

BANKRUPTCY AND FEDERAL CROP INSURANCE

*Chad G. Marzen**

I. INTRODUCTION.....	328
II. LIENS ON FUTURE CROPS—”INDUBITABLE EQUIVALENT” OF CASH COLLATERAL AND ADEQUATE PROTECTION OF SECURITY INTERESTS ISSUE	331
III. ALLEGED MISREPRESENTATIONS CONCERNING CROP INSURANCE APPLICATIONS	335
IV. CROP INSURANCE PREMIUMS AND SETOFFS UNDER THE BANKRUPTCY CODE.....	337
V. FEDERAL CROP INSURANCE ACT STATUTE OF LIMITATIONS	338
VI. ARE CROP INSURANCE PROCEEDS PROPERTY OF THE BANKRUPTCY ESTATE?	340
VII. PREEMPTION: FEDERAL LAW AND STATE LAW ON SECURITY INTERESTS IN THE BANKRUPTCY CONTEXT	342
VIII. CONCLUSION.....	346

I. INTRODUCTION

As the United States Supreme Court stated in *Local Loan Co. v. Hunt*, one of the main purposes of federal bankruptcy law is for a debtor to have a “new opportunity in life.”¹ Bankruptcy has affected thousands of individuals, but the promise of starting with a new opportunity in life under United States bankruptcy law shines as hope for many. Numerous scholars have written articles in the area of bankruptcy law, ranging from the relationships between bankruptcy law and families,² bankruptcy law

* Assistant Professor of Legal Studies, Florida State University, College of Business—Department of Risk Management/Insurance, Real Estate and Legal Studies. The author can be reached at cmarzen@fsu.edu. This article is dedicated to Laura Elizabeth Grice—yours always.

¹ *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (“This purpose of the [Bankruptcy] act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.”).

² See, e.g., Tiffany R. Harper, *Gelding the Lily: How the Bankruptcy Code’s Promotion of Marriage Leaves It Impotent*, 28 EMORY BANKR. DEV. J. 31 (2011) (suggesting revisions to the Bankruptcy Code to permit more individuals to receive benefits only conferred under bankruptcy laws to married debtors); Mary M. Mahoney, *Debts, Divorce and Disarray in Bankruptcy*, 73 UMKC L. REV. 83 (2004) (discussing situations where debts incurred by a couple during marriage are allocated to a spouse who later declares bankruptcy); Eric S. Nguyen, *Parents in Financial Crisis: Fighting to Keep the Family Home*, 82 AM. BANKR. L.J. 229 (2008) (providing an empirical

and housing,³ bankruptcy law and student loan debt discharge,⁴ and between bankruptcy law and race.⁵

Another area receiving scholarly attention is the relationship between bankruptcy law and agriculture.⁶ Given better times in agriculture in

study which indicates that parents with children are more likely than parents without children to keep their homes in times of financial distress); Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1 (2004) (discussing the economic pressures on middle class families and the increasing occurrence of bankruptcy among American families).

³ See, e.g., John Eggum, Katherine Porter & Tara Twomey, *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 2008 UTAH L. REV. 1123 (2008) (advocating for repeal of the prohibition on home mortgage loan modifications during the course of a Chapter 13 bankruptcy proceeding); Melissa B. Jacoby, Daniel T. McCue, & Eric S. Belsky, *In or Out of Mortgage Trouble? A Study of Bankrupt Homeowners*, 85 AM. BANKR. L.J. 291 (2011) (providing an econometric study of the factors that make homeowners more or less likely to experience mortgage issues prior to bankruptcy); Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L. REV. 121 (2008) (studying the behavior of mortgage servicers in bankruptcy cases); Alexandra P. Everhart Sickler, *Mitigating the Foreclosure Crisis with Bankruptcy Mortgage Modifications*, 9 U.C. DAVIS BUS. L.J. 85, 109 (2008) (advocating for reform of bankruptcy law to allow loan modifications for a principal residence mortgage during bankruptcy and arguing that such an amendment “would minimize investor losses, preserve homeownership levels, and stabilize the housing market”).

⁴ See, e.g., Daniel A. Austin, *The Indentured Generation: Bankruptcy and Student Loan Debt*, 53 SANTA CLARA L. REV. 329 (2013) (discussing various proposals to amend federal bankruptcy laws to address the issue of student loan debt); Richard B. Keeton, *Guaranteed to Work or It's Free!: The Evolution of Student Loan Discharge in Bankruptcy and the Ninth Circuit's Ruling in Hedlund v. Educational Resources Institute Inc.*, 89 AM. BANKR. L.J. 65 (2015) (providing an excellent historical outline of the “undue hardship” standard for discharging student loan debt in bankruptcy); Kevin J. Smith, *Defining the Brunner Test's Three Parts: Time to Set a National Standard for All Three Parts to Determine When to Allow the Discharge of Federal Student Loans*, 58 S.D. L. REV. 250, 271 (2013) (proposing revisions to the Brunner test for student loan discharge in bankruptcy); Aaron N. Taylor, *Undo Undue Hardship: An Objective Approach to Discharging Federal Student Loans in Bankruptcy*, 38 J. LEGIS. 185 (2012) (proposing an objective framework to replace the “undue hardship” standard for discharging federal student loans in bankruptcy).

⁵ See, e.g., Abbye Atkinson, *Race, Educational Loans and Bankruptcy*, 16 MICH. J. RACE & L. 1, 43 (2010) (stating “African Americans, who are more likely to need to borrow money in order to get a college education, are particularly hit by the nondischargeability of educational loans in bankruptcy. This observation might prompt Congress to reconsider the current treatment of educational loans in bankruptcy.”); A. Mechele Deckerson, *Race Matters In Bankruptcy Reform*, 71 MO. L. REV. 919 (2006) (discussing the potential effects of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 with a specific focus on race); A. Mechele Deckerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725 (2005) (examining bankruptcy law through a racial lens); Dariely Rodriguez, *Left Behind: The Impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on Economic, Social and Racial Justice*, 18 BERKELEY LA RAZA L.J. 65, 77 (2007) (arguing that “retrogressive legislation, such as BAPCPA, that further exacerbates racial economic gaps must be reformed so that minorities have the opportunity to obtain long-term wealth and security.”).

