

CHAPTER 13 NEWS AND UPDATES

Recent Court Decisions

The 6th Circuit B.A.P. recently came out with a decision that, in essence, disallows discharging student loans by special plan provisions as denying due process to the creditor. Any attempt to discharge a student loan based on hardship must be done by adversary. The case is In re Ruehle, 2004 Fed. App. 0003P (6th Cir.B.A.P. decided March 17, 2004).

