

Bankruptcy In Brief

News from the Bankruptcy Court

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

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STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

A couple of Newsletter articles ago, I mentioned that we were having to use at least one Monday a month for creditor meetings in an effort to keep up with the Court's Lafayette schedule. I was seeking suggestions to see how we could alleviate that situation. As it turns out, the Court made a determination that there needs to be more hearing dates in Lake Charles. Consequently, beginning in August, we will revert to our old way of scheduling hearings with every other Wednesday having Court in Lafayette and the in between Thursdays in Lake Charles. This will certainly result in a much easier 341 schedule.

Back in the old days, (pre BAPCPA) it was our regular practice that when a creditor filed a secured proof of claim for more than the value as stated in the plan, we would automatically break the claim up into a secured portion for the amount stated in the plan with the remaining balance to be paid as an unsecured debt. As objections would be filed by the creditors and values amended, we would, of course, amend our claim entries accordingly. As the law has evolved since BAP-

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Attorney Fees

Effective for services rendered on or after July 1, 2007, the no-look attorney fees allowed in chapter 13 cases for post-confirmation services will be the following:

- (1) filing an amended plan, defending a motion to dismiss case or defending a motion to lift stay—\$450
- (2) a combination of any two actions indicated in paragraph 1 — \$600 (for example, defending a motion for relief from stay which requires the filing of an amended plan)

When a creditor becomes entitled to reimbursement of fees and costs, the attorney fees will now be \$450 (so the fees and costs on a motion for relief from stay will be \$600 total).

RECENT DECISIONS

Debtor not Permitted to Reopen Case to Add Creditor

A chapter 7 debtor sought to reopen his case to add a creditor who was pursuing the debtor in state court. The creditor opposed the motion on the basis that the claim at issue could be non-dischargeable. The court found that permitting the debtor to reopen the case and add the creditor could prejudice the creditor's right could be prejudiced. As such the debtor did not establish requisite cause under *Matter of Stone* to reopen the case. In re Romero, Case Number 05-53714.

Debtor's Homestead Exemption Extends to Contiguous Lots

A chapter 13 debtor objected to the secured claim of a judgment creditor on the basis that there was no value above the

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For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the July newsletter should have the articles to me no later than July 10, 2007.

Lunch with the Judge

Monday, July 16, 2007 at Don's Downtown

August 16, 2007 in Lake Charles following court

Editor's Comments

Ok, so I haven't seen as many movies as I had hoped. There's just not much playing that I really want to see. I do plan to see lots of movies this summer so if anyone has any specific request for reviews, just let me know.

Now onto the reviews:

* Spiderman 3 - this was a pretty good movie. If you liked the first 2 movies in the series, you'll probably enjoy this one as well. But as a warning for parents, the Spiderman movies are really not for small children. While it is exciting for the little kids to see Spiderman flying around and slinging webs, the movies have

too much plot and are too dark for the younger kids. 3 stars.

On DVD:

* Night at the Museum starring Ben Stiller. This movie was actually better than I expected. It has stuff for the kids but is also quite amusing for adults. 2 1/2 stars.

* Catch and Release starring Jennifer Garner. Yes, this is a chick flick. It is characterized as a romantic drama but there is enough comic relief to keep the story moving and even to keep the guys interested. 3 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.

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homestead exemption. The creditor asserted that the debtor owned 3 lots and only one represented the debtor's homestead. The debtor's home was on one lot, a garage apartment on another and the third lot was had no structures. All three lots were enclosed within a fence. The court held that, pursuant to the Louisiana homestead exemption statute, the homestead exemption extended to all three lots. As such there was no equity above the existing mortgage for the judgment to attach to and the claim was unsecured. In re Goff, Case Number 06-20109.

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CPA, we have decided to re-think this practice. With so much emphasis placed upon 910 vehicles, we have decided to simply allow the secured claim for the amount stated in the claim as secured. And even though the plan may be confirmed for a lower amount (with or without creditor involvement) we will pay, as secured, the amount stated in the confirmed plan. Any other remaining secured balance per the proof of claim will not be paid by the trustee. If the creditor wants to participate in the unsecured creditor pool, they will need to timely amend their proof of claim to so state. Without that, there will be no or limited participation with the unsecured creditors.

A couple of months ago, we had a Chapter 13 filed with a plan calling for paying nothing for the first two months with payments beginning in months three and running through months sixty. The statement at the bottom of Schedule I indicated that the debtor was out of work and anticipated starting a job within a couple of months. In reviewing the statement of financial affairs, there were no lawsuits pending and no foreclosures - nothing to push this debtor into filing a Chapter 13 at that time. The debtor did have some household income as stated in Schedule I but after deducting the living expenses in Schedule J, the result was a negative balance. The Trustee not only objected to the plan, but filed a motion to dismiss the case indicating a lack of regular income resulting in what the Trustee believed was lack of good faith. When the matter came before the Court for hearing, the Court denied confirmation

and dismissed the case but not for the reason stated by the Trustee. Rather, the Court determined that the debtor was not eligible to be a debtor in Chapter 13 for lack of regular income. I would, therefore, urge counsel not to file such plans unless there is a great reason for doing so such as imminent foreclosure, etc. And even then the debtor will have the burden of demonstrating eligibility.

