruptcy was again brought up at such proceedings, but continued with the eviction, changed the locks to the property, and deprived the debtors of personal property that was located therein. A creditor need not have a specific intent to violate the stay in order for its stay violation to be willful, so as to require the entry of a damages award against it, held the court, and it is enough that the creditor knew of the stay and that it intended to take the actions found to violate the stay. Even an innocent stay violation, one committed without knowledge of the automatic stay, becomes willful if a creditor fails to remedy the violation after receiving notice of the stay, clarified the court.

CUMULATIVE SUPPLEMENT

Cases:

Creditor's act of instructing constable through counsel to serve a 48 hour eviction notice on Chapter 7 debtor and the constable's subsequent service of the notice constituted a willful violation of the automatic stay; creditor was aware of the automatic stay as evidenced by his petitioning the bankruptcy court for relief from it. 11 U.S.C.A. § 362. In re Kim, 554 B.R. 304 (Bankr. D. Mass. 2016).

[Top of Section]

[END OF SUPPLEMENT]

§ 56. Registration of deed of trust

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been determined whether violation of the automatic stay by registering a deed of trust on a Chapter 7 debtor's real property was willful, based on the facts and circumstances.

Both a mortgage company and its attorney possessed knowledge of Chapter 7 debtors' bankruptcy case when the automatic stay was violated by the mortgage company's registration of a deed of trust on the debtors' property, determined the court in In re Medlin, 201 B.R. 188 (Bankr. E.D. Tenn. 1996), so that the violation was willful and potentially entitled the bankruptcy estate to an award of damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the mortgage company had filed a proof of claim in the Chapter 7 debtors' case, and the mortgage company's attorney had corresponded with the trustee regarding the possibility of lifting the automatic stay.

3. Other Actions Involving Real Estate

§ 57. Attempt to transfer property

[Cumulative Supplement]

Whether attempting to transfer the property of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

A grantor's postpetition attempt to transfer property, which had been transferred to debtors, who had apparently filed under Chapter 7, under a deed reserving a life estate for the grantor together with the power to exchange, mortgage, sell, and convey the fee, decided the court in In re Rose, 113 B.R. 534 (W.D. Mo. 1990), was not a willful violation of the stay, for the purpose of an award of attorney's fees under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since a bona fide dispute existed as to whether the grantor had the right to transfer the property.

CUMULATIVE SUPPLEMENT

Cases:

By wire transferring, to substitute trustee, the funds necessary to complete its purchase of deed of trust property, at time when it was aware of debtor's Chapter 7 filing and of debtor's ownership, along with her husband, of deed of trust property, high bidder at postpetition foreclosure sale willfully violated automatic stay, regardless of whether debtor sustained any harm as result of its actions, given that foreclosure sale followed debtor's bankruptcy filing by a mere three-and-one-half hours, and given that high bidder could allegedly have obtained an annulment of automatic stay simply by moving therefor. 11 U.S.C.A. § 362(k). In re Okedokun, 593 B.R. 469 (Bankr. S.D. Tex. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 58. Renegotiation of listing agreements

Exhibit 3

The willfulness of a violation of the automatic stay, based on the renegotiation of a Chapter 7 debtor's real property listing agreements, has been decided, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Sales agents who, subsequent to a real estate brokerage firm's Chapter 7 filing, interfered with the firm's contract rights under its exclusive listing agreements by renegotiating these agreements with the same sellers on behalf of a different brokerage firm, concluded the court in In re Sherlock Homes of W.N.Y, Inc., 246 B.R. 19, 35 Bankr. Ct. Dec. (CRR) 221 (Bankr. W.D. N.Y. 2000), were liable for damages to the Chapter 7 trustee under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), for willfully violating the automatic stay.

§ 59. Request for lien on real property

[Cumulative Supplement]

Based on the facts and circumstances, it has been determined whether the request for a lien on a Chapter 7 debtor's real property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Chapter 7 debtors brought an adversary proceeding for an award of damages against creditors for their alleged willful stay violation, and the court in In re Paine, 283 B.R. 33, 40 Bankr. Ct. Dec. (CRR) 48, 49 Collier Bankr. Cas. 2d (MB) 468 (B.A.P. 9th Cir. 2002), determined that the creditors had not willfully violated the automatic stay, and were not liable for damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), merely because in their postpetition lawsuit against parties other than the debtors they had sought, by way of remedy, a lien against property that was the debtors' residence. The request for a lien was not a sanctionably willful violation of stay, as long as the complaint was promptly amended to delete the lien request, concluded the court.

CUMULATIVE SUPPLEMENT

Cases:

Postpetition filing of notice of lis pendens against deed of trust property owned by Chapter 7 debtor and her husband, by high bidder at postpetition foreclosure sale, in violation of automatic stay at time when high bidder knew of debtor's Chapter 7 filing, was in nature of willful stay violation. 11 U.S.C.A. § 362(k). In re Okedokun, 593 B.R. 469 (Bankr. S.D. Tex. 2018).

There was no statute of limitations upon Chapter 7 debtor's ability to commence cause of action for creditor's allegedly willful violation of automatic stay, in recording abstract of judgment against debtor's property while stay was in effect, a stay violation of which debtor had no reason to know until he attempted to refinance property post-bankruptcy. 11 U.S.C.A. § 362(k). In re Breul, 533 B.R. 782 (Bankr. C.D. Cal. 2015).

[Top of Section]

[END OF SUPPLEMENT]

§ 60. Reattachment of lien on debtor property

Exhibit 3

It has been determined whether the reattachment of a lien on a Chapter 7 debtor's property constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

A Chapter 7 debtor filed a complaint to recover $7,227.15 collected from her on a discharged debt, and the court in In re Brantley, 116 B.R. 443 (Bankr. D. Md. 1990), determined that the reattachment of a judgment lien upon the debtor's repurchase of a home was not a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the reattachment was not the result of an action by any entity, but rather, the result of an operation of law, and since it was done without contemporaneous knowledge by any party to the adversary proceeding.

§ 61. Withdrawal of escrowed earnest money

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been decided whether withdrawing earnest money deposited in escrow to purchase a Chapter 7 debtor's real property constituted a willful violation of the automatic stay, based on the facts and circumstances.

In In re Bair Island Marina & Office Center, 116 B.R. 180 (Bankr. N.D. Cal. 1990), a Chapter 7 trustee filed an adversary proceeding against a purchaser of the debtor's real estate for violation of the automatic stay, and the court decided that the purchaser's violation of the automatic stay, by withdrawing earnest money deposited in escrow with the bankruptcy court for the purchase of the debtor's real estate, was sufficiently willful to trigger the remedies set forth in the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

E. Repossession of Financed Property

§ 62. Attempt to repossess financed property—Willful violation found

Violation of the automatic stay by attempting to repossess the financed property of a Chapter 7 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have found, based on the facts and circumstances of each case.

Chapter 7 debtors sought sanctions and other relief against a secured creditor for its alleged violation of the automatic stay, and the court in In re Grace, 85 B.R. 464 (Bankr. S.D. Ohio 1988), found that the debtors would be awarded damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), for the secured creditor's willful violation of the stay by attempting to repossess the debtors' liened vehicles and its employee's threats to the debtors in violation of the section of the automatic stay provision, 11 U.S.C.A. § 362(a), prohibiting an act to collect, assess, or recover a claim that arose prepetition.

Alleging that a creditor had willfully violated the automatic stay, stemming from an injurious attempt at repossession on the creditor's behalf by an employee of a repossession company hired by the creditor to accomplish repossession of the collateral securing the creditor's claim, Chapter 7 debtors brought an adversary proceeding, and the court in In re Trull, 1995 WL 17005344 (Bankr. S.D. Ga. 1995), order vacated on other grounds, 1995 WL 17005378 (Bankr. S.D. Ga. 1995), concluded that the creditor's act of hiring the repossession company to repossess the debtors' boat was a willful violation of the automatic stay, so as to support recovery by the debtors under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The creditor made a clear attempt to recover the property, which had become property of the estate on filing, and thereby attempted to collect or recover on the prepetition debt, noted the court, and the creditor had received actual notice from the debtors of their bankruptcy, yet failed to take any action to inquire further before employing the repossession company and its employee to repossess its collateral. The debtors had a reasonable expectation that when they sought relief under Chapter 7 of the Bankruptcy Code, all

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

creditors would be required to cease collection efforts against them, stated the court, and the willful breach of this requirement gave rise to an award of actual damages.

§ 63. Attempt to repossess financed property—Willful violation not found

Whether attempting to repossess the financed property of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

In In re Haan, 93 B.R. 439 (Bankr. W.D. N.C. 1988), the court decided that where Chapter 7 debtors sought sanctions for a secured creditor's violation of the automatic stay by attempting to repossess the debtors' truck, the secured creditor and repossessor were not liable for sanctions for a willful violation of the automatic stay, under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), because the repossession attempt had occurred before the creditors reasonably could have received notice of the bankruptcy filing and there was no evidence of any injury to the debtors.

§ 64. Repossession of financed property—Willful violation found

[Cumulative Supplement]

In the following cases, courts have found that the repossession of a Chapter 7 debtor's financed property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Chapter 7 debtors in two separate cases filed motions against a creditor, which had extended purchase money loans to the debtors for household furniture, and against the creditor's attorney, seeking sanctions for automatic stay violations, and the court in In re Baker, 183 B.R. 30 (Bankr. D. R.I. 1995), found that the creditor and its attorney had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor's branch manager had attended the creditor's meeting in anticipation of the debtors' reaffirmation of their debt with the creditor, and, when the debtors declined to do so, the manager had telephoned the attorney and instructed him to repossess the furniture. The court explained that the manager had received the creditor's meeting notice, which contained the details of the automatic stay, and the attorney knew of the debtors' bankruptcy when he was retained by the creditor, but failed to investigate independently whether the debtors had received their discharge before filing a replevin action.

The court in In re Fisher, 144 B.R. 237, Bankr. L. Rep. (CCH) ¶ 74900 (Bankr. D. R.I. 1992), decided that a creditor's conduct in repossessing a Chapter 7 debtor's vehicle at the conclusion of the creditors' first meeting, over the strenuous objection and warning of debtor's counsel and the Chapter 7 trustee, constituted a willful violation of the automatic stay, for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), warranting the imposition of compensatory and punitive damages. The court added that the creditor's phone call to the debtor following her Chapter 7 filing, while the debtor was represented by counsel, accusing the debtor of engaging in criminal conduct if she did not consent to the repossession of her vehicle, also constituted a willful violation of the automatic stay, warranting sanctions under former § 362(h).

Where a debtor who owned an automobile, in which a bank held a security interest in connection with an automobile loan to the debtor, had informed the bank during a phone call that she was in the process of filing for Chapter 7 bankruptcy, and had also provided the name and telephone number of her attorney, the court in In re Baker, 140 B.R. 88 (D. Vt. 1992), found that the bank had willfully violated the automatic stay by repossessing the vehicle, so that an award of $10,000 in punitive damages was appropriate according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Both the debtor and her attorney had spoken

Exhibit 3

with representatives of the bank on more than one occasion in order to inform the bank of the debtor's bankrupt status, stated the court, but the bank had still proceeded with the repossession of the debtor's vehicle.

Based on its repossession of a Chapter 7 debtor's automobile, a secured creditor had willfully violated the automatic stay, for the purposes of awarding damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), determined the court in Matter of Sielaff, 164 B.R. 560 (Bankr. W.D. Mich. 1994), where the creditor had received notice of the debtor's filing for bankruptcy, and knew that the bankruptcy filing had some impact on the vehicle account because notice of the debtor's filing was listed on the creditor's internal collection records for the account. Thus, the creditor had notice of the filing and had connected the debtor's bankruptcy to the proper account at its bank, as required to find willfulness, explained the court.

The court in In re Beair, 168 B.R. 633 (Bankr. N.D. Ohio 1994), found that a secured creditor's act in repossessing a Chapter 7 debtor's truck constituted a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the creditor claimed that he had never received notice of the bankruptcy filing, since the creditor had been listed as a creditor in the bankruptcy case, the relief from stay had been forwarded to the creditor through the clerk's office, and the relief from stay had not been returned to the bankruptcy court.

Despite the fact that a Chapter 7 debtor did not have an ownership interest in an automobile that was titled solely in the name of the debtor's estranged husband, the debtor's possessory interest, as the person making principal use of the vehicle, was protected by the automatic stay, concluded the court in In re Printup, 264 B.R. 169 (Bankr. E.D. Tenn. 2001), and by repossessing the car with knowledge of the debtor's bankruptcy filing, the creditor had exposed itself to possible liability for willfully violating the automatic stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Chapter 7 debtors appealed the rejection of their application for an award of attorney's fees and damages based on a secured creditor's alleged violation of the automatic stay, and the court in In re McHenry, 179 B.R. 165 (B.A.P. 9th Cir. 1995), concluded that the creditor's automatic stay violation by repossessing the debtors' vehicle was willful, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditors had notice of the bankruptcy filing and the action of the creditor's employee in repossessing the vehicle was intentional.

Where a creditor repossessed Chapter 7 debtors' automobile postpetition and, after the debtors made no attempt to retrieve the vehicle in the next 60 days, sold it at a private auction, and the debtors subsequently obtained an order to show cause against the creditor in order to recover the vehicle, the court in Progressive Motors, Inc. v. Frazier, 220 B.R. 476, 153 A.L.R. Fed. 753 (D. Utah 1998), decided that the creditor had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by hiring an independent contractor to repossess the Chapter 7 debtors' automobile postpetition, since there was evidence that the creditor was aware of the debtors' bankruptcy and that this was not the first time that the creditor had violated the stay.

Debtors moved for an award of sanctions based on creditors' alleged willful violation of the stay in repossessing the debtors' automobile, and the court in In re Herbst, 167 B.R. 983 (Bankr. N.D. Fla. 1994), decided that the company that financed the purchase of the Chapter 7 debtors' automobile had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, with actual knowledge of the debtor's Chapter 7 filing, it had directed its agent to repossess the vehicle based on the debtor's lengthy default, notwithstanding the debtor's execution of an agreement to relinquish possession in the event of any further defaults. Although the debtor's delinquency might have provided a basis for relief from the automatic stay, conceded the court, it did not justify the finance company's self-help remedy in knowing and willful violation of the automatic stay.

Chapter 7 debtors moved to hold a creditor in contempt for willfully violating the automatic stay in repossessing its collateral, the debtors' vehicle, and the court in In re Esposito, 154 B.R. 1011, Bankr. L. Rep. (CCH) ¶ 75346 (Bankr. N.D. Ga. 1993), found that the creditor had willfully violated the stay, for the purpose of imposing sanctions under the Bankruptcy Code, former

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

11 U.S.C.A. § 362(h), by repossessing its collateral without first moving for relief from the stay, in reliance on the terms of a reaffirmation agreement never approved by the bankruptcy court. The court observed that the creditor had actual notice of the bankruptcy case by virtue of the statements of the debtors, as a result of the notice of commencement of the case under Chapter 7 sent to all creditors, including the creditor, and by the caption of the reaffirmation agreement itself. The creditor had received the notice prior to the date of repossession and was aware of the bankruptcy and the meeting of creditors, so that the action of repossessing the vehicle was a willful violation, concluded the court.

CUMULATIVE SUPPLEMENT

Cases:

Creditor's violation of the automatic stay by making repeated demands for payment and repossessing Chapter 13 debtor's vehicle, at her place of employment in plain sight of her co-workers, was "willful," where creditor had knowledge of debtor's bankruptcy filing. 11 U.S.C.A. § 362(k)(1). In re Brodgen, 588 B.R. 625 (Bankr. M.D. Ala. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 65. Repossession of financed property—Willful violation not found

Repossessing the financed property of a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have concluded, based on the facts and circumstances of each case.

Pro se Chapter 7 debtors brought an action for damages caused by creditors' conduct in repossessing an automobile, and the court in Ghartey v. Chrysler Credit Corp., 1992 WL 373479 (E.D. N.Y. 1992), concluded that reading the complaint in the most favorable light from the debtors' standpoint, it was clear that the creditors had not willfully violated the automatic stay imposed by the bankruptcy court, so that sanctions could not be imposed under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). According to the complaint, explained the court, the creditors had properly filed a notice of motion for vacating the automatic stay in the bankruptcy proceedings, and after a hearing by the bankruptcy court, an order vacating the automatic stay and permitting the creditor to foreclose its interest in the automobile in accordance with state law and procedure had been entered. The complaint stated that the debtors' car had been taken after the order was entered, and that the car was repossessed 30 days after the automatic stay was properly vacated, emphasized the court. Accordingly, even taking all of the allegations of the complaint as true, there could have been no willful violation of the automatic stay, and the creditors were entitled to summary judgment in their favor with respect to this cause of action.

A debtor who had apparently filed for bankruptcy pursuant to Chapter 7 failed to present sufficient evidence to prove that the towing of his taxi was a willful violation of the stay by creditors, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in Gonzales v. Checker Taxi Co., 165 F.3d 32 (7th Cir. 1998) (unpublished Table disposition; 1998 WL 864024), where one of the creditors presented undisputed evidence at trial that it had towed the car because it had been reported stolen and found parked in a lot in a housing project. Moreover, there was reliable testimony that the tow was in no way connected to collection efforts on behalf of the creditors, and that those efforts had ceased while the bankruptcy case was pending, stated the court.

Where a secured creditor learned of the Chapter 7 debtor's bankruptcy filing later on the same day it had its agent repossess the debtor's vehicle, the repossession constituted a technical violation of the automatic stay, but was not willful, for the purpose of

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k)(1), held the court in In re Gossett, 369 B.R. 361, 23 A.L.R. Fed. 2d 751 (Bankr. N.D. Ill. 2007). The court noted that the debtor failed to supply the creditor with written notice immediately subsequent to the bankruptcy filing despite the creditor's requests that it be notified in the event the debtor decided to file for bankruptcy, neither the creditor nor its agent had actual notice of the bankruptcy petition at the time the vehicle was repossessed, as the copies of the notice that the debtor allegedly left on the vehicle's dashboard and steering wheel were not found there or anywhere else in the car, and, once it learned of the bankruptcy filing, the creditor attempted to return the vehicle to the debtor on numerous occasions.

§ 66. Failure to return repossessed property—Willful violation found

The courts in the following cases decided, based on the facts and circumstances of each case, that failing to return the repossessed property of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Sanctions were imposed on an unsecured creditor for its alleged willful violations of the automatic stay pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), and on appeal, the court in In re Carrigg, 216 B.R. 303, 31 Bankr. Ct. Dec. (CRR) 1324, Bankr. L. Rep. (CCH) ¶ 77657 (B.A.P. 1st Cir. 1998), determined that the creditor had willfully violated the automatic stay by repossessing a Chapter 7 debtor's truck, then refusing to turn over the vehicle to the debtor voluntarily, after it had notice of the debtor's bankruptcy filing. Even though, at the time it obtained the repossession title to the debtor's truck, the creditor had no knowledge of the debtor's Chapter 7 filing, acknowledged the court, the creditor had refused to reassign the title to the truck after it was advised of the debtor's bankruptcy filing.

Prior to a Chapter 7 debtor's bankruptcy filing, a secured creditor commenced foreclosure proceedings, and the court in In re Collins, 2002 WL 31051032 (Bankr. M.D. N.C. 2002), determined that the creditor's violation of the automatic stay, based on the creditor's postpetition repossession and retention of the debtor's mobile home, was willful, subjecting the creditor to sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since upon the realization that the mobile home had been repossessed postpetition, the creditor had not returned the mobile home despite demand, nor had it filed a motion to lift the stay or to resolve the dispute regarding whether it was obligated to return the mobile home.

The failure of a creditor, for more than two months after it had received notice of debtors' Chapter 7 filing, to turn over the repossessed automobile securing its claim was a willful violation of the automatic stay, of the kind warranting an award of actual damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in Nissan Motor Acceptance Corp. v. Baker, 239 B.R. 484 (N.D. Tex. 1999), regardless of whether the debtors had ever asked that the vehicle be returned, had ever reaffirmed their obligation to the creditor, or had provided the creditor with adequate protection.

Although a creditor, which had repossessed a Chapter 7 debtor's automobile, and which had been given oral notice of the debtor's prior bankruptcy filing, had acted reasonably in requesting written notification of the bankruptcy, after the creditor received written notice of the bankruptcy case six days later, its continued retention of the automobile was a willful violation of the automatic stay warranting the imposition of sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), concluded the court in In re Holman, 92 B.R. 764 (Bankr. S.D. Ohio 1988), despite the creditor's contention that the delay had resulted from consultation with counsel, since the creditor had six days following oral notice to consult counsel but did not return the car for over three weeks after receipt of written notice. Furthermore, stated the court, the creditor's claim that the debtor made no formal demand for the return of the repossessed automobile, and thus, that the continued possession of the automobile was not a willful violation of the automatic stay, was not supported by the evidence, which indicated that at the first meeting of creditors, debtor's counsel made a request for the return of the vehicle to both the creditor and creditor's counsel.

Where the issue before the court was whether a creditor should be sanctioned pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), for the postpetition repossession of a vehicle and the failure to return the vehicle within a reasonable time,

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

the court in In re Martin, 1997 WL 33479086 (Bankr. C.D. Ill. 1997), determined that the creditor had willfully violated the automatic stay when it had retained possession of the debtors' personal property after being informed of the debtor's Chapter 7 bankruptcy. The law was clear that there was an affirmative duty on the part of one who violated the automatic stay to undo the violation without unreasonable delay, or face sanctions as a consequence, held the court.

The court in In re Skaggs, 1996 WL 33406652 (Bankr. C.D. Ill. 1996), concluded that although the repossession of Chapter 7 debtors' vehicle by a creditor after the filing of the bankruptcy petition was not a willful violation of the automatic stay because the creditor was not aware of the bankruptcy petition at the time of the repossession, the creditor's retaining possession of the vehicle after being informed of the debtor's bankruptcy was a willful violation of the automatic stay, and sanctions could be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). In this case, observed the court, the creditor had learned of the bankruptcy when he had returned home from repossessing the vehicle and had played back a message from the debtors on his answering machine. The filing of the bankruptcy petition had been confirmed the next day by a phone call from the office of the debtors' attorney, noted the court, and the creditor had also received the debtors' request for sanctions and notice of the hearing on the request for sanctions from the bankruptcy court, but the creditor had nevertheless refused to return the vehicle to the debtors.

Chapter 7 debtors brought an adversary proceeding to recover damages for a creditor's alleged willful violation of the stay, and the court in In re Abrams, 127 B.R. 239, 21 Bankr. Ct. Dec. (CRR) 1283, 25 Collier Bankr. Cas. 2d (MB) 15, Bankr. L. Rep. (CCH) ¶ 74023 (B.A.P. 9th Cir. 1991), found that the creditor's continuing retention of repossessed property, a vehicle, after it had been notified of the debtors' bankruptcy filing was itself a willful violation of the stay, for which sanctions could be imposed under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the creditor had not known of the debtors' bankruptcy filing at the time of its initial seizure of the vehicle.

An automobile repossession company had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), though it had initially acted without knowledge of a debtor's Chapter 7 filing in repossessing the debtor's automobile at the direction of a company that had financed the debtor's purchase, concluded the court in In re Herbst, 167 B.R. 983 (Bankr. N.D. Fla. 1994), to the extent that the repossession company had continued to retain the vehicle in its possession after it had been notified of the debtor's bankruptcy.

Regardless of whether creditors, at the time they repossessed equipment securing a Chapter 7 debtor's debt to them, had received notice of the bankruptcy or had any knowledge of the debtor's bankruptcy petition, concluded the court in In re Harsh, 277 B.R. 833 (Bankr. M.D. Ga. 2001), the creditors' later refusal, upon being informed of the debtor's bankruptcy by the Chapter 7 trustee, to return the equipment that they had repossessed, was a willful violation of the automatic stay, such as would make them liable for the trustee's damages, costs, and attorney's fees under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court added that the mere fact that the creditors, who were not natural citizens of the United States and were not represented by an attorney, may have been unfamiliar with United States bankruptcy law could not excuse their willful violations of the automatic stay or preclude the entry of an attorney's fees award against them when, after being informed of their violations and advised to obtain legal counsel, the creditors had persisted in their refusal to return the equipment that they had repossessed while the stay was in effect.

A creditor-automobile dealership that had repossessed a Chapter 7 debtor's car postpetition, and had subsequently disregarded the Chapter 7 trustee's request for turnover had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Johnson, 230 B.R. 466, 40 U.C.C. Rep. Serv. 2d 462 (Bankr. D. D.C. 1999), where even if the creditor had not been advised by the debtor of her bankruptcy filing, contrary to what the debtor asserted, the creditor certainly knew of it by the time the bankruptcy court ruled on a summary judgment motion in the trustee's turnover proceeding, but the creditor had not yet acquiesced to the trustee's demands.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 67. Failure to return repossessed property—Willful violation not found

Failing to return the repossessed property of a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been concluded, based on the facts and circumstances.

Appealing from a judgment in favor of creditors in an action alleging that the creditors had willfully violated the automatic stay in a bankruptcy action when they towed his taxi, a debtor who had apparently filed for bankruptcy pursuant to Chapter 7 argued that the creditors had acted willfully because they took his taxi and medallion license and never returned the vehicle to him, even though the bankruptcy judge had ordered them to do so, but the court in Gonzales v. Checker Taxi Co., 165 F.3d 32 (7th Cir. 1998) (unpublished Table disposition; 1998 WL 864024), concluded that the creditors had not willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the bankruptcy judge had never ordered the creditors to return the vehicle to the debtor.

§ 68. Sale of repossessed property—Willful violation found

The sale of property repossessed from a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the cases that follow have found, based on the facts and circumstances of each case.

The court in In re Walker, 168 B.R. 114 (E.D. La. 1994), decision aff'd on other grounds, 51 F.3d 562, 33 Collier Bankr. Cas. 2d (MB) 1136, Bankr. L. Rep. (CCH) ¶ 76499 (5th Cir. 1995), concluded that where a Chapter 7 debtor brought an action against a mortgagee to recover damages for a willful stay violation, the evidence supported a finding that the mortgagee had willfully violated the stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when the mortgagee had deliberately repossessed and sold the debtor's trailer with knowledge of the bankruptcy.

Chapter 7 debtors brought an adversary proceeding to recover damages for a creditor's alleged violation of the stay in refusing to turn over, and ultimately selling postpetition, the motor vehicle that secured its claim, and the court in Nissan Motor Acceptance Corp. v. Baker, 239 B.R. 484 (N.D. Tex. 1999), determined that the creditor's sale of the Chapter 7 debtors' automobile, after it had received notice of the debtors' bankruptcy filing, was a willful violation of automatic stay, of the kind warranting an award of actual damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), regardless of whether the creditor's records had erroneously indicated that the bankruptcy court had ruled affirmatively on the creditor's pending motion to lift the stay to allow the sale to proceed. The creditor's erroneous records did not affect the willfulness of its acts, noted the court, where it was undisputed that, at the time the vehicle was sold, the bankruptcy court had not yet ruled on the creditor's motion.

The finding that a creditor knew of a Chapter 7 debtor's filing of bankruptcy and would be held to knowledge of the terms of the automatic stay, as of a specified date at the latest, was not clearly erroneous, although there was no admissible evidence that the creditor had learned of the filing on the specified date, held the court in In re Bradford, 112 B.R. 347 (B.A.P. 9th Cir. 1990), so that the creditor's violation of the automatic stay by repossessing and selling the debtor's vehicle postpetition was willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

A Chapter 7 trustee brought an action against a secured creditor to recover damages for a willful violation of the automatic stay, and the court in In re Reed, 102 B.R. 243, 10 U.C.C. Rep. Serv. 2d 611 (Bankr. E.D. Okla. 1989), decided that the creditor's repossession and sale of a vehicle owned by the debtors and encumbered by a lien held by the creditor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor knew of the pendency of the bankruptcy at the time of the sale. Elements of a trustee's action for damages for a willful violation of the automatic stay are that the violation of the stay by a secured creditor occurred, that the violation

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

was willful, that the trustee was injured by the violation thereby giving rise to actual and, if applicable, punitive damages, and the measure and amount of damages sustained, held the court.

§ 69. Sale of repossessed property—Willful violation not found

Based on the facts and circumstances of each of the following cases, courts have found that the sale of property repossessed from a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Following a judgment in favor of creditors, a debtor who had apparently filed for bankruptcy pursuant to Chapter 7 appealed, and the court in Gonzales v. Checker Taxi Co., 165 F.3d 32 (7th Cir. 1998) (unpublished Table disposition; 1998 WL 864024), found that the creditors' sale of the debtor's taxi and medallion license were not willful violations of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), because the stay had been automatically terminated when the bankruptcy case was dismissed.

Chapter 7 debtors failed to establish that the agents or employees of a creditor, which sold the debtors' automobile after receiving notice of the bankruptcy, had willfully, deliberately, and intentionally violated the automatic stay, and thus, the bankruptcy court lacked sufficient factual basis to justify the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Skinner, 90 B.R. 470 (D. Utah 1988), in light of evidence that an employee who was responsible for reading notices received from the bankruptcy court and alerting other employees of bankruptcy filings had been on vacation and had not found out about the debtors' notice of bankruptcy until two days after the sale had taken place, although the creditor had not made any attempt to compensate the debtors for losses resulting from the postpetition sale of the vehicle.

§ 70. Taking possession of other property

It has been determined whether taking possession of other property of a Chapter 7 debtor during the repossession of financed property constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

When, after vacating a mobile home in which a creditor had a secured interest, Chapter 7 debtors found their waterbed, clothing, and other miscellaneous items missing, the court in In re Adams, 2002 WL 844350 (Bankr. N.D. Iowa 2002), decided that the creditor had not willfully violated the automatic stay by taking possession of some of the items, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since although the creditor admitted to having notice of the debtors' bankruptcy and to storing some of the items at issue, a critical look at the entire record revealed a situation that would have been murky at best to the creditor. The debtors had abandoned their mobile home after filing their Chapter 7 petition while in arrears on their payments to the creditor, abandoning the property without notification to the creditor other than a note allegedly left on the door of the mobile home, and leaving the mobile home in disarray, observed the court. The debtors' abandonment of the mobile home made the creditor an involuntary custodian of whatever property remained behind, stated the court, and it was within this context that the court had to view the creditor's conduct.

F. Tax Collection Efforts

§ 71. Filing proceeding to seize debtor property

Whether the filing of a proceeding to seize a Chapter 7 debtor's property in satisfaction of unpaid taxes constituted a willful violation of the automatic stay, so that damages could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been decided, based on the facts and circumstances.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Where a Chapter 7 debtor filed a motion to enforce the automatic stay and to assess damages for willful violation of the automatic stay against the Internal Revenue Service (IRS), the court in In re Nichols, 1991 WL 539972 (Bankr. E.D. Mo. 1991), determined that the IRS' filing of a miscellaneous proceeding with a federal district court to obtain authorization to enter the debtor's business premises in order to seize property in satisfaction of unpaid federal taxes constituted a willful violation of the stay, so that damages could be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 72. Moving forward with proceeding to enforce debtor's tax liability

Whether the continuation of a proceeding to enforce a Chapter 7 debtor's tax liabilities constituted a willful violation of the automatic stay, so that damages could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been decided, based on the facts and circumstances.

Where the Chapter 7 debtor filed suit against the U.S. District Court for the Northern District of Iowa and officials of the Internal Revenue Service (IRS) alleging that these defendants violated the automatic stay by moving forward with proceedings concerning the debtor's tax liabilities, the court in In re Kramer, 2004 WL 3235816 (Bankr. N.D. Iowa 2004), held that the defendants' conduct did not constitute a willful violation of the automatic stay, so that damages could be imposed pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the record showed that the debtor listed the incorrect address for the IRS on his mailing matrix, the certificate of service stated the notice was undeliverable, and the actions taken by the defendants occurred prior to receiving electronic notification from the bankruptcy court on a later date.

§ 73. Seizure of debtor property

The willfulness of a violation of the automatic stay, based on the seizure of a Chapter 7 debtor's property in satisfaction of unpaid taxes, has been determined, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Following the filing of a motion by a Chapter 7 debtor to enforce the automatic stay and to assess damages for willful violation of the automatic stay against the Internal Revenue Service (IRS), the court in In re Nichols, 1991 WL 539972 (Bankr. E.D. Mo. 1991), found that the IRS' entering upon the debtor's business premises and seizing business as well as personal items in satisfaction of unpaid federal taxes constituted a willful violation of the automatic stay, so that the IRS was liable for damages, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 74. Refusal to return personal property seized

It has been decided whether the refusal to return a Chapter 7 debtor's personal property, seized in satisfaction of unpaid taxes, was a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

In In re Nichols, 1991 WL 539972 (Bankr. E.D. Mo. 1991), where a Chapter 7 debtor filed a motion to enforce the automatic stay and to assess damages for willful violation of the automatic stay against the Internal Revenue Service (IRS), the court concluded that the IRS' refusal to return the debtor's personal property seized in satisfaction of unpaid federal taxes constituted a violation of the stay that was willful, so that damages could be imposed on the IRS pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Exhibit 3

§ 75. Auction of debtor property

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been determined whether the auction of a Chapter 7 debtor's property to collect a tax debt was a willful violation of the automatic stay, based on the facts and circumstances of each case.

When a Chapter 7 debtor filed a motion for sanctions and damages against the Internal Revenue Service (IRS) for violation of the automatic stay with respect to the auction of the debtor's property following the filing of a bankruptcy petition, the court in In re Clarkson, 168 B.R. 93, 73 A.F.T.R.2d 94-1289 (Bankr. D. S.C. 1994), found that a deputy marshal's testimony that he would not have stopped the auction of the debtor's property, absent instructions to do so by his superior or a judge, established a willful violation of the automatic stay, for the purpose of imposing sanctions against the IRS under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 76. Lien on debtor property—Generally

A determination of whether filing a tax lien on a Chapter 7 debtor's property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been reached, based on the facts and circumstances.

Knowledge possessed by an agent of the Internal Revenue Service (IRS) who was responsible for a debtor's bankruptcy case, that a discharge order previously entered by the bankruptcy court had been vacated and that the debtor's Chapter 7 case was still pending, determined the court in Shadduck v. Rodolakis, 221 B.R. 573, 98-2 U.S. Tax Cas. (CCH) ¶ 50516, 81 A.F.T.R.2d 98-2455 (D. Mass. 1998), had to be imputed to the IRS, so that the IRS' violation of the automatic stay by filing a tax lien against the debtor to collect a prepetition debt constituted a willful violation, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the IRS alleged that it had filed the levy in reliance on a computer entry reflecting the discharge order. The conduct of the IRS, in reviewing only the cover page of a computer docket sheet in evaluating the discharge status of the taxpayer's bankruptcy case, was neither reasonably prudent nor sufficient to detract from the willful nature of the IRS' actions in improperly attempting to collect on prepetition tax indebtedness while the automatic stay was still in effect, stated the court. Although the IRS asserted that it was the bureaucratic structure of the agency and not deliberate action that was the cause of the violation, the court rejected this defense.

Comment

Although the First Circuit had not yet defined the term "willful violation" as it was used in § 362(h), the *Shadduck* court held that the standard of In re Bloom, 875 F.2d 224, 19 Bankr. Ct. Dec. (CRR) 590 (9th Cir. 1989), see § 14, adopted by other circuits, was the proper standard. The court in *Bloom* held that a willful violation did not require a specific intent to violate the automatic stay, but rather former § 362(h) provided for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions that violated the stay were intentional. This approach for assessing willful violation ensured the integrity of the automatic stay, recognizing its centrality in the bankruptcy proceeding, believed the court in *Shadduck*.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 77. Lien on debtor property—Failure to remove lien

Based on the facts and circumstances, whether the failure to remove a tax lien from a Chapter 7 debtor's property constituted a willful violation of the automatic stay, such that sanctions could be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered.

For the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), found the court in In re Rhodes, 155 B.R. 491, 71 A.F.T.R.2d 93-1369 (W.D. Ark. 1993), the Internal Revenue Service (IRS) had willfully violated the automatic stay in a Chapter 7 case by doing nothing to remove a tax lien from the property of Chapter 7 debtors, despite its knowledge that the debtors had filed for bankruptcy prior to the IRS' filing of the lien, and by refusing to release its lien and insisting on receiving the net proceeds from the sale of the home and income tax refunds in satisfaction of the lien.

§ 78. Levy on debtor property—Generally

In the following cases, courts have decided whether levying on a Chapter 7 debtor's property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Where a Chapter 7 debtor filed a complaint against the Internal Revenue Service (IRS), seeking damages, both compensatory and punitive, together with attorney's fees and interest, based upon the IRS' alleged violation of the automatic stay by levying on the debtor's property between the entry of discharge and the closing of the case, the court in In re Weisberger, 205 B.R. 727, 79 A.F.T.R.2d 97-1989 (Bankr. M.D. Pa. 1997), determined that the actions taken by the IRS in executing upon the Chapter 7 debtor's securities constituted a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), regardless of whether those actions had been taken in compliance with IRS procedures or whether the IRS had acted in good faith, thinking it had every right to proceed to the levy, as its actions were intentional. Whether a party believes in good faith that it has a right to property is not relevant to whether an act in violation of the automatic stay was willful or whether compensation must be awarded, explained the court, and even a good-faith belief that a party is not violating the stay is insufficient to escape liability.

Chapter 7 debtors brought a complaint, alleging that the Internal Revenue Service (IRS) had violated the automatic stay by levying on their bank account postpetition, and the court in In re Davis, 201 B.R. 835, 77 A.F.T.R.2d 96-2439 (Bankr. S.D. Ala. 1996), found that the levy on the debtors' bank account by the IRS, after the IRS had received notice of the debtors' bankruptcy petition filing, constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The preponderance of the evidence supported the findings that notice of the bankruptcy filing had been received prior to the levy based upon the listing of the IRS in the bankruptcy schedules, the testimony of the debtors, the statements in the IRS Motion to Continue, and government counsel's statements, held the court. Although the IRS termed the violation technical and not willful, the court recognized that once it was shown that actual notice of the bankruptcy had been received, the law was that the violation was willful. For a violation of the automatic stay to be willful, the only requirement is that the entity engage in a deliberate act to violate the stay with the knowledge that the debtor had filed for bankruptcy, clarified the court.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 79. Levy on debtor property—Notice of intent to levy

The courts in the following cases decided, based on the facts and circumstances of each case, whether sending or filing notice of intent to levy upon a Chapter 7 debtor's property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in Shadduck v. Rodolakis, 221 B.R. 573, 98-2 U.S. Tax Cas. (CCH) ¶ 50516, 81 A.F.T.R.2d 98-2455 (D. Mass. 1998), concluded that knowledge possessed by an agent of the Internal Revenue Service (IRS) who was responsible for a debtor's bankruptcy case, that a discharge order previously entered by the bankruptcy court had been vacated and that the debtor's Chapter 7 case was still pending, had to be imputed to the IRS, so that the IRS' violation of the automatic stay, by filing notice of a tax levy to collect a prepetition tax debt in alleged reliance on a computer entry reflecting the discharge order, constituted a willful violation of the automatic stay, and sanctions could be imposed according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The bankruptcy court's characterization of the IRS' conduct as excusable neglect or inadvertent error was simply too deferential to an agency sufficiently equipped to determine accurately when an order of discharge was entered, believed the court, and government agencies should be required to exercise the power conferred upon them by Congress with due regard for the rights of those individuals affected by their exercise of such power. The burdens created by deficiencies in IRS administrative handling of cases involving a taxpayer in bankruptcy should be borne by the IRS, not the taxpayer, concluded the court.

Comment

Although the First Circuit had not yet defined the term "willful violation" as it was used in § 362(h), the *Shadduck* court held that the standard of In re Bloom, 875 F.2d 224, 19 Bankr. Ct. Dec. (CRR) 590 (9th Cir. 1989), see § 14, adopted by other circuits, was the proper standard. The court in *Bloom* held that a willful violation did not require a specific intent to violate the automatic stay, but rather former § 362(h) provided for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions that violated the stay were intentional. This approach for assessing willful violation ensured the integrity of the automatic stay, recognizing its centrality in the bankruptcy proceeding, believed the court in *Shadduck*.

Where a Chapter 7 debtor brought a complaint alleging that the Internal Revenue Service (IRS) violated the automatic stay by mailing a notice of levy to the bank where bankruptcy estate funds were deposited, the court in In re Graycarr, Inc., 330 B.R. 741, 45 Bankr. Ct. Dec. (CRR) 74, 54 Collier Bankr. Cas. 2d (MB) 1324, 96 A.F.T.R.2d 2005-6559 (Bankr. W.D. Ark. 2005), held that the IRS willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the IRS had previously directed its requests for payment to the trustee of the debtor's bankruptcy estate. The court explained that the IRS clearly knew of the debtor's bankruptcy petition when it sent a notice of levy, as evidenced by its earlier letter specifically addressed to the trustee in the debtor's bankruptcy case.

Chapter 7 debtors brought a complaint against the Internal Revenue Service (IRS) for damages for violating the automatic stay, and the court in In re Matthews, 184 B.R. 594, 33 Collier Bankr. Cas. 2d (MB) 1243, 75 A.F.T.R.2d 95-2445 (Bankr. S.D. Ala. 1995), found that since the debtors had received their discharge before receiving two notices of levy from the IRS, and since the IRS knew of the bankruptcy filing and the discharge of the tax debts, yet proceeded to take action against the

Exhibit 3

debtors and their property, the IRS had willfully violated the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The notices, when taken as a part of the IRS' entire pattern of activity in the case, were intentional and inappropriate violations of the stay, stated the court. An action is willful under the statute that provides for damages for willful automatic stay violations, held the court, if a creditor engages in deliberate action that is done in violation of the automatic stay with knowledge that the debtor has filed a bankruptcy petition.

§ 80. Wage levy—Willful violation found

Violation of the automatic stay by levying upon the wages of a Chapter 7 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found, based on the facts and circumstances.

The Internal Revenue Service (IRS) would be required to turn over to a Chapter 7 debtor funds received from the debtor's county employer postpetition for the debtor's wages that the IRS had levied upon, with interest from the date the IRS had received the funds, and to pay the debtor's attorney the actual amount of fees incurred in the proceeding, concluded the court in In re Carlsen, 63 B.R. 706, 15 Collier Bankr. Cas. 2d (MB) 1191, Bankr. L. Rep. (CCH) ¶ 71445 (Bankr. C.D. Cal. 1986), due to the IRS' willful violation of the automatic stay, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the funds were property of the estate but had been exempted, and the Chapter 7 trustee had abandoned any interest in them.

§ 81. Wage levy—Willful violation not found

Levying upon the wages of a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been concluded, based on the facts and circumstances.

A Chapter 7 debtor was not entitled to the return of wages collected by the Internal Revenue Service (IRS) postpetition pursuant to a continuing wage levy, on the theory that this represented the debtor's actual damages for the IRS' violation of the automatic stay pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Mathews, 209 B.R. 218, Bankr. L. Rep. (CCH) ¶ 77425, 97-2 U.S. Tax Cas. (CCH) ¶ 50851, 79 A.F.T.R.2d 97-3084, 1997 FED App. 0004P (B.A.P. 6th Cir. 1997), absent evidence of any willful misconduct by the IRS in connection with the collection of wages, and absent evidence, in light of the bankruptcy statute, 11 U.S.C.A. § 522(c), providing that even exempt property remains liable during a bankruptcy case on nondischargeable tax claims, that the debtor had sustained any damages as a result of the stay violation.

§ 82. Failure to return levied funds

It has been addressed whether the failure to return levied funds to a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

A Chapter 7 debtor brought an adversary proceeding against the United States, seeking damages for a violation of the automatic stay by the Internal Revenue Service (IRS), and the court in In re Chastang, 116 B.R. 833, 20 Bankr. Ct. Dec. (CRR) 1360, Bankr. L. Rep. (CCH) ¶ 73557 (Bankr. M.D. Fla. 1990), found that the IRS had not willfully violated the automatic stay, for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by failing to return to the debtor an amount received pursuant to a tax levy after the taxpayer had filed the bankruptcy petition, where the automatic stay was not in effect when the IRS had issued its notice of levy upon the debtor's United States Army retirement pension, the levy had been properly released upon

Exhibit 3

notification of the bankruptcy filing, the funds levied were not the property of the estate, and the income tax debts underlying the levy were not discharged by the bankruptcy filing.

