Did the Seventh Circuit make the "Wright" Decision in Resolving the BAPCPA "Hanging Paragraph"?

Alvin C. Harrell, Oklahoma City University School of Law
Did the Seventh Circuit Make the "Wright" Decision in Resolving the BAPCPA "Hanging Paragraph"?

By Abin C. Harrell

I. Introduction

Glimches, or at least arguable points of law, are inevitable in any legislation as complex and comprehensive as the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), and one of those issues in the BAPCPA is the so-called "hanging paragraph" at Bankruptcy Code section 1225(a)(2). Section 1235 sets forth the requirements for confirmation of a Chapter 13 plan, and includes various provisions designed to protect creditors from unfair treatment in the debtor's plan. The BAPCPA, in adding the unhung hanging paragraph at section 1225(a), provides that Bankruptcy Code section 506 does not apply to certain secured claims. As noted above, the apparent purpose of the hanging paragraph (to prevent "crumdown" of liens via section 506(a)) itself is the complex interplay of these issues under the Bankruptcy Code, as section 506(a) is not a crumdown provision and does not apply directly to liens; rather, it provides for bifurcation of unsecured claims (by itself this does not affect the underlying liens, which flow through bankruptcy unless modified by the plan). However, in a Chapter 13 case, a "crumdown" of a lien may occur under section 1225(b)(2), in conjunction with sections 522(a)(5) and 506(a). Thus, the hanging paragraph at section 1225(a) comes into play with regard to the claims and liens of 910 creditors, because of its impact on section 1225(a)(5).

II. The BAPCPA "Hanging Paragraph"

The drafters of the hanging paragraph clearly meant to address an abstruse scenario, wherein the debtor purchases a vehicle on credit shortly before filing bankruptcy in order to "crumdown" the liens to the newly depreciated value of the collateral. However, if the bankruptcy code was not able to predict this scenario, the drafters did so at section 1325(a)(5), by reference to sections 522(a)(5) and 506(a), given the important and sometimes subtle relation between these sections and state secured transactions law, and the central but challenging role in these sections of interrelated state law concepts such as "lien," "debt," and "lien." But in the process of preventing crumdown of liens on 910 creditors, the BAPCPA drafters inadvertently created a new argument for debtors: The argument that, if section 506 does not apply to a 910 claim, the hanging paragraph in section 1225(a)(2)(A), then the undersecured creditor's claim is bifurcated into secured and unsecured claims under section 506(a), and the undersecured creditor who repossesses the collateral has no unsecured deficiency claim entitled to payment in the Chapter 13 plan. In this view, securing the collateral by the debtor under section 1225(a)(3)(A) discharges the debtor's entire claim (including the secured portion of the claim as under state law). This would have the effect of wiping out the secured creditor's unsecured claim for "deficiency" (the amount of the debt in excess of the value of the collateral), which otherwise would be entitled to receive payment under state law and in the Chapter 13 plan.

There is broad agreement that the hanging paragraph "knocks out" sections 506(a) and 1225(a)(3)(A) in Chapter 13 cases. The statutory language is clear on that point. But the remaining question is: What happens to the creditor's unsecured deficiency claim if the debtor surrenders the collateral to the secured creditor? More precisely, does the absence of section 506(a) wipe out the 910 creditor's state law deficiency claim? At this writing, a majority of the bankruptcy courts have accepted the debtor's argument that U.S. Court of Appeals, bound by circuit court appeal process under another provision of the BAPCPA that allows such a direct appeal if certain requirements (as set forth in the statute) are met.