On a similar note, unless there is a real emergency requiring the filing of the petition without schedules and plan, I would urge you to hold everything and file all pleadings together. We are having some real problems with the debtors getting current on plan payments where the case is filed on a particular date and the plan is not filed for another twenty or thirty days.

One other area of concern that we are trying to remedy is the debtor believing that they don't have to make plan payments because a wage deduction is being done. I believe that part of the problem stems from the fact that they are being copied with the letter sent to the employer. Whether or not money comes out of their check, they think it is permissible to no longer make payments. In an effort to stem this problem, we will no longer send the debtor copies of the wage deduction letter directed to the employer. We will, however, send it to counsel's office just to let you know that the process has begun. Please advise your clients to continue making payments themselves until money actually begins to come out of your check.

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

FROM THE PRESIDENT

By W. Simmons Sandoz

LUNCHEON WITH THE JUDGE

Our luncheon with the Judge took place at Copeland's in Lafayette on April 27, 2007. Our corporate sponsor for the event was Drugzz-R-U's. Two corporate representatives attended. They were Dr. Gregory DeKeyser Von Einstein and Dr. Rick Kavorkeating. They distributed their products for all to ingest. For detailed information on our corporate sponsor's services, see in the newsletter, "And now a word from our sponsor."

BANKRUPTCY WORKING GROUP (BWG)

The topic discussion dealt with BWG meeting which took place on March 8th. The items were Motion to Lift Stay, Valuation Hearings, Adequate Protection Order form, Court announcements or cases where no hearing will take place, and a Chapter 13 Practice Guide. See our previous newsletter for a review of the March 8 minutes.

A brief discussion took place about the meeting on the BWG of April 11, 2007.

THE BANKRUPTCY WORKING GROUP (BWG)

MINUTES OF MEETING HELD ON WEDNESDAY, APRIL 11, 2007

JUDGE SUMMERHAYS' CHAMBER LAFAYETTE, LA @ 11:00 A.M.

Present: Judge Robert Summerhays, Alice Dukes, Keith Rodriguez, Herman Wessels, Kevin Payne, Tom Thompson, Rick Keating, Greg DeKeyser, Ham Chauvin and Sim Sandoz

The items on the agenda and discussions were:

Attachment to Motion to Lift Stay

A standing order will be entered regarding a required attachment to Motion for Relief from Stay dealing with all motions to lift stay on or after June 1, 2007, requiring the listing of each post-petition payment received and the date of receipts of each such payment. If the motion to lift stay does not comply with the standing order, the motion will not be heard.

Adequate Protection Order

The final draft of the proposed Adequate Protection Order has been forwarded to the members of the BWG on April 12, 2007. Any final comments must be made within twenty days or by May 2, 2007.

910 Vehicle Hearing - Proposed Stipulation

A draft of the proposed stipulation was reviewed by the BWG. There were a number of suggested changes to the proposed stipulation. The stipulation will be revised pursuant to the discussion and reviewed at the next BWG meeting.

Tax Issues Reviewed in Chapter 13 Hearings

Tom Thompson of the U. S. Attorney's Office made a presentation to the BWG regarding tax issues in a Chapter 13 proceeding. Tom discussed, among other things, trust fund liabilities and the manner in which they were listed on the proof of claim.

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Pre-Hearing Court Announcements

The BWG adopted the new procedure whereby Debtor's counsel will advise Ham or Keith (depending who will be at the Chapter 13 confirmation hearings) that if the plan will not be confirmed and an amendment is necessary, that Attorney for Debtor will notify Ham or Keith prior to hearing. They will then transmit the information to Alice and the Judge will make an announcement prior to the hearing, that the plan will be denied, an amended plan must be filed by a certain date and a new hearing date given.

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

- Debtor's counsel must initiate a call to 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 setting forth the details of the amendment;
 - 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 it will be dealt with as a pre-hearing announcement matter.
- This must be accomplished prior to the Wednesday hearing date.

- It must go through Ham or Keith to Alice.
- It won't work if we try to accomplish this on Wednesday at the hearing.

Website

Alice is currently working on obtaining a website for the Bar Association. Once she obtains the costs, there will be a one time assessment to members to defray the costs of the website. Included in the website will be standing orders, guide to Chapter 13 practice, as well as forms for pleadings, notices and proposed orders.

Objection to Late Filed Proofs of Claim

In the past, Chapter 13 Trustee's Office has objected to late filed claims seeking to have the claim denied. The Trustee, instead of seeking denial of the proof of claim, will now seek to have it listed recognized a tardily filed proof of claim.

Care Program

Judge Summerhays is interested in the Care Program which educates high school and college students regarding debt management, credit card information and financial matters. We are in the very early stages of organizing this project.