§ 83. Interference with tax refund—Willful violation found

[Cumulative Supplement]

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have concluded that interference with a Chapter 7 debtor's tax refund constituted a willful violation of the automatic stay, based on the facts and circumstances of each case.

After a Chapter 7 trustee brought an adversary proceeding to recover a tax refund and other payments from the debtor's corporate parent, the court in In re Nelco, Ltd., 264 B.R. 790, 95 A.F.T.R.2d 2005-577 (Bankr. E.D. Va. 1999), determined that the corporate parent's violation of the automatic stay, in retaining the tax refund properly allocated to the debtor as the sole source of funding for the tax payments of an affiliated group of corporate entities, rose to the level of a willful violation, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the corporate parent may have believed that it was entitled to a portion of the refund, since any such belief by the corporate parent was not supported by the advice of its professionals or by documents filed with the bankruptcy court, and the corporate parent knew, at the time it withheld the tax refund and used it for its own purposes, that the debtor was in bankruptcy.

Filing an adversary proceeding, a Chapter 7 debtor alleged that his federal tax debts had been discharged and that the Internal Revenue Service (IRS) had violated the automatic stay when it issued tax assessments against him during the pendency of the bankruptcy, engaging in postpetition setoff of the tax liability against the debtor's right to a tax refund, and the court in In re Fingers, 170 B.R. 419, 94-2 U.S. Tax Cas. (CCH) ¶ 50434, 74 A.F.T.R.2d 94-5685 (S.D. Cal. 1994), found that the actions of the IRS constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). It was undisputed that the IRS had notice of the bankruptcy case, noted the court, so it necessarily followed that the government had willfully violated the automatic stay by making the assessment during the pending bankruptcy and engaging in the postpetition setoff.

CUMULATIVE SUPPLEMENT

Cases:

Creditor's violation of the automatic stay by retaining funds received from garnishment of Chapter 7 debtor's state tax refund was willful, warranting award of actual damages, including costs and attorney fees, for debtor; creditor received notice of the bankruptcy filing on the day the case was filed and debtor's counsel subsequently called creditor's counsel and discussed recent case law, nevertheless, creditor refused to turn over the refund to debtor or seek appropriate relief from the bankruptcy court. 11 U.S.C.A. § 362(k)(1). In re Newberry, 604 B.R. 37 (Bankr. E.D. Mich. 2019).

[Top of Section]

[END OF SUPPLEMENT]

§ 84. Interference with tax refund—Willful violation not found

Exhibit 3

Interference with a Chapter 7 debtor's tax refund did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the cases that follow have found, based on the facts and circumstances of each case.

The Internal Revenue Service (IRS) had not acted willfully or with knowledge of a Chapter 7 debtor's bankruptcy when it set off the debtor's tax refund postpetition, and the debtor accordingly would be denied recovery of attorney's fees, costs, and punitive damages provided for by the Bankruptcy Code, former 11 U.S.C.A. § 362(h), to an individual injured by a willful violation of the automatic stay, decided the court in In re Miel, 134 B.R. 229, Bankr. L. Rep. (CCH) ¶ 74416, 81 A.F.T.R.2d 98-1877 (Bankr. W.D. Mich. 1991), since the IRS did not have notice through the mail or even by word of mouth of the debtor's filing of the bankruptcy petition when the setoff was exercised.

Chapter 7 debtors sought a determination that a prosecutor, a receiver, and a trustee were in contempt for violating the automatic stay, and the court in In re Walton, 158 B.R. 943 (Bankr. N.D. Ohio 1993), found that the prosecutor had not willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by proceeding against the debtors' tax refund check held by the receiver, where the prosecutor did not know that the check was estate property. Furthermore, the court determined that the receiver had not willfully violated the automatic stay by receiving from the Chapter 7 trustee the check that the trustee assured the receiver was not estate property.

§ 85. Suspension of professional license

It has been determined whether the suspension of a Chapter 7 debtor's professional license constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

A Chapter 7 debtor-chiropractor sought sanctions against the State Board of Examiners for violation of the automatic stay in refusing to stay its prepetition administrative order suspending the debtor's license for nonpayment of prepetition state taxes, and the court in In re North, 128 B.R. 592 (Bankr. D. Vt. 1991), decided that the evidence failed to establish that the State Board of Examiners' suspension of the chiropractor's license, pursuant to an order entered before the chiropractor's Chapter 7 filing but effective after the filing, was a willful violation of the automatic stay, so as to warrant an award of damages pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

G. Pursuit of Other Action

1. Generally

§ 86. Assignment of insurance claim

A determination of whether the assignment of a Chapter 7 debtor's insurance claim constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been reached, based on the facts and circumstances.

On an order to show cause why a creditor should not be held in contempt for violation of the automatic stay in a Chapter 7 case, the court in In re Johnson, 138 B.R. 352 (Bankr. D. R.I. 1992), found that the creditor's postpetition affirmative act of seeking out and obtaining assignment of the debtors' insurance claim constituted a willful violation of the automatic stay for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor's manager and counsel were fully aware of the debtors' pending bankruptcy case and, with that knowledge, made postpetition, extrajudicial attempts to obtain assignment of the debtors' temporary lodging claim against their fire insurer. This was not a case of an uneducated or illiterate

Exhibit 3

creditor unwittingly running afoul of an unfamiliar or complex federal statute, believed the court, but rather, the knowledge of the debtors' pending bankruptcy on the part of the creditor's agent and its subsequent attempts to recover said insurance proceeds by doing an end run around the debtors' attorney were indeed willful and intentional violations of the automatic stay.

§ 87. Cancellation of service contract

Whether the cancellation of a Chapter 7 debtor's service contract constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

The court in Nissan Motor Acceptance Corp. v. Baker, 239 B.R. 484 (N.D. Tex. 1999), concluded that a creditor's cancellation of an extended service contract on Chapter 7 debtors' automobile, and application of the proceeds to reduce the debtors' obligation to the creditor, at a time when the creditor was on notice of the debtors' bankruptcy filing, was a willful violation of the automatic stay, of the kind warranting an award of actual damages according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 88. Deferred payment arrangement

It has been decided, based on the facts and circumstances, whether a deferred payment arrangement with a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Following a debtor's reopening her Chapter 7 case and moving to hold her attorney in contempt for allegedly violating the automatic stay in collecting an excessive fee for his services postpetition pursuant to a deferred payment arrangement, the court in In re Sanchez, 241 F.3d 1148, Bankr. L. Rep. (CCH) ¶ 78374 (9th Cir. 2001), found that any violation of the automatic stay had not been willful, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since although the fee collected by the attorney was later found to be excessive, the discrepancy was not so great as to demonstrate that the attorney knew the fee was excessive, or to warrant an award of sanctions against the attorney for willfully violating the automatic stay.

§ 89. Participation in Medicare program precluded

It has been considered whether precluding a Chapter 7 debtor's participation in the Medicare program constituted a willful violation of the automatic stay, such that sanctions could be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

After a Chapter 7 debtor podiatrist moved to hold the United States Department of Health and Human Services (HHS) in contempt for violating the automatic stay after HHS precluded the debtor from participating in the Medicare program for defaulting on her Health Education Assistance Loans, the court in In re Rusnak, 184 B.R. 459, 101 Ed. Law Rep. 941, Bankr. L. Rep. (CCH) ¶ 76633 (Bankr. E.D. Pa. 1995), concluded that the debtor was not entitled to damages because the violation was not willful for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where there was no case law discussing the issue, and HHS had to rely on the complex statutory framework of the Medicare Act and other related statutes when it made its decision. To be willful within the meaning of the statute providing for damages for a willful automatic stay violation, held the court, there need not be a specific intent to violate the stay, but rather, the statute provides for damages upon a finding that the creditor knew of the automatic stay and that the creditor's actions that violated the stay were intentional.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 90. Public sale of collateral

Based on the facts and circumstances, it has been determined whether the public sale of a Chapter 7 debtor's collateral constituted a willful violation of the automatic stay, so that sanctions could be imposed under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

When a trustee brought an action against a creditor, alleging violation of the automatic stay, on cross-motions for summary judgment, the court in In re Omni Graphics, Inc., 119 B.R. 641 (Bankr. E.D. Wis. 1990), decided that the secured creditor's public sale of a Chapter 7 debtor's collateral postpetition was a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the creditor knew of the involuntary petition before the public sale was held and had deliberately acted with knowledge of the bankruptcy petition. The creditor was not a novice, and had taken a calculated gamble in proceeding without first seeking relief from the automatic stay, observed the court, so that its actions constituted an improper exercise of control over property of the estate.

§ 91. Recording of mechanic's lien

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been decided whether the recording of a mechanic's lien against a Chapter 7 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances.

The actions of an individual who had signed under oath a mechanic's lien and a company on whose behalf the lien had been filed constituted a willful, intentional violation of a Chapter 7 trustee's automatic stay, justifying a punitive damage award of $6,000 under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), although the mechanic's lien was released after a motion for contempt was filed, found the court in In re M & J Feed Mill, Inc., 112 B.R. 985, 20 Bankr. Ct. Dec. (CRR) 619 (Bankr. W.D. Mo. 1990), since the lien was recorded knowing that affirmations in the document were false, for the purpose of obstructing the bankruptcy trustee's impending sale of property, and the actions were a continuation of the pattern employed by the individual and related companies of confusing sales and conveyances designed to obstruct creditors, the parties in interest, and the judicial system.

§ 92. Sale of property subject to lien

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), the courts in the following cases decided whether sale of property of a Chapter 7 debtor that was subject to a lien constituted a willful violation of the automatic stay, based on the facts and circumstances.

The court in In re Bennett, 317 B.R. 313 (Bankr. D. Md. 2004), held that a repair shop claiming a mechanic's lien on the Chapter 7 debtor's car for the cost of repair work willfully violated the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, with knowledge of the debtor's Chapter 7 filing, sold the vehicle and retained the sale proceeds.

The court in In re Ozenne, 337 B.R. 214 (B.A.P. 9th Cir. 2006), held that it was clear error for the bankruptcy court to find that, despite its knowledge of the Chapter 7 debtor's filing, a lessor who owned self-storage units where the Chapter 7 debtor's property was stored did not violate the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when it sold the debtor's stored personal property after a default judgment against the debtor for nonpayment of rent. The bankruptcy court had held that the lessor did not willfully violate the automatic stay, finding that California law was unclear as to who owned the property and it also appeared that the lessor held a good-faith belief that the

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

debtor had abandoned the property. The court, on appeal, rejected these findings. The court, after finding that the lessor had received notice of the debtor's bankruptcy filing, found that the lessor's and the bankruptcy court's construction of California law was incorrect and that the debtor retained an ownership interest in the property up until the time it was sold. Furthermore, stated the court, a creditor's good-faith belief that it has a right to the property is irrelevant, as no specific intent is required to willfully violate the automatic stay. The court also noted that the lessor exhibited no concern about the automatic stay, forgoing any attempt to seek relief from the stay. Based on these factors, the court held that the bankruptcy court's finding that the lessor did not willfully violate the automatic stay was clear error and would be reversed.

§ 93. Refusal to release lien

It has been decided, based on the facts and circumstances, whether the refusal to release a lien on a Chapter 7 debtor's property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Ulinski, 317 B.R. 716 (Bankr. E.D. Ky. 2004), held that a creditor's refusal to release a motor vehicle lien that was perfected only after the filing of the Chapter 7 debtor's bankruptcy petition, upon the debtor's request for such a release, did not warrant an award of damages against the creditor for willfully violating the automatic stay, under former 11 U.S.C.A. § 362(h), where the lien's notation on the certificate of title was triggered by the debtor's payment of transfer taxes, and not by any affirmative act by the creditor. The court explained that although the creditor's security interest was invalid due to the fact that it remained unperfected until after the debtor filed for bankruptcy, the creditor was not guilty of willfully violating the automatic stay because the creditor took all the steps necessary to perfect the lien well before the debtor declared bankruptcy, all that remained for perfection to occur was for the debtor to pay the transfer taxes, and perfection was triggered two days after the bankruptcy petition was filed by the debtor's actions in paying the transfer taxes.

§ 94. Refusal to relinquish accounts receivable

[Cumulative Supplement]

In the following cases, courts have determined whether refusal to relinquish a Chapter 7 debtor's accounts receivable constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

In In re U.S. Physicians, 2002 WL 31866247 (E.D. Pa. 2002), where a Chapter 7 trustee brought an adversary proceeding to compel the turnover of property of the estate and to recover damages for doctors' alleged violation of the automatic stay, in refusing to relinquish accounts receivable that they had assigned to the debtor, at the time they sold their practice and entered into a contract to be the debtor's employees, the court determined that the doctors' expending funds properly belonging to the bankruptcy estate was a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). Although the bankruptcy court had concluded that the prohibition did not reach the passive act of possessing the property and that the doctors thus did not violate the automatic stay, the appeals court believed that the doctors' control over the receivables was not passive.

When a Chapter 7 debtor, an interstate carrier, brought an adversary proceeding against a creditor trucker's agent for the agent's alleged violation of the stay, the court in In re Express America, Inc., 132 B.R. 535 (Bankr. W.D. Pa. 1991), found that the agent had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the agent, with knowledge of the debtor's bankruptcy filing, had collected and refused to relinquish accounts receivable that it had previously assigned to the debtor, in exchange for its right to a commission.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

CUMULATIVE SUPPLEMENT

Cases:

While principal of bankrupt debt collector, by causing funds recovered for company's clients, funds in which company had fee interest, to be deposited in his personal bank account, and by in some instances retaining these funds for over a year before remitting them to trustee, may have believed that he was assisting trustee in liquidating estate assets, his conduct, which he engaged in with knowledge of debt collector's Chapter 7 filing, was in nature of "willful" violation of automatic stay, of kind supporting damages award against him. 11 U.S.C.A. § 362(a)(3), (k)(1). In re Arthur B. Adler and Associates, Ltd., 588 B.R. 864 (Bankr. N.D. Ill. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 95. Refusal to restore utility services

The courts in the following cases decided, based on the facts and circumstances of each case, whether the refusal to restore a Chapter 7 debtor's utility services constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Following conversion of a Chapter 13 case to a Chapter 7, debtors brought an adversary proceeding against a telephone company, alleging that the company had willfully violated the automatic stay by disconnecting their telephone service preconversion for nonpayment and by refusing to restore service until payment was made, and the court in In re Smith, 170 B.R. 111 (Bankr. N.D. Ohio 1994), concluded that the telephone company's intentionally disconnecting the debtors' telephone service for nonpayment after receiving notice from the debtor's attorney that the Bankruptcy Code stayed the telephone company's collection activities constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to former 11 U.S.C.A. § 362(h). The court added that the telephone company's purported good-faith reliance upon the advice of in-house counsel in disconnecting the debtors' service after notice of the debtors' bankruptcy filing did not preclude a finding of willful violation of the stay.

Chapter 7 debtors brought an adversary proceeding, seeking the return of money paid to a city, plus attorney's fees, for a willful violation of the automatic stay, and upon the debtors' motion for summary judgment, the court in In re Coons, 123 B.R. 649, 21 Bankr. Ct. Dec. (CRR) 521 (Bankr. N.D. Okla. 1991), determined that a long-distance telephone call from the Chapter 7 debtors' attorney to the creditor city, informing the city's utility supervisor of the debtors' bankruptcy filing, was sufficient notice of the bankruptcy filing, so that the city's subsequent extraction of payment from the debtors of prebankruptcy debts before the city would provide new utility service constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). If a creditor violates the automatic stay without knowledge of the filing of bankruptcy, it is merely a technical violation, explained the court, but where a creditor violates the stay with knowledge of the bankruptcy, it is a willful violation within the meaning of the Bankruptcy Code provision permitting one injured by a willful violation of the stay to recover actual damages.

In In re Tarrant, 190 B.R. 704, Bankr. L. Rep. (CCH) ¶ 76847 (Bankr. S.D. Ga. 1995), where a Chapter 7 debtor sued a city for damages for the city's refusal to immediately restore electrical power to the debtor's residence after being notified of the debtor's bankruptcy filing, the court concluded that the city, in seeking to take advantage of its innocent violation of the law in terminating the utility service of the Chapter 7 debtor before it had knowledge of the pending bankruptcy, by refusing to restore

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

utility service immediately after receiving notice of the bankruptcy, transferred the character of its action into a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 96. Refusal to turn over contract proceeds

The willfulness of a violation of the automatic stay, based on the refusal to turn over a Chapter 7 debtor's contract proceeds, has been considered, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

When a Chapter 7 trustee brought a sanctions motion against a credit union for a willful violation of the automatic stay, the court in In re Cordle, 187 B.R. 1, 27 Bankr. Ct. Dec. (CRR) 1013 (Bankr. N.D. Cal. 1995), determined that the creditor's refusal to turn over to the trustee postpetition proceeds from a security interest in the Chapter 7 debtor's insurance agent appointment contract, pending resolution of any issues concerning the validity of the security interest, constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even though the creditor had received the proceeds postpetition without knowledge of the bankruptcy filing and the creditor was eventually found to be entitled to the proceeds. The creditor's contention that it would have lost the security interest had it turned the disputed proceeds from the security interest in the Chapter 7 debtor's insurance agent appointment contract over to the trustee was unreasonable, and thus, could not protect the creditor from sanctions for willful violation of the automatic stay, held the court, where the creditor had duly perfected its security interest in the appointment contract when the bankruptcy case was filed, and the trustee's counsel stipulated in writing that the creditor's rights would be preserved notwithstanding turnover of the proceeds.

§ 97. Takeover of debtor business

Determination of whether the takeover of a Chapter 7 debtor's business constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been reached, based on the facts and circumstances.

Creditors' attorney had willfully violated the automatic stay as to the property of Chapter 7 debtors' estate by taking over a bar owned by the debtors in the name of the creditors without bankruptcy court approval, even if the debtors had consented, so that sanctions could be imposed against the attorney according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), concluded the court in In re Soll, 181 B.R. 433 (Bankr. D. Ariz. 1995), where the attorney had been clearly aware that the debtors had filed bankruptcy petitions, had not bothered to fully investigate the pleadings filed in the debtors' bankruptcy proceedings, had proceeded without obtaining all the facts regarding various transactions involving promissory notes held by his clients and transactions involving the bar, and had not filed a motion for relief from the stay or for abandonment.

§ 98. Transfer of radio call sign license

Whether the transfer of a Chapter 7 debtor's radio call sign license constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

A Chapter 7 trustee and a purchaser at the trustee's auction of a debtor's Federal Communications Commission (FCC) licenses and permits commenced an adversary proceeding against the former controlling shareholder-officer of the corporate debtor and unauthorized transferees of the debtor's radio call sign license, and the court in Matter of Fugazy Exp., Inc., 124 B.R. 426 (S.D. N.Y. 1991), found that the former controlling shareholder-officer had willfully violated the automatic stay by attempting a postpetition transfer of the radio call sign license to his son, for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), and therefore, a damage award of one third of the trustee's costs and attorney's fees relating to litigation over the radio

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

call sign license was justified. Furthermore, the court determined that the former controlling shareholder-officer's son, on behalf of himself and his employer, had knowingly violated the stay provisions as well, based on the fact that the son was a former officer of the debtor and thus could be found to have actually or constructively known of the bankruptcy and the stay. Moreover, the son had received the license of the debtor in a less than arm's-length transaction with his father, observed the court.

§ 99. Withholding academic transcript

It has been decided, based on the facts and circumstances, whether withholding the academic transcript of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where a Chapter 7 debtor filed a motion for sanctions against a state university for failure to turn over the debtor's academic transcripts, the court in In re Gustafson, 111 B.R. 282, 20 Bankr. Ct. Dec. (CRR) 448, 22 Collier Bankr. Cas. 2d (MB) 741, 59 Ed. Law Rep. 89 (B.A.P. 9th Cir. 1990), decision rev'd on other grounds, 934 F.2d 216, 21 Bankr. Ct. Dec. (CRR) 1251, 24 Collier Bankr. Cas. 2d (MB) 1937, 67 Ed. Law Rep. 1074, Bankr. L. Rep. (CCH) ¶ 73996 (9th Cir. 1991), found that the state university had willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by withholding the transcript unless the debtor reaffirmed his educational loan debt, even if the university's conduct was not malicious.

§ 100. Refusal to allow debtor to register for classes

It has been decided, based on the facts and circumstances, whether refusal to allow a Chapter 7 debtor to register for classes constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Parker, 334 B.R. 529, 204 Ed. Law Rep. 639 (Bankr. D. Mass. 2005), held that a university willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, in an attempt to compel the Chapter 7 debtor to pay her tuition bill, it refused to allow her to register for a class and register for graduation, where the university admitted it was aware of the debtor's bankruptcy and that it intended to bar her from registering for a class and for graduation, at least until it could decide whether to pursue a nondischargeability action. The court noted that this case was comparable to other cases in which a school denied a debtor access to transcripts in order to compel the debtor to pay outstanding debts. In examining such past cases, the court found persuasive the reasoning in In re Cardillo, 172 B.R. 146 (Bankr. N.D. Ga. 1994), a case not in point for this annotation, in which the court held that a nondischargeability judgment does not constitute a "denial of discharge," for the purposes of 11 U.S.C.A. § 362(c)(2)(C), specifying that the automatic stay continues in a Chapter 7 case until such time as a discharge is granted or denied, where a nondischargeability judgment has two parts: a determination of the amount of the debt; and a declaratory judgment that the debt is not subject to discharge, and neither the determination of the amount of the debt nor a declaratory judgment of nondischargeability constitutes relief from the automatic stay. The court in the instant case agreed with *Cardillo* and found that there is no provision in the Bankruptcy Code that suggests that debts declared or presumed nondischargeable are no longer subject to the automatic stay. Accordingly, as the court could discern no reason for the university not to allow the debtor to register for her class other than to compel her to pay her tuition debt, the court held that the university's conduct was a willful violation of the automatic stay.

§ 101. Seeking to perfect security interest

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

It has been decided, based on the facts and circumstances, whether seeking to perfect a security interest on a Chapter 7 debtor's property constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where a credit union granted a loan to the Chapter 7 debtors to refinance an existing automobile loan, intending to take a lien on the automobile to secure the new loan, but erroneously forwarded to the debtors a clean title to the automobile that it had executed to include a release of the first lien, and thereafter the debtors filed for bankruptcy, and the creditor, realizing its mistake, filed an affidavit of loss of title and application for a duplicate title with the state department of motor vehicles and received a duplicate title listing it as a lienholder, the court in In re McGrath, 2005 WL 1030424 (Bankr. D. Vt. 2005), held that the creditor had committed a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor had notice of the debtors' bankruptcy filing prior to its attempt to perfect its lien when it was served with a notice of the debtor's bankruptcy petition along with schedules listing it as a general unsecured creditor.

§ 102. Refusal to do business with debtor

It has been decided, based on the facts and circumstances, whether the refusal to continue doing business with a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

In McCready v. eBay, Inc., 51 Collier Bankr. Cas. 2d (MB) 1586, 2004 WL 626142 (N.D. Ill. 2004), the court held that an online auction website's refusal to allow the Chapter 7 debtor to engage in selling goods on its website until the website operators received notification from several buyers of the debtor's goods that the debtor had satisfactorily resolved their complaints of fraud and nondelivery of the goods did not violate the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A § 362(h). According to the court, the debtor had signed a user agreement with the website at the time he opened his account, which gave the website operators the right to terminate his user privileges in the event he was accused of fraudulent activity, such as if buyers complained of nondelivery of goods paid for or receipt of goods of a lesser quality than what the debtor had advertised on the site. The court explained that the website retained discretion, by virtue of the user agreement, to terminate a user's right to buy and sell on the site, and that the exercise of this discretion was not the initiation of a proceeding against the debtor or an attempt to collect a debt. According to the court, the website's communications with the debtor never demanded that the debtor pay anyone and did not threaten adverse legal action against the debtor if he failed to do so. Rather, opined the court, the website's communications merely warned that the website would refuse to deal with the debtor in the future if buyers' fraud complaints against the debtor were not satisfactorily resolved.

§ 103. Entering into insurance settlement agreement with debtor

Whether entering into an insurance settlement agreement with a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where a Chapter 7 trustee sued an insurance company that entered into a settlement agreement with the debtor on the debtor's personal injury claim after the debtor had filed for bankruptcy, the court in In re Huebbe, 56 Collier Bankr. Cas. 2d (MB) 1397, 2006 WL 3000132 (Bankr. N.D. Iowa 2006), held that the trustee was entitled to damages under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), for the insurance company's willful violation of the automatic stay. When the debtor declared bankruptcy, she failed to include her personal injury claim on her schedules. When the trustee learned about the debtor's claim, he sent a letter to the insurance company notifying it of the debtor's bankruptcy. Later, when the debtor contacted the insurance company to inquire about a personal injury settlement, she mentioned that she was going through a bankruptcy and needed to know the amount of

Exhibit 3

her settlement. In response to the debtor's inquiries, the insurance company entered into a settlement agreement with the debtor in which she was paid $1,412.20. After successfully voiding the settlement agreement as a violation of the automatic stay, the trustee filed a motion seeking damages under former 11 U.S.C.A. § 362(h) for the insurance company's stay violation. The court held that the insurance company clearly had actual notice of the debtor's bankruptcy, and, as such, was under an obligation to forward any property held on behalf of the debtor directly to the trustee. Due to the insurance company's stay violation, the court awarded damages to the trustee in an amount compensating the trustee for expenses spent resolving the matter.

§ 104. Sale of note subject to repurchase agreement

Whether selling a promissory note subject to a prepetition repurchase agreement with a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where the Chapter 7 debtor sold a printing press to a buyer and the buyer issued a promissory note payable to the debtor, the promissory note was sold to a bank, the bank entered into a repurchase agreement with the debtor-seller, the debtor-seller filed for bankruptcy, and the bank, with knowledge of the debtor's bankruptcy filing and concerned that it would recoup only pennies on the dollar of the $1,425,495.12 still owing under the repurchase agreement, sold the note for $1.1 million to a subsidiary of the buyer, the court in In re GGSI Liquidation Inc., 351 B.R. 529, 60 U.C.C. Rep. Serv. 2d 1133 (Bankr. N.D. Ill. 2006), opinion amended, 355 B.R. 691 (Bankr. N.D. Ill. 2006), held that the bank willfully violated the automatic stay by selling the note and thereby impairing the debtor-seller's rights against the buyer and the debtor's ability to collect the $2.7 million that the buyer had agreed to pay for the release of the debtor-seller's interest in the sold equipment, even though the bank's agents may have believed that they were simply exercising the bank's ownership interest in the note. After concluding that the bankruptcy estate had an interest in the note by virtue of the over $5 million in payments it had already made under the repurchase agreement, the court further concluded that the bank's sale of the note impaired the debtor-seller's interest in the note by selling it to a subsidiary of the original maker, thereby impairing any action the debtor-seller might have against the maker. The court, in finding that a willful violation occurred, explained that a good-faith claim of ownership of all rights in the property at issue is irrelevant in determining whether a willful violation occurred.

Comment

Amending its original order in In re GGSI Liquidation Inc., 351 B.R. 529, 60 U.C.C. Rep. Serv. 2d 1133 (Bankr. N.D. Ill. 2006), opinion amended, 355 B.R. 691 (Bankr. N.D. Ill. 2006), the court in In re GGSI Liquidation Inc., 355 B.R. 691 (Bankr. N.D. Ill. 2006), held that liability for the willful stay violation was not limited solely to the bank, but extended to the foreign subsidiary company that, with knowledge of debtor-seller's bankruptcy filing, collaborated with the bank in impairing the debtor's interest in the note and that the foreign company was jointly and severally liable for any damages assessed against the bank for the stay violation.

§ 105. Offsetting money owed to debtor against prepetition debt—Willful violation found

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Based on the facts and circumstances, it has been determined that a creditor's offsetting monies owed to the Chapter 7 debtor against a prepetition debt owed to the creditor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Radcliffe, 372 B.R. 401 (Bankr. N.D. Ind. 2007), held that a pension fund willfully violated the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, 11 U.S.C.A § 362(k)(1), when it offset monthly pension benefits it owed to the Chapter 7 debtor against the debtor's prepetition guaranty of an obligation that was owed to the pension fund by the company for which the debtor was a principal, where the pension fund both had notice of the bankruptcy case and acted in an arrogant manner by not taking immediate affirmative action to justify its conduct by obtaining stay relief.

§ 106. Offsetting money owed to debtor against prepetition debt—Willful violation not found

Based on the facts and circumstances, it has been determined that a creditor's offsetting monies owed to the Chapter 7 debtor against a prepetition debt owed to the creditor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where the Social Security Administration (SSA) set off prepetition overpayments of disability benefits paid to the Chapter 7 debtor on behalf of her disabled child, the court in In re Bailey, 2007 WL 2049007 (Bankr. S.D. N.Y. 2007), held that the SSA did not commit a violation of the automatic stay, as the SSA never asserted a claim against the debtor, who was acting in a representative capacity in accepting benefits on behalf of her minor child.

Comment

See also § 6, in which the court held that sending the debtor a collection letter for the purpose of recouping overpayments made on behalf of another of the debtor's disabled children who had died amounted to a willful violation of the automatic stay.

2. Legal Action

a. Procedural Proceedings

§ 107. Filing action on behalf of debtor

[Cumulative Supplement]

Based on the facts and circumstances, it has been determined whether filing an action on behalf of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Sanctions were properly assessed to cover damages incurred by a Chapter 7 trustee, concluded the court in In re Atlas, 222 B.R. 656 (S.D. Fla. 1998), where an attorney for the debtors' pension and profit sharing plans had willfully violated the automatic stay, for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by filing, without seeking leave of the bankruptcy

Exhibit 3

court, an action on behalf of the debtors to enjoin the trustee from prosecuting her motion objecting to the debtors' claim of exemption, since the debtors' interest in the pension plans claimed as exempt was listed as estate property in the bankruptcy schedules, and the court action to enjoin the trustee from obtaining that property or from litigating over the claimed exemption as to that property fell within the prohibition against actions to obtain possession of or exercise control over estate property.

CUMULATIVE SUPPLEMENT

Cases:

That Chapter 7 debtor's owner, by amending his state court complaint to eliminate claims that belonged to debtor and that were included in property of the estate, had allegedly eliminated any stay violation did not prevent bankruptcy court from holding him in contempt and imposing sanctions in compensation for attorney fees and costs incurred by Chapter 7 trustee due to the filing of original complaint. In re Nicole Gas Production, Ltd., 502 B.R. 508 (Bankr. S.D. Ohio 2013).

[Top of Section]

[END OF SUPPLEMENT]

§ 108. Filing motion to release settlement proceeds

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been decided whether violation of the automatic stay by filing a motion to release a Chapter 7 debtor's settlement proceeds was willful, based on the facts and circumstances.

After a Chapter 7 trustee filed an adversary proceeding against former counsel for debtors in a legal malpractice action, asserting a claim for the settlement proceeds and requesting damages for counsel's violations of the automatic stay, the court in In re Pace, 67 F.3d 187, 34 Collier Bankr. Cas. 2d (MB) 557, Bankr. L. Rep. (CCH) ¶ 76680 (9th Cir. 1995), amended, (Oct. 11, 1995), concluded that counsel for the Chapter 7 debtors had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by filing motions in state court to release the settlement proceeds in the debtors' legal malpractice action and to allocate the settlement proceeds, permit allocation by jury, or dissolve the settlement agreement, where counsel's conduct involved knowingly concealing assets of the estate, prosecuting the claim without the permission of the bankruptcy trustees, misleading the state court as to the bankruptcy law, and attempting to circumvent the jurisdiction of the bankruptcy court.

§ 109. Filing petition for certiorari

It has been determined whether filing a petition for certiorari in an action brought against a Chapter 7 debtor constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

A creditor's attorney in a state court libel action had willfully violated the automatic stay, and subjected the creditor to an award of sanctions pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), determined the court in In re Banderas, 236 B.R. 841 (Bankr. M.D. Fla. 1999), when with knowledge of the debtor's Chapter 7 bankruptcy, the creditor's attorney had filed a petition for certiorari from a trial court's order granting summary judgment to the debtor on the creditor's claim for an award of monetary damages based on alleged prepetition libel. The creditor was liable for the actions of its attorneys in alleged willful

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

violation of the automatic stay, held the court, even in the absence of any evidence that the creditor had authorized or consented to these violations.

§ 110. Continuation of proceedings

[Cumulative Supplement]

The willfulness of a violation of the automatic stay, based on continuing proceedings against a Chapter 7 debtor, was considered by the courts in the following cases, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Default judgment was entered in state court against a debtor charged with malicious prosecution, and on appeal from the bankruptcy court's dismissal of the debtor's claim that the state court judge had violated the automatic stay, the court in Salem v. Paroli, 260 B.R. 246 (S.D. N.Y. 2001), judgment aff'd on other grounds, 79 Fed. Appx. 455 (2d Cir. 2003), concluded that the state court judge's postpetition continuation of proceedings against the judgment debtor, who had apparently filed for bankruptcy under Chapter 7, in violation of the automatic stay, based on the misunderstanding that the judge needed evidence that the bankruptcy court had issued a stay, was neither willful nor malicious, for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the judge had taken active steps to stop the proceeding upon receiving formal notice of the debtor's bankruptcy petition.

The court in In re Emmons, 349 B.R. 780 (Bankr. W.D. Mo. 2006), held that the Chapter 7 debtor's former wife did not willfully violate the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by continuing to pursue state court proceedings to enforce the debtor's child support obligations after a default judgment was entered against her in an adversary proceeding in the bankruptcy court determining that the disputed support obligations were dischargeable, given the debtor's failure to mitigate damages by informing his former wife of the default judgment and given the former wife's immediate attempt to rectify her violation of the automatic stay by discontinuing her efforts to enforce the discharged obligations upon learning of the default judgment. The court explained that the debtor was not entitled to damages for his former wife's stay violation due to the fact that he apparently purposely kept the existence of the default judgment a secret from his former wife and the state court, and decided instead to lie in wait until he received his order of discharge and then use it to quash his former wife's attempts to enforce his obligation to pay postpetition college tuition and hold her in contempt for violating a default judgment she had never seen.

CUMULATIVE SUPPLEMENT

Cases:

Bankruptcy court did not clearly err in finding that judgment creditor's violation of automatic stay, in failing to take steps to cancel status hearing on its debtor's interrogatories, or to discontinue interrogatories, after being advised of judgment debtor's Chapter 7 filing, was "willful" violation, given that, as result of this advisement, it had actual knowledge of stay at time violations occurred. 11 U.S.C.A. § 362(k). Skillforce, Inc. v. Hafer, 509 B.R. 523 (E.D. Va. 2014).

[Top of Section]

[END OF SUPPLEMENT]

§ 111. Bringing citation action

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

It has been determined whether bringing a citation action against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

In In re Betts, 165 B.R. 233 (Bankr. N.D. Ill. 1994), where a pro se Chapter 7 debtor attorney alleged that various beneficiaries of a probate estate had violated the automatic stay by bringing a citation action against the debtor to discover assets in the estate, the court rejected the debtor's argument that the beneficiaries' actions in connection with the citation proceedings were willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). None of the beneficiaries were scheduled creditors or listed claimants, and none received notice of the bankruptcy case when it was filed, explained the court.

§ 112. Request to conduct Fed. R. Bankr. P. 2004 examination

Whether requesting a Fed. R. Bankr. P. 2004 examination of a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

By filing a request to conduct a Fed. R. Bankr. P. 2004 examination of a Chapter 7 debtor in a corporate bankruptcy case pending in another state, a law firm did not willfully violate the automatic stay in the debtor's personal Chapter 7 case pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Carlson, 265 B.R. 346, 38 Bankr. Ct. Dec. (CRR) 63 (Bankr. D. R.I. 2001), where the requested Fed. R. Bankr. P. 2004 examination was not an action against the debtor, but was a discovery proceeding in the bankruptcy case of the company of which the debtor was the majority shareholder and president, the debtor clearly was an appropriate person to be examined in the company's case, and the allegation that the firm sought the examination in the other state merely to harass and cause the debtor unnecessary expense was not supported by the evidence.

§ 113. Pursuit of contempt proceedings—Willful violation found

[Cumulative Supplement]

Violation of the automatic stay by pursuing contempt proceedings against a Chapter 7 debtor was willful, and thus, sanctions could be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have found, based on the facts and circumstances of each case.

Because a creditor had proceeded with state court contempt proceedings with knowledge of a Chapter 7 judgment debtor's bankruptcy case, the creditor had willfully violated the automatic stay, and was liable for any damages sustained by the debtor as a result pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), concluded the court in In re Benalcazar, 283 B.R. 514 (Bankr. N.D. Ill. 2002), notwithstanding that the creditor believed in good faith that its actions came within an exception to the stay and had no intent to violate the Bankruptcy Code. Any deliberate violation of the automatic stay by a creditor, undertaken with knowledge of the debtor's bankruptcy, is sufficient to establish a willful violation of the stay without need to show that the creditor was subjectively aware of the applicable law or intended to violate it, held the court.

A creditor had willfully violated the automatic stay of a Chapter 7 debtor, and thus, subjected itself to sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), decided the court in In re Smith, 180 B.R. 311 (Bankr. N.D. Ga. 1995), by failing to take any action to undo a contempt order that it had obtained without knowledge of the debtor's bankruptcy filing, after it had received adequate notice of the debtor's Chapter 7 case. After the creditor learned of the debtor's bankruptcy, it had filed no motion to vacate the contempt order, had failed to contact the state court that issued the order to inform the court of the debtor's pending bankruptcy, and had failed to join in the debtor's motion to vacate or even to respond to the debtor's motion until

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

after the debtor had been arrested, observed the court. The mere fact that the creditor may not have been aware that the contempt order was still outstanding at the time it received adequate actual notice of the debtor's pending Chapter 7 case did not insulate the creditor from liability for willfully violating the stay in failing to take steps to undo the contempt order, noted the court, where the creditor did not claim to have made any inquiry about the status of the order. The court held that a creditor's failure to take affirmative action to undo an innocent violation of the automatic stay, at a time when the creditor lacked knowledge of a debtor's bankruptcy filing, may itself constitute a willful stay violation, such as will subject the creditor to sanctions.

CUMULATIVE SUPPLEMENT

Cases:

Violation of automatic stay by attorney for Chapter 7 debtor's ex-wife, in continuing to prosecute state court proceeding to hold debtor in contempt for not paying attorney fees awarded by state court even after attorney learned of debtor's bankruptcy filing, was in nature of willful stay violation, though attorney mistakenly believed that his actions came within stay exception for actions to collect domestic support obligations from property not included in bankruptcy estate. 11 U.S.C.A. § 362(b)(2)(B), (k). In re Grinspan, 597 B.R. 725 (Bankr. E.D. N.Y. 2019).

[Top of Section]

[END OF SUPPLEMENT]

§ 114. Pursuit of contempt proceedings—Willful violation not found

Pursuing contempt proceedings against a Chapter 7 debtor did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), the courts in the following cases concluded, based on the facts and circumstances of each case.

In a Chapter 7 case filed by an association of churches, where a local church filed a motion to lift the automatic stay, the debtor association filed a motion to hold the vice chancellor of the state court and the local church in civil contempt for violating the stay, the debtor association filed a motion to enforce the stay, the debtor's controlling person filed a motion to hold the vice chancellor, church, and counsel in contempt for violating the stay, and the controlling person filed a motion to enforce the stay or for an order staying acts against the controlling person, the court in In re Conference of African Union First Colored Methodist Protestant Church, 184 B.R. 207 (Bankr. D. Del. 1995), found that the conduct of the local church and its counsel in arguing for, and the state court vice chancellor in allowing, contempt motions to proceed against the controlling person of the Chapter 7 debtor association of churches did not implicate the automatic stay, and, thus, such conduct could not result in willful violations of the stay under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), even if the consequence of having the contempt proceeding go forward might result in personal liability for the controlling person and might even trigger a claim by the controlling person against the debtor. Even if the local church and its counsel, along with the vice chancellor of the state court, came to the wrong conclusion regarding the nonapplicability of the automatic stay to the contempt proceeding against the parties other than the Chapter 7 debtor, added the court, they still were not liable for a willful violation of the automatic stay, since they had persuasive legal authority for their position.

Moving for an award of sanctions for a judgment creditor's alleged willful violations of the automatic stay, a Chapter 7 debtor brought an adversary proceeding, and the court in In re Banderas, 236 B.R. 841 (Bankr. M.D. Fla. 1999), concluded that the creditor had not engaged in any willful violation of the automatic stay, of the kind that would warrant an award of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), when, having been granted relief from the stay for the purpose of pursuing an in rem action against the debtor's property, the creditor had filed a motion for contempt, seeking a monetary award against

Exhibit 3

the debtor personally, where the creditor did not seek to collect a prepetition debt, but to sanction the debtor for postpetition conduct that clearly was not within the scope of the stay. Furthermore, found the court, the creditor had not willfully violated the automatic stay by seeking an expedited hearing and award of attorney's fees against the Chapter 7 debtor's spouse, since the debtor's spouse, as a nondebtor, was not protected by the automatic stay from a motion to recover for her alleged contempt.

§ 115. Failure to vacate writ of execution—Generally

In the following cases, courts have decided whether failing to vacate a writ of execution against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

When a judgment creditor brought an adversary proceeding objecting to a Chapter 7 debtor's discharge, the debtor filed a counterclaim, alleging that the creditor had violated the automatic stay, and the court in In re Outlaw, 66 B.R. 413 (Bankr. E.D. N.C. 1986), concluded that the judgment creditor's failure to notify the sheriff to stop the execution process once the creditor had learned of the filing of the Chapter 7 bankruptcy petition constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), despite the creditor's claim that he thought the sheriff would be notified by the bankruptcy court. As a result of the creditor's failure to notify the sheriff's department that they should not execute on his default judgment against the debtor because of the pending bankruptcy, the debtor went through the distressing experience of having a deputy sheriff appear at her door demanding that she pay the state court judgment, observed the court.

A creditor that, immediately after it had obtained relief from the automatic stay, caused a writ of execution to be issued against a Chapter 7 debtor's property during the 10-day period when enforcement or implementation of the stay relief order was temporarily stayed, and that further, upon being notified of the 10-day stay on enforcement of the order, instructed law enforcement officers executing on the writ to desist, but without taking any steps to have the writ vacated, found the court in In re Banks, 253 B.R. 25 (Bankr. E.D. Mich. 2000), was liable for any damages that the debtor sustained when, as a result of the creditor's failure to vacate the writ, the officers had returned and executed upon the debtor's property prior to the expiration of this 10-day waiting period, since the creditor's inaction, in failing to vacate the writ, rose to the level of a willful violation of stay, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 116. Failure to vacate writ of execution—Failure to return seized property

The willfulness of a violation of the automatic stay, based on failing to return property seized pursuant to a writ of execution issued against a Chapter 7 debtor, has been decided, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

A county sheriff who had lawfully seized a Chapter 7 debtor's automobile prepetition, pursuant to a writ of execution that the debtor had never requested that the creditor quash, did not exercise control over property of the estate in willful violation of the automatic stay, as required to impose sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), simply because, when the debtor notified the sheriff of his bankruptcy filing and demanded that the sheriff return the automobile to the debtor, the sheriff did not comply with the debtor's demand, but advised the debtor of the necessity of paying the towing and other charges of the private company on whose lot the vehicle was being stored, decided the court in In re Westman, 300 B.R. 338, 51 Collier Bankr. Cas. 2d (MB) 333, Bankr. L. Rep. (CCH) ¶ 80002 (Bankr. D. Minn. 2003), since even if the sheriff had wanted to deliver the vehicle, he could not have effectuated delivery without satisfaction of the towing company's lien, and would, moreover, have been required to make delivery to the trustee, not to the debtor.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 117. Provoking criminal prosecution

[Cumulative Supplement]

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have determined whether provoking the criminal prosecution of a Chapter 7 debtor constituted a willful violation of the automatic stay, based on the facts and circumstances of each case.