⁶ See, e.g., Jason Binford & John Kane, *Farmer Favoritism: Statutory Protections for Creditors in Agricultural Bankruptcy Cases*, 46 TEX. TECH L. REV. 377 (2014) (comprehensively examining federal and state laws relating to the relationship between debtors and creditors in agricultural bankruptcy cases); Robert J. Haupt, *When is a Farmer a “Family Farmer”? An Analysis of Chapter 12 Income Qualification*, 29 OKLA. CITY U.L. REV. 725 (2004) (discussing the income qualification considerations for a family farmer and eligibility for a Chapter 12 bankruptcy

recent years with rising or steady land values, according to at least one commentator the risk of bankruptcy is possibly not as prescient a risk among today's farmers.⁷ But historically, this has not always been the case. For instance, during the 1980s, many farmers financed the purchase of farmland when commodity prices were at a zenith and when commodity and land prices fell precipitously. A "farm crisis" ensued which resulted in many farmers declaring bankruptcy and leaving the field of agriculture entirely.⁸ While current analyst prognostications of a future "farm crisis" are not as widespread as they had once been,⁹ there is increasing discussion among a number of analysts who have raised the possibility of a land price "bubble" in agriculture.¹⁰

Amidst the discussions among policymakers regarding agriculture is a debate over the future of the federal crop insurance program. Several months ago, a budget compromise reached in Congress originally included vital cuts to the subsidy.¹¹ While the final version of the budget compromise in 2015 did not incorporate the provision of cuts to the program,¹² there are still many who are calling for significant reform of the federal crop insurance program.¹³

reorganization); Susan A. Schneider, *Bankruptcy Reform and Family Farmers: Correcting the Disposable Income Problem*, 38 TEX. TECH L. REV. 309 (2006) (discussing an amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and its potential positive effects for family farmers who seek Chapter 12 bankruptcy reorganization).

⁷ See, e.g., Gary Schnitkey, *Impact of Farmland Price Decreases Overstated*, AGRINEWS (Nov. 12, 2015) ("In the 1980s, farmland price decreases contributed to farm financial stress. Today, some concern exists that farmland price decreases could cause financial stress in the next several years. While large price decreases would cause large net worth reductions, it is unlikely that farmland price decreases in and of themselves will lead to solvency problems on most farms. However, continuing negative cash flows from operations could lead to financial difficulties.").

⁸ See Bethany Verhoef Brands, Thomas M. Johnston & Jill Korenevich Harker, *The Iowa Mediation Service: An Empirical Study of Iowa Attorneys' Views on Mandatory Farm Mediation*, 79 IOWA L. REV. 653, 657-59 (1994) (discussing the history of the 1980s farm credit crisis).

⁹ See Schnitkey, *supra* note 7.

¹⁰ See Jesse Newman, *Farmland Values in Parts of Midwest Fall for First Time in Decades*, WALL ST. J. (Feb. 12, 2015).

¹¹ See Charly Haley & Donnelle Eller, *Washington Promises to Restore Crop Insurance Cuts*, DES MOINES REGISTER (Oct. 28, 2015) (discussing the version of a House of Representatives bill for a budget agreement which originally cut \$3 billion over 10 years from the federal crop insurance program); see also *Crop Insurance Cuts Averted by Budget Pledge*, IOWA FARMER TODAY (Nov. 5, 2015) (stating that "The House and Senate came to an agreement that would avoid more than \$3 billion in cuts to the nation's crop insurance program as part of the budget package. The agreement followed a tumultuous three-day fight over the bill's inclusion of the proposal that would have accomplished the cuts by reducing the rate of return for crop insurance companies from 14 percent to 8.9 percent.").

¹² See Angela Bowman, *Crop Insurance Survives Budget Deal*, AG PROFESSIONAL (Oct. 30, 2015, 1:18 PM), <http://www.agprofessional.com/news/crop-insurance-survives-budget-deal>.

¹³ See Philip Brasher, *Lawmakers Propose New Cuts in Crop Insurance*, AGRIPULSE (Nov. 4, 2015), <http://www.agri-pulse.com/Lawmakers-propose-deep-cuts-in-crop-insurance-11042015>

In the area of insurance law, there are several commentators who have written on the relationship between insurance law and that of bankruptcy law.¹⁴ At least one commentator has explored the question of when payments under government programs generally become property of a bankruptcy estate by examining payments made in crop disaster programs;¹⁵ another, Professor Susan Schneider, has generally examined factors relating to when federal farm program payments generally become property of a bankruptcy estate.¹⁶ But there is a gap in the literature relating to bankruptcy law and the law of federal crop insurance specifically. This article is intended to examine the nexus between bankruptcy law and the federal crop insurance program by analyzing some of the key issues litigated in court. The law of bankruptcy and the law of federal crop insurance intersect in a variety of interesting contexts, including issues of replacement liens on crops; allegations of misrepresentation and its effects on a bankruptcy proceeding; setoffs; adequate protection of security interests; statutes of limitations; whether crop insurance proceeds are part of the bankruptcy estate; and preemption.

II. LIENS ON FUTURE CROPS—“INDUBITABLE EQUIVALENT” OF CASH COLLATERAL AND ADEQUATE PROTECTION OF SECURITY INTERESTS ISSUE

In a bankruptcy reorganization case, a farmer may file a bankruptcy petition but then seek to place a lien on future cash proceeds from the sale of commodity crops for the benefit of a creditor in exchange for cash

.asp (discussing legislation introduced in 2015 to cut crop insurance subsidies by \$24 billion over 10 years).

