

Bankruptcy In Brief

News from the Bankruptcy Court

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

Volume 90

April 24, 2007

STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

As many of you in Lafayette have already noticed, a representative of the Internal Revenue Service is appearing on some of our 341 dates. I have no idea how often they will come but their new policy is to get out into the field as often as possible. All of these people come out of the New Orleans office and clearly it is more convenient for them to go to New Orleans and Baton Rouge than it is to come Lafayette and Lake Charles. Nonetheless, they are beginning to make the effort to get out and about more often. As you are also aware, while making it easy to get debtors to file tax returns that are not yet three years overdue, at the same time, they are finding other debtors who are married and both filing separate returns claiming "head of household" status. That is a no-no and something they will be looking at closely going forward.

Last week, I attended a training session sponsored by the United States Trustee's office in New Orleans. One portion of the training was given by representatives of Special Procedures in New Orleans. They reiterated the point having to do with timely filed tax returns. This seems to be a big focus since the implementation of the

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RECENT DECISIONS

The Burkhart Language

If you've been in Lafayette on Chapter 13 day lately, you may have noticed attorney news mentioning the "Burkhart Language." The court recently ruled in the case of *In re Burkhart*, regarding the plan provision which provided that successful completion of the plan would constitute a finding that the debtor was current on the mortgage payments. The court held that such language should not be included in the plan. Rather, if the debtor wants a finding that they are current and have made all mortgage payments during the plan, the debtor can file a motion seeking such a finding after completion of the plan, and serve notice upon the secured creditor. *In re Burkhart*, Case Number 07-50032.

LUNCH WITH THE JUDGE

Please note that the location of Lunch with the Judge for Friday, April 27 has changed. The luncheon will be held at Cope-land's at noon. See you then.

For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the May newsletter should have the articles to me no later than May 11, 2007.

Lunch with the Judge

April 27, 2007, at noon, at Copeland's

May 31, 2007 in Lake Charles following court

June 8, 2007 at noon at Don's Downtown

Editor's Comments

As I promised some movie reviews this month, I'll get right to them. I'm finally getting back in the swing of regularly going to movies so there should be many more to come. If anyone has a request for a particular movie, let me know.

* *Fracture*, starring Anthony Hopkins. This is the movie where he kills his wife, admits to it and then tries to get away with it. There is of course a big mystery and I won't give it away, though I figured it out fairly early. It's not as suspenseful once you figure it out but it was still a pretty good movie. The acting was very good and it had an interesting story. 3 stars.

* *Perfect Stranger*, starring Bruce Willis and Halle Berry. Halle's character is trying to prove that Bruce's character killed her friend. There are several twists in this one and I must say, I didn't figure out the big twist at the end. It gets bonus points for that alone. 3 stars.

* *The Pursuit of Happyness* (now on DVD) starring Will Smith. If you didn't see this movie at the theater, rent the DVD, it's well worth it. It's based on a true story about a guy who struggles from nothing to make a better life for himself and his son. While it is a bit sad at times, it demonstrates what one can accomplish with perseverance and faith. 3 1/2 stars.

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.

To contact the editor:

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Fax.....(337)262-6382

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new law. Clearly, your clients are required to have the last four years of returns filed prior to the 341 meeting. While we have some instances where that has not been done, they usually get filed prior to the confirmation hearing. However, I have noticed that delinquent and unfiled tax returns are not as big an issue as they used to be. Apparently, the new law is having an effect.

Another area in which the new law is having an effect is overall bankruptcy filings. While there was a recent article in the local newspaper indicating that nationwide bankruptcy filings for 2006 were 680,000, down from 2.1 million in 2005, that number is a bit skewed. As we recall, approximately 600,000 bankruptcies were filed the week before the law became effective. Traditionally, we have seen 1.6 to 1.7 million bankruptcies being filed. Factoring out the 600,000 still shows a decrease but not as dramatic as the gross numbers indicate.

We have noted a fairly steady increase in filings since August. Cyclically, filings usually decrease in December (holidays) and January, February and March (people trying to get their tax refunds to get well) the filings are still fairly healthy. I believe we are oper-

ating at approximately 80% to 85% of prior years. A big part of this is because of an increase in filings in Lake Charles. They once made up approximately 1/3 of the Chapter 13 filings. Now, that number is closer to 40% and climbing. Because of these numbers, we have had to add some Mondays in Lafayette as 341 meeting dates in order to try and keep up with the Court schedule so as not to overload any one day too heavily with first time confirmation hearings. Hopefully, we will find a way to get away from that extra day and still keep a balanced schedule.

The Bankruptcy Working Group is close to putting the finishing touches on an adequate protection order. This should simplify the entire mortgage process and make paying the mortgages through the plan a much simpler task. It appears that many of the kinks with a mortgage payment through the Trustee's office are getting worked out. It is certainly far from perfect but it is moving in the right direction at a nice pace. We should have it working like a well oiled machine just about the time I am ready to retire.