The conduct of a creditor in pursuing criminal charges against a Chapter 7 debtor for allegedly passing a bad check was not a violation of the automatic stay, for the purpose of imposing sanctions under the Bankrutpcy Code, former 11 U.S.C.A. § 362(h), held the court in In re Yost, 2007 WL 184674 (Bankr. N.D. Ohio 2007), where 11 U.S.C.A. § 362(b)(1) expressly excepted from the stay "commencement or continuation of a criminal action or proceeding against the debtor," and the court found that the creditor's motivation for pursuing criminal charges against the debtor appeared to be a desire to see the debtor punished for her conduct rather than an attempt to collect a debt.

Where a Chapter 7 debtor obtained a prepetition short-term loan from a creditor, tendered a postdated check as security for the loan, failed to pay the loan back when due, and the creditor attempted to negotiate the check, which was returned for insufficient funds, resulting in the creditor pursuing criminal bad check charges against the debtor, the court In re Dorsey, 373 B.R. 528 (Bankr. N.D. Ohio 2007), found that the creditor did not violate the automatic stay, for the purpose of imposing sanctions under the Bankrutpcy Code, 11 U.S.C.A. § 362(k)(1), where 11 U.S.C.A. § 362(b)(1) expressly excepted from the stay "commencement or continuation of a criminal action or proceeding against the debtor," and the court found that the creditor's motivation for pursuing criminal charges against the debtor did not appear to be an attempt to collect a debt.

Following a discharged Chapter 7 debtor's bringing an action against a creditor for violation of the automatic stay, the court in In re Williamson-Blackmon, 145 B.R. 18 (Bankr. N.D. Ohio 1992), concluded that the fact that the creditor, which had filed a prepetition criminal complaint against the debtor, had given the police the debtor's new address postpetition, did not give rise to a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditor had ceased collection efforts upon receiving notice of the bankruptcy filing, and could properly supply information in response to the police request. The automatic stay provision, 11 U.S.C.A. § 362(a), does not prohibit the commencement or continuation of a criminal action or proceeding against the debtor, noted the court. However, it is well established that a creditor is not permitted to utilize a criminal prosecution as a means of avoiding the automatic and injunctive stay provisions of the Bankruptcy Code in an effort to continue to collect on a claim owed by the debtor, added the court.

The conduct of a creditor and the creditor's attorney, in provoking and assisting the criminal prosecution of a debtor who had apparently filed for bankruptcy under Chapter 7, was not a violation of the automatic stay, determined the court in In re Kavoosi, 55 B.R. 120 (Bankr. S.D. Fla. 1985), and thus, the creditor and its attorney had not willfully violated the stay so as to allow the debtor to recover actual and punitive damages, as well as attorney's fees, under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

CUMULATIVE SUPPLEMENT

Cases:

Creditor's violation of the automatic stay, which occurred when its office manager contacted prosecutor and police about Chapter 7 debtor-general contractor's unpaid debt for concrete work, was "willful" where office manager acknowledged that he had received notice that debtor had filed a Chapter 7 petition and, with knowledge of debtor's bankruptcy filing, he deliberately

Exhibit 3

contacted the police to report debtor's crime, intending to collect a dischargeable debt. 11 U.S.C.A. § 362(k). In re Pearce, 400 B.R. 126 (Bankr. N.D. Iowa 2009).

[Top of Section]

[END OF SUPPLEMENT]

§ 118. Arrest warrant enforcement—Generally

Whether the enforcement of an arrest warrant against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where a debtor entered a prepetition plea of nolo contendere to a criminal charge of obtaining money under false pretenses and, as a condition of deferred sentence, was ordered to pay restitution, then an arrest warrant was issued when the debtor failed to pay restitution, and the debtor subsequently filed a Chapter 7 petition, but when the debtor appeared in state court to request that the arrest warrant be withdrawn, he had been detained, ordered to pay bail in the exact amount of the restitution, and directed to appear at a probation violation hearing, the court in In re Barboza, 211 B.R. 450, 31 Bankr. Ct. Dec. (CRR) 331 (Bankr. D. R.I. 1997), determined that by pursuing the postpetition collection action against the debtor, the state and/or creditor had technically engaged in a willful violation of the automatic stay, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 119. Arrest warrant enforcement—Failure to quash warrant—Willful violation found

Failure to quash a warrant for a Chapter 7 debtor's arrest constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), the courts in the following cases found, based on the facts and circumstances.

Judgment creditors who, prior to the start of a debtor's Chapter 7 case, had obtained an outstanding warrant for the debtor's arrest, based on his failure to appear at a proceeding supplementary to the enforcement of the judgment, had an affirmative obligation, once the debtor had filed for bankruptcy and the creditors had learned of the bankruptcy case, to take steps to ensure that this outstanding arrest warrant was not enforced, determined the court in In re Siskin, 231 B.R. 514 (Bankr. E.D. N.Y. 1999), and in failing to take any steps to see that the arrest warrant was not enforced, and in actually opposing the debtor's efforts to have the arrest warrant stayed, the judgment creditors had willfully violated the automatic stay and were liable for any resulting damages to the debtor under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The bankruptcy court did not have to determine precisely when the creditors first became aware of the debtor's Chapter 7 filing, added the court, where the creditors were admittedly aware of the debtor's bankruptcy before a certain date, and where all of their alleged violations of the stay occurred subsequent to that date.

The court in In re Daniels, 316 B.R. 342 (Bankr. D. Idaho 2004), held that a creditor that, after being notified of the debtor's Chapter 7 filing, refused to take any steps to quash an arrest warrant that it had obtained as part of its postjudgment collection efforts, and insisted that it was up to the debtor to seek such relief from the state court that issued the warrant, committed a willful violation of the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), notwithstanding that it might have acted in reliance on the advice of counsel. The court further held that the actions of the creditor's counsel in choosing not to co-operate with the debtor's bankruptcy counsel in obtaining an order quashing the arrest warrant, in counsel's mistaken belief that the creditor was under no obligation to undo the collection process it had lawfully initiated prepetition, was also a willful violation of the automatic stay.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

§ 120. Arrest warrant enforcement—Failure to quash warrant—Willful violation not found

Violation of the automatic stay by failing to quash a warrant for a Chapter 7 debtor's arrest was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have concluded, based on the facts and circumstances of each case.

In In re Hart, 2003 WL 1193700 (Bankr. C.D. Ill. 2003), a Chapter 7 debtor brought a motion to compel compliance with the automatic stay and a motion for sanctions based on a creditor's failure to quash a bench warrant that was issued following the filing of the debtor's Chapter 7 bankruptcy, and the court concluded that although it was clear that a creditor had an affirmative duty to seek withdrawal or to quash any bench warrants in an underlying state court proceeding following the filing of a Chapter 7 bankruptcy petition, the creditor's violation of the automatic stay was not willful, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). There was evidence that, after receiving notice of the debtor's bankruptcy filing, the creditor, through its attorneys, had sought to have the bench warrant quashed, explained the court, and unfortunately, for some unexplained reason, the warrant had not been quashed and the debtor had subsequently been arrested.

When a Chapter 7 debtor filed an adversary proceeding against creditors' attorney and law firm, alleging willful violation of the automatic stay, the court in In re Atkins, 176 B.R. 998 (Bankr. D. Minn. 1994), determined that the failure of the judgment creditors' attorney to see that the bench warrant for the debtor's arrest was withdrawn did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the attorney's infraction was an omission rather than an active commission, and when the attorney had received the clerk's notice of the debtor's bankruptcy case, he had simply forgotten that the bench warrant was outstanding. The uncontroverted facts showed that the attorney had acted negligently and not intentionally, believed the court.

§ 121. Seeking appointment of receiver

Whether a creditor's seeking the appointment of a receiver for a Chapter 7 debtor's assets constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

Where following the bankruptcy court's denial of a judgment creditor's motion to dismiss the debtor's Chapter 11 case, the district court reversed the bankruptcy court's order and entered an order granting the motion to dismiss, and, later that day counsel for the creditor sought the appointment of a receiver for the debtor's property from a Michigan bankruptcy court, and the next day the debtor converted his original Chapter 11 case to Chapter 7, and the Michigan court then entered an ex parte order appointing the receiver, the court in In re Adell, 328 B.R. 845 (Bankr. M.D. Fla. 2005), held that the creditor's counsel willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the district court's mere entry of an order granting the motion to dismiss did not have the effect of dismissing the case, and counsel, as an expert bankruptcy attorney, should have been aware that the original case was never dismissed.

§ 122. Demand that debtor submit to postpetition examination under oath

Whether a creditor's demand that a Chapter 7 debtor submit to a postpetition examination under oath constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been considered, based on the facts and circumstances.

The court in In re Lyckberg, 310 B.R. 881 (Bankr. N.D. Ill. 2004), held that the homeowners' insurer of the Chapter 7 debtor willfully violated the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11

Exhibit 3

U.S.C.A. § 362(h), by issuing a demand to the debtor-insured, who had previously filed a claim under the policy for the alleged theft of personal property from his home, requiring him to submit to a postpetition examination under other, where the examination under oath was clearly a "proceeding against the debtor," as defined in 11 U.S.C.A. § 362(a)(1), to assess the insurer's allegation that the debtor had staged the theft to make a phony insurance claim.

§ 123. Service of summons and complaint on debtor

[Cumulative Supplement]

A determination of whether service of a summons and complaint on a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been reached, based on the facts and circumstances.

The court in In re Kinsey, 349 B.R. 48 (Bankr. D. Idaho 2006), held that the service of a summons and complaint on the Chapter 7 debtor by a professional process server that was acting as the creditor's agent at the time of service, four days after the creditor had received notice of the debtor's bankruptcy filing, was a willful violation of the automatic stay, such as might subject the creditor to a damages award under former 11 U.S.C.A. § 362(h), even though the creditor, after receiving notice of the debtor's bankruptcy filing, had contacted the process server's president, informed him of the bankruptcy case, and attempted, unsuccessfully, to retrieve the summons and complaint before they were served. The court noted that the fact that the creditor and the process server both had policies in place to ensure that bankruptcy stays were not violated but that the service occurred by accident was irrelevant, as the policies failed to work in this case. The court found that, although the creditor's conduct was not egregious, the creditor's actions did constitute a willful violation of the automatic stay.

CUMULATIVE SUPPLEMENT

Cases:

Every act taken by lender after it received telephone call from Chapter 7 debtor, notifying it of debtors' bankruptcy filing, was a "willful" violation of the automatic stay, including the following: filing of state-court lawsuit against debtor and its service by certified mail, process server's visit to debtors' home, and process server's visit to debtors' dental practice. 11 U.S.C.A. § 362(a, k). In re Bilfield, 494 B.R. 292 (Bankr. N.D. Ohio 2013).

[Top of Section]

[END OF SUPPLEMENT]

b. Substantive Proceedings

§ 124. Abuse of process claim

A determination of whether filing an abuse of process claim against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), has been reached, based on the facts and circumstances.

Since no relief had been granted from the automatic stay when a creditor filed an abuse of process claim against a Chapter 7 debtor, the court in In re Fox, 1989 WL 112790 (Bankr. E.D. Pa. 1989), found that the creditor had willfully violated the stay,

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court reasoned that the action against the debtor was a thinly veiled collateral attack on the bankruptcy court proceedings, and that the debtor should not have been subject to suit for pursuing a bankruptcy. The actions of the creditor were willful, sufficiently blatant, and characterized by repetition, concluded the court.

§ 125. Breach of fiduciary duty claim

For the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been determined whether violation of the automatic stay by bringing a breach of fiduciary duty claim against a Chapter 7 debtor was willful, based on the facts and circumstances.

Since creditors apparently believed, in good faith, that the automatic stay provision did not apply to their breach of fiduciary duty claim against Chapter 7 debtors, and the creditors did not know the stay was in effect, the court in Eskenazi v. Klein, 1995 WL 362460 (E.D. N.Y. 1995), decided that the creditor's motion for summary judgment on this claim was not filed in willful violation of the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

§ 126. Breach of promissory note claim

Based on the facts and circumstances, it has been decided whether pursuing a breach of a promissory note action against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

In Eskenazi v. Klein, 1995 WL 362460 (E.D. N.Y. 1995), where creditors residing in California brought a diversity action against Chapter 7 debtors residing in New York, as well as two sole proprietorships owned by the debtors, alleging breach of a promissory note, the court found that the creditors had not willfully violated the automatic stay, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), because the creditors apparently believed, in good faith, that the automatic stay provision did not apply to their claims against the debtors, the creditors did not know the stay was in effect, and their motion for summary judgment was not filed in willful violation of that stay, so that sanctions were not appropriate.

§ 127. Creation of constructive trust claim

It has been determined whether bringing a creation of constructive trust claim against a Chapter 7 debtor constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

Where creditors residing in California brought a diversity action against Chapter 7 debtors residing in New York, as well as two sole proprietorships owned by the debtors, alleging the creation of a constructive trust, the court in Eskenazi v. Klein, 1995 WL 362460 (E.D. N.Y. 1995), concluded that the creditor's motion for summary judgment on this claim was not filed in willful violation of the stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), because the creditors apparently believed, in good faith, that the automatic stay provision did not apply to their breach of fiduciary duty claim against the Chapter 7 debtors, and the creditors did not know the stay was in effect.

§ 128. Divorce judgment enforcement—Willful violation found

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

The courts in the following cases found, based on the facts and circumstances of each case, that proceeding with divorce judgment enforcement against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Weisberg, 218 B.R. 740 (Bankr. E.D. Pa. 1998), decided that where a Chapter 7 debtor brought an adversary proceeding for an award of sanctions against a law firm that had represented the debtor's ex-wife in their state court divorce action, based on the law firm's alleged violations of the automatic stay, the totality of the law firm's actions, including attempting to take numerous actions against the debtor after he had filed his bankruptcy petition without first obtaining relief from the automatic stay, led the court to the conclusion that the law firm's actions were repeatedly in willful contravention of the automatic stay in the worst sense, so that sanctions could be imposed under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The court observed that the law firm's conduct was rendered particularly egregious by the fact that the court had specifically advised the firm against any further actions when its initial conduct was first brought to the court's attention, and despite personal assurances to the contrary, the law firm had nevertheless proceeded to ignore the pronouncements of the court and had continued to pursue its claims against the debtor in various state courts. Although 11 U.S.C.A. § 362(b)(2)(B) would have generally permitted the spouse of a Chapter 7 debtor to collect support from the debtor's postpetition earnings, acknowledged the court, the debtor had little or no earnings and the law firm made no effort to collect from any earnings.

A former husband who was a Chapter 7 debtor brought a contempt action against his former wife and her attorney, based on their pursuit of a motion filed with the state court, seeking to hold the debtor in contempt for the nonpayment of certain liabilities arising out of the divorce proceeding, and the court in In re Sermersheim, 97 B.R. 885 (Bankr. N.D. Ohio 1989), concluded that the debtor's former wife and her attorney had violated the stay by requesting the state court to hold the debtor in contempt for the nonpayment of liabilities arising out of the divorce proceeding when the former wife and attorney had received notice of the debtor's bankruptcy petition, and the debtor was therefore entitled to recover damages resulting from the willful violation of the stay, pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Since a Chapter 7 debtor's former wife was properly listed as a creditor at the time the debtor's bankruptcy petition was filed, the debtor's former wife had received notice of the bankruptcy, and had been directly advised by one or more attorneys that her actions in seeking a contempt order for the debtor's refusal to pay the parties' second mortgage pursuant to the divorce decree were in violation of the bankruptcy court's automatic stay provisions, the court in Matter of Brock, 58 B.R. 797, 14 Bankr. Ct. Dec. (CRR) 161 (Bankr. S.D. Ohio 1986), decided that the former wife's violation of those provisions was willful, and damages would therefore be awarded pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

An adversary complaint was filed by a Chapter 7 debtor, seeking a permanent injunction enjoining the debtor's former spouse and her attorney from undertaking collection efforts to force the debtor's payment of certain marital obligations, as well as damages for the attorney's alleged stay violation in connection with contempt proceedings brought against the debtor in a state court, and the court in In re Tipton, 257 B.R. 865 (Bankr. E.D. Tenn. 2000), determined that the debtor's allegations that, even after the debtor's former spouse and her attorney had been placed on notice of the bankruptcy case, they had failed to halt the contempt proceedings that they had initiated against him, stated a cause of action for willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h).

Where a Chapter 7 debtor brought an adversary proceeding to determine the dischargeability of a divorce decree debt, the court in In re Zick, 123 B.R. 825 (Bankr. E.D. Wis. 1990), found that the postpetition motion of the debtor's former wife for modification of the property division willfully violated the automatic stay imposed in the former husband's bankruptcy, for which both the former wife and her counsel would be sanctioned, according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), in that the motion was a continuation of the prepetition divorce action.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

A Chapter 7 debtor's former spouse brought an adversary proceeding to determine the dischargeability of a judgment debt arising from a state court default judgment against the debtor, and after the Chapter 7 trustee filed a third-party complaint, alleging that the state court judgment was void, and seeking to set aside the state court's award of property to the former spouse and third-party defendants, the court in In re Silva, 215 B.R. 73 (Bankr. D. Idaho 1997), determined that the judgment creditors' state court claims against the Chapter 7 trustee, individually and in his official capacity, contravened the bankruptcy court's order terminating the automatic stay for the limited purpose of allowing the parties to take action in state court to litigate the validity of a state court default judgment against the debtor, thus subjecting the creditors to damages for a willful stay violation, under the Bankruptcy Code, former 11 U.S.C.A. § 362(h). The trustee was merely carrying out his statutory duties in joining with the debtor to set aside the default judgment that, if successful, could add property to the estate from which dividends to the creditors could be paid, explained the court. Whether a party believes in good faith that it has the right to assert claims against a bankruptcy trustee or a bankruptcy estate is not relevant to whether an act was willful or whether damages should be awarded for a stay violation, held the court.

§ 129. Divorce judgment enforcement—Willful violation not found

[Cumulative Supplement]

Violation of the automatic stay by proceeding with divorce judgment enforcement against a Chapter 7 debtor was not willful, and thus, sanctions could not be imposed pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), courts in the following cases have concluded, based on the facts and circumstances of each case.

In In re Nelson, 994 F.2d 42, Bankr. L. Rep. (CCH) ¶ 75285 (1st Cir. 1993), where a Chapter 7 debtor husband brought an adversary proceeding against his former wife and the wife's attorneys for their alleged willful violations of the automatic stay pursuant to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), seeking actual damages, costs, and attorney's fees and punitive damages, the court found that the debtor's former spouse had not willfully violated the stay, and was not liable for sanctions, for seeking to enforce rights granted by a judgment of divorce against property that the debtor had transferred to his father prior to filing for bankruptcy, that the debtor had not listed on his bankruptcy schedules. The debtor alleged that his former wife and her attorneys had willfully violated the automatic stay when they instituted equity actions in state court that interfered with the sale of the former marital home, but the court disagreed, deciding that although the former wife could have asked the bankruptcy court to determine whether the property was subject to a stay prior to commencing her equity actions in state court, it was reasonable for her to believe that the property was not part of the bankruptcy estate.

After a Chapter 7 debtor filed a complaint to discharge divorce decree obligations and to obtain damages for an alleged willful violation of the automatic stay by the debtor's former spouse, his former spouse's father, and his former spouse's attorney, the court in In re Boudakian, 137 B.R. 89 (Bankr. D. R.I. 1992), decided that based on the totality of the circumstances, there was no willful violation of the automatic stay for the purposes of the Bankruptcy Code, former 11 U.S.C.A. § 362(h), and that an award of damages was therefore not warranted. The court noted that following the debtor's bankruptcy petition, a hearing had been commenced before the family court on the motion of the debtor's former spouse to adjudge the debtor in contempt for his failure to make the ordered payments, and it was undisputed that at some point during that proceeding, it was revealed to the judge that the debtor had filed a bankruptcy petition, but the hearing had continued, and at its conclusion, the judge had found the debtor to be in willful contempt of the family court's final judgment and had ordered the debtor to be held at a correctional facility until he complied with the terms of the family court order. It was the court's intent merely to suspend the effect of the family court's order until such time as the court could hear and determine a properly brought complaint to determine the dischargeability of the debts in question, stated the court.

The court in In re Preston, 333 B.R. 346 (Bankr. M.D. N.C. 2005), held that the Chapter 7 debtor failed to establish that her estranged husband had notice of her bankruptcy filing when he filed a request for a hearing on an equitable distribution claim in state court, so sanctions could not be imposed on him for a willful violation of the automatic stay under former 11 U.S.C.A. § 362(h), where although the husband's address in Scotland was on the mailing matrix, the debtor did not include the

Exhibit 3

proper European postal code and no presumption could arise that the husband received the mailing or had proper notice of the bankruptcy filing. The court further held that even though the estranged husband's attorney claimed he never received notice of the debtor's bankruptcy, a presumption arose that the estranged husband's attorney did in fact receive notice, as notice was sent to the attorney's correct address, but even if the attorney willfully violated the automatic stay, he was not liable under former § 362(h) because the debtor made no attempt to notify him of her bankruptcy in her communications with him and her attorney did not give him any time to rectify the situation when she finally did notify him.

CUMULATIVE SUPPLEMENT

Cases:

To extent that surplus proceeds from liquidation of estate assets had not yet been distributed to Chapter 7 debtor at time state divorce court attempted to exercise control over proceeds, as being in nature of marital property, any injury from violation of stay was to estate and not to debtor, and debtor did not have standing to pursue claim for willful violation of automatic stay. 11 U.S.C.A. § 362. In re Flanders, 517 B.R. 245 (Bankr. D. Colo. 2014).

[Top of Section]

[END OF SUPPLEMENT]

§ 130. Proceeding seeking reduction of support obligation

The willfulness of a violation of the automatic stay, based on the initiation of a proceeding to reduce a support obligation to a Chapter 7 debtor, has been addressed, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

The court in In re Harris, 310 B.R. 395, 53 Collier Bankr. Cas. 2d (MB) 391 (Bankr. E.D. Wis. 2004), held that the Chapter 7 debtor's ex-husband and his attorney willfully violated the automatic stay, for the purposes of the imposition of sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by commencing a postpetition state court proceeding for the reduction of the ex-husband's support obligation to the debtor based on the debtor's alleged failure to comply with a dischargeable property settlement obligation, given that the ex-husband was aware of the debtor's bankruptcy filing, as evidenced by his attorney's dismissal of an earlier motion to hold the debtor in contempt on learning of her bankruptcy.

§ 131. Fraud claim—Willful violation found

Filing an action against a Chapter 7 debtor for fraud constituted a willful violation of the automatic stay, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), it has been found by the courts in the following cases, based on the facts and circumstances.

Filed under Chapter 13 but converted to Chapter 7, a bankruptcy case came before the court in In re Fox, 1989 WL 112790 (Bankr. E.D. Pa. 1989), which concluded that a creditor's filing an action against the debtor for fraud constituted a willful violation of the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since no relief had been granted from the stay and the action brought against the debtor was a thinly veiled collateral attack on the bankruptcy court proceedings. The debtor should not have been subject to suit for pursuing a bankruptcy, believed the court, and the actions of the creditor were willful, sufficiently blatant, and characterized by repetition.

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Where the administrator of the estate of a deceased victim and his attorney served a complaint on the Chapter 7 debtor for forging the victim's name on a check and depriving her of the funds, the court in In re Cochonour, 2007 WL 2245735 (Bankr. S.D. Ill. 2007), held that the administrator and his attorney had willfully violated the automatic stay, so that sanctions could be imposed according to the Bankruptcy Code, 11 U.S.C.A. § 362(k)(1), where the administrator and the attorney had sought relief from the automatic stay to question the debtor for the purposes of their suit against other parties involved in the forgery and were specifically told by the court that relief from the stay did not include the right to pursue any action against the debtor.

§ 132. Fraud claim—Willful violation not found

[Cumulative Supplement]

It has been concluded that filing an action against a Chapter 7 debtor for fraud did not constitute a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances.

Prior to filing for Chapter 7 bankruptcy, debtors sued defendants in state court alleging fraud relating to the sale of a business, and the court in In re Merrick, 175 B.R. 333, 26 Bankr. Ct. Dec. (CRR) 434, Bankr. L. Rep. (CCH) ¶ 76350 (B.A.P. 9th Cir. 1994), concluded that one of the state court defendants had not willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by participating in a motion for summary judgment and a motion for costs on the fraud claim, though the debtors' lawsuit constituted a chose in the action that was property of the estate. The defendant disclaimed an interest in costs awarded postpetition in the state court action, and the trustee could have sought a discretionary stay from the bankruptcy court if the trustee felt time was needed to evaluate the estate's assets, noted the court.

CUMULATIVE SUPPLEMENT

Cases:

Chapter 7 trustee did not adequately allege third element required to state a claim against debtors' daughter-in-law for violation of the automatic stay, namely, that the conduct in question violated the automatic stay; complaint alleged, inter alia, that daughter-in-law violated the stay by causing the postpetition sale of auto parts from nondebtor company owned by debtor, that she deposited the postpetition sale proceeds into her online payment service account, and that she used certain of the proceeds for personal purchases for herself and her family, but, because company was not a debtor, trustee did not adequately allege that the postpetition sale proceeds were "proceeds of or from property of the estate." 11 U.S.C.A. §§ 362(a), 541(a)(6). In re Brizinova, 588 B.R. 311 (Bankr. E.D. N.Y. 2018).

[Top of Section]

[END OF SUPPLEMENT]

§ 133. Fraudulent conveyance of assets claim

In the cases that follow, the courts have determined whether bringing a fraudulent conveyance of assets claim against a Chapter 7 debtor constituted a willful violation of the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h), based on the facts and circumstances of each case.

Exhibit 3

Creditors brought an action against Chapter 7 debtors, alleging fraudulent conveyance of assets, and the court in Eskenazi v. Klein, 1995 WL 362460 (E.D. N.Y. 1995), determined that the creditors had not willfully violated the automatic stay, for the purpose of imposing sanctions under the Bankruptcy Code, former 11 U.S.C.A. § 362(h), where the creditors apparently believed, in good faith, that the automatic stay provision did not apply to their claims against the debtors, the creditors did not know the stay was in effect, and their motion for summary judgment was not filed in willful violation of that stay.

In Matter of Sherk, 918 F.2d 1170, 21 Bankr. Ct. Dec. (CRR) 119, 21 Bankr. Ct. Dec. (CRR) 148, 24 Collier Bankr. Cas. 2d (MB) 502, Bankr. L. Rep. (CCH) ¶ 73746, 18 Fed. R. Serv. 3d 1019 (5th Cir. 1990) (abrogated on other ground by, Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280, 22 Bankr. Ct. Dec. (CRR) 1396, 26 Collier Bankr. Cas. 2d (MB) 487, Bankr. L. Rep. (CCH) ¶ 74513A (1992)), a nondebtor spouse filed a state court action to recover damages in connection with the alleged fraudulent transfer of the homestead interest, and the court found that the nondebtor spouse had not willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), by filing the state court action, where an arguable basis existed for the nondebtor spouse's claim that the homestead community property ceased to be the property of the Chapter 7 debtor's estate when the debtor listed the homestead as an exemption and no timely objections were filed.

§ 134. Interstate Commerce Commission petition

The willfulness of a violation of the automatic stay, based on the filing of an Interstate Commerce Commission petition against a Chapter 7 debtor, has been addressed, based on the facts and circumstances, for the purpose of imposing sanctions pursuant to the Bankruptcy Code, 11 U.S.C.A. § 362(k), formerly § 362(h).

Where an interstate motor carrier filed for Chapter 11 relief in bankruptcy, and the petition was subsequently converted to a Chapter 7 liquidation, the court in In re Bulldog Trucking, Inc., 68 F.3d 459 (4th Cir. 1995) (unpublished Table disposition; 1995 WL 613043), found that creditors that had filed petitions with the Interstate Commerce Commission (ICC) had willfully violated the automatic stay, for the purpose of imposing sanctions according to the Bankruptcy Code, former 11 U.S.C.A. § 362(h), since the debtor's trustee had sent the creditors a letter regarding the petitions filed before the ICC, stating that he believed the creditors had violated the automatic stay, as well as the orders of the bankruptcy court that limited the issues to be referred to the ICC, and the letter had further warned that if amended petitions were not filed, the trustee would pursue the matter in court. The creditors had taken no action to truly amend or to withdraw their petition before the ICC, noted the court.

RESEARCH REFERENCES

West's Key Number Digest

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

- West's Key Number Digest, Bankruptcy 2131, 2186, 2392, 2393, 2394.1, 2395, 2397(1), 2397(2), 2399 to 2401, 2402(2.1), 2402(4), 2402(5), 2403, 2442, 2461, 2462, 2464, 2465.1 to 2465.3, 2466 to 2468, 2481, 2546, 2588, 2679, 3715(11), 3787

Westlaw Databases

- Andrews Bankruptcy Litigation Reporter Court Documents (ANBKRLR-DOC)
- Bankruptcy Desk Guide (BKR-BDG)
- United States Bankruptcy Court Trial Filings (BKR-FILING-ALL)
- Bankruptcy Law Fundamentals (BKRFUND)
- Bankruptcy Law Manual (BKRLAWML)
- Bankruptcy Litigation (BKRLIT)
- Bankruptcy Practice Handbook (BKRPRACHB)
- Consumer Bankruptcy Manual (CONSBKRML)
- Law of Debtors and Creditors (DEBTCREDIT)
- Federal Bankruptcy Briefs (FBKR-BRIEF)
- Norton Bankruptcy Law and Practice 2d (NRTN-BLP)
- Norton Creditors' Rights Handbook (NRTN-CRRTH)
- Bankruptcy Deskbook (PLIREF-BKRCY)
- WESTLAW® Search Query: (("11 USC!""11 U.S.C.!") +3 362(h) 362(k)) & (WILLFUL! /P STAY) &"CHAPTER 7"

Primary Authority

- 11 U.S.C.A. § 362(k)

A.L.R. Library

- A.L.R. Index, Bankruptcy and Insolvency
- A.L.R. Index, Damages
- A.L.R. Index, Stay of Action or Proceeding
- West's A.L.R. Digest, Bankruptcy 2464
- What Constitutes "Repeated" or "Willful" Violation for Purposes of State Occupational Safety and Health Acts, 17 A.L.R.6th 715
- Availability and Application of Laches to Claims of Violation of Bankruptcy Automatic Stay, 11 U.S.C.A. § 362, 32 A.L.R. Fed. 3d Art. 2
- Construction and Application of 11 U.S.C.A. § 362(b)(3), Providing for Exception to Automatic Stay for Any Act to Perfect, or to Maintain or Continue Perfection of, Interest in Property to Extent that Trustee's Rights and Powers are Subject to Such Perfection Under 11 U.S.C.A. § 546(b) or to Extent that Such Act Is Accomplished Within Period Provided Under 11 U.S.C.A. § 547(e)(2)(A), 9 A.L.R. Fed. 3d Art. 8

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

- Construction and Application of Phrase "With Respect to the Debtor" of Bankruptcy Code, 11 U.S.C.A. § 362(c)(3)(A), Terminating Automatic Stay of Execution for Debtors Commencing Second Bankruptcy, 3 A.L.R. Fed. 3d Art. 7
- Prepetition Conduct by Debtor as Constituting "For Cause" Under 11 U.S.C.A. § 707(a) Permitting Dismissal of Chapter 7 Bankruptcy Petition, 3 A.L.R. Fed. 3d Art. 3
- Validity and Effect of Prepetition Agreements Waiving Protection of Bankruptcy Automatic Stay, 66 A.L.R. Fed. 2d 385
- Construction and Application of "Forward Contract" and "Forward Contract Merchant" Under Bankruptcy Code, 11 U.S.C.A. § 101(25), (26), 58 A.L.R. Fed. 2d 273
- Construction and Application of "Settlement Payment" Provision of Bankruptcy Code, 11 U.S.C.A. § 741(8), 28 A.L.R. Fed. 2d 633
- What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient to Award Damages—Chapter 13 Cases, 8 A.L.R. Fed. 2d 433
- What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient To Award Damages—Chapter 11 and 12 Cases, 2 A.L.R. Fed. 2d 459
- What constitutes "willful" violation for purposes of § 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 666(a) or § 666(e)), 161 A.L.R. Fed. 561
- Remedies and damages for violations of the automatic stay provisions of the Bankruptcy Code (11 U.S.C.A. § 362(h)), by parties other than the federal government, 153 A.L.R. Fed. 463
- Federal Government's liability for damages under 11 U.S.C.A. § 362(h) for willful violation of automatic stay in bankruptcy, 117 A.L.R. Fed. 1
- What is "willful" violation of Age Discrimination in Employment Act (29 U.S.C.A. §§ 621 to 634) for purpose of extension to 3 years of 2-year limitations period for filing action, 82 A.L.R. Fed. 377
- "Who is "party in interest" entitled to request relief from automatic stay provision of bankruptcy code of 1978 (11 U.S.C.A. § 362(d)), 73 A.L.R. Fed. 324
- What constitutes lack of "adequate protection" of interest in property of estate for which relief may be granted from automatic stay provision of Bankruptcy Code of 1978 (11 U.S.C.A. § 362(a)), 66 A.L.R. Fed. 505
- What are proceedings by governmental units to enforce police or regulatory powers which are excepted from operation of automatic stay provisions of Bankruptcy Code of 1978 (11 U.S.C.A. § 362(b)(4), (5)), 58 A.L.R. Fed. 282
- Violation of automatic stay provisions of 1978 Bankruptcy Code (11 U.S.C.A. § 362) as contempt of court, 57 A.L.R. Fed. 927
- Application of 11 U.S.C.A. § 362 of Bankruptcy Code of 1978 (automatic stay provisions) to cancellation of franchise or license agreement, 53 A.L.R. Fed. 622

Legal Encyclopedias

- Am. Jur. 2d, Bankruptcy §§ 372, 794, 1948 to 1960
- C.J.S., Bankruptcy §§ 187, 548 to 549

Treatises and Practice Aids

- Osborne and Schurig, Asset Protection: Domestic and International Law and Tactics § 3:12
- Dreher and Feeney, Bankruptcy Law Manual § 2:10 (5th ed.)
- Drake, Bankruptcy Practice for the General Practitioner § 9:2 (3d ed.)

Exhibit 3

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

- Bankruptcy Service, Lawyer's Edition §§ 2B:14882B:1488, 2B:14922B:1492, 2B:14932B:1493, 2B:15132B:1513, 2B:15142B:1514, 2B:15192B:1519, 2B:15202B:1520
- Rome, Business Workouts Manual § 18:3 (2d ed.)
- Cohen and Miller, Consumer Bankruptcy Manual §§ 10:3, 11:3 (2d ed.)
- Federal Procedure, L.Ed. §§ 9:381, 9:1159 to 9:1165
- Dunaway, The Law of Distressed Real Estate § 28:21
- Boelter, Representing the Bankrupt Taxpayer § 8:20

Trial Strategy

- Relief from Automatic Stay—Debtor's Lack of Equity in Residential Property, 21 Am. Jur. Proof of Facts 3d 769
- Relief from Automatic Stay—Inadequate Protection of Secured Interest, 20 Am. Jur. Proof of Facts 3d 521

Forms

- Am. Jur. Pleading and Practice Forms, Bankruptcy § 521
- Federal Procedural Forms § 9:241
- West's Federal Forms § 12610 (4th ed.)

Law Reviews and Other Periodicals

- Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002)

Westlaw. © 2020 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient to Award Damages—Chapter 13 Cases, 8 A.L.R. Fed. 2d 433.

2 What Constitutes "Willful Violation" of Automatic Stay Provisions of Bankruptcy Code (11 U.S.C.A. § 362(h)) Sufficient To Award Damages—Chapter 11 and 12 Cases, 2 A.L.R. Fed. 2d 459.

3 See Remedies and damages for violations of the automatic stay provisions of the Bankruptcy Code (11 U.S.C.A.§ 362(h)), by parties other than the federal government, 153 A.L.R. Fed. 463.

Exhibit 3

4 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002).

5 See Bankruptcy Reform Act of 1978, 11 U.S.C.A. §§ 101 to 1330 (1988); Niccolini, The Voidability of Actions Taken in Violation of the Automatic Stay: Application of the Information-Forcing Paradigm, 45 Vand. L. Rev. 1663 (1992). For a brief discussion of the nature of this expansion, see Keating, Offensive Uses of the Automatic Stay, 45 Vand. L. Rev. 71 (1992).

6 H.R. Rep. 95-595, at § 362 (Sept. 8, 1977). See Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002).

7 H.R. Rep. 95-595, at § 362; Barnes, The Plain Meaning of the Automatic Stay in Bankruptcy: The Void/Voidable Distinction Revisited, 57 Ohio St. L.J. 291 (1996) (citing Blum, Bankruptcy and Debtor/Creditor: Examples & Explanations § 10.3 (Aspen Pubs., Inc. 1993)). See Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002).

8 Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353 § 304, 98 Stat. 333, 352. Former § 362(h) of the Bankruptcy Code originally provided that an individual injured by a willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages."

9 See Boelter, Representing the Bankrupt Taxpayer § 8:20.

10 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002).

Prior to the enactment of 11 U.S.C.A. § 362(k), sanctions for violations of the automatic stay were pursued in a civil contempt proceeding pursuant to the bankruptcy court's discretionary power under 11 U.S.C.A. § 105(a).

11 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002).

12 Tobar, The Need for a Uniform Void Ab Initio Standard for Violations of the Automatic Stay, 24 Whittier L. Rev. 3 (2002), citing In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987) (holding that knowledge of bankruptcy filing is legal equivalent of knowledge of stay); but see In re Williams, 100 B.R. 726 (Bankr. M.D. Pa. 1989) (holding that debtor could not recover damages where it failed to file notice in correct recorder's office, since mortgagee holding sheriff's sale postpetition had no notice of bankruptcy).

13 Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265, 35 Bankr. Ct. Dec. (CRR) 45, Bankr. L. Rep. (CCH) ¶ 78044 (1st Cir. 1999), see §§ 32, 33; In re Ocasio, 272 B.R. 815 (B.A.P. 1st Cir. 2002); In re Smith, 180 B.R. 311 (Bankr. N.D. Ga. 1995), see § 113.

14 In re Florio, 229 B.R. 606 (S.D. N.Y. 1999).

15 In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987).

16 In re Wagner, 74 B.R. 898 (Bankr. E.D. Pa. 1987).

17 Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 109 S. Ct. 2818, 106 L. Ed. 2d 76, 26 Soc. Sec. Rep. Serv. 175, 19 Bankr. Ct. Dec. (CRR) 514, 20 Collier Bankr. Cas. 2d (MB) 1204, Bankr. L. Rep. (CCH) ¶ 72856 (1989) (citing In re Prime, Inc., 44 B.R. 924 (Bankr. W.D. Mo. 1984)).

18 In re Nelson, 994 F.2d 42, Bankr. L. Rep. (CCH) ¶ 75285 (1st Cir. 1993), see § 129.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit 3

Case: 4:09-cv-00730-RWS Doc. #: 16 Filed: 05/15/09 Page: 1 of 3 PageID #: 352

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	Case No. 4:09-CV-730 RWS
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

TEMPORARY RESTRAINING ORDER

The Court, having considered Plaintiffs' Charter Communications Holding Company, LLC and Charter Communications Operating, LLC (collectively, "Charter") Motion for Temporary Restraining Order through the record, argument and supporting evidence, and upon good cause shown, a temporary restraining order is entered to prevent irreparable harm to Charter before the matter can be heard on Charter's prayer for a preliminary injunction. This order is a necessary and proper temporary injunction in light of the balance between the harm Charter will suffer and the injury that granting the injunction may inflict on Defendant DirecTV, Inc. ("DirecTV"), the likelihood of Charter's success on the merits, and the public interest.

IT IS HEREBY ORDERED that, under Federal Rule of Civil Procedure 65, DirecTV, its affiliates, employees, agents, servants, officers, directors, attorneys, licensees, successors and assigns, and all those acting on behalf of or in concert or participation with any of them (including but not limited to affiliates, resellers, and partners who sell or promote DirecTV's

Case: 4:09-cv-00730-RWS Doc. #: 16 Filed: 05/15/09 Page: 2 of 3 PageID #: 353

products, equipment and services) who receive actual notice of this Order by personal service or otherwise, be temporarily restrained as follows:

1. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) advertisements or statements that state: "there's no way [Charter will] be able to bring you the latest technology, more channels in HD and new exclusive programming."

2. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) advertisements or statements that state: "do you really think [Charter will] be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not."

3. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) advertisements or statements that state: "do you really think [Charter will] have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not."

DirecTV shall cause a copy of this Order to be immediately communicated to each person and entity to whom DirecTV has directed or permitted to distribute or disseminate any such advertisement, or other such message, that is the subject of this Order. DirecTV is ordered to immediately prevent dissemination of all advertisements or statements, or other such messages

Case: 4:09-cv-00730-RWS Doc. #: 16 Filed: 05/13/09 Page: 3 of 3 PageID #: 354

that are the subject of this Order. This Temporary Restraining Order shall remain in full force and effect until **May 23, 2009 at 5:00 p.m.** or until an intervening order is issued.

IT IS FURTHER ORDERED that a bond, or a deposit in lieu of bond, in the amount of fifteen thousand dollars ($15,000) be filed or submitted by Charter to the United States District Court for the Eastern District of Missouri. Charter's bond or deposit in lieu of bond is approved as to form.

IT IS FURTHER ORDERED that the hearing on Charter's prayer for Preliminary Injunction is set for a hearing on **May 20, 2009, at 9:30 a.m.**

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 13th day of May, 2009 at 4:35 p.m. central time.

Case: 4:09-cv-00730-RWS Doc. #: 9 Filed: 05/11/09 Page: 1 of 6 PageID #: 124

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

COME NOW Plaintiffs Charter Communications Holding Company, LLC and Charter Communications Operating, LLC (collectively, "Charter") and move, pursuant to Fed. R. Civ. P. 65, for entry of a Temporary Restraining Order and Preliminary Injunction against Defendant DirecTV, Inc. ("DirecTV") in the form attached hereto.

In support of this Motion, Charter submits the attached Memorandum in Support of its Motion for Temporary Restraining Order and Preliminary Injunction and incorporates by reference herein Charter's Verified Complaint. As detailed in Charter's Memorandum in Support, Charter is entitled to immediate injunctive relief because it is likely to succeed on its false advertising cause of action against DirecTV; Charter faces irreparable harm if this Court does not immediately enjoin these false advertisements; the irreparable harm to Charter outweighs any possible injury to DirecTV resulting from the removal or modification of these ads; and public interest is best served by the removal of false and deceptive advertisements from the marketplace.

As set forth in the draft Temporary Restraining Order attached hereto, Charter requests that this Court temporarily restrain DirecTV, its affiliates, employees, agents, servants, officers, directors, attorneys, licensees, successors and assigns, and all those acting on behalf of or in concert or participation with any of them (including but not limited to affiliates, resellers, and partners who sell DirecTV's products, equipment and services), as follows:

1. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the direct mailer solicitations notifying recipients that Charter has filed bankruptcy and stating that as a result of the bankruptcy "there's no way [Charter will] be able to bring you the latest technology, more channels in HD and new exclusive programming." For an example of this type of direct mailer, see Exhibit 1 to Plaintiffs' Memorandum in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction ("Charter Memo").
2. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" print advertisements referencing Charter's bankruptcy filing and telling the public "now's the time to save yourself" or "we'll save the day" and "Get Help while you can." For examples of this type of advertisement, see Exhibits 3-5 to Charter Memo.
3. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "fire extinguisher" print advertisements directing the public to "Get Help while you can" and "instead of waiting to see how Charter's

bankruptcy might affect you, just switch to DIRECTV." For an example of this type of advertisement, see Exhibit 6 to Charter Memo.

4. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" billboard advertisements referencing Charter's bankruptcy filing and telling the public to "SAVE YOURSELF." For an example of this type of advertisement, see Exhibit 7 to Charter Memo.

5. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that because of Charter's bankruptcy, its customers are "probably thinking what does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels." For an example of this type of advertisement, see Exhibit 8 to Charter Memo.

6. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's operations are in a "mess" because they filed for bankruptcy. For an example of this type of advertisement, see Exhibit 9 to Charter Memo.

7. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's bankruptcy filing is "not going to help [Charter's] customer service one bit." For an example of this type of advertisement, see Exhibit 10 to Charter Memo.

8. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboard, and direct mail) any advertisements, or other such messages, claiming or implying that Charter, as a result of its Chapter 11 bankruptcy filing: (1) is going out of business, (2) is not able to continue to provide services to customers, (3) is not able to provide new services or content or the latest technology, (4) is going to provide inferior customer service, or (5) that Charter's customers will be adversely impacted.

Further, Charter requests that DirecTV be ordered to immediately advise any independent third parties who are disseminating the advertisements at issue, or other such messages, of which DirecTV is aware of the temporary restraining order and demand their compliance. Additionally, Charter requests that this Court order DirecTV to cause a copy of any issued temporary restraining order to be immediately communicated to each person and entity to whom DirecTV has directed or permitted to distribute or disseminate any such advertisement, or other such message, that is the subject of any issued temporary restraining order in this case. Finally, Charter requests that this Court order DirecTV to recall or retract any advertisements at issue that are already disseminated and prevent dissemination of all such advertisements that can reasonably be stopped.

WHEREFORE, Plaintiffs Charter Communications Holding Company, LLC and Charter Communications Operating, LLC move this Court to grant their Motion for Temporary Restraining Order and Preliminary Injunction.

Case: 4:09-cv-00730-RWS Doc. #: 9 Filed: 05/11/09 Page: 5 of 6 PageID #: 128

Respectfully submitted,

THOMPSON COBURN LLP

/s/ Dean L. Franklin

Dean L. Franklin, #3145
Steven M. Sherman, #84878
Pamela M. Miller, #535838
One US Bank Plaza
St. Louis, Missouri 63101
Telephone: 314-552-6000
Fax: 314-552-7000
dfranklin@thompsoncoburn.com
ssherman@thompsoncoburn.com
pmiller@thompsoncoburn.com

and

Kirill Y. Abramov, #109139
12405 Powerscourt Drive
St. Louis, MO 63131
Telephone: 314-288-3125
Fax: 314-909-0609
Kirill.Abramov@chartercom.com

Attorneys for Plaintiffs
Charter Communications Holding Company, LLC,
and Charter Communications Operating, LLC

Case: 4:09-cv-00730-RWS Doc. #: 9 Filed: 05/11/09 Page: 6 of 6 PageID #: 129

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing Motion for Temporary Restraining Order and Preliminary Injunction was served upon the following individual via email on May 11, 2009:

Takehiko Suzuki, Esq.
2230 East Imperial Highway
El Segundo, CA 90245
Vice President and Associate General Counsel for DirecTV, Inc.

The undersigned counsel further certifies that a copy of the foregoing Motion for Temporary Restraining Order and Preliminary Injunction was served upon the following entity via hand delivery on May 11, 2009:

CSC - Lawyers Incorporating Service Company
221 Bolivar
Jefferson City, MO 65101
Registered Agent for DirecTV, Inc.

/s/ Dean L. Franklin

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 1 of 36 PageID #: 130

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs Charter Communications Holding Company, LLC and Charter Communications Operating, LLC (collectively, "Charter") bring this action to enjoin a false and misleading advertising campaign initiated by Charter's competitor, DirecTV, Inc. ("DirecTV"). DirecTV launched a national, multimedia advertising campaign that falsely states and deceptively implies that Charter's Chapter 11 bankruptcy filing will adversely affect Charter's customers and will result in Charter going out of business. Nothing could be further from the truth. Charter's bankruptcy filing was the result of a pre-arranged, consensual plan of reorganization (the "Plan") agreed to with certain of Charter's debt holders. Charter is a thriving and growing company that entered into the Plan merely to de-leverage its balance sheet in light of the recent deteriorating conditions in the capital markets. Charter has no intention of liquidating. On the contrary, Charter's trade creditors are continuing to receive full payment of 100 cents on the dollar in the ordinary course and Charter continues to service its customers as

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 2 of 36 PageID #: 131

usual, including by providing them with the latest technology, more High Definition ("HD") television channels, and more exclusive programming.

DirecTV's false and misleading advertising campaign seizes upon the fact that Charter "filed for bankruptcy" to deceive customers into thinking that the bankruptcy filing means that their cable services will be terminated or otherwise adversely affected – a contention that is utterly false, as DirecTV well knows. For example, one DirecTV ad asserts that "there's no way" Charter will be able to provide "the latest technology, more channels in HD and new exclusive programming" to its customers because of its bankruptcy – even though Charter is continuing to do so. In addition, a number of ads claim that Charter's customers must be "saved" from Charter's bankruptcy, urge the customers to "get help while [they] can," and depict DirecTV as their life-preserver or fire extinguisher – implying that Charter customers should switch to DirecTV's competing service, because Charter is figuratively "sinking" or "going up in flames," *i.e.*, that it is going out of business. In the context of a pre-arranged, consensual bankruptcy such as Charter's – where there is no plan for liquidation, the business is growing, the bankruptcy case is moving forward at precedent-setting speed (Charter has already received Bankruptcy Court approval of its Disclosure Statement in support of the reorganization Plan and hearing date has been set), and all the relief required to continue business as usual has been granted, with trade creditors being paid in full – DirecTV's advertisements are literally false, grossly misleading, cause consumer confusion, and are likely to deceive Charter's current and prospective customers.

DirecTV's advertising campaign constitutes false advertising under the Lanham Act, 15 U.S.C. § 1125(a), tortious interference with Charter's contracts, tortious interference with Charter's prospective business relationships, injurious falsehood, defamation, and violations of

various state consumer fraud and deceptive business practices laws. Despite efforts by Charter to persuade DirecTV to cease its false and misleading campaign, DirecTV persists in running demonstrably false advertisements through direct mailings, billboards, newspaper ads, and radio ads, thereby causing Charter irreparable harm. It appears DirecTV also inaugurated a personal solicitation program based on these same false messages.

This is not the first time that DirecTV has violated the Lanham Act in an advertising campaign. Just two years ago, two of the country's other major cable companies brought successful Lanham Act claims against DirecTV for false and deceptive advertising. In February 2007, the Honorable Laura Taylor Swain of the Southern District of New York entered a preliminary injunction in favor of Time Warner, holding that DirecTV's advertisements regarding the quality of the picture on cable television were false and misleading. *Time Warner Cable, Inc. v. DirecTV, Inc.*, 475 F. Supp.2d 299 (S.D.N.Y. 2007). The Second Circuit upheld that decision. *Time Warner Cable, Inc. v. DirecTV, Inc.*, 497 F.3d 144 (2d Cir. 2007). Later in 2007, the Honorable John F. Grady entered a preliminary injunction in favor of Comcast after DirecTV ran ads regarding television picture quality the court described as "obviously a misleading representation." *DirecTV, Inc. v. Comcast of Illinois III, Inc.*, No. 07 C 2568, 2007 WL 2808235, at *2 (N.D. Ill. Aug. 15, 2007). In both instances, DirecTV's advertising was not only false, it was deliberately calculated to present the public with misleading information. DirecTV is a repeat offender. Its history of false and deceptive advertising leaves no doubt that its conduct here will continue in the absence of injunctive relief.

Charter is entitled to immediate injunctive relief because it is likely to succeed on its false advertising cause of action against DirecTV; Charter faces irreparable harm if this Court does not immediately enjoin these false advertisements; the irreparable harm to Charter outweighs any

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 4 of 36 PageID #: 133

possible financial injury to DirecTV resulting from the removal or modification of these ads; and public interest is best served by the removal of false and deceptive advertisements from the marketplace. To preserve the status quo and prevent irreparable harm to Charter, Charter requests that this Court immediately enjoin DirecTV from making any such false and deceptive claims about the effects of Charter's bankruptcy filing on its service offerings and ability to provide service to its customers. Charter also requests that this Court order the immediate removal of DirecTV's false and deceptive advertisements from the marketplace, whether written, electronic, audio, printed, or contained on DirecTV's web site.

I. FACTUAL BACKGROUND

A. Charter and DirecTV Directly Compete to Provide Television Services.

Charter offers analog and digital cable television services, as well as high-speed Internet and telephone services, to customers throughout the United States, including the Eastern District of Missouri. *See* Declaration of Ted W. Schremp, ("Decl. of T. Schremp") attached hereto as Exhibit 15, at ¶ 4. DirecTV is a significant competitor of Charter. *Id.* at ¶ 41. Charter and DirecTV compete directly with one another to provide television services to customers throughout the United States, including but not limited to customers located in St. Louis, Missouri. *Id.*

Charter, together with its subsidiaries and affiliates, constitutes the third largest publicly-held cable company in the United States, with approximately 5.5 million customers and 16,500 employees. *Id.* at ¶ 4. Similar to other cable companies, Charter operates through franchises granted by local or state government entities. *Id.* at ¶ 40. In the areas in the Eastern District of Missouri and elsewhere in which Charter is the franchisee, the majority of cable subscribers are Charter customers. *Id.* at ¶ 41.

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 5 of 36 PageID #: 134

B. Charter's Bankruptcy Filings Make Clear that Charter Will Not Discontinue or Reduce Its Cable Services During Reorganization.

Charter is a thriving and growing business, which generates significant positive cash flow before debt service and has achieved upward, favorable trends as an operating enterprise. *Id*. at ¶ 4. In the past three years, Charter has increased *pro forma* annualized revenue from approximately $5.4 billion to approximately $6.5 billion, and *pro forma* annualized adjusted earnings before interest, taxes, depreciation, and amortization ("EBITDA") has grown from $1.9 billion to approximately $2.3 billion. *Id*. Over the past several months, recognizing the recent deteriorating capital market conditions and its significant debt load, Charter embarked on a plan to de-leverage its balance sheet to improve its already-strong competitive position. *Id*. at ¶ 8. To do so, Charter negotiated a financial restructuring with key bondholder constituencies and agreed upon a consensual, pre-arranged plan of reorganization (the "Plan") under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, *et seq*. *Id*. at ¶¶ 5 and 8.

On February 12, 2009 Charter and its subsidiaries announced that they had reached an agreement with certain Charter debt holders on the terms of a financial restructuring to reduce Charter's debt by approximately $8 billion and raise approximately $3 billion of capital and debt financing, and the continuation of Charter's business in the ordinary course with trade creditors receiving payment in full – 100 cents on the dollar. *Id*. at ¶ 9. To implement the restructuring, on March 27, 2009, Charter and its subsidiaries filed a voluntary, pre-arranged bankruptcy pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, Case No. 09-11435-jmp. *Id*. at ¶¶ 5 and 8. Charter's bankruptcy filings are publicly available online at: www.kccllc.net/charter. *Id.* at ¶ 6.

Charter's bankruptcy was designed to allow Charter to continue operating as usual while it develops and implements a balance sheet restructuring that will leave its operations and the

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 6 of 36 PageID #: 135

senior portion of its capital structure intact, and while minimizing the amount of time Charter spends in Chapter 11 bankruptcy. *Id*. at ¶¶ 9-13. To that end, Charter sought and obtained authorization from the Bankruptcy Court to continue to pay its trade creditors in the ordinary course of business. *Id*. at ¶ 10. As of March 31, 2009, Charter had approximately $836 million of cash on hand, and was producing more than $2.5 billion of positive adjusted *pro forma* EBITDA on an annualized basis. *Id.* at ¶ 11. In addition, Charter's recent first quarter earnings release demonstrates its continued strong financials, and the release has received positive coverage in both industry press and other publications. *Id*.

Bankruptcy Court approvals and substantial available resources have permitted Charter to continue its operations without disruption during its bankruptcy, as it will do throughout that process. *Id.* at ¶ 12. Charter obtained Bankruptcy Court approval of the Disclosure Statement with respect to the Plan on May 5, 2009. *Id*. A hearing to confirm the Plan is currently scheduled for July 20, 2009. *Id*. Due to the consensual nature of the Plan, Charter's time in bankruptcy should be brief and will have no impact on Charter's ability to service its customers. *Id*.

Charter's public bankruptcy filings and its public statements have made clear that Charter is and will maintain its cable services and offerings during or after its reorganization. *Id*. at ¶¶ 12-15. Charter is not going out of business and is not reducing its services or offerings to its customers. *Id*. at ¶¶ 17-38. To the contrary, Charter has expanded its service offerings by offering additional HD channels, video on demand services, the launch of a new Internet sports service, and upgrades of its Internet service. *Id.* at ¶¶ 17-38.

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 7 of 36 PageID #: 136

C. Charter Has Enhanced Its Services Following Its Bankruptcy Filing and Has Road Maps in Place for Continued Enhancement of Its Services.

Charter's bankruptcy filing has not impacted its efforts to launch additional HD channels this spring and summer. *Id.* at ¶ 26. Charter is currently trialing "switched digital technology" in three markets. *Id.* at ¶ 28. This technology allows Charter to free-up additional bandwidth to allow it to launch additional HD channels and services. *Id.* Charter will expand its switched digital technology services to other markets. *Id.* Charter also launched its new NBC On Demand service on April 6, 2009, which provides its customers with NBC Primetime content accessible via On Demand. *See id.* at ¶ 24. This service was not available to Charter customers prior to Charter's March 27, 2009 bankruptcy filing. *Id.*

D. DirecTV's Advertising Campaign is False and Misleading.

DirecTV began its false and misleading national advertising campaign shortly after Charter filed its reorganization Plan. *See* Exhibits 1, and 3 through 10. DirecTV's advertisements state "there's no way" Charter can provide its customers with the latest technology, more channels in HD and new exclusive programming. *See id.* The ads also urge Charter's customers to switch to DirecTV to avoid the "mess" and before Charter's bankruptcy proceedings "affect" them. *Id.* Despite the above publicly-available facts regarding Charter's bankruptcy and the continuation of its operations as usual, DirecTV's advertisements falsely state and deceptively imply that Charter will not be able to provide services due to Charter's bankruptcy and that customers need to be "saved" by DirecTV from Charter's bankruptcy. *Id.* Some DirecTV advertisements use the imagery of customers needing a DirecTV life-preserver or a DirecTV fire extinguisher, implying the outright falsehood that Charter is a figurative "sinking ship" or is going up in flames. *See* Exhibits 3 through 7. True and accurate copies of DirecTV's advertisements are attached hereto as Exhibits 1, and 3 through 10.

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 8 of 36 PageID #: 137

1. Direct Mailers

DirecTV has sent and continues to send direct mail advertisements to Charter's customers and prospective customers that falsely state Charter will not be able to provide services due to its bankruptcy filing. The body of DirecTV's direct mail advertisements reads in part:

> Dear [Charter Customer]:
>
> It's official: Charter has filed for bankruptcy. As they focus on their problems, *there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will.* So make the popular choice – join over 18 million families who have made the FREE and EASY switch to DIRECTV
>
> …
>
> *So instead of wondering how cable's problems will affect you, just switch to DIRECTV….*

(Emphasis added). A true and accurate redacted copy of one such advertisement is shown below. Decl. of T. Schremp at ¶ 61. Additional redacted copies of such advertisements are attached as Exhibit 1. *Id.* DirecTV is currently mailing this advertisement directly to Charter's customers in at least the following states: Connecticut, Louisiana, Michigan, Missouri, South Carolina, and Wisconsin. *See* Exhibit 1; *see also* Decl. of T. Schremp at ¶ 58.

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in O Fallon

REDACTED

O Fallon, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE™ package
~~$55.99 mo.~~

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

30100657456

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. *Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 15 of 36 PageID #: 139

In a further effort to confuse customers, DirecTV sent some of these mailers in envelopes that do not display DirecTV's name or logo. A true and accurate photocopy of one of these envelopes is attached as Exhibit 2; Decl. of T. Schremp at ¶ 101. The envelope only displays the address of the sender, not the sender's name or company information. Indeed, DirecTV deliberately designed the envelope to hide its status as a mere solicitation; it reads: "**Important information about the television service in [Charter customer's city].**" Exhibit 2; Decl. of T. Schremp at ¶¶ 58-60 (emphasis in original). These marketing tactics are employed typically to increase the opening rate of a mailer by conveying the impression that the mailer is "official" or otherwise critical to the customer's television service. Decl. of T. Schremp at ¶ 59.

2. Print Advertisements

A print advertisement ("the life-preserver print ad") published by DirecTV or on its behalf states in part:

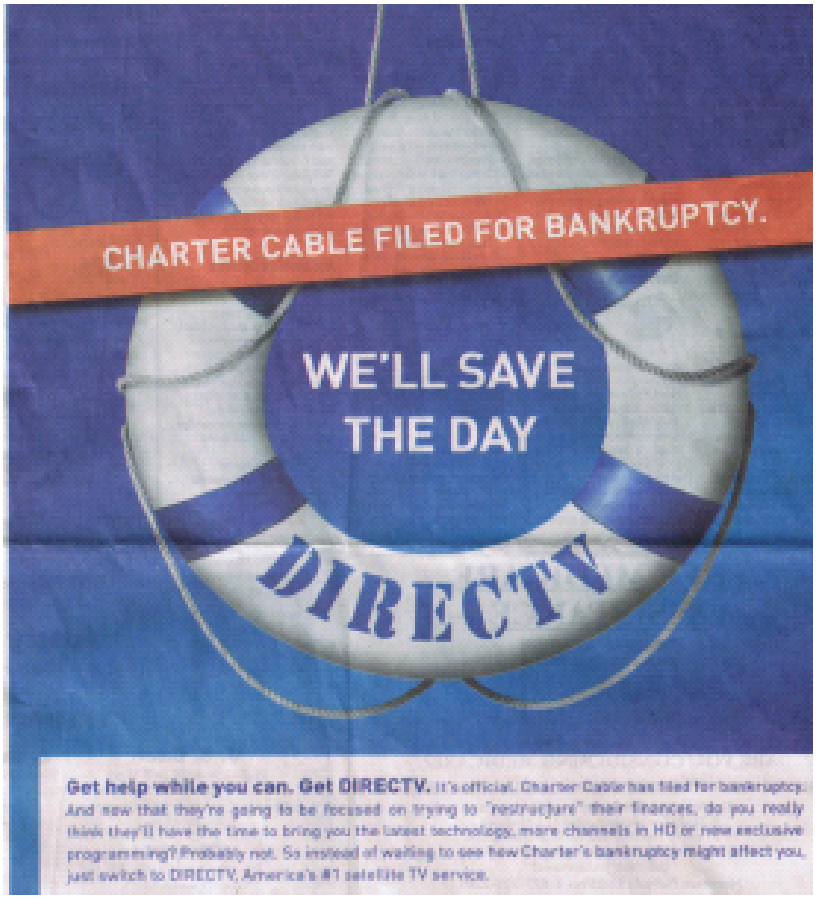
> With Charter Cable filing for bankruptcy, now's the time to save yourself.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, *do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you*, just switch to DIRECTV, America's #1 satellite provider.

A true and accurate copy of the life-preserver print ad published on April 5, 2009, is below and attached as Exhibit 3 (emphasis added); Decl. of T. Schremp at ¶¶ 66 and 67.

DIRECTV
With Charter Cable filing for bankruptcy, now's the time to save yourself.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you, just switch to DIRECTV, America's #1 satellite provider.
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99 $55 The CHOICE Package
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
9 PREMIUM CHANNELS FOR 3 MONTHS FREE
$39.99 $60 The CHOICE XTRA Package
MORE CHANNELS, MOVIES AND SPORTS!
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME
$44.99 $65 The PLUS DVR Package
WATCH WHAT YOU WANT. WHEN YOU WANT.
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
Monthly DVR Service Included
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME
Free Next-Day Installation • No Equipment to Buy • No Start-Up Costs • 99.9% Digital Signal Reliability

Case: 4:09-cv-00730-RWS Doc. #: 142 Filed: 05/11/09 Page: 12 of 36 PageID #: 141

This advertisement misleadingly instructs customers that they must "Get help *while they can*," and depicts DirecTV as a life-preserver which can "save" Charter's customers – thus implying that Charter is a "sinking ship" (*e.g.*, that it is going out of business). *See* Exhibit 3 (emphasis added). That is untrue – as DirecTV well knows. Likewise, the use of quotation marks around the words "restructure" implies that the term "restructure" is a euphemism for "liquidate" – again, completely false. Additional versions of this type of ad have been published by DirecTV since Charter filed for bankruptcy, including the following:


CHARTER CABLE FILED FOR BANKRUPTCY.
WE'LL SAVE THE DAY
DIRECTV
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

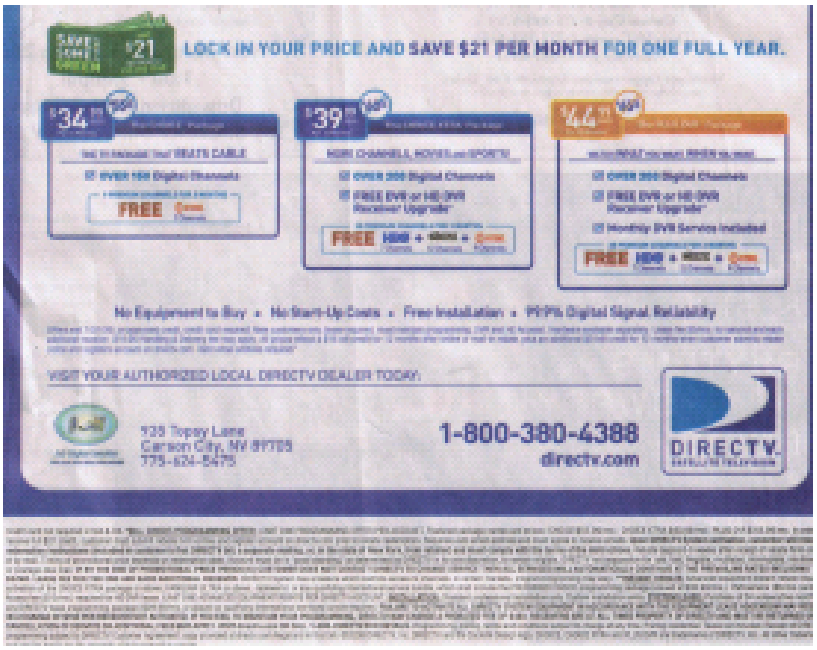

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
No Equipment to Buy • No Start-Up Costs • Free Installation • 99.9% Digital Signal Reliability
VISIT YOUR AUTHORIZED LOCAL DIRECTV DEALER TODAY!
939 Topsy Lane
Carson City, NV 89705
775-624-5475
1-800-380-4388
directv.com
DIRECTV

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 14 of 36 PageID #: 143

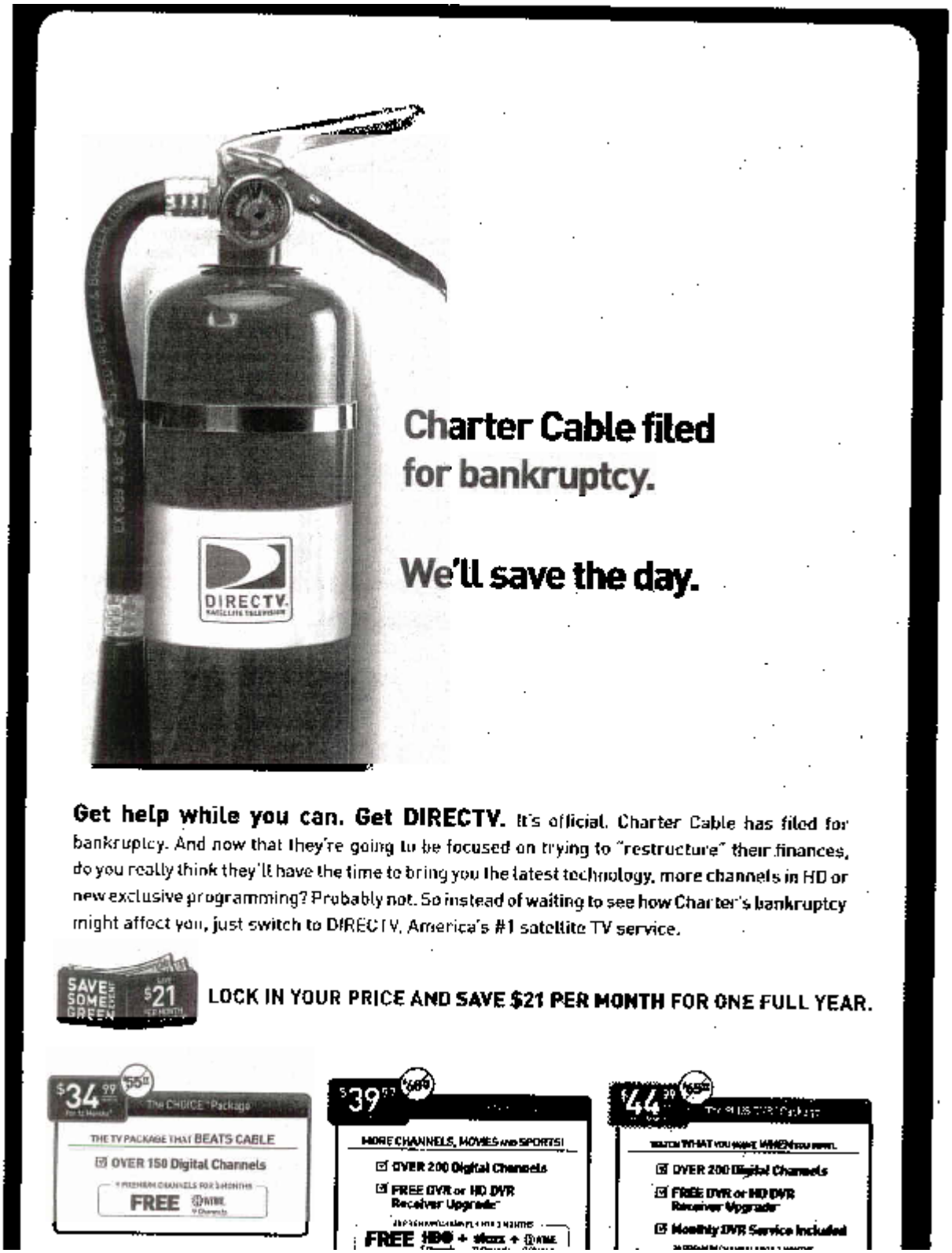
See Exhibit 5; Decl. of T. Schremp at ¶¶ 78 and 79; *see also*, Exhibit 4; Decl. of T. Schremp at ¶¶ 72 and 73 (an additional version of the this type of ad).

Another print advertisement ("the fire extinguisher print ad") published by DirecTV or on its behalf states in part:

> Charter Cable filed for bankruptcy. We'll save the day.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, *do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you*, just switch to DIRECTV, America's #1 satellite TV service.

A true and accurate copy of the fire extinguisher print ad is below and attached as Exhibit 6 (emphasis added); Decl. of T. Schremp at ¶¶ 84 and 85.

This advertisement misleadingly instructs customers that they must "Get help *while they can*," and depicts DirecTV as a fire extinguisher that will "save" Charter's customers from Charter's bankruptcy – implying the falsehood that Charter is going up in flames (*i.e.*, that it is going out of business). *See* Exhibit 6 (emphasis added). In addition, this advertisement again uses quotation marks around the term "restructure" to misleadingly imply that "restructuring" is not what is really occurring in Charter's bankruptcy proceedings.


DIRECTV.
Charter Cable filed
for bankruptcy.
We'll save the day.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.
SAVE SOME GREEN
$21
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
FREE
$39.99
MORE CHANNELS, MOVIES and SPORTS!
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
FREE HBO
$44.99
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
Monthly DVR Service Included

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 16 of 36 PageID #: 145

3. Billboard Advertisements

A billboard advertisement ("the life-preserver billboard") published by DirecTV or on its behalf states, "Charter Cable has filed for bankruptcy. SAVE YOURSELF." Some of these billboards are located along interstates in the St. Louis area, including two billboards located along Interstate 55 that were put up recently – after Charter sent a cease and desist letter to DirecTV. Decl. of T. Schremp at ¶¶ 90 and 91. The life-preserver billboards have been seen by countless numbers of Charter's potential and current customers. A true and accurate copy of this billboard is shown below and is attached as Exhibit 7; Decl. of T. Schremp at ¶¶ 90-92. Similar to the life-preserver print ad, the billboards misleadingly depict DirecTV as a life-preserver to "save" Charter's customers from Charter's bankruptcy – thus, implying the falsehood that Charter's bankruptcy will have severe negative consequences for its customers.

4. Radio Broadcasts

Radio broadcast ads were also aired in at least the St. Louis, Missouri, and Madison, Wisconsin, markets. Audio recordings of these three radio advertisements are contained on the CDs filed herewith as Exhibits 8 through 10. The DirecTV radio ad that aired in Madison, Wisconsin, states in part:

> Announcer No. 1: Ok, Charter cable customers, time for some direct talk from DirecTV. *As you may know, Charter has filed for*

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 17 of 36 PageID #: 146

> *bankruptcy. Uh-oh. And so now you're probably thinking "What does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels?"* I certainly don't know. But I do know you can avoid Charter's mess completely by switching to DirecTV. . . . *So instead of waiting to see how Charter's bankruptcy will affect you, just switch to DirecTV,* America's number one satellite TV service.
>
> . . . .

Exhibit 8 (emphasis added).[1]

There may be other DirecTV advertisements exploiting Charter's bankruptcy in a false and misleading way. Charter will seek all such advertisements published or aired by or on behalf of DirecTV in discovery.

E. DirecTV Has Refused to Modify its Conduct.

Charter attempted to resolve this matter short of a lawsuit. After being alerted to DirecTV's false and misleading advertising, Charter's counsel sent a cease and desist letter to DirecTV on April 10, 2009 seeking "to resolve this matter amicably and on a business basis, if possible." *See* Charter's April 10, 2009 Cease and Desist Letter, p. 2, attached hereto as Exhibit 11. The letter requested "that DirecTV immediately cease and desist from continuing to make any such false or misleading claims about Charter and its bankruptcy filing in its advertisements" and "immediately remove all such false or misleading claims from DirecTV's promotional materials, whether written, electronic, audio, printed, or contained on DirecTV's web site." *Id.* In response, DirecTV assured Charter it would modify its advertisements to address Charter's concerns. DirecTV's in-house counsel, Takehiko Suzuki, stated in a letter dated April 15, 2009, that "[n]evertheless, to alleviate any concerns you may have, we are in the process of modifying

[1] DirecTV has aired at least two additional similar types of radio ads claiming that Charter's bankruptcy is a "mess" and is "not going to help [Charter's] customer service one bit." *See* Exhibits 9 and 10.

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 18 of 36 PageID #: 147

the print advertising (including the billboard). The new creative will be in the marketplace in short order. We believe the foregoing addresses your concerns, and as such, we consider this matter closed." *See* Letter from DirecTV to Charter, April 15, 2009, p. 2, attached as Exhibit 12. Based on Mr. Suzuki's promise, Charter held off filing a lawsuit until the new advertisements appeared.

DirecTV's promise was apparently meaningless. During the week of April 27, 2009, DirecTV began directly contacting Charter's customers though a direct mail campaign in the St. Louis area and other areas throughout the country. *See* Exhibit 1. This direct mailer contains even stronger language than the print, billboard, and radio ads, and contains statements that are in direct contrast to Charter's publicly available bankruptcy filings. *See* Decl. of T. Schremp at ¶¶ 60-63.

F. DirecTV's Advertisements Have Caused and Continue to Cause Consumer Confusion and Deception Among Charter's Current and Potential Customers.

DirecTV's false advertising has caused consumer confusion and deception. *Id.* at ¶¶ 49-55. Since DirecTV began its false and misleading advertising campaign, Charter customers have contacted Charter regarding the statements in DirecTV's ads. *Id.* at ¶¶ 50-55. Charter has received inquiries from customers asking whether the bankruptcy filing will affect Charter's ability to provide technology and programming to its customers as claimed in DirecTV's ads. *Id.*

When a Charter customer calls Charter's customer service line, a customer service representative ("CSR") answers the call and sometimes makes contemporaneous notes regarding the nature and details of the call. *Id.* at ¶ 49. The following is a redacted portion of contemporaneous notes made by a CSR regarding a customer's confusion resulting from DirecTV's advertisement:

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 19 of 36 PageID #: 148

> The following customer who received the letter from DIRECTV advising that they were losing services unless they switched due to Charter's bankruptcy.
> Phone Number [REDACTED]; Customer Name: [REDACTED]; Site 500, Romulus MI.
> She received letter in the mail from DIRECT TV. *This letter was on DIRECT TV letterhead regarding television service in Romulus. It stated Charter has filed for bankruptcy, and you will be losing your services as a result*. If you wish to avoid the interruption of service, they can call DIRECT TV to get their services switched.
> I have assured customer that is not the case, but there are other people in that market who may be receiving the same mailing. *The customer says the wording is very clear that their Charter services will be lost.*

Id. at ¶ 50 (emphasis added). According to other CSR notes, other Charter customers, like the customer above, have sought clarification about the statements in DirecTV's advertisements at issue and whether Charter's services will be discontinued. *Id.* at ¶¶ 53-55.

Additionally, a Charter customer of over eighteen years visited a Charter office located in Eunice, Louisiana, on April 29, 2009 to find out when Charter's office would be closing. Declaration of Telly Burnett, ("Decl. of T. Burnett") attached hereto as Exhibit 16, at ¶¶ 3-8. The customer said she received a flyer from DirecTV stating that Charter would no longer be able to provide her with service. *Id.* and Exhibit A to Decl. of T. Burnett.

Another Charter customer visited that same Charter office during the week of April 27, 2009 with questions about the effects of Charter's bankruptcy on her services. Decl. of T. Burnett at ¶¶ 14-17. This Charter customer told the Charter CSR that a DirecTV representative at a Sam's Club located in Lafayette, Louisiana, told the customer that Charter filed for bankruptcy and would no longer be able to provide her services. *Id.*

II. LAW AND ARGUMENT

A. The Standard for Issuing a Temporary Restraining Order and Preliminary Injunction Against DirecTV's False and Misleading Advertising.

The Lanham Act reflects Congressional intent to encourage competitors to seek injunctions as a method of combating false advertising, and injunctive relief is not to be issued reluctantly. *See Black Hills Jewelry Mfg. Co. v. Gold Rush, Inc.*, 633 F.2d 746, 753 n.7 (8th Cir. 1980) (citation omitted). The Eighth Circuit specifically recognized this intent in *Black Hills Jewelry*, stating, "under [section] 43(a), Congressional policy appears to encourage commercial companies to act as the 'vicarious avenger' of consumer rights. An injunction, as opposed to money damages, is no windfall to the commercial plaintiff." *Id.* (citation omitted).

A temporary restraining order is appropriate where "immediate and irreparable injury, loss, or damage will result to the movant" if the order does not issue. Fed. R. Civ. P. 65(b). The standard for the issuance of a temporary restraining order and preliminary injunction is the same and well-established. *Jackson v. NFL*, 802 F. Supp. 226, 229 (D. Minn. 1992) (*citing Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc) (preliminary injunction); *S.B. McLaughlin & Co. v. Tudor Oaks Condominium Project*, 877 F.2d 707, 708 (8th Cir. 1989) (temporary restraining order)). This Court must weigh the following factors in determining whether to issue a temporary restraining order or preliminary injunction: (1) the probability that the movant will succeed on the merits; (2) the threat of irreparable harm to the movant; (3) the balance between this harm and any injury that granting the injunction will inflict on the non-movant; and (4) the public interest. *Id.*; *see* Fed. R. Civ. P. 65. No single factor in itself is dispositive. *Charter Commc'ns, Inc. v. Southwestern Bell Tel. Co.*, 202 F. Supp.2d 918, 928 (E.D. Mo. 2001) (citation omitted). Instead, this Court must flexibly weigh the particular circumstances to determine whether a balance of equities favors Charter requiring the Court to

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 21 of 36 PageID #: 150

intervene to preserve the status quo until the merits are determined. *See id.* (*quoting Dataphase*, 640 F.2d at 113-14).

As set forth below, each of the factors the Court must weigh in determining whether to issue a temporary retraining order and a preliminary injunction support issuance of injunctive relief.

B. <u>There Is a Substantial Likelihood that Charter Will Prevail on the Merits of Its False Advertising Claim Against DirecTV.</u>

The Lanham Act's purpose is, in part, to protect persons engaged in commerce against false advertising and unfair competition. *See* 15 U.S.C. § 1125; 5 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 27:25 (4th ed. 2009). To establish a claim for false or deceptive advertising under the Lanham Act,[2] Charter must prove: (1) a false statement of fact by DirecTV in a commercial advertisement about its own or Charter's product; (2) the statement actually deceived or has the tendency to deceive a substantial segment of the advertisement's audience; (3) the deception is material, in that it is likely to influence the purchasing decision; (4) DirecTV caused its false statement to enter interstate commerce; and (5) Charter has been or is likely to be injured as a result of the false statement. *Southwestern Bell*, 202 F. Supp.2d at 928 (citation omitted); *see* 15 U.S.C. § 1125(a).

When weighing the first factor in determining whether to enjoin DirecTV's ad campaign – the probability that Charter will succeed on the merits – it is not necessary for the Court to determine that Charter's chances of success are more likely than not. *Dataphase*, 640 F.2d at 113-14 (rejecting the notion that a movant must show "a greater than fifty per cent likelihood" of

[2] Because Charter only needs to demonstrate the probability of success on one of its claims against DirecTV, *Sensient Tech. Corp. v. SensoryFlavors, Inc.*, No. 4:08CV00336, 2008 WL 762092, at *3 (E.D. Mo. Mar. 21, 2008), Charter limits this analysis to its claim for false advertising under the Lanham Act.

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 22 of 36 PageID #: 151

prevailing). Rather, it is sufficient to determine "that after a trial on the merits, with formal procedures and complete evidence, [Charter] has a fair chance of prevailing." *Heartland Acad. Cmty. Church v. Waddle*, 335 F.3d 684, 690 (8th Cir. 2003) (affirming Eastern District of Missouri decision to grant preliminary injunction). Further, "[i]f the balance [of the relative hardships] tips decidedly towards the plaintiffs and the plaintiffs have raised questions serious enough to require litigation, ordinarily the injunction should issue." *Fennell v. Butler*, 570 F.2d 263, 264 (8th Cir. 1978) (vacating and remanding an order denying preliminary injunction because the court held that "there is some possibility that an injunction may issue" despite finding "that there is no probability that the plaintiffs will succeed on the merits"); *see also, Universal Underwriters Serv. Corp. v. Mech. Breakdown Prot., Inc.*, No. 05-0415-CV-W-GAF, 2005 WL 1429759, at *7-8 (W.D. Mo. June 14, 2005) (enjoining the dissemination of false statements and finding it unnecessary to engage in an exhaustive analysis of likelihood of success because "the balance of other factors tips decidedly towards" granting the injunction).

1. DirecTV Made False Statements about Charter in Its Advertising.

A plaintiff can establish a false statement under the Lanham Act by showing an advertisement is literally false or is likely to mislead consumers. *Time Warner*, 497 F.3d at 153. Literal falsity exists if the advertisement contains a false statement or if the advertisement's message implicitly conveys a false message. *See Rhone-Poulenc Rorer Pharm., Inc. v. Marion Merrell Dow, Inc.*, 93 F.3d 511, 516 (8th Cir. 1996). In assessing whether a message is literally false, "a court must analyze the message conveyed in full context." *Id.* at 516 (*quoting Castrol, Inc. v. Pennzoil Co.*, 987 F.2d 939, 946 (3d Cir. 1993)). In fact, this Court can assess the images in DirecTV's advertisements in determining whether such advertisements are literally false. *Time Warner*, 497 F.3d at 159. If an advertisement is shown to be literally false, the second

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 25 of 36 PageID #: 152

element of a Lanham Act false advertising claim is presumed and the plaintiff need not show evidence of consumer confusion. *Id*. at 153; *Rhone-Poulenc*, 93 F.3d at 516.

The second avenue of recovery for a Lanham Act plaintiff is to show that an advertisement, while not literally false, is likely to mislead or confuse consumers. *Time Warner*, 497 F.3d at 153. An advertisement is likely to mislead or confuse if – despite the literal truth of its statements – it leaves an impression on the listener or viewer that conflicts with reality. *Id.* If an advertisement is not literally false because of its explicit statements or implicit message, a plaintiff can prevail with evidence of consumer confusion. *Id.*

a. DirecTV's Ads Contain Literally False Statements.

As part of its national advertising campaign directed at Charter's bankruptcy filing, DirecTV is sending direct mail advertisements to Charter's existing customers in the form of a letter from DirecTV's Vice President of Marketing, Michael Rogers. *See* Exhibit 1. The advertisements state: "It's official: Charter has filed for bankruptcy. As they focus on their problems, **there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming**." *Id.* (emphasis added). The direct mailer instructs Charter's customers to switch to DirecTV because Charter's bankruptcy will affect its customers. *Id.* ("So instead of wondering how **cable's problems will affect you**, just switch to DIRECTV.").

DirecTV's statement is literally false. With respect to the latest technology, Charter recently rolled out NBC Primetime On Demand, which was not available to Charter's customers prior to March 27, 2009, the date of Charter's bankruptcy filing. Decl. of T. Schremp at ¶ 24. This service allows customers to access NBC Primetime television shows whenever the customer chooses to view them and utilizes an advanced technology. *Id.* With respect to more channels in

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 24 of 36 PageID #: 153

HD, Charter has added additional HD channels since filing for bankruptcy. *Id.* at ¶¶ 26 and 27. For example, on April 1, 2009, Charter made two additional HD channels available to its customers in the Osage Beach, Missouri, area. *Id.* at ¶ 27. The first channel made available to these customers was the HD counterpart of a standard definition feed from KOMU, a local NBC affiliate located in Columbia, Missouri. *Id.* The second channel made available was the HD counterpart of a standard definition feed from KSPR, a local ABC affiliate located in Springfield, MO. *Id.* Charter will launch additional HD channels in other areas later this spring and summer. *Id.* at ¶ 26.

Charter has also launched telephone service to additional markets and faster-speed Internet services during its bankruptcy. *Id.* at ¶ 32. For example, Charter recently launched 60 Meg Internet access, one of the fastest in the industry, utilizing recently announced "DOCSIS 3.0" technology. *Id.* DirecTV's claim is literally false – during the bankruptcy period, Charter is providing the latest technology and adding HD television channels.

Not only are DirecTV's statements false, they are willful. DirecTV's conduct is all the more egregious given its status as a direct competitor of Charter. *Id.* at ¶¶ 64 and 65. It is obvious from DirecTV's advertisements that DirecTV is monitoring Charter's financial status. *See* Exhibits 1, and 3 through 10. As with anyone with Internet access, DirecTV could have reviewed the content and details of Charter's bankruptcy filing online by going to www.kccllc.net/charter. Decl. of T. Schremp at ¶ 6. DirecTV had public notice that Charter's reorganization will not affect Charter's ability to provide customers with cable services. *Id.* at ¶¶ 6 and 7. Contrary to the statements in DirecTV's direct mailers, Charter's services and offerings to its customers and prospective customers have not and will not decrease during the pre-arranged reorganization. *Id.* at ¶¶ 17-38. After the bankruptcy filing, Charter offered new

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 25 of 36 PageID #: 154

services to its customers using the latest technology. *Id*. at ¶¶ 21-32. DirecTV cannot maintain that its ads are innocent or mistaken or simply fail to nuance a complicated situation when it has had a plethora of easily accessible information at its fingertips that demonstrates its claims are false.

b. DirecTV's Ads Are Literally False By Implication.