B. Issues on Appeal

Thus the Seventh Circuit addressed the meaning of the hanging paragraph in section 1225(a). Before addressing the Seventh Circuit's opinion, it may be appropriate to note that this is partly a problem of legislative drafting within the BAPCPA, which created an argument that there is a conflict within the Bankruptcy Code (and perhaps between the Bankruptcy Code and state law) giving rise to the two different views. Beyond this, however, there is also a more fundamental dispute as to the basic relation between state law and the Bankruptcy Code. In interpreting the hanging paragraph in "knocking out" section 506(a), one must appreciate that the majority of bankruptcy courts (and indeed the Seventh Circuit) apparently believe that the Bankruptcy Code preempts the creditor's state law deficiency claim, on the theory that it cannot exist in bankruptcy absent section 506(a). In this view the plain language of the Bankruptcy Code is simple, conclusive, and clear: if there is no section 506(a) unsecured claim, there is no unsecured deficiency claim under the Bankruptcy Code. As a result, the bankruptcy courts under the hanging paragraph at section 1225(a). The bankruptcy court adopted the minority view as to the effect of the hanging paragraph, rejecting confirmation of the plan on grounds that it did not include payment on the unsecured portion of the creditor's debt (i.e., the deficiency balance). The debtors appealed directly to the Seventh Circuit, the Second Circuit, and the Ninth Circuit for review of the district court appeal process under another provision of the BAPCPA that allows such a direct appeal if certain requirements (as set forth in the statute) are met.

1. See Wright v. Wright, 927 F.3d 430 (7th Cir. 2019).
2. See, e.g., Wright v. Wright, 927 F.3d 430 (7th Cir. 2019); see also Wright v. Wright, 927 F.3d 430 (7th Cir. 2019).
3. Id. at 434-35.
4. Id. at 434-35.
5. Id. at 434-35.
6. Id. at 434-35.
7. Id. at 434-35.
8. Id. at 434-35.
9. Id. at 434-35.
10. Id. at 434-35.
11. Id. at 434-35.
12. Id. at 434-35.
13. Id. at 434-35.
14. Id. at 434-35.
15. Id. at 434-35.
16. Id. at 434-35.
17. Id. at 434-35.
18. Id. at 434-35.
19. Id. at 434-35.
20. Id. at 434-35.
is a view focused entirely on the Bankruptcy Code, with an emphasis on any connoisseur acting as an alternative role for creditors. It is support of this view, it is clear that for 910 creditors the hanging paragraph at section 1325(a) (the "knock out" in the popular parlance of some courts, including the Seventh Circuit’s section 506, including the section 506(a) provision bifurcating the secured creditors into secured and unsecured portions. Section 506(a) most certainly does not bifurcate the secured creditors’ lien, but does provide for a calculation of the values of the undersecured lender’s secured and unsecured claims, and in turn the treatment of the secured portion of these claims in determining whether the Chapter 11 plan should be confirmed under section 1325(a)(4) and (5). Bankruptcy courts that were inclined to disbelieve the BAPCPA (some had already evidenced obvious frustration with the BAPCPA) were given an easy means to throw their frustrations by throwing out the secured creditor’s unsecured claim in cases like Wright, on grounds that section 506(a) is the exclusive source of secured claim against the, or the other hand, despite the perhaps confusing effect of the hanging paragraph in this scenario, it seems clear that section 1325(a)(5) and the hanging paragraph are directed at protecting the creditor’s secured claim from the cramdown (the unsecured portion of the Chapter 11 claim being governed primarily elsewhere, e.g. by state law and sections 502 and 1322(a)(4), in addition to section 506(a), most of which is unaffected by the hanging paragraph), the clear purpose of the hanging paragraph is simply to prevent section 506(a) from being used as part of a cramdown of the lien under sections 1322(b)(2) and 1325(a)(5). In this respect the hanging paragraph is quite successful: The Chapter 13 cramdown as a lien authorized under section 1322(b)(2) and limited by section 1325(a)(5) relies on the section 506(a) bifurcation of claims as a means to measure the limit on cramdown of the lien. When the section 1325(a)(5) hanging paragraph "knocks out" section 506(a) as to secured claim valuation, it eliminates the basis for cramming down the lien under sections 1322(b)(2) and 1325(a)(5), leaving the lien to the "how through" bankruptcy in its entirety under the otherwise applicable state law rule. This leaves the 910 creditor’s lien intact to the entire debt as under state law, along with the right to any deficiency. There is no reason to think that the hanging paragraph or section 1325(a)(5) is designed to disturb the resulting deficiency claim under state law or the Bankruptcy Code, e.g., section 502. Although the majority and minority views differ on these issues, there is general agreement that the hanging paragraph "knocks out" section 506(a), at least for purposes of cramming down liens under section 1322(b)(2) and 1325(a)(5). So that is the starting point for any analysis, and that is where the Seventh Circuit began its analysis in Wright.

