NACTT QUARTERLY
OFFICIAL PUBLICATION OF THE NATIONAL ASSOCIATION OF CHAPTER 13 TRUSTEES
www.NACTT.com
JANUARY/FEBRUARY/MARCH 2018

Even Creditors Can Benefit from Debtors' Chapter 13 Bankruptcy Filings

As a Chapter 13 Bankruptcy Trustee, your operation is a highly sophisticated and technical office environment, processing multiple computer transactions. With Bankruptcy Software Specialists working as your partner, you are not alone. We are steadfastly committed to addressing the challenges faced by Chapter 13 Trustees. From start to finish, we provide the tools you need, supported by dedicated and caring professionals.

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NACTT QUARTERLY
Official Publication Of The National Association of Chapter 13 Trustees

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Word From Washington - EOUST

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All NACTT members should view the *Quarterly* in its ***new digital format***. You will be asked in the near future if you want to continue receiving a published printed copy or prefer to receive an electronic copy. **To view the Quarterly in the digital flip page format, log into the members only area on www.NACTT.com.**

NACTT Quarterly (ISSN 10458972) is published quarterly by the National Association of Chapter 13 Trustees, One Windsor Cove, Suite 305, Columbia, SC 29223. Subscription fee of $25.00 is by membership only and is included in the annual membership fee. Periodicals postage paid at Columbia, SC and additional mailing office. Material appearing herein, including editorial comment, represents the views of the respective authors and does not necessarily carry the endorsement of the National Association of Chapter 13 Trustees.

President's Message

Joyce Bradley Babin
NACTT President
Chapter 13 Trustee
Little Rock, AR

I come from a jurisdiction that never had a prescribed form plan. A jurisdiction without a form plan may come as a surprise to many. Sure, we had some "suggested plan forms," but as far as practitioners in my districts were concerned, we all survived quite nicely over the years. As with all, or most all, other trustees and courts across the country, we now are practicing with National Plan Forms and Local Plan Forms. We are encountering the transitions necessitated by new plans.

We will all have a story to tell. My story is below, told with a loosely based nod to another famous transition made a few years ago by *The Fresh Prince of Bel Air*.[1]

So, here goes our journey…

Now this is the story all about how the Chapter 13 World got flipped, turned all around.

I'd like to take a minute; just sit right down;

And I'll tell you how a new Form Plan came to town.

In Chapter 13, I was born and raised.

1301, *et seq.*, spending most of my days.

Examining, objecting, administering away.

Giving out money from the unsecured pool.

When a couple of guys, they were up to some good,

Went to the Rules Committee; gave us a new tool.

The Committee started talking about a National Form Plan.

With a Rule Thirty Fifteen to be used across all the land.

"The National Form Plan will allow for more consistency."

"Provisions all the same; where would there be resistancy?"

Special sections and boxes, valuations and lien avoidance, too.

Practitioners said, "My goodness, whatever are we to do?"

"We like it!" We don't!" "We have OUR OWN PLAN already!" sounded the masses.

If it's all the same to you, the Rule Committee was told, many of us will take passes.

Back to the drafting board, the Committee reacted.

Makin' more Rules and Form Plan parameters more attractive.

More heads got together and decided they were done.

A new rule was added – and named Thirty Fifteen Point One.

Most of the land became pretty happy.

Jurisdictions now keep their beloved plans so snappy.

The National Form Plan also could stay – most all gave a clappy.

With Thirty Fifteen Point One, districts had an opt-out.

But the Rule itself reminded, there was no cop out.

Certain steps had to be taken; local rules you had to be makin'.

Only one Local Form for each district; check boxes galore;

Extra provisions in one special section; valuation specifications and more.

Have to come clean if you're avoiding a lien; no more cram down without making a sound.

What you do may be turned on end; use the same form if you want to amend.

With a nod to Oprah and her "favorite things,"

Across the country, Local Forms became final and sounds began to ring:

"You get a Plan!" "You get a Plan!" "You get a Plan!"

At last count, most districts had opted to their own Local Form.

A few mighty districts have held tight - the National Plan, they'll conform.

December One, and Ultimately Twenty Seventeen, became the date.

The new Form Plan implementation could no longer wait.

Our new favorite Plan Forms now have all gone live.

It shouldn't be shocking to see we've all survived.

We're from the Chapter 13 World after all, and we know what it takes.

Remember, we've survived BAPCPA, for goodness sakes.

Move on now from the plans, we've got new stories aplenty.

Revised Rules for claims and filing deadlines of seventy.

I'd tell you that story, but that's for another day.

Right here in my Bankruptcy Kingdom, that's where I'll stay.

Three Thousand Two and Point One- "(C) You Later!" ◉

Footnotes

[1] Written by Willard C. Smith, Jeffrey Townes, Copyright: Universal Music - Z Tunes LLC, Jazzy Jeff And Fresh Prince Publishing Co.

Let's Go Phishing

Thomas P. O'Hern
STACS Program Manager
for Jacob & Sundstrom

Contact
Please reach out to the STACS support team at *support@stacs.net* or 866-STACSNEt, if you would like to discuss questions or concerns prompted by this article.

I'm not talking about the Andy and Opie kind. For the millennials that's a reference to fishing with a pole and bait. I'm talking about the new Phish module on the STACS website so you can Phish like a hacker.

What is Phishing?

Phishing is a method of presenting an apparent trustworthy and valid request for information to someone in an attempt to solicit their sensitive or confidential information. We most commonly see phishing as an email request containing links to fake websites where the desired information can be collected. Phishing attacks can also be used to compromise computers by exploiting unpatched web browser vulnerabilities.

Phishing Season

Phishing attacks occur throughout the year around special and tragic events. Fund raising and donation sites are regularly exploited to collect financial accounts or directly solicit online funds.

But it's the end of year holidays that mark the prime phishing season. The massive increase in online shopping and related activities create an ideal environment for phishing. Online purchases, receipts, returns, confirmation requests, shipping notifications, shopping deals all make great phishing email templates. They contain links that are easily replaced to direct the recipient to fake webpages that look identical to the real online service.

What are they targeting?

Phishing attacks frequently target account access, personal and financial information including:

- Remote and online account login information: usernames, passwords, pin codes, and responses to security questions
- Personal information: SSN, DOB, Medical ID numbers, driver license numbers, or photocopies of these documents.
- Financial information: bank routing and account numbers, credit card and CCV numbers, online banking, payment and retail account services

So what is the Phish module?

Phish is a new module on the STACS website that allows you to upload a list of staff email accounts, select a phishing email template, and schedule a time to start phishing. You will get notified of your catch when it happens or you can review the results online.

Staff who are caught clicking on the link in the email are presented with a webpage informing them of the exercise and presented with phishing examples and additional guidance on how to spot, validate and avoid potential attacks in the future.

Secured WiFi on KRACK, Must Read!!!

The WiFi Protected Access 2 (WPA2) encryption protocol is the most widely used encryption to secure communications between wireless access points and the devices that connect to them. An attack called KRACK uses a vulnerability in how the encryption is required to work by the protocol standards. This means every wireless device that supports WPA2 is susceptible to this attack.

In lay terms, WPA2 secured wireless networks are not secure. Someone within physical range of the

wireless signal can capture and monitor the wireless network communications. More importantly, they can also get access to other computers and networks accessible through the wireless network.

Take for instance a large retailer who used wireless point of sales terminals. The wireless POS network at a local retail location was also connected to the corporate network. When hackers exploited this vulnerability to gain access to the POS network, they had an undetectable backdoor into the corporate network where they were able to gain access to servers and databases with customer financial data.

Who is at Risk?

Cellular or broadband wireless communications do not use WPA based encryption and are therefore not vulnerable. But, if you use WPA2 secured WiFi to connect to a mobile cellular hotspot (MiFi), the wireless device to hotspot communications are at risk, the hotspot to the cellular carrier are not.

There are hundreds of millions of secured wireless networks found in homes, offices, airports, hotels, and coffee shops across the globe and the phones, tablets, laptops, printers and computers that connect to them, are also susceptible. When you consider other uses of wireless communications for cameras, cars, appliances, point of sales terminals, security systems, and etc. you can quickly understand the broad impact of this vulnerability and the incomprehensible task to patch or upgrade all these devices.

Common end-user devices like phones, tablets, and laptops are more frequently and easier to update. Windows and Apple iOS devices have implemented modifications to the protocol and distributed them through regular updates to prevent this attack.

However, the problem is with wireless devices that are not frequently or easy to update such as a home or office wireless router, a smartphone, a security camera system, or a mobile MiFi hotspot device.

What is at Risk?

There are two major concerns with these attacks. One is the access to other networks and computers through the wireless network. The second is the access to normal network communications that don't use additional encryption like when you go to a website and use https:// with encryption, instead of http:// without encryption.

What do I need to do?

1. Consider all wireless networks as unsecured. The STACS and UST guidance on wireless use are based on this assumption and recommend the use of a separate Virtual Private Network (VPN) product to encrypt ALL network communications before they are transmitted over a wireless network. A correctly implemented and used VPN will protect you from all wireless and remote network vulnerabilities and attacks.
2. At the office, do not attach wireless access points to the internal network. Attach them to a firewall and require the use of a VPN to get access to the office network.
3. **CRITICALLY IMPORTANT:** Wireless routers used to connect physically separated groups to the internal office network need to be upgraded and patched for KRACK. If they cannot be patched for KRACK, they should be replaced as theses pose the greatest risk for the Trustee network.
4. At home wireless devices and access points should be upgraded. If your Internet provider manages your WiFi router, check with them to see if your device has been patch to prevent KRACK attacks.

Follow-up

The STACS Team is available to discuss and assist Trustees and their staff with the secure use of wireless technology. Please reach out to us at *support@stacs.net* or 866-782-2763 (866-STACSNEt) for assistance.

2018 Staff Symposium IT Track

When: May 17-18, 2018 in Baltimore, MD

Over the last 5 years, I've had the opportunity to work with some incredible members of the 13 community preparing and presenting technical materials for the NACTT Staff Symposium Information Technology (IT) track. This year is no different. We have Deb Smith from Al Russo's office returning and are adding Jim Smiley from Bill Miller's office and Harold Garcia from Melisa Davey's office. We also have a number of great hot topics to conquer this year which include:

- The increasing and future role of cloud computing
- Basic programming and scripting skills for admins
- Document sharing and collaboration solutions
- PII Data Management practices and techniques
- Automations through group policy by example

The track is intended for System Managers and therefore can be very technical at points. However each session will have a portion of general presentation and high level discussion followed by a technical deep dive on specific topics of interest with live demos where possible. ◉

THE NATIONAL ASSOCIATION OF CHAPTER 13 TRUSTEES

APPLICATION FOR ASSOCIATE MEMBERSHIP

The undersigned hereby applies for Associate Membership in the National Association of Chapter 13 Trustees. Associate membership dues of $150 include a subscription to the quarterly publication NACTT Quarterly, plus notice of all seminars and right to participate as a member, but does not include voting rights.

DUES OF $250 PER YEAR,

renewable annually, must accompany this application. Membership period is October 1 through September 30.

Name: _____ E-mail Address: _____

Address: _____ City, State, Zip: _____

Telphone: _____ Fax: _____

Please check applicable box:

❑ Attorney: _____ ❑ Creditor: _____

❑ Court Officer: _____

❑ Organization: _____ ❑ Other: _____

Date: _____ **Signature of Applicant:** _____

Mail check and application or address changes to NACTT Headquarters:

One Windsor Cove, Suite 305 • Columbia, SC 29223 • (800) 445-8629 • (803) 252-5646 • Fax (803) 765-0860

WELCOME NEW ASSOCIATE MEMBERS:

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Albuquerque, NM

Melissa J. Davey
Atlanta, GA

Andrew M. Dudley
Brunswick, ME

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Birmingham, AL

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Hollywood, FL

Brian V. Lee
Washington, DC

Ryan J. Really
Bonita Springs, FL

Jennifer R. Watkins
Indianapolis, AL

CALENDAR OF EVENTS

NACTT
2018 Mid Year Meeting
January 18 - 20, 2018
The Mayflower Renaissance, Washington, D.C.
Info: NACTT at (800) 445-8629, or visit NACTT at www.nactt.com, One Windsor Cove, Suite 305 Columbia, SC 29223

ABI - American Bankruptcy Institute
23rd Annual Rocky Mountain Bankruptcy Conference
January 25 - 26, 2018
Four Seasons Hotel, Denver, Colorado
Info: American Bankruptcy Institute, 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314, Tel. (703)-739-0800, Fax. (703) 739-1060, or visit abiworld.org

MBA Mortgage Bankers Association
National Mortgage Servicing Conference & Expo
February 6 - 9, 2018
Gaylord Texan, Grapevine, Texas
Info: Mortgage Bankers Association, 1919 M Street NW, 5th Floor, Washington, DC 20036, (202) 557-2700, (800) 793-6222, or email: meetings@mba.org

Sacramento Valley Bankruptcy Forum
16th Annual Northern California Bankruptcy Conference
February 22 - 23, 2018 • Hyatt Regency, Sacramento, CA
Info: Kristen Koo, (916) 239-6605 or kkoo@jpj13trustee.com

NABT - National Association of Bankruptcy Trustees ***2018 Spring Seminar***
February 23 - 25, 2018 • The Delano, Las Vegas, NV
Info: NABT at (770) 846-3402, or visit NABT at www.nabt.com, 7433 Spout Springs Road, Suite 101 #67, Flowery Branch, GA 30542

