

# Bankruptcy In Brief

News from the Bankruptcy Court

Western District of Louisiana - Lafayette/Opelousas/Lake Charles Divisions Editor: Alice Dukes

Volume 87

January 8, 2007

## STUFF ABOUT CHAPTER 13

**BY: Keith A. Rodriguez**

On December 1, the Bankruptcy Bar Association had a luncheon with Judge Summerhays and the results of our discussions with the Judge are posted elsewhere in the Newsletter. One issue that was discussed had to do with making Chapter 13 plan payments timely. I wanted to take the time to expand on that a bit.

While I won't go so far as to say that a Chapter 13 plan will never be confirmed if the debtor is not current in payments, it certainly does not hurt to be current. The problem seems to stem from either a misconception or misunderstanding of the whole idea of wage deductions.

A few years ago, at the prompting of some attorneys, the Trustee's office decided to undertake the institution of wage deductions immediately upon filing. Prior to that time, we waited until confirmation so we would have a firm number to ask the employer. Thus, our one caveat in seeking the early wage deduction is that we will not change the requested amount until we have a confirmation order so that we are not constantly sending requests for changes to an employer. However, more and more, the

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## Judge Summerhays' Swearing In Ceremony Scheduled

The members of the Southwest Bankruptcy Bar Association are invited to attend the formal swearing in ceremony for Judge Robert R. Summerhays. The ceremony will be held at the Federal Courthouse located at 800 Lafayette Street, in Lafayette, in Courtroom 1 (4th Floor), on Friday, January 19, 2007 at 10:00 a.m. The SLBBA is sponsoring a reception which will follow the ceremony in the reception area at the Federal Courthouse on the 4th Floor. If you intend to



# For Your Information

## Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the February newsletter should have the articles to me no later than February 2, 2007.

## Lunch with the Judge

Thursday, February 8, 2007 in Lake Charles following court

## Editor's Comments

Happy New Year to all. I hope that everyone had an enjoyable and otherwise uneventful holiday season. I hope that Santa brought you all of the good things on your list. For those of you who didn't attend the SLBBA Christmas party, you missed a really good show. The entertainment was just awesome and the food was good too. Sim did a great job organizing it and all the performers were exceptional. I mean, you can't help but be impressed with Greg DeKeyzer's Debt-O-Meter (that's the device Greg designed to tell

if debtors are lying). If you missed it, I'd encourage you to purchase a copy of the DVD, the order form is on the last page of the newsletter.

For those of you who are interested in participating in this year's Komen Race for the Cure, the 1 mile and 5K walk/run will be held on Saturday, March 17, 2007 in downtown Lafayette. Online registration is now open at [www.komenacadiana.org](http://www.komenacadiana.org).

### To Get Bankruptcy In Brief:

If you would like to receive copies of Bankruptcy in Brief in the mail, you may either send me self-addressed stamped envelopes or join the SLBBA. Copies of the newsletter are mailed free of charge to SLBBA members. To get an application for membership, please contact me.

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debtors are using the wage deduction as a reason for not having made a payment themselves.

In an effort to try and get everyone current, we send out a letter in the first couple of weeks of a case telling each debtor the date their petition was filed; the amount of the plan payment and telling them that a payment is due within thirty days. We further tell them if a wage deduction has not begun that they are responsible to make the payments themselves. However, in several cases and for various reasons and excuses, we do not get the first payment due in the plan. Rarely can we get a wage deduction begun in less than thirty days. Consequently, it would behoove your clients if each of you would stress with them the fact that regardless of any other correspondence that they receive from our office or any intent to undertake a wage deduction, that they themselves are responsible to make the first monthly plan payment. In fact, it would probably be even better if you would tell them to make a half of a payment within two weeks of filing and if a wage deduction has not begun two weeks thereafter to make the remainder of that plan payment and so forth until they actually see money coming out of their check to go towards their Chapter 13 plan payment.