An old farmer had a wife that nagged him unmercifully. From morning till night, she was always complaining about something. The only time he got any relief was when he was out plowing with his old mule. One day when he was out plowing, his wife brought him lunch in the field. He drove the old mule into the shade, sat down on a stump, and began to eat his lunch. Immediately, his wife began to nag him again. All of a sudden, the old mule lashed out and with both hind feet, caught her smack in the back of the head, killing her on the spot. At the funeral several days later, the minister noticed something rather odd. When a woman mourner approached him, he would listen and then nod his head in agreement; but when a man approached, he would listen and then shake his head in disagreement. After the funeral, the minister decided to ask the old farmer about it. The old farmer said "well, the women would come up and say something about how nice my wife looked or how pretty her dress was, so I'd nod my head in agreement." "And what about the men" the minister asked. "they wanted to know if the mule was for sale."

AND NOW A WORD FROM OUR SPONSOR:

Are you stressed? Do confirmation hearings and 341 meetings cause you to hyperventilate and become nauseous? Do you break out in a cold sweat every time you think about going to court?

We can help at DRUGZZ-R-US - MAKING DEBTORS BETTER THROUGH CHEMICALS. Our medical attendants are standing by at our toll free number to assist you with medication to reduce your anxiety. Our medical staff is headed up by the renowned physician and inventor, Dr. Gregory DeKeyzer Von Einstein. Dr. Von Einstein is assisted in his work by the world famous physician, Dr. Rick Kavorkeating who has just completed his jail term and is actively seeking the return of his medical license. They personally oversee quality control and test the effectiveness of our medication daily by personally taking massive amounts of our medication to make certain that they are quality products.

If you are stressed, we can make you mellow. Try our *Mellow-Yellow* pill to relax. We have a complimentary value pack - a year's supply which we are giving to the Trustee and his attorney. We suggest that they ingest all of these immediately with a fifth of Jack Daniels.

Need a guaranteed continuance - try our *Red-Rocket* pill. It will immediately raise your blood pressure and induce stroke-like symptoms including foaming at the mouth.

If you are not current and your plan is not confirmable, try our hallucinogenic pill - *Agent Orange*. This medication will cause you to become delusional and you will become convinced that you are current, your plan is confirmable and that Hamilton Chauvin is here to help you.

If you can't stand all the financial pressure, you can end it all with our *Green pill of Death*. It's our #1 sales item. We have a complimentary value pack for the Trustee, his attorney and staff. We

suggest that they take this immediately.

With every prescription, you will receive a personal prescription information printout including, but not limited to:

Common uses -

Certain cautions about medications -

Directions if you overdozz -

Warnings before using this medication -

Directions on how to use this medication - particularly - Drink alcohol heavily when taking the medication before attending any bankruptcy hearing.

Possible side effects - Including, but not limited to, nausea, upset stomach, throwing up on the Trustee, diarrhea, incontinence, anxiety, hyperventilation, cold sweat, hot flashes, severe financial distress, table top dancing and even death.

Additional information - For example, sharing this medication with other debtors who are experiencing anxiety. Keep this medicine out of the reach of the U. S. Marshalls, the Trustee and Creditors' lawyers.

Under the United States Code, we are compelled to disclose that we are a stress-relief agency, and we help stressed out debtors who have filed bankruptcy.

For further information, call 1-800-DOPE-UP. If you call within the next ten minutes, we will ship to you free of charge a stomach pump.

**MAKING DEBTORS BETTER THROUGH
CHEMICALS - CALL DRUGZZ-R-US**

IDIOT SIGHTINGS

I live in a semi-rural area. We recently had a new neighbor call the local township administrative office to request the removal of the Deer Crossing sign on our road. The reason: "too many deer were being hit by cars" and he didn't want them to cross there anymore.

My daughter went to a local Taco Bell and ordered a taco. She asked the person behind the counter for "minimal lettuce." He said he was sorry, but they only had iceberg.

I was at the airport, checking in at the gate when an airport employee asked, "Has anyone put anything in your baggage without your knowledge? To which I replied, "If it was without my knowledge, how would I know? He smiled knowingly and nodded, "That's why we ask."

The stoplight on the corner buzzes when it's safe to cross the street. I was crossing with an intellectually challenged coworker of mine when she asked if I knew what the buzzer was for. I explained that it signals blind people when the light is red. Appalled, she re-

sponded, "What on earth are blind people doing driving?!"

At a good-bye luncheon for an old and dear coworker who was leaving the company due to "downsizing," our manager commented cheerfully, "This is fun. We should do this more often."

I work with an individual who plugged her power strip back into itself and for the life of her couldn't understand why her system would not turn on.

When my husband and I arrived at an automobile dealership to pick up our car, we were told the keys had been locked in it. We went to the service department and found a mechanic working feverishly to unlock the driver's side door. As I watched from the passenger side, I instinctively tried the door handle and discovered that it was unlocked. "Hey," I announced to the technician, "it's open!" To which he replied, "I know - I already got that side."