Norton Institutes on Bankruptcy Law, Inc.
The 32nd Annual Norton Bankruptcy Litigation Institute
February 24 - 27, 2018
Park City Marriott Hotel, Park City, Utah
Info: Norton Institutes on Bankruptcy Law, Inc., PO Box 150873, Nashville, TN 37215, Phone: (770) 535-7722, Fax: (770) 536-7072, Email: Norton Inst@aol.com or visit www.nortoninstitutes.org

NACTT
Staff Symposium
March 8 - 9, 2018 • Sheraton Denver Downtown Hotel
Info: NACTT at (800) 445-8629, or visit NACTT at www.nactt.com, One Windsor Cove, Suite 305 Columbia, SC 29223

ACB - American College of Bankruptcy
Class 29 Induction Ceremony and Events
March 16 - 17, 2018
Renaissance Washington DC Downtown Hotel
Info: American College of Bankruptcy, P.O. Box 249 Stanardsville, VA 22973, Phone 434-939-6004, or email sbedker@amercol.org

University of Kentucky, Office of Continuing Legal Education
14th Biennial Consumer Bankruptcy Law Conference
March 22 - 23, 2018
Marriott Griffin Gate Resort, Lexington, Kentucky
Info: University of Kentucky Office of Continuing Legal Education, 660 South Limestone Street, Lexington, KY 40506-0417, phone: (859) 257-2921, email: ukcle@uky.edu, or visit ukcle.com

Southeastern Bankruptcy Law Institute
44th Annual Seminar on Bankruptcy Law and Rules
March 22 - 24, 2018
The Whitley, Atlanta, Georgia
Info: Southeastern Bankruptcy Law Institute, PMB 522
2107 North Decatur Road, Decatur, GA 30033
770-451-4448 or visit info@sbli-inc.org

Satori & Associates, Inc.
User Seminar
April 10 - 12, 2018
Embassy Suites Downtown, Louisville, KY
Info: Satori & Associates, Inc. Call 770-292-9387, or email support@trustee13.com, 6065 Parkway North Dr., Ste. 100, Cumming, GA 30040

BSS - Bankruptcy Software Specialists
34th Annual Chapter 13 Bankruptcy Seminar
April 10 - 12, 2018
Omni Fort Worth Hotel, Ft. Worth, Texas
Info: visit www13software.com

2018 Case Power
User Conference
April 16 - 18, 2018
Embassy Suites Myrtle Beach, Myrtle Beach, SC
Info: Christel Hockett, Manager of Client Services Epiq - Trustee Services, 501 Kansas Avenue, Kansas City, KS 66105, Phone: 913-621-9727, Mobile: 913-205-5984, email: chockett@epiqsystems.com

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NACBA - National Association of Consumer Bankruptcy Attorneys
26th Annual Convention
April 19 - 22, 2018
Sheraton Downtown Denver, Denver, CO
Info: NACBA, 2200 Pennsylvania Avenue NW, 4th Floor, Washington D.C. 20037, Phone: (8006) 499-9040, or email admin@nacba.org

NARCA - National Association of Retail Collection Attorneys
2018 Spring Conference
May 16 - 19, 2018
JW Marriott Austin, Austin, Texas
Info: NARCA – The National Creditors Bar Association™, 8043 Cooper Creek Blvd. Suite 206 University Park, FL 34201, Phone: 202-861-0706 Fax: 240-559-0959, or visit www.narca.org

NACTT
Staff Symposium
May 17 - 18, 2018
Baltimore Marriott Inner Harbor at Camden Yards, Baltimore, MD
Info: NACTT at (800) 445-8629, or visit NACTT at www.nactt.com, One Windsor Cove, Suite 305 Columbia, SC 29223

California Bankruptcy Forum
30th Annual Insolvency Conference
May 18 - 20, 2018
Resort at Squaw Creek, Lake Tahoe, Squaw Valley, California - Info: Visit calbf.org or email tspangler@jbassociates.com

Annual Western District of Virginia
Bankruptcy Conference
June 1, 2018
Airport Holiday Inn Hotel, Roanoke, Virginia
Info: call Herb Beskin (434 817 9913) or Chris Micale (540 342 3774)

CLLA - Commercial Law League of America
Annual Meeting
June 6 - 9, 2018
Chicago Marriott Downtown Magnificent Mile, Chicago, IL
Info: Suzanne Spohr at sspohr@tso.net, Commercial Law League of America, 1000 N. Rand Rd., Suite 214, Wauconda, IL 60084, Phone: (312) 240-1400 or visit info@clla.org

Alabama State Bar Association and Bankruptcy and Commercial Law Section's
Annual Bankruptcy at the Beach Seminar
June 8 - 9, 2018
SanDestin Hilton, Destin, FL
Info: Alabama State Bar, 415 Dexter Avenue, Montgomery, AL 36104, 334-269-1515, 800-354-6154 (toll free), 334-261-6310 (fax), or visit www.alabar.org

Norton Institutes on Bankruptcy Law, Inc.,
The 33rd Western Bankruptcy Law Institute
June 15 - 17, 2018
Jackson Lake Lodge, Jackson Hole, Wyoming
Info: Norton Institutes on Bankruptcy Law, Inc., PO Box 150873, Nashville, TN 37215, Phone: (770) 535-7722, Fax: (770) 536-7072, Email: Norton Inst@aol.com or visit www.nortoninstitutes.org

NACTT
53rd Annual Seminar
June 27 - 30, 2018
Fontainebleau Hotel, Miami, FL
Info: NACTT at (800) 445-8629, or visit NACTT at www.nactt.com, One Windsor Cove, Suite 305 Columbia, SC 29223

American Bankruptcy Institute (ABI)
Southeast Bankruptcy Workshop
July 26 - 29, 2018
Ritz Carlton Amelia Island, Amelia Island, FL
Info: American Bankruptcy Institute, 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314, Tel. (703)-739-0800, Fax. (703) 739-1060, or visit abiworld.org

American Bankruptcy Institute (ABI)
Mid-Atlantic Bankruptcy Workshop
August 2 - 4, 2018
Hotel Hershey, Hershey, PA
Info: American Bankruptcy Institute, 66 Canal Center Plaza, Suite 600, Alexandria, VA 22314, Tel. (703)-739-0800, Fax. (703) 739-1060, or visit abiworld.org

National Conference of Bankruptcy Clerks (NCBC) ***2018 Conference***
August 12 - 15, 2018
New York City, NY
Info: Visit www.ncbcweb.com, or email Regina_Thomas@ganb.uscourts.gov

CLLA - Commercial Law League of America
Western Region Conference
September 21, 2018
Hilton Los Angeles/Universal City, Universal City, CA
Info: Suzanne Spohr at sspohr@tso.net, Commercial Law League of America, 1000 N. Rand Rd., Suite 214, Wauconda, IL 60084, Phone: (312) 240-1400 or visit info@clla.org

CLLA - Commercial Law League of America
Eastern Region Conference
October 3, 2018
Tropicana Casino and Resort, Atlantic City, New Jersey
Info: Suzanne Spohr at sspohr@tso.net, Commercial Law League of America, 1000 N. Rand Rd., Suite 214, Wauconda, IL 60084, Phone: (312) 240-1400 or visit info@clla.org

A Year – and a Career – in Review

Doreen B. Soloman
Assistant Director for Oversight, Office of the United States Trustees

U.S. Trustee Program/NACTT Accomplishments in FY 2017

Each new fiscal year I like to recap in this column the accomplishments the U.S. Trustee Program (Program) and the NACTT made in the prior year and set the stage for possible projects and challenges for the upcoming year. This year, since this is the last *NACTT Quarterly* column I will write before retiring at the end of 2017, I also want to highlight some of the projects the Program and the NACTT have worked on together during my tenure as Assistant Director for Oversight.

In Fiscal Year 2017, one of our most significant accomplishments was our revision of the "Chapter 13 Statement of Work" (SOW). The last major revision occurred in 2008 – four years before release of the current *Handbook for Standing Chapter 13 Trustees (Handbook)*. The revised SOW improved the prior SOW by clarifying instructions and procedures, updating or removing outdated procedures and terminology, adding references to the *Handbook* and defining the format for the Independent Auditor's Report of the Annual Report to improve consistency. As part of the review process, the Program sought input from trustees and their staff, Program staff and current auditors. We incorporated many of the suggestions made by trustees and auditors alike. The revised SOW will be implemented during the FY 2018 audit cycle.

Another significant accomplishment in FY 2017 was the review of the benefits portion of trustee compensation. In 2008 Robin Weiner, then President of the NACTT, made it the goal of her presidency to work with the Program to implement regular, periodic reviews of trustee compensation. Paul Chael led the discussions on behalf of the NACTT membership and has continued to do so for every benefits review analysis since then. In every discussion the NACTT has skillfully and respectfully advocated its members' position on compensation. The NACTT has provided analyses from lawyers and benefits consultants to advance its position on what benefits should be included in trustee compensation. Although the Program and the NACTT have not agreed on every point, the open dialogue and discussion have led to greater predictability and transparency in calculating compensation.

Past Accomplishments

As for past accomplishments, those that stand out in my mind are the release of the *Handbook*, the development of educational materials relating to the Home Affordable Modification Program (HAMP), the change to permit trustees to take a percentage fee on the receipt of plan payments and the issuance of the "Best Practices for Document Production Requests by Trustees in Consumer Bankruptcy Cases" (Best Practices) in 2012. Each of these accomplishments exemplifies the commitment of the Program and the NACTT to work together to improve the bankruptcy system for all constituents.

Handbook Revision

The most recent revision to the *Handbook* marked the first time the NACTT participated in updating the *Handbook*. The discussions were spirited at times and forced all participants to articulate why a certain policy was wrong or, conversely, why it could not be changed. We agreed that a standing trustee is much more than a "mere disbursing agent" and strove together to define the standing trustee's fiduciary responsibilities. Together we worked hard to make the *Handbook* a practical guide and, at the suggestion of trustees, included "practice tips" to help newer trustees.

We also made the *Handbook* available electronically in a format that is easy to update as new policies are implemented. Many of you may remember that the only way we could update the prior *Handbook* was to send new pages with instructions to remove old page "X" and insert new page "Y." Now, we post a list of updated sections along with the updated *Handbook*. No more worrying whether you have the most current updates. While the specific changes are too numerous to recite here, the *Handbook* revision was important because it marked a milestone in the collaborative efforts of the Program and the NACTT.

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Even Creditors Can Benefit from Debtors' Chapter 13 Bankruptcy Filings

Amanda Doyle
Heavner, Beyers & Mihlar, LLC; Decatur, Illinois

Heather Giannino
Heavner, Beyers & Mihlar, LLC; Decatur, Illinois

While case dismissal in the legal arena carries the connotation of failure, such cause and effect should not be imputed in Chapter 13 bankruptcy. There has been much discussion about Chapter 13 bankruptcy, whether it is necessary and frankly, whether it has been a failure given the high percentage of debtors that do not complete their plans which results in repeat filers.[1] As creditor's counsel we would like to dispel this perceived correlation between case dismissal and failure and argue that for debtors and creditors alike Chapter 13 bankruptcies are necessary, effective, and sometimes preferred.

If bankruptcy had a tagline it would be "the honest but unfortunate debtor." Those seeking bankruptcy protection are typically average individuals and families that have been faced with common problems that make paying off their debts increasingly difficult, or for some, impossible. Observe any bankruptcy courtroom proceeding in America and reoccurring themes will begin to emerge as evidence of excessive medical expenses, job loss, overextension of credit, divorce, or unexpected expenses[2] is brought to light. These unfortunate life events are what make Chapter 13 bankruptcy relief necessary.

Chapter 13 bankruptcy provides for adjustment of debts for an individual with regular income and allows debtors to keep their property and pay debts over time. It provides an opportunity for those with regular income to get their financial lives back on track. This could be accomplished through completion of a plan of reorganization or by alternative arrangements made possible by the structure of Chapter 13 or the breathing room provided by the automatic stay.

While some may believe creditors abhor bankruptcy filings, that assumption is false, particularly for secured creditors. Secured creditors are in the business of lending money, not owning and managing homes and vehicles; they simply want their investment to remain protected. From the secured creditor perspective there are numerous advantages to restructuring under Chapter 13 rather than liquidation under a Chapter 7. Often, debtors just need additional time, or a lower payment, or both to keep their heads above water. Chapter 13 is an opportunity for debtors to save their property or vehicles from foreclosure or repossession, reschedule payments on secured debts, and extend them over the life of the plan. For the secured creditor this means that payments will finally start rolling in on what used to be an non-performing loan, whether in the form of trustee disbursements, post-petition payments, or adequate protection payments, or a combination of these, and there is now some certainty in how and when payments will be received. Additionally, Chapter 13 provides a means for debtors to relieve themselves of obligations on unsecured debts, such as medical expenses or unexpected expenses like necessary home or car repairs. Relief from these unsecured debts conversely means more of debtors' income can be directed to their outstanding secured debts allowing them to be brought current.

