



THE BANKRUPTCY LETTER

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BANKRUPTCY THIS WEEK - OCTOBER 2 2006

REVISED OFFICIAL FORMS TAKE EFFECT OCTOBER 1

The Judicial Conference has approved some modified bankruptcy forms which become effective today (Oct. 1 2006). For information about the new forms visit -

<http://www.uscourts.gov/rules/#judicial0906>

[Following item reported to us by Jonathan C. Becker
Attorney at Law, Lawrence, KS]

U.S. TRUSTEE AUDITS ARE COMING IN OCTOBER

The audits are coming! The audits are coming from the
redwood forest to New York island!

Effective 10/17/2006, pursuant to BAPCPA § 603, at least
one out of every 250 cases will be audited. The audit
notification letter will come out of the UST office. In
jurisdictions with electronic filing, you can expect some kind
of virtual record in the bankruptcy file that will tell you the
letter is coming.

You will have 21 days to produce the four categories of
documents: (1) the six months of income (no problem
because you have that from your calculation of CMI), (2)
bank statements (reports are saying either 6 months or 12
months; don't know if you have to produce checks and
deposit slips), (3) divorce decree, and (4) a packet of
documents like 2-4 years of tax returns, titles to cars and
deeds. As soon as we have the form letter we will post it.
We recommended that it be posted on the UST web site.

Once these docs are submitted, the audit will be done by
one of two auditing firms. The completion of the audit will
result in another virtual docket entry. Either (1) audit
completed, no discrepancy; (2) audit completed,
discrepancy; or (3) audit incompleting. If (1), then UST
cannot do anything about discharge. If (2) or (3), UST can
file a motion to deny discharge.

This audit procedure will be national and arose out of the
'sense of the Congress' direction to the UST. Historically, it
was supposed to start 6 months ago, but UST Region 20
Trustee, Mary May, the chair of the UST committee
spearheading the development of the audit program died
from chronic leukemia/cancer last March, so the program got
delayed 6 months.

[says Mr. Becker" "A lot of attorneys are going to get caught
by this. It may also result in disgorgement motions."]

LAWYERS KNOCK DECLINE IN BANKRUPTCY FILINGS

Attorneys say new law is not steering people to Chapter 13
and they expect resurgence in activity

By ALAN WECHSLER, Business writer
September 30, 2006

ALBANY -- Almost a year after the U.S. Bankruptcy Law
changed, the number of filings so far this year is little more
than a third of the number filed in the same period in 2005.

Lawyers acknowledge that the rules -- -- have kept some
people from filing. But they say the rules aren't doing what
they were supposed to, and they expect the numbers to
pick up again in future.

For instance, some lawyers say they are filing more Chapter 7s than Chapter 13s, though the new rules were supposed to encourage more Chapter 13s.

For full article: <http://timesunion.com/AspStories/story.asp?storyID=521417&category=BUSINESS&newsdate=9/30/2006>

[Following item reported to us by Georgia attorneys Rob and Carol Colliersmith]

COURT ELIMINATES "NO LOOK" RETAINER FEE IN CHAPTER 13: DEBTOR'S ATTORNEY FREE TO CHARGE MARKET RATE

On September 26, 2006 the United States Bankruptcy Court for the Northern District of Georgia entered General Order No. 6-2006 regarding the compensation of attorneys in Chapter 13 Cases. The Order recognized that, under the changes brought about by BAPCPA, issues presented in Chapter 13 cases vary and debtor's counsel is in the best position to evaluate each case and to determine the legal services required and the fees that are appropriate for the performance of those services.,

"While not intending to establish a particular fee or method of payment, attorney compensation will not be determined by the "no-look fee," as was the previous practice.

The Order requires full disclosure of the fee arrangement in the Plan and Rule 2016 disclosure statement which will allow all interested parties the opportunity to review and respond to the arrangement prior to confirmation of the plan. Possible fee arrangements could involve a "flat fee" for all services a case may require or a set fee schedule tied to specific tasks, which could result in post-confirmation fee applications. Regardless of the method of payment the attorney would continue to be required to represent the debtor in all matters related to the case unless permitted to withdraw by order of the Court.

Prior to General Order No. 6-2006 the "no-look" fee was \$2500.

[To view the full text of the order go to BankruptcyMedia.com, then scroll down to "Bankruptcy This Week" (center column). This article appears with a link to the order.

[CLICK HERE FOR MORE BANKRUPTCY NEWS](#)

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wrote about cost-free or relatively inexpensive ways to
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expensive ways to reach your market.

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methods. He discusses 7 proven ways to get more clients
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BAPCPA CASE UPDATES - 5 CASES

BAPCPA TREATS MOTION TO EXTEND STAY DIFFERENTLY
AS BETWEEN CERTAIN CREDITOR OR ALL CREDITORS

FAILURE TO DEMONSTRATE CHANGED CIRCUMSTANCES IS
 GROUNDS FOR DENIAL OF MOTION TO EXTEND STAY

§ 362(c)(3)(C)(i) and 362(c)(3)(C)(ii)

Debtor's motion to extend the automatic stay brought timely with 30 days of filing the petition was denied on grounds of bad faith where debtor could not demonstrate change of circumstances from previous dismissed case.

In re Ellis, 339 B.R. 136 (Bkrtcy.E.D.Pa. 2006)
 DIANE WEISS SIGMUND, Chief Judge

HOMESTEAD CAP APPLIES IN ALL STATES (IN THIS CASE
 NEVADA)

§ 522(p)

11 U.S.C. § 522(p) is applicable even though Nevada does not allow the choice of federal exemptions. Because the debtors acquired their homes within the 1215 days before the filing they are limited to the \$125,000 homestead set forth in that § notwithstanding the fact that the Nevada homestead is higher.