C. The Seventh Circuit Analysis

The Seventh Circuit agreed with the bankruptcy court decision in Wright that the effect of knocking out section 506 under the hanging paragraph of section 1325(a) is to leave intact the otherwise applicable law, which in this case means the parties’ state law rights and "contractual entitlements." Clearly this includes the entitlement to payment of any deficiency remaining after repossession and sale of the collateral under state law. As the Seventh Circuit noted: "[t]his is a mistake to assume, as the majority of bankruptcy courts have done, that [section 506(a)] is the only source of authority for a deficiency judgment when the collateral is insufficient." The court noted that the parties’ contract is explicit: "Buyer shall be liable for deficiency." The Seventh Circuit also noted that the enactment of the hanging paragraph was entitled "Reconstituting the Foundation of Secured Creditors’ Claims Under Bankruptcy Law," and that the purpose was to prevent bankruptcy courts from rewriting private contracts in these circumstances and thereby to "control the fate of the secured claim." All of this points to "knocking out" section 506 as a means to interfere with the lien rights of secured creditors under state law, i.e., it evidences a clear intent to preserve the lien of secured creditors who have financed recent purchases of debtors’ vehicles. Again there is no apparent intent to claim unsecured claim, e.g. under section 1325(a)(4). Adopting the alternative view would be to suppose that Congress had the opposite in mind, and intended to mandate a new class of non-recourse secured lending transactions, wiping out unsecured deficiency claims in derogation of the Uniform Commercial Code and other state law and contract rights. A change of this significance would require an explicit and hopefully unambiguous modification of the Bankruptcy Code. No such intent is evident in the hanging paragraph, but some would go even farther. In what the Seventh Circuit referred to as a "bold argument," an amicus curiae brief of the National Association of Consumer Bankruptcy Attorneys argued that the hanging paragraph of section 1325(a) causes secured creditors covered by it to be completely unwarranted, on grounds that section 506 is essential not only to creation of an unsecured claim but to secured

claims as well. The one must admit that this represents a logical extension of the debtors’ argument in these cases. If section 506(a) bifurcation is the sole source of an undersecured creditor’s unsecured claim, and that claim is knocked out by the hanging paragraph, then section 506(a) must also be the source of the other bifurcated portion, i.e., the secured claim, and it would be likewise knocked out. But it is the logical next step of the argument, the Seventh Circuit, to illustrate some obvious difficulties with the entire line of reasoning. This argument ignores both recent and historic Supreme Court precedent, as well as the plain meaning and historic balances of the Bankruptcy Code and the clear purpose of the 2005 BAPCPA amendments (including the hanging paragraph), though apparently it is a view that some bankruptcy lawyers would embrace. At this point the argument that the hanging paragraph knocks out both secured and unsecured claims seems hardly worthy of a response, but the Seventh Circuit pointedly refuted it, as being founded on the same "basic mistake" as the argument of the debtors in Wright.

It supposes that contracts and state law are irrelevant unless specified in the Bankruptcy Code. Bankruptcy Code. Buyer holds that the presumption runs the other way: rights under state law count in bankruptcy unless the Bankruptcy Code says otherwise. Creditors don’t need [section] 506 to create, allow, or recognize security interests, which rest on contracts (and the UCC) rather than federal law. The differences of opinion on this basic point, in the arguments over the hanging paragraph, demonstrate that the importance of the issues in cases like Wright go far beyond the interests of 910 creditors.