While reorganization over liquidation is often preferential for debtors who wish to retain assets and resume normal life, Chapter 13 has one particularly stark advantage over Chapter 7 in that debtors in a Chapter 13 must "walk the walk". While both Chapter 7 and Chapter 13 require personal financial management courses, a Chapter 13 requires debtors to implement their new found financial knowledge through the "forced discipline" of a Chapter 13 repayment plan under the supervision of a strict enforcer, the Chapter 13 Trustee. Such oversight provides the structure necessary for debtors to repay debts that they would not have otherwise. It provides a mechanism to address all creditors at once – instead of attempting to make arrangements with individual ones. Such oversight solidifies the bankruptcy code's dedication to the honest but unfortunate debtor and creditors welcome the regular payments toward their collateral investment.[3]

In the mortgage context, debtors and creditors alike would suffer if Chapter 13 was eliminated. Debtors would be left with fewer alternatives to save their homes. Outside of the bankruptcy context, debtors may work with loss mitigation departments to attempt catch

up or modify their home mortgage loans. Outside of bankruptcy, the debtors may feel they are under a time crunch or may not have the resources. For example, many repayment alternatives outside of Chapter 13 require defaults to be cured in a short timeframe. For example: debtors with $20,000.00 in mortgage arrears would need to make additional payments of $1,600.00 to $3,300.00 per month for a 6-12 month period under the terms of a forbearance agreement versus additional payments of $330.00 to $555.00 per month for a 36-60 month Chapter 13 plan. Yes, time is money for creditors, in terms of protecting their investment but, receiving smaller payments in a controlled environment, over an extended period of time, may be much more enticing, and potentially better for the bottom line in the long run, than just a few large payments upfront and a greater risk that the payments over the life of the loan will not be made.

Chapter 13 provides debtors and creditors with a road map to a better financial position. The paths to this position and the end goal may vary greatly – for the debtor it could be unloading financial burdens or restructuring in such a way to pay all creditors in full; for creditors it could be recouping part of a loss or turning a nonperforming loan to a performing loan. In Chapter 13, secured creditors may retain the ability to collect the entirety of the obligation owed to them or may be paid more than they would have received outside of the bankruptcy context. Prior to filing bankruptcy debtors had discretion as to what debts to pay, when to pay them and what amounts to pay. The Chapter 13 process provides guidance, oversight and structured mechanisms for repaying the debtors' outstanding obligations. The Bankruptcy Code requires debtors to provide adequate protection to secured creditors when the automatic stay is in effect, when the debtor uses, sells, or leases a secured creditor's collateral[4], and when the debtor proposes to attach an additional lien to a secured creditor's collateral.[5] Debtors are to provide adequate protection to secured creditors during the life of the Chapter 13 plan. Further, debtors are required to commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier.[6] Whereas prior to bankruptcy, debtors had discretion regarding how their income was spent, and it often wasn't managed well. In the bankruptcy context, creditors can rely on more concrete time periods and enforcement mechanisms if those are not met.

Additionally, in Chapter 13 bankruptcy a trustee's role is extremely important. The Chapter 13 trustee enforces fair and equal treatment for all creditors and in a sense, provides a second level of scrutiny for creditors. Sophisticated creditors have vast processes in place to ensure every detail of a bankruptcy petition is analyzed to confirm protection for that creditor's collateral. However, less sophisticated creditors may not know the first step after receipt of a bankruptcy notice. The Chapter 13 Trustee can provide some additional assurance to both the national lender and the local credit union that the debtor is financially positioned to complete the proposed debt repayment plan.[7] If such proposed terms aren't mathematically feasible, the Trustee will not allow the plan to be confirmed.[8] While the Chapter 13 Trustee is no substitution for a lack of knowledge, they instead, can be viewed as an additional gatekeeper, providing guidance and enforcing the Bankruptcy Code as the Chapter 13 plan proceeds. The Chapter 13 Trustee is not the only oversight provided by the Bankruptcy Code as even the Chapter 13 Trustee is overseen by the bankruptcy judge. The Chapter 13 Trustee may be the gatekeeper, the bankruptcy judge is the "eye in the sky," ensuring that the Bankruptcy Code is enforced, correctly interpreted, and that the "honest but unfortunate debtor" takes advantage of the provisions afforded to them by the Bankruptcy Code.

However, oversight by the Chapter 13 Trustee as well as, judges, and the benefit of such oversight to creditor and debtors alike, does not end with plan confirmation. While negotiations outside of the bankruptcy context can lead to agreements or modifications allowing debtors to defer or waive arrearages, lower interest rates, or lower monthly payments, the additional statutes and parties involved in Chapter 13 bankruptcy hold supreme. Generally, a Chapter 13 places all secured creditors on an even playing field, meaning a debtor cannot be forced to pay one creditor over the other. Outside of bankruptcy, debtors may be forced to expend additional income to facilitate a mortgage modification and consequently be forced to surrender their vehicle. With the help of the Chapter 13 plan, debtors are able to propose a cohesive debt repayment strategy that benefits both the debtors and all (or most) creditors simultaneously. Additionally, the usual alternatives, such as modification, can still be found in the Chapter 13 context. However, in bankruptcy such modifications often require court approval and with oversight from the bankruptcy judge and Chapter 13 trustee, such agreements can result in terms that are more beneficial to both parties that due to time and circumstance may not have been able to be achieved outside of the bankruptcy context.

Throughout a Chapter 13 bankruptcy, the relationship between debtors and creditor can be greatly enhanced through strong communication and zealous

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advocacy by debtors' attorneys and creditors' attorneys alike. Due to stigma and emotional nature of high debt levels, attorneys on both sides, as well as, trustees and judges, frequently serve as mediators and intermediaries between parties working to resolve disputes and issues that may arise over the life of the bankruptcy. A successful Chapter 13 case can instill the idea that going forward a debtor – creditor relationship can be transparent and mutually beneficial. After all, the initial steps of bankruptcy are educating the debtor. If such education is not intended to help rehabilitate debtors into fiscally responsible citizens then why have the requirement? It is imperative that debtors' attorneys with their debtors and creditors' attorneys with their clients seek to educate and provide understanding in all areas of the bankruptcy process. If there is knowledge and understanding, the bankruptcy process can be relatively smooth and ultimately, provide debtors with the tools to manage their obligations in the future.

Even without completing plan payments or receiving a discharge, Chapter 13 bankruptcies still have merit. As discussed earlier, discharge is not always the goal of a Chapter 13 bankruptcy and not receiving a discharge should not be correlated with failure. Most Chapter 13 debtors file bankruptcy due to save an asset. For debtors with few other debts, the end goal of filing bankruptcy may be simply to obtain a loan modification from the secured creditor. As discussed earlier, a loan modification through the Chapter 13 plan context has its own advantages, such as paying an outstanding balance over the life of the plan or a significantly reduced interest rate allowing on going payments to remain feasible. However, a post-filing loan modification can capitalize or defer mortgage arrears eliminating the need to reorganize and the case can be dismissed, resulting in success with debtor and creditor alike feeling accomplished. The same can be said for selling real estate while in bankruptcy. A private sale of real estate will often generate higher price than bankruptcy alternatives, not to mention, cooperation may be an issue for parties on either side. However, if the sale is being overseen by the bankruptcy trustee and judge with established deadlines, there is incentive for the debtor and creditor to act expeditiously and compliantly to find a buyer at a price that benefits all parties. Finally, a Chapter 13 on the verge of dismissal may act as a wakeup call for debtors. The debtors may ultimately come to the realization that their debt burden is unbearable and only after trying and even failing in the Chapter 13 context are debtors brought to their senses. This reality check may lead to surrender and a deed in lieu or consent foreclosure, eliminating the debt burden for the debtor and allowing the creditor a more efficient resolution for a nonperforming loan. ◉

Footnotes

1 The Northern District of Illinois has had 9,816 Chapter 13 Bankruptcy filings as of June 30, 2017. *See* "Caseload Statistics Data Tables," U.S. Courts, *available at* uscourts.gov/statistics-reports/caseload-statistics-data-tables. Given previous statistics, it can be reasonably inferred that 2,748 of those will be repeat filers. Additionally, only 3,808 of those will complete repayment plans and receive a discharge. *See* Ed Flynn, "Success Rates in Chapter 13," ABI Journal (August 2017).

2 *See* Mark P. Cussen, "Top Five Reasons Why People Go Bankrupt," Forbes (March 25, 2010), *available at* https://forbes.com/2010/03/25/why-people-go-bankrupt-personal-finance-bankruptcy.html.

3 This is of course presuming the debtors' plan of reorganization provides for the particular creditor in question and in a manner consistent with the Bankruptcy Code and agreeable to the creditor.

4 11 U.S.C. § 363.

5 11 U.S.C. § 364.

6 11 U.S.C. § 1326.

7 There is no substitute for proper review by the creditor.

8 Based on previous statistics, less than 39% of Chapter 13 Plans are confirmed. *See* Ed Flynn, "Success Rates in Chapter 13," ABI Journal (August 2017).

Life Expectancy: How Long is Too Long for a Chapter 13 Plan?

The Bankruptcy Code states that: "the [debtor's] plan may not provide for payments over a period that is longer than five years."[1] Hopefully, the debtor will have no problems making the plan payments. However, if a debtor falls behind on payments for one reason or another, the Trustee or a creditor may move to dismiss the case.

What happens if the debtor is extremely close to completing the plan, but the five-year payment period has ended? Is the Court required to dismiss the case, or may the Court allow the shortfall to be cured so the debtors can receive the §1328(a) discharge? If the Court has the discretion to allow the cure, what factors should it consider? These were the issues addressed, in a case of first impression among the Courts of Appeals, by the Third Circuit Court in the recent decision in *In Re Klass*.[2]

In 2009, Paul and Beth Ann Klaas filed a voluntary Chapter 13 petition in the Western District of Pennsylvania, and Ronda Winnecour, the Chapter 13 Standing Trustee, was appointed to administer the case.[3] The Debtors' confirmed plan proposed to pay $2,485 monthly payments over five years.[4] About a year later, the plan was amended to increase monthly payments to $3,017.[5] The Debtors made regular payments, and after sixty months, paid slightly more than the plan base, though, at the Plan term end, there remained a $1,123 shortfall.[6]

Following the practice in her District, the Trustee filed a motion to dismiss the case in order to put all parties on notice of the shortfall and the need for it to be promptly addressed. [7] The Motion expressly provided that if the debtors cured the plan arrears, "[she] would not object to withdrawing her motion."[8] As has been stated by Trustee Winnecour: "The motion to dismiss is filed as a place-holder to alert the debtor to the amount necessary to complete. This is particularly concerning in a conduit jurisdiction where mortgage payment changes in the last few months of the case can cause the plan to be underfunded even if the plan base has been achieved. The goal in this district is to help the debtor get a discharge whenever possible."

The Debtors cured the shortfall just over two weeks after the Motion to Dismiss. Ordinarily that is the end of it, but in this case there was a Motion filed by an unsecured creditor, Elizabeth Shovlin.[9] Shovlin joined the Motion to Dismiss, though she argued that the Debtors were not able to cure the default. She contended that the failure to pay the plan in full within the maximum five-year term precluded completion. Therefore, the Court was required to dismiss the case or, at a minimum, deny the Debtors a completion discharge.[10] She cited 11 U.S.C § 1307(c) which states, in relevant part, that: "a court . . . may dismiss a case under this chapter, whenever it is in the best interests of creditors and the estate, for cause." Cause includes "unreasonable delay," "nonpayment of any fees", and "material default."[11]

The Bankruptcy Court held that a failure to fund a plan within sixty months is a material default which constitutes cause for dismissal under 11 U.S.C. § 1307; however, the Court had discretion of whether to dismiss or allow the cure.[12] Since the Debtors had promptly cured the arrears, no creditor was affected and the plan default did not significantly affect the amount of distributions to any creditor. The Bankruptcy Court denied the Motion to Dismiss and granted the debtors a complete discharge, concluding that "the default was no longer material," and that debtors had "fully funded their plan obligations."[13] Shovlin appealed to the District Court for the Western District of Pennsylvania.

The District Court heard Shovlin's first appeal and affirmed the Bankruptcy Court.[14] The creditor later initiated an adversary proceeding, objecting to the Debtors discharge, and again the Bankruptcy Court issued a discharge and granted the Debtors' summary judgment, which the District Court upheld.[15] The Trustee consistently supported the position that the plan could be completed after more than sixty months elapsed.

Shovlin appealed to the Third Circuit, where the two cases (one over the denial of the Motion to Dismiss and the second over the granting of the completion discharge) were consolidated. The standard of review

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Chapter 13 Trustee for the Western District of Pennsylvania

Jared C. Quinn
Law Clerk for the Chapter 13 Trustee for the Western District of Pennsylvania, Ronda Winnecour.

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was *de novo*; searching for any clear error or abuse of discretion.[16] The first issue the Court decided was "whether the bankruptcy courts have discretion to grant a brief grace period and discharge debtors who cure an arrearage in their payment plan shortly after the expiration of the plan term."[17]

Shovlin argued that the Code requires dismissal of a case when shortfalls remain at the end of the plan term, even if the debtor promptly cures the shortfalls.[18] The Trustee and Debtors argued that Bankruptcy Courts have discretion to grant a reasonable grace period for debtors to cure shortfalls.[19] The Third Circuit agreed with the Trustee and debtors.

First, the Third Circuit applied canons of statutory interpretation to relevant portions of the Bankruptcy Code.[20] Looking at the plain meaning of the text, the Court found that the text gave a clear answer which does not result in a conflict with congressional intent.[21]

Although the Creditor argued that the plain meaning of § 1322 completely barred payments after the five-year term, the Code expressly uses the term "may" in §1307(c) which is the section that controls dismissal. Although §1322(d) (and §1329(c)) limit the maximum plan length, their limitations are evaluated at the time of the plan confirmation or modification. By contrast, there is nothing in §1307(c) that limits the discretion, that is expressly provided by the use of the use of "may" on whether to dismiss.