If anyone has any suggestions for issues to be taken up by the Working Group, I recommend that you contact Sim Sandoz to get it on the agenda.

Talk to you later!!!!!!!!!!!!!!

The Bathtub Test

It doesn't hurt to take a hard look at yourself from time to time, and this should help get you started. During a visit to the mental asylum, a visitor asked the Director what the criterion was which defined whether or not a patient should be institutionalized.

"Well," said the Director, "we fill up a bathtub, then we offer a teaspoon, a teacup and a bucket to the patient and ask him or her to empty the bath-

tub." "Oh, I understand," said the visitor. "A normal person would use the bucket because it's bigger than the spoon or the teacup."

"No" said the Director, "A normal person would pull the plug. Do you want a bed near the window?"

DID YOU PASS, OR DO YOU WANT THE BED NEXT TO MINE?

FROM THE PRESIDENT

By W. Simmons Sandoz

In the last newsletter, my article was quite lengthy. It took up so much space that there was not enough room for jokes and funny stories. Silly me, I thought my article was a joke.

BANKRUPTCY WORKING GROUP

Our Bankruptcy Working Group meet on Thursday, March 8, 2007. The Minutes of that meeting are reproduced in this newsletter for your review.

The Bankruptcy Working Group also had a meeting on Wednesday, April 11, 2007. The minutes of that meeting will be included in our next newsletter.

LUNCHEON WITH THE JUDGE

Our next luncheon with the Judge is scheduled for Friday, April 27, 2007, at Copeland's at noon. We have been successful in obtaining another corporate sponsor for our April luncheon. Rumor has it that our new corporate sponsor has retained the services and has on its staff our old friend from the Christmas party, Dr. Gregory DeKeyzer Von Einstein. Please make every effort to attend our Luncheon with the Judge and visit with Dr. Von Einstein.

THE BANKRUPTCY WORKING GROUP

MINUTES OF MEETING HELD ON THURSDAY, MARCH 8, 2007

Present: Judge Robert Summerhays, Alice Dukes, Lisa Thomas, Elizabeth Andrus, Ham Chauvin, Keith Rodriguez, Rick Keating, Fred Rogers and Sim Sandoz

The items on the agenda and discussions were:

MOTIONS TO LIFT STAY

One of the difficulties at Motions to Lift Stay hearings is identifying post-petition payments made and how these payments were credited. For example, a payment may have been made in March but credited to February. In order to alleviate this prob-

lem, it was suggested that a simple attachment accompany a Motion to Lift Stay reflecting the date the post-petition payments were received by the mortgage holder and the corresponding amount. Hopefully, this will prevent confusion and matters may be resolved swiftly without the necessity of continued hearings and/or motion to compel records. The group is working on a proposed form and is considering urging the court to adopt a standing order, or other compulsory method, to require such an attachment, in general, or at least as a condition to a default judgment on the motion.

VALUATION HEARINGS

One thing that seems to perhaps unnecessarily prolong valuation hearings is the amount of time required to deal with expert testimony. Invariably, the expert's direct consist of no more than a belabored recitation of the exact same information contained in his written report - something that everyone can simply read, without benefit of narration. One way to avoid this would be just to simply agree to admit the report in lieu of direct examination - one may conjure the very, very odd circumstance when one can block admission of the report but certainly such is rare to the point of in-measurability, and something best handled as it arises. Anything beyond that consideration, up to and including methodology and the breadth of expertises, etc., are certainly things which can (and would anyway) be covered on cross or redirect. Accordingly, the group is working on an appropriate vehicle to actuate such a streamlining measure.

COURT ANNOUNCEMENTS PRIOR TO COMMENCEMENT OF CHAPTER 13 HEARING - PLAN CONFIRMATION DENIED, AMENDED PLAN ORDERED, NEW HEARING DATE SET

In many instances the attorney for debtor knows prior to hearing, that a plan will not be confirmed and curative work is necessary. Hopefully, prior to the hearing, he has spoken with creditor's counsel about the objection and spoken to Keith or Ham about the Trustee's objection to the plan and has agreed to file an amended plan to resolve all issues. If Debtor's counsel has spoken with all objecting parties as well as Keith or Ham (depending upon who will be at the hearing) it is suggested that Keith or Ham call Alice when reviewing the

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Chapter 13 calendar and advise that confirmation should be denied, an amended plan should be ordered within ten days and an new hearing date given. This procedure will allow the Judge to make an announcement prior to hearing, avoid unnecessary court appearances by Debtor's counsel, the Debtor, Creditor's counsel, and the Trustee. It also will allow the matter to be removed from the hearing docket and the case will not be called for hearing. Hopefully, this will move the hearing docket along at a faster pace.