D. Importance of Wright

The importance of these issues and the decision in Wright cannot be over emphasized, reaffirming as they do the basic nature of the relation between state law and the Bankruptcy Code. In recent years, Supreme Court cases like Butner and Dreyfuss have taken pains to recast bankruptcy courts and lawyers of the limits on Bankruptcy Code intervention as to property and related lien rights under state law. Wright must now be added to this list of important case by case. In maintaining the hanging paragraph in the overall context of the relation between bankruptcy and state law, the Seventh Circuit has explored once again the basic elements and limits on which the Bankruptcy Code is built. It is likely that Wright and the cases discussed below will remain a focal point of the jurisprudence on the "hanging paragraph" The logic of the Seventh Circuit in Wright operates at a foundational level that nothing short of a basic restructuring of the Bankruptcy Code and state-federal relations would be sufficient to change the outcome. Clearly Wright is not the final word on all of the related issues; as discussed below, other courts have continued to consider and expand the analysis. But, given that Wright is based so heavily on a foundational analysis, including the basic structure of the Bankruptcy Code, with reliance on both historic and recent Supreme Court precedent, it seems unlikely that the Supreme Court will overturn the principle in Wright any time soon. Wright reflects as well the apparent intent of Congress, and a reversal on this issue in that forum likewise would implicate a foundational reexamination of section 506 of the Bankruptcy Code. It is quite likely that the Supreme Court will not be as inclined to go beyond the narrow issues in the Wright decision; the Bankruptcy Code represents a difficult baseline for its opposing parties. Thus it is possible that Wright will stand for years to come as a baseline for the "right" decision on these issues. But this does not mean that the path ahead will be easy for the Wright analysis, or that all of the questions have been answered, as illustrated by the subsequent cases discussed below.

IV. Ninth Circuit BAP Weighs in

A. The Rodriguez Case

The United States Bankruptcy Appellate Panel for the Ninth Circuit (Ninth Circuit BAP) added its voice to this debate in Wells Fargo Fin, Accept v. Rodriguez [In re Rodriguez]. Once again, the facts in Rodriguez were typical of 910 claim scenarios. The Chapter 13 debtor had obtained purchase-money secured financing for her vehicle within 910 days prior to filing the bankruptcy petition. She proposed a plan providing for surrender of the collateral in full satisfaction of the creditor’s claim, asserting that under the hanging paragraph of section 1325(a) the creditor had no remaining unsecured claim. As discussed above, the issue discussed below will remain a focal point of the jurisprudence on the "hanging paragraph" and the Ninth Circuit BAP in Rodriguez considered the view that the inapplicability of section 506(a) (due to the hanging paragraph) meant that the creditor could not bifurcate its claim into secured and unsecured portions, and therefore had no unsecured claims entitled to payment under the Chapter 13 plan.

B. The Ninth Circuit BAP Analysis

The Ninth Circuit BAP noted that the majority line of bankruptcy cases (favoring the debtor’s argument) rely on the plain meaning of the hanging paragraph, making the bifurcation of claims under section 506(a) inapplicable to a surrender of collateral under section 1325(a). In Wright, the Ninth Circuit BAP noted: "[t]he court must address the issue of the bankruptcy court courts is based on the additional view that section 506 (and only section 506) creates,
defines and governs deficiency claims. In other words, if section 506 does not apply, deficiency claims cannot exist. The Ninth Circuit BAP agreed with Wright that this is fundamentally incorrect, and addresses the issue at a superficial level, as if the basis for a secured claim and a deficiency claim exist and are governed by state law, independently of section 506(a), and therefore are not affected by the inapplicability of section 506(a) to 910 creditors. The Ninth Circuit BAP agreed with both the result and the analysis of these other cases such as In re Patricia, stating that it is incorrect to begin and end the analysis with the assumption that "section 506 is the sole source of any deficiency claim..." However, the Ninth Circuit BAP supplemented the reasoning of these cases as noted below.

