

Bankruptcy In Brief

News from the Bankruptcy Court

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

Volume 88

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STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

As you are all aware, the Trustee's policy of placing the ongoing house note inside the plan when substantial pre-petition arrears exist is beginning to bear fruit. We disbursed over \$170,000.00 in ongoing mortgage payments during the month of December. However, there are still a couple of recurring problems that we would like to resolve.

I have seen several cases where the debtors are eight, twelve, eighteen, and twenty months in arrears yet counsel still persists in trying to have the debtor make that payment directly. Ain't no way!! It might be a closer call if the debtor is six months in arrears and have a very tight budget and truly can't afford the Trustee's fee. However, beyond that, don't even try to make the payment directly. Further, this creates a substantial problem for your client in trying to amend after the case has commenced to then put the house note inside the plan. The accounting is extremely difficult and your clients will always fall further and further behind. Ideally, the idea would be to put one or two months of post petition payments to be included as pre petition arrears because of the natural delays in the debtor having to make the first monthly payment and the Trustee disbursing thereafter. In fact, we recently saw a plan filed

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Lunch with the Judge

The next Lunch with the Judge will be held on Friday, March 9, 2007 at Don's Downtown at noon. And yes, there will be entertainment!

☞ You don't want to miss what everyone will be talking about!



Race for the Cure Benefit for Breast Cancer



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. For \$20 (or \$15 for kids), you can sign up as a participant and get a t-shirt (whether you participate in the Race or not). Or you can go online and make a donation (either a general donation or donate to a participant). A mail-in entry form is attached if you'd rather register by mail. If you'd like to make a donation by check, I'd be happy to take those as well.

For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the March newsletter should have the articles to me no

later than March 5, 2007.

Lunch with the Judge

Friday, March 9, 2007, at noon at
Don's Downtown

Editor's Comments

I first wanted to let you know about some new bar association developments. We are looking into setting up a website for the SLBBA. I researching the costs, etc to determine whether we can afford it. The website would contain general court information, copies of the newsletter, a database of forms for lawyers to share and various other items of information. I'll keep you posted on our progress.

Also, I'm planning to start emailing the newsletter to people who provided their email addresses when they sent in their dues. I'll still be mailing them out as well. Assuming the email thing works, at some point in the future, members will be allowed to elect whether to receive it by mail or email.

I finally started seeing movies again and

here's the first movie review:

* Breach. This is the story about the FBI agent, Robert Hanssen, who got caught selling intelligence secrets. The story is more about the low-level surveillance expert who desperately wants to be an agent until he is assigned to monitor Hanssen and find proof of his crimes. The movie stars Chris Cooper, Ryan Phillippe and Laura Linney and is very well done. While the premise behind the movie is a bit disturbing, the movie was great. 3 1/2 stars.

I also wanted to mention that I did finally see The Guardian (officially starring Kevin Costner and Ashton Kutcher but really starring our very own Kevin Payne). The movie was actually very good and I was able to spot Kevin, he's in the second bar scene and is next to the old

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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mid January asking the Trustee to disburse in March. This makes perfect sense considering the fact that we won't receive a payment from the debtor until mid-February and then our normal disbursement cycle would be March 1. However, whenever post petition arrears are included with the plan, we would request that the plan state that one or two months post petition arrears are included in the pre petition arrearage total. This is a great help when it comes to comparing these numbers to the amounts stated in the creditor's proof of claim.

We recently received a letter from a creditor advising us of two monthly house note increases in 2006 and now in 2007 for a case that was filed at the very end of 2005. This is going to create a serious problem since the creditor did not see fit to advise us or the debtor of the changes when they actually occurred. Therefore, it might be wise for

debtor's counsel to put language in a plan requiring the creditor to inform them of payment changes in sufficient time to put an amended plan together. It might even be more efficient if, upon receipt of that information counsel discuss the change with the client and advise the trustee in writing of the debtors' consent to increase the plan payment accordingly. That would allow the trustee to submit an amended confirmation order and save the time and effort of an amended plan. Most importantly though, when following this course, is the knowledge and consent of the debtor to an increase in plan payments.