In order for this to work, certain rules must be adhered to:

1. Debtor's counsel must take the initiative and call all objecting parties and advise all parties that:
 - a. The Confirmation hearing will not go forward because the plan will not be confirmed;
 - b. An amended plan will be filed;
 - c. A new hearing date will be obtained;
 - d. Keith or Ham will be advised; and
 - e. Ham or Keith will call Alice and advise her to take the matter off of the hearing docket and dealt with as a pre-hearing announcement matter.
2. This must be accomplished prior to the Wednesday hearing date.
3. It must go through Ham or Keith to Alice.
4. It won't work if we try to accomplish this on Wednesday at the hearing.

We will try this procedure and determine if it works and/or saves any time and effort.

CREATION OF GUIDE TO CHAPTER 13 PRACTICE

One of our long term projects is to create a Guide to Chapter 13 Practice with helpful pointers and suggestions along with forms for pleadings, motions, notices and orders. Judge Summerhays supports this project and wants to make certain that everyone has public access to this material and that it is not restricted to members of the SLBBA only.

LANGUAGE IN CHAPTER 13 PLAN AFTER ADEQUATE PROTECTION ORDER

We are working on a form for Adequate Protection Orders. Hopefully, the language in the Adequate Protection Order that can be copied directly into the Chapter 13 plan. If this is accomplished, it will avoid unnecessary plan objections.

TIME & DATE OF FUTURE MEETINGS

Our first meeting on Wednesday, February 7, 2007, took place after the 341 meetings in Lafayette @ 3:30 p.m. Our second meeting took place on Thursday, March 8, 2007, after the confirmation hearings in Lake Charles @ 3:30 p.m. Our next meeting is scheduled for Wednesday, April 11, 2007, @ 1:30 after the confirmation hearings in Lafayette. We are trying several different meeting dates to determine what dates are the most convenient for the majority of group members.

Why You Never Question a Drunk

I was shopping at the local supermarket where I selected:

- A half-gallon of 2% milk,
- A carton of eggs,
- A quart of orange juice,
- A head of romaine lettuce,
- A 2 lb can of coffee, and
- A lb package of bacon.

As I was unloading my items on the conveyor belt to check out, a drunk standing behind me watched as I placed the items in front of the cashier. While the cashier was ringing up the purchases, the drunk calmly stated, "You must be single." I was a bit startled by this proclamation, but I was intrigued by the derelict's intuition, since I was indeed single. I looked at the six items on the belt and saw nothing particularly unusual about my selections that could have tipped off the drunk to my marital status. Curiosity getting the better of me, I said: "Well, you know what, you're absolutely right. But how on earth did you know that?"

The drunk replied, "Cause you're ugly."

Memo from US Attorney's Office

Re: Post-Petition Taxes in Chapter 13 Cases

It is not uncommon for a debtor in a Chapter 13 case to incur post-petition federal taxes and propose to pay said taxes through a modified plan. As a preliminary matter, taxing authorities and not taxpayers are given the option under the Bankruptcy Code to file a proof of claim for post-petition taxes. 11 U.S.C. §1305(a)(1); *In re Ripley*, 926 F.2d 440, 443, n. 12 (5th Cir. 1991); *In re Seydan*, 294 B.R. 418, 419 (Bkcty. S. D. Ga. 2002) ("Because Section 1305 grants the right to file post-petition claims only to claimholders, not to Chapter 13 debtors, [the d]ebtor has no standing to file her post-petition tax claim over the IRS objection").

Although the practice may vary among the Chapter 13 trustees in the district, three trustees will not make disbursements on a debt for which a

confirmed plan provides but for which no proof of claim has been filed. Thus, if a debtor desires to pay post-petition federal taxes through the plan, it is recommended the appropriate IRS bankruptcy technician be contracted to determine if the IRS will consider filing a proof of claim for the post-petition taxes and, if so, a modified plan proposing to pay said taxes should then be filed. In such an event, please be prepared to supply the technician with a duplicate original of the subject return(s). Once the modified plan is confirmed, the IRS should be notified at which time the IRS will decide whether or note to file a claim for the post-petition taxes.

A bankruptcy case inventory assignment guide is attached (see page 7) and any questions of this office may be directed to AUSA Robert A. Thrall at (318)676-3609.

AN OPEN LETTER TO MR. JAMES THATCHER, BRAND MANAGER, Proctor and Gamble

Dear Mr. Thatcher,

I have been a loyal user of your Always maxi pads for over 20 years and I appreciate many of their features. Why, without the Leak Guard Core or Dri-Weave absorbency, I'd probably never go horseback riding or salsa dancing, and I'd certainly steer clear of running up and down the beach in tight, white shorts.