The Ninth Circuit BAP began by reviewing the effect of section 1325(a), which indicates at section 1325(a)(5)(B) the three ways a claim (such as the 910 creditor claim in this case) can be "provided for" in the Chapter 13 plan. The option applicable to this case is surrender of collateral. The court noted that this provision is effective "only upon confirmation" of the plan, and has no other purpose but to establish claims for purposes of the Chapter 13 plan. Thus, section 1325(a) is an independent provision (clearly separate from section 506) for determining the status of a section 506 claim in the Chapter 13 plan. Section 1325(a)(5)(C) governs surrender of collateral in the Chapter 13 plan. Indeed, section 1325(a)(5)(C) provides that "the plan does not apply to prepetition creditors or those with preconfirmation surrenders, nor to post confirmation surrenders." But, given that the creditor's lien passes through bankruptcy, the lien survives as a basis for the claim not to be disallowed by the creditor's claim is based on surrender at the time of confirmation under section 1225(a)(5)(C). Thus, the court noted to reference to the decisions of Rodriguez and Wright, the debtor will satisfy the second portion of the creditor's claim by surrender of collateral. The estate then has no interest in the collateral, leaving the creditor with a wholly unsecured debt, as the basis for a Chapter 13 claim for any remaining balance due. Among other things, the inapplicability of section 506(a) to validating this claim (under section 1225(a) (hanging paragraphs) means that the section 506(a)/(12) value of the collateral in the plan is not determined in the plan, and that the amount of the creditor's deficiency claim under section 1225(a)(5)(C). The Ninth Circuit BAP noted that the plan meaning of this arrangement is to preclude the use of replacement value under section 506(a)(2) in a means to reduce the creditor's deficiency claim under section 1225(a)(5)(C). Thus, under Rodriguez, the creditor has a secured claim under section 506(a), and in a surrender of collateral to a 910 creditor under section 1325(a)(5)(C), the hanging paragraph precludes bifurcation and valuation of the secured and unsecured portions of the claim under section 506(a), instead providing for satisfaction of the lien by surrender of collateral and subsequent recognition of an unsecured claim for the deficiency under section 1225(a)(5)(C). The amount of the unsecured claim is determined by reference to the deficiency calculated under state law, which determines the amount of the unsecured deficiency claim and therefore the amount of the deficiency claim under section 1225(a)(5)(C). The Ninth Circuit BAP noted that there is nothing in the plain language of the Bankruptcy Code to the contrary, or providing a basis to disallow this claim. This would clearly be the law if section 506 had not existed. In Rodriguez, the Ninth Circuit BAP concludes that the bankruptcy court in In re Patricia, holding that the inapplicability of section 506(a) to 910 creditors did not change the law in this respect, because section 506(a) has never applied to surrendered collateral (as the estate has no interest in such collateral under the Chapter 13 plan, and thus there is no secured claim). In the view of the hanging paragraph, it has no impact on a 910 creditor's deficiency claim and the claim remains entitled to payment as an ordinary claim in the Chapter 13 plan, as under prior law. While this is an interesting and potentially important point, it is not essential to the analysis, as the reasoning in Patricia, Rodriguez, and Wright is more focused on the current state of law and the Bankruptcy Code, without dependency on the previous scope of section 506. In Rodriguez, the Ninth Circuit BAP noted that creditors of collateral, particularly in cases such as section 506(a) only applies to a lien secured by property in which the estate has an interest. In Osborne, however, concluded that the creditor's unsecured deficiency claim "comes into being not because of...state law, but because...[section 506(a)] determines the value of the collateral..." Thus, "[the] hanging paragraph prohibits the application of [section 506(a)]...thereby eliminating the statutory vehicle for creating an unsecured claim." This approach expressly makes the basic error, identified in Wright and Rodriguez, of assuming that an unequivocally deficiency claim cannot exist on the basis of section 502 and state law, and abrogates the application of section 506(a). Of course, this analysis is fundamentally incorrect, regardless of whether section 506(a) has also applied in these kinds of cases. In your author's view the former role created and statutorily imposed in section 506(a) is that of creditor in bankruptcy. If section 506 is the sole source of a claim, and the section 506 claim cannot be adjusted on the basis of any other law or post-petition events, then the Wright/Rodriguez rationale is incorrect; the hanging paragraph deprives the 910 creditor of any deficiency claim based on section 506, and in the debtors' argument there is no other source for such a claim. Advocates of this view point out that section 1325(a) (c) plan deals with payment of claims, not debts, and therefore argue that the claim