¹⁴ See, e.g., Alena Allen, *State-Mandated Disability Insurance as Salve to the Consumer Bankruptcy Imbroglia*, 2011 B.Y.U. L. REV. 1327, 1358–59 (2011) (contending that an expansion of state-mandated disability insurance programs can address issues with bankruptcies due to medical reasons); George William Van Cleve, *Bankruptcy and the Future of Insurance Risk-Sharing*, 21 AM. BANKR. INST. L. REV. 99, 100 (2013) (discussing the relationship between self-insured retention provisions in insurance contracts and bankruptcy law); Wm. Carlisle Herbert, *When Jurisdictions Collide: Determining Judicial Roles When Bankruptcy Court and Insurance Receivership Court Responsibilities Overlap*, 42 TORT TRIAL & INS. PRAC. L.J. 941, 942 (2007) (examining jurisdictional issues which arise between state insurance receivership courts and federal bankruptcy courts); Michael Sean Quinn & Brian S. Martin, *Insurance and Bankruptcy*, 36 TORT & INS. L.J. 1025, 1027 (2001) (generally discussing issues concerning the intersection of insurance law and bankruptcy law); Michael D. Sousa, *Making Sense of the Bramble-Filled Thicket: The “Insured vs. Insured” Exclusion in the Bankruptcy Context*, 23 EMORY BANKR. DEV. J. 365 (2007) (analyzing the application of the “insured vs. insured” exclusion in directory and officer liability insurance policies and how the exclusion applies in bankruptcy proceedings).

¹⁵ See Patricia Boxold, Comment, *Government Payments: When Do They Become Property of the Estate?*, 30 EMORY BANKR. DEV. J. 429 (2014).

¹⁶ See Susan A. Schneider, *Who Gets the Check: Determining When Federal Farm Program Payments Are Property of the Bankruptcy Estate*, 84 NEB. L. REV. 469, 471 (2005).

collateral to finance farming operations.¹⁷ This arrangement raises questions as to the protection of the creditor's interest. Federal bankruptcy law provides that during a bankruptcy proceeding, a creditor with an interest in property of the debtor must be provided at least "adequate protection" in the event such property is used, sold, or leased.¹⁸ Thus, an "adequate protection" standard must be met if a farmer wishes to obtain cash collateral to finance farming operations in the situation described above.

Under 11 U.S.C. § 361, "adequate protection" for the creditor can be met by cash payment or periodic cash payments,¹⁹ an additional or replacement lien,²⁰ or "such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property."²¹ The third means, an "indubitable equivalent," is the type that arises with future crop liens.

In the case of *In re Berg*, a group of debtors filed for bankruptcy protection and sought approval to use cash collateral to finance farm commodity planting operations in North Dakota.²² In their bankruptcy plan, the debtors sought to sell grain on the farm under loan to the Commodity Credit Corporation ("CCC"). In exchange for the operating loan, the debtors would assign any proceeds of claims under a crop insurance policy to the CCC and also give it a primary lien on the crops obtained from the harvest that year.²³ The CCC, the creditor in the case, contended that a primary lien on crops yet to be harvested is speculative in nature and not an "indubitable equivalent."²⁴ In response, the debtors argued that in the broader commercial context it is not an unusual practice for a bank to give loans on future crops and that the lien, as well as assignment of any crop insurance proceeds, met the "indubitable equivalent" standard.²⁵

¹⁷ See generally, Jerry J. Jensen, Note, *Obtaining Operating Capital in a Chapter 12 Farm Reorganization*, 54 MO. L. REV. 75 (1989) (broadly discussing agricultural financing possibilities for a farmer in a bankruptcy reorganization case).

¹⁸ 11 U.S.C. § 363(e) (2015) states the following:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest

¹⁹ 11 U.S.C. § 361(1) (2015).

²⁰ 11 U.S.C. § 361(2) (2015).

²¹ 11 U.S.C. § 361(3) (2015).

²² *Berg v. United States (In re Berg)*, 42 B.R. 335, 336 (D. N.D. 1984).

²³ *Id.*

²⁴ *Id.* at 337.

²⁵ *Id.*

The United States District Court of the District of North Dakota found that such an arrangement did not meet the “indubitable equivalent” standard, overturning the bankruptcy court decision.²⁶ In particular, the district court focused on the difference between an existing crop and a future crop, reasoning that an existing crop offers much more value than a prospective future crop to a creditor.²⁷ In addition, the district court also mentioned that the proposed CCC lien in the case may or may not have had priority over other potential liens (seed, fuel, or fertilizer liens).²⁸ Finally, the district court also noted that the liens on future crops may not adequately protect against unanticipated disasters.²⁹ Assigning federal crop insurance proceeds, the court reasoned, would not adequately protect the creditor’s interest because a failure to follow good farming practices bars insurance coverage³⁰ and because the proposed insurance only protected against yield losses, not losses in revenue which could occur in the event commodity prices fell.³¹

The decision of the District Court of the District of North Dakota was appealed to the United States Court of Appeals of the Eighth Circuit and combined with another case.³² In its decision in *In re Martin*, the Eighth Circuit comprehensively examined the legislative history of the “adequate protection” standard.³³ The court found that the standard of “adequate protection” was intended to “insure that the secured creditor receives the *value* for which he bargained,”³⁴ and that the determination

²⁶ *Id.* at 338.

²⁷ *Id.* (“The case relied upon by the debtors as authority for the giving of a replacement lien all deal with existing collateral. In this case, rather than providing CCC with collateral of a value that is indubitably equivalent to its interests in the stored grain, the debtors have provided a promise of collateral which may exist in the future. This is, in effect, an offer of no collateral at all. As pointed out at oral argument, the value to a creditor of a lien on an existing crop is greater than the promise of a lien on a crop to be grown. The creditor has the ability to inspect, protect and control existing grain in storage. Additionally, existing collateral is capable of being liquidated at any time, whereas a future crop must first be planted, grown, and harvested.”).

²⁸ *Id.* (“It may be possible for others to file competing liens against the crop, for example, seed, fuel or fertilizer liens, which may or may not have priority over CCC’s lien.”).

²⁹ *Id.* (“It should also be noted that weather, fire, explosions or other disasters could partially or totally destroy the 1984 crop. Thus, a lien on crops yet in existence and that are purely speculative in nature as well as being subject to the uncertainties of weather and other natural phenomena is not the indubitable equivalent of a lien on already existing commodities in storage.”).

³⁰ *Id.* (“Debtors argue that to ensure against uncertainties and to put CCC in a position where it can be virtually certain of recouping its interests in full, the debtors will obtain federal crop insurance and assign the proceeds to CCC. However, federal crop insurance will not insure against management errors or poor husbandry practices.”).