In the last newsletter, I made comments about impressing upon debtors the necessity of getting at least a half payment made during the first pay period after filing. One attorney recently contacted me to advise that they would collect a half payment from their clients at the time that they collected the filing fee and submit same as soon as they received a notice of the 341 and confirmation

16 THINGS THAT TOOK ME OVER 50 YEARS TO LEARN

by Dave Barry, Nationally Syndicated Columnist

1. Never, under any circumstances, take a sleeping pill and a laxative on the same night.
2. If you had to identify, in one word, the reason why the human race has not achieved, and never will achieve, its full potential, that word would be "meetings."
3. There is a very fine line between "hobby" and "mental illness."
4. People who want to share their religious views with you almost never want you to share yours with them.
5. You should not confuse your career with your life.
6. Nobody cares if you can't dance well. Just get up and dance.
7. Never lick a steak knife.
8. The most destructive force in the universe is gossip.
9. You will never find anybody who can give you a clear and compelling reason why we observe daylight savings time.
10. You should never say anything to a woman that even remotely suggests that you think she's pregnant unless you can see an actual baby emerging from her at that moment.
11. There comes a time when you should stop expecting other people to make a big deal about your birthday. That time is age eleven.
12. The one thing that unites all human beings, regardless of age, gender, religion, economic status or ethnic background, is that, deep down inside, we ALL believe that we are above average drivers.
13. A person, who is nice to you, but rude to a waiter, is not a nice person. (This is very important. Pay attention. It never fails.)
14. Your friends love you anyway.

FROM THE PRESIDENT

By W. Simmons Sandoz

INVESTITURE CEREMONY

The investiture ceremony for Judge Summerhays was held in the John M. Shaw Federal Building in Judge Haik's Courtroom on Friday, January 19, 2007. Judge Davis of the 5th Circuit, the District Court Judges & Magistrates, the Bankruptcy Judges, the U. S. Trustee, Mike Bolen and members of his office, Ray Guy (Judge Summerhays' former law partner who served as Master of Ceremonies) and many bankruptcy luminaries (Yes, that includes us, the members of the Southwest Bankruptcy Bar Association), were present. If you were unable to attend you missed quite an event, and dey all axed for you. (See the musical interlude entitled "Dey All Axed for You" contained elsewhere in the newsletter). Joey's provided the catering and Community Coffee provided the coffee.

RECENT COURT DEVELOPMENTS

MOTIONS TO EXTEND STAY

During the court session of January 10, 2007, Judge Summerhays had a number of hearings on Motions to Extend the Automatic Stay. He made comments that two significant factors in determining bad faith were: 1) Was the debtor current on plan payments; and 2) Was the debtor current on post-petition payments being made outside of the plan.

910-DAY VEHICLES

During the Chapter 13 hearings on January 24, 2007, a number of hearings took place regarding the hanging paragraph of 11 USC 1325.

The Judge made comments as to

what factors the Court deemed significant when a vehicle was used for both personal and business use (mixed use).

Those factors are:

- 1) Was the Debtor working at the time the vehicle was purchased?
- 2) The mileage on the vehicle
 - a) From date of purchase to present;
 - b) Any mileage logs - if none available, then evidence regarding personal mileage versus business mileage;
- 3) How is the vehicle used at work to carry out the debtors work duties?
- 4) Does the debtor receive reimbursement for mileage from his/her employer?
- 5) Does the debtor claim a vehicle expense deduction on his/her tax return?
- 6) The sales contract - The Judge indicated that while this is significant, it may not be dispositive of the issue. Other evidence may be presented on the mixed use of the vehicle.

These factors are certainly not the only factors that may be presented; however, the Judge feels that these factors are essential in a 910-vehicle hearing to allow him to make a decision. Judge Summerhays stated that the totality of the circumstances is the appropriate test. He felt that the percentage of use (personal v. business) was an important and telling factor.

