CASE LAW MADNESS

THE "SWEET SIXTEEN" CASES TO KEEP IN YOUR BRIEFCASE FOR HEARINGS

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This paper contains various case summaries which often are direct quotes from the cases, but sometimes footnotes and citations are removed for readability and space. Please review the actual cases before citing any of these cases to the court.

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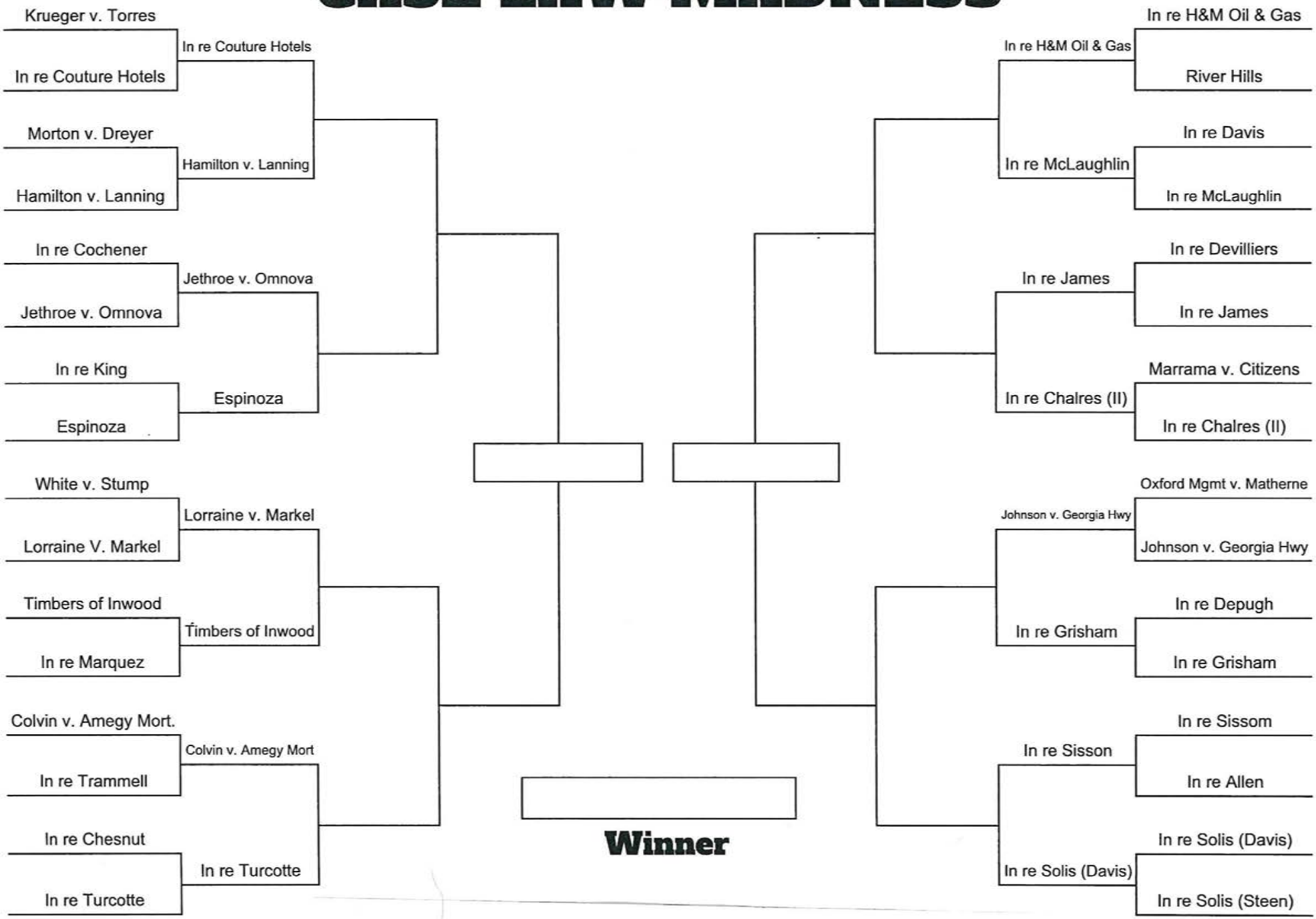

Match 1

(L) *Krueger v. Torres* (*In re Kruger*), 812 F. 3d 365 (5th Cir. 2016) - Bad Faith dismissal under §707

Dismissal of a case "for cause" is properly pursued by motion rather than a contested matter, so long as it does not seek any kind of denial of discharge or dischargeability. A temporary bar to refiling does not address discharge such as would require an adversary proceeding.

The statute (11 U.S.C. §707) lists three grounds "for cause" that all courts have understood as illustrative, not exclusive: 1) unreasonable delay by the debtor that is prejudicial to creditors; 2) nonpayment of any fees or charges required to file a case; and 3) failure of the debtor in a voluntary case to file schedules and creditor lists.

Bad faith in the bankruptcy process can serve as the basis of a dismissal "for cause" even if the bad faith conduct is arguably encompassed by other provisions of the code. Cause is any reason cognizable to the equity power of the Court as constituting an abuse of the bankruptcy process which can include pre-petition bad faith conduct, post-petition bad faith conduct or petitions that simply serve no legitimate bankruptcy purpose. In judging dismissal, the court may consider the debtor's entire course of conduct.

(W) *In re Couture Hotel Corporation*, 554 B.R. 369 (Bankr.N.D.Tex. 2016 - Houser) - Business records prove-up

Hearsay (Federal Rule of Evidence 802) is a statement that (1) the declarant does not make while testifying at the current trial or hearing and (2) a party offers in evidence to prove the truth of the matter asserted.

Rule 803(6) provides an exception to the hearsay rule for records of a regularly conducted activity (generally known as the "business records exception.") A record of an act, event, condition, opinion or diagnosis is admissible if: (1) it is made at or near the time by or from information transmitted by someone with knowledge; (2) the record was kept in the course of a regularly conducted activity of a business, organization, occupation or calling; (3) making the record was a regular practice of that activity; (4) all these conditions are shown by the testimony of a custodian or qualified witness or by a certification under Rule 902(11) or (12) and (5) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Documents prepared by an outside entity which is incorporated into a testifying organizations business records can be proven up by a witness from the testify organization if the documents are heavily relied upon and were integrated into and used by the testifying organization. If business records incorporate other records that qualify as business records, there is no accumulation of inadmissible hearsay. There is no

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