As an ordinary claim in the Chapter 13 plan, as under prior law. While this is an interesting and potentially important point, it is not essential to the analysis, as the reasoning in Patricia, Rodriguez, and Wright is more focused on the current state of law and the Bankruptcy Code, without dependency on the previous scope of section 506. In Rodriguez, the Ninth Circuit BAP noted that creditors of collateral, particularly in cases such as section 506(a) only applies to a lien secured by property in which the estate has an interest. In Osborne, however, concluded that the creditor's unsecured deficiency claim "comes into being not because of...state law, but because...[section 506(a)] determines the value of the collateral..." Thus, "[the] hanging paragraph prohibits the application of [section 506(a)]...thereby eliminating the statutory vehicle for creating an unsecured claim." This approach expressly makes the basic error, identified in Wright and Rodriguez, of assuming that an unequivocally deficiency claim cannot exist on the basis of section 502 and state law, and abrogates the application of section 506(a). Of course, this analysis is fundamentally incorrect, regardless of whether section 506(a) has also applied in these kinds of cases. In your author's view the former role created and statutorily imposed in section 506(a) is that of creditor in bankruptcy. If section 506 is the sole source of a claim, and the section 506 claim cannot be adjusted on the basis of any other law or post-petition events, then the Wright/Rodriguez rationale is incorrect; the hanging paragraph deprives the 910 creditor of any deficiency claim based on section 506, and in the debtors' argument there is no other source for such a claim. Advocates of this view point out that section 1325(a) (c) plan deals with payment of claims, not debts, and therefore argue that the claim.
as valued under section 506 is the only basis for a creditor's right to payment of a deficiency in the Chapter 13 plan. In this view the amount of the discharge as fixed as of the petition date under section 506 and cannot thereafter change.3 If that section 506 claim is effectively disallowed under the hanging paragraph, there is no other source for asserting or paying a claim in Chapter 13. if the court in the hanging paragraph does not disallow the claim, it merely makes 506(a)(2) inapplicable, leaving the valuation to be determined under traditional state law standards. Both sides in this debate agree that the collateral does not exist, except for the right to payment of the discharge as fixed as of the petition date under section 506(a), leaving in bankruptcy only the unsecured claim, which cannot be ascertained by a 910 creditor because of the hanging paragraph but is nonetheless a debt subject to discharge. 3 As noted, critics of Wright and Rodriguez argue that section 506(a) is the sole source of the creditor's unsecured claim, whereas Wright and Rodriguez argue that such a claim can be valued only as of the petition date pursuant to section 506(a). In contrast, Wright and Rodriguez treat the debt as created under state law, creating a claim that is allowed under section 502, subject to valuation in Chapter 13 surer claims pursuant to section 1325(a)(4) and state law, as an alternative to section 506 and as an alternative to section 506(a) under 11 U.S.C. 1107. As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).

V. The Seventh Circuit BAP View

The Seventh Circuit BAP View

Shortly after the Seventh Circuit de scription in which the Ninth Circuit BAP decision in Rodriguez, the Tenth Circuit BAP issued its decision in In re Quick,36 effectively rejecting the rationale of Wright and Rodriguez and the Seventh Circuit BAP View. In re Quick illustrates the perspective of section 506(a) under Title. This was again the classic scenario in which the unsecured creditor had a non-recourse claim (that is the job of section 502), as argued by the critics of Wright and Rodriguez, and that state laws have always been intended to provide an ample basis for valuing the 910 creditor's unsecured (deficiency claim) in the absence of section 506(a).

As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).

V. The Seventh Circuit BAP View

Shortly after the Seventh Circuit des cision in which the Ninth Circuit BAP decision in Rodriguez, the Tenth Circuit BAP issued its decision in In re Quick,36 effectively rejecting the rationale of Wright and Rodriguez and the Seventh Circuit BAP View. In re Quick illustrates the perspective of section 506(a) under Title. This was again the classic scenario in which the unsecured creditor had a non-recourse claim (that is the job of section 502), as argued by the critics of Wright and Rodriguez, and that state laws have always been intended to provide an ample basis for valuing the 910 creditor's unsecured (deficiency claim) in the absence of section 506(a).