³¹ *Id.* (“Additionally, it insures only against losses in yield, and not against decreases in the market value of the crop, which may be caused by a decrease in market price or discounting due to poor quality grain.”).

³² *Martin v. United States (In re Martin)*, 761 F.2d 472 (8th Cir. 1985).

³³ *Id.* at 474.

³⁴ *Id.*

of “value” as well as adequate protection needed to be determined on a case-by-case basis.³⁵

The *In re Martin* court recognized that in analyzing questions of “adequate protection,” competing interests between a creditor’s security interests in collateral and a debtor’s interest in developing a feasible reorganization plan in bankruptcy must be balanced.³⁶ The court established a three-part test to determine whether “adequate protection” is met: “(1) establish the value of the secured creditor’s interest, (2) identify the risks to the secured creditor’s value resulting from the debtor’s request for use of cash collateral, and (3) determine whether the debtor’s adequate protection proposal protects value as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.”³⁷ In reviewing the Eighth Circuit noted that the bankruptcy court did not fully establish the value of the secured interest of CCC³⁸ and listed a number of agricultural factors the court could consider in the context of the three-part test for adequate protection.³⁹

Three years after *In re Martin*, the United States Bankruptcy Court of the District of Nebraska applied the three-part “adequate protection” test in the case of *Matter of Krumm*.⁴⁰ In *Krumm*, a bank in a bankruptcy proceeding had a claim of over \$280,000 secured by farm livestock, equipment, and crops.⁴¹ The debtor in the bankruptcy proceeding sought to utilize \$150,000 of the bank’s cash collateral for planting and harvesting a crop of corn and soybeans.⁴² As in *Berg*, the debtors in *Krumm* sought to place a lien on the future crops as adequate protection for the bank along with an assignment of proceeds of any claims under federal crop insurance policies.⁴³ The bankruptcy court determined that

³⁵ *Id.*

³⁶ *Id.* at 477. (“On the contrary, we believe they are in accordance with the policy of balancing the competing interests of a debtor who proposes to use secured property to contribute to the reorganization plan on the one hand, and the creditor who wishes to retain the value and safety of its security interest on the other.”).

³⁷ *Id.* at 476–77.

³⁸ *Id.* at 477.

³⁹ *Id.* (“On remand, the bankruptcy court should consider: the anticipated yield in light of the productivity of the land; the husbandry practices of the farmer, including his proven crop yields from previous years; the health and reliability of the farmer; the condition of the farmer’s machinery; whether there are encumbrances on the machinery which may subject it to being repossessed before the crop is harvested; the potential encumbrances on the present or future crop by other secured creditors; the availability of crop insurance and the risk of crop failure not covered by the crop insurance; and the anticipated fluctuation in market price of the farmer’s crop. These factors are by no means exclusive but merely illustrative of ones affecting CCC’s security interest.”).

⁴⁰ *Matter of Krumm*, 87 B.R. 76, 77 (Bankr. D. Neb. 1988).

⁴¹ *Id.* at 76.

⁴² *Id.*

⁴³ *Id.* at 77.

the risks to the secured creditor outweighed the risks with the debtor's use of cash collateral, even if the debtor could manage price risk by hedging in the commodity futures markets.⁴⁴ Despite the bankruptcy court's findings, it noted that the debtor could potentially have met the "adequate protection" standard if a different cash collateral amount was proposed.⁴⁵ Read together, both the *Berg* and *Krumm* cases indicate a debtor may have difficulties meeting the "adequate protection" standard in a Chapter 11 bankruptcy case even if the debtor both obtains a lien on future crops as well as an assignment of federal crop insurance proceeds.

III. ALLEGED MISREPRESENTATIONS CONCERNING CROP INSURANCE APPLICATIONS

Although the vast majority of farmers are likely hard working, honest, and forthright, there are cases throughout the country where there are allegations of misrepresentations associated with the federal crop insurance program.⁴⁶ United States Code chapter 11, section 541(a)(1) provides that all "legal or equitable interests of the debtor in property" at the commencement of a bankruptcy case become part of the bankruptcy estate and are thus capable of being discharged in bankruptcy.⁴⁷ However, there are exceptions and a number of debts are exempted from bankruptcy discharge. There is an exemption from bankruptcy discharge through the provisions of 11 U.S.C. § 523(a)(2)(A) for money, property, services, or credit obtained, renewed, extended, or refinanced if obtained through false pretenses, false representations, or fraud.⁴⁸ If a creditor wishes to prevent dischargeability on the basis of false pretenses, false representations, or fraud, then the "creditor must prove by a preponderance of the evidence that: (1) the debtor made a representation; (2) at the time the representation was made the debtor knew it was false; (3) the debtor subjectively intended to deceive the creditor at the time he made the representation; (4) the creditor justifiably relied on the representation; and (5) the creditor was damaged."⁴⁹

The case of *In re Kraft* illustrates an instance where allegations of crop insurance misrepresentations intersected with a bankruptcy matter.⁵⁰ The

⁴⁴ *Id.* at 77–78.

⁴⁵ *Id.* at 78.

⁴⁶ For a comprehensive discussion of the area of crop insurance misrepresentations, see Chad G. Marzen, *Crop Insurance Fraud and Misrepresentations: Contemporary Issues and Possible Remedies*, 37 WM. & MARY ENVTL. L. & POL'Y REV. 675 (2013).

⁴⁷ See 11 U.S.C. § 541(a)(1) (2015).

⁴⁸ See 11 U.S.C. § 523(a)(2)(A) (2015).

⁴⁹ *Farmers Crop Ins. Alliance Inc. v. Kraft*, (*In re Kraft*), Bankruptcy No. 05-31171, 2009 WL 750288, at *8 (Bankr. D. N.D. Mar. 17, 2009).