But my favorite feature has to be your revolutionary Flexi-Wings. Kudos on being the only company smart enough to realize how crucial it is that maxi pads be aerodynamic. I can't tell you how safe and secure I feel each month knowing there's a little F-16 in my pants.

Have you ever had a menstrual period, Mr. Thatcher? Ever suffered from "the curse"? I'm guessing you haven't. Well, my "time of the month" is starting right now. As I type, I can already feel hormonal forces violently surging through my body. Just a few minutes from now, my body will adjust and I'll be transformed into what my husband likes to call "an inbred hillbilly with knife skills." Isn't the human body amazing?

As brand manager in the feminine-hygiene division, you've no doubt seen quite a bit of research on what exactly happens during your customers' monthly visits from Aunt Flo. Therefore, you must know about the bloating, puffiness, and cramping we endure, and about our intense mood swings, crying jags, and out-of-control behavior. You surely realize it's a tough time for most women. In fact, only last week, my friend fought the violent urge to shove her boyfriend's testicles into a George Foreman Grill just because he told her he thought Grey's Anatomy was written by

drunken chimps. Crazy! The point is, sir, you of all people must realize that America is just crawling with homicidal maniacs in Capri pants.

Which brings me to the reason for my letter. Last month, while in the throes of cramping so painful I wanted to reach inside my body and yank out my uterus, I opened an Always maxi-pad, and there, printed on the adhesive backing, were these words: "Have a Happy Period." Are you f---g kidding me? What I mean is, does any part of your tiny middle-manager brain really think happiness - actual smiling, laughing happiness - is possible during a menstrual period?

Did anything mentioned above sound the least bit pleasurable? Well, did it, James? FYI, unless you're some kind of sick S&M freak girl, there will never be anything "happy" about a day in which you have to jack yourself up on Motrin and Kahlua and lock yourself in your house just so you don't march down to the local Walgreen's armed with a hunting rifle and a sketchy plan to end your life in a blaze of glory. For the love of God, pull your head out, man. If you just have to slap a moronic message on a maxi pad, wouldn't it make more sense to say something that's actually pertinent, like "Put Down the Hammer" or Vehicular Manslaughter Is Wrong"? Or are you just picking on us? Sir, please inform your accounting department that, effective immediately, there will be an \$8 drop in monthly profits, for I have chosen to take my maxi-pad business elsewhere. And though I will certainly miss your Flex-Wings, I will not for one minute miss your brand of condescending bullshit. And that's a promise I will keep. Always.

Best, Wendi Aarons Austin, TX

LOUISIANA BANKRUPTCY CASE INVENTORY ASSIGNMENTS AS OF JANUARY 1, 2007

Internal Revenue Service Insolvency Unit 1555 Poydras Street, Suite 220, Stop 31 New Orleans, LA 70112 Fax Number (504)558-3486 Employee Direct Number: (504)558-Ext.	(Note: D. Smith & B. Stalbert presently assigned to Baton Rouge post of duty) IRS, Insolvency Unit 2600 City Place, Suite 300 Baton Rouge, LA 70808 Fax (225)923-4177	Notice of Federal Tax Lien / Certificates of Discharge Assistance: Katherine Young (504)558-3047 Fax (504)558-3490 1555 Poydras Street, Suite 220 Technical Services, STOP 65 New Orleans, LA 70112-3747
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Chapter 7 No asset Cases < \$150K; Chapter 7 Asset Cases < \$250K; Chapter 13 Cases < \$50K

Debtor's Last Name Begins With	Assigned To:	At Extension:
A-BI	Lois Foster	3393
Bm-Ca	Iris Wells	3428
Cb-Dn	Alicia Johnson	3169
Do-Fo	Schirelle Wiltz	3168
Fp-G	Gwen Trinity	3472
H-Ho	Diane Smith	(225)923-4246
Hp-J	Raul Acuna	3461
K-Mb	Angelle Baudier	3471
Mc-Pa	Lorraine Guillot	3357
Pb-R	Betty Stalbert	(225)923-4238
S-Ta	Sharon Gibson	3152
Tb-Wa	Ava Rhodes	3464
Wb-Z	Vendoria Perodin	3432

Chapter 7 No Asset Cases \$150K—\$250K; chapter 7 Asset Cases > \$250K; Chapter 9, 11, 12 < \$150K; Chapter 13 Cases \$50K—\$150K

Debtor's Last Name Begins With:	Assigned To:	At Extension:
A-L	Donna Celestine	3013
M-Z	Jackie Revon	3094

Chapter 7 No Asset Cases > \$250K; Chapter 9, 11, 12 and 13 > \$150K

Debtor's Last Name Begins With:	Assigned to:	At Extension
A-L	Melanie Richard	3467
M-Z	Alvina Nagim	3415