DirecTV's advertisements are also literally false by implication. The images and words used in DirecTV's advertisements, when considered in context, deliver a false message and are likely to deceive Charter's current and prospective customers. The advertisements falsely imply that Charter's ability to provide cable services will be impaired or that Charter is going out of business. For example, DirecTV's print and billboard advertisements depict the image of DirecTV as a life-preserver or a fire extinguisher and state: "Get help *while you can*," "[w]ith Charter Cable filing for bankruptcy, now's the time to save yourself," and "Charter Cable has filed for bankruptcy. SAVE YOURSELF." *See* Exhibits 3 through 7 (emphasis added). These advertisements falsely suggest that Charter is a figurative "sinking ship" or a "burning building," *i.e.*, that it is going out of business. Moreover, DirecTV's use of quotation marks around the words "restructure" in the advertisements falsely implies that "restructure" is a euphemism for "liquidate."

Rather, Charter is a thriving and growing business, that filed a bankruptcy petition only to de-leverage its balance sheet. Decl. of T. Schremp at ¶¶ 4-15. Before filing the Petition, Charter reached a consensual, pre-arranged Plan designed to ensure that its stay in Chapter 11 would be successful and brief. *Id*. at ¶ 8. Charter will emerge from Chapter 11 an even stronger company with less of a debt burden. *Id*. at ¶¶ 8-9 and 13-15. Charter will not liquidate. *See id*. at ¶¶ 4-15. Indeed, its trade creditors are continuing to receive and will continue to receive payment in full

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 26 of 36 PageID #: 155

for their obligations. *Id*. at ¶ 10. In addition, Charter has undertaken substantial efforts to ensure that its services to its customers have been and will continue to be unaffected by its restructuring. *Id*. at ¶¶ 13-15. New service offerings and more HD channels and offerings are evidence that these efforts have been successful. *Id*. at ¶¶ 17-38.

DirecTV furthers its false message by using language and imagery suggesting harm to the consumer. DirecTV uses the phrase "save yourself" in the print advertisements and employs a life-preserver and fire extinguisher to suggest that the consumer will suffer much more than mere inconvenience if he or she stays a Charter customer. *See* Exhibits 3 through 6. These extreme words and imagery further DirecTV's false message that Charter is either going out of business or will not be able to provide its customers with the latest technology, more HD channels, or new exclusive programming. *Id*. In fact, the advertisements specifically instruct Charter's current customers that "instead of waiting for Charter's bankruptcy *to affect you*, just switch to DirecTV." *Id*. (emphasis added). A customer viewing or hearing these advertisements is likely to take away the message that Charter is either going out of business or that he or she will be adversely impacted by the recent bankruptcy filings. In fact, several customers viewing DirecTV's ad have reached that conclusion. Decl. of T. Schremp at ¶¶ 49-55; Decl. of T. Burnett at ¶¶ 3-18. DirecTV's advertisements are literally false because their words and images, when considered in context, imply a false message to the customer.

DirecTV's literally false messages extend to its broadcast ads. One broadcast ad states "[d]id you know Charter just filed for bankruptcy? I'd suggest you avoid this mess altogether and switch to DirecTV." Exhibit 9. Just like the life-preserver and fire extinguisher ads, the broadcast ad employs words that suggest the customer will be harmed by Charter's restructuring. Another DirecTV broadcast ad claims that the bankruptcy proceedings are "not going to help

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 27 of 36 PageID #: 156

[Charter's] customer service one bit." Exhibit 10. These assertions are not based in fact and convey false messages that are likely to mislead the consuming public by falsely asserting that the quality of Charter's services will decrease as a result of the bankruptcy proceedings. In reality, Charter's services have not decreased and Charter will further enhance its service offerings going forward. Decl. of T. Schremp at ¶¶ 17-38.

Implicit messages in advertisements, such as the ones used by DirecTV's ongoing ad campaign may be literally false. *See Rhone-Poulenc*, 93 F.3d at 516 (affirming a permanent injunction for false advertising under the Lanham Act where the implicit message of a competitor's advertisement, when conveyed in full context, was literally false). A statement may be literally false by implication if the intended audience would recognize the claim "as readily as if it had been explicitly stated." *Medtox Scientific, Inc. v. Tamarac Med., Inc.*, No. 06-3546, 2007 WL 37793, at *2-3 (D. Minn Jan. 4, 2007) (citation omitted) (granting preliminary injunction, after temporary restraining order expired, for statements in advertisement that were false by necessary implication). In fact, when an implicit message is literally false, the issue becomes one of remedy. *Rhone-Poulenc*, 93 F.3d at 516. Thus, the central message conveyed by the words and images in DirecTV's ads is literally false and must be remedied by this Court.

2. DirecTV's Advertisements Are Likely to Deceive Customers.

When an advertisement is shown to be literally false, consumer deception is presumed, and relief may be granted without reference to the advertisement's actual impact on the buying public. *Id.*; *Time Warner*, 497 F.3d at 153. Even if not literally false, willful and bad faith statements are presumed to deceive. *Porous Media Corp. v. Pall Corp.*, 110 F.3d 1329, 1337 (8th Cir. 1997). As set forth above, DirecTV's advertisements are literally false, both by their explicit statements and by implicit messages. They are also willful. Thus, this second element

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 28 of 36 PageID #: 157

for a cause of action under the Lanham Act for false advertising is presumed. *Id.*; *Rhone-Poulenc*, 93 F.3d at 516; *Porous Media*, 110 F.3d at 1337; *Time Warner*, 497 F.3d at 153.

Charter need not present a survey evidencing confusion when seeking immediate injunctive relief. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 15 (7th Cir. 1992) (reversing district court denial of preliminary injunction and noting that "full-blown consumer surveys to prove actual consumer confusion . . . are not required at the preliminary injunction stage"). The Court may grant the injunctive relief requested without considering whether consumers are likely to be deceived, confused, or misled by DirecTV's advertisements. But there should not be any issue on this point – Charter has evidence of *actual* consumer confusion as set forth above in Section I, Subsection F. Not only is the buying public likely to be deceived by DirecTV's ad campaign directed at Charter's bankruptcy filings, Charter has cited to several instances when its existing customers have been and continue to be deceived by DirecTV. For these reasons, Charter is likely to prevail on its claims under the Lanham Act and DirecTV should be enjoined from continuing to run its advertising campaign regardless of whether DirecTV's advertisements are deemed literally false.

3. DirecTV's False Advertisements are Likely to Influence the Purchasing Decision of Customers.

DirecTV's advertisements are targeted at Charter's customers and prospective customers of both Charter and DirecTV. In fact, DirecTV instructs Charter's customers: "instead of wondering how cable's problems *will affect you*, just switch to DIRECTV." Exhibits 1 and 3 (emphasis added). Charter and DirecTV directly compete to provide television services to customers throughout the United States. Decl. of T. Schremp at ¶ 41. The competition among television service providers is high. *Id.* at ¶ 42; *see also Time Warner*, 497 F.3d at 149. This is especially true in light of the limited number of television service provider options for customers

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 29 of 36 PageID #: 158

and because customers typically subscribe to only one subscription television service provider at a given time. *Id*. at 41-44. The acquisition of a customer by any one subscription television service provider likely eliminates a potential or current customer for all competing subscription television service providers. *Id*. at ¶ 43. Likewise, the loss of a customer or potential customer by any subscription television service provider is likely a gain for a competing subscription service provider. *Id*. at ¶ 44.

These advertisements are material to customers' purchasing decisions. If Charter customers believe Charter is going out of business, they may very well decide to buy television services elsewhere. The intent of the DirecTV advertising campaign is to convince the viewer that Charter's bankruptcy proceedings would negatively affect its services and drive those customers to DirecTV. *Id.* at ¶ 45. In fact, Charter has evidence that several customers have contacted Charter regarding the continuation of its services due to DirecTV's false and deceptive assertions in its advertising. *Id.* at ¶¶ 49-55; Section I, Subsection F.

DirecTV's deception is material, in that it is likely to influence customers' purchasing decisions. *See Southwestern Bell*, 202 F. Supp.2d at 930 (citation omitted) (finding a false advertisement of a direct competitor likely to influence customers' purchasing decisions). Because DirecTV's advertisements at issue are material to the purchasing decision, this element of Charter's false advertising claim is met and DirecTV should be ordered to cease its false ad campaign.

4. DirecTV's False Advertisements Entered Interstate Commerce.

There should be no dispute on this point. DirecTV is engaged in a national advertising campaign. DirecTV has sent direct mailings, published print ads and billboards, and broadcast radio ads containing false and misleading statements. *See* Exhibits 1, and 3 through 10.

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 36 of 36 PageID #: 159

DirecTV continues to aggressively implement its false and misleading advertising campaign in various states, including but not limited to Connecticut, Illinois, Louisiana, Michigan, Missouri, Nevada, South Carolina, and Wisconsin. *See* Decl. of T. Schremp at ¶ 57; s*ee generally* 15 U.S.C. §1125(a); *Laurel Capital Group, Inc. v. BT Fin. Corp.*, 45 F. Supp.2d 469, 477-80 (W.D. Pa. 1999).

5. Charter Has Been or Is Likely to Be Injured as a Result of DirecTV's False Advertising.

"[I]njury is presumed when a Lanham Act plaintiff shows that the defendant's statements are literally false." *Medtox Scientific*, 2007 WL 37793, at * 4. If DirecTV's advertisements are literally false, injury to Charter is presumed. *Id.*; *Time Warner*, 497 F.3d at 149, 161-62.

Even if the Court does not presume injury or the likelihood of injury, this element is met. Injury under the false advertising prong of the Lanham Act can be shown either by direct diversion of sales from Charter to DirecTV or by loss of goodwill associated with Charter's products.

> [A]ctual damages under section 35(a) can include: profits lost by the plaintiff on sales actually diverted to the false advertiser, profits lost by the plaintiff on sales made at prices reduced as a demonstrated result of the false advertising, the costs of any completed advertising that actually and reasonably responds to the defendant's offending ads, and quantifiable harm to the plaintiff's good will, to the extent that completed corrective advertising has not repaired that harm.

Alpo Petfoods, Inc. v. Ralston Purina Co., 997 F.2d 949, 954 (D.C. Cir. 1993) (citation omitted). As detailed above, Charter and DirecTV directly compete to provide television services to customers. Decl. of T. Schremp at ¶ 41. Customers typically use one service provider or another at a given time. *Id*. at ¶ 42. If Charter's customers believe DirecTV's false and deceptive messages in its advertisements, they likely will switch to DirecTV.

Case: 4:09-cv-00730-RWS Doc. #: 142 Filed: 05/11/09 Page: 31 of 36 PageID #: 160

Additionally, Charter's goodwill associated with its television services and its ability to provide television services to customers will be damaged if an injunction is not granted. "The goodwill of a company is an intangible business value which reflects the basic human tendency to do business with a merchant who offers products of the type and quality which the customer desires and expects." *Porous Media*, 173 F.3d at 1121-23. If customers viewing or hearing DirecTV's advertisements believe that Charter is going out of business or that its services are going to decline because of the bankruptcy proceedings, they may choose to take their business elsewhere resulting in a loss of goodwill to Charter. For these reasons, Charter is likely to be injured as a result of DirecTV's advertising.

C. Absent a Temporary Restraining Order and Preliminary Injunction, Charter Faces a Threat of Immediate and Irreparable Harm.

Charter easily meets the second requirement for obtaining injunctive relief. It will face irreparable injury through damage to its reputation and loss of customers unless the Court enjoins DirecTV from running its false advertisements.

Where, as here, a plaintiff has made a showing of likelihood of success under the Lanham Act, irreparable harm is presumed. *Southwestern Bell*, 202 F. Supp.2d at 929 (citation omitted); *Alternative Pioneering Sys., Inc. v. Direct Innovative Prods., Inc.*, 822 F. Supp. 1437, 1444 (D. Minn. 1993) ("[I]rreparable harm is presumed for purposes of a preliminary injunction motion on a false advertising claim once the moving party establishes a likelihood that the disputed [advertisements] are false."). When injunctive relief is sought under the Lanham Act, the finding of a tendency to deceive also satisfies the requisite showing of irreparable harm. *See Black Hills Jewelry*, 633 F.2d at 753 ("To obtain an injunction under section 43(a) appellees need only show that the falsities complained of had a tendency to deceive."). Charter has shown a likelihood of

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 32 of 36 PageID #: 161

success on the merits and that DirecTV's ads have a tendency to deceive; therefore, irreparable harm to Charter is presumed. *Id.*

Even if the presumption did not apply, Charter can demonstrate irreparable harm. Decl. of T. Schremp at ¶¶ 40-55; *Time Warner*, 475 F. Supp.2d at 308 (*rev'd on other grounds*); *see Southwestern Bell*, 202 F. Supp.2d at 930; *Coca-Cola Co. v. Tropicana Prods., Inc.*, 690 F.2d 312, 316-17 (2d Cir. 1982) (*abrogated on other grounds*) (holding that the fact that plaintiff and defendant were direct competitors would make it likely that the defendant's false advertising would cause the plaintiff to lose customers and suffer an irreparable injury). And once these customers leave Charter, the costs associated with switching disincentivizes them to return. Decl. of T. Schremp at ¶ 46. DirecTV customers may have to lease a satellite dish and new receivers. *Id.* In addition, the discounts DirecTV offers in the very advertisements at issue here are contingent on the customer buying DirecTV service for a certain number of years. *Id.* at ¶¶ 46 and 47. The offer contained in the life-preserver ad, for example, is contingent on a two-year commitment by the customer. Exhibits 4 and 5. This Court has held that under similar circumstances, "measuring which customers have been lost and calculating money damages to compensate for them would not be possible with any degree of accuracy," warranting injunctive relief. *Southwestern Bell*, 202 F. Supp.2d at 930. The heightened potential for irreparable harm and difficulty in ascertaining actual damages warrants injunctive relief. *Id.*

D. <u>The Harm to Charter if Equitable Relief Is Denied Outweighs any Harm to DirecTV if the Requested Relief Is Granted.</u>

The balance of harm weighs strongly in favor of issuing a temporary restraining order and preliminary injunction. The relative inquiry, the threat to each party's rights in the absence or presence of equitable relief, favors Charter. *Baker Elec. Co-op, Inc. v. Chaske*, 28 F.3d 1466, 1472-73 (8th Cir. 1994). As made clear above, DirecTV has already caused Charter irreparable

Case: 4:09-cv-00730-RWS Doc. #: 342 Filed: 05/11/09 Page: 33 of 36 PageID #: 162

harm by creating customer confusion. That damage, in the form of possible loss of customers and money to correct DirecTV's advertising will continue. *Time Warner*, 475 F. Supp.2d at 305, n.3. In contrast, the potential "harm" to DirecTV is merely the cost of removing these specific ads during the period of the injunction. *Comcast*, 2007 WL 2808235 at *3.

One need only look to *Time Warner* and *Comcast* for a demonstration of how the equities come out here. Just as here, in those cases DirecTV engaged in false and misleading national advertising campaigns deliberately designed to create customer confusion. In *Time Warner*, the district court held that the fact that Time Warner had established a likelihood of success was, standing alone, sufficient to meet the required balancing of harm. *Time Warner*, 475 F. Supp.2d at 305 n.3. In *Comcast*, the district court held that the balance of harm favored Comcast because the irreparable harm to Comcast, including a lack of remedy at law, outweighed the harm DirecTV would suffer in not being able to run specific advertisements during the period the injunction ran. *Comcast*, 2007 WL 2808235 at *3.

This case is no different, particularly given the limited nature of the relief Charter is requesting. Charter requests only that the Court enjoin DirecTV from further printing, airing, or otherwise using its advertisements directed at Charter's bankruptcy proceedings and removing all such existing advertisements. During the injunction, DirecTV is free to conduct business and compete with Charter – it certainly has many other advertisements at its disposal. However, it may not run advertisements that are false or deceptive. This narrow relief will be of little harm to DirecTV. Without it, however, Charter will suffer injury resulting from potential loss of current and prospective customers to DirecTV's services, as well as a potential loss of goodwill associated with Charter's reputation. This factor heavily favors granting the requested relief.

Case: 4:09-cv-00730-RWS Doc. #: 42 Filed: 05/11/09 Page: 34 of 36 PageID #: 163

E. Public Interest Will Be Best Served by Granting the Temporary Restraining Order.

Public interest favors enjoining false statements. *Surdyk's Liquor, Inc. v. MGM Liquor Stores, Inc*., 83 F. Supp.2d 1016, 1028 (D. Minn. 2000). In fact, "the public policy favors truth in advertising, so this factor must, of necessity, follow the determination that Charter is likely to succeed on the merits." *Southwestern Bell*, 202 F. Supp.2d at 930. Because Charter has shown that it is likely to succeed on the merits of its false advertising claim against DirecTV, public policy favors an injunction. *Id*.

There is a significant societal interest in safeguarding businesses from unfair competitive practices. Indeed, Section 43(a) of the Lanham Act was "designed to protect the right of the consumer to be told the truth." 5 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 27:25 (4th ed. 2009). The public is entitled to rely on the truth when deciding which television service provider to use. The public will ultimately benefit from having access to accurate information in the marketplace so that customers can make untainted decisions regarding competing products and services. No restraint of trade or other impact harmful to public policy will result if the Court enjoins DirecTV's false advertising. Considerations of the public interest weigh in favor of granting the requested relief, especially in light of the significant public interest in preserving and fostering fair business practices.

CONCLUSION

WHEREFORE Plaintiffs Charter Communications Holding Company, LLC and Charter Communications Operating, LLC request that this Court grant a temporary restraining order and a preliminary injunction enjoining DirecTV, Inc. from publishing or airing false and misleading advertisements directed at Charter's recent bankruptcy filing. For the foregoing reasons, Charter respectfully requests that the Court enter the Proposed Order filed herewith against DirecTV.

Respectfully submitted,

THOMPSON COBURN LLP

/s/ Dean L. Franklin

Dean L. Franklin, #3145
Steven M. Sherman, #84878
Pamela M. Miller, #535838
One US Bank Plaza
St. Louis, Missouri 63101
Telephone: 314-552-6000
Fax: 314-552-7000
dfranklin@thompsoncoburn.com
ssherman@thompsoncoburn.com
pmiller@thompsoncoburn.com

and

Kirill Y. Abramov, #109139
12405 Powerscourt Drive
St. Louis, MO 63131
Telephone: 314-288-3125
Fax: 314-909-0609
Kirill.Abramov@chartercom.com

Attorneys for Plaintiffs
Charter Communications Holding Company, LLC,
and Charter Communications Operating, LLC

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 36 of 36 PageID #: 165

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction was served upon the following individual via e-mail on May 11, 2009:

Takehiko Suzuki, Esq.
2230 East Imperial Highway
El Segundo, CA 90245
Vice President and Associate General Counsel of DirecTV, Inc.

The undersigned counsel further certifies that a copy of the foregoing Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction was served upon the following entity via hand delivery on May 11, 2009:

CSC - Lawyers Incorporating Service Company
221 Bolivar
Jefferson City, MO 65101
Registered Agent for DirecTV, Inc.

/s/ Dean L. Franklin

Case: 4:09-cv-00730-RWS Doc. #: 9-3 Filed: 05/11/09 Page: 1 of 16 PageID #: 166

DIRECTV.
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in O Fallon

REDACTED

O Fallon, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.^

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2006 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS^ The CHOICE™ package ~~$55.99 mo.~~

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.*

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY™ package

3810065456

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. Lease req'd. Must maintain programming. DVR service &/or HD Access. Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails

Exhibit 1

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS
FOR ONLY
$34.99 mo. ~~$55.99 mo.~~
FOR 12 MONTHS
The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE
PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE
FOR 3 MONTHS
28 PREMIUM MOVIE CHANNELS!
$108 value!

HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE
DIRECTV® HD DVR
Receiver upgrade

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer†
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit, credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!
HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99 mo. ~~$55.99~~ FOR 12 MONTHS*

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- Over 150 All-Digital Channels
- Local Channels Included in Every Package* ABC, CBS, FOX, NBC, PBS, CW and MyTV
- FREE for 3 Months—$38 Value! SHOWTIME 9 Channels
- FREE Professional Installation in up to 4 rooms *No equipment to buy. No start-up costs.*

And more!

$39.99 mo. ~~$60.99~~ FOR 12 MONTHS*

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- 50 MORE CHANNELS
- FREE for 3 Months—$108 Value! 28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- FREE HD DVR or DVR Receiver Upgrade*

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

~~$39.99~~ **$29.99 mo.** FOR 12 MONTHS*

Choices for the whole family!

- Over 150 of the Best Spanish** and English-Language Channels

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. [Lease req'd. Must maintain programming, DVR service &/or HD Access.] Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recorded. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ***Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. **Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. "BILL CREDIT/PROGRAMMING OFFER: free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MAS $39.99/mo. In order to receive $10 bill credit for OPTIMO MAS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer] and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing" as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. "HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($5/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $400. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C10

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE® package

Important information about the television service in Eunice

REDACTED
Eunice, LA REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.^

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels

+

FREE
DIRECTV® HD DVR
Receiver upgrade
$199 value!

+

FREE
Professional Installation

Case: 4:09-cv-00730-RWS Doc. #: 9-2 Filed: 05/11/09 Page: 5 of 16 PageID #: 170

Exhibit 5

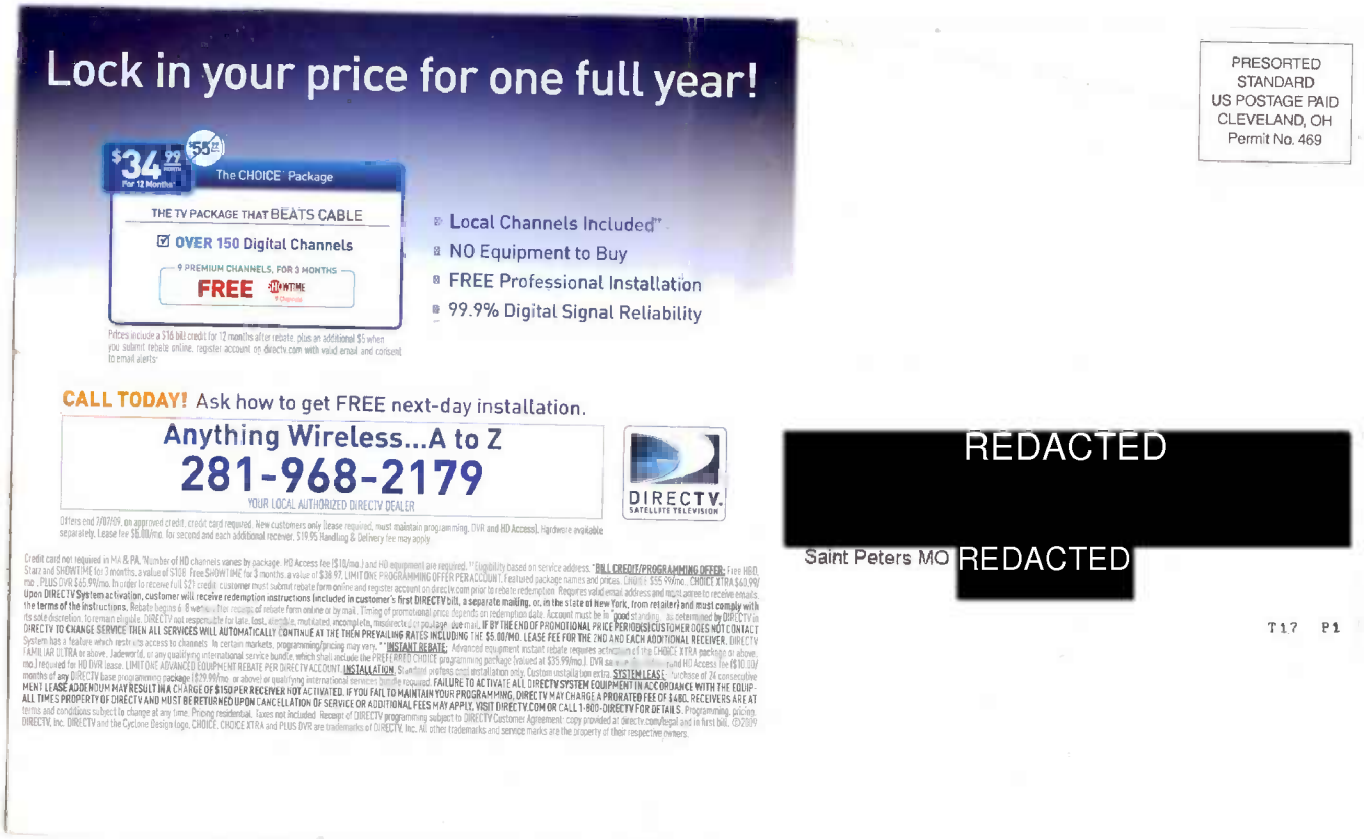

Lock in your price for one full year!
$34.99 for 12 Months
55
The CHOICE Package
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
9 PREMIUM CHANNELS, FOR 3 MONTHS
FREE SHOWTIME
Local Channels Included
NO Equipment to Buy
FREE Professional Installation
99.9% Digital Signal Reliability
CALL TODAY! Ask how to get FREE next-day installation.
Anything Wireless...A to Z
281-968-2179
YOUR LOCAL AUTHORIZED DIRECTV DEALER
DIRECTV
SATELLITE TELEVISION
PRESORTED
STANDARD
US POSTAGE PAID
CLEVELAND, OH
Permit No. 469
REDACTED
Saint Peters MO REDACTED
T17 P1

Exhibit 5

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. ~~$53.99 mo.~~
The CHOICE package

Important information about the television service in Church Hill

REDACTED

REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo.
EVERYDAY LOW PRICE
The FAMILY package

30101065261

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies. Not all content is HD. ‡Not all games available. ▽Dolby Digital 5.1 surround sound requires optional audio connection.

DIRECTV. SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $~~55~~[99]/mo.
The CHOICE package

Important information about the television service in Rockford

REDACTED
Rockford, MI REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34[99] a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29[99]/mo.
EVERYDAY LOW PRICE
The FAMILY package

30100486065

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ♦DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^**BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **"HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE: RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

30100486065 6C10

Exhibit 5

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo.
The CHOICE™ package

Important information about the television service in Lomira

REDACTED

Lomira, WI REDACTED

Dear REDACTED,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2009 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY™ package

30100392480

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by area. ‡Exclusive of Sirius.

Exhibit 6

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Attitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES†
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ◊DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. ~HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

REDACTED

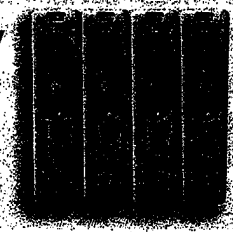
Charter has major issues—we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $55.99/mo.

- Local channels included in every package*
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third
- With DIRECTV, you can set your home DVR from any cell phone or computer†
- Access over 130 of your favorite channels in HD^

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99 mo. FOR 12 MONTHS* ~~$55.99 mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

$39.99 mo. FOR 12 MONTHS* ~~$60.99 mo.~~

Want even more for your money?

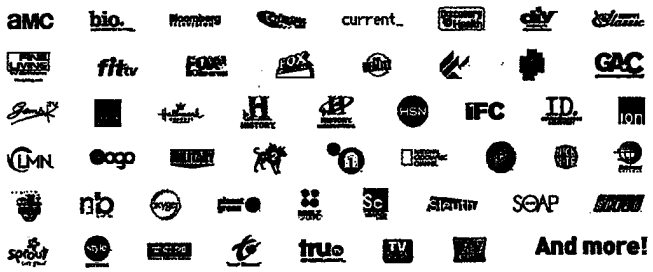
For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.



*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99 mo. FOR 12 MONTHS* ~~$39.99 mo.~~

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver.
Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ♦♦Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $498. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C10

30100392480

Exhibit 5

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE® package
~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
Greenville, SC REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[†]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · Starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.°

+

FREE DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY package

3011023847

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address required to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Case: 4:09-cv-00750-RWS Doc. #: 9-5 Filed: 05/11/09 Page: 15 of 16 PageID #: 180

REDACTED

Charter has major issues—we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99 mo.

FOR 12 MONTHS*

"The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra, $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD[1]

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ with DIRECTV

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

DIRECTV
2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in New Milford

REDACTED

New Milford, CT REDACTED

Dear Keith Vande,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.*

Get over 150 channels for only $34.99 a month.* You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV†
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound††
- **Worry-free 99.9% signal reliability.**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or direct.com

More TV. Less Money.

Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package

~~$55.99/mo.~~

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels

$108 value!

HBO 12 Channels | STARZ 12 Channels | SHOWTIME 9 Channels

FREE DIRECTV® HD DVR Receiver upgrade

Ask how

$199 value!

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

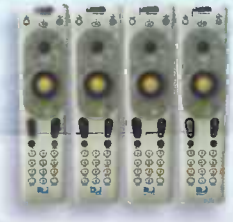
$34.99 mo. FOR 12 MONTHS^ ~~$55.99 mo.~~

The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

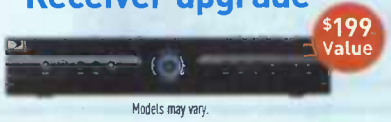
28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade



Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET℠ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Case: 4:09-cv-00750-RWS Doc. #: 3-4 Filed: 05/11/09 Page: 2 of 25 PageID #: 133

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ²HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. **BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **°HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($5/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30101170409

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

**$34.99 mo.** FOR 12 MONTHS^ ~~$55.99 mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package*** ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms *No equipment to buy. No start-up costs.*

And more!

**$39.99 mo.** FOR 12 MONTHS^ ~~$60.99 mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!* 28 Premium Movie Channels HBO 7 Channels, Starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

Models may vary.

And more!

^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

**$29.99 mo.** FOR 12 MONTHS^ ~~$39.99 mo.~~

Choices for the whole family!

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

^Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. ^^Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ∇∇Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^**BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °**HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30101170409

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just **$34.99 mo.** FOR 12 MONTHS^ The CHOICE™ package

~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
New Milford, CT REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers, 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · Starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

30111169532

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.99 shipping & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99 mo.

FOR 12 MONTHS^

The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-866-834-0830 or directv.com

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. for 12 months. The CHOICE™ package. ~~$55.99/mo.~~

Important information about the television service in Saint Charles

REDACTED

Saint Charles, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!

HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how°
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE. The FAMILY™ package

30100644623

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

^Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming, DVR service &/or HD Access.] Lease fee of $6/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & [illegible] Sales tax add'l. rms on back of letter. *Price & savings reflected include a $15 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails q'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ▽DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ◇HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. ^HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30100644623

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

$37.99/mo. FOR 12 MONTHS

The CHOICE™ package

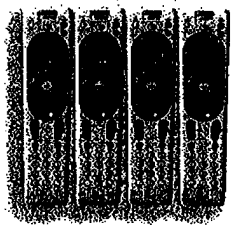
$55.99/mo.

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV is #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

[redacted]

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS $55.99/mo.

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo. FOR 12 MONTHS $60.99/mo.

Want even more for your money?
For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99/mo. FOR 12 MONTHS* $39.99/mo.

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. °DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ††Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30100644623

Case: 4:09-cv-00738-RWS Doc. #: 9-4 Filed: 05/11/09 Page: 15 of 16 PageID #: 191

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package
~~$55.99/mo.~~

Important information about the television service in Ballwin

REDACTED

Ballwin, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running,†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE The FAMILY™ package

38180567576

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & shipping/processing fee add'l. Terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES†
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Terms end 7/7/09 and are based on approved credit: credit card required. Credit card not required in MA and PA. New customers only. Lease required. Must maintain programming. DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ^DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System as a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

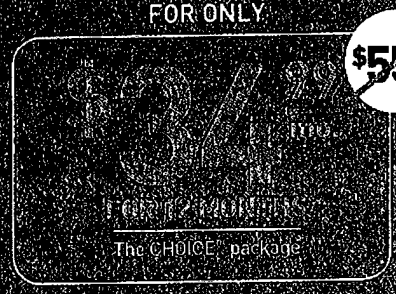
Exhibit 5

6C10

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $55.99 mo.

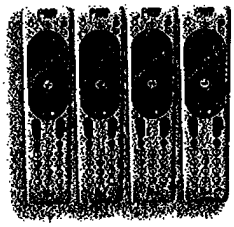


The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | starz 12 Channels | SHOWTIME® 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

$39.99/mo. FOR 12 MONTHS ~~$60.99/mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels Starz 12 Channels SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99/mo.~~ $29.99/mo. FOR 12 MONTHS*

- ☑ **Over 150 of the Best Spanish^^ and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

dit card not required in MA and PA. †Eligibility for local channels based on service address. ^^Professional installation highly recommended. Land-based phone line connection required. ^DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may . In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD nnels varies by package selected. ^^Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject hange at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system irements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. ^^Includes English-language broadcast channels with rnate Spanish-language audio and XM Satellite Radio channels. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and es: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state few York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as rmined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN . SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels, in certain kets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED NCE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR Lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 I RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. IT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone ign logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

)100567576

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package

~~$55.99/mo.~~

Important information about the television service in Chesterfield

REDACTED

Chesterfield, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2009 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE DIRECTV® HD DVR
Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE The FAMILY™ package

30108562102

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

s end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee applies. See back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming. DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $65.99/mo. In order to receive full $71 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

REDACTED

Charter has major issues—we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$83.99~~ $53.99 mo.

FOR 12 MONTHS

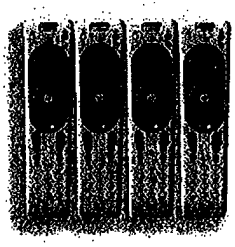
The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

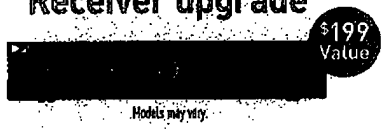
$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value



Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo. FOR 12 MONTHS ~~$60.99/mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV mas

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99/mo.~~ **$29.99/mo. FOR 12 MONTHS***

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/1/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recorded. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ¶¶Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $600. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

3810056210P

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package ~~$55.99/mo.~~

Important information about the television service in Saint Peters

REDACTED

Saint Peters, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.*

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE The FAMILY™ package

30180659498

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming, DVR service &/or HD Access.] Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & access to e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Exhibit 5

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Attitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

-s end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/, a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ▽DVR Scheduler requires Internet access via computer or mobile phone directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. y is a registered trademark of Dolby Laboratories. "BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $18B. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive mption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing romotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), TOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System a feature that restricts access to channels. In certain markets, programming/pricing may vary. "HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($90.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, h shall include the PREFERRED CHOICE programming package. DVR service ($3/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: hase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER EIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR L 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box e, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$99.99~~ $55.99 mo.

FOR 12 MONTHS

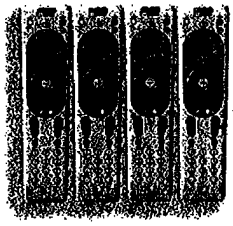
The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom InstaKation extra. $19.95 handling & delivery fee may apply.

DIRECTV #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET^^ Extreme by DTV

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

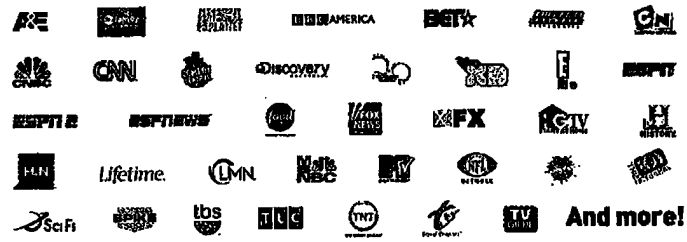
SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.



$39.99/mo. FOR 12 MONTHS ~~$60.99/mo.~~

Want even more for your money?
For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels starz 12 Channels SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99/mo. FOR 12 MONTHS* ~~$39.99/mo.~~

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $18 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional Installation highly recommended. Land-based phone line connection required. °DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ††Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. **Includes English-Language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill), a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *NO DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

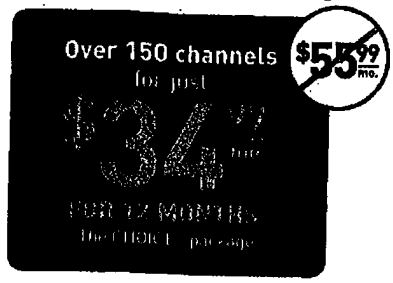
6C10

3818865499

DIRECTV.
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:



Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED

Saint Louis, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

✚

FREE
DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

✚

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY package

3011864055B

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

ers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming. DVR service &/or HD Access.] Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l ns on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & current browser required. Limit 5 rebates per email address. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package. See d.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-866-834-0830 or directv.com

offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ^DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System as a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C11

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $55.99/mo.

FOR 3 MONTHS

The CHOICE™ package

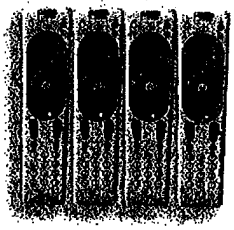
- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV #1 IN CUSTOMER SATISFACTION

FREE PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming. DVR service &/or HD Access.] Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET through DIRECTV

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

Pick your DIRECTV package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo FOR 12 MONTHS (was $55.99/mo.)

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo FOR 12 MONTHS* (was $60.99/mo.)

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

[redacted]

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99/mo. FOR 12 MONTHS* (was $39.99/mo.)

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-866-834-0830 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ‡To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline 0lsb, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ▽▽Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C11

3811 10640558

Exhibit 5

Frequently Asked Questions

about DIRECTV

"Is it a hassle to get DIRECTV?"

Not at all. Switching is FREE and EASY. Just call **1-866-558-6753** and we'll handle the rest.

"How reliable is the signal?"

Very. DIRECTV delivers **worry-free 99.9% signal reliability**, rain or shine. Don't believe what cable companies tell you.

"Will I still get my local channels?"

Yes, you will. DIRECTV® service includes local channels in 94% of the U.S.

Eligibility for local channels based on service address.

"Are there any start-up costs?"

None. In fact, you'll save money with our current offer. Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

"Do I have to buy any equipment?"

Not a thing. Batteries are even included with your remote.

"Do I have to install it myself?"

No. We'll set up your DIRECTV® System for you and show you how to use it.

Switch now!

1-866-558-6753

or directv.com

Case: 4:09-cv-00738-RWS Doc. #: 9-5 Filed: 05/11/09 Page: 11 of 11 PageID #: 208

DIRECTV
beats the competition hands down

Compare for yourself

	DIRECTV	DISH Network (#2 Satellite Company)	Cable
The most channels in HD—over 130†	YES	No	No
The most sports in HD‡‡	YES	No	No
EXCLUSIVE SPORTS PACKAGES‡:			
NFL SUNDAY TICKET™	YES	No	No
NCAA® MEGA MARCH MADNESS®	YES	No	No
FREE NASCAR HotPass™	YES	No	No
99.9% signal reliability	YES	?	?
#1 in customer satisfaction Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.	YES	No	No

You deserve the best TV service
GET DIRECTV!

Switch now!
1-866-558-6753

†To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡‡Based on national offering of exclusive sports packages and other major sports programming in HD. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo are registered trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C12

Case: 4:09-cv-00758-RWS Doc. #: 9-5 Filed: 05/11/09 Page: 12 of 17 PageID #: 209

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS^ The CHOICE™ package
~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
Saint Louis, MO REDACTED

Dear REDACTED,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-558-6753** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how°
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY™ package

30120619033

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-558-6753 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & activation fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-866-558-6753 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ▽DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ◇HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in good standing, as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $400 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, a copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners. 6C12

30120619033

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99/mo.

FOR 12 MONTHS*

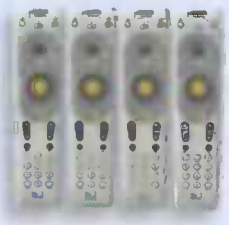
The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-558-6753** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET through DIRECTV

Switch now! 1-866-558-6753 or directv.com

Exhibit 5

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99 mo. ~~$55.99 mo.~~ FOR 12 MONTHS^

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package*** ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms *No equipment to buy. No start-up costs.*

And more!

$39.99 mo. ~~$60.99 mo.~~ FOR 12 MONTHS^

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!* 28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

Models may vary.

And more!

^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99 mo.~~ **$29.99 mo.** FOR 12 MONTHS^

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

^Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-866-558-6753 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. ^^Professional installation highly recommended. Land-based phone line connection required. 'DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ^^Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^**BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °**HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD [illegible] $10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. [illegible] DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

30120619033

6C12

DIRECTV
SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.

Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE™ package ~~$55.99 mo.~~

Important information about the television service in Mishicot

REDACTED

Mishicot, WI REDACT

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers, 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels

$108 value!

HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher^

+

FREE

DIRECTV® HD DVR

Receiver upgrade

Ask how°

$199 value!

+

FREE

Professional Installation

in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

30100254951

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $6/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.99 for first standard installation; other charges may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Taxes not included. *Consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

REDACTED

Charter has major issues— we'll give you major savings

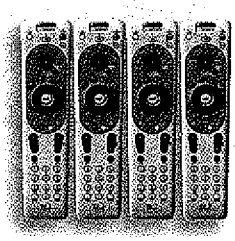
GET OVER 150 CHANNELS
FOR ONLY
$37.99/mo.
~~$55.99 mo.~~
FOR 12 MONTHS
The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE
PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE
FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE
DIRECTV® HD DVR
Receiver upgrade
$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available seperately. $19.95 handling & delivery fee may apply. See back for full offer details.