⁵⁰ *Id.* at *1.

case concerned representations made in written applications and acreage reports for a 2003 potato crop in North Dakota.⁵¹ The 2003 potato crop was a total loss, and the insureds were paid an indemnity of over \$498,000 by the insurer, which issued a federal crop insurance policy.⁵² In June 2005, the insureds filed for Chapter 12 bankruptcy protection.⁵³

In October 2007, the insurer filed a complaint contending that the indemnity payment was nondischargeable under 11 U.S.C. § 523(a)(2)(A) because the insureds allegedly received the payment by fraud, false representations, or false pretenses.⁵⁴ The allegations centered around conflicting testimony between one of the insureds and the insureds' crop insurance agent.⁵⁵ The written agreement application stated that the insureds would partner with another entity on the annual potato crop, but the written agreement application also represented that the insureds were the sole owners of the potato crop.⁵⁶ Furthermore, one of the insureds signed an acreage report and production certification that the insureds were the only parties with interests in the potato crop.⁵⁷ The insurer in the case argued that one of the insureds was a knowledgeable participant in the federal crop insurance program and that the insureds' testimony in the matter was inconsistent.⁵⁸

The United States Bankruptcy Court of the District of North Dakota ruled against the insurer and found the indemnity debt to be dischargeable in bankruptcy.⁵⁹ In its findings, the bankruptcy court noted that the insurer did not produce any evidence that showed the insureds in any way benefited from any misrepresentations,⁶⁰ that one of the insureds testified that he believed the insurance application had to be in his own name since he was named on the land lease,⁶¹ and also noted that the insurance agent for the insureds did not correctly handle insurance in the following year.⁶² Thus, the insurer did not prove by a preponderance of the evidence that the insureds had any intent to deceive.⁶³

⁵¹ *Id.* at *1, 8.

⁵² *Id.* at *7.

⁵³ *Id.*

⁵⁴ *Id.* at *1.

⁵⁵ *Id.* at *4.

⁵⁶ *Id.*

⁵⁷ *Id.* at *6–7.

⁵⁸ *Id.* at *9.

⁵⁹ *Id.* at *12.

⁶⁰ *Id.* at *9 (“Plaintiff did not introduce any evidence to show that the misrepresentations as to ownership advantaged [the insured] in any way. When [the insured] received the indemnity, it was not a windfall.”).

⁶¹ *Id.*

⁶² *Id.* at *10.

⁶³ *Id.* at *11 (“The Court is not convinced that [the insured] intended to deceive Plaintiff at the time he made the representations that he was not sharing the crop with anyone else. Rather, [the

IV. CROP INSURANCE PREMIUMS AND SETOFFS UNDER THE BANKRUPTCY CODE

The issue of recovering a crop insurance premium setoff claimed by an insurer has also arisen in the bankruptcy context. Under 11 U.S.C. § 553(a) setoffs can be claimed in bankruptcy cases and the statute “does not affect any right of a creditor to offset a mutual debt by such creditor to the debtor that arose before the commencement of the case under this title” against a similar claim made before commencement.⁶⁴ To obtain a setoff, a creditor must show three items⁶⁵ and confirm that the debt and the claim are mutual and arose prior to the petition for bankruptcy being filed.⁶⁶

The “mutuality” requirement arose in the 1994 case of *In re Kalenze*, heard before the United States Bankruptcy Court for the District of North Dakota.⁶⁷ In the case, the debtors filed for Chapter 7 bankruptcy protection in 1993, and at the same time were obligated to pay a 1992 crop insurance premium and also due to receive a tax refund.⁶⁸ The Federal Crop Insurance Corporation (“FCIC”) claimed a setoff on the refund, and the debtors claimed the setoff was invalid.⁶⁹

The bankruptcy court upheld the validity of the setoff.⁷⁰ In upholding the setoff, the Bankruptcy Court rejected the debtors’ argument that the debts at issue (the crop insurance premium and the tax refund) were not mutual since the Internal Revenue Service (“IRS”) and FCIC are different entities.⁷¹ The bankruptcy court stated “all federal agencies are an integral part of the federal government and entitled to settled statutory priority in collecting on loans made from government funds.”⁷² Thus, absent a future

insured] believed, albeit incorrectly, that he was properly insuring the potato crop. [The insured] may have let [the insured’s agent] adamance about the necessity of the person renting the land matching the person insuring the crop to mislead him into believing that the insurance needed to be in his name alone, but the Court does not find this to be indicative of an intent to deceive.”)

⁶⁴ 11 U.S.C. § 553(a) (2015).

⁶⁵ See *Kalenze v. Federal Crop Ins. Corp. (In re Kalenze)*, 175 B.R. 35, 37 (Bankr. D. N.D. 1994). The United States Bankruptcy Court of the District of North Dakota stated the following:

In order for FCIC to establish a right to setoff, it must demonstrate:

1. A debt exists from the creditor to the debtor and that debt arose prior to the commencement of the bankruptcy case.
2. The creditor has a claim against the debtor which arose prior to the commencement of the bankruptcy case.
3. The debt and the claim are mutual obligations.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 36.

⁶⁹ *Id.*

⁷⁰ *Id.* at 37.

⁷¹ *Id.*

⁷² *Id.*

amendment to the federal bankruptcy statutes which would treat federal agencies differently from each other, future courts are likely to consider the FCIC in mutual capacity with other federal agencies for setoffs.

V. FEDERAL CROP INSURANCE ACT STATUTE OF LIMITATIONS

Filing a claim within the applicable statute of limitations⁷³ concerns all attorneys practicing law within the United States. Missing a statute of limitations deadline can result in the loss of a case⁷⁴ and even worse, may result in professional malpractice or ethics discipline.⁷⁵ Occasionally, applying a statute of limitation will create a complex legal issue of interpretation.

A complicated statute of limitations issue arose in a federal crop insurance law and federal bankruptcy law context in the case of *Van Curen v. Federal Crop Insurance Corporation*.⁷⁶ In the *Van Curen* case, the Chapter 11 bankruptcy trustee brought an action against the FCIC seeking crop insurance proceeds for the benefit of the debtor's bankruptcy estate.⁷⁷ In the underlying bankruptcy case, the debtor ran a grape farming business in California and sold the crop to wine and juice manufacturers.⁷⁸ In July 2001, the debtor filed for Chapter 11 bankruptcy relief but continued operating the grape farming business as a debtor-in-possession until April 2003.⁷⁹ In the 2002 crop year, much of the debtor's grape crop suffered substantial damage and several claims were filed with the debtor's crop insurer.⁸⁰ The crop insurer paid out claims over \$8 million and in early 2003 the insurer conducted a "High Dollar Loss Review" as required by the federal reinsurance agreement for high loss claims.⁸¹ During this same time, the insurer suffered financial difficulties

⁷³ See *Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 428 (1965) ("Statutes of limitation are primarily designed to assure fairness to defendants. Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights.")