In conjunction with the plain meaning of the text, Courts should read provisions to "avoid an interpretation which would be incompatible with the rest of the law."[22] The Court looked at the text of §1307, and decided that a court "may" dismiss a case for cause, not "must" dismiss.[23] If "may" is consistently used to express discretion, an obligation to dismiss in this instance would create incompatibility with other sections of the Code. Therefore, the Court is not compelled to dismiss a case that requires extra time to complete.[24]

Rules of statutory interpretation also avoid superfluous language. Section 1328(a) directs Courts to issue a discharge if the debtor has "completed all of the payments *under the plan*." Section 1325(a)(6) also requires that debtors "make all payments *under the plan.*" The Court determined that the phrase, "under the plan," does not limit the plan to five years.[25] Section 1325(a)(6) requires the debtor "to make all payments under the plan" and "comply with the plan." If "under the plan" limited payments to be made within five years to comply with the plan, this interpretation would create unnecessary language.[26] Rather, the Courts interpret "under the plan" to mean "made pursuant to the authority conferred by such a plan."[27] The late payment was still "pursuant to the authority conferred by the plan," thus the debtors completed payments "under the plan."[28]

The Court also found support for its interpretation in the legislative history. Both the Bankruptcy Reform Act of 1978, which revised the Bankruptcy Act, and the House Judiciary Committee Report of the Reform Act encouraged flexible repayment plans, but limited plan terms to five years.[29] Congress's concern for debtors capped the plan term at five years to shield debtors from remaining in payment plans indefinitely.[30] Mandatory dismissal would defeat the purpose of the cap.[31]

The Creditor also argued that the Debtors were attempting to modify the plan. The Court held that this was not a modification as the Debtors fulfilled their obligations under the confirmed plan.[32] The last payment was made to "cure a default."[33] Nor was a hardship discharge the only remedy.[34] The Klaases' substantially complied with their confirmed plan and acted in good faith to pay off the plan arrears.[35] A hardship discharge made no sense for the debtors or their creditors. The debtors were able to complete the plan. They just needed additional time. Denial of the debtor's discharge at this point in the case precludes the Code's goal of "provid[ing] for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors."[36] The Court concluded that Court does have discretion to grant a grace period.

The Court next examined the second issue: did the Bankruptcy Court abuse its discretion when it denied the creditor's Motion to Dismiss and erred in granting Summary Judgment?[37] The Court listed relevant factors for the Bankruptcy Court to consider when exercising that discretion.

Replying in part on *In Re Brown*, and other factors the Court deemed relevant under §1307(c), the Court created "a non-exhaustive list of factors to consider for whether a bankruptcy court should allow a grace period."[38] These include: "(1) whether the debtor substantially complied with the plan, including the debtor's diligence in making prior payments; (2) the feasibility of completing the plan if permitted, including the length of time needed and amount of arrearage due; (3) whether allowing a cure would prejudice any creditors; (4) whether the debtor's conduct is excusable or culpable, taking into account the cause of the shortfall and the timeliness of notice to the debtor; and (5) the availability and relative equities of other remedies, including conversion and hardship discharge."[39]

When the Court applied the factors to the Debtors' case, it found that the Bankruptcy Court properly exercised its discretion.[40] First, the debtors made "diligent and timely" payments, "promptly augmented their payments," and did not violate any other plan terms.[41]

Second, the cure was feasible, because the arrearage was small relative to the plan.[42] Third, the late payment "did not adversely affect any creditor."[43] Fourth, the arrears were not due to "unreasonable or culpable delay by the Debtors," but rather due to the Trustee's increased fee.[44] Finally, the Court found that conversion and hardship discharge would not make sense, nor was modification an option.[45] The Third Circuit concluded that the Bankruptcy Code "does permit a bankruptcy court to grant such a grace period and the Bankruptcy Court did not abuse its discretion" when granting the grace period.[46]

Trustee Winnecour believes that the decision is good for Chapter 13 debtors and for the system in general. Chapter 13 plans require a best effort commitment and where that effort is made, a small, easily curable arrears at plan end should not stand in the way of completion and discharge. ◉

Footnotes

1 11 U.S.C. § 1322(d)(1).
2 *Klaas v. Shovlin*, 858 F.3d 820, 823 (3d Cir. 2017).
3 *Id*. at 824.
4 *Id*.
5 *Id*.
6 *Id*.
7 *Id*.
8 *Id*.
9 *Id.* at 825.
10 *Id*.
11 11 U.S.C. § 1307(c).
12 *Shovlin v. Klaas*, 539 B.R. 465, 468 (W.D. Pa. 2015).
13 *In re Klaas*, 533 B.R. 482, 488 (Bankr. W.D. Pa. 2015).
14 *Shlovin v. Klaas*, 539 B.R. at 466.
15 *Klaas*, 858 F.3d at 825.
16 *Id*.
17 *Id*. at 823.
18 *Klaas*, 858 F.3d at 828.
19 *Id*.
20 *Id*.
21 *Id*.
22 *United Sav, Ass'n of Tex v. Timbers of Inwood Forest Assocs, Ltd.*, 484 U.S. 365, 371 (1988).
23 *Klaas*, 858 F.3d at 829.
24 *In re Brown*, 296 B.R. 20, 22 (Bankr. N.D. Cal. 2003).
25 *Klaas*, 858 F.3d at 829-30.
26 *Id*.
27 *See In re Hechinger Inv. Co. of Del., Inc.*, 335 F.3d 243, 254 (3d Cir. 2003).
28 *Id*.
29 *Klass*, 858 F.3d at 830 (citing H.R. Rep. No. 95-595, at 117 (1977).
30 *Klass*, 555 B.R. at 513.
31 858 F.3d at 830.
32 *Id*.
33 *Germeraad v. Powers* , 826 F.3d 962, 968 (7th Cir. 2016).
34 *Klaas*, 858 F.3d at 831.
35 *Id*.
36 *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 251 (3d Cir. 2001).
37 *Klaas*, 858 F.2d at 832.
38 *Klaas*, 858 F.3d at 832.
39 *Id*.
40 *Id.* at 832-3.
41 *Id*.
42 *Id*.
43 *Id*.
44 *Id*.
45 *Id*.
46 *Id*. at 823.

Don't Dodge the Meeting: The Importance of Bankruptcy Attorney Representation of Debtors at § 341 Meetings of Creditors

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Debtors are required to appear at a meeting of creditors.[1] While there is perhaps a tendency to minimize the importance of a meeting of creditors, that is not a good tendency. While many meetings may be short and basic, they are nonetheless an important component of the process. Having both conducted and attended many meetings, I am aware they can be tedious, but they are nonetheless important to the process generally, to courts, to debtors, to trustees and to creditors who may appear at the meeting. Moreover, debtors can relay important information and trustees and creditors can obtain important information at the meetings to move cases forward. "[T]he meeting is an important tool for identifying possible factual matters and attendant legal issues that may indeed be of major significance to the debtor."[2] At a chapter 13 meeting, it can also be very helpful to the trustee to obtain the sense of the debtor's plan and to reemphasize to the debtor his or her responsibilities under that plan.

Most debtors will not set foot in the bankruptcy courtroom, so their only exposure to the bankruptcy process is the meeting of creditors. The significance of that fact cannot be overstated. Our bankruptcy process is a great system, but debtors have responsibilities to be active participants in the process by, for example, attending the meeting of creditors. I was once asked by a debtor's attorney why I insisted on debtors standing while taking the oath prior to the meeting rather than allowing them to sit. I explained that I thought it was important to emphasize the significance of both the meeting itself and the oath.

For all these reasons, it is very concerning when debtors' attorneys routinely send "appearance counsel" to attend the meeting of creditors rather than attending themselves. Most consumer bankruptcy attorneys have likely had an unavoidable conflict or a last minute emergency that necessitated the use of appearance counsel in certain situations, but those unavoidable and limited situations are not the problem or the subject of this article (leaving aside also a continuance of the meeting due to a conflict). Instead, the concern is the routine use of appearance counsel for attendance at meetings of creditors. In fact, "[m]ultiple courts agree that an attorney, engaged in representation of the debtor, must appear on behalf of a client at the § 341(a) meeting of creditors."[3]

It is very frustrating for both the trustee and the debtor to have counsel present who do not know the case or even the debtor, so counsel is unable to offer any insight into the case. It must be very disconcerting for a debtor to appear and find not the attorney she has dealt with, but someone completely unfamiliar with the debtor, her case and her financial circumstances. Some attorneys have unfortunately "evinced an attitude that § 341(a) meetings are brief, uneventful, and of little consequence, thus justifying the use of 'appearance counsel' who are paid *de minimis* fees. Even setting aside [disclosure and other issues], the view expressed is troublesome."[4]

That is indeed a very unfortunate attitude for attorneys to take toward meetings of creditors. Unfortunately, however, there are bankruptcy counsel who seldom or never appear at meetings of creditors because they presumably find them unimportant or bothersome, which is a great disservice to all involved in the process. An attorney filing a case on behalf of an individual ideally takes the time to review which chapter under which the debtor should file, assists with schedules and statements and drafts the plan for the debtor, and provides other legal advice. The attorney's knowledge of the debtor's financial situation is critical to progression of the case. Because most debtors are not schooled in bankruptcy, they hire counsel to represent them in an important aspect of their financial life and one of the basic duties of hired counsel is to represent the debtor at the meeting.

While most chapter 13 cases may be straightforward, some debtors do have more complicated financial affairs where it is not only helpful but critical for counsel to be present at the meeting to explain issues to the trustee and creditors. Some chapter 13 cases

can be complicated both legally and factually and it is imperative that debtors be able to rely on their counsel to explain legal issues to the trustee which the debtors themselves cannot be expected to know or to be able to explain. In sum, attendance at meetings of creditors is important and the debtor should not be short-changed by counsel who inappropriately delegate this important function to appearance counsel unfamiliar with the debtor's case. "[W]hen accepting an engagement to represent a debtor in relation to a bankruptcy proceeding," one court observed, "an attorney must be prepared to assist that debtor through the normal, ordinary and fundamental aspects of the process. These include… attendance at the § 341 meeting."[5]

In the jurisdiction in which I practice, attorneys and debtors in Chapter 13 cases are obligated to sign a local form detailing the rights and responsibilities of both parties. Under penalty of denial or disgorgement of fees, the attorney is obligated to provide a copy of the form to debtors and both the attorney and debtor must sign the form.[6] The form provides that the attorney is obligated to "[r]ender all services required, excluding adversary proceedings, necessary through the entry of the order confirming the plan and shall include, without limitation the following: . . . c. Appearing at the § 341 Meeting of Creditors."[7] An attorney who fails to appear at meetings of creditors is likely violating the terms of the court's mandated form.

An attorney in Washington state is also likely violating the State's Rules of Professional Conduct if he or she does not fully disclose and receive informed consent from the debtor to forego appearance at the meeting of creditors. "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."[8] I would posit that it is never reasonable for an attorney representing debtors in bankruptcy to limit the scope of his or her representation by routinely sending appearance counsel to represent debtors at meetings of creditors. Assuming that to be correct, even obtaining the debtors' prior informed consent may not satisfy this particular rule of professional conduct. And even with informed consent, "[t]he burden is on Counsel to show that a debtor . . . properly contracts away any of the fundamental and core obligations such an engagement necessarily imposes. Proving competent, intelligent, informed and knowing consent of the debtor is required."[9]

Sending appearance counsel as a cardboard cutout, as it were, is indeed a limitation of the scope of representation because the attorney is not present at the meeting to represent the debtor's interests and to assist the debtor through the bankruptcy process. A debtor is under oath when testifying at a meeting of creditors and a debtor may not understand the importance of the meeting itself, so it is unclear how an attorney could simply choose not to appear at the meeting and instead send appearance counsel. "Appearance attorneys can hinder the swift dispatch of a case," one court observed, "and the lack of a formal association raises questions about the ability and authority of appearance attorneys to speak for debtors."[10]

Hiring appearance counsel also raises the issue of disclosure of compensation and fee sharing. "Any attorney representing a debtor… shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney."[11] In addition, the attorney "shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity."[12] Attorneys who send appearance counsel to the meeting and pay the appearance counsel a nominal, undisclosed fee are likely violating both the Code and the Federal Rules of Bankruptcy Procedure.[13]

In the jurisdiction in which I practice, the Court's Local Rules include a list of services necessary for an attorney to receive the Chapter 13 presumptive fee through confirmation and those services include "appearing at the 11 U.S.C. § 341 meeting of creditors." [14] Attendance of the attorney at the meeting of creditors is thus perceived as a basic element of representing a debtor in a Chapter 13 case and in receiving preconfirmation fees for the Chapter 13 case. Why would attorneys even put themselves in the position of having fees reduced or disgorged when the answer – appear at the meeting – is so simple? The answer eludes me. The potential ramifications for the attorney are significant, particularly if the attorney represents numerous debtors and sends appearance counsel in each case.

We all have various unavoidable and understandable conflicts, but the concerns here relate to attorneys who routinely send appearance counsel to meetings of creditors. This creates many problems for all involved, most particularly for the debtor who is expecting representation in his or her bankruptcy case. "As officers of the court, attorneys have a special responsibility for upholding the quality of justice within the judicial process."[15] Part of upholding the quality of justice is providing adequate representation to our clients.

For those attorneys who engage in the practice of

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routinely sending appearance counsel to meetings of creditors (or even to hearings), we should emphasize to the attorney his or her duties to the debtor, the court and the process generally. We should reinforce that attorneys who decide to take a client in a bankruptcy case must represent the debtor in the meeting as an important component of the representation. ◉

Footnotes

1 11 U.S.C. §§ 341(a), 343(a).

2 *In re Johnson*, 291, B.R. 462, 469 (Bankr. D. Minn. 2003).

3 *In re Ortiz*, 496 B.R. 144, 149 (Bankr. S.D. N.Y. 2013) (citations omitted).

4 *In re Olson*, Case No. 15-01580-TLM, 2016 WL 3453341, at *8 (Bankr. D. Idaho June 16, 2016).