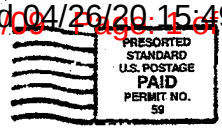
GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!
Get HIGH SPEED INTERNET™ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

2220 East Imperial Hwy.
El Segundo, CA 90245



Important information about the television service in Saint Charles

REDACTED

Saint Charles, MO REDACTED

Case: 4:09-cv-00730-RWS Doc. #: 9-7 Filed: 05/11/09 Page: 1 of 1 PageID #: 216

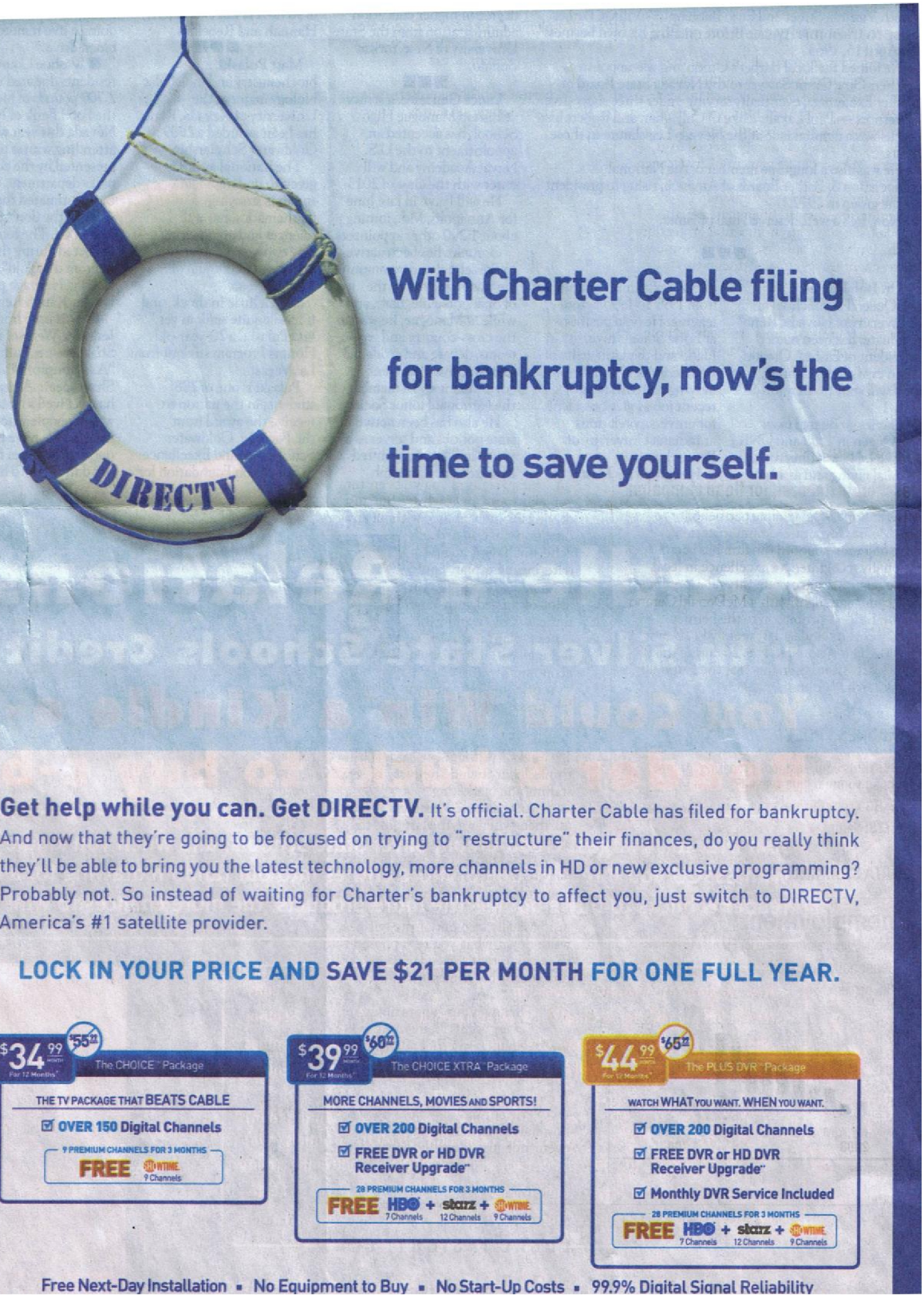
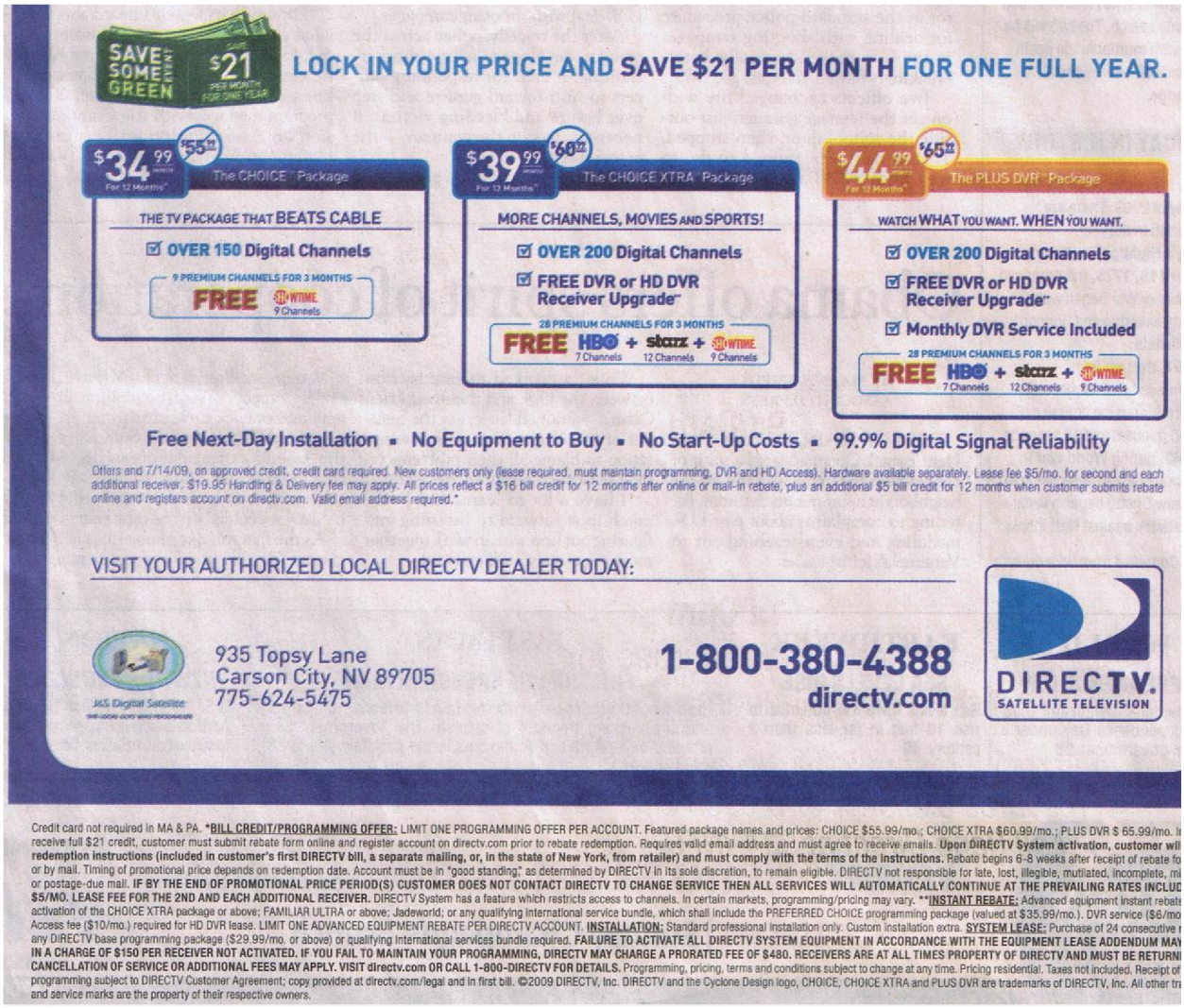


Exhibit 3

Case: 4:09-cv-00730-RWS Doc. #: 9-8 Filed: 05/11/09 Page: 1 of 21 PageID #: 217

Exhibit 4



Credit card not required in MA & PA. ***BILL CREDIT/PROGRAMMING OFFER:*** LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE $55.99/mo.; CHOICE XTRA $60.99/mo.; PLUS DVR $ 65.99/mo. I receive full $21 credit, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Requires valid email address and must agree to receive emails. **Upon DIRECTV System activation, customer wil redemption instructions (included in customer's first DIRECTV bill, a separate mailing, or, in the state of New York, from retailer) and must comply with the terms of the instructions.** Rebate begins 6-8 weeks after receipt of rebate fo or by mail. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, mi or postage-due mail. **IF BY THE END OF PROMOTIONAL PRICE PERIOD(S) CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICE THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE PREVAILING RATES INCLUD $5/MO. LEASE FEE FOR THE 2ND AND EACH ADDITIONAL RECEIVER.** DIRECTV System has a feature which restricts access to channels. In certain markets, programming/pricing may vary. ****INSTANT REBATE:** Advanced equipment instant rebate activation of the CHOICE XTRA package or above; FAMILIAR ULTRA or above; Jadeworld; or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package (valued at $35.99/mo.). DVR service ($6/mo Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Custom installation extra. **SYSTEM LEASE:** Purchase of 24 consecutive any DIRECTV base programming package ($29.99/mo. or above) or qualifying International services bundle required. **FAILURE TO ACTIVATE ALL DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MA IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURN CANCELLATION OF SERVICE OR ADDITIONAL FEES MAY APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of programming subject to DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and PLUS DVR are trademarks of DIRECTV, Inc. All other tr and service marks are the property of their respective owners.

Exhibit 5

CHARTER CABLE FILED FOR BANKRUPTCY.

WE'LL SAVE THE DAY

DIRECTV

Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

SAVE SOME GREEN $21 PER MONTH FOR ONE YEAR

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

$34.99 For 12 Months* ~~$55.99~~ The CHOICE™ Package
THE TV PACKAGE THAT BEATS CABLE
☑ OVER 150 Digital Channels
9 PREMIUM CHANNELS FOR 3 MONTHS
FREE SHOWTIME 9 Channels

$39.99 For 12 Months* ~~$60.99~~ The CHOICE XTRA™ Package
MORE CHANNELS, MOVIES AND SPORTS!
☑ OVER 200 Digital Channels
☑ FREE DVR or HD DVR Receiver Upgrade**
28 PREMIUM CHANNELS FOR 3 MONTHS
FREE HBO 7 Channels + STARZ 12 Channels + SHOWTIME 9 Channels

$44.99 For 12 Months* ~~$65.99~~ The PLUS DVR™ Package
WATCH WHAT YOU WANT, WHEN YOU WANT.
☑ OVER 200 Digital Channels
☑ FREE DVR or HD DVR Receiver Upgrade**
☑ Monthly DVR Service Included
28 PREMIUM CHANNELS FOR 3 MONTHS
FREE HBO 7 Channels + STARZ 12 Channels + SHOWTIME 9 Channels

No Equipment to Buy ▪ No Start-Up Costs ▪ Free Installation ▪ 99.9% Digital Signal Reliability

Offers end 7/07/09, on approved credit, credit card required. New customers only (lease required, must maintain programming, DVR and HD Access). Hardware available separately. Lease fee $5/mo. for second and each additional receiver. $19.95 Handling & Delivery fee may apply. All prices reflect a $16 bill credit for 12 months after online or mail-in rebate, plus an additional $5 bill credit for 12 months when customer submits rebate online and registers account on directv.com. Valid email address required.*

VISIT YOUR AUTHORIZED LOCAL DIRECTV DEALER TODAY:

All Digital Satellites

935 Topsy Lane
Carson City, NV 89705
775-624-5475

1-800-380-4388
directv.com

DIRECTV. SATELLITE TELEVISION

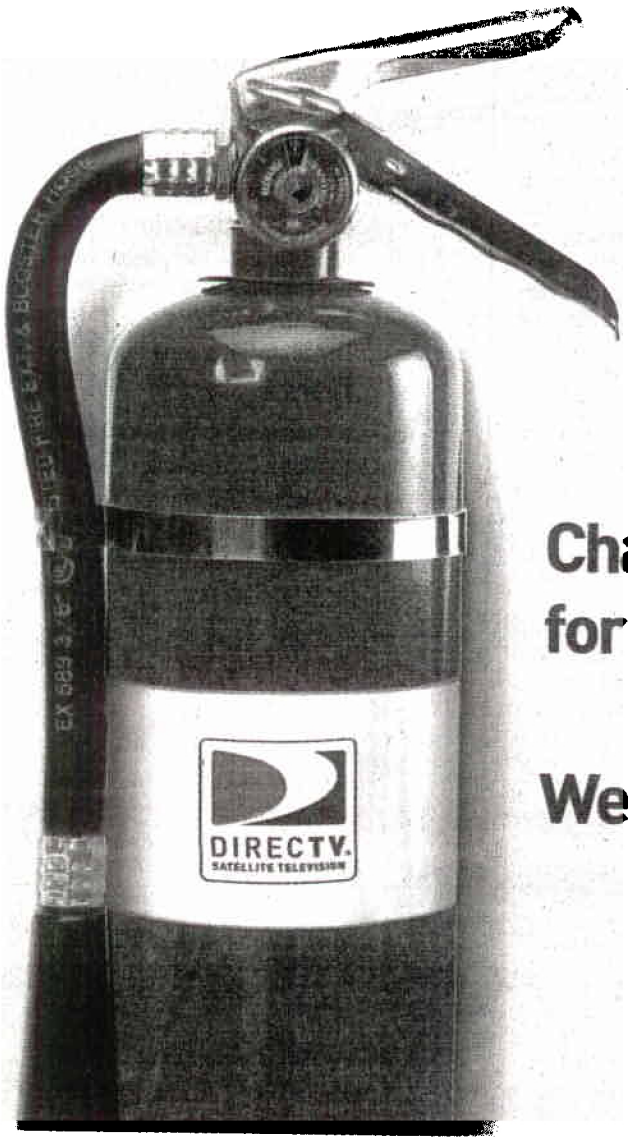
Credit card not required in MA & PA. *BILL CREDIT/PROGRAMMING OFFER: LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE $55.99/mo.; CHOICE XTRA $60.99/mo.; PLUS DVR $ 65.99/mo. In orde receive full $21 credit, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Requires valid email address and must agree to receive emails. **Upon DIRECTV System activation, customer will rec redemption instructions (included in customer's first DIRECTV bill, a separate mailing, or, in the state of New York, from retailer) and must comply with the terms of the instructions.** Rebate begins 6-8 weeks after receipt of rebate form or or by mail. Timing of promotional price depends on redemption date. Account must be in "good standing" as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdire or postage-due mail. **IF BY THE END OF PROMOTIONAL PRICE PERIOD(S) CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICE THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE PREVAILING RATES INCLUDING $5/MO. LEASE FEE FOR THE 2ND AND EACH ADDITIONAL RECEIVER.** DIRECTV System has a feature which restricts access to channels. In certain markets, programming/pricing may vary. ****INSTANT REBATE:** Advanced equipment instant rebate requ activation of the CHOICE XTRA package or above; FAMILIAR ULTRA or above; Jadeworld; or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package (valued at $35.99/mo.). DVR service ($6/mo.) and Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Custom installation extra. **SYSTEM LEASE:** Purchase of 24 consecutive month any DIRECTV base programming package ($29.99/mo. or above) or qualifying international services bundle required. **FAILURE TO ACTIVATE ALL DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RES IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED CANCELLATION OF SERVICE OR ADDITIONAL FEES MAY APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes programming subject to DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and PLUS DVR are trademarks of DIRECTV, Inc. All other tradem and service marks are the property of their respective owners.

Exhibit 5

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-10 Filed: 05/11/09 Page: 1 of 1 PageID #: 220

Exhibit 6



Charter Cable filed for bankruptcy.

We'll save the day.

Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

SAVE SOME GREEN EVENT — SAVE $21 PER MONTH

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

$34.99 ~~$55~~ — The CHOICE Package

THE TV PACKAGE THAT BEATS CABLE

- OVER 150 Digital Channels

9 PREMIUM CHANNELS FOR 3 MONTHS FREE STARZ 9 Channels

$39.99 ~~$60~~

MORE CHANNELS, MOVIES AND SPORTS!

- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade

28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME

$44.99 ~~$65~~ — The PLUS DVR Package

WATCH WHAT YOU WANT. WHEN YOU WANT.

- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade
- Monthly DVR Service Included

28 PREMIUM CHANNELS FOR 3 MONTHS

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 3-11 Filed: 05/11/09 Page: 1 of 1 PageID #: 221

Case: 4:09-cv-00730-RWS Doc. #: 9-12 Filed: 05/11/09 Page: 1 of 1 PageID #: 222

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC	)	
Plaintiffs,	)	Case No.
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 8

Exhibit 8 is a DirecTV radio ad labeled Exhibit8.mp3, and will be filed with the Court in electronic format on compact disc via hand delivery.

Case: 4:09-cv-00730-RWS Doc. #: 9-13 Filed: 05/11/09 Page: 1 of 1 PageID #: 223

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC	)	
Plaintiffs,	)	Case No.
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 9

Exhibit 9 is a DirecTV radio ad labeled Exhibit9.mp3 and will be filed with the Court in electronic format on compact disc via hand delivery.

Case: 4:09-cv-00730-RWS Doc. #: 9-14 Filed: 05/11/09 Page: 1 of 1 PageID #: 224

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC; CHARTER COMMUNICATIONS, INC.,	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 10

Exhibit 10 is a DirecTV radio ad labeled Exhibit10.mp3, and will be filed with the Court in electronic format on compact disc via hand delivery.

Case: 4:09-cv-00730-RWS Doc. #: 9-15 Filed: 05/11/09 Page: 1 of 4 PageID #: 225

THOMPSON COBURN LLP

One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000
www.thompsoncoburn.com

Dean L. Franklin
314-552-6038
FAX 314-552-7038
dfranklin@
thompsoncoburn.com

April 10, 2009

VIA ELECTRONIC AND NEXT DAY MAIL

Takehiko Suzuki
Vice President and Associate General Counsel
Business and Legal Affairs
DirecTV, Inc.
2230 E. Imperial Hwy.
El Segundo, CA 90245
tsuzuki@directv.com

Re: Advertising Campaign of DirecTV, Inc. Directed at Bankruptcy Proceedings of Charter Communications, Inc.

Dear Mr. Suzuki:

Our firm represents Charter Communications, Inc. ("Charter"). It has come to Charter's attention that DirecTV, Inc. ("DirecTV") is engaging in a national advertising campaign regarding Charter's recent bankruptcy proceedings. The advertisements in the campaign falsely state or deceptively imply that Charter is either going out of business or that Charter's ability to provide cable services will be impaired. The images and words used in DirecTV's advertisements, when considered in context, deliver a false message and are likely to deceive Charter's current and prospective customers. These advertisements constitute false advertising under the Lanham Act, 15 U.S.C. § 1125, *et seq*. In addition, these advertisements violate state statutory and common law rights of Charter.

As examples, DirecTV's print and billboard advertisements depict DirecTV as a life saver and state that "[w]ith Charter Cable filing for bankruptcy, now's the time to save yourself" and "Charter Cable has filed for bankruptcy. SAVE YOURSELF." *See* DirecTV's print and billboard advertisements attached hereto as Exhibit A, pp. 1-2. These advertisements suggest that Charter will no longer be able to provide services to its customers and that Charter's customers need to be rescued by DirecTV. This false message is strengthened by DirecTV's use of the phrase "save yourself" in both of these advertisements and the placement of DirecTV's name on a life saver. *Id.*

The print advertisement further implies that Charter will not be able to provide its customers with the latest technology, more high-definition channels, or new exclusive programming while involved in the current bankruptcy proceedings. *Id.* at 1. In fact, the advertisement specifically instructs Charter's current customers that "instead of waiting for Charter's bankruptcy to affect you, just switch to DirecTV." *Id.* DirecTV is misleading Charter's current and potential customers to believe that the bankruptcy proceedings will disrupt Charter's service and negatively

Case: 4:09-cv-00730-RWS Doc. #: 9-15 Filed: 05/11/09 Page: 2 of 4 PageID #: 226

affect its customers. Rather, Charter's public bankruptcy filings make clear that Charter is not planning to discontinue its cable services during its reorganization. Had DirecTV analyzed Charter's filings, it would have or should have known that its advertising falsely portrays Charter's future services. DirecTV's deceptive ads are aimed at luring Charter's current and prospective customers to DirecTV.

DirecTV's misleading and disparaging advertising campaign extends to its broadcast ads. Those state "[d]id you know Charter just filed for bankruptcy? I'd suggest you avoid this mess altogether and switch to DirecTV." These statements falsely state that there will be problems or a "mess" associated with Charter's restructuring and that Charter's bankruptcy proceeding will affect Charter's customers in a tangible manner. The word "mess" has a negative connotation and may mislead customers into switching their cable services to DirecTV. Another broadcast advertisement claims that the bankruptcy proceedings are "not going to help [Charter's] customer service one bit." These assertions are not based in fact and are likely to mislead the consuming public by falsely asserting that the quality of Charter's service will decrease as a result of the bankruptcy proceedings.

The Lanham Act prohibits such false or misleading advertising. *See* 15 U.S.C. § 1125, *et seq*. Charter requests that DirecTV immediately cease and desist from continuing to make any such false or misleading claims about Charter and its bankruptcy filing in its advertisements. Charter further requests that DirecTV immediately remove all such false or misleading claims from DirecTV's promotional materials, whether written, electronic, audio, printed, or contained on DirecTV's web site.

Charter would prefer to resolve this matter amicably and on a business basis, if possible. However, if DirecTV fails to take the requested action and provide Charter with written assurances of its actions in compliance with this letter by 5:00 P.M. CDT (3:00 P.M. PDT) on Wednesday, April 15, 2009, Charter will take further appropriate action.

Thank you for your attention to this matter.

Very truly yours,

Thompson Coburn LLP

By Dean L. Franklin
Dean L. Franklin

DLF/PMM

Enclosure – Exhibit A: DirecTV's print and billboard advertisements

4918368.8

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-15 Filed: 05/11/09 Page: 3 of 4 PageID #: 227

EXHIBIT
A
Exhibit 5

Charter Cable has filed for bankruptcy.
SAVE YOURSELF.
DIRECTV
SATELLITE TELEVISION
1-800-DIRECTV
DIRECTV

Case: 4:09-cv-00730-RWS Doc. #: 9-15 Filed: 05/11/09 Page: 1 of 2 PageID #: 229

Takehiko Suzuki
Vice President
and Associate General Counsel
Business and Legal Affairs

VIA E-MAIL
dfranklin@thompsoncoburn.com

April 15, 2009

Dean L. Franklin, Esq.
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101

RE: Charter Communications, Inc.

Dear Mr. Franklin:

This letter is in response to your April 10th letter regarding DIRECTV's advertising campaign in connection with Charter Communications, Inc. ("Charter"). Let me first state that DIRECTV is extremely committed to truthful advertising in our industry and, therefore, takes the accusations within your letter very seriously. However, DIRECTV's advertising campaign in connection with Charter is truthful and accurate, despite the accusations contained in your letter. It appears that this is nothing more than an attempt by you and your client to distort the facts and mischaracterize the advertisements in an effort to curtail and suppress the dissemination of truthful advertising by DIRECTV and to deflect the attention away from the dire nature of Charter's business operations.

Contrary to your assertions, none of the advertisement materials state or imply that Charter is either going out of business or that its ability to deliver cable services will be impaired. DIRECTV's advertisements simply articulate the facts and promote its superior service to consumers. There should be no dispute that Charter has filed for relief under Chapter 11 of Title 11 of the United States Code in the US Bankruptcy Court. In addition, as you should be well aware, DIRECTV has received significantly higher overall customer satisfaction ratings than Charter from ACSI and J.D. Power & Associates, two well-respected independent organizations, for the past several years. Matter of fact, Charter has been ranked as the worst or one of the worst television providers by these organizations in various categories. In the J.D. Power & Associates Rankings, Charter ranked the worst in the categories of (1) Performance and Reliability; (2) Customer Service; (3) Cost of Service and (4) Billing in all parts of the country. There is no denying that Charter's customers are generally dissatisfied with all aspects of their services as provided by Charter. In comparison, DIRECTV has received overwhelmingly higher ratings than Charter in all of the aforementioned categories. Moreover, DIRECTV has maintained the lowest customer disconnect rate in the multi-channel video industry. Consequently, it is indisputable that DIRECTV's customers are highly-satisfied with the high-quality services provided by DIRECTV. DIRECTV's advertisements merely reflect these incontrovertible facts; Charter subscribers should save themselves by switching to DIRECTV which affords their customers with significantly better customer experience,

Exhibit 12
Exhibit 5

2230 E. Imperial Hwy El Segundo, CA 90245 Phone: 310-964-5486 Fax: 310-964-4880 tsuzuki@directv.com

Case: 4:09-cv-00730-RWS Doc. #: 9-15 Filed: 05/11/09 Page: 2 of 2 PageID #: 230

satisfaction and service. Of course, this includes the industry-leading number of HD channels, unparalleled sports and entertainment options, including exclusive sports programming like the NFL Sunday Ticket programming, the NCAA Men's Basketball Tournament Mega March Madness package and the NASCAR HotPass, and the Interactive Channels for sports, news and major tennis and golf events like the French Open, the Wimbledon, the US Open and the Masters. Charter simply cannot match the overall quality and breadth of television experience provided by DIRECTV to its customers; DIRECTV's television service is head and shoulder above Charter.

While we can appreciate your client's discomfort with its bankruptcy filings, that in no way should prevent, limit or preclude any of its competitors from disseminating truthful and accurate advertisements. Based on the explanation above, DIRECTV does not believe that the advertisements you specify in your letter are false, misleading or deceptive. Nevertheless, to alleviate any concerns you may have, we are in the process of modifying the print advertising (including the billboard). The new creative will be in the marketplace in short order.

We believe the foregoing addresses your concerns, and as such, we consider this matter closed. If you would like to discuss this matter further, please do not hesitate to contact me. All rights are reserved.

Very truly yours,

Takehiko Suzuki

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 1 of 32 PageID #: 231

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

DECLARATION OF TED W. SCHREMP

1. I am employed by Charter Communications ("Charter") and currently hold the position of Executive Vice President and Chief Marketing Officer. I have been an employee of Charter for four years. Prior to my current position, I held the positions of Senior Vice President of Product Management and Senior Vice President and General Manager of Charter Telephone.

2. This Declaration is based on my personal knowledge. I am older than 18 and am competent to testify to the matters set forth herein.

Nature of Bankruptcy Proceedings

3. I have personal knowledge of Charter's pre-arranged financial restructuring and petition filed in the United States Bankruptcy Court for the Southern District of New York.

4. Charter offers analog and digital cable television services, as well as high-speed Internet and telephone services, to customers throughout the United States, including the Eastern District of Missouri. Charter, together with its subsidiaries and affiliates, constitutes the third-largest publicly-held cable operator in the United States, with operations in 27 states, approximately 5.5 million customers and 16,500 employees. Charter is a thriving and growing

Exhibit 15
~~Exhibit 5~~

Case: 4:09-cv-00750-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 2 of 32 PageID #: 232

business, which generates significant positive cash flow before debt service and has achieved upward, favorable trends as an operating enterprise. In the past three years, Charter has increased *pro forma* annualized revenue from approximately $5.4 billion to approximately $6.5 billion, and *pro forma* annualized adjusted Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") has grown from $1.9 billion to approximately $2.3 billion.

5. On March 27, 2009, Charter filed a pre-arranged plan and petition pursuant to Chapter 11 of the Bankruptcy code (11 U.S.C. § 1101, *et seq*.) in the United States Bankruptcy Court for the Southern District of New York, Case No. 09-11435-jmp.

6. All of Charter's bankruptcy filings have been public and anyone wishing to review the substance of those filings may do so online at www.kccllc.net/charter.

7. There have been numerous press releases regarding the details of the filings and developments in the bankruptcy proceeding.

8. Over the past several months, recognizing the recent deteriorating capital market conditions and its significant debt load, Charter embarked on a plan to de-leverage its balance sheet to improve its already-strong competitive position. To do so, Charter negotiated a financial restructuring with key bondholder constituencies and agreed upon a consensual, pre-arranged plan of reorganization (the "Plan") under Chapter 11 of the Bankruptcy Code.

9. The Plan provides for the canceling of approximately $8 billion in debt, the raising of approximately $3 billion of capital and debt financing, and the continuation of Charter's business in the ordinary course with trade creditors receiving payment in full -- 100 cents on the dollar.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 3 of 32 PageID #: 233

10. The Plan provides for Charter's trade creditors to be paid in full. To that end, Charter sought and obtained authorization from the Bankruptcy Court to continue to pay its trade creditors in the ordinary course of business.

11. As of March 31, 2009, Charter had approximately $836 million of cash on hand, and was producing more than $2.3 billion of positive *pro forma* adjusted EBITDA on an annualized basis. In addition, Charter's recent first quarter earnings release demonstrates its continued strong financials, and the release has received positive coverage in both industry press and other publications.

12. These approvals and substantial available resources have permitted Charter to continue its operations without disruption during its bankruptcy, as Charter will do throughout the reorganization process. Moreover, Charter is planning a quick exit from bankruptcy. In line with that intention, Charter obtained Bankruptcy Court approval of the Disclosure Statement with respect to the Plan on May 5, 2009. A hearing to confirm the Plan is currently scheduled for July 20, 2009. Due to the consensual nature of the Plan, Charter's time in bankruptcy will be brief and will have no impact on its ability to service its customers.

13. Charter filed its bankruptcy petition to take advantage of the benefits offered by a Chapter 11 filing such as restructuring their finances to emerge from bankruptcy as a stronger company better able to serve its customers. Charter's pre-arranged petition was designed to allow Charter to continue operating while it develops and implements financial restructuring plans and to minimize the amount of time that Charter spends in Chapter 11 bankruptcy.

14. As part of the bankruptcy proceedings the bankruptcy court has authorized Charter to continue conducting business in the ordinary course. The court also gave Charter approval to honor current customer programs without interruption.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 4 of 32 PageID #: 234

15. The financial restructuring will benefit customers because Charter will be better positioned to deliver products and services to its customers now and in the future. Charter's financial restructuring will allow Charter to offer customers more value through advanced video services, including a growing high-definition ("HD") offering, faster Internet speeds with value-added services, and a choice for telephone service.

Charter Offerings and Service

16. I have personal knowledge of Charter's stability and commitment to provide quality services now and in the future, the television, Internet, and telephone services offered by Charter now and prior to March 27, 2009, and Charter's business plans regarding future services and offerings.

17. Before and after filing for bankruptcy, Charter has undertaken substantial efforts to ensure that the services and offerings to its customers will be unaffected or enhanced by its financial restructuring.

18. Meeting customers' needs remains Charter's highest priority and customers should continue to rely on Charter for their communications and entertainment needs just as they always have. Charter is committed to continuing to provide its customers with quality cable, Internet, and phone service, throughout this financial restructuring and beyond.

19. Charter's operations are strong. Charter operations will continue as usual and service will not be impacted as a result of the financial restructuring. This restructuring enhances Charter's financial structure.

20. In response to DirecTV's false advertising campaign, Charter is responding with significant marketing efforts aimed at correcting the untrue claims made by DirecTV. Charter is expending substantial resources on correcting DirecTV's false advertisements. Charter is

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 5 of 32 PageID #: 235

educating its customer service representatives with instructions to specifically address DirecTV's false ads regarding Charter's financial restructuring.

21. Since the bankruptcy filings, Charter continues to operate business "as usual" and provide its customers with all services that were available pre-filing. Charter remains focused on offering its customers more value through advanced video services, including growing HD offerings, faster Internet speeds with value-added services, and a choice for telephone services. Charter is committed to serving its customers and bringing its customers the latest innovations in home entertainment.

22. So far this year, Charter has launched faster Internet speeds and has invested in innovative technology to further enhance its customers' Internet experience. Charter now provides the fastest residential service available from any multi-system cable and telecom provider in the St. Louis, Missouri area. In addition to Charter delivering the fastest speed today, its infrastructure has the capacity to support even higher speeds as demand and usage grow.

23. Charter is constantly enhancing its video products with new channels, more HD, and more Charter OnDemand™ ("On Demand") offerings.

24. On April 6, 2009, Charter launched NBC Primetime On Demand offering new content that was not available prior to March 27, 2009. This offering adds even more value to Charter's video service as a free addition to Charter's On Demand programming and is an example of Charter's ongoing commitment to bring its customers what they want in television. Charter will expand its Primetime On Demand offerings to include other content providers.

25. In March 2009, Charter launched Sports View Plus, which uses innovative technology to bring premium online and TV content to its customers. Charter is the first cable provider to combine select cable sports channels with premium content from sports websites.

Case: 4:09-cv-00750-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 6 of 32 PageID #: 236

26. Over the past year, Charter has increased its HD offerings and will continue adding more channels in HD. Charter's plans to increase its HD offerings continue and have not been slowed by Charter's financial restructuring. Charter will launch additional HD channels later this spring and summer.

27. On April 1, 2009, Charter made two additional HD channels available to its customers in the Osage Beach, Missouri, area. The first channel made available to these customers was the HD counterpart of a standard definition feed from KOMU, a local NBC affiliate located in Columbia, Missouri. The second channel made available was the HD counterpart of a standard definition feed from KSPR, a local ABC affiliate located in Springfield, MO.

28. Charter is currently trialing "switched digital technology" or "SDV" in three markets. This technology allows Charter to free-up additional bandwidth to launch additional HD channels. This technology requires a substantial financial commitment and the bankruptcy filings will not impede these plans and will facilitate implementation of this technology. Charter will expand its "switched digital technology" services. These developments have been well-publicized and have received coverage in industry press.

29. Charter currently offers approximately 30 HD channels in a majority of its markets and plans to offer additional HD channels later this spring and summer. Charter's bankruptcy filing has not and will not prevent Charter from offering more HD content.

30. Charter offers popular theatrical movies on its On Demand service, which allows Charter customers to watch programming whenever they wish to view it. Many of the popular theatrical movies offered through the On Demand service are made available to customers at the same time they are released on DVD. Since March 27, 2009, Charter has continued to add

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 7 of 32 PageID #: 237

blockbuster hits to On Demand in the same manner that such content has always been added to its On Demand offerings. Since March 27, 2009, 254 movies have been released on Charter On Demand (that count includes new releases, library titles, and independent and foreign movies) with six of them being released on the same day those movies were first available on DVD including: *Yes Man* on April 7, 2009; *Frost Nixon* on April 21, 2009; *The Burrowers* on April 21, 2009; *The Wrestler* on April 21, 2009; *Bride Wars* on April 28, 2009; and *Divina Confusion* on April 28, 2009.

31. Charter is investing in a new interactive program guide, making it easier for customers to find what they want, when they want. This project continues forward and has not been delayed or cancelled because of the financial restructuring.

32. Charter has also launched telephone service to additional markets, and faster-speed Internet services during its bankruptcy. For example, Charter recently launched 60 megabits per second ("Mbps") Internet access, one of the fastest in the United States, utilizing recently announced "DOCSIS 3.0" technology.

33. Charter offers more than 6000 movies and shows through Charter On Demand, including more free content and new releases than ever before, and a growing HD offering.

34. Charter's operations are strong and Charter will continue to offer the latest products and reliable service for years to come.

35. The television services offered by Charter after March 27, 2009 are more robust than the services offered prior to March 27, 2009.

36. Charter's television service offerings have increased since March 27, 2009.

37. Charter has created and continues to plan and implement initiatives to develop and offer new services and improved technology now and in the future.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 8 of 32 PageID #: 238

38. Charter will continue to offer the latest technology, add more HD channels, and provide new exclusive programming.

Nature of Competition Among Television Service Providers

39. I have personal knowledge of the competition among television service providers, the efforts used to attract customers from competitors, and marketing used to attract customers.

40. Like other cable companies, Charter operates through franchises granted by local or state government entities. In the areas in the Eastern District of Missouri and elsewhere in which Charter is the franchisee, the majority of cable subscribers are Charter customers. DirecTV is a significant competitor of Charter in areas where Charter operates.

41. Nationally, there are a limited number of options for customers seeking a television service provider. Essentially, the customer has the choice between normal "over-the air" broadcasters, a cable service provider, or a satellite service provider. DirecTV is one of only two national satellite television service providers and has a larger national market share of viewers than Charter. In the areas in which Charter does business, it is the primary provider of cable television services in those areas. Charter and DirecTV directly compete with one another to provide television services to customers throughout the United States, including but not limited to customers located in St. Louis, Missouri.

42. The competition among television service providers for customers is highly competitive in light of the limited number of options for customers and because customers typically subscribe to the services of only one subscription television service provider at a given time.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 5 of 32 PageID #: 239

43. The acquisition of a customer by any one subscription television service provider likely eliminates a potential or current customer for all competing subscription television service providers.

44. Likewise, the loss of a customer or potential customer by any subscription television service provider is likely a gain for a competing subscription service provider.

45. Customers who believe DirecTV's false messages that Charter will no longer be able to provide customers with television, Internet, or telephone services because of its bankruptcy filing may be lost as a potential Charter customer. If that customer then chooses a television service provider, the limited number of options make it likely that the customer will choose DirecTV.

46. Typically there are startup or installation costs associated with satellite television service including but not limited to a satellite dish and receivers. The customer may have to pay for leasing satellite equipment, installation of the equipment and may also have to sign a fixed term contract with the satellite television provider.

47. The offers in DirecTV's advertisements at issue in this matter are contingent on the customer signing a contract subscribing to DirecTV service for a certain number of years.

Actual Customer Confusion/Persuasion by DirecTV Ads

48. I am aware of inquiries received by Charter from its customers and the public regarding the untrue claims in DirecTV's advertisements and direct mailings.

49. When a Charter customer calls Charter's customer service line, the Customer Service Representative ("CSR") who answers the call sometimes contemporaneously makes notes regarding the nature and details of the call.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 10 of 32 PageID #: 240

50. The following example is a redacted true and accurate copy of a CSR's documentation of a call from a Charter customer in Romulus, Michigan:

> The following customer who received the letter from DIRECTV advising that they were losing services unless they switched due to Charter's bankruptcy. Phone Number [REDACTED]; Customer Name: [REDACTED]; Site 500, Romulus MI.
> She received letter in the mail from DIRECT TV. This letter was on DIRECT TV letterhead regarding television service in Romulus. It stated Charter has filed for bankruptcy, and you will be losing your services as a result. If you wish to avoid the interruption of service, they can call DIRECT TV to get their services switched.
> I have assured customer that is not the case, but there are other people in that market who may be receiving the same mailing. The customer says the wording is very clear that their Charter services will be lost.

51. Since DirecTV began running their ad campaign against Charter, Charter has received customer inquiries regarding confusion about the false claims in DirecTV's ad campaign. Several Charter customers have expressed concern because DirecTV's ads indicate that Charter will be ceasing operations and will not be able to provide them with service.

52. Another example of DirecTV's ad campaign causing consumer confusion among Charter's customers involves a Charter customer of more than eighteen (18) years. This customer in Eunice, Louisiana visited a Charter office on April 29, 2009 and asked when the office would be closing because she received a flyer from DirecTV stating that Charter would no longer provide her with service due to bankruptcy. A copy of the direct mailer this customer received and referenced is attached as part of Exhibit 1.

53. There are instances of Charter customers going to Charter offices and calling Charter's customer service lines to inquire whether they should terminate their Charter service because of the information stated in DirecTV's direct mailer that informed them that Charter will not be able to provide them with service.

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 11 of 32 PageID #: 241

54. Charter customer service representatives have documented customer inquiries about the DirecTV ads. Many of those customers sought clarification about the ads, which led them to believe that Charter was going out of business, ceasing operations, or would no longer be able to provide them with service. Charter customers have reported receiving phone calls from DirecTV providing similar information to the direct mailers they received.

55. Charter has received inquiries from customers and potential customers asking if the bankruptcy filing will affect the ability of Charter to provide technology and programming.

DirecTV's False and Misleading Advertisements

56. I have personal knowledge of DirecTV's advertisements and direct mailers that contain messages related to Charter's March 27, 2009 Chapter 11 bankruptcy filing.

57. DirecTV continues to aggressively implement its false and misleading advertising campaign in various states, including, but not limited to, Connecticut, Illinois, Louisiana, Michigan, Missouri, Nevada, South Carolina, and Wisconsin.

DirecTV's False and Deceptive Direct Mailings

58. Charter Exhibit 1, attached hereto and attached to Charter's Complaint, are true and accurate redacted copies of DirecTV's direct mailers sent by DirecTV or on its behalf to Charter customers and the general public in multiple states including but not limited to Connecticut, Louisiana, Michigan, Missouri, South Carolina, and Wisconsin. These direct mailers have been widespread and sent by DirecTV or on its behalf through the United States Postal Service.

59. One technique used with direct mailer marketing is the use of an envelope that does not readily identify the company sending the mailer and indicates that the envelope contains "important information." This tactic is designed to increase the opening rate of the mailer by

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 12 of 32 PageID #: 242

conveying the impression that the mailer is "official" or otherwise critical to the customer's television service.

60. DirecTV sent some of its direct mailer advertisements to customers using this type of direct mailing technique. *See* Exhibits 1 and 2.

61. DirecTV has sent and continues to send direct mail advertisements to Charter's customers. DirecTV's direct mailings consistently state as follows:

> Dear [Charter Customer]:
>
> It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice – join over 18 million families who have made the FREE and EASY switch to DIRECTV
>
> …
>
> So instead of wondering how cable's problems will affect you, just switch to DIRECTV….

Exhibit 1. A true and accurate redacted copy of a direct mailer advertisement sent to an individual in O Fallon, Missouri follows and is filed herewith as part of Exhibit 1.

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in O Fallon

REDACTED

O Fallon, MO REDACTED

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo FOR 12 MONTHS The CHOICE™ package ~~$55.99/mo~~

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. †† Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.*

+

FREE
DIRECTV® HD DVR Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99/mo EVERYDAY LOW PRICE The FAMILY™ package

3D100657456

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & eq. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online e-mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 14 of 32 PageID #: 244

62. These direct mailers state that as a result of Charter's bankruptcy filing Charter will not be able to provide its customers with (1) the latest technology; (2) more HD channels; and (3) new exclusive programming.

63. This statement is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD channels, NBC Primetime On Demand, and additional content. Charter also is ready and able to add more HD channels and will do so later this year. Additionally, Charter will expand its "switched digital technology" services. *See* ¶¶ 21-29.

64. Charter became aware of DirecTV's false and deceptive direct mailers after sending its cease and desist letter to DirecTV. Charter believes that DirecTV has actually ramped up its false and deceptive marketing campaign by increasing both the volume and egregiousness of their false advertisements. The DirecTV advertisements, including but not limited to the direct mailers, have become more explicit with their false messages asserting that there is "no way" Charter will be able to offer services to customers.

65. Charter also became aware of more DirecTV false advertisements after Charter sent its cease and desist letter to DirecTV, including but not limited to the "fire extinguisher" print ad. Charter believes the volume of all of DirecTV's false advertisements have increased since the cease and desist letter was sent, including but not limited to the widespread direct mailing campaign in multiple states around the country and the addition of billboard advertisements along major highways in, but not limited to, the St. Louis, Missouri area.

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 15 of 32 PageID #: 245

DirecTV's False and Deceptive Print Advertisements

66. Charter Exhibit 3, attached hereto and attached to Charter's Complaint, is a true and accurate copy of a print ad published by DirecTV or on its behalf.

67. The print copy of the advertisement appeared in the Reno Gazette-Journal on April 5, 2009 in the Reno, Nevada area. This advertisement ("the life-preserver ad") published by DirecTV or on its behalf states:

> With Charter Cable filing for bankruptcy, now's the time to save yourself.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you, just switch to DIRECTV, America's #1 satellite provider.

Exhibit 3. A true and accurate copy of the entire life-preserver print advertisement follows and is filed herewith as Exhibit 3.

DIRECTV
With Charter Cable filing for bankruptcy, now's the time to save yourself.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you, just switch to DIRECTV, America's #1 satellite provider.
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
FREE
$39.99
$68
MORE CHANNELS, MOVIES AND SPORTS!
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
FREE HBO + STARZ +
$44.99
$65
WATCH WHAT YOU WANT, WHEN YOU WANT.
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
Monthly DVR Service Included
FREE HBO + STARZ +
Free Next-Day Installation • No Equipment to Buy • No Start-Up Costs • 99.9% Digital Signal Reliability

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 17 of 32 PageID #: 247

68. This print advertisement states that as a result of Charter's bankruptcy filing Charter will not be able to provide its customers with (1) the latest technology; (2) more HD channels; or (3) new exclusive programming.

69. This statement is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD Channels, NBC Primetime On Demand, and additional content. Charter also is ready and able to add more HD channels and will do so later this year. Additionally, Charter will expand its "switched digital technology" services. *See* ¶¶ 21-29.

70. The implicit message of this advertisement is that Charter is going out of business or will no longer be able to provide cable services to its customers. The message also implies that the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

71. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter is and will continue to provide the same or greater level of service to its customers now and in the future. Contrary to DirecTV's untrue claims, Charter's bankruptcy filing has not and will not disrupt Charter's ability to provide services to its customers. *See* ¶¶ 4, 12-15, 17-19, 21, and 26-38.