We always have issues with the timing of the payment and the timing of the wage deduction and clearly if your

client has made every effort to make their portion of the payments and wage deduction has begun but your client may not be absolutely current, the plan still may be confirmed when we can look forward to payments coming every couple of weeks with the debtor catching up over the next few pay periods. However, the key to getting the plan confirmed is to be sure that the debtor has made a substantial effort themselves to make payment.

The other ongoing problem that we face with payments is with debtors on a fixed income who receive payments during the first week of the month. Whenever this situation exists and a debtor files a case in the second half of the month, they should be instructed to immediately make a plan payment as soon as they receive their check the following month. Once they are told that a payment is not due for thirty days, then they don't make the payment on the 3rd, 4th or 5th of the month and consequently, on the 20th of the month when the payment is due, they have no funds. They then wait until the 3rd of the following month which puts them behind - a place where they must remain for the entire duration of the plan (if permitted - which is highly unlikely).

Therefore, the secret to at least having delinquency no longer be a confirmation issue is to stop telling your clients that the first payment is due in thirty days and to start telling your clients to begin paying immediately.

## FROM THE PRESIDENT

By W. Simmons Sandoz

We had a rather lengthy agenda at the Bar Association meeting on December 1, 2006, at Prejean's in Lafayette. Our surprise guest was Boudreaux the Dead Broke Debtor. His visit is commemorated with a literary work which is found elsewhere in the newsletter.

### HISTORY & PURPOSE "LUNCH WITH THE JUDGE"

Ham Chauvin and Judge Schiff gave a short history of the formation of the Bankruptcy Bar Association and the purpose of its formation. Judge Summerhays feels that the "Lunch with the Judge" is beneficial to both the bench and bar. All were in agreement that the informal format of our "Lunch with the Judge" should be maintained. While all topics are available for discussion, certain issues are most important to the bench and bar. There will be continued dialogue with the Judge concerning any changes in court procedure and policy, upcoming court issues, new case law (5th Circuit & other jurisdictions), and any new court rulings in the Lafayette/Opelousas and Lake Charles Divisions which would impact our practice.

### CHAPTER 13 HEARING PROCEDURES

A review of our newly implemented Chapter 13 hearing procedure took place. Judge Summerhays is very pleased regarding the manner in which the docket flows. Everyone was congratulated and encouraged to continue to resolve matters. Although a phone review with the Trustee's office on the day prior to hearing can be helpful, it will only be useful if you take the time to fully review your file, as well as to check the Trustee's web page for pay history and 'case notes' before you call. While

these calls can often resolve a few matters, or at the very least may help narrow issues, this is not the time to litigate your case. Notifying Alice of resolved matters on the day before Chapter 13 hearings, prior to the motions to lift stay and at the break prior to the hearings on motions is working well. Everyone was congratulating for managing their cell phone as well as being in Court when their case was called.

### OPPOSITIONS-RESPONSE TO MOTIONS TO DISMISS OR MOTIONS TO LIFT STAY

Judge Summerhays suggested that oppositions and responses to motions to dismiss and motions to lift stay should be more detailed so that when he reviews the file prior to hearing he will have a much better idea as to what's going on in the case and won't have to wait until the actual hearing to find out the status of the case. The Trustee's motions to dismiss are very specific as to what a response should include, particularly, why the debtor fell behind, when the debtor will become current with a detailed repayment schedule including dates and amounts of payments, any failure by the Trustee to give credit for any payment, and the payments have not been credited. The response should give dates and amounts of payments, with copies of payments made forwarded to the Trustee. The Judge stressed the importance of filing responses/objections within a timely manner.

### IMMATERIAL MODIFICATIONS

As a general rule, all Chapter 13 plan modifications should be noticed out. It would be a rare instance where a modification would be immaterial. As a consequence all modifications should be noticed out.