5 *In re Castorena*, 270 B.R. 504, 530 (Bankr. D. Idaho 2001).

6 Local W.D. Wa. Bankr. R. 2016-1(f).

7 Rights and Responsibilities of Chapter 13 Debtors and Their Attorney, Local W.D. Wa. Bankr. Form 13-5; *http://www.wawb.uscourts.gov/forms/all-forms*.

8 Wash. Rules of Prof'l Conduct R. 1.2(c) (2011).

9 *Olson*, 2016 WL 3453341, at *7 (discussing the Idaho Rules of Professional Conduct) (citation and quotations omitted).

10 *In re Bradley*, 495 B.R. 747, 786 (Bankr. S.D. Tex. 2013) (citation omitted).

11 11 U.S.C. § 329(a).

12 Fed. R. Bankr. P. 2016(b).

13 *See Olson*, 2016 WL 3453341, at *6.

14 Local W.D. Wa. Bankr. R. 2016-1(e)(1).

15 *United States Trustee v. Jones (In re Alvarado)*, 363 B.R. 484, 489-90 (Bankr. E.D. Va. 2007).

Video Conferencing 341 Meetings and Court Appearances

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I. Introduction

The developments of video conferencing technology have transformed parties' ability to appear at 341 meetings and make court appearances. Ninety-four percent of people who use video conferencing at meetings say it increases efficiency and productivity.[1] Video conferencing offers new and effective ways to all parties in bankruptcy cases to make appearances, conduct business and meetings, and complete their statutory duties. This article is a brief overview of how bankruptcy courts, Trustees, and practitioners may use video conferencing to save time and money.

II. Benefits of Video Conferencing

A. Time efficiency. Video conferencing saves money and time by reducing travel and its related costs. Video conferencing offers the benefit of being able to conduct 341 meetings and see the parties involved. Video conference equipment allows users to multipoint parties so parties may make their appearance and see each other from multiple locations. Parties may save tens of thousands of dollars in annual travel costs and hundreds of hours of travel time thanks to video conferencing.

B. More than just a video connection. When people think of video conferencing, they typically think of Skype. However, most court reporters and federal courts utilize Polycom or Cisco Systems hardware which offer a more complete video conferencing experience. Utilizing these video conferencing systems, parties can conduct video conferences with up to eight different parties in separate locations that are all able to see each other at one time. Parties have the ability to control the far-end cameras, moving the camera and zooming in and out at the far-end conference. Parties may project documents on the far-end screen so that the participants can view it at the same time it is being discussed. Near-end microphones have a mute function that allows discussion outside of the hearing of the remaining participants.

Polycom has developed RealPresence mobile applications for laptops, Android, and iOS devices.[2] The mobile user does not have a static internet

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address. Thus, the mobile user must have a specific IP address to connect from their mobile device to a video conference.

Cicso Systems Inc. has developed a mobile application called Cisco Jabber Guest.[3] A Jabber Guest recipient accepts an email invitation to join the conference and does not have to dial a specific internet address to establish the connection.

C. Convenience. Video conferencing is liiterally available almost anywhere in the world. Many Courts allow Trustees to appear by video at confirmation and other hearings from their offices. This gives the benefit of having all of the Trustee's case data immediately available to both parties and the Court. Witnesses and attorneys frequently appear by video from distant locations. Additionally, video locations can have more than one camera giving the Judge the ability to view counsel and witnesses at the same time.

D. Security. Much has been made of the security of 341 meetings rooms. Video conferencing allows the 341 meeting or court appearance to be conducted in a fashion that offers superior security for the bench, the Trustee, and the parties appearing in the conference.

III. Equipment

Both Cisco Systems Inc. and Polycom offer different products depending upon the needs of the parties. The products range from mobile solutions that may be used on smart phones and tablets, to conference room units that can do live conferences in a meeting room. Both offer desktop systems that are very affordable and innovative. Both offer effortless conferencing that would be suitable to any collaboration space.

In Montana, Polycom Real Presence Group 500 is the most suitable for our office. It came with a desktop microphone. The Polycom camera sits on top of the monitor across the room from my desk. This allows me to appear and have the benefit of all of my case data and pleadings with me for my appearance. Polycom also offers different types of microphones. Both Polycom and Cisco Systems Inc. utilize an internet protocol so there is no charge for the connection. We use court reporters' offices for our far-end connections to enable checking, identifying, and signing original documents at 341 meetings. Using this device, we can originate multipoint conferences and serve a conference bridge.

IV. How to Make it Work

Most courts are using Cisco Systems Inc. technology. Most court reporters have video conferencing technology in their conference rooms. The U.S. Trustee's office has adopted the use of video conferencing technology for conducting 341 meetings. In February 2014, the United States Trustee's office amended the general guidance offered in the Chapter 13 Trustee's Handbook, thus, recognizing the benefits of video conferencing protocols. The Handbook recognizes that Trustees may seek authorization to expend trust funds for equipment and software necessary to conduct 341 meetings as opposed to traveling to far end venues.[4]

It is important to practice the video conference set up prior to the time of the actual conference. Verifying that a connection can be made, the systems are compatible, and the connection speeds are compatible are all tasks that need to be sorted out. Proper placement of equipment and microphones is also important.

V. Conclusion

Video conferencing is a powerful tool for saving time and money. Technological advances have made it a user friendly environment. Trustees who do 341 meetings at distant locations should examine this technology to save time and money. ◉

Footnotes

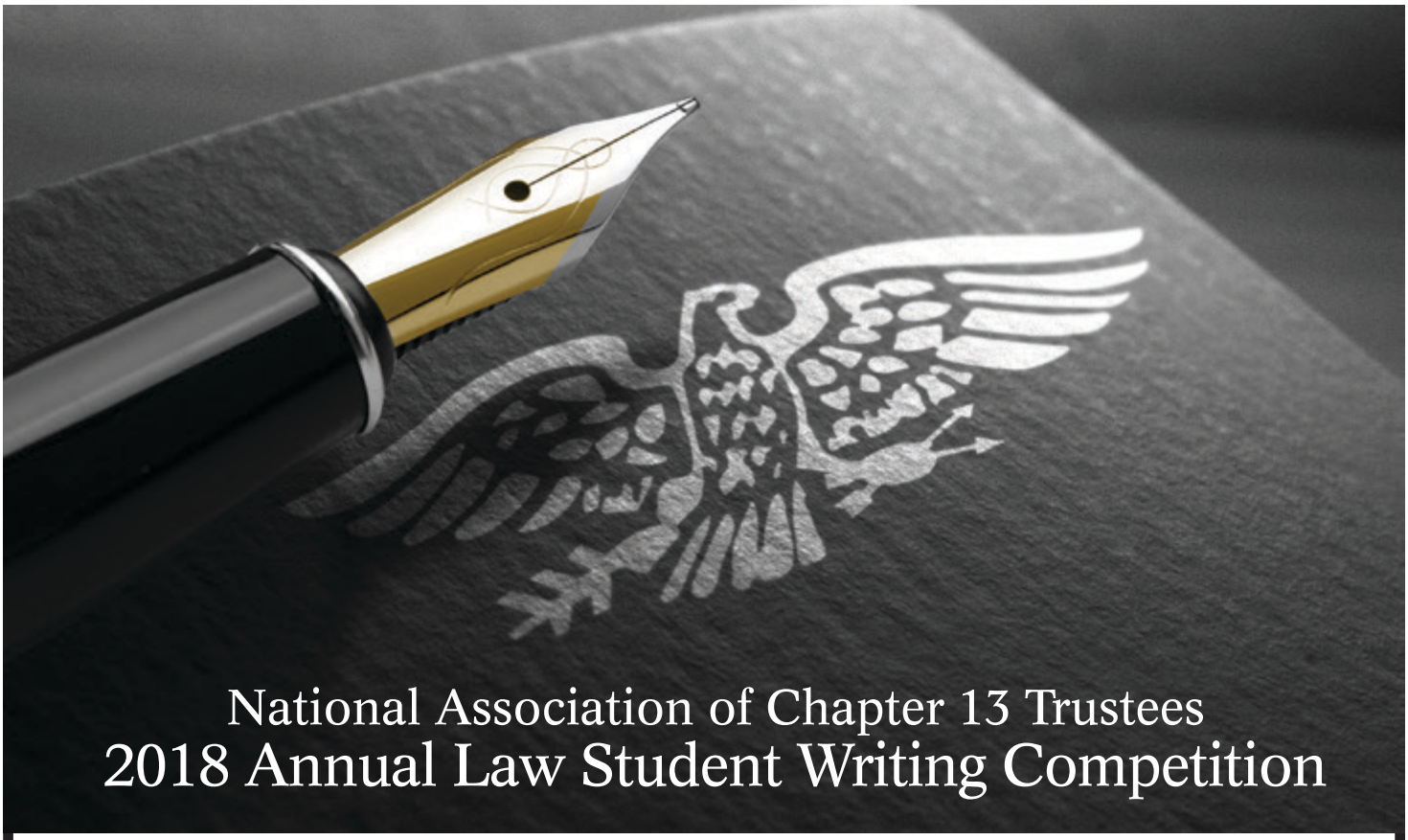
[1] Wainhouse Research: End-User Survey: The "Real" Benefits of Video. http://www.gbh.com/wp-content/uploads/2015/12/wainhouse-the-real-benefits-of-video-wp-enus-2.pdf.

[2] http://www.polycom.com http://www.polycom.com/hd-video-conferencing/realpresence-mobile-video-conferencing.html.

[3] http://www.cisco.com/c/en/us/products/unified-communications/jabber-guest/index.html.

[4] The Handbook for Chapter 13 Standing Trustees, Chapter 3, § 13, provides in pertinent part:

> A standing trustee may be authorized to expend trust funds for equipment and software necessary to conduct meetings of creditors remotely on a regular basis. To request budget approval, a standing trustee must present a plan and budget to the United States Trustee. 28 U.S.C. § 586(b). The plan should include the following: remote communication method to be used; projected cost of equipment, software, and other related items; and benefit to the trustee, debtor, debtor's counsel and creditors. The plan should also include a discussion of how the standing trustee will comply with each requirement contained in section B., Meeting of Creditors, of this Chapter. [Language revised February 2014.].



National Association of Chapter 13 Trustees
2018 Annual Law Student Writing Competition

The National Association of Chapter 13 Trustees has established an annual student writing competition to encourage and reward original law student writing on issues concerning consumer bankruptcy and the law. The rules for the competition are as follows.

TOPIC
Entrants should submit an essay, article, or comment on an issue concerning Chapter 13 of the Bankruptcy Code.

ELIGIBILITY
Essays will be accepted from students enrolled at any law school during the 2017-2018 school year. The essays must be the law student author's own work and must not have been submitted for publication elsewhere. Notwithstanding the foregoing, students may incorporate feedback as part of a course requirement or supervised writing project.

FORMAT
Essays must be typed, double-spaced in 12-point font, and Times New Roman font type. All margins must be at least one inch. Entries must not exceed fifteen (15) total pages of text, including notes, with footnotes placed as endnotes. Citation style should conform to the most recent edition of *The Bluebook - A Uniform System of Citation*. Essays longer than 15 pages of text, including notes, or which are not in the required format will not be read. The winner may be required to abridge the winning article for publication in the *NACTT Quarterly*.

JUDGING
The *NACTT Quarterly* Editorial Committee will judge the competition. Essays will be judged based upon content, exhaustiveness of research, originality, writing style, and timeliness.

QUESTIONS
Questions regarding this competition should be addressed to the chair of the Writing Competition at the address that appears below.

SUBMISSION AND DEADLINE
Entries must be received by April 30, 2018. Entries received after the deadline will be considered only at the discretion of the NACTT Publications Committee. Entries may be submitted via email (in Microsoft Word format) to the *NACTT Quarterly* c/o Robert G. Drummond, *Trustee@MTChapter13.com*.

AWARD
The author of the first-place essay will receive a $1000.00 cash prize. The winning essay will be published in the *NACTT Quarterly - The Quarterly Journal of the National Association of Chapter 13 Trustees*. The winner will also receive free registration and a room for the 2018 NACTT annual seminar in Miami, Florida.


NACTT
53RD ANNUAL SEMINAR
June 27-30, 2018
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Case Decisions

Linda B. Gore
NACTT Secretary,
Chapter 13 Trustee,
Gadsden, AL

1ST CIRCUIT

In re Dube, 2017 Bankr. Lexis 2612 (Bankr. D. Me. Aug. 28, 2017) (Cary) The State of Maine Revenue Services served a levy on a Chapter 13 Trustee and the Trustee filed a motion for instructions seeking directions on how to disburse post-dismissal plan funds. The Court denied the Chapter 13 Trustee's motion and found it did not have jurisdiction to direct where funds should be paid. The Court determined that the dismissal of the underlying case terminated this Court's jurisdiction unless the court retained explicit jurisdiction and it did not do so in this case. The Court rejected the Trustee's argument that the Court had the jurisdiction necessary to assist the Trustee in his efforts to wind up the case.

In re Smith, 2017 Bankr. Lexis 2617 (Bankr. D. Me. August 18, 2017) (Fagone) A Chapter 13 Debtor filed his second case within a year and failed to request that the automatic stay continue so the stay expired according to the statute. One of the creditors, the State of Maine Bureau of Revenue Services, recognized that the Courts are split as to the extent the stay is lifted so it moved for an order clarifying to what extent the stay is lifted. The Court held that when the stay automatically terminates on the thirtieth day that the automatic stay under 11 U.S.C. section 362(a) no longer protects the repeat-filer and all of his property even property of the estate. The Court recognized that it was adopting the minority view and the Court specifically rejected the majority view that was previously adopted by the First Circuit Bankruptcy Appellant Panel, which is not binding precedent. The Bankruptcy Court stated that a stay that did not lift on property of the estate on the thirtieth day would have little impact on the refiling debtor. The court pointed out that the stay lifts on the same property whether the debtor failed to request an extension of the stay or failed to rebut the presumption of bad faith. The Court reasoned that not lifting the automatic stay entirely would not deter bad faith repeat filers and would be inconsistent with the purpose of the statute.

