

Bankruptcy In Brief

News from the Bankruptcy Court

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

Volume 92

September 5, 2007

STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

I attended a seminar in New Orleans on June 22 sponsored by the NACTT and held at Tulane Law School. The presenters were Honorable Keith Lundin, a Bankruptcy Judge in the Middle District of Tennessee, Henry Hildebrand, the Chapter 13 Trustee in Nashville and two practitioners, Rick Hayden, a creditor attorney from Spokane, Washington and Mike McConnell, a debtor attorney from Albany, New York. One of the purposes of the seminar was to assist those practitioners in New Orleans in resurrecting their businesses in the wake of Hurricane Katrina. While recovery has started off very slowly in every area of the City including the filing of bankruptcies, it seems that the Chapter 13 filings there are up to about 50% of pre-hurricane filings but Chapter 7s are only at about 25%. Of course, the constituency is not what it used to be. The morning was devoted more or less to the basics in developing (or re-developing) a practice. But the afternoon dealt with substantive issues including mortgage payments through the plan, adequate protection payments; dealing with 910 vehicles and what effect financing negative equity could possibly have on a purchase money security interest. While the issues were all very interesting and the discussion quite helpful, the idea that seemed to dominate much of the conversation dealt with “notice”.

Everything in Chapter 13 is driven by the notice. It tells creditors how they way will be treated in a plan; it tells the Trustee the that payments are to be disbursed; it tells parties about contracts to be assumed or rejected or modified; it talks about values for assets retained and surrendered. But the key to any notice is specificity. If the notice does not state in specific, clear terms the intent of the party submitting the notice, then it leaves open the door for any opponent to come in after the fact

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WHEN TO BRING YOUR CLIENTS TO COURT

There seems to be a new trend in bankruptcy court...here's the scenario...picture it, Wednesday morning, chapter 13 day, the trustee has just shocked the world by announcing that the debtor isn't current on plan payments and the judge looks to debtor's counsel with the question “where's the debtor?” It seems to be normal procedure that debtors are not in court and they, of course, are the only ones who can answer the relevant questions. Ok, granted, everyone wants them at their job working, but it sure would be nice if we saw more of them in court when they are supposed to be there. Aside from this observation, I just wanted to point out that there are certain occasions when it is absolutely imperative (not just a really good idea) to have the debtor in court. First, hearings on **Motions to Extend the Automatic Stay**—debtors have to be present at least at the first hearing. Second, hearings on **Motions for Reconsideration**—every order fixing a hearing on a Debtor's Motion for Reconsideration orders (not requests) the debtor to be present.

PASSIONATELY PINK FOR THE CURE

Once again, Susan G. Komen for the Cure is encouraging groups and organizations to go Passionately Pink for the Cure. The basis premise is that an organization picks a day in October (which is Breast Cancer Awareness month) and allows employees to pay \$5 (or more) in order to be allowed to dress in pink that day. All proceeds go to fund breast cancer research. I would like for the bankruptcy community to participate in this event. I've signed us up and have picked the date as October 19. If anyone wants to participate, all you have to do is let me know and send me your money or you can join our team online at passionatelypink.org (team name Bankruptcy Court with me as team leader). I also want to see pictures! We are going to have a little contest and awards will be given for certain categories of pictures: most creative (I know you people can be silly), most people in the picture wearing pink (attorneys, staff, clients, people off the street, as long as they are wearing pink and have paid their \$5), and most men in the picture wearing pink (come on, be a man and wear your pink for a good cause). As a reminder of this event, the October newsletter will be pink!

For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the October newsletter should have the articles to me no later than October 1, 2007.

Lunch with the Judge

We've been very disappointed at the turnout for the last few luncheons so we're going to give this one more shot. If people aren't interested, we won't waste everyone's time.

Friday, October 19 at noon at Don's Downtown
Thursday, November 15 in Lake Charles, following court

Editor's Comments

Ok, I know that we've been talking about this for a while but I'm actually meeting with someone this week to start designing the website for the SLBBA. We expect the website to contain general information as well as general forms and documents that lawyers can share. Electronic copies of the newsletter will also be available. If you have suggestions for content for the website, please let me know. There may be a one-time increase in membership fees to pay the initial cost of setting up the website, but we expect that to be minimal and we hope that everyone will enjoy the website once it's up and running.