### PROCEDURE FOR USE OF CASH COLLAT-

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## ERAL

Judge Summerhays is comfortable with the two-step process that is currently in place whereby the debtor attempts to use insurance proceeds (cash collateral) when the vehicle is involved in a wreck. Step one is a motion with notice for authority to use the insurance proceeds. Once the motion is approved, step two involves sending a copy of the invoice (sales work sheet) for the new vehicle to the secured creditor for approval. If five days passes and the secured creditor does not object, debtor's counsel will submit an ex parte motion and order to purchase the substitute vehicle. If creditor timely disagrees with the purchase of the substitute vehicle, debtor's counsel will set up a telephone conference with secured creditor and the Judge to determine the adequacy of the substitute vehicle. The insurance proceeds would be better handled by debtor's counsel rather than sending the check to the Trustee for ultimate disbursement.

## MOTIONS TO RECONSIDER

The Judge requests that any motion for reconsideration should be timely filed with sufficient detail to allow the court to make a determination as to whether the motion should be granted ex parte, denied ex parte or set for hearing.

## REQUIREMENT FOR CONFIRMATION - DEBTORS MUST BE CURRENT

It was suggested that Debtor's counsel obtain a current payment history from the Chapter 13 Trustee's website to make a determination as to whether debtor is current and to advise the Court at the confirmation hearing as to the status of payments. If debtors are not current, the attorney for debtor should be able to explain why debtor is not current, whether a wage assignment is in place, and whether all payments have been credited? As a general rule, the Judge will not confirm a plan where the debtor is not current.

Keith Rodriguez, Chapter 13 Trustee,

## BOUDREAUX THE DEAD BROKE DEBTOR\*

\* Sung to the tune of Rudolph the Red Nose Reindeer

You know Dupre, Patin, Comeaux &  
Thibeaux  
Caillier, Cormier, Darbonne and Fontenot  
But do you recall  
The most famous Debtor of all  
Boudreaux the dead broke debtor  
Had a worn out suit of clothes  
and from his four other cases  
He knew on Schedule B it goes  
All of the other debtors  
Used to laugh and call him names

they never let poor Boudreaux  
Play in any debtor games  
Then one day he couldn't believe  
The Trustee came to say  
Boudreaux you seem to be so bright  
Won't you teach Debtor class - that's right  
Then all the debtors loved him  
As they shouted out with glee  
Boudreaux the dead broke debtor  
Your next case will be filed for free

A few Christmas creations from Mr. Sandoz. They would have been in the December newsletter had one gone out. Sorry!

### **DON'T PAY BILLS**

(\*Sung to the tune of Jingle Bells)

Don't Pay bills, 13s smell, 7s all the way

File it quick and get discharged all without delay

Dashing to and fro

To file and get the stay

Over the schedules we go

Signing all the way

I lied about some things

Amendments might make it right

Oh yes I hid some rings

and I can't sleep tonight

Don't Pay bills, 13s smell, 7s all the way

File it quick and get discharged all without delay

A month or two ago

I let my payments slide

I ran up my cards and I know

My discharge may be denied

Don't Pay bills, 13s smell, 7s all the way

File it quick and get discharged all without delay

I filed and then I drank

No debt I did forget

I went into the tank

1<sup>st</sup> meeting soon will be set

Don't Pay bills, 13s smell, 7s all the way

File it quick and get discharged all without delay

### **THERE IS NO DISCHARGE FOR YOU**

Sung to the tune of the Christmas song (Merry Christmas to You)

Your case roasting on an open fire

The Trustee swinging at your nose

Your Means Test being bogged in mire

Your schedules lie and the Trustee knows

Everybody knows -- hide assets and your discharge goes

Amendment won't make your schedules right

Four night caps and your eyes all aglow

You'll find it hard to sleep tonight

You know an objection is on its way

An adversary filed and there's no delay

And in your answer you are going to lie

So that's why your discharge isn't going to fly

And so I'm offering this simple phrase

For debtors from one to 92

Although its been said many time, many ways

There's no discharge for you