

Bankruptcy In Brief

News from the Bankruptcy Court

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

Volume 96

April 21, 2010

STUFF ABOUT CHAPTER 13

BY: Keith A. Rodriguez

As anyone who listens to the news even once a week knows, the economy is not in the greatest shape. We know that unemployment appears to be highest in the manufacturing states (of which Louisiana is not one). However, we are also seeing signs of a contraction in the oil industry and a slow down in this part of the state. I say this because I can't imagine any other reason for the incredible increase in consumer bankruptcy filings we have seen over the last 6 months.

Since the change in the law in 2005 I consider 125 new cases filed in a month to be very high. In fact, in October, 2008 we had 127 new cases filed which is the highest month we've had since the law changed. Thereafter, the filings were pretty normal (considering the lower filings during December through February). However, beginning in June the filings began to go through the roof.

In June 144 new cases were filed; in July 159; in August 141 and in September 168. For the fiscal year which ended September 30 we had 1,449 new cases filed - an increase of 360 over the prior year and an average of nearly 121 cases a month.

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Join Us on Facebook

The SLBBA is now on Facebook. I have created a group in Facebook to allow members to interact and follow events. We still have our website but the Facebook page will allow me to easily post upcoming events and email members as well as allowing members to post questions to other members and exchange information. In order to take advantage of this, you need to join Facebook and join the group. If you have any questions, let me know. It is important that you all join the group so even if you are opposed to the whole concept of Facebook (Mr. Chauvin!), you can still join and create a private profile and reject any friend requests from those pesky friends and relatives from your past.

Lunch with the Judge

The next Lunch with the Judge will be held on Friday, April 30, 2010. The main topic of discussion will be the new procedures regarding attorney fees in chapter 13 cases. The lunch will be held at Don's Downtown at noon. No RSVP is necessary but please try to attend.

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 10, 2010.

Lunch with the Judge

Friday, April 30, 2010, Don's Downtown at noon

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. Also, prior versions of Bankruptcy in Brief are on the site and new issues will be placed there when published.

A Call for Jokes

Everyone knows that you read this newsletter mostly for it's jokes. I need more jokes — so send me your jokes, your tired, your poor, your huddled masses yearning to breathe free....oh wait, those are your clients, I take that back, just send the jokes!

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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We began the new fiscal year with a bang with 171 cases filed in October and 150 filed in November, 2009. Considering that most of the work this office has to do is at the inception of any new case, you can only imagine how busy we have been for the six months. I hope to add a couple of full time people to the staff over the next few months so that we can better handle this case load.

At the same time that we have been experiencing this increase in filings we have also been getting deeper into filing Motions For Accounting for those cases which are approximately 30 months old. We are working our way through this process in hopes that over the next several months both this office and those creditors/servicers will come to a place where we can have the appropriate information provided to us in a readable and understandable format. One thing that has been noticed throughout this process is that those cases which include a home mortgage have made plan payments on a very regular basis. The vast majority of cases involving mortgage creditors are no more than one or two months delinquent even after 30 months in bankruptcy. Further, debtors' counsel are, for the most part, doing the extra work necessary to enable all parties to discern those months which are delinquent and a good starting time for mortgage payments.

BEST PRACTICES: SUGGESTED PLAN LANGUAGE

The following language is suggested in a Chapter 13 plan where there is a home mortgage. While this language is not required, nor approved by the court, the use of this language will be helpful in determining that all payments have been appropriately credited to either ongoing mortgage payments or the arrearages. In this way, debtors will have the best opportunity of knowing the actual mortgage balance at discharge and the ability to see if any unnecessary or unwarranted costs or charges have been added to that balance. It is further suggested that this language should be incorporated in the appropriate section of the Chapter 13 plan so that it will not appear to be simply "boiler-plate" language and therefore have no real significance in the particular Chapter 13 case.

Suggested Language:

XXX Mortgage Co holds a first mortgage on the debtors residence. The on-going regular monthly payment of \$\$\$ is included in the plan payment. Trustee shall remit regular monthly on-going payments commencing with the April 2010 payment. On-going regular monthly payments shall only be applied to on-going regular monthly payments and shall not

be applied to in arrearages pursuant to 11 USC 524(I). The mortgage payment includes (does not include) escrow for taxes and insurance.

Arrearages to the following named lienholders shall be paid in installments from funds available for distribution monthly, non-cumulative. Installments shall begin subsequent to payment of the administrative claims listed in paragraph 2(a) above and shall be sufficient to pay in full the arrearages upon completion of the plan:

XXX Mortgage Co— Pre Petition \$\$\$

Post Petition \$\$\$ - specify month.

Arrearage payments shall only be applied to the arrearages and not applied to the on-going regular monthly payments pursuant to 11 USC 524(I).

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A Word (or Two) from Our President

By: W. Simmons Sandoz

The Southwest Louisiana Bankruptcy Bar Association's Annual Christmas Party took place at Don's Downtown on December 11, 2009. Our group has a reputation of causing local eateries to permanently cease operation after our social functions. The obituary list includes such local favorites as Lafayette's and Catahoula's. However, Don's, with its 75 year history, survived our onslaught and continues business operations. We have failed in our mission to cause another business to close. In spite of our failure, we hope to book Don's again next year and start a new string of restaurant failures.