In re Virissimo, 332 B.R. 201 (Bkrtcy.Nev. 2006)
 LINDA B. RIEGLE, Bankruptcy Judge.

DEBTOR WAS ENTITLED TO EXTENSION OF AUTOMATIC
 STAY WHERE DEBTORS DEMONSTRATED GOOD FAITH FOR
 SECOND FILING

BAD FAITH IS PRESUMED ONLY AS TO CREDITOR WHO
 FALLS WITHIN § 362(c)(3)(C)(ii)

The court found the second filing was in good faith as to all creditors where:

- The Debtors' Second Filing was dismissed for failure to make payments pursuant to a proposed plan of reorganization that had not yet been confirmed, the provision in Section 362(c)(3)(C)(i)(II)(cc) — failure to "perform the terms of a plan confirmed by the court" — does not apply.
- There is no evidence that the Debtors failed to file or amend their petition, or other documents in the Second Filing. There is also no record in the Second Filing of any motion to lift the automatic stay, and no evidence that the Debtors failed to provide court-ordered adequate protection to any party.
- The Debtors have filed affidavits from their daughter, Amy Wade, and son-in-law, William Wade, stating that they are willing and able to fund the Debtors' plan in the amount necessary to complete a Chapter 13 plan.

In re Warneck, 336 B.R. 181 (Bankr. S.D.N.Y., 2006)
 CECELIA G. MORRIS, Bankruptcy Judge

DEBTOR'S ATTORNEY CAN'T RELY ON COURT CLERK TO
 CALENDAR MOTION TO EXTEND STAY WITHIN 30-DAY
 DEADLINE

§ 362(c)(3)

Debtor had a previous case that had been dismissed within a year of filing the second case. The debtor's attorney filed a motion pursuant to § 362(c)(3)(B) prior to the expiration of the 30-day deadline in which hearing must be held. However, the attorney relied on the court clerk to calendar the actual hearing within the 30-day period. Clerk actually set the hearing at a date beyond the 30-day deadline.

Court held error in relying on clerk was not sufficient grounds to order an extension of the stay. Motion was denied.

"However, to say that the Clerk's Office should have scheduled the Motion for a hearing to be held prior to the Hearing Deadline is not dispositive here. The Debtors were the movants and it was their ultimate burden to insure that the Motion was timely scheduled. When the Notice of Hearing was not issued timely (i.e., within three days), it was incumbent on the Debtors' counsel to take action. A telephone call to the Clerk's Office probably would have produced the necessary corrective action."

In re Ziolkowski 338 B.R. 543 (Bkrcty.Conn. 2006)
LORRAINE MURPHY WEIL, Bankruptcy Judge.

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NEARLY 200 REPORTED CASES

OPINIONS ORGANIZED BY CODE SECTION

As the trickle of published opinions interpreting BAPCPA (Bankruptcy Abuse Prevention & Consumer Protection Act of 2005) starts to become a torrent you'll need a way to get a quick fix on the weight of authority developing for a particular BAPCPA code amendment or key topic.

BankruptcyMedia is developing a compendium of all published opinions mentioning BAPCPA. It also includes a list of scholarly articles on the Reform Act.

Most of the cases appearing on this site have the case cite plus a brief annotation as to the issue and the ruling.

Visit this valuable resource to look up authority. It's free for now. However, it may become necessary to charge a subscription fee in the future to maintain the service. So, take advantage of it while you can.

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ROOKER FELDMAN'S BANKRUPTCY BLOG

U.S. TRUSTEE SWAT TEAM LIBERATES RETAINER FEE IN SURPRISE RAID AS TRUSTEE AUDITS BEGIN

Yesterday 2006 - Bankruptcy Attorney Rooker Feldman's home office was raided by the U.S. Trustee's SWAT team.

Using techniques learned in Iraq, the team knocked down the door to Feldman's office in the middle of the night, rushed in with weapons pointing every which way, terrorized Feldman's children, and humiliated Feldman in front of his wife.

With a flashlight Feldman was seen hunching furtively over a small pile of cash on his desk.

"Step away from the retainer fee and no one gets hurt!" one shouted.

Feldman did as he was told.

"But that's my money, not yo' money," he blurted. "Y'all come bashing in like this! So unnecessary!"

"That money is property of the estate!" responded the SWAT team chief, Nunker ("the Punk") Protunk.

"I can prove it's mine!" bleated Feldman as one of the team swept the cash into a bag.

"Well, don't worry about it. You'll have your day in court," said Nunker, with a smirk and a wink to some of the other team members. "After all, our President has said we must follow the Geneva Accords. This means we can hold you for years without bringing charges. But, I wouldn't count on getting much sleep in the next few months."

SWAT team members laughed.

As they hauled Feldman and the money away some SWATTERS sprayed his office with bullets, shooting up his computer, and his statute of Lady Justice.

As Sec. of State Donald Rumsfeld said, "After all, enforcing the new Reform Act is untidy. The few lawyers who still complain about it are just a small pocket of dead-enders." And the head of the creditors' militia was quoted as saying "We have broken the back of the consumer bankruptcy bar. All resistance has stopped."

Or not.

World without end.

Amen.

[CLICK HERE FOR A DAY IN THE LIFE OF ROOKER FELDMAN - EPISODE 1](#)

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