

Bankruptcy In Brief

News from the Bankruptcy Court

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STUFF ABOUT CHAPTER 13

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I imagine this Newsletter will be published some time between Thanksgiving and Christmas. This is my favorite time of the year - not because of all of the wonderful traffic heading towards the Southwest side of town at 5:00 in the afternoon but because for a couple of weeks out of the year, everyone's work pace seems to slow down. Certainly, for much of the time people are breaking their necks trying to get work out and meet deadlines before the end of the year but there is that portion of the period when the phone seems to ring less; there are fewer emails and we are not required to sit at our desks for quite so long. But then, as soon as the first of the year rolls around with all of our new goals set we move back into the left lane and scream through the day at 70+ miles per hour. That said, and knowing that everyone is very busy, I wanted to talk about something that will probably require a bit more work but will, hopefully, yield very positive results in the long run.

As most of you are aware, our focus has been centered on mortgage payments for the last several months. In fact, at our last Working Group meeting, it was the only topic on the agenda (other than warning your clients about wearing linguistically challenged t-shirts to Court). When the idea was first discussed about making the home mortgage payment through the Trustee, the initial purpose

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Attorney Fees

The court has increased the level of no-look chapter 13 attorney fees to \$2,700. This fee will apply in all newly filed chapter 13 cases regardless of whether the debtors are above or below median income. These fees include all actions through confirmation. As always, if counsel believes that a case is not a normal case, fees in excess of the no-look fee can be sought by filing a fee application with notice and hearing.



SLBBA Christmas Party

The Southwest Louisiana Bankruptcy Bar Association will hold its annual Christmas Party on Friday, December 12, 2008. The party will be held at Catahoula's, 530 W. Pinhook, from 6 to 9 p.m. Dinner will be \$25 per person and there will be a cash bar. Entertainment (and we use that term loosely) will be provided. Please plan to attend.

For Your Information

Deadline for Articles

Anyone wishing to submit articles or jokes for inclusion in the January newsletter should have the articles to me no later than January 9, 2009.

Lunch with the Judge

Friday, January 16, 2009, at noon at Don's Downtown
(topic—best practices)

WWW.SLBBA.COM

The website for the Southwest Bankruptcy Bar Association is up and running. It has been updated and will continue to be updated. We are currently working on a trustee's sales page which will allow the trustees to post a list of items which they are currently attempting to liquidate. That page should be up by January. Also, prior versions of Bankruptcy in Brief are on the site and new issues will be placed there when published.

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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seemed to be to lighten the lift stay docket and avoid so many continued hearings because neither party could come up with the documentary evidence necessary to resolve the issue. Since the Trustee's record keeping is much better than most debtors, it seemed to be a natural outflow and should be made a regular part of the Trustee's payment process. In fact, over the two and one half years that we have now been pushing for home mortgages through the plans, our records seem to indicate very regular receipt and disbursement of these payments. There are still a few glitches but these can be worked out with appropriate plan language. If we all remember that the goal is to not only have all arrearages paid by the completion of the plan but also to have the mortgage payment not only current but to not have increased by virtue of various charges and assessments for late payments, attorney fees, etc. which we know can often add several thousand dollars to the pay off. Then the extra work required will certainly fill a need.

In an effort to try and resolve the problem, we have begun the process of seeking motions for accounting and are working towards a method of having information provided which is easily readable by the debtor, his counsel (and particularly, the Trustee) to determine when payments were received; the month to which the payment was applied; the amounts paid to principal, interest and escrow; any payments which may come out of escrow to pay for insurance and taxes; and any charges which may have been applied to the account. This has been much more easy to say than to do. The good news, however, is that in reviewing a dozen or so cases dating back thirty months (February, March, April, and May of 2005) we have found that in all of those cases the debtors have only missed a total of about eight payments. The regularity of receiving and disbursing the payments has been remarkable. However, the one area in the whole process that could be improved upon for the of benefit of all parties deals with the plan language.

We have worked for a while (and successfully) in getting the attorneys to specify the month to which the first Trustee home mortgage disbursement is to be applied and to be equally as specific in the various months included in the pre (and post) petition arrears. This is extremely important because in one of the first cases we reviewed in our motion for accounting, there was no such language and although the debtor was perfectly current with the Trustee through nearly forty months of plan payments, he was still three months behind. The case was filed on August 7, 2005, the due date on the mortgage was the 20th of the month. Consequently, without any restrictive language, the creditor was correct in applying the first payment disbursed to the August 20 payment. The plan was finally confirmed in December and in January we disbursed all of the money we received in September, October, November and December. However, those payments were applied to August, September, October and November. The debtor was two months behind then and has remained two months behind throughout the course of the case. At this point, we still have not determined whether or not late charges have been applied to this account.

Of equal importance should be plan language restricting the servicers ability to assess various charges to the account such as late payments; forced placed insurance; attorney fees; etc. without seeking court approval. Judge Summerhays has taken the position (and he is correct) that he will not put forth any local rule which would require Court approval before assessing such charges. However, there is no restriction on placing such language in the plan. Only with the right language will the pertinent issues ever present themselves before the Court for review, argument and a decision. This is the only way to properly protect debtors and to properly put creditors on notice of how your clients expect to be treated during the Chapter 13. Only then will we be able to know that debtors are truly "current" at the conclusion of a case.