⁷⁴ See *Thornhill v. Ingram*, No. 2014-IA-00959-SCT, 2015 WL 5730728, at *5 (Miss. Oct. 1, 2015) (concluding "that a statute of limitations is not tolled during a proceeding that is dismissed ultimately for failure to prosecute, regardless of whether the dismissal is initiated by the clerk, the judge, or a party.")

⁷⁵ See, e.g., *Attorney Grievance Comm'n of Md. v. Shapiro*, 441 Md. 367 (Md. Ct. App. 2015).

⁷⁶ *Van Curen v. Fed. Crop Ins. Corp.*, 50 F. Supp.3d 1200 (N.D. Cal. 2014).

⁷⁷ *Id.* at 1202.

⁷⁸ *Id.* at 1203.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 1203–04.

and in early 2003 the United States Department of Agriculture Risk Management Agency (“RMA”) began daily oversight over the insurer to start winding down its operations.⁸² Following the “High Dollar Loss Review,” the insurer determined it had overpaid the debtor by approximately \$1.2 million and sent a letter on August 7, 2003 issuing a final determination in the case.⁸³ The letter noted that the insurance policy contained a mandatory arbitration clause and that arbitration was required to commence within 12 months of the letter date.⁸⁴

The bankruptcy trustee responded just within one year of the insurer’s letter, contending the bankruptcy court had jurisdiction over the crop insurance indemnity dispute and that there was no obligation to begin arbitration proceedings.⁸⁵ However, the bankruptcy trustee did not take any legal action nor start arbitration proceedings before the end of the 12-month period.⁸⁶ In February 2005, a Nebraska court issued an order to authorize the Nebraska Division of Insurance to liquidate the insurer.⁸⁷ The RMA then took over servicing all of the insurer’s policies, and in early 2006 the bankruptcy trustee sought payment under the policies from RMA.⁸⁸ In April 2010, RMA issued a determination denying the bankruptcy trustee’s claims, and this decision was followed by a second RMA decision in May 2011 denying the claims once again and requesting repayment of an additional sum totaling \$2.4 million (following a hearing on additional evidence).⁸⁹

After the second RMA decision, the bankruptcy trustee appealed to the National Appeals Division (“NAD”) of the United States Department of Agriculture, which reversed the RMA’s decision.⁹⁰ After the NAD decision, both parties requested a Director Review of the NAD decision and the Director ruled that the RMA owed substantial indemnity payments to the bankruptcy trustee.⁹¹ Following the Director review, the RMA sent a letter to the bankruptcy trustee that it would not expect repayment of the additional funds awarded by the second RMA decision but would not award any additional amounts due to the arbitration clause and statute of limitations.⁹² The bankruptcy trustee then filed a claim in

⁸² *Id.* at 1204.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 1204–05.

⁸⁷ *Id.* at 1205.

⁸⁸ *Id.*

⁸⁹ *Id.* at 1205–06.

⁹⁰ *Id.* at 1206.

⁹¹ *Id.*

⁹² *Id.* at 1206–07.

the United States District Court for the Northern District of California requesting implementation of the NAD decision.⁹³

Despite the complex procedural history, the United States District Court for the Northern District of California held that the one-year statute of limitations under the Federal Crop Insurance Act applied and barred the bankruptcy trustee's claims.⁹⁴ The bankruptcy trustee contended that an automatic stay for bankruptcy proceedings applied and the statute of limitations did not apply.⁹⁵ In dismissing this argument, the District Court noted "the automatic stay applies to actions *against* a debtor, but does not prevent a debtor from offensively asserting a claim."⁹⁶ The District Court also rejected the bankruptcy trustee's argument that the matter at issue concerning the insurance contract was a "core" bankruptcy matter and did not affect the statute of limitations question since the bankruptcy trustee "did not initiate *any* action in response to [the insurer's] claim denial, whether inside or outside of bankruptcy."⁹⁷

Significantly, the district court noted that had the bankruptcy trustee would have filed an adversary action within the bankruptcy proceeding, then there may have been a greater question as to the enforceability of the arbitration provision.⁹⁸ But that did not occur.⁹⁹ Thus, the decision in *Van Curen* can be read to mean that in the interplay between federal crop insurance law and federal bankruptcy law, the automatic stay provision of 11 U.S.C. § 362¹⁰⁰ will not stay the statute of limitations deadline under the provisions of the Federal Crop Insurance Act.¹⁰¹

VI. ARE CROP INSURANCE PROCEEDS PROPERTY OF THE BANKRUPTCY ESTATE?

A legal question that has arisen in the area of insurance law is whether an insurance policy and insurance policy proceeds are property of the bankruptcy estate. The rule in insurance law generally is that an insurance policy becomes property of the bankruptcy estate upon the start of bankruptcy proceedings.¹⁰² However, the question as to whether

⁹³ *Id.* at 1207.

⁹⁴ *Id.* at 1208.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 11 U.S.C. § 362 (2015).

¹⁰¹ 7 U.S.C. § 1508(j)(2)(B) (2015).