Summer is over and I must say that I wasn't all that impressed with the summer movie selection so I didn't go see as many as I wanted. Here's my reviews:

* *Live Free or Die Hard*, the 4th Die Hard movie starring Bruce Willis. I enjoyed this movie. If you liked the previous Die Hard movies, you'll like this one too. I was actu-

ally surprised that they were able to bring John McClane into the new high-tech world. 3 stars.

* *Evening*, starring Claire Danes, Toni Collette, Vanessa Redgrave and Natasha Richardson. This one is hard to describe in any other way than....chick flick. It was a decent movie though it dragged at times. 2 1/2 stars.

* *Death Sentence* starring Kevin Bacon. Kevin Bacon stars as an executive type with a perfect family until he witnesses his son being killed by a member of a gang. When he finds out that the guy is going to walk with a light sentence, he decides to take matters into his own hands. This was a really good movie. Kevin Bacon did a great job in personalizing his character. 3 1/2 stars.

* *The Bourne Ultimatum* starring Matt Damon. I think this might have been the best movie in the series, though I have to admit the camera work in the action shots made me a bit dizzy! 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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and make objection. Therefore, I urge all of the participants in the Chapter 13 process to please take the time to be sure that your notice details in the written word exactly what you intend for the original plan. I urge counsel to take a little extra time to be sure that anyone reading the plan, whether it is a creditor, the Trustee, a DSO recipient or whoever is involved is able to clearly understand how the parties are being treated.

One issue which we continually have to deal with is the method for paying attorney fees for debtor's counsel. As the Trustee, I take no position as to how you want to get paid. I only ask you to be specific in telling me how to pay you. Where the plan states fixed monthly payments for secured creditors and says nothing more, even though it is clear to the Trustee that based upon the secured debt to be paid, the monthly payments will not have to run for the entire length of the plan, the Trustee will assume that these payments are to begin in the first month. In many instances, this leaves less than \$10.00 per month to pay on attorney fees. If counsel is attempting to pay himself or herself in preference and priority to many other creditors

in the case, then please make the plan so state. That way, the Trustee will know exactly how to pay you and should parties not object to your proposals, then there should be no problem in making these payments.

Since the inception of a new law a little over a year and a half ago, everyone has been quite diligent in studying the law and trying to specifically adhere to its terms. However, as we get a bit more used to what the law tells us is permissible and things become a bit more routine, the work product becomes less than accurate. Please be mindful of this and stay on top of the accuracy of all plan and notice provisions.

I recently received a email from Dan Rees who is with the Attorney General's office. He is working on assisting with "Road Home" funding. He has asked for assistance in compiling a data base of debtors so he can cross reference same to determine who the applicants might be. In the event any of you are aware of clients who are undergoing this process, I would appreciate your contacting me with their name and case number so I pass it along to Mr. Rees.

Talk to you later!!!

YOU CAN'T FIX STUPID

Eighth Place: In Detroit, a 41-year-old man got stuck and drowned in two feet of water after squeezing head first through an 18-inch-wide sewer grate to retrieve his car keys.

Seventh Place: A 49-year-old San Francisco stockbroker, who "totally zoned when he ran," accidentally jogged off a 100-foot high cliff on his daily run.

Sixth Place: While at the beach, Daniel Jones, 21, dug an 8 foot hole for protection from the wind and had been sitting in a beach chair at the bottom when it collapsed, burying him beneath 5 feet of sand. People on the beach used their hands and shovels trying to get him out but could not reach him. It took rescue workers using heavy equipment almost an hour to free him. Jones was pronounced dead at a hospital.

Fifth Place: A 24 year old was killed as he fell through the ceiling of a bicycle shop he was burglarizing. Death was caused when the long flashlight he had placed in his mouth to keep his hands free rammed into the base of his skull as he hit the floor.

Fourth Place: After stepping around a marked police car parked at the front door, a man walked into a firearms store intent on robbing it. The shop was full of customers and a uniformed officer was standing at the counter. Upon seeing the officer, the would-be robber announced a hold-up and fired a few wild shots from a target pistol. The officer and a clerk promptly returned fire, and several customers also drew their guns and fired. The robber was pronounced dead at the scene by paramedics. Crime scene investigators located 47 expended cartridge cases in the shop. The autopsy revealed 23 gunshot

wounds. Ballistics identified rounds from 7 different weapons.