TALK TO YOU LATER!!!!!!!!!!!!!!

Best Practices Luncheon

The SLBBA will be having a Lunch with the Judge on Friday, January 16, 2009. The focus of the luncheon will be sharing best practices. We're hoping to have a good turnout so that everyone can share their practices and procedures on a variety of issues. So if you have a particular issue that you are wondering how other lawyers handle, you should plan to attend on January 16.

Pun Intended

1. The roundest knight at King Arthur's round table was Sir Cumference. He acquired his size from too much pi.
2. I thought I saw an eye doctor on an Alaskan island, but it turned out to be an optical Aleutian.
3. She was only a whisky maker, but he loved her still.
4. A rubber band pistol was confiscated from algebra class because it was a weapon of math disruption.
5. The butcher backed into the meat grinder and got a little behind in his work.
6. No matter how much you push the envelope, it'll still be stationery.
7. A dog gave birth to puppies near the road and was cited for littering.
8. A grenade thrown into a kitchen in France would result in Linoleum Blownapart.
9. Two silk worms had a race. They ended up in a tie.
10. Time flies like an arrow. Fruit flies like a banana.
11. A hole has been found in the nudist camp wall. he police are looking into it.
12. Atheism is a non-prophet organization.
13. Two hats were hanging on a hat rack in the hallway. One hat said to the other, 'You stay here, I'll go on a head.'
14. I wondered why the baseball kept getting bigger. Then it hit me.
15. A small boy swallowed some coins and was taken to a hospital. When his grandmother telephoned to ask how he was, a nurse said, 'No change yet.'
16. The short fortune-teller who escaped from prison was a small medium at large.
17. The man who survived mustard gas and pepper spray is now a seasoned veteran.
18. A backward poet writes inverse.
19. In democracy it's your vote that counts. In feudalism it's your count that votes.
20. When cannibals ate a missionary, they got a taste of religion.
21. Don't join dangerous cults: Practice safe sects!

A Washington, DC airport ticket agent offers some examples of why our country is in trouble!

1. I had a New Hampshire Congresswoman ask for an aisle seat so that her hair wouldn't get messed up by being near the window.

2. I got a call from a candidate's staffer, who wanted to go to Capetown. I started to explain the length of the flight and the passport information, then she interrupted me with, "I'm not trying to make you look stupid, but Capetown is in Massachusetts." Without trying to make her look stupid, I calmly explained, "Cape Cod is in Massachusetts; Capetown is in Africa." Her response - click.

3. A senior Vermont Congressman called, furious about a Florida package we did. I asked what was wrong with the vacation in Orlando. He said he was expecting an ocean-view room. I tried to explain that's not possible, since Orlando is in the middle of the state. He replied, "Don't lie to me, I looked on the map and Florida is a very thin state!"

4. I got a call from a lawmaker's wife who asked, "Is it possible to see England from Canada?" I said, "No." She said, "But they look so close on the map."

5. An aide for a cabinet member once called and asked if he could rent a car in Dallas. When I pulled up the reservation, I noticed he had only a 1-hour layover in Dallas. When I asked him why he wanted to rent a car, he said, "I heard Dallas was a big airport, and we will need a car to drive between gates to save time."

6. An Illinois Congresswoman called last week. She needed to know how it was possible that her flight from Detroit left at 8:30 am and got to Chicago at 8:33 am. I explained that Michigan was an hour ahead of Illinois, but she couldn't understand the concept of time zones. Finally, I told her the plane went fast, and she bought that.

7. A New York lawmaker called and asked, "Do airlines put your physical description on your bag so they know whose luggage belongs to whom?" I said, "No, why do

you ask?" She replied, "Well, when I checked in with the airline, they put a tag on my luggage that said (FAT), and I'm overweight. I think that's very rude!" After putting her on hold for a minute while I looked into it (I was laughing, I came back and explained the city code for Fresno, CA is (FAT), and the airline was just putting a destination tag on her luggage.

8. I just got off the phone with a freshman Congressman who asked, "How do I know which plane to get on?" I asked him what exactly he meant, to which he replied, "I was told my flight number is 823, but none of these planes have numbers on them."

9. A lady Senator called and said, "I need to fly to Pepsi-Cola, Florida. Do I have to get on one of those little computer planes?" I asked if she meant fly to Pensacola, Fl. on a commuter plane. She said, "Yeah, whatever, smarty!"

10. A senior senator called and had a question about the documents he needed in order to fly to China. After a lengthy discussion about passports, I reminded him that he needed a visa. "Oh, no I don't. I've been to China many times and never had to have one of those." I double checked and sure enough, his stay required a visa. When I told him this he said, "Look, I've been to China four times, and every time they have accepted my American Express!"

11. A New Mexico Congresswoman called to make reservations, "I want to go from Chicago to Rhino, New York." I was at a loss for words. Finally, I said, "Are you sure that's the name of the town?" "Yes, what flights do you have?" replied the lady. After some searching, I came back with, "I'm sorry, ma'am, I've looked up every airport code in the country and can't find a Rhino anywhere." The lady retorted, "Oh, don't be silly! Everyone knows where it is. Check your map!" So I scoured a map of the state of New York and finally offered, "You don't mean Buffalo, do you?" The reply? "Whatever! I knew it was a big animal."