Our theme was "A Night at the Oscars" featuring award winners in several categories

In Best Special Effects in Animated Film

The winners were:

- 1) The elderly debtor who slept through debtor education, but his chattering teeth did not.
- 2) The stunning performance of Gregory DeKeyser, where his lips were moving, but nothing cogent came out.
- 3) The disappearing act of several lawyers when their case was called during Chapter 13 hearings.

In Best Documentary with Worthless Topic

The award went to:

The Good, the Bad and the Ugly

This documentary focuses on a typical Chapter 7 day with Rick Keating, Greg DeKeyser and Sim Sandoz. This film explores lack of preparation, total disregard for the welfare of clients and exposes bumbling idiocy. In the end, you are left to decide who is good, who is bad and who is ugly.

Best Actor Award:

The winner for best performance by an actor in a featured film was Hamilton J. Chauvin in:

THE TERMINATOR

This story begins with a strange being from another planet who comes to earth and becomes the attorney for the Chapter 13 Trustee. His sole mission on earth is to deny confirmation and terminate all Chapter 13 filings as well as Chapter 13 debtors.

Best Actress:

The winner for best performance by an actress in a featured film was Alice Dukes in:

ONE FLEW OVER THE CUCKOO'S NEST

Alice Dukes turns in a sterling performance

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as nurse “hatchet” running roughshod over the beligerent and rule breaking Debtors’ attorneys on Chapter 13 day. In the end, Nurse “Hatchet” suggests that all debtors’ attorneys receive a lobotomy with that portion of their brains donated to creditor’s counsel.

Best Director:

Fred Rogers was the winner for:

SCUM AND SCUMMIER

The story of three scumbag lawyers who are totally devoid of ethics, professionalism and morals. They will do anything for a buck - particularly if it is in cash. They will represent debtors, creditors or anyone else who has cash in their pockets.

Best Costume:

Kevin Payne was the winner for:

ELF

The film is about a misguided, card carrying member of the actors guild, who is under the misconception that he is actually one of santa’s elves. He is continually seen wearing his elf outfit in public. He has been stopped by several police officers on many occasions. His job requires that he do bad things, but he really would like to do good. He constantly fights with his mental illness.

Best Screenplay:

The winner for best screenplay in a featured film was D. Patrick Keating for:

I’M-A-HO

A remake of the Sir Walter Scott story of “Ivanhoe”. The setting is Medieval England where there are very few attorneys. All honorable barristers have gone off to fight in the crusades. I’m-A-Ho is 4th generation lawyer who represents in the same case, the debtor, the creditor, as well as the Trustee, and naturally gets paid in cash by all three sides. W. Simmons Sandoz stars as the confused I’m-A-Ho who never met a conflict he did not like.

Bob was in trouble. He forgot his wedding anniversary. His wife was really pissed.

She told him "Tomorrow morning, I expect to find a gift in the driveway that goes from 0 to 200 in 6 seconds AND IT BETTER BE THERE !!"

The next morning he got up early and left for work. When his wife woke up, she looked out the window and sure enough there was a box gift-wrapped in the middle of the driveway.

Confused, the wife put on her robe and ran out to the driveway, brought the box back in the house.

She opened it and found a brand new bathroom scale.

Bob has been missing since Friday.

Suggested Plan Language continued from page 3

E. Confirmation of the plan shall impose an affirmative duty on the holders and/or the servicers of any claims secured by liens, mortgages and/or deeds of trust on the principal residence of the Debtors to do all of the following:

(1) To deem the mortgage contractually current as of the filing of this bankruptcy for the purpose of accounting for post petition payments. This is subject to and contingent on successful completion of mortgage cure payments and regular monthly mortgage payments under the plan. And will preclude the imposition of late charges or other default related fees, charges or costs based solely on prepetition default.

(2) To apply the “on-going” post-petition monthly mortgage payments paid by the trustee or by the debtors to the month in which each payment was designated to be made under the plan. The payments shall be applied only to the on-going monthly mortgage payments as designated, and to interest, principal and escrow only. Any post-petition monthly payments that may accrue between filing and the beginning month stated shall be treated as a post-petition arrearage. Any additional post-petition charges or assessments, (other than principal, interest, insurance and taxes), including, but not limited to miscellaneous costs, expenses, assessments, or

other charges which increase Debtor’s liability to the creditor, must be approved by the Court prior to being assessed to, charged to, or otherwise added to Debtor(s) account.

(3) To apply the payments received from the trustee on the pre-petition arrearages, if any, only to such arrearages. For purposes of this plan, the “pre-petition” arrears shall include all sums included in the “allowed” proof of claim and shall have a “0” balance upon entry of the Discharge Order in this case.

(4) Should there be a adjustment to the monthly note payment amount, the secured creditor must comply with Local Bankruptcy Rule 3002-1.

(5) If the debtors pay the cure amount specified in the plan or in such lesser amount as may be established by the creditors proof of claim, while timely making all required post-petition payments, the mortgage will be reinstated according to its original terms, extinguishing any right of the holder to recover any amount alleged to have arisen prior to the filing of petition. At the conclusion of the plan, any remaining indebtedness will continue until paid in full.

Time to Pay Dues

It’s time to pay SLBBA dues for 2010. I’m attaching an application to the newsletter for submission. Please complete all information even if your information hasn’t changed. I have a new data system that I’ll be adding everyone to so please don’t leave any blanks.