Third Place: Paul Stiller, 47, and his wife Bonnie were bored just driving around at 2 A.M. so they lit a quarter stick of dynamite to toss out the window to see what would happen. Apparently they failed to notice the window was closed.

RUNNER UP: Kerry Bingham had been drinking with several friends when one said they knew a person who had bungee-jumped from a local bridge in the middle of traffic. The conversation grew more heated and they trooped along the walkway of the bridge at 4:30 AM. Upon arrival they discovered that no one had brought a bungee rope. Bingham, who had continued drinking, volunteered and pointed out that a coil of lineman's cable lay near by. They secured one end around Bingham's leg and the tied the other to the bridge. His fall lasted 40 feet before the cable tightened and tore his foot off at the ankle. He miraculously survived his fall into the icy water and was rescued by two nearby fishermen. Bingham's foot was never located.

AND THE WINNER IS...Zookeeper Friedrich Riesfeldt fed his constipated elephant 22 doses of animal laxative and more than a bushel of berries, figs and prunes before the plugged-up pachyderm finally got relief. Investigators say ill-fated Friedrich, 46, was attempting to give the ailing elephant an olive oil enema when the relieved beast unloaded. The sheer force of the elephant's unexpected defecation knocked Mr. Riesfeldt to the ground where he struck his head on a rock as the elephant continued to evacuate 200 pounds of dung on top of him. It seems to be just one of those freak accidents that proves..."S**t Happens!"

FROM THE PRESIDENT

By W. Simmons Sandoz

Our luncheon with the Judge took place at Don's (Downtown) on Friday, June 15, 2007, at noon. Our corporate sponsor for the event was Deadbeat Publishing Company. Our sponsor was promoting its latest publication entitled "Debtors-Street Language of Bankruptcy." This reference book is "a must" for all bankruptcy practitioners. For detailed information on our corporate sponsor's publication, see in the newsletter, "And now a word from our sponsor."

BANKRUPTCY WORKING GROUP (BWG)

Our discussion centered around the BWG meeting which took place on May 10, 2007. The items that were discussed were the adequate protection order, stipulation regarding 910 vehicles, pre-hearing court announcements, the website, motions to extend stay (particularly notice issues and attachments to the motion), care program, motions for relief from stay or confirmation order, tax issues in Chapter 13 hearings, net settlement proceeds in Chapter 13, post-confirmation attorney's fees, and motions to determine that mortgage payments are current.

The minutes of the BWG for May 10, 2007, are as follows:

THE BANKRUPTCY WORKING GROUP (BWG)

MINUTES OF MEETING HELD ON THURSDAY, MAY 10, 2007

JUDGE ROBERT SUMMERHAYS' CHAMBER

Present: Judge Robert Summerhays, Alice Dukes, Keith Rodriguez, Fred Rogers, Jerry Breaux, Tom Thompson, Rick Keating, Greg DeKeyzer, Ham Chauvin, Lisa Thomas, Betsy Andrus and Sim Sandoz

The items on the agenda and discussions were:

Adequate Protection Order

The final approval was given for the Adequate Protection Order form. Copies will be distributed to the members of the Bar.

910 Vehicle Hearing - Proposed Stipulation

The stipulation has been approved and will be

distributed to the members of the Bar.

Pre-Hearing Court Announcements

The pre-hearing court announcements with regard to the denial of plan, the filing of an amended plan by a certain date, and a new hearing date being given must be discussed with Keith or Ham prior to the Chapter 13 hearings. The issue of who must be noticed must be likewise discussed with them.

Website

Alice is continuing to work on the website for the Bankruptcy Bar Association and will continue to update us as to its progresses.

Motions to Extend Stay - Notice Issues- Attachments to Motion

11 USC 362 requires a motion to extend stay must be heard within thirty (30) days of the filing of the new case where there has been a pending case within the year and a subsequent case is filed. A poll has been taken among debtors' counsel to determine the notice practice. Some attorneys, based on Judge Schiff's prior ruling, do not file a motion to extend stay if creditors do not take action. Other counsel send notice to the home mortgage holder only, others send notice to all secured creditors and a fourth group send notice to all creditors on the mailing matrix. Because of the conflicting jurisprudence, the group concluded that until Judge Summerhays rules on this matter, it is prudent to notice all creditors in each instance.