¹⁰² See John D. Hughes, Jonathan W. Young & Michael B. Kind, *Effects of Bankruptcy on Insurance Policies*, EDWARDS WILDMAN, 1 (June 2014), <http://media.lockelord.com/files/uploads/Insurance/Bankruptcy%20White%20Paper.pdf>.

insurance policy *proceeds* also become the property of the bankruptcy estate is more complicated.¹⁰³ The test generally followed by most courts is whether the debtor benefits from the policy proceeds. If the debtor benefits, then the proceeds are part of the bankruptcy estate.¹⁰⁴ Thus, property/casualty, collision, life, and fire insurance policies generally become part of the bankruptcy estate, while liability insurance policies do not.¹⁰⁵ In addition, as Professor Schneider notes, the results of cases involving payments under government farm programs also vary, largely “depending upon the nature of the farm program and the timing of the bankruptcy in relation to the right to payment.”¹⁰⁶

The 2007 United States Bankruptcy Court for the Eastern District of California decision in *In re Hat* addressed the question of whether a crop insurance policy taken out after the petition by a debtor acting as debtor-in-possession belongs to the debtor or bankruptcy estate.¹⁰⁷ In 2002, after filing for Chapter 11 bankruptcy relief, the debtor-in-possession of the bankruptcy estate purchased federal crop insurance coverage, which included the debtor’s social security number but not the employer identification number for the company running the grape farm business.¹⁰⁸ Later that year, the debtor acting as debtor-in-possession made claims for indemnity under the insurance policy for damage to the grape crop.¹⁰⁹ A dispute arose as to whether the crop insurance policies were the property of the debtor or the bankruptcy estate.¹¹⁰

Under 11 U.S.C. § 541(a)(7), “any interest in property that the estate acquires after the commencement of the case” is considered to be

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.*; see also *La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1401 (5th Cir. 1987).

¹⁰⁵ John D. Hughes, Jonathan W. Young, & Michael B. Kind, *supra* note 102, 5–6; see also *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 55–56 (5th Cir. 1993) (“The overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim. When a payment by the insurer cannot inure to the debtor’s pecuniary benefit, then that payment should neither enhance nor decrease the bankruptcy estate. In other words, when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate. Examples of insurance policies whose proceeds are property of the estate include casualty, collision, life, and fire insurance policies in which the debtor is a beneficiary. Proceeds of such insurance policies, if made payable to the debtor rather than a third party such as a creditor, are property of the estate and may inure to all bankruptcy creditors. But under the typical liability policy, the debtor will not have a cognizable interest in the proceeds of the policy. Those proceeds will normally be payable only for the benefit of those harmed by the debtor under the terms of the insurance contract.”).

¹⁰⁶ See Schneider, *supra* note 16, at 470.

¹⁰⁷ *Van Curen v. Great Am. Ins. Co. (In re Hat)*, 363 B.R. 123 (Bankr. E.D. Cal. 2007).

¹⁰⁸ *Id.* at 131.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 131–32.

property of the bankruptcy estate.¹¹¹ The bankruptcy court was faced with an ambiguity as to ownership of the crop insurance policies since the “named person” on the crop insurance policies¹¹² was the same name for the debtor as well as bankruptcy estate.¹¹³

Given the lack of any provisions within the Federal Crop Insurance Act or federal crop insurance regulations resolving the question, the bankruptcy court deferred to state law, where the debtor’s intent becomes relevant.¹¹⁴ In examining the facts of the case revolving around intent, the bankruptcy court noted in particular that the debtor testified he purchased the crop insurance as the debtor-in-possession and that he also testified he believed the estate was responsible for the crop insurance policy premiums.¹¹⁵

Examining all these facts, the bankruptcy court found that the crop insurance policies were the property of the bankruptcy estate.¹¹⁶ It appears from reading *In re Hat* that had the facts been different, and the debtor testified he believed the policies were his and he incurred responsibility for the premiums, then the bankruptcy court may have reached a different result. Arguably, the proceeds of crop insurance policies flow toward the benefit of the insured as a payment for a covered loss, similar to a property/casualty policy. In the absence of further guidance from the Federal Crop Insurance Act or federal crop insurance regulations, future courts should hold that federal crop insurance policies—like property/casualty, collision, life, and fire insurance policies—become part of the bankruptcy estate upon commencement of a bankruptcy proceeding.

VII. PREEMPTION: FEDERAL LAW AND STATE LAW ON SECURITY INTERESTS IN THE BANKRUPTCY CONTEXT

Legal issues relating to federal preemption of state law abound in the context of federal crop insurance. For instance, although it is beyond the scope of this particular article, the question of whether the Federal Crop Insurance Act preempts state law claims for bad faith has resulted in

¹¹¹ 11 U.S.C. § 541(a)(7) (2015).

¹¹² Being a “named person” establishes ownership under the federal crop insurance regulations. 7 C.F.R. § 457.8 (2015) defines an “Insured” as: “The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.”

¹¹³ *In re Hat*, 363 B.R. at 136.

¹¹⁴ *Id.* at 137.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

varying court decisions throughout the country.¹¹⁷ Just as there is a question with preemption of state law claims for bad faith, another question has arisen in the context of bankruptcy proceedings as to whether federal law preempts state law concerning security interests.

The issue of whether the Federal Crop Insurance Act preempts state law lien rights under the Uniform Commercial Code apparently first arose in the 1998 bankruptcy case of *In re Rees* before the United States Bankruptcy Court for the Northern District of Texas.¹¹⁸ In *Rees*, the Farm Service Agency (“FSA”) of the United States Department of Agriculture asserted a lien on federal crop insurance proceeds from the debtors’ 1996 cotton crop.¹¹⁹ The debtor’s Chapter 12 bankruptcy reorganization plan did not recognize the lien, and the FSA filed objections to the plan.¹²⁰ The FSA did not obtain a written assignment of the crop insurance proceeds.¹²¹ Since the FSA did not obtain a written assignment, the debtors argued that the federal multiple peril crop insurance policy, which requires an assignment of indemnity in writing,¹²² preempted state law on security interests and defeated the FSA’s lien.¹²³ In response, the FSA contended that they had a security interest under state law when the debtors personally received the proceeds.¹²⁴

The Bankruptcy Court noted that 7 U.S.C. § 1509 of the Federal Crop Insurance Act states:

Claims for indemnities under this subchapter shall not be liable to attachment, levy, garnishment, or any other legal process before payment to the insured or to deduction on account of the indebtedness of the insured or the estate of the insured to the United States except claims of the United States or the Corporation [FCIC] arising under this subchapter.¹²⁵

Analyzing this statutory provision, the bankruptcy court in the *Rees* case noted that the provision prohibited liens on policy proceeds “before

¹¹⁷ For a comprehensive discussion of issues involving the Federal Crop Insurance Act and whether state law bad faith claims are preempted, see Chad G. Marzen, *Crop Insurance Bad Faith: Protection for America’s Farmers*, 46 CREIGHTON L. REV. 619 (2013).