72. Charter Exhibit 4, attached hereto and attached to Charter's Complaint, is a true and accurate copy of a print ad published by DirecTV or on its behalf. A copy of the advertisement appeared in the Reno Gazette-Journal on Sunday April 19, 2009 in the Reno, Nevada area.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 18 of 32 PageID #: 248

73. The print advertisement ("the life-preserver ad") published by DirecTV or on its behalf states:

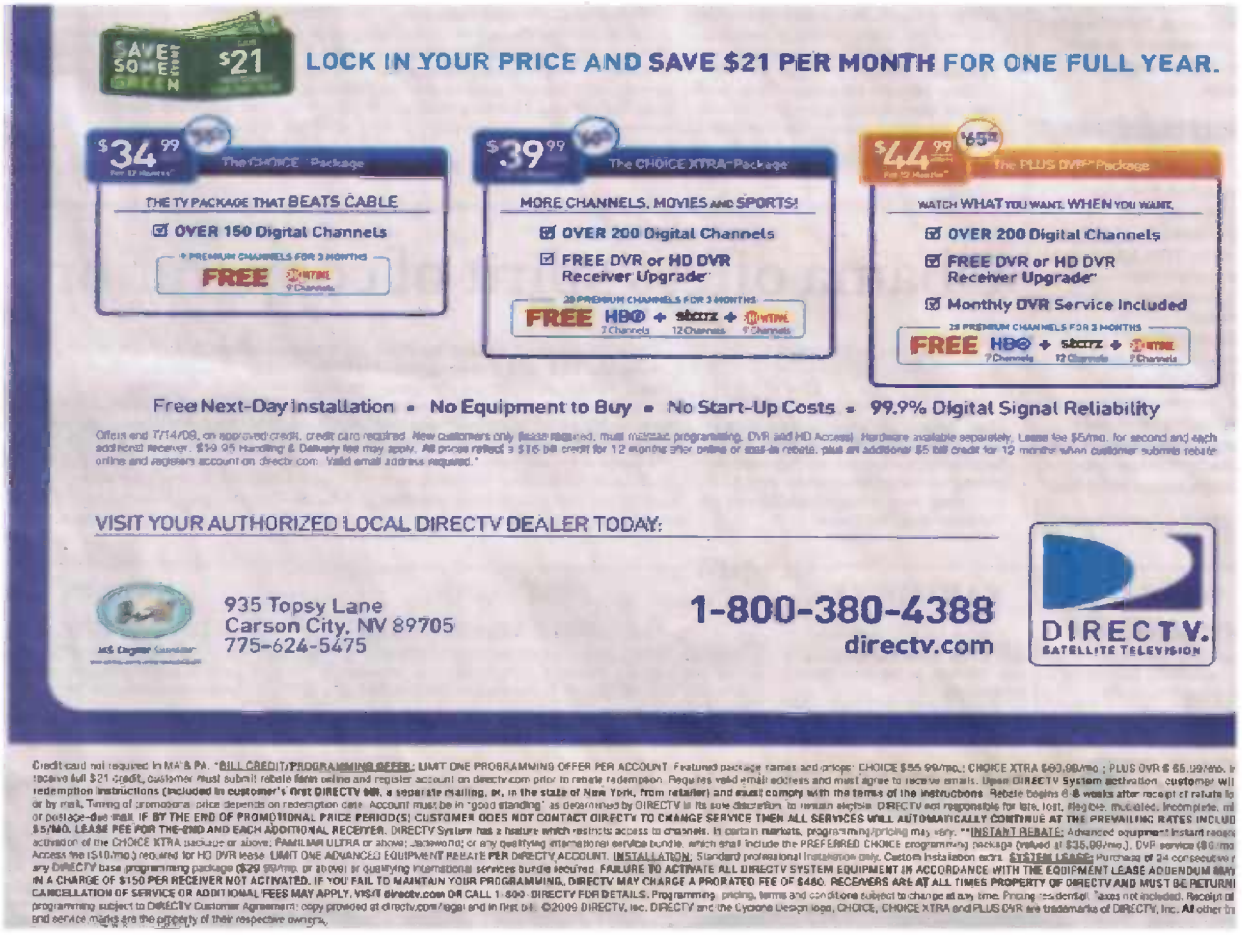
> With Charter Cable filing for bankruptcy, now's the time to save yourself.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite provider.

Exhibit 4. A true and accurate copy of the entire life-preserver print advertisement follows and is filed herewith as Exhibit 4.

Exhibit 5

DIRECTV
With Charter Cable filing for bankruptcy, now's the time to save yourself.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you just switch to DIRECTV, America's #1 satellite TV service.
SAVE SOME GREEN $21
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

Exhibit 5



74. This print advertisement states that as a result of Charter's bankruptcy filing Charter will not be able to provide its customers with (1) the latest technology; (2) more HD channels; or (3) new exclusive programming.

75. This statement is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD channels, NBC Primetime On Demand, and additional content. Charter also is ready and able to add more HD channels and will do so later this year. Additionally, Charter will expand its "switched digital technology" services. *See* ¶¶ 21-29.

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 21 of 32 PageID #: 251

76. The implicit message of this advertisement is that Charter is going out of business or will no longer be able to provide cable services to its customers. The message also implies that the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

77. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter is and will continue to provide the same or greater level of service to its customers now and in the future. Contrary to DirecTV's untrue claims, Charter's bankruptcy filing has not and will not disrupt Charter's ability to provide services to its customers. *See* ¶¶ 4, 12-15, 17-19, 21, and 26-38.

78. Charter Exhibit 5, attached hereto and attached to Charter's Complaint, is a true and accurate copy of a print ad published by DirecTV or on its behalf. This is another example of the "life-preserver" advertisement. A copy of the advertisement appeared in the Reno Gazette-Journal on Sunday May 3, 2009 in the Reno, Nevada area.

79. The print advertisement ("the life-preserver ad") published by DirecTV or on its behalf states:

> Charter Cable filed for bankruptcy. We'll save the day.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

Exhibit 5. A true and accurate copy of the entire life-preserver print advertisement follows and is filed herewith as Exhibit 5.

Exhibit 5

CHARTER CABLE FILED FOR BANKRUPTCY.
WE'LL SAVE THE DAY
DIRECTV
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99
$39.99
FREE
FREE
No Equipment to Buy • No Start-Up Costs • Free Installation • 99.9% Digital Signal Reliability
VISIT YOUR AUTHORIZED LOCAL DIRECTV DEALER TODAY:
1-800-380-4388
directv.com
DIRECTV

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 23 of 32 PageID #: 253

80. This print advertisement states that as a result of Charter's bankruptcy filing Charter will not be able to provide its customers with (1) the latest technology; (2) more HD channels; or (3) new exclusive programming.

81. This statement is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD channels, NBC Primetime On Demand, and additional content. Charter also is ready and able to add more HD channels and will do so later this year. Additionally, Charter will expand its "switched digital technology" services. *See* ¶¶ 21-29.

82. The implicit message of this advertisement is that Charter is going out of business or will no longer be able to provide cable services to its customers. The message also implies that the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

83. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter is and will continue to provide the same or greater level of service to its customers now and in the future. Contrary to DirecTV's untrue claims, Charter's bankruptcy filing has not and will not disrupt Charter's ability to provide services to its customers. *See* ¶¶ 4, 12-15, 17-19, 21, and 26-38.

84. Charter Exhibit 6, attached hereto and attached to Charter's Complaint, is a true and accurate copy of a print ad published by DirecTV or on its behalf. This ad has appeared in various publications around, but not limited, to the St. Louis, Missouri area. A copy of the

Case: 4:09-cv-00730-RWS Doc. #: 91-2 Filed: 05/11/09 Page: 24 of 32 PageID #: 254

advertisement appeared in the Wausau Daily Herald on Sunday April 26, 2009, in the Wausau, Wisconsin area.

85. The print advertisement ("the fire extinguisher ad") published by DirecTV or on its behalf states:

> Charter Cable filed for bankruptcy. We'll save the day.
>
> Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

Exhibit 6. A true and accurate copy of the print advertisement follows and is filed herewith as Exhibit 6.

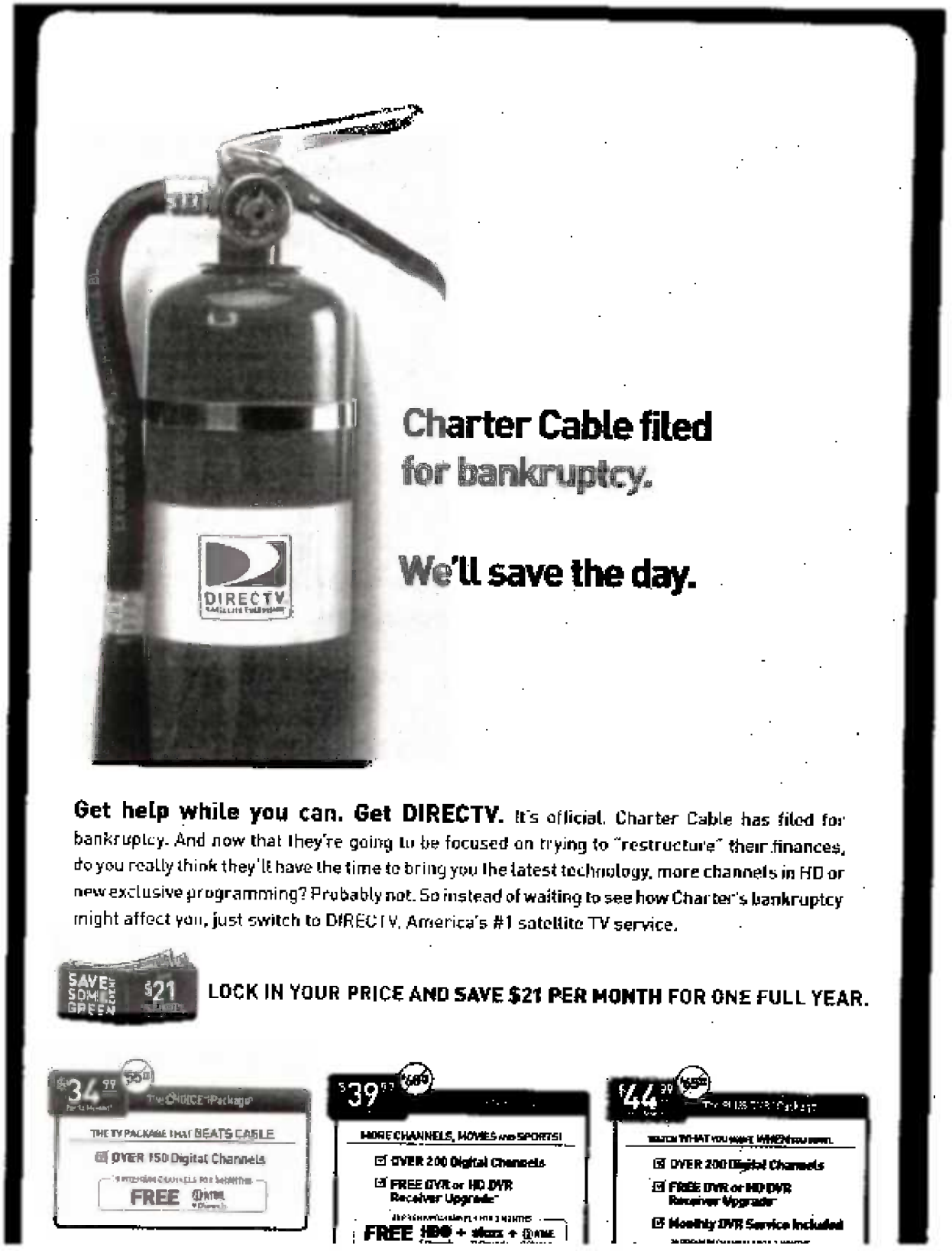

Charter Cable filed
for bankruptcy.
We'll save the day.
DIRECTV
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.
SAVE SOME GREEN $21
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
FREE
$39.99
MORE CHANNELS, MOVIES and SPORTS!
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
FREE HBO + STARZ + CINEMAX
$44.99
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
Monthly DVR Service Included

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 26 of 32 PageID #: 256

86. This print advertisement states that as a result of Charter's bankruptcy filing Charter will not be able to provide its customers with (1) the latest technology; (2) more HD channels; or (3) new exclusive programming.

87. This statement is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD channels, NBC Primetime On Demand, and additional content. Charter also is ready and able to add more HD channels and will do so later this year. Additionally, Charter will expand its "switched digital technology" services. *See* ¶¶ 21-29.

88. The implicit message of this advertisement is that Charter is going out of business or will no longer be able to provide cable services to its customers. The message also implies that the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

89. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter is and will continue to provide the same or greater level of service to its customers now and in the future. Contrary to DirecTV's untrue claims, Charter's bankruptcy filing has not and will not disrupt Charter's ability to provide services to its customers. *See* ¶¶ 4, 12-15, 17-19, 21, and 26-38.

DirecTV's False and Deceptive Billboard Advertisements

90. Charter Exhibit 7, attached hereto and attached to Charter's Complaint, is a true and accurate copy of DirecTV's billboard advertisement published by DirecTV or on its behalf. Billboards with this advertisement are located in, but not limited to, the St. Louis, Missouri area.

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 27 of 32 PageID #: 257

91. Some of these billboard advertisements are located along highways in the St. Louis area, including two billboards located along Interstate 55 that were recently installed. These installations came after Charter sent a cease and desist letter to DirecTV and DirecTV represented to Charter that they would change the content of their false advertisements.

92. One billboard advertisement published by DirecTV or on its behalf states, "Charter Cable has filed for bankruptcy. SAVE YOURSELF." Exhibit 7. A true and accurate copy of DirecTV's billboard advertisement follows and is filed herewith as Exhibit 7.

93. The implicit message of this advertisement is that Charter is going out of business or will no longer be able to provide cable services to its customers. The message also implies that the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

94. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter is and will continue to provide the same or greater level of service to its customers now and in the future. Contrary to DirecTV's untrue claims, Charter's bankruptcy filing has not and will not disrupt Charter's ability to provide services to its customers. *See* ¶¶ 4, 12-15, 17-19, 21, and 26-38.

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 28 of 32 PageID #: 258

DirecTV Radio Advertisements

95. Charter Exhibit 8, attached hereto and attached to Charter's Complaint as an audio compact disc, contains a true and accurate audio recording of a radio advertisement and is saved as electronic file "Exhibit8.mp3." This radio advertisement has played on major radio stations in, but not limited to, the Madison, Wisconsin market.

96. This DirecTV radio ad states in part:

> Announcer No. 1: Ok, Charter cable customers, time for some direct talk from DirecTV. As you may know, Charter has filed for bankruptcy. Uh-oh. And so now you're probably thinking "What does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels?" I certainly don't know. But I do know you can avoid Charter's mess completely by switching to DirecTV. . . . You can save yourself from this hassle. . . . So instead of waiting to see how Charter's bankruptcy will affect you, just switch to DirecTV, America's number one satellite TV service. . . .

Exhibit 8.

97. The implicit message of this radio advertisement is that as a result of Charter's bankruptcy filing Charter customers will lose their television service, miss their favorite shows, and not receive HD channels. The message also implies that Charter is going out of business and the only way for Charter customers to continue to receive television services is to terminate their service with Charter and subscribe to DirecTV.

98. This implicit message is false. As set forth above in ¶¶ 4, 9-15, and 17-38, Charter is not going out of business and Charter's bankruptcy filing has not and will not prevent Charter from offering its customers (1) the latest technology; (2) more HD channels; and (3) new exclusive programming. In fact, since the bankruptcy filing, Charter has added additional HD channels, NBC Primetime On Demand, and additional content. *See* ¶¶ 4, 12-15, 17-19, and 21-38.

Case: 4:09-cv-00730-RWS Doc. #: 9-1 Filed: 05/11/09 Page: 29 of 32 PageID #: 259

99. Charter Exhibit 9, attached hereto and attached to Charter's Complaint as an audio compact disc, contains a true and accurate audio recording of a radio advertisement and is saved as electronic file "Exhibit9.mp3." This radio advertisement has played on major radio stations in, but not limited to, the St. Louis, Missouri market.

100. Charter Exhibit 10, attached hereto and attached to Charter's Complaint as an audio compact disc, contains a true and accurate audio recording of a radio advertisement and is saved as electronic file "Exhibit10.mp3." This radio advertisement has played on major radio stations in, but not limited to, the St. Louis, Missouri market.

Foundation for Charter Exhibits

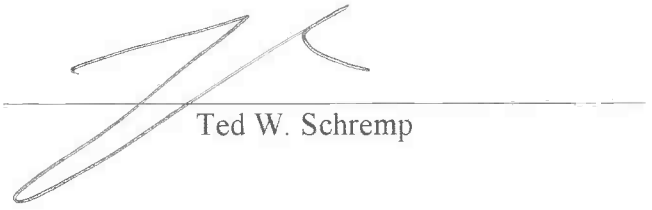
101. Charter Exhibit 2, attached hereto and attached to Charter's Complaint, is a true and accurate redacted copy of the envelope in which one of DirecTV's direct mailers was received. That envelope has a return address of 2230 East Imperial Hwy. El Segundo, CA 90245 and is postmarked Bellmawr, NJ.

102. Charter Exhibit 14, attached hereto and attached to Charter's Complaint, is a true and accurate copy of the Charter Committed to You DJ Talking Points script supplied to radio stations for use as live advertisements. These talking points are true and correct.

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 30 of 32 PageID #: 260

I, Ted W. Schremp, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on May 10, 2009.



Ted W. Schremp

Exhibit 5

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in O Fallon

REDACTED

O Fallon, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.^

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS^ The CHOICE™ package
~~$55.99 mo.~~

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.*

+

FREE
DIRECTV® HD DVR Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

3810065456

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. Lease req'd. Must maintain programming. DVR service &/or HD Access. Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails

Exhibit 1

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-17 Filed: 05/11/09 Page: 32 of 32 PageID #: 262

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $34.99 mo. FOR 12 MONTHS

~~$55.99 mo.~~

The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer†
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit, credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ***Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. ^^Includes English language broadcast channels with alternate Spanish language audio and XM Satellite Radio channels. "BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MAS $39.99/mo. In order to receive $10 bill credit for OPTIMO MAS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer] and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing" as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. "HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package, DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION. Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $400. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C10

Exhibit 5

DIRECTV
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE® package

Important information about the television service in Eunice

REDACTED
Eunice, LA REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.^

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™ and FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels starz 12 Channels SHOWTIME 9 Channels

+

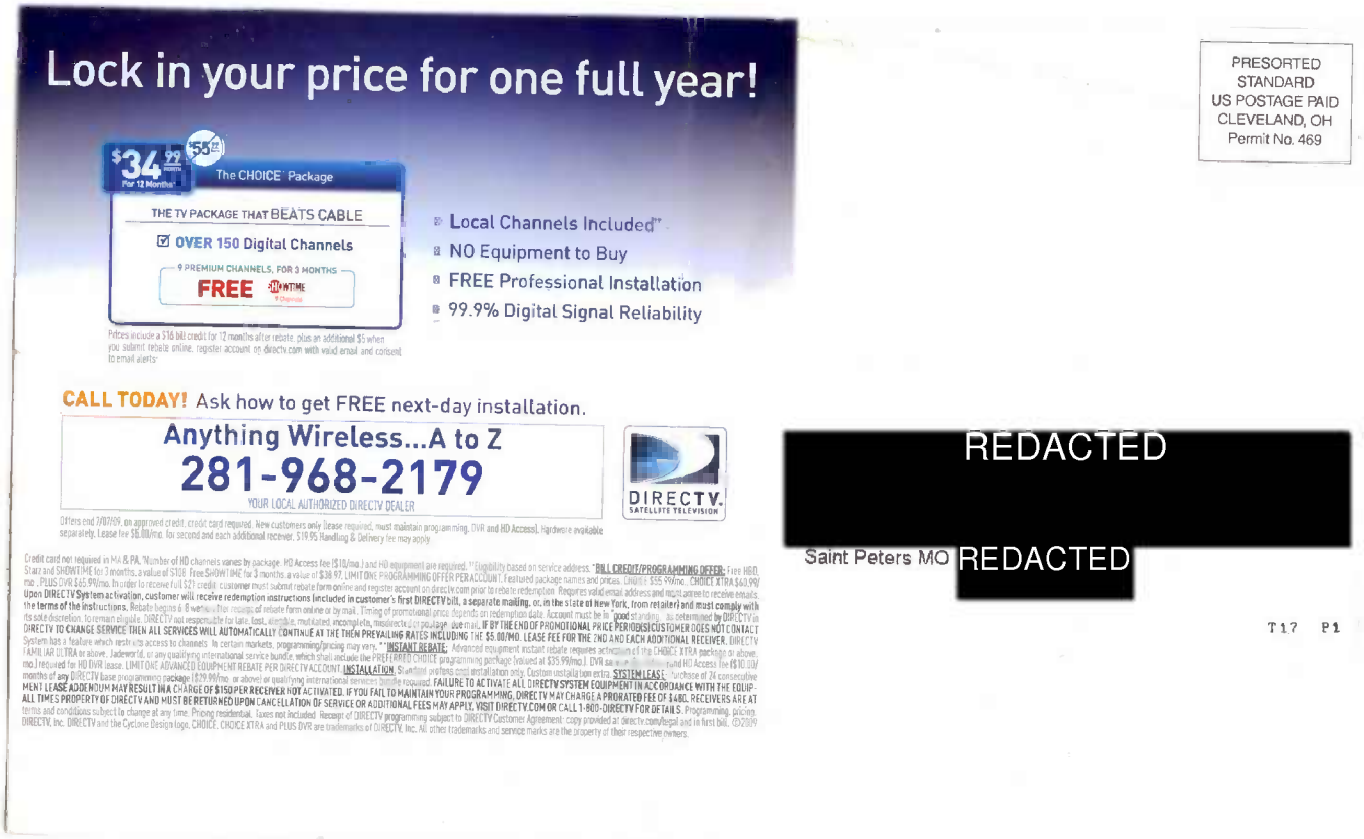
FREE
DIRECTV® HD DVR
Receiver upgrade
$199 value!

+

FREE
Professional Installation

Case: 4:09-cv-00750-RWS Doc. #: 9-18 Filed: 05/11/09 Page: 3 of 16 PageID #: 265

Exhibit 5


Lock in your price for one full year!
$34.99 for 12 Months
55
The CHOICE Package
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
9 PREMIUM CHANNELS, FOR 3 MONTHS
FREE SHOWTIME
Local Channels Included
NO Equipment to Buy
FREE Professional Installation
99.9% Digital Signal Reliability
CALL TODAY! Ask how to get FREE next-day installation.
Anything Wireless...A to Z
281-968-2179
YOUR LOCAL AUTHORIZED DIRECTV DEALER
DIRECTV
SATELLITE TELEVISION
PRESORTED
STANDARD
US POSTAGE PAID
CLEVELAND, OH
Permit No. 469
REDACTED
Saint Peters MO REDACTED
T17 P1

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo.
The CHOICE package
~~$53.99 mo.~~

Important information about the television service in Church Hill

REDACTED

REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo.
EVERYDAY LOW PRICE
The FAMILY package

30101065261

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies. HBO® is a registered

DIRECTV. SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Important information about the television service in Rockford

REDACTED
Rockford, MI REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY package

30100486065

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ▽DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^**BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **"HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE: RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

30100486065

6C10

Exhibit 5

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just ~~$55.99/mo.~~
The CHOICE™ package

Important information about the television service in Lomira

REDACTED

Lomira, WI REDACTED

Dear REDACTED,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2009 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo.
EVERYDAY LOW PRICE
The FAMILY package

30100392480

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by area. ‡Not all features offered.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Attitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES†
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

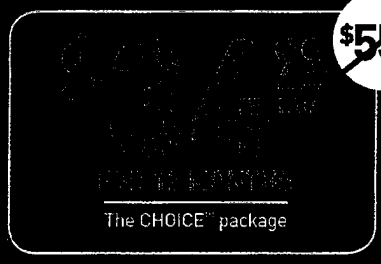
Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ◊DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. ~HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

REDACTED

Charter has major issues— we'll give you major savings

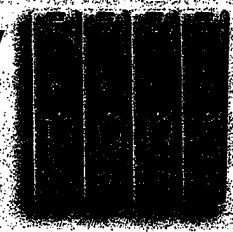
GET OVER 150 CHANNELS FOR ONLY $55.99/mo.



- Local channels included in every package*
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | starz. 17 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third
- With DIRECTV, you can set your home DVR from any cell phone or computer†
- Access over 130 of your favorite channels in HD^

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99 mo. ~~$55.99~~ FOR 12 MONTHS*

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package°** ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms *No equipment to buy. No start-up costs.*

And more!

$39.99 mo. ~~$60.99~~ FOR 12 MONTHS*

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!* 28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

[redacted]

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99~~ $29.99 mo. FOR 12 MONTHS*

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ♦♦Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **°HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $498. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C10

30100392480

Exhibit 5

DIRECTV
SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE® package
~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
Greenville, SC REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[†]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · Starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.°

+

FREE DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY package

30111023847

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. *Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address required to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-13 Filed: 05/11/09 Page: 15 of 16 PageID #: 275

REDACTED

Charter has major issues—we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99 mo. FOR 12 MONTHS

"The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra, $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD[1]

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ with DIRECTV

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

DIRECTV

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in New Milford

REDACTED

New Milford, CT REDACTED

Dear Keith Vande,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.*

Get over 150 channels for only $34.99 a month.* You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV†
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound††
- **Worry-free 99.9% signal reliability.**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or direct.com

Get more TV. Less money.

Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package

~~$55.99/mo.~~

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels

$108 value!

HBO 9 Channels | STARZ 12 Channels | SHOWTIME 9 Channels

+

FREE DIRECTV® HD DVR Receiver upgrade

Ask how

$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE

381813 75403

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99 mo.

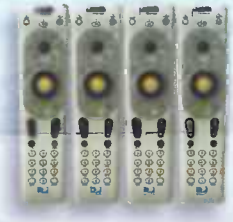
FOR 12 MONTHS^

The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

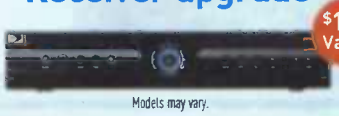
$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value



Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 5-12 Filed: 05/11/09 Page: 15 of 15 PageID #: 278

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ²²HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. **BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. **HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($5/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30101170409

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

**$34.99 mo.** FOR 12 MONTHS^ ~~$55.99 mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package*** ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms *No equipment to buy. No start-up costs.*

A&E · HGTV · DIY · BBC AMERICA · BET · BIG TEN NETWORK · CN · CNBC · CNN · DISCOVERY · DISNEY · DISNEY XD · E! · ESPN · ESPN 2 · ESPNEWS · FOOD · FOX NEWS · FX · FXX · G4TV · HISTORY · HLN · Lifetime · LMN · MSNBC · MTV · NFL NETWORK · NICK · SCIENCE · SCI FI · SPIKE · TBS · TLC · TNT · TRAVEL · TV GUIDE · **And more!**

**$39.99 mo.** FOR 12 MONTHS^ ~~$60.99 mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!* 28 Premium Movie Channels HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

Models may vary.

AMC · BIO · BLOOMBERG · CMT · CURRENT · DISCOVERY HEALTH · DIY · EWTN · FINE LIVING · FIT TV · FLIX · FOX · FOX SOCCER · G4TV · GAC · GAME TV · GSN · HALLMARK · HISTORY · HISTORY INTERNATIONAL · HSN · IFC · ID · ION · LMN · LOGO · MILITARY · NATIONAL GEOGRAPHIC · NICK · NICK TOONS · NICK JR · NBA · OXYGEN · PLANET GREEN · REELZ · SCIENCE · STARZ · SOAP · SONY · SPROUT · STYLE · TCM · TRAVEL · TRUTV · TV GUIDE · TV LAND · **And more!**

^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

~~$39.99 mo.~~

$29.99 mo. FOR 12 MONTHS^

Choices for the whole family!

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

^Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

AZTECA MÉXICO · CINE MEXICANO · DISNEY XD · ESPN DEPORTES · FOOD · FOX DEPORTES en español · GOL TV · MEGA · TLNOVELAS · **And more!**

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. ^^Professional installation highly recommended. Land-based phone line connection required. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ∇∇Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^**BILL CREDIT/PROGRAMMING OFFER:** Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °**HD DVR INSTANT REBATE:** Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. © 2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30101170409

DIRECTV
SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just **$34.99 mo.** FOR 12 MONTHS^
The CHOICE™ package
~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
New Milford, CT REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers, 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | Starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY™ package

30111169532

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.99 shipping & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$55.99 mo.~~

$34.99 mo.

FOR 12 MONTHS^

The CHOICE™ package

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms

Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET™ through DIRECTV

Switch now! 1-866-834-0830 or directv.com

DIRECTV. SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE™ package
~~$59.99 mo.~~

Important information about the television service in Saint Charles

REDACTED
Saint Charles, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels · STARZ 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how°
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY™ package

30100644523

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming, DVR service &/or HD Access.] Lease fee of $6/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & [illegible] Sel. add'l rms on back of letter. ^Price & savings reflected include a $15 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($18/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ◊DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $55.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. ^HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30100644623

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

$37.99/mo. FOR 12 MONTHS

$55.99 mo.

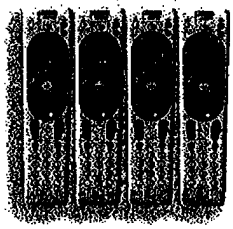
The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV is #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

[redacted]

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. ~~$55.99/mo.~~ FOR 12 MONTHS

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo. ~~$60.99/mo.~~ FOR 12 MONTHS

Want even more for your money?
For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade°**

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99/mo. ~~$39.99/mo.~~ FOR 12 MONTHS*

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. °DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ††Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. ^HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

30100644623

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package
~~$55.99/mo.~~

Important information about the television service in Ballwin

REDACTED

Ballwin, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running,†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE The FAMILY package

38180567576

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

¹Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & shipping/processing apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES†
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

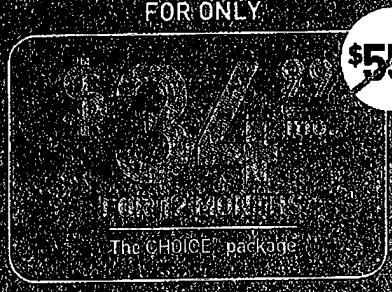
Switch now! 1-877-912-3291 or directv.com

Terms end 7/7/09 and are based on approved credit: credit card required. Credit card not required in MA and PA. New customers only. Lease required. Must maintain programming. DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ^DVR Scheduler requires Internet access via computer or mobile phone at directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System as a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILIAR are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $55.99 mo.

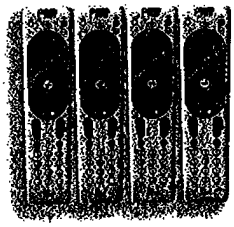


- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV is #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo. FOR 12 MONTHS ~~$60.99/mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels Starz 12 Channels SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV mas

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99/mo. FOR 12 MONTHS* ~~$39.99/mo.~~

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

dit card not required in MA and PA. °Eligibility for local channels based on service address. °°Professional installation highly recommended. Land-based phone line connection required. °DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may . In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD nnels varies by package selected. ††Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject hange at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system irements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with rnate Spanish-language audio and XM Satellite Radio channels. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and es: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MAS $39.99/mo. In order to receive $10 bill credit for OPTIMO MAS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state few York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as ermined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN . SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels, in certain kets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED NCE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR Lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 I RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. IT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone ign logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MAS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

)100567576

DIRECTV
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE™ package
~~$55.99 mo.~~

Important information about the television service in Chesterfield

REDACTED

Chesterfield, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer¹
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2009 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how°
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

38108562102

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

s end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee applies. son back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails . °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming. DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $65.99/mo. In order to receive full $71 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($4/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

~~$83.99 mo.~~ $53.99 mo. FOR 12 MONTHS

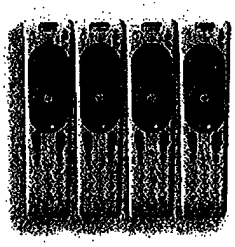
The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

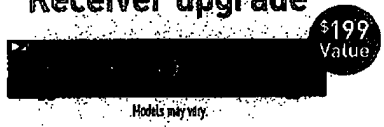
$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value



Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

GET HIGH-SPEED INTERNET

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

~~$44.99/mo.~~ $34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

~~$69.99/mo.~~ $39.99/mo. FOR 12 MONTHS

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?

Get DIRECTV for LESS!

DIRECTV mas

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99/mo.~~ $29.99/mo. FOR 12 MONTHS*

- ☑ **Over 150 of the Best Spanish^ and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/1/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. ¹DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recorded. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ²To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ³⁴Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. ^^Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $600. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

3810056210P

DIRECTV. SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package

~~$55.99/mo.~~

Important information about the television service in Saint Peters

REDACTED

Saint Peters, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.*

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!
HBO 7 Channels · starz 12 Channels · SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.*

+

FREE
DIRECTV® HD DVR
Receiver upgrade
Ask how*
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99/mo. EVERYDAY LOW PRICE The FAMILY™ package

30180659498

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address required for e-mail rebate & e-mails req'd. *Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Exhibit

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Attitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Attitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-877-912-3291 or directv.com

's end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/, a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ◊DVR Scheduler requires Internet access via computer or mobile phone directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. y is a registered trademark of Dolby Laboratories. "BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $18B. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive mption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing romotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), TOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System a feature that restricts access to channels. In certain markets, programming/pricing may vary. "HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($90.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, h shall include the PREFERRED CHOICE programming package. DVR service ($3/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: base of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER EIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR L 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box e, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

6C10

REDACTED

Charter has major issues—we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

$55.99 mo.

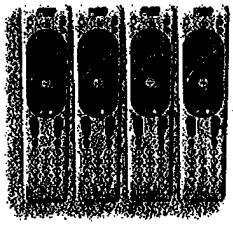
FOR 12 MONTHS

The CHOICE™ package

- Local channels included in every package
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET^^ Exclusively on DIRECTV

Switch now! 1-877-912-3291 or directv.com

Pick your DIRECTV® package and lock in your price for one full year

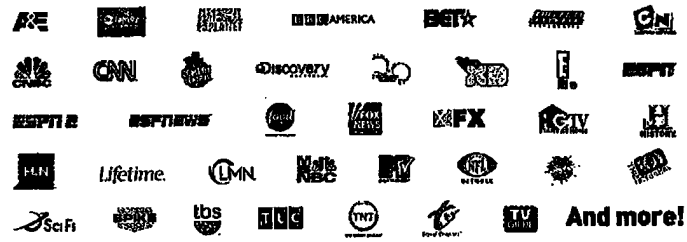
SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo. FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.



$39.99/mo. FOR 12 MONTHS ~~$60.99/mo.~~

Want even more for your money?
For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels starz 12 Channels SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

Models may vary.

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99/mo.~~ **$29.99/mo. FOR 12 MONTHS***

- ☑ **Over 150 of the Best Spanish°° and English-Language Channels**

*Price reflected includes a $18 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-877-912-3291 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional Installation highly recommended. Land-based phone line connection required. °DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ††Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-Language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and ÓPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for ÓPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °NO DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, ÓPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

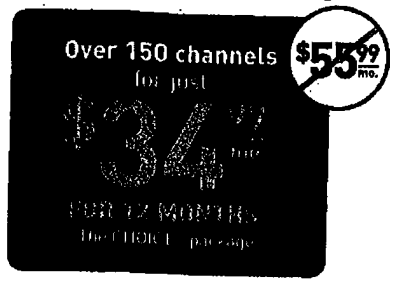
6C10

3812866499

DIRECTV.
SATELLITE TELEVISION

2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:



Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED

Saint Louis, MO REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-834-0830** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels
$108 value!

HBO 7 Channels | STARZ 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE
DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE
Professional Installation
in up to 4 rooms

Want to keep it simple?

$29.99 mo.
EVERYDAY LOW PRICE
The FAMILY package

3011864055B

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-834-0830 or directv.com

ers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming. DVR service &/or HD Access.] Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See add'l ns on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & current basic cable or satellite TV service required. Other restrictions apply. See directv.com for details. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package. ‡NFL, 5

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolfTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-866-834-0830 or directv.com

offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ◊DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ▽HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $56.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $6/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System as a feature that restricts access to channels. In certain markets, programming/pricing may vary. ^HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C11

1811 0640558

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY $55.99/mo.

FOR 3 MONTHS

The CHOICE™ package

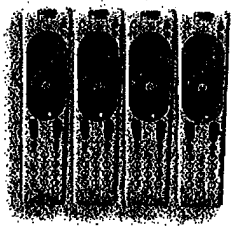
- Local channels included in every package
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV #1 IN CUSTOMER SATISFACTION

FREE PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | STARZ 12 Channels | SHOWTIME® 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. [Lease req'd. Must maintain programming. DVR service &/or HD Access.] Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-834-0830** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET through DIRECTV

Switch now! 1-866-834-0830 or directv.com

Exhibit 5

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99/mo FOR 12 MONTHS ~~$55.99/mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- ☑ **Over 150 All-Digital Channels**
- ☑ **Local Channels Included in Every Package***
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- ☑ **FREE for 3 Months**—*$38 Value!* SHOWTIME. 9 Channels
- ☑ **FREE Professional Installation** in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99/mo FOR 12 MONTHS* ~~$60.99/mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- ☑ **50 MORE CHANNELS**
- ☑ **FREE for 3 Months**—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME. 9 Channels
- ☑ **FREE HD DVR or DVR Receiver Upgrade***

[redacted]

Models may vary.

And more!

*Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99/mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

~~$39.99/mo.~~ **$29.99/mo.** FOR 12 MONTHS*

- ☑ **Over 150 of the Best Spanish^ and English-Language Channels**

*Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-866-834-0830 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. **Professional installation highly recommended. Land-based phone line connection required. ♦DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline 0lsb, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ♥♥Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. ^^Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement; copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C11

3811 10640558

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-20 Filed: 05/11/09 Page: 8 of 161 PageID #: 302

Frequently Asked Questions

about DIRECTV

"Is it a hassle to get DIRECTV?"

Not at all. Switching is FREE and EASY. Just call **1-866-558-6753** and we'll handle the rest.

"How reliable is the signal?"

Very. DIRECTV delivers **worry-free 99.9% signal reliability**, rain or shine. Don't believe what cable companies tell you.

"Will I still get my local channels?"

Yes, you will. DIRECTV® service includes local channels in 94% of the U.S.

Eligibility for local channels based on service address.

"Are there any start-up costs?"

None. In fact, you'll save money with our current offer. Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

"Do I have to buy any equipment?"

Not a thing. Batteries are even included with your remote.

"Do I have to install it myself?"

No. We'll set up your DIRECTV® System for you and show you how to use it.

Switch now!

1-866-558-6753

or directv.com

DIRECTV beats the competition hands down

Compare for yourself

	DIRECTV	DISH Network (#2 Satellite Company)	Cable
The most channels in HD—over 130†	YES	No	No
The most sports in HD‡‡	YES	No	No
EXCLUSIVE SPORTS PACKAGES‡:			
NFL SUNDAY TICKET™	YES	No	No
NCAA® MEGA MARCH MADNESS®	YES	No	No
FREE NASCAR HotPass™	YES	No	No
99.9% signal reliability	YES	?	?
#1 in customer satisfaction Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.	YES	No	No

You deserve the best TV service

GET DIRECTV!

Switch now!

1-866-558-6753

†To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡‡Based on national offering of exclusive sports packages and other major sports programming in HD. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo are registered trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

6C12

DIRECTV
SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS^ The CHOICE™ package
~~$55.99 mo.~~

Stop worrying about Charter going bankrupt.
Switch to DIRECTV and save $21 a month^ for one full year.

REDACTED
Saint Louis, MO REDACTED

Dear REDACTED,

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-866-558-6753** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels
With activation of CHOICE XTRA™ programming or higher.^

+

FREE DIRECTV® HD DVR Receiver upgrade
Ask how°
$199 value!

+

FREE Professional Installation in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

30120619033

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-866-558-6753 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & activation fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Exhibit 5

5 Numbers You Can Trust

OVER 130 HD Channels

DIRECTV has the most channels in brilliant high definition—now over 130!

- A&E HD
- ABC HD (East)
- ABC HD (West)
- ABC Family HD
- Altitude HD**
- Animal Planet HD
- Big Ten Network HD
- Biography HD
- Bravo HD
- Cartoon Network HD
- CBS HD (East)
- CBS HD (West)
- Cinemax HD (East)
- Cinemax HD (West)
- CMT HD
- CNBC HD+
- CNN HD
- Comedy Central HD
- Crime & Investigation HD
- CSN Bay Area HD**
- CSN Chicago HD
- CSN Mid-Atlantic HD
- CSN New England HD
- CSTV HD
- Discovery Channel HD
- Disney Channel HD
- Disney XD HD
- ESPN HD
- ESPN2 HD
- ESPNEWS HD
- Food Network HD
- FOX HD (East)
- FOX HD (West)
- Fox Business Network HD
- Fox News Channel HD
- FSN Arizona HD
- FSN Cincinnati HD**
- FSN Detroit HD
- FSN Florida HD**
- FSN Midwest HD
- FSN North HD
- FSN Northwest HD
- FSN Ohio HD**
- FSN Pittsburgh HD
- FSN Prime Ticket HD
- FSN Rocky Mountain HD
- FSN South HD
- FSN Southwest HD
- FSN West HD
- FUEL TV HD
- FX HD
- Golf Channel HD
- HBO HD (East)
- HBO HD (West)
- HD Theater
- HDNet
- HDNet Movies
- HGTV-HD
- History HD
- MASN HD**
- MGM HD
- MLB Network
- MSG HD
- MSG PLUS HD
- MTV HD
- National Geographic Channel HD
- NBA TV HD
- NBC HD (East)
- NBC HD (West)
- NESN HD
- NFL Network HD
- NHL Network HD
- Nick HD
- Palladia HD
- Planet Green HD
- SCI FI Channel HD
- Science Channel HD
- SHOWTIME HD
- SHOWTIME HD (West)
- SHOWTIME Extreme HD
- SHOWTIME Showcase HD
- SHOWTIME 2 HD
- Smithsonian Channel HD
- SNY HD
- SPEED HD
- Spike TV HD
- SportSouth HD
- SportsTime Ohio HD**
- Starz Comedy HD
- Starz Edge HD
- Starz HD (East)
- Starz HD (West)
- Starz Kids & Family HD
- Sun Sports HD
- TBS in HD
- Tennis Channel HD
- The 101 Network HD
- The Movie Channel HD
- The Weather Channel HD
- TLC HD
- TNT HD
- Universal HD
- USA Network HD
- VERSUS HD
- VH1 HD
- YES Network HD
- Pay Per View channels (up to 31)
- Plus, an ever-growing library of On-Demand movies & shows

To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected. **Games only.

#1 in Sports

If you call yourself a sports fan, call now. Only DIRECTV offers all this:

NATIONAL SPORTS CHANNELS
- Big Ten Network
- CBS College Sports
- ESPN
- ESPN2
- ESPN Classic
- ESPNEWS
- ESPNU
- Fox Soccer Channel
- Fox Sports en Español
- FUEL TV
- Golf Channel
- GolTV
- MLB Network
- NBA TV
- NFL Network
- NHL Network
- Outdoor Channel
- SPEED
- Tennis Channel
- TVG
- VERSUS

REGIONAL SPORTS NETWORKS
- Altitude Sports & Entertainment
- CSN (5 channels)
- FSN (13 channels)
- FSN Prime Ticket
- MASN
- MSG
- MSG PLUS
- NESN
- SportsNet New York
- SportSouth
- SportsTime Ohio
- Sun Sports
- The Mtn.
- YES Network

PREMIUM SPORTS PACKAGES‡
- **EXCLUSIVE: NFL SUNDAY TICKET™**
- **EXCLUSIVE: NCAA® MEGA MARCH MADNESS®**
- **FREE: NASCAR HotPass™**
- ESPN FULL COURT
- ESPN GamePlan
- MLB EXTRA INNINGS®
- MLS Direct Kick™
- NBA LEAGUE PASS
- NHL® CENTER ICE®
- Setanta Sports™

8 Years Running, DIRECTV Has Been Ranked #1 in Customer Satisfaction

Higher customer satisfaction ratings than cable††

- Over 18 million families have already made the switch to DIRECTV

††Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index, University of Michigan Business School.