Judge Summerhays stressed the importance of the debtor being present at the initial hearing. Because the hearing must be scheduled and conducted within thirty day of the date of the bankruptcy filing, it is absolute necessary for the debtor to be present. If, however, circumstances arise where the debtor cannot appear, it is suggested that an affidavit be attached to the Motion to Extend executed by the Debtor. The Judge made it very clear that the affidavit is not to be used in lieu of the debtor appearing, but only in unusual circumstances. If the motion to extend is contested, the debtor must appear. The better procedure would be to file the affidavit with the motion in all circumstances.

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Care Program

This program is to educate high school and college students regarding sound financial practices and to protect against credit card abuse. There is a power point presentation available, and we are seeking volunteer speakers. This matter will be reviewed in the fall when school commences.

Motions for Relief from Stay or Confirmation Order

In the circumstance where there has been no motion to extend the stay and the thirty (30) days have passed, the Code appears to indicate that no stay exists. If the plan is confirmed in this instance, there is no automatic stay and an injunction may arise as a result of the confirmation order. Should the debtor default in the terms of the confirmation order or default in direct payments to secured creditors, the question becomes: "What type of motion does the creditor file to foreclose upon the collateral?" It appears that a Motion to Lift Stay is inappropriate if there is no stay in existence. Does the creditor file a motion for relief from the confirmation order? While this issue has not been resolved, it appears to be a significant issue that will have to be dealt with eventually.

Tax Issues Reviewed in Chapter 13 Hearings

Tom Thompson discussed the notice requirements of Bankruptcy Rules 2002(j), 9007, 9014 and 7004(b)(4) as well as the local rule requirements for no-

tice. He also discussed the non-dischargeability of employer's portion of withholdings as well as the treatment of penalties and interest in an IRS proof of claim.

Net Settlement Proceeds

When the debtor has a personal injury or workers compensation claim that is property of the estate, one of the issues is whether it is appropriate to divide the proceeds between the Trustee and the Debtor. It may be appropriate to consider a division of the proceeds between the debtor and the trustee because the proceeds may include lost wages. In addition, it will encourage assistance from the debtor in settling the claim. These issues should be dealt with on a per case basis. It is suggested that debtor's counsel discuss this matter with the Trustee prior to noticing out a proposed settlement.

Motion to Determine that Mortgage Payments are Current

One of the problems that debtors have experienced after the case is closed, is that the mortgage company takes the position that the mortgage payments are not current. Once this happens, the attorney for debtor must reopen the case to request an accounting for purposes of determining what payments are delinquent. It was suggested that toward the end of the case a Rule to Show Cause should be filed to determine any delinquent obligations including late charges, escrow shortages, interest, attorney fees or any other obligation under the mortgage.

WORDS WOMEN USE

- 1.) Fine: This is the word women use to end an argument when they are right and you need to shut up.
- 2.) Five Minutes: If she is getting dressed, this means a half an hour. Five minutes are only five minutes if you have just been given five more minutes to watch the game before helping around the house.
- 3.) Nothing: This is the calm before the storm. This means something, and you should be on your toes. Arguments that begin with nothing usually end in fine.
- 4.) Go Ahead: This is a dare, not permission. Don't Do It!
- 5.) Loud Sigh: This is actually a word, but is a non-verbal statement often misunderstood by men. A loud sigh means she thinks you are an idiot and wonders why she is wasting her time standing here and arguing with you about nothing. (Refer back to #3 for the meaning of nothing.)
- 6.) That's Okay: This is one of the most dangerous statements a woman can make to a man. That's okay means she wants to think long and hard before deciding how and when you will pay for your mistake.
- 7.) Thanks: A woman is thanking you, do not question, or Faint. Just say you're welcome.
- 8.) Whatever: Is a women's way of saying F%*K YOU!
- 9.) Don't worry about it, I got it: Another dangerous statement, meaning this is something that a woman has told a man to do several times, but is now doing it herself. This will later result in a man asking "What's wrong?" For the woman's response refer to #3.