¹¹⁸ *In re Rees*, 216 B.R. 551 (Bankr. N.D. Tex. 1998).

¹¹⁹ *Id.* at 551–52.

¹²⁰ *Id.*

¹²¹ *Id.* at 552.

¹²² *Id.* at 554. The “Assignment of Indemnity” provision in the federal multiple peril crop insurance policy stated:

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ 7 U.S.C. § 1509 (2015).

payment to the insured.”¹²⁶ The bankruptcy court found no evidence suggesting that the FCIC intended its regulations to exceed the provisions of 7 U.S.C. § 1509 and that no provisions in the federal crop insurance regulations preclude creditors with security interests in federal crop insurance proceeds from enforcing lien rights against a debtor.¹²⁷ The bankruptcy court also quoted with approval¹²⁸ the following language from *Butner v. U.S.*, which emphasizes that the presence of a bankruptcy proceeding should not allow a party to receive a windfall simply because of the bankruptcy:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving a “windfall merely by reason of the happenstance of bankruptcy.”¹²⁹

For these reasons, the bankruptcy court upheld the FSA’s state law security interest in the federal crop insurance policy proceeds and found the FSA could enforce its lien rights.¹³⁰

The United States Court of Appeals for the Fifth Circuit encountered the preemption issue in the 1999 case of *In re Cook*.¹³¹ In *Cook*, a creditor sought to recover federal crop insurance proceeds from a lien placed on the 1995 cotton crop of debtors who were in a Chapter 7 bankruptcy proceeding.¹³² Just like in *Rees*, the creditor did not obtain an assignment of the proceeds.¹³³ Both the bankruptcy court and the district court ruled that the creditor did not have a lien on the policy proceeds.¹³⁴

The Fifth Circuit cited *Rees* and found that the creditor held a valid lien on the debtors’ crop insurance proceeds.¹³⁵ Analyzing the statutory language of 11 U.S.C. § 1509, which provides that claims for indemnities do not attach before payment to the insured, the Fifth Circuit noted that if Congress would have intended to prohibit liens on indemnities *after*

¹²⁶ *In re Rees*, 216 B.R. at 554.

¹²⁷ *Id.* at 554–55.

¹²⁸ *Id.* at 555.

¹²⁹ *Butner v. United States*, 440 U.S. 48, 55 (1979) (citing *Lewis v. Mfrs. Nat’l Bank*, 364 U.S. 603, 609 (1961)).

¹³⁰ *In re Rees*, 216 B.R. at 556.

¹³¹ *Rolling Plains Prod. Credit Assoc. v. Cook (In re Cook)*, 169 F.3d 271, 273 (5th Cir. 1999).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 278.

payment to the insured, then Congress would have drafted the statute to specifically provide for a prohibition before or after payment to the insured.¹³⁶ Thus, the *Cook* court emphasized the timing issue—if a creditor sought to obtain crop insurance proceeds directly from the FCIC, state law on security interests would be preempted and an assignment would be necessary; but after the proceeds of a crop insurance policy are paid to a debtor, state law on security interests would apply.¹³⁷

In 2012, the United States Bankruptcy Court of the Central District of Illinois also faced the preemption issue in the case of *In re Duckworth*.¹³⁸ In *Duckworth*, the debtor entered into two loan transactions with a bank, one in November 2008 and the other in January 2010.¹³⁹ In November 2010, the debtor granted a security interest to a different entity to secure “all debts.”¹⁴⁰ On the day the security interest was granted, an assignment under two crop insurance policies was issued to that same entity.¹⁴¹ During the bankruptcy proceedings, the bank made claims for liens on the crop insurance policies at issue.¹⁴²

Examining those facts, the bankruptcy court found that the bank did not have a security interest in the undisbursed crop insurance policies since it did not obtain a valid assignment per the FCIC process.¹⁴³ The Bankruptcy Court stated that “the exclusive method by which a creditor might obtain a lien or interest in undisbursed proceeds is through the authorized assignment process.”¹⁴⁴

Reading the *Rees*, *Cook*, and *Duckworth* decisions together, it appears that the answer to the legal question of whether the Federal Crop Insurance Act and associated federal regulations preempt state law security interests in the absence of an authorized assignment depends upon timing: if no payments under a crop insurance policy have been disbursed to an insured, then 11 U.S.C. § 1509 controls and a lien on indemnities before payments is not recognized; if crop insurance proceeds are disbursed to an insured, then it appears a valid lien claim pursuant to state law on security interests is recognized. Future decisions may further clarify this question.

¹³⁶ *Id.* at 276.

¹³⁷ *Id.*

¹³⁸ *State Bank of Toulon v. Covey (In re Duckworth)*, Bankruptcy No. 10-83603, Adversary No. 11-8002, 2012 WL 986766 (Bankr. C.D. Ill. Mar. 22, 2012).

¹³⁹ *Id.* at *2.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at *7.

¹⁴³ *Id.* at *8.

¹⁴⁴ *Id.*

VIII. CONCLUSION

As the foregoing cases indicate, several legal considerations have arisen at the intersection of federal crop insurance law and bankruptcy law. A number of the issues arising in the context of bankruptcy law attach to a number of the larger policy considerations surrounding the future of the crop insurance program. For instance, allegations of crop insurance misrepresentations sometimes arise in the context of bankruptcy law.¹⁴⁵ And preemption issues, which have arisen in the context of recovery for bad faith damages under state law¹⁴⁶ and are the subject of a recent Final Agency Determination by the Risk Management Agency of the United States Department of Agriculture,¹⁴⁷ also appear in the case of whether federal law preempts state laws relating to security interests in the context of bankruptcy proceedings.

Lenders, creditors, and insurers participating in the federal crop insurance program, as well as insureds, need to be cognizant of the legal terrain between federal crop insurance law and bankruptcy law now and in the future as these issues continue to develop.

¹⁴⁵ See *infra* Part III.

¹⁴⁶ See *infra* Part VII.

¹⁴⁷ See U.S. DEP'T AGRIC., RISK MGMT. AGENCY, FAD-240, FINAL AGENCY DETERMINATION (2015).