As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).

V. The Seventh Circuit BAP View

Shortly after the Seventh Circuit de scription in which the Ninth Circuit BAP decision in Rodriguez, the Tenth Circuit BAP issued its decision in In re Quick,36 effectively rejecting the rationale of Wright and Rodriguez and the Seventh Circuit BAP View. In re Quick illustrates the perspective of section 506(a) under Title. This was again the classic scenario in which the unsecured creditor had a non-recourse claim (that is the job of section 502), as argued by the critics of Wright and Rodriguez, and that state laws have always been intended to provide an ample basis for valuing the 910 creditor's unsecured (deficiency claim) in the absence of section 506(a).

As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).

V. The Seventh Circuit BAP View

Shortly after the Seventh Circuit de scription in which the Ninth Circuit BAP decision in Rodriguez, the Tenth Circuit BAP issued its decision in In re Quick,36 effectively rejecting the rationale of Wright and Rodriguez and the Seventh Circuit BAP View. In re Quick illustrates the perspective of section 506(a) under Title. This was again the classic scenario in which the unsecured creditor had a non-recourse claim (that is the job of section 502), as argued by the critics of Wright and Rodriguez, and that state laws have always been intended to provide an ample basis for valuing the 910 creditor's unsecured (deficiency claim) in the absence of section 506(a).

As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).

V. The Seventh Circuit BAP View

Shortly after the Seventh Circuit de scription in which the Ninth Circuit BAP decision in Rodriguez, the Tenth Circuit BAP issued its decision in In re Quick,36 effectively rejecting the rationale of Wright and Rodriguez and the Seventh Circuit BAP View. In re Quick illustrates the perspective of section 506(a) under Title. This was again the classic scenario in which the unsecured creditor had a non-recourse claim (that is the job of section 502), as argued by the critics of Wright and Rodriguez, and that state laws have always been intended to provide an ample basis for valuing the 910 creditor's unsecured (deficiency claim) in the absence of section 506(a).