The Judge would be interested in any stipulations which could be filed prior to the hearing as it will assist in discerning the facts.

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BANKRUPTCY WORKING GROUP

At the suggestion of Keith Rodriguez, Chapter 13 Trustee, and the concurrence of Judge Summerhays, a bankruptcy working group is in the early stages of being organized. The purpose of this group is to meet with Judge Summerhays periodically in his Chambers in Lafayette to discuss matters of court policy and procedure regarding Chapter

13s. This group will be formed from members of the Southwest Louisiana Bankruptcy Bar Association.

If you are interested in serving on this group, please contact Alice. If you wish to volunteer, be aware that there will be a serious time commitment and the expectation that all members will work and participate. This will not be a coffee and conversation group. If you are serious, you are welcome to volun-

DEY ALL AXED FOR YOU

Sung to the tune of "Dey All Went Down to the Audubon Zoo"

We all went up to da swearin' in

And dey all axed for you

Dey all axed for You

Dey even inquire about you

Da 5th Circuit axed

Da District Court axed

And da Bankruptcy Judges too

We den returned to the Bankruptcy Court

And dey all axed for you

Da Clerk's Office axed

Da Marshalls axed

And da lawyers axed for you

We den had court on Chapter 13 day

And dey all axed for you

Da Debtors axed

Da creditors axed

And da Trustee axing too

When we went home after da 13 zoo

Dey all axed for you

Da Boudreauxs axed

Da Fontenots axed

And da Thibodeaux axing too

Everybody dere

Want to know where

Dey all axed for you

They Walk Among Us

I walked into a Blimpie's with a buy-one-get-one-free coupon for a sandwich. I handed it to the girl and she looked over at a little chalkboard that said "buy one-get one free". "They're already buy-one-get-one-free", she said, "so I guess they're both free" She handed me my free sandwiches and I walked out the door. They walk among us and many work retail.

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A friend of mine bought a new fridge for his house. To get rid of his old fridge, he put it in his front yard and hung a sign on it saying: "Free to good home. You want it, you take it." For three days the fridge sat there without even one person looking twice at it. My friend decided that people were too untrusting of this deal. It looked too good to be true, so he changed the sign to read: "Fridge for sale \$50." The next day someone stole it. They walk among us.

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One day I was walking down the beach with some friends when one of them shouted, "Look at that dead bird!" Someone looked up at the sky and said, "Where?" They Walk among us!

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While looking at a house, my brother asked the real estate agent which direction was north because, he explained, he didn't want the sun waking him up every morning. She asked, "Does the sun rise in the north?" When my brother explained that the sun rises in the east, and has for sometime, she shook her head and said, "Oh, I don't keep up with that stuff." They Walk Among Us!!

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I used to work in technical support for a 24/7

call center. One day I got a call from an individual who asked what hours the call center was open. I told him, "The number you dialed is open 24 hours a day, 7 days a week." He responded, "Is that Eastern or Pacific time?" Wanting to end the call quickly, I said, "Uh, Pacific." They Walk Among Us!

=====

My colleague and I were eating our lunch in our cafeteria, when we overheard one of the administrative assistants talking about the sunburn she got on her weekend drive to the shore. She drove down in a convertible, but "didn't think she'd get sunburned because the car was moving." They Walk Among Us!

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My sister has a lifesaving tool in her car designed to cut through a seat belt if she gets trapped. She keeps it in the trunk. They Walk Among Us!

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My friends and I were on a beer run and noticed that the cases were discounted 10%. Since it was a big party, we bought 2 cases. The cashier multiplied 2 times 10% and gave us a 20% discount. They Walk Among Us!

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I couldn't find my luggage at the airport baggage area, so I went to the lost luggage office and told the woman there that my bags never showed up. She smiled and told me not to worry because she was a trained professional and I was in good hands. "Now," she asked me, "has your plane arrived yet?" They Walk Among Us!

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While working at a pizza parlor I observed a man ordering a small pizza to go. He ap-