In re Franklin, 2017 Bankr. Lexis 2406 (Bankr. D. N.H. Aug. 24, 2017) (Deasy) (Unreported) The Bankruptcy Court granted the debtor's motion for contempt against the USDA for misapplying mortgage payments in violation of the automatic stay and the confirmation order. Consistent with prior opinion in other cases, this Court found that applying post-petition payments to prepetition obligations is a collection of a prepetition debt in violation of the automatic stay. The debtor was awarded compensatory damages of $5320 and reasonable attorney's fees as sovereign immunity prevented an award of damages for emotional distress and punitive damages.

Foster v. Burns, 547 B.R. 19 (Bankr. D. Me. 2017) (Cary) The debtor's ex-wife was determined to have willfully violated the automatic stay by filing motions in state court to increase her spousal support or adjust the divorce decree to compensate for the debtor's dischargeable obligations without seeking relief from the stay. Although the automatic stay does not prevent the modification of an order for domestic support obligations, the modification cannot be an attempt to recover a discharged property division. The ex-wife knew of the bankruptcy case as she had filed a claim and her objection to confirmation had previously been overruled. Eleven months later she filed three motions in the state court, two days later the debtor filed this adversary proceeding alleging that the ex-wife violated the stay and the ex-wife withdrew some of her motions in state court. The Court determined that the withdrawal would impact damages but does not eliminate the stay violation. The debtor established only $3000 in damages so the Court awarded that amount and determined that the appropriate circumstances did not exist to justify punitive damages because she acted willfully but not in arrogant defiance of the Bankruptcy Code.

2ND CIRCUIT

In re Singh, 2017 Bankr. LEXIS 2256 (Bankr. E.D.N.Y. Aug. 4, 2017) (Trust) Two debtors brought individual chapter 13 cases and the Court determined that each were eligible to be a chapter 13 debtor. Each debtor had guaranteed a corporate loan that was not in default before their petitions were filed. First Jersey Credit Union had filed a claim in each case for the guaranteed loans and each debtor requested that the Court determine their debts are contingent and unliquidated and would not count toward the debt limits for eligibility purposes. The creditor argued that the bankruptcies trigged a default making the debts non-contingent and liquidated. The Court rejected the argument and determined that the filing of a bankruptcy case would never be a pre-filing default in the first case filed. The Court further found that creditor failed to prove that the filing of the case by the first debtor trig-

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gered liability and made the debt non-contingent in the second debtor's case. The debts were each determined to be liquidated since the amounts due were easily determined but the debt were also contingent and did not count toward eligibility purposes.

In re Ciarcia, 2017 Bankr. Lexis 3778 (Bankr. D. Conn. Nov. 1, 2017) (Tancredi) The Court granted the Chapter 13 Trustee's motion to dismiss the debtors' case due to bad faith and, upon request of a creditor, the Court placed a three year bar to refiling on the male debtor unless litigation with the creditor moving for a bar is resolved in debtors favor or he has completely satisfied any judgment she obtains against him and he satisfies mortgage or gets judgment in his favor in mortgage litigation. The Chapter 13 Trustee had gotten the debtor to admit that he never scheduled or provided notice of the case to several creditors, and that he failed to disclose two personal injury lawsuits that were valuable. The Court examined the totality of the circumstances including lack of forthrightness with the Court, inaccuracies in the petition and unlawful business practices and ruled that these factors made him the type of debtor the Bankruptcy Code should not protect.

In re Hanley, 2017 Bankr. Lexis 2283 (Bankr. E.D.N.Y. Aug. 11, 2017)(Grossman) The Court dismissed the case of Chapter 13 debtors who made all their plan payments but failed to make direct mortgage payments. The debtors had defaulted on their plan by failing to make direct mortgage payments as provided in their plan so the Court ruled that they were not entitled to a discharge. The Court rejected the debtor's attempt to resolve the mortgage default by a loan modification since the sixty month term of the plan had expired. The Court stated that a modified plan was not necessary but that approval of the loan modification by the Court was required and that could only be done prior to completion of the plan payments to the Chapter 13 Trustee.

Apollo Global Mgmt. v. BoKf, N.A., 2017 U.S. App. LEXIS 20596 (2nd Cir. Oct. 20, 2017) (Parker) The Second Circuit decided in this Chapter 11 case that the formula approach for determining the interest rates in Chapter 13 case was not required to be used in Chapter 11 cases. The Second Circuit Court of Appeals decided to allow the market rate approach to be used in Chapter 11 cases especially when an efficient market existed. The formula approach in this case caused a below market rate to be offered and approved by the lower court, and the Second Circuit recognized that this was not what was intended by the statute.

Leahey v. SP Ctr., 2017 U.S. Dist. Lexis 183593(S.D.N.Y. Nov. 6, 2017) (Sweet) The District Court denied the defendant's motion for summary judgment based on judicial estoppel due to the failure of the debtors to schedule a lawsuit in their bankruptcy petition. Although the Second Circuit had not specifically addressed the issue of whether debtors should be allowed to bring a suit if they failed to disclose the asset in the bankruptcy petition, in other facts situations the Second Circuit has encouraged courts not to use judicial estoppel if the prior position of the party was due to a mistake. Although both parties agree that this suit was not disclosed, the plaintiff proved that they provided the information to list the suit to their bankruptcy attorney and assumed he had done so. Therefore, the Court ruled that preventing the debtors from proceeding with a lawsuit due to a mistake made by their attorney was inappropriate.

3RD CIRCUIT

Merritt v. Cheshire Land Preservation Trust, 2017 U.S. App. Lexis 18953 (3rd Cir. Oct. 2, 2017) (Vanskie) (Unpublished) The Third Circuit Court of Appeals affirmed the lower court ruling holding that the debtor lacked standing to pursue an avoidance claims under 11 U.S.C section 548 as the Trustee had not failed to carry out her duties but may have legitimately believed that the avoidance complaint would not succeed. The Trustee did not abuse her discretion by refusing to file the adversary proceeding and such abuse is necessary before a debtor will be granted derivative standing. After the Trustee refused to pursue the actions, the debtor filed the adversary proceeding and the court refused to compel the Trustee to join the lawsuit. The defendants filed a motion to dismiss both lawsuits and the motions were granted as the debtor did not have standing to bring the suits. The Court further held that standing was not established by the debtor mentioning the lawsuits in her confirmed plan.

In re Odom, 570 B.R. 718 (Bankr. E.D. Pa. Aug. 10, 2017) (Frank) The Court rejected the Philadelphia Parking Authority's (PPA) argument that that it was immune from monetary liability even though the PPA was assisting the Philadelphia Traffic Court in their collection efforts. The PPA had twice booted and towed the debtor's vehicle. The PPA violated the automatic stay when it attempted to collect a pre-petition debt even if it was collecting the debt on behalf of another entity. The Court awarded $5,046 in compensatory damages ($46 for telephone charges and $5,000 for emotional distress) and attorney's fees.

Thomas v. City of Philadelphia, 2017 U.S. Dist. Lexis 133309 (E.D. Pa. Aug. 21, 2017) (Slomsky) In a case remanded by Third Circuit Court of Appeals the Court instructed the lower court to determine if the City of Philadelphia and School District of Philadelphia (collectively referred to as "City") had notice of the bankruptcy and what effect that had on this complaint alleging the City violated the discharge order by attempting to collect a debt that was discharged in an earlier bankruptcy. The Court found that due to the

admission of the defendants on several occasions that the defendants did receive notice of the bankruptcy and did have knowledge of the discharge order. The defendants also admitted they did not stop collection efforts for a tax debt that included the pre-petition debt that was discharged and that they did sell some property partly for pre-petition taxes. The plaintiff was awarded the amount that the City obtained for the tax sell of one piece of the debtor's property, and since the creditor agreed not to sell the other piece of property or pursue collection of pre-petition debt no further sanctions were deemed necessary.

Odom v. Philadelphia Parking Authority, 2017 Bankr. Lexis 2240 (Bankr. E.D. Pa. Aug. 10, 2017) (Frank) Both motions for summary judgment on the debtor's complaint for violation of the automatic stay due to parking authorities impoundment of the Debtor's vehicle for six days about 18 months after the debtor filed bankruptcy were denied. However, the Court found that the state immunity law did not control due to the Supremacy Clause of the U.S. Constitution. The Court further recognized that it could not award punitive damages against the parking authority since it was a governmental unit.

In re Leahey, 2017 Bankr. Lexis 3274 (Bankr. D.N.J. Sept. 26, 2017) (Altenburg Jr.) The Court denied the debtor's motion to reconsider its prior order denying the debtor's motion to reopen their chapter 13 bankruptcy case as the asset could not be administered in the case. The Debtor's had informed their attorney of a lawsuit but he failed to file an amended schedule A and B and never modified their plan. The Court found that nothing could be done if the motion to reopen was granted since the plan was completed, it was too late for a motion to modify, the plan that had been confirmed and completed provided for 0% to unsecured claimholders, and the confirmed plan did not provide for the distribution of lawsuit proceeds.

4TH CIRCUIT

Va. v. Beskin, 2017 U.S. Dist. Lexis 173197 (W.D. Va. Oct. 19, 2017) (Moon) A debtor's chapter 13 bankruptcy case was dismissed because he could not obtain confirmation of a plan. The Division of Child Support Enforcement ("the Division") ordered the Chapter 13 Trustee to pay them the money being held by the Trustee that he was preparing to return to the debtor because the debtor was behind on child support. The Chapter 13 Trustee filed a motion requesting that the Bankruptcy Court direct him where to disburse the funds and the Court ruled that the money should be returned to the debtor. The District Court affirmed the decision of the Bankruptcy Court and ruled that the money must be returned to the debtor. The Court looked to the wording of the statute to determined it directed the Trustee to return the funds to the debtor and the Court further found that the Supremacy Clause requires that 11 U.S.C. section 1326(a)(2) trump the state statute.

In re Baker, 2017 Bankr. Lexis 3865 (Bankr. E.D. Va. Nov. 8, 2017) (Phillips) The Court sustained the Trustee's Objection to Confirmation on disposable income grounds. The Debtor's spouse owned the house where they resided since before they were married. The home is in his name and the mortgage debt is in his name only. The Court determined the debtor was entitled to a marital adjustment for the Spouse's mortgage payments. The mortgage payments in this case are not expenses by the debtor since it is not owed by the debtor.

In re Keisler, 2017 Bankr. Lexis 3617 (Bankr. D.S.C. Oct. 16, 2017) (Duncan) The Debtor's chapter 13 plan may provide for the payment of the truck debt he guaranteed even though the truck was in the possession of the creditor prior to the filing of the petition. The plan was allowed to provide for the full payment of the debt over the life of the plan because the debtor's right of redemption is property of the bankruptcy case. The truck had not been sold when this case was filed so the debtor's equitable interest remained. However, the Court ruled that plan must be amended to include the payment of the creditor's reasonable attorney's fees.

In re Matusak, 2017 Bankr. Lexis 3166 (Bankr. E.D.N.C. Sept. 19, 2017) (Humrickhouse) In month 31 of a 36 month plan, the debtor's ex-wife who was a creditor filed a motion to modify the plan of the debtor to offer additional monthly income due to an increase in the debtor's regular income. The debtor works on commission and a fluctuation in income was anticipated so that would normally prevent the modification. However, this same creditor objected to confirmation and the debtor responded that the plan could be modified if the income increased and the creditor withdrew her objection based on that representation. The income had increased substantially as the income increased from $90,000 per year to $155,371 since the filing of the case. The modification was approved and the debtor was required to pay an additional $1734.59 for five months. The Court refused to extend the commitment period to 60 months as the 36 month term was properly calculated when the case was filed.

In re Matteson, 2017 Bankr. Lexis 3105 (Bankr. W.D.N.C. Aug. 8, 2017) (Beyer) Bankruptcy Petition Preparer (BPP) failed to comply with requirements of 11 U.S.C.S. section 110 and practiced law without a license by advising debtor to file bankruptcy, advising her what chapter to choose, and advising the debtor that filing a chapter 13 case would prevent foreclosure of her home. The BPP charged an excessive fee, failed to disclose the fee, failed to sign and provide the BPP's name and address on the petition, and failed to provide other documents including the pre-petition

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credit counseling certificate. The Court ruled that the document filed attempted to conceal the BPP so the court tripled the fine as the statute allowed under these circumstances. The trebled fine was $21,000, the fees had to be disgorged and the BPP was forbidden from committing further violations.