As noted, this difference of opinion is far more than a narrow disagreement over the effect of the hanging paragraph: it goes to the basic relationship between state property law and the Bankruptcy Code. If the section 506(a) claim is fixed at the petition date and is the exclusive source of an unsecured claim in a Chapter 13 plan, state law and subsequent bankruptcy court deliberations on this issue become irrelevant once a bankruptcy petition is filed. In this view, section 506(a) cannot create a debt, and once a debtor's claim as fixed in the Chapter 13 plan cannot thereafter be recognized or adjusted by the court or affected by state law related developments such as surrender, abandonment, an Article 9 disposition, sale, etc. On the other hand, if section 506(a) does not exist under section 506, and Wright and Rodriguez are correct that the bankruptcy court can adjust and determine Chapter 13 claims pursuant to applicable law, in the absence of section 506(a).
The petition date and only pursuant to section 502(b)(6) of the Bankruptcy Code to any of the claims. As noted above, "claim," is defined at Bankruptcy Code section 101(5) as a right to payment, i.e., a debt, as typically established under state law. "Debt" is defined at section 101(12) as "liability on a claim." This indicates that a claim exists to the extent there is a debt under state law, subject to disallowance under section 502 if there is a valid objection. None of the objections of section 502 is essential to the existence of a claim. Section 502(a) divides unsecured claims into secured and unsecured portions (at least for bankruptcy purposes), which provides a basis for (limiting a cramdown of lien in some cases pursuant to section 1325(a)(3)(B)(i), but section 502(a) does not indicate that it is the exclusive means to value deficiency claims in a Chapter 13 plan. Section 502(a) can be viewed as a version of the traditional calculation of secured and unsecured debts under state law, the symbiotic relationship between "debt" and "claim" making a relationship between the two. The relation between state law and the Bankruptcy Code on this basic principle is one reason why the details of that relation have been either muddled or unexplored, despite repeated disputes about whether replacement or liquidation value should be used. The BAPCPA additionally modifies section 502(a)(2), mandating a replacement value standard for some cases, reinforces the conclusion that section 502(a) is not intended to govern the valuation of unsecured claims in all cases (e.g., in a Chapter 13 surrender scenario). So, in the end the question is, how does the Bankruptcy Code treat the calculation of these claims, in the absence of section 502(a)? In effect, what would bankruptcy courts do if section 502(a) had never existed? Does the definition of "claim" in section 101(5) (with its foundation in state law), and the allowance of all of those claims under section 502, make sense together with the definition of "lien" in section 101(37), provide a basis for a bankruptcy court to distinguish between secured and unsecured debts, i.e., to recognize the unsecured (deficiency) claim of an unsecured creditor under state law? This requires more of a Bankruptcy Code analysis than the "pro forma reasoning in cases like Quick. Most people will agree, presumably, that a deficiency claim created before the bankruptcy petition is filed (e.g., where the collateral is repossessed and sold postpetition) is a debt until a secured unsecured status in bankruptcy. Thus a part of the issue is a policy question: whether the analysis and result should be different if the collateral is repossessed and sold postpetition. While your author is aware of the argument that claims are fixed at the petition date and cannot thereafter change (an argument undoubtedly consistent with the general principle that a petition "freezes" the state of affairs for some purposes), this would not allow determinations of secured and unsecured status based on subsequent events relevant to the value of the collateral (e.g., a postpetition liquidation sale). This would place a considerable restriction on the ability of the bankruptcy court to apply section 1222(a)(5) in considering confirmation of the plan. Debtor's counsel may argue that this is precisely what the hanging paragraph does, but note how the irrelevancy of section 502(a) does not alone resolve the issue. This resolution requires a deeper analysis, and inevitably some consideration of the basic nature and structure of the Bankruptcy Code, given the absence of a direct answer in the statute. On this basis, it seems inappropriate to simply reject any postpetition valuation of the creditor's secured and unsecured claims in the circumstance of a 910 creditor deficiency claim. Still, this involves a policy argument on both sides and as such is inherently limited, particularly as all important bankruptcy law and the Bankruptcy Code cannot be avoided. In all, despite the lack of clarity in the Bankruptcy Code on this issue, as a basis for deciding the policy issue the state law approach has its merits and inconsistencies. Perhaps in the end the best argument as to postpetition valuation of claims in Chapter 13 is Bankruptcy Code section 105 recognizing the inherent equity powers of the court to implement the law. Although not providing the specificity one might prefer, it may be the best we can do. VII. Conclusion This leaves us with the final question: whether the inapprachability of section 502(a) to a 910 creditor's claim severe the relation between the claim and its state law debt counterpart, so as to preclude bankruptcy courts from recouping unsecured (deficiency) claims determined on the basis of a post-petition valuation mechanism (e.g., a repossessond sale). Although it can be argued that the Bankruptcy Code is silent on this specific point, it would seem that the bankruptcy judge's broad equitable powers under 11 U.S.C. section 105, together with the close relation between a bankruptcy claim and the state law debt and lien on which it is based, would be sufficient to overcome arguments that the Bankruptcy Code inherently disallows unsecured deficiency claims in the absence of section 502. Supreme Court precedent, while not directly on point, clearly supports this view. If that is not enough, the mandates under section 1222(a)(5) (the plan confirmation law for Chapter 13 plan confirmation) purporting that the reference of payment of allowed unsecured claims (and the treatment of them) be made consistent with the bankruptcy judge to determine such claims under applicable law (e.g., state law, Bankruptcy Code sections 101(5) and 502, and, as needed, the courts equili- barity authority). The argument that absent section 502 no unsecured claims exist for 910 creditors renders meaningless these and other important Bankruptcy Code provisions, such as section 1325(a)(4) (assuring that unsecured claims receive at least as much as they would in Chapter 7), and ignores the inevitable relation between state law debts and floating Bankruptcy Code provisions, such as section 1325(a)(4) (Continued from page 204)