99.9% Worry-Free Signal Reliability

DIRECTV delivers a crystal clear picture—rain or shine

- DIRECTV has always been 100% digital
- 100% digital picture on every channel and Dolby® Digital 5.1 surround sound▽

$0 Start-Up Costs

Switching to DIRECTV is FREE and EASY

- No equipment to buy, no start-up costs
- FREE Professional Installation in up to 4 rooms

Switch now! 1-866-558-6753 or directv.com

Offers end 7/7/09 and are based on approved credit; credit card required. Credit card not required in MA and PA. New customers only. (Lease required. Must maintain programming, DVR service and/or HD Access.) *Eligibility for local channels based on service address. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ‡Professional and collegiate sports subscriptions sold separately. Blackout restrictions and other conditions apply. ▽DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ◇HD channels include 5.1 surround sound when available from programmer. Additional equipment required and sold separately. Dolby is a registered trademark of Dolby Laboratories. *BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo. and CHOICE $65.99/mo. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date. Account must be in good standing, as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER. Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. *HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above. FAMILIAR ULTRA or above. Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Complex/Custom installation extra. SYSTEM LEASE: Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $400 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, a copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. NFL, the NFL Shield design and the NFL SUNDAY TICKET name and logo are trademarks of the NFL and its affiliates. NFL team names and uniform designs are registered trademarks of the teams indicated. NCAA, March Madness and MEGA MARCH MADNESS are trademarks owned or licensed by the National Collegiate Athletic Association. NASCAR and NASCAR HotPass word mark and logos are trademarks of the National Association for Stock Car Auto Racing, Inc. ©2009 NASCAR Digital Entertainment, LLC. All Rights Reserved. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and FAMILY are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners. 6C12

30120619033

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

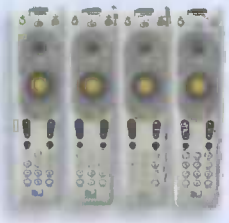
$34.99/mo. FOR 12 MONTHS*
The CHOICE™ package
~~$55.99 mo.~~

- Local channels included in every package*
- 100% digital picture on every channel

DIRECTV ranks #1 among the largest national cable & satellite TV providers

FREE PROFESSIONAL INSTALLATION

- No equipment to buy
- No start-up costs
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME. 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.°

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available separately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-866-558-6753** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH-SPEED INTERNET through DIRECTV

Switch now! 1-866-558-6753 or directv.com

Exhibit 5

Pick your DIRECTV® package and lock in your price for one full year

SAVE $21/mo. FOR ONE FULL YEAR

$34.99 mo. FOR 12 MONTHS^ ~~$55.99 mo.~~

THE CHOICE™ PACKAGE

The TV package that BEATS CABLE!

- Over 150 All-Digital Channels
- Local Channels Included in Every Package*
  ABC, CBS, FOX, NBC, PBS, CW and MyTV
- FREE for 3 Months—*$38 Value!* SHOWTIME 9 Channels
- FREE Professional Installation in up to 4 rooms
  No equipment to buy. No start-up costs.

And more!

$39.99 mo. FOR 12 MONTHS^ ~~$60.99 mo.~~

Want even more for your money?

For just $5 more a month, get everything in the CHOICE™ package, plus:

THE CHOICE XTRA™ PACKAGE

More channels, movies and value!

- 50 MORE CHANNELS
- FREE for 3 Months—*$108 Value!*
  28 Premium Movie Channels HBO 7 Channels, starz 12 Channels, SHOWTIME 9 Channels
- FREE HD DVR or DVR Receiver Upgrade°

Models may vary.

And more!

^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd.

$29.99 mo. EVERYDAY LOW PRICE

ASK ABOUT THE FAMILY™ PACKAGE

Want to keep it simple?
Get DIRECTV for LESS!

DIRECTV más

NEW!

THE ÓPTIMO MÁS™ PACKAGE

Choices for the whole family!

$29.99 mo. FOR 12 MONTHS^ ~~$39.99 mo.~~

- Over 150 of the Best Spanish°° and English-Language Channels

^Price reflected includes a $10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate.

And more!

Offers end 7/7/09 & are based on approved credit. Credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Lease fee of $5/mo. for 2nd & ea. add'l receiver. Plus access to Pay Per View movies & events. All programming & pricing subject to change. Complex/Custom installation extra. $19.95 handling & delivery fee may apply. See below for full offer details.

Switch now! 1-866-558-6753 or directv.com

Credit card not required in MA and PA. *Eligibility for local channels based on service address. ^^Professional installation highly recommended. Land-based phone line connection required. †DVR Scheduler requires Internet access via computer or mobile phone and directv.com login. Remote connections may vary. In rare instances, scheduled recording(s) may not be recognized. Only available on certain receivers. Visit directv.com/dvrscheduler for details. ††To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV Slimline Dish, an HD Receiver and HD television equipment are required. Number of HD channels varies by package selected. ^^^Availability/Eligibility may be based on service address and phone line. Service not available in all areas. Internet service billed separately by a preferred provider. Must be new customer to qualify for service. Prices vary depending on provider and are subject to change at any time. Service is only available from select Internet Service Providers in certain areas on certain speeds. Separate appointment for Internet installation may be required. Equipment may be required and sold separately. Start-up costs, taxes and other fees may apply. Computer system requirements vary by provider. Terms and conditions for selected Internet Service Provider apply. High-Speed Internet bill credits will be applied to your DIRECTV bill. Internet and DIRECTV service commitments required. Other restrictions apply. °°Includes English-language broadcast channels with alternate Spanish-language audio and XM Satellite Radio channels. ^BILL CREDIT/PROGRAMMING OFFER: Free HBO, Starz and SHOWTIME for 3 months, a value of $108. Free SHOWTIME for 3 months, a value of $38.97. LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE XTRA $60.99/mo., CHOICE $55.99/mo. and OPTIMO MÁS $39.99/mo. In order to receive $10 bill credit for OPTIMO MÁS, customer must submit rebate form online or by mail. In order to receive full $21 credit for CHOICE programming or higher, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Valid e-mail address and consent to receive e-mails required. **Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6–8 weeks after receipt of online redemption, or 8–12 weeks for mail-in redemption. Timing of promotional price depends on redemption date.** Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdirected or postage-due mail. **IF, BY THE END OF PROMOTIONAL PRICE PERIOD(S), CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICES, THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE THEN-PREVAILING RATES, INCLUDING THE $5/MO. LEASE FEE FOR THE SECOND AND EACH ADDITIONAL RECEIVER.** Package pricing at directv.com/packages. DIRECTV System has a feature that restricts access to channels. In certain markets, programming/pricing may vary. °HD DVR INSTANT REBATE: Advanced equipment instant rebate requires activation of the CHOICE XTRA package ($60.99/mo.) or above, FAMILIAR ULTRA or above, Jadeworld or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package. DVR service ($6/mo.) and HD [illegible] $10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. **INSTALLATION:** Standard professional installation only. Complex/Custom installation extra. **SYSTEM LEASE:** Purchase of 24 months of any DIRECTV base programming package ($29.99/mo. or above) or qualifying international service bundle required. **FAILURE TO ACTIVATE ALL OF THE DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RESULT IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE, OR ADDITIONAL FEES APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS.** Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of DIRECTV programming is subject to the DIRECTV Customer Agreement, copy provided at directv.com/legal and in your first bill. HBO is a service mark of Home Box Office, Inc. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Starz and related channels and service marks are the property of Starz Entertainment, LLC. [illegible] DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA, FAMILY, OPTIMO MÁS and DIRECTV Más are trademarks of DIRECTV, Inc. All other trademarks and service marks are the property of their respective owners.

Exhibit 5

30120619033

6C12

DIRECTV
SATELLITE TELEVISION
2230 East Imperial Hwy.
El Segundo, CA 90245

More TV. Less money.

Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99 mo. FOR 12 MONTHS The CHOICE™ package ~~$55.99 mo.~~

Important information about the television service in Mishicot

REDACTED

Mishicot, WI REDACT

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.°

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130![†]
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV[‡]
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer[1]
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound[▽]
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.[††] So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. ††Among the largest national cable & satellite TV providers, 2008 American Customer Satisfaction Index, University of Michigan Business School.

Sincerely,

Michael Rogers

Michael Rogers, V.P. Marketing

Plus, for a limited time, get all this:

3 MONTHS FREE

28 premium movie channels

$108 value!

HBO 7 Channels | starz 12 Channels | SHOWTIME 9 Channels

With activation of CHOICE XTRA™ programming or higher^

+

FREE

DIRECTV® HD DVR

Receiver upgrade

Ask how°

$199 value!

+

FREE

Professional Installation

in up to 4 rooms

Want to keep it simple?

$29.99 mo. EVERYDAY LOW PRICE The FAMILY™ package

30100254951

P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.

Switch now! 1-877-912-3291 or directv.com

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of $6/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.99 handling/delivery fee may apply. See add'l terms on back of letter. ^Price & savings reflected include a $16 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l $5 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Service commitment & consent to receive e-mails req'd. °Free HD DVR Receiver upgrade w/activation of CHOICE XTRA programming or higher. †To access DIRECTV HD programming, an HD Access fee ($10/mo.), a DIRECTV SlimLine Dish, an HD Receiver & HD television equipment are req'd. Number of HD channels varies by package selected.

Exhibit 5

REDACTED

Charter has major issues— we'll give you major savings

GET OVER 150 CHANNELS FOR ONLY

$34.99/mo. FOR 12 MONTHS*

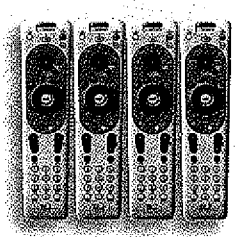
~~$55.99/mo.~~

The CHOICE™ package

- Local channels included in every package^
- 100% digital picture on every channel

FREE PROFESSIONAL INSTALLATION

- **No equipment to buy**
- **No start-up costs**
- Free Professional Installation included in up to 4 rooms



Lease fee of $5/mo. for 2nd & ea. add'l receiver. Complex/Custom installation extra. $19.95 handling & delivery fee may apply.

DIRECTV ranks #1 among the largest national cable & satellite TV providers

DIRECTV IS #1 IN CUSTOMER SATISFACTION

2008 American Customer Satisfaction Index, University of Michigan Business School

FREE FOR 3 MONTHS

28 PREMIUM MOVIE CHANNELS!

$108 value!

HBO® 7 Channels | starz 12 Channels | SHOWTIME® 9 Channels

With activation of CHOICE XTRA™ programming or higher.^

FREE DIRECTV® HD DVR Receiver upgrade

$199 Value

Models may vary.

The DIRECTV® HD DVR Receiver lets you enjoy your favorite shows in stunning HD—whenever you want.

- Record 2 shows at once while watching a third^^
- With DIRECTV, you can set your home DVR from any cell phone or computer[1]
- Access over 130 of your favorite channels in HD†

With activation of CHOICE XTRA™ programming or higher.^

Offers end 7/7/09 & are based on approved credit; credit card req'd. New customers only. (Lease req'd. Must maintain programming, DVR service &/or HD Access.) Hardware available seperately. $19.95 handling & delivery fee may apply. See back for full offer details.

GETTING DIRECTV IS AS EASY AS 1, 2, 3

1. **CALL 1-877-912-3291** to schedule your free installation
2. **SELECT** the programming package you want
3. **SIT BACK** and we'll do the rest for you

Now Available!

Get HIGH SPEED INTERNET^^ through DIRECTV

Switch now! 1-877-912-3291 or directv.com

Exhibit 5

2220 East Imperial Hwy.
El Segundo, CA 90245

BELLMAWR, NJ

PRESORTED
STANDARD
U.S. POSTAGE
PAID
PERMIT NO.
59

Important information about the television service in Saint Charles

REDACTED

Saint Charles, MO REDACTED

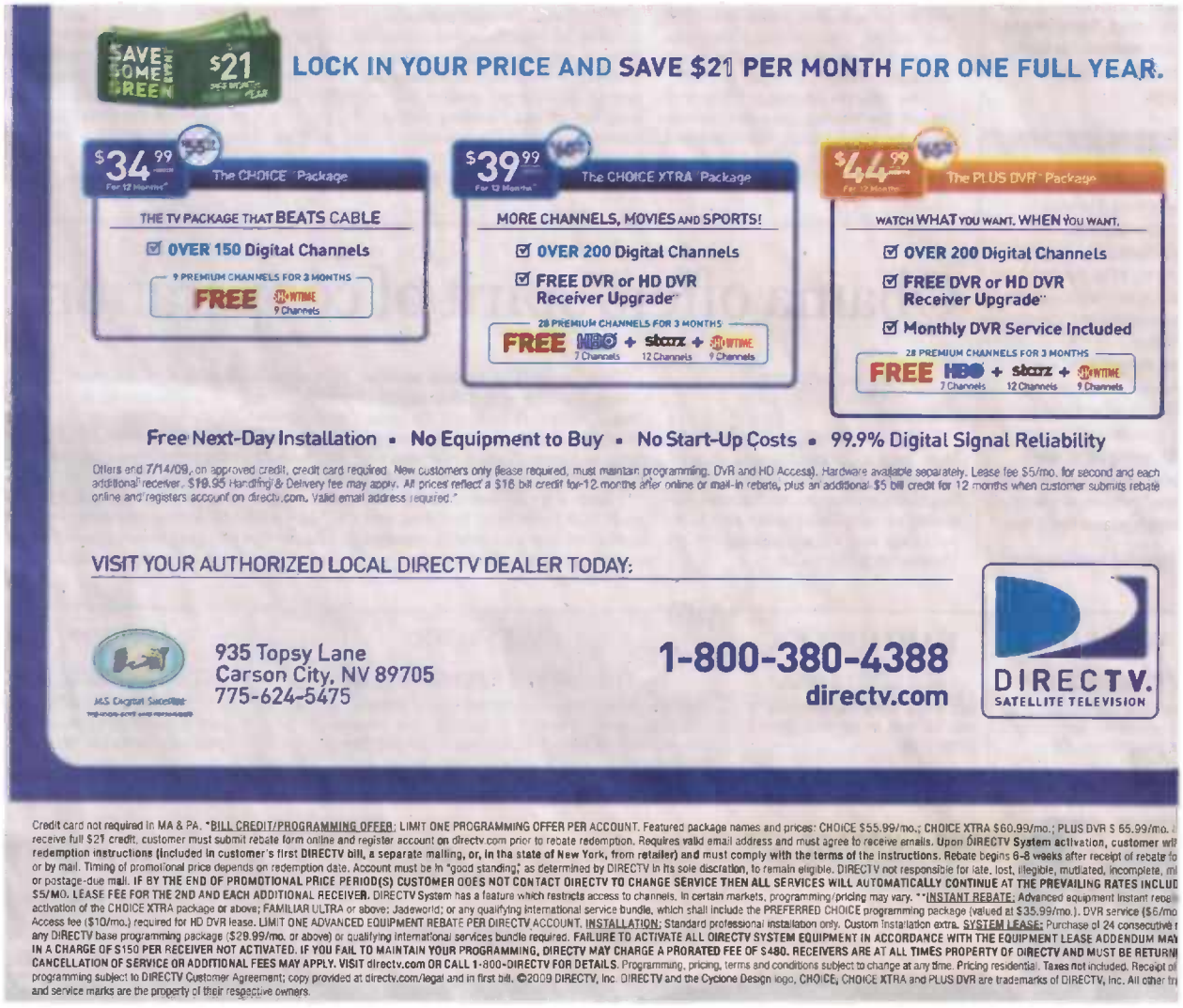
Exhibit 5

DIRECTV
With Charter Cable filing for bankruptcy, now's the time to save yourself.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you, just switch to DIRECTV, America's #1 satellite provider.
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.
$34.99 The CHOICE Package
THE TV PACKAGE THAT BEATS CABLE
OVER 150 Digital Channels
9 PREMIUM CHANNELS FOR 3 MONTHS FREE
$39.99 The CHOICE XTRA Package
MORE CHANNELS, MOVIES AND SPORTS!
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME
$44.99 The PLUS DVR Package
WATCH WHAT YOU WANT, WHEN YOU WANT.
OVER 200 Digital Channels
FREE DVR or HD DVR Receiver Upgrade
Monthly DVR Service Included
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME
Free Next-Day Installation • No Equipment to Buy • No Start-Up Costs • 99.9% Digital Signal Reliability

Exhibit 3

DIRECTV
With Charter Cable filing for bankruptcy, now's the time to save yourself.
Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.
SAVE SOME GREEN
$21
LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

Exhibit 4



Credit card not required in MA & PA. *BILL CREDIT/PROGRAMMING OFFER: LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE $55.99/mo.; CHOICE XTRA $60.99/mo.; PLUS DVR $ 65.99/mo. receive full $21 credit, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Requires valid email address and must agree to receive emails. Upon DIRECTV System activation, customer will redemption instructions (included in customer's first DIRECTV bill, a separate mailing, or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6-8 weeks after receipt of rebate fo or by mail. Timing of promotional price depends on redemption date. Account must be in "good standing," as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, mi or postage-due mail. IF BY THE END OF PROMOTIONAL PRICE PERIOD(S) CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICE THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE PREVAILING RATES INCLUD $5/MO. LEASE FEE FOR THE 2ND AND EACH ADDITIONAL RECEIVER. DIRECTV System has a feature which restricts access to channels. In certain markets, programming/pricing may vary. **INSTANT REBATE: Advanced equipment instant rebat activation of the CHOICE XTRA package or above; FAMILIAR ULTRA or above; Jadeworld; or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package (valued at $35.99/mo.). DVR service ($6/mo Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Custom installation extra. SYSTEM LEASE: Purchase of 24 consecutive r any DIRECTV base programming package ($29.99/mo. or above) or qualifying international services bundle required. FAILURE TO ACTIVATE ALL DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNE CANCELLATION OF SERVICE OR ADDITIONAL FEES MAY APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Receipt of programming subject to DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and PLUS DVR are trademarks of DIRECTV, Inc. All other tr and service marks are the property of their respective owners.

Exhibit 5

CHARTER CABLE FILED FOR BANKRUPTCY.

WE'LL SAVE THE DAY

DIRECTV

Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

SAVE SOME GREEN $21

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

$34.99 The CHOICE Package
THE TV PACKAGE THAT BEATS CABLE
☑ OVER 150 Digital Channels
6 PREMIUM CHANNELS FOR 3 MONTHS FREE STARZ 9 Channels

$39.99 The CHOICE XTRA Package
MORE CHANNELS, MOVIES AND SPORTS!
☑ OVER 200 Digital Channels
☑ FREE DVR or HD DVR Receiver Upgrade
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO 7 Channels + STARZ 12 Channels + STARZ 9 Channels

$44.99 The PLUS Package
WATCH WHAT YOU WANT. WHEN YOU WANT.
☑ OVER 200 Digital Channels
☑ FREE DVR or HD DVR Receiver Upgrade
☑ Monthly DVR Service Included
28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO 7 Channels + STARZ 12 Channels + STARZ 9 Channels

No Equipment to Buy • No Start-Up Costs • Free Installation • 99.9% Digital Signal Reliability

Offers end 7/07/09, on approved credit, credit card required. New customers only (lease required, must maintain programming, DVR and HD Access). Hardware available separately. Lease fee $5/mo. for second and each additional receiver. $19.95 Handling & Delivery fee may apply. All prices reflect a $16 bill credit for 12 months after online or mail-in rebate, plus an additional $5 bill credit for 12 months when customer submits rebate online and registers account at directv.com. Valid email address required.*

VISIT YOUR AUTHORIZED LOCAL DIRECTV DEALER TODAY:

Dealer
935 Topsy Lane
Carson City, NV 89705
775-624-5475

1-800-380-4388
directv.com

DIRECTV. SATELLITE TELEVISION

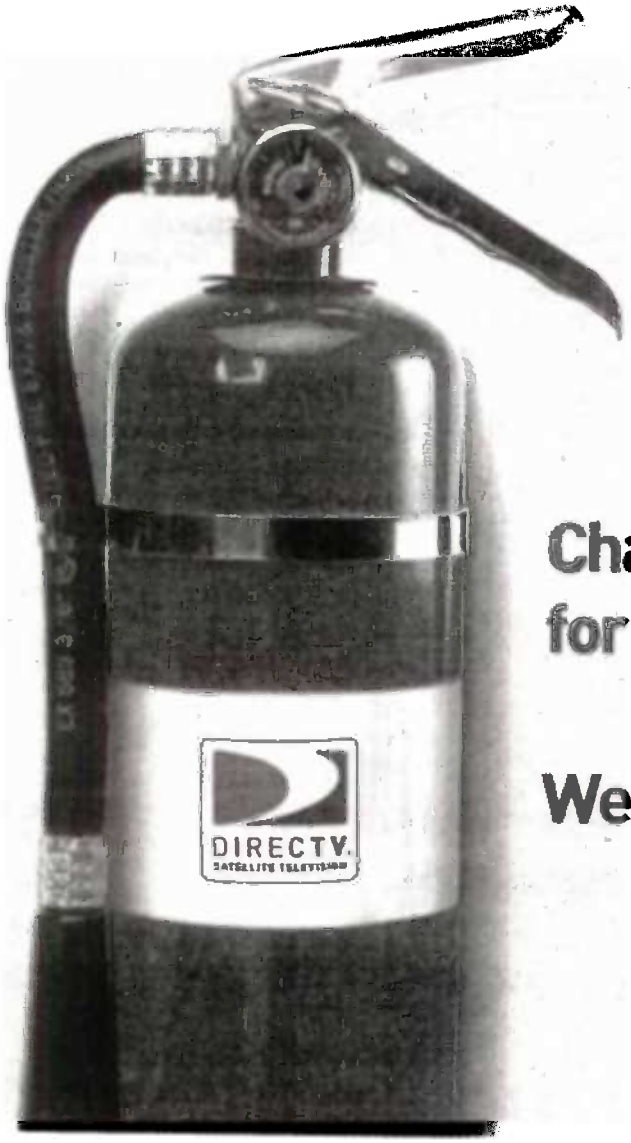
Credit card not required in MA & PA. *BILL CREDIT/PROGRAMMING OFFER: LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE $55.99/mo.; CHOICE XTRA $60.99/mo.; PLUS DVR $ 65.99/mo. In ord receive full $21 credit, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Requires valid email address and must agree to receive emails. Upon DIRECTV System activation, customer will rec redemption instructions (included in customer's first DIRECTV bill, a separate mailing, or, in the state of New York, from retailer) and must comply with the terms of the instructions. Rebate begins 6-8 weeks after receipt of rebate form o or by mail. Timing of promotional price depends on redemption date. Account must be in "good standing" as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, mutilated, incomplete, misdire or postage-due mail. IF BY THE END OF PROMOTIONAL PRICE PERIOD(S) CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICE THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE PREVAILING RATES INCLUDING $5/MO. LEASE FEE FOR THE 2ND AND EACH ADDITIONAL RECEIVER. DIRECTV System has a feature which restricts access to channels. In certain markets, programming/pricing may vary. **INSTANT REBATE: Advanced equipment instant rebate req activation of the CHOICE XTRA package or above; FAMILIAR ULTRA or above; Jadeworld; or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package (valued at $35.99/mo.). DVR service ($6/mo.) and Access fee ($10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Custom installation extra. SYSTEM LEASE: Purchase of 24 consecutive month any DIRECTV base programming package ($29.99/mo. or above) or qualifying international services bundle required. FAILURE TO ACTIVATE ALL DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY RES IN A CHARGE OF $150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRORATED FEE OF $480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED CANCELLATION OF SERVICE OR ADDITIONAL FEES MAY APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes programming subject to DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and PLUS DVR are trademarks of DIRECTV, Inc. All other [illegible]

Exhibit 5

Exhibit 5

Case: 4:09-cv-00750-RWS Doc. #: 9-21 Filed: 05/11/09 Page: 5 of 10 PageID #: 315

Exhibit 6



Charter Cable filed for bankruptcy.

We'll save the day.

Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

SAVE SOME GREEN EVENT $21

LOCK IN YOUR PRICE AND SAVE $21 PER MONTH FOR ONE FULL YEAR.

$34.99 $55.99

The CHOICE Package

THE TV PACKAGE THAT BEATS CABLE

☑ OVER 150 Digital Channels

9 PREMIUM CHANNELS FOR 3 MONTHS FREE

$39.99 $60.99

MORE CHANNELS, MOVIES AND SPORTS!

☑ OVER 200 Digital Channels

☑ FREE DVR or HD DVR Receiver Upgrade

28 PREMIUM CHANNELS FOR 3 MONTHS FREE HBO + starz + SHOWTIME

$44.99 $65.99

The PLUS DVR Package

WATCH WHAT YOU WANT. WHEN YOU WANT.

☑ OVER 200 Digital Channels

☑ FREE DVR or HD DVR Receiver Upgrade

☑ Monthly DVR Service Included

Exhibit 5

Case: 4:09-cv-00736-RWS Doc. #: 9-21 Filed: 05/11/09 Page: 6 of 101 PageID #: 316

Case: 4:09-cv-00730-RWS Doc. #: 9-21 Filed: 05/11/09 Page: 1 of 10 PageID #: 317

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC	)	
	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 8

Exhibit 8 is a DirecTV radio ad labeled Exhibit8.mp3, and will be filed with the Court in electronic format on compact disc via hand delivery.

Case: 4:09-cv-00730-RWS Doc. #: 9-21 Filed: 05/11/09 Page: 8 of 10 PageID #: 318

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC	)	
	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 9

Exhibit 9 is a DirecTV radio ad labeled Exhibit9.mp3 and will be filed with the Court in electronic format on compact disc via hand delivery.

Case: 4:09-cv-00730-RWS Doc. #: 9-21 Filed: 05/11/09 Page: 1 of 10 PageID #: 319

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY., LLC, and CHARTER COMMUNICATIONS OPERATING, LLC	)	
	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

Exhibit 10

Exhibit 10 is a DirecTV radio ad labeled Exhibit10.mp3, and will be filed with the Court in electronic format on compact disc via hand delivery.

Committed to You
DJ Talking Points

- Some of you may have heard recently that Charter Communications is planning to improve their financial structure. So what does this mean to you?

- Charter will continue to serve their customers, just like they always have. So don't worry – you can expect to receive the same great, reliable services and customer care from them.

- Charter's operations are strong. They are continuing to invest in launching new services, including faster Internet speeds and new HD content, including HD On Demand.

- Charter has 5.5 million customers who count on them for their entertainment and communication needs, and they have over 16,000 employees who remain committed to serving each of their customers as they always have – now and in the future.

- If you want more information, Charter has issued a press release and a letter from their CEO. They can both be found at www.charter.com.

Exhibit 14

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-22 Filed: 05/11/09 Page: 1 of 4 PageID #: 321

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	
Plaintiffs,	)	
v.	)	Case No.
DIRECTV, INC.,	)	
Defendant.	)	

DECLARATION OF TELLY BURNETT

1. I am employed by Charter Communications, Inc. ("Charter") and currently hold the position of Customer Service Lobby Representative in the Charter office located in Eunice, Louisiana. I have been an employee of Charter for approximately nine years.

2. This Declaration is based on my personal knowledge. I am older than 18 and am competent to testify as to the below information.

3. On April 29, 2009, a Charter customer in Eunice, Louisiana (Charter account number ending in 8055) visited the Charter office located at 330 Moosa Boulevard in Eunice, Louisiana, and I personally assisted with her questions.

4. This Charter customer has been a customer since November 3, 1990.

5. This customer came into the Charter office with the direct mail advertisement that DirecTV sent to her home address.

6. The customer gave me the direct mailer she received from DirecTV. Exhibit A is a true and accurate redacted copy of the direct mail advertisement that the customer brought to me on April 29, 2009.

Exhibit 16

Exhibit 5

Case: 4:09-cv-00730-RWS Doc. #: 9-22 Filed: 05/11/09 Page: 2 of 4 PageID #: 322

7. The Charter account for this customer's household is listed in her husband's name, but the DirecTV direct mailer was addressed to her.

8. The customer asked me when the Charter office in Eunice, Louisiana was closing.

9. I informed the customer that the Charter office would not be closing.

10. The customer then asked me if Charter was able to continue providing her cable services.

11. I informed the customer that Charter will be able to continue providing her services.

12. The customer showed me the DirecTV direct mailer and pointed out that the mailer says "Important information about the television service in Eunice" and that Charter filed for bankruptcy and will not be able to provide her services.

13. I told the customer that the DirecTV advertisement was not true. I informed the customer that, although Charter filed for bankruptcy, Charter is still able to provide her services and high-definition channels and that the Charter office will continue to run as normal.

14. Another Charter customer came into the Eunice, Louisiana office during the week of April 27, 2009 with questions about the effects of Charter's bankruptcy on her services.

15. This customer told me that she purchased a high-definition television from Sam's Club in Lafayette, Louisiana.

16. The customer stated that a DirecTV employee was at the Sam's Club and asked her who her cable provider was. When she told the DirecTV employee she was a Charter customer, the DirecTV employee told her that Charter filed for bankruptcy and would no longer be able to provide her services.

17. The customer came into the Eunice, Louisiana office and told me about her experience at the Sam's Club in Lafayette, Louisiana and asked me if it was true that Charter would no longer be able to provide her services because of the bankruptcy.

18. I informed this customer that Charter did file for bankruptcy but that Charter's ability to provide her services would not be impaired.

19. I, Telly Burnett, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishably by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on May 4, 2009.

Telly Burnett

Exhibit 5

2230 East Imperial Hwy.
El Segundo, CA 90245

Important information about the television service in Eunice

REDACTED

Eunice, LA REDACTED

Dear REDACTED

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

Lock in your price for one full year and save $21 a month.^

Get over 150 channels for only $34.99 a month.^ You'll get all your local channels* and **3 FREE months of SHOWTIME®. Switching is FREE and EASY,** with no equipment to buy, no start-up costs and **FREE Professional Installation.** Plus, ask how to get a **FREE DIRECTV HD DVR Receiver** upgrade.^

Enjoy the best in HD,† sports and technology:

- **DIRECTV has the most channels in HD**—now over 130!†
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™ and FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer†
- **100% digital picture** on every channel and Dolby® Digital 5.1 surround sound▽
- **Worry-free 99.9% signal reliability**

Get help while you can—get DIRECTV

More TV. Less money.
Upgrade to DIRECTV now and get:

Over 150 channels for just $34.99/mo. FOR 12 MONTHS The CHOICE™ package $55

Plus, for a limited time, get all this:

3 MONTHS FREE
28 premium movie channels
$108 value!
HBO 7 Channels starz 12 Channels SHOWTIME 9 Channels

+

FREE
DIRECTV® HD DVR
Receiver upgrade
$199 value!

+

FREE
Professional Installation

Exhibit A

Case: 4:09-cv-00730-RWS Doc. #: 9-23 Filed: 05/11/09 Page: 1 of 5 PageID #: 325

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARTER COMMUNICATIONS HOLDING COMPANY, LLC, and CHARTER COMMUNICATIONS OPERATING, LLC,	)	Case No.
Plaintiffs,	)	
v.	)	
DIRECTV, INC.,	)	
Defendant.	)	

TEMPORARY RESTRAINING ORDER

The Court, having considered Plaintiffs' Charter Communications Holding Company, LLC and Charter Communications Operating, LLC (collectively, "Charter") Complaint, Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support, and supporting evidence, the arguments, the record, and the law, and upon good cause shown, finds that unless a temporary restraining order is entered, Charter will continue to suffer irreparable harm before the matter can be heard on Charter's prayer for a preliminary injunction, and that the restraining order sought by Charter is otherwise necessary and proper to preserve the status quo until this Court can hear Charter's preliminary injunction motion, in light of the state of balance between the harm Charter will suffer and the injury that granting the injunction may inflict on Defendant, the likelihood of Charter's success on the merits, and the public interest,

IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure 65, that Defendant DirecTV, Inc. ("DirecTV"), its affiliates, employees, agents, servants, officers, directors, attorneys, licensees, successors and assigns, and all those acting on behalf of or in concert or participation with any of them (including but not limited to affiliates, resellers, and

Case: 4:09-cv-00730-RWS Doc. #: 9-23 Filed: 05/11/09 Page: 2 of 5 PageID #: 326

partners who sell DirecTV's products, equipment and services) who receive actual notice of this Order by personal service or otherwise, be temporarily restrained as follows:

1. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the direct mailer solicitations notifying recipients that Charter has filed bankruptcy and stating that as a result of the bankruptcy "there's no way [Charter will] be able to bring you the latest technology, more channels in HD and new exclusive programming." For an example of this type of direct mailer, see Exhibit 1 to Plaintiffs' Memorandum in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction ("Charter Memo").
2. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" print advertisements referencing Charter's bankruptcy filing and telling the public "now's the time to save yourself" or "we'll save the day" and "Get Help while you can." For examples of this type of advertisement, see Exhibits 3-5 to Charter Memo.
3. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "fire extinguisher" print advertisements directing the public to "Get Help while you can" and "instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV." For an example of this type of advertisement, see Exhibit 6 to Charter Memo.

Case: 4:09-cv-00730-RWS Doc. #: 9-23 Filed: 05/11/09 Page: 3 of 5 PageID #: 327

4. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboards, and direct mail) the "life-preserver" billboard advertisements referencing Charter's bankruptcy filing and telling the public to "SAVE YOURSELF." For an example of this type of advertisement, see Exhibit 7 to Charter Memo.
5. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that because of Charter's bankruptcy, its customers are "probably thinking what does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels." For an example of this type of advertisement, see Exhibit 8 to Charter Memo.
6. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's operations are in a "mess" because they filed for bankruptcy. For an example of this type of advertisement, see Exhibit 9 to Charter Memo.
7. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, and radio) the radio advertisement which states that Charter's bankruptcy filing is "not going to help [Charter's] customer service one bit." For an example of this type of advertisement, see Exhibit 10 to Charter Memo.
8. From using in commerce, publishing, or otherwise disseminating in any and all media (including, without limitation, Internet, television, radio, newspaper and other print, billboard, and direct mail) any advertisements, or other such messages, claiming or

Case: 4:09-cv-00730-RWS Doc. #: 9-23 Filed: 05/11/09 Page: 4 of 5 PageID #: 328

implying that Charter, as a result of its Chapter 11 bankruptcy filing: (1) is going out of business, (2) is not able to continue to provide services to customers, (3) is not able to provide new services or content or the latest technology, (4) is going to provide inferior customer service, or (5) that Charter's customers will be adversely impacted.

To the extent DirecTV is aware of independent third parties who are disseminating advertisements, or other such messages, that are the subject of this Order, DirecTV shall immediately advise them of this Order and demand their compliance. DirecTV shall cause a copy of this Order to be immediately communicated to each person and entity to whom DirecTV has directed or permitted to distribute or disseminate any such advertisement, or other such message, that is the subject of this Order. DirecTV is ordered to recall or retract advertisements already disseminated and prevent dissemination of all advertisements, or other such messages, that are the subject of the Order and that can reasonably be stopped. This Temporary Restraining Order shall remain in full force and effect until the _____day of _____, 2009 at _____a.m./p.m. unless extended for a longer time by consent or for good cause shown.

IT IS FURTHER ORDERED that a bond, or a deposit in lieu of bond, in the amount of _____ be filed or submitted by Charter to the United States District Court for the Eastern District of Missouri; and, to the extent not previously served, that service of a copy of Charter's Complaint, Motion, and supporting Memorandum shall be served forthwith upon DirecTV. Charter's bond or deposit in lieu of bond is approved as to form.

IT IS FURTHER ORDERED that the hearing on Charter's prayer for Preliminary Injunction is set for the _____ day of _____, 2009, at _____ a.m/p.m., at which time DirecTV shall appear and show cause, if any there be, why the preliminary injunctive relief

Case: 4:09-cv-00730-RWS Doc. #: 9-23 Filed: 05/11/09 Page: 5 of 5 PageID #: 329

requested by Charter should not be granted. DirecTV shall serve and file an Answer to the Complaint by _____:00 __.m., _____, 2009.

SO ORDERED:

Date:_____

_____
Judge
United States District Court for the Eastern District of Missouri

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8653 / January 11, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 53100 / January 11, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2362 / January 11, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12146

In the Matter of **Pegasus Satellite Communications, Inc., and** **Pegasus Media & Communications, Inc.** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted, pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Pegasus Satellite Communications, Inc. ("PSC") and Pegasus Media & Communications, Inc. ("PM&C") or collectively the "Respondents."

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.100 et seq., and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist

Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Respondents

l. PSC was a Delaware corporation with corporate headquarters in Bala Cynwyd, Pennsylvania. Through its operating subsidiaries, PSC operated broadcast television systems and provided direct broadcast satellite television services to customers in certain rural areas of the United States.

2. PM&C was a Delaware corporation with corporate headquarters in Bala Cynwyd, Pennsylvania, which together with its subsidiaries owned and operated broadcast television systems in exclusive territories primarily within rural areas of 41 states.

3. Respondents filed quarterly and annual reports with the Commission on Forms 10-Q and 10-K through June of 2004. PSC filed registration statements that incorporated these annual and quarterly reports on Forms S-4 through May 2001.[2]

Summary

This is a reporting and disclosure matter. Respondents inflated their publicly reported subscriber counts. They did so by including the accounts of customers whose accounts were or should have otherwise been de-activated. Because the subject accounts were not receiving services or making payments to the Respondents, the Respondents effectively increased the number of subscribers reported in press releases and in quarterly and year-end filings issued by the Respondents and filed with the Commission on Forms 10-Q and 10-K during, at least, 1999 to 2001. Reported subscriber numbers are a key performance measure by which investors and analysts evaluated companies operating in the satellite television business. On June 2, 2004, PSC, PM&C, and their subsidiary Pegasus Satellite Television, Inc. ("PST"), among other affiliates, filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the District of Maine.[3]

---

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Until the completion of a reorganization in 2001, PSC was required to file periodic reports with the Commission under Section 13(a) of the Exchange Act as a result of registering securities pursuant to Section 12(g) of the Exchange Act. During the relevant time, PM&C was not subject to the Exchange Act's reporting requirements, but did file reports on a voluntary basis. However, PM&C was still subject to the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for false statements contained in those reports.

[3] In re Pegasus Satellite Television, Inc. et al., Case No. 04-20878 (U.S. Bankr. D. Me.)

Respondents' Billing Practices

PSC and PM&C billed their customers through a billing system maintained by a telecommunications cooperative. The system generated subscriber statistics that were used to prepare reports. The system used certain criteria to determine which accounts would be considered active and included in the subscriber statistics and which accounts would be considered dropped, or "churned," and excluded from subscriber statistics. Under this system, a customer bill was generated one day after activation and was payable 21 days thereafter. The subscriber record keeping system automatically cut off and marked as churned accounts that were overdue by 54 days. Such churned accounts were not counted as part of the reportable subscriber base. The system also churned accounts with a zero balance that were not receiving services.

Respondents' Conduct

During at least 1999 through 2001, Respondents knowingly or recklessly implemented certain adjustments to inflate the number of active subscribers to their satellite television services as reported in their public filings. Personnel associated with the Respondents in at least two ways overrode features of the subscriber billing system that would have deemed certain accounts to be inactive or churned. Respondents "re-aged" certain accounts by extending them beyond the 54 day limit. This was done by manual intervention that overrode the automatic system cut-off features. In addition, Respondents kept certain accounts out of the churn category by assigning penny-credits to otherwise churned accounts. By these means, the Respondents added to their so-called "no-core" accounts—which were accounts that did not receive standard television packages and remained active as part of the publicly reported subscriber count.

PSC and PM&C typically reported the inflated subscriber numbers at or near the end of quarterly or annual reporting periods. For example, on June 26, 2000, four days before the June 30 end of the second quarter of that year, PST added approximately 2,400 subscribers to its active accounts by moving those accounts from the suspended category to the active category on its books and records. By issuing penny-credits to these accounts, PST was able to activate the accounts for reporting purposes. PST repeated this conduct on September 7 and 8, 2001, prior to the September 30 end of the third quarter of that year, when it moved approximately 1,042 and 950 accounts, respectively, from churn status to active status by use of penny-credits. Similar actions occurred on numerous other occasions throughout the period between 1999 and December 2001.

In the periodic reports then filed with the Commission, PSC and PM&C reported the number of subscribers for any given reporting period. In each quarterly and annual filing on Forms 10-Q and 10-K during the reporting periods from the third quarter of 1999 through December 2001, PSC and PM&C disclosed the number of its subscribers and attributed increases in subscriber numbers to, among other things, "internal growth**."** Neither PSC nor PM&C ever explained that a portion of their subscriber base consisted of "no-core" accounts. In their Forms 10-K for the year 2001, which contained virtually identical disclosures, PSC and PM&C reported 1,519,000 subscribers, compared to 1,403,000 for the prior year. In the same reports, PSC and PM&C stated that the year-to-year increase "was substantially due to internal growth." PSC and PM&C omitted to mention that the internal growth each cited included some non-core

subscribers that were activated by various means including the re-aging of accounts and the issuance of penny-credits as described above.

Stock analysts and public investors typically focused on subscriber numbers as one of the most important performance metrics for a company operating a satellite television business. Analysts' reports issued during the time subscriber numbers were inflated often cited those inflated numbers as part of the basis for their investment recommendations regarding PSC, PM&C and their affiliate companies.

In February 2002, PSC's management and audit committee undertook a review of the method by which it publicly reported the number of its subscribers.

In their 2001 10-Ks filed with the Commission on April 3 and April 9, 2002, respectively, PSC and PM&C announced that:

> Our publicly reported subscriber counts in the past have included a number of accounts whose service has been suspended for prolonged periods of time. Because we believe it would improve our public reporting and internal analyses, we are changing our method of reporting subscribers, beginning with the first quarter of 2002 so as to exclude these accounts. We estimate that if we had instituted this change at December 31, 2001, we would have reported approximately 1.4 million subscribers.

Legal Discussion

The elements of fraud under Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, are, in general: (1) a device, scheme, or artifice to defraud or misstatements or omissions of material fact; (2) made in connection with the offer, sale, or purchase of securities; where (3) the defendants acted with scienter. The Supreme Court has defined scienter as a "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976). The scienter requirement may also be met by recklessness. *In Re The Lesley Fay Companies, Inc.*, 871 F. Supp. 686 (S.D.N.Y. 1995) (explaining the evolution of recklessness to establish scienter). Courts have held that an issuer's public dissemination of materially false or misleading information through the press or in public filings with the Commission combined with public trading in the issuer's securities satisfy the nexus requirement of Section 10(b), and that selling or offering securities in the midst of a fraud, with knowledge of the fraud, violates Section 17(a). *S.E.C. v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d. Cir. 1968) *(en banc), cert. denied*, 394 U.S. 976 (1969). *See also, S.E.C. v. Savoy Indus.*, 587 F.2d 1149, 1171 (D.C.Cir. 1978), *cert denied*, 440 U.S. 913 (1979).

Section 13(a) of the Exchange Act requires all issuers whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act to file with the Commission periodic reports containing information prescribed by Commission rules and regulations. Pursuant to Section 13(a), the Commission has promulgated Rules 13a-1 and 13a-13, which require issuers to file annual and quarterly reports, respectively. Rule 12b-20 requires periodic reports to contain any additional information necessary to ensure that statements in the reports are not, under the circumstances, materially misleading. The filing of reports containing

materially false or misleading information constitutes a violation of the reporting provisions of the federal securities laws. *See, e.g., Savoy Indus.*, 587 F.2d at 1165. A showing of scienter is not required to establish liability under the reporting provisions. *Id.* at 1167.

Section 13(b)(2)(A) of the Exchange Act requires issuers to keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect company transactions and the disposition of assets. Section 13(b)(2)(B) of the Exchange Act requires an issuer to "devise and maintain a system of internal accounting controls" that is sufficient to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets. Rule 13b2-1 of the Exchange Act prohibits any person from directly or indirectly falsifying any book, record or account required to be kept pursuant to Section 13(b)(2)(A) of the Exchange Act. Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) do not require a showing of materiality or scienter. *S.E.C. v. Worldwide Coin Investments, Ltd.*, 567 F. Supp. 724, 749-51 (N.D. Ga. 1983).

IV.

As a result of the conduct described above, PSC violated Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules l0b-5, 12b-20, 13a-1, 13a-13 and 13b2-1 thereunder. As a result of its conduct described above, PM&C violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

V.

Undertakings

In determining to accept the Respondents' Offers, the Commission further considered the following undertakings by Respondents. Ongoing Cooperation: Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents have undertaken to produce promptly, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff.

VI.

Accordingly, it is hereby ORDERED that:

PSC cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1 thereunder.

PM&C cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Nancy M. Morris
Secretary