5TH CIRCUIT

In re Kindle, 2017 Bankr. Lexis 3796 (Bankr. D. S.C. Nov. 1, 2017) (Duncan) The Court overruled the Chapter 13 Trustee's objection to confirmation and confirmed a chapter 13 plan that proposed to continue to pay student loans directly $476.21 per month. This proposal allowed the student loan claimholder to be paid 44.51% of their debt while other unsecured claimholder would receive 33.30%. The Court pointed out that 11 U.S.C.S. section 1322(b)(5) allows for the curing of the default and maintenance of payments on any secured or unsecured debt if the last payment is due after the final plan payment. Since the code allows this provision, the only issue left to be decided is whether or not this provision is an unfair discrimination. The Court determined that the provision did not unfairly discriminate applying a totality of circumstances test to this case. The Court found that other unsecured claimholder would receive more than they would under the means test. The Court further found that the interest would accumulates on the student loan debt at a rate of $200.00 per month and if the debt was paid through the plan the payments would not be made until the thirtieth month causing interest and late charges to accumulate. These delayed payments on the student loan would not be enough to pay the interest and late charges. The Court ruled that the fact that student loans are non-dischargeable is not enough to justify the unfair discrimination. Nevertheless, taking into consideration the entire situation, to not allow the plan provision would interfere with the bankruptcy code's purpose to provide the debtors with a fresh start. The Court explained to the debtors that they must make the direct payments for their student loans in order to qualify for a discharge and that they were required to certify that they had made all their student loan payments at the end of the case. The plan was confirmed.

In re Young, 2017 Bankr. Lexis 3170 (Bankr. M.D. La. Sept. 19, 2017) (Dodd) The Chapter 13 Trustee's Motion to Dismiss was denied. The motion to dismiss was filed when the Trustee discovered that the debtor did not make thirty-nine direct plan payments to their mortgage holder. The debtor responded by obtaining a loan modification with the mortgage holder that forgave over $26,000 of the principal and said agreement was eventually approved by the Bankruptcy Court. The Chapter 13 Trustee argued that the last payment had been made on the plan and a modification could not now be proposed. The Court ruled that the debtor could modify the plan to adopt the terms of mortgage modification since the debtor had paid all secured and unsecured claim in full that were to be paid by the trustee in month 53.

In re Pustejovsky, 2017 Bankr. Lexis 2500 (Bankr. W.D. Tex. Sept. 1, 2017) (King) The Court vacated the order dismissing this debtor's case. The case was dismissed based on the debtor's voluntary dismissal. Upon discovery that the debtor failed to list property of the estate, the Court found that a bad faith exception existed to the debtor's right to dismiss her case. The Court determined it could *sua sponte* convert the case to a chapter 7 case as to do otherwise would allow the debtor to escape from her bad actions and found that allowing dismissal was not in best interests of unsecured claimholders. The debtor's husband died a tragic death and the debtor received life insurance proceeds and donations of over $700,000. The debtor spent this entire sum without accounting for the funds to the minor child of the debtor who lived with his biological mother and was legally due to receive a substantial portion of the money. The debtor further failed to schedule a wrongful death lawsuit and failed to receive approval of the employment of the law firms representing her. The case was converted.

In re Hawk, 871 F.3d 287 (5th Cir. Sept. 5, 2017) (Prado) In a chapter 7 case, the Bankruptcy Court erred when it ordered the Debtors to turn over funds withdrawn from their IRA. Under the laws of Texas, retirement funds lose their exempt status if they are not rolled into a different account within 60 days of the distribution. After the petition was filed, the debtors withdrew funds from their IRA and did not roll them into another account. The Fifth Circuit noted that 11 U.S.C.S. Section 1306(a)(1) which makes property acquired after the petition is filed property of the estate does not have a similar provision in chapter 7 so there is no way for newly acquired property to become property of the Chapter 7 estate. Therefore, the Court ruled that the Court erred when it required the property to be turned over to the Trustee.

In re Riley, 2017 Bankr. Lexis 3299 (Bankr. W.D. La. Sept. 29, 2017) (Kolwe) The Court disallowed the request to reimburse advances as administrative expenses made for filing fee, credit counseling fee and credit report fees. The debtor's attorney requested these reimbursements over and above the no-look fee allowed by the Court. The Court ruled that if the attorney wished to be compensated under the Courts no-look fee order, the attorney could only receive the no look fee and no more. The Court pointed out that the debtor is personally responsible for paying for the credit counseling, credit report and filing fee not the bankruptcy estate.

6TH CIRCUIT

In re Lundy, 2017 Bankr. LEXIS 3315 (Bankr. W.D.N.D. Ohio Sept. 29, 2017) (Whipple) The Court denied the debtor's Motion under Rule 2020 to have the United States Trustee (UST) investigate acts of the Judges and pursue writ of mandamus for the debtors as that rule did not authorize the UST to review the Bankruptcy Judges or Bankruptcy Courts. The Court pondered that the debtors may be requesting that the UST investigate the Chapter 13 Trustee for retaining fees on a pre-confirmation dismissed case, but the Court found those fees were authorized by the Court and directives of the UST. Therefore, the Debtors' request to investigate the Chapter 13 Trustee if one was being made was also denied.

In re Lundy, 2017 Bankr. Lexis 3316 (Bankr. W.D.N.D. Ohio Sept. 29, 2017) (Whipple) The Court denied the debtors' motion to remove the Chapter 13 Trustee as she acted in accordance with the Handbook for Standing Trustees and there was not controlling law in the Sixth Circuit or the Northern District of Ohio that required her to reverse and refund her percentage fee when a case is dismissed or converted prior to confirmation of a plan. Furthermore, the Court's original order authorized her to retain the fee. Therefore, the fee retention was not a criminal embezzlement as falsely alleged by the debtors. Although the Court decided that the fee should be refunded to the debtors, the Trustee's actions of retaining the fee were authorized and not inappropriate and did not amount to cause for removal. The Court further found no cause for removal as the Trustee never misrepresented to the Court amounts paid to her by the debtors but merely stated that one payment had not posted in her computer system. Thirdly, the Court found no cause for removal on basis that the Trustee did not file a written objection to confirmation as it has been procedure in this court for years for the Trustee to file objection only when it is apparent that the confirmation issue cannot be resolved by the parties so that practice is not cause for removal. Finally, any complaint that the debtors had about her lack of computer access is not well-founded as the Trustee does not have control over the Pacer system, debtors do not have access to the Trustee's system, and the Trustee had fulfilled her statutory duty by providing the debtors with worksheets.

In re Lundy, 2017 Bankr. LEXIS 3317 (Bankr. W.D.N.D. Ohio Sept. 29, 2017) (Whipple) The Bankruptcy Court granted the Debtors' Motion to amend the dismissal order and motion to disgorge fees. The Court ruled that upon dismissal of a case prior to confirmation that pursuant to 11 U.S.C.S. section 1326(a)(2) the Chapter 13 Trustee must return funds to the debtors including her statutory fee. The Co-debtor was found to have standing to raise this issue as she proved that $685.90 of funds retained by the trustee came from payments she made. The Court found that Section 586(e)(2) requires the Chapter 13 trustee to collect a percentage fee from all payments received and to hold it until the plan is confirmed. If the plan is not confirmed, the Court found that 1326(a)(2) required the return of all payments including the statutory fees held by the trustee after deducting allowed administrative expenses.

In re Moore, 2017 Bankr. LEXIS 3385 (Bankr. E.D.N.D. Ohio Oct.3, 2017) The co-debtor's wife died in a joint chapter 13 case. The attorney filed a Notice of Voluntary Conversion on behalf of both debtors. The Court issued a Notice of Intent to Sever and re-convert the wife's portion of the case back to chapter 13 and the other debtor objected. The Court found that when a debtor died that the case may be dismissed or further administered and further administered means continue with receipt and disbursements per a confirmed plan. Conversion is not an option since a decedent's estate is not a person so it is not eligible to be a chapter 7 debtor. Although some courts relate back to date of the original filing to determine eligibility, this Court rejected that theory and found the relevant time to determine eligibility was at the time the case was converted. The Court further pointed out the ethical dilemma of the debtor's attorney in converting a case when the debtor is unable to direct his actions and a representative of the probate estate had not been appointed.

In re McDowell, 2017 Bankr. Lexis 3371(Bankr. M.D. Tenn. Oct. 3, 2017) (Walker) The Trustee filed an objection to a claim asking the Court to deem a claim abandoned because the creditor has not provided the Chapter 13 Trustee with a good address to make payments so the distribution could not be made. The Trustee had attempted unsuccessfully to locate a good address from the debtor's attorney, phonebook, and directory assistance. The Court denied the motion to deem the claim abandoned as the Court found that the wording in 11 U.S.C section 347(a) was straightforwardly requiring the trustee to hold funds and at the end of the case pay the funds to the Court registry in trust for the creditor. The Court found that the prejudice to the creditor especially in light of lack of notice outweighed all other considerations.

In re Hager, 572 B.R. 848 (Bankr. W.D. Mich. Sept. 5, 2017) (Dales) The Court sustained a creditor's objection to confirmation based on lack of feasibility and bad faith. The debtor's plan was deemed not to be feasible as she was depending on $750 in rent paid to her by her ex-husband who had moved into her condo and suffers from a gambling problem. Her ex-husband has proven before he was not dependable, and she failed to produce him as a witness to show how she can now rely on this income. The Court found bad faith under the totality of circumstances test as the debtor would not consider getting a less expensive

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home even though she was commuting a long distance to work and paying over the IRS local standard. The Court found further support for the bad faith finding in the debtor's extensive gambling loss from 2012 until even after her chapter 13 petition was filed, and the fact she squandered her fresh start after receiving her chapter 7 discharge.

7TH CIRCUIT

In re Manzo, 2017 U.S. Dist. Lexis 136448 (E.D.N.D. Ill. Aug. 25, 2017) (Alonso) The District Court reversed and remanded the Bankruptcy Court's denial of confirmation. Although the Court of Appeals normally only hears final orders and an order denying confirmation is not a final order, the District Court granted the debtor's request to appeal an interlocutory order. The District Court found the interlocutory appeal was appropriate since the outcome of this issue will affect the course of the litigation. Other reasons supporting the interlocutory appeal were that different opinions concerning this issue exist, and allowing the appeal would advance the end to the litigation. The Debtor claimed exempt over $7,000 in social security benefits that remained from a lump sum he was paid in 2013. The Bankruptcy Court rightfully denied objections to this exemption by the Trustee, and a creditor. The objecting creditor had a second mortgage on the debtor's home but was being treated as completely unsecured due to the value of the first mortgage exceeding the value of the home in this case ("Seaway"). However, the Bankruptcy Court sustained Seaway's objection to confirmation of the plan on grounds of bad faith under the totality of circumstance test finding that it was bad faith to propose a plan to pay a small sum to a stripped off lien when the debtor had enough money on hand to pay most if not all of the debt. The Bankruptcy Court went on to find that the Court would confirm a plan if the debtor offered to pay 50% of the unsecured debts. The District Court remanded the case with instruction to the Bankruptcy Court that if the only bad faith in this case is the stripping of a lien and the retaining of exempt funds then the plan must be confirmed as a debtor should not be deemed as acting in bad faith if he is doing exactly what the bankruptcy code allows.

In re Whitlock-Young, 2017 Bankr. LEXIS 2262 (Bankr. E.D.N.D. Ill. Aug. 10, 2017) (Barnes) A Debtor filed his sixth case, and had two cases previously dismissed in the same year as this one was filed, so he did not have a stay when the last case was filed. The day after the case was filed, the creditor sold the real property of the debtor at an auction and both the debtor and the co-debtor were named as defendants in this foreclosure. The debtor later had his stay imposed and obtained confirmation of a plan. The Court held that the debtor had standing to raise the violation of the co-debtor issue because the purpose of the stay was to protect the debtor from injury such as the loss of her home. The Court pointed out that Congress could have not imposed the co-debtor stay as well as the automatic stay upon the filing of the third case in twelve months and they chose not to do so. The Court found it was undisputed that the debtor listed the mortgage-holder and the mortgage-holder had notice of the filing of the case, so the Court determined that the sale was held in violation of the co-debtor stay and that the sale was void. However, no damages were awarded as the debtor did not meet his burden for damages.

8TH CIRCUIT

Missouri Department of Social Services v. Spencer, 868 F.3d 748 (8th Cir. 2017) (Loken) The claim of the Missouri Department of Social Services("MDSS") was partially disallowed in the debtors' bankruptcy case. The debtors completed their plan, paid the allowed amount of MDSS's claim and received a discharge. Six weeks later the MDSS garnished one of the debtor's wages for the disallowed portion of the claim. The debtors filed a motion for sanctions for MDSS's willful violation of the discharge order in the bankruptcy case the Bankruptcy Court judge agreed that collection actions were in violation of the discharge order and as contempt sanctions ordered MDSS to pay the debtors' attorney's fees for bring the action. The BAP reversed and held that the Supreme Court has made it clear that DSOs are not dischargeable so the discharge did not apply even to the disallowed portion of the claim. Therefore, the Eight Circuit BAP ruled that MDSS had a legitimate reason for issuing the garnishment and MDSS should not have been sanctioned. The debtors appealed to the Eighth Circuit Court of Appeals. The Eight Circuit held that MDSS had a legitimate reason to believe that they could issue the garnishment due to Supreme Court's ruling that indicates DSOs cannot be discharged so sanctions were not appropriate. The Eighth Circuit refused to rule on any other issue as that was not raised at the Bankruptcy Court level.

In re Tanner, 2017 Bankr. Lexis 2367 (Bankr. N.D. Iowa Aug. 23, 2017) (Collins) The Court awarded actual damages of $19,207.62, punitive damages of $40,000.00, and attorneys fees to the debtor because Nationstar Mortgage, LLC ("Nationstar") failed to comply with Court orders and demonstrated a casual attitude toward compliance. The debtor had reached a settlement with the creditor when the proof of claim reflected a lower monthly payment amount than the debtor's plan and upon payment of the lower amount for over a year and with each payment he requested information as to the proper amount and was ignored. Nationstar said it was their policy during that period not to respond to inquiries made by debtors in bankruptcy but that policy has since changed. The debtor originally agreed to pay over $7000.00 in arrears if the

creditor would provide him with a statement showing how the funds were applied, the new principle balance, the new contractual due date and an amortization schedule within 30 days. Nationstar did not provided the information within the allotted time so they offered to waive the over $7000.00 in arrears for additional time to provide the information. When the information was provided the arrears was actually placed at end of loan and not forgiven and other mistakes were contained in the documents. Nationstar originally had until December 1, 2015 to provide the information, the Court gave them an additional 30 days or it would schedule a show cause hearing for Nationstar to show why it should not be sanctions. Five days after the second deadline Nationstar's counsel asked the debtor's attorney to clarify what information was needed and finally provided the information fifty-two days after the second deadline. The Court ruled these actions support an award for sanctions.

Demarais v. Gurstel Chargo, P.A. 869 F.3d 685 (8th Cir. Aug. 29, 2017) (Benton) The Eight Circuit Court of Appeals reversed the District Court dismissal of counts of the debtor's complaint alleging Fair Debt Collection Practices Act ("FDCPA") violations by attempting to collect a debt not owed, using unfair practice to collect a debt, falsely misrepresenting the amount of the debt and threatening to take action without an intent to do so. Originally, the debtor was sued for a stale debt. He defended the action and brought this action for violations of the FDCPA. The District Court dismissed his complaint finding that the violations were barred by statute of limitations, that a letter sent was not deceptive, and that counsels statement in Court were permissible legal tactic and not actionable. The Eight Circuit found that the defendant's letter of January 22 caused the debtor real injuries similar to traditionally recognized injuries for this type of action. The Court further found that the debtor had alleged real injuries including mental distress, and had standing to sue for false representation about the amount of debt and false threats to proceed to trial. Thirdly, the Court found that the action was not barred by the statute of limitations since creditor attempted to collect interest not owed after the case was filed and each attempt to collect gives rise to another statute of limitations. The Court further found that debtor had plead facts for a violation for wrongfully threatening to proceed to trial. The Court found the District court erred when it determined that the letter sent in the dismissed case requiring discovery response within 30 days was not actionable since no one was misled, as being misled is not a requirement for a violation.

9TH CIRCUIT

In re Hatch, 2017 Bankr. Lexis 2461 (Bankr. E.D. Cal. Aug. 30, 2017) (McManus) The Bankruptcy Court held a properly noticed valuation hearing on the debtor's home. The debtors contended that the value was less than the amount owed on the first mortgage so the second mortgage could be treated as wholly unsecured. The debtors appeared at the hearing, testified and were cross-examined but the creditor did not call their appraiser as a witness and the Court did not consider his opinion. The debtors as owners of the property are proper lay witnesses concerning the value. Therefore, the Court found the value to be the amount the debtors testified was the value as that was the only evidence properly before the Court. The Court pointed out that if it had considered the appraisal, the result would have been the same because the appraisal was flawed due to the fact that comparables were based on houses for sale, not what they sold for, and because the manufactured home market is declining since more homes are available for sale. Additionally, the manufactured home's condition was overstated in the appraiser's report.

In re Mendenhall, 2017 Bankr. Lexis 3600 (Bankr. D. Idaho Oct. 17, 2017) (Pappas) The Court gave the debtor fourteen days to convert this case to a chapter 7 case or the case would be dismissed as the debt was determined to be ineligible to be a chapter 13 debtor as her unsecured debt exceeded the debt limit even though she would have been qualified if her time-barred student loans were excluded. The Court held that the time-barred, unenforceable student loans were debts that counted toward eligibility limits as the Supreme Court has ruled that they are debts. The Court pointed out that even though the debts were disputed they were still liquidated since the amount could be readily determined and time-barred debt are not contingent as another event did not need to occur to establish the debtor's liability.

Bank of New York Mellon v. Watts, 867 F.3d 1155 (9th Cir. Aug. 16, 2017) (Berzon) The Ninth Circuit Court of Appeals determined that it did not have jurisdiction over this appeal from the District Court order reversing the Bankruptcy Court so the appeal was dismissed. The District Court had reversed the Bankruptcy Court's order confirming a plan that vested property in an objecting creditor as that Court found that a plan could not require a creditor to take title to property especially one that does not consent to take the title. The Ninth Circuit found that since the confirmation was set aside by the District Court that there was not a final appealable order to give the Ninth Circuit Court of Appeals jurisdiction.

In re Escarcega, 573 B.R. 219 (B.A.P. 9th Cir. 2017) (Jury) In several cases, the Chapter 13 Trustee was not formally raising disposable income objections to chapter 13 plans because that would trigger a required term of the plan per a local rules and form plan. The failure to formally object, allowed the debtors to pay

CONTINUED NEXT PAGE

0% to unsecured claimholders, conclude cases sooner than was statutorily required, and prevented cases from being subject to modification for changed circumstances for the appropriate term. The Court found that this breached her fiduciary duty to the unsecured claimholders and he denied confirmation of the plans.

10TH CIRCUIT

In re Cox, 2017 Bankr. Lexis 2248 (Bankr. E.D. Ok Aug 9, 2017) (Cornish) The Bankruptcy Court denied the extension of a stay motion. The debtor's first case was dismissed when they failed to file tax returns and failed to make payments and they had not experienced a substantial change of circumstance since the last case was dismissed. The Court found that a substantial change of circumstance is required to rebut the presumption that the case was filed in bad faith and for the Court to find that the debtor would be able to perform in this new case.

In re Beaird, 2017 Bankr. LEXIS 3152 (Bankr. D. Kan. Sept. 11, 2017) (Berger) When the debtor filed a voluntary dismissal of his case, the Chapter 13 trustee had over $13,000 on hand being held for the mortgage creditor who had only recently filed a claim. The Trustee's motion for allowance of the claim was granted four days before the voluntary dismissal. The debtor's attorney wanted all funds paid to her for the debtor. The Bankruptcy Court agreed with the majority of other Courts that have ruled on this issue and found that the wages vested in the debtor when the case was dismissed and should be returned to the debtor. The Trustee was not allowed to distribute funds to the mortgage holder. The Court pointed out that the late filed claim was not the debtors fault so cause did not exist for the mortgage creditor to be paid. The Trustee was allowed to pay the Debtor's counsel from the funds as the debtor had signed an agreement that the attorney be paid upon dismissal.

In re Ordonez, 2017 Bankr. Lexis 3739(Bankr. D. Utah Oct. 27, 2017) (Thruman) A Chapter 7 debtor who had reopened her chapter 7 case to schedule her unlisted lawsuit, which remained unlisted at the time this opinion was written, was not allowed to convert the case to a chapter 13 case. The lawsuit was property of the chapter 7 bankruptcy estate (the Court ruled it had not been abandoned) and the fact she failed to schedule the suit and failed to show she had enough income to fund a chapter 13 plan led the court to deny her motion to convert. The Court refused to award sanctions against the defendant in the lawsuit for the debtor as she requested, as her complaints were in regard to matters that happen in the District Court.

11TH CIRCUIT

In re Moorer, 2017 Bankr. Lexis 2282 (Bankr. M.D. Ala. Aug. 15, 2017) (Williams, Jr.) The Court overruled the creditor's objection to the plan modification and approved the modification. The Court allowed the debtor to surrender collateral post-confirmation and treat the deficiency balance as unsecured if the debtor proposed the modification in good faith as was done in this case. The Court found that the surrender as payment is allowed in a modification, *res judicata* does not prevent such a modification especially since the debtors can achieve the same by dismissing and re-filing, secured claimholders are not defenseless and the affect on claims is irrelevant as the Code allows such a modification.

Floyd v. Floyd, 2017 Bankr. Lexis 3266 (Bankr. N.D. Ala. Sept 27, 2017)(Jessup, Jr.) A bankruptcy court determined that a mobile home debt assumed by an ex-husband was not domestic support obligation but was instead a dischargeable property settlement. The debtor was allowed to cram down the mobile home, pay that amount in his chapter 13 plan and his ex-wife would be solely responsible for the remaining portion of the discharged debt on the home where he lived. The Debtor's motion for summary judgment on an adversary proceeding complaint addressing whether the debt was dischargeable was granted and the debt was determined to be dischargeable. The Court recognized that property settlements can be in the nature of support or alimony but that was not true in this case since both debtors had similar income and neither appeared to receive support in the divorce agreement.

In re Alexander, 2017 Bankr. Lexis 3896 (Bankr. N.D. Ga. Nov. 13, 2017) (Diehl) The Court found that the purchasers of the debtor's property pursuant to a tax sale under Georgia law had a claim in the debtor's case as the debtor's had an unexpired right to redemption and possession of the property even though the debtor did not have legal title. The property was determined to be property of the estate and the plan could provide for the payment of the fully secured claim over time.

In re Ryan, 2017 Bankr. Lexis 3848 (Bankr. M.D. Fla. Nov. 7, 2017) (Funk) The Court denied confirmation of a plan and sustained the Chapter 13 Trustees objection to a plan that provided for interest only payments on the student loan debt while paying all other unsecured claims in full. The Court never reached the unfair discrimination portion of the objection as the objection was due to be sustained on disposable income issues. The Court may not confirm a plan if an objection is filed unless all claims are paid in full or if all of the debtor's disposable income is offered for payment to unsecured claimholders for the applicable commitment period. The plan does not propose to pay all claims in full since the student loans will not be paid in full. Secondly, the debtor failed to present any evidence as to the debtor's future income so it was

not possible for the Court to determine that all of her disposable income was offered. Therefore, confirmation of the plan was denied.

In re Jocelyn, 2017 Bankr. Lexis 3433 (Bankr. M.D. Fla. Oct. 5, 2017) (McEwen) A *pro se* Debtors filed a motion for contempt of Automatic stay and request for injunctive relief. The Court decided he was asking him to hold a state court judge in contempt for denying his motion to rescind a foreclosure sale but the court refused to take this action since the Judge was absolutely immune from suit when exercising his judicial authority, the Judge had not been served with the pleading and there was no evidence that the state judge knew about the bankruptcy case. The debtor second request is that the state court judge be directed to rescind the sale. The Court found it was without authority to direct another court to enter an order but he did determine that the foreclosure sale was void since it was conducted in violation of the automatic stay.

Slater v. United States Steel Corp., 871 F.3d 1174 (11th Cir. 2017) (Pryor) The Eleventh Circuit Court of Appeals, sitting *en banc*, remanded the case back to the Eleventh Circuit Panel to review further whether the District Court abused its discretion in applying judicial estoppels due to the new standard in this opinion. The Court announced new inquires for evaluating the debtor's intent to make a mockery of the court or judicial system. The Court rejected past precedent that held that if a civil action was omitted in the bankruptcy filing that the debtor intended to make a mockery of the bankruptcy system. The Court adopted a *totality of circumstances* standard requiring courts to examine the facts and circumstances of each case. The Court suggested that Courts consider factors such as the plaintiff's sophistication, whether the civil action was ever listed, whether the debtor's bankruptcy attorney, trustee and creditors were aware of the action and whether other items were omitted. ◉

HAMP

In 2009, in the aftermath of the financial crisis, the U.S. Treasury Department established HAMP, which allowed a homeowner who met certain criteria to modify an existing mortgage. The Program worked with the NACTT to identify issues that would affect borrowers in bankruptcy. Together, the Program and the NACTT developed informational resources to provide to debtors at the section 341 meeting of creditors. Bankruptcy Judge Kevin Anderson of the District of Utah, a former trustee, participated in a video to help educate trustees and the debtor bar about the opportunities provided by HAMP. Many trustees actively assisted debtors and worked with vendors to create a portal where debtors could upload their loan modification information and track the progress of the modification.

Percentage Fee

Longstanding Program policy permitted the trustee to take a percentage fee only on funds disbursed. The Program began to review this position in 2011. Based on its interpretation of the relevant statutes, the Program decided that trustees would be permitted to collect the percentage fee upon receipt of the plan payment, and it litigated this position in various forums.

In January 2014, the Program and the NACTT began working with the software vendors to identify the changes in the trustee case management software that would be necessary to implement the fee on receipt policy. A group of trustees, representing users of each software system, volunteered to pilot test the software changes and identify problems, and the fully vetted software was rolled out to nearly all trustees effective October 1, 2014. This project took an enormous amount of coordination and effort, and the fact that implementation went as smoothly as it did is a testament to the dedication and hard work of all involved.

Best Practices

Some debtors and lawyers fail to produce required documents, and some trustees make burdensome and unnecessary document requests. Both situations result in inefficiency and increased costs in the bankruptcy system. To address all sides of the issue in a balanced fashion, the Program met with representatives of the NACTT, the National Association of Bankruptcy Trustees (NABT) and the National Association of Consumer Bankruptcy Attorneys (NACBA) to develop a set of best practices that would ensure that all parties in interest are focused on documentation likely to advance the proper and efficient administration of cases. The Program issued the Best Practices in 2012. Since then, the Program, the trustee associations and NACBA have provided training to the debtors' bar, including a jointly hosted Live Meeting presentation.

Stick to One Thing

It has been said that the Program is the "watchdog" of the bankruptcy system and that trustees are the face of the system. As I sit here trying to sum up my career as a "watchdog" and as a former chapter 13 trustee, I am reminded of a line from the movie "City Slickers." Jack Palance's character holds up one finger and says that the secret to life is one thing and as long as you stick to that one thing nothing else matters.

What is my "one thing"? As it turns out, it is something that Program personnel and trustees also share. It is a commitment to service, to serving the needs of all stakeholders in the system and improving the system for all.

So dear friends and colleagues, it is time for me to begin my next career as a novice tennis player, artist, linguist, animal trainer and world traveler. Thank you for your friendship, professionalism and commitment to helping the "honest but unfortunate debtor" navigate the bankruptcy system. ◉

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