AND NOW A WORD FROM OUR SPONSOR:

Our sponsor is Americans for Debtors' Rights and for a Protective Environment. The Constitution, particularly the Bill of Rights, has given certain protection to United States citizens. The Fifth Amendment and the case law has expanded citizens' rights, particularly with the Maranda warnings (i.e. the right to remain silent, etc.). In antiquity, the ancient Babylonian King gave us the Code of Hammurabi. In Bankruptcy Court, Debtors have certain rights as enumerated in the Code of Ham-U-Rob-Me.

These rights are:

1. You do not have the right to remain silent.
2. Anything you say can and will be used against you - Repeatedly.
3. You have the right to have an attorney present - even an incompetent one.
4. If you can't afford an attorney, one will not be appointed for you. Who knows you may be better off.
5. You have the right to be HAMMERIZED.
6. After you have been hammered, you have the right to make one phone call.

For more information and a free brochure about Debtors' rights and the Code of Ham-U-Rob-Me, call toll free 1-800-GET-HAMMERIZED.

AMAZINGLY SIMPLY HOME REMEDIES

1. If you are choking on an ice cube simply pour a cup of boiling water down your throat. Presto! The blockage will instantly remove itself.
 2. Avoid cutting yourself slicing vegetables by getting someone else to hold while you chop.
 3. Avoid arguments with the Mrs. about lifting the toilet seat by using the sink.
 4. For high blood pressure sufferers: simply cut yourself and bleed for a few minutes, thus reducing the pressure in your veins. Remember to use a timer.
 5. A mouse trap, placed on top of your alarm clock, will prevent you from rolling over and going back to sleep after you hit the snooze button.
 6. If you have a bad cough, take a large dose of laxatives, then you will be afraid to cough.
 7. You only need two tools in life - WD-40 and Duct Tape. If it doesn't move and should, use the WD-40. If it shouldn't move and does, use the duct tape.
 8. Remember: Everyone seems normal until you get to know them.
- Daily Thought: SOME PEOPLE ARE LIKE SLINKIES. NOT REALLY GOOD FOR ANYTHING BUT THEY BRING A SMILE TO YOUR FACE WHEN PUSHED DOWN THE STAIRS

NOTEWORTHY TOMBSTONES

Harry Edsel Smith of Albany, New York:

Born 1903--Died 1942.

Looked up the elevator shaft to see if the car was on the way
down. It was.

=====

In a Thurmont, Maryland , cemetery:

Here lies an Atheist, all dressed up and no place to go.

=====

On the grave of Ezekial Aikle in East Dalhousie Cemetery ,
Nova Scotia :

Here lies Ezekial Aikle, Age 102. Only The Good Die Young.

=====

In a London , England cemetery:

Here lies Ann Mann, Who lived an old maid but died an old
Mann. Dec. 8, 1767

=====

In a Ribbesford, England , cemetery:

Anna Wallace

The children of Israel wanted bread, And the Lord sent them
manna.

Clark Wallace wanted a wife, And the Devil sent him Anna.

=====

In a Ruidoso, New Mexico , cemetery:

Here lies Johnny Yeast... Pardon me for not rising.

=====

In a Uniontown, Pennsylvania , cemetery:

Here lies the body of Jonathan Blake.

Stepped on the gas instead of the brake.

=====

In a Silver City, Nevada, cemetery:

Here lays The Kid.

We planted him raw.

He was quick on the trigger

But slow on the draw.

A lawyer's epitaph in England :

Sir John Strange.

Here lies an honest lawyer,

and that is Strange.

=====

John Penny's epitaph in the Wimborne, England , cemetery:

Reader, if cash thou art in want of any,

Dig 6 feet deep and thou wilt find a Penny.

=====

In a cemetery in Hartscombe , England :

On the 22nd of June, Jonathan Fiddle went out of tune.

=====

Anna Hopewell's grave in Enosburg Falls , Vermont :

Here lies the body of our Anna,

Done to death by a banana.

It wasn't the fruit that laid her low,

But the skin of the thing that made her go.

=====

On a grave from the 1880s in Nantucket , Massachusetts:

Under the sod and under the trees,

Lies the body of Jonathan Pease.

He is not here, there's only the pod.

Pease shelled out and went to God.

=====

In a cemetery in England :

Remember man, as you walk by,

As you are now, so once was I

As I am now, so shall you be.

Remember this and follow me.

To which someone replied by writing on the tombstone:

To follow you I'll not consent ...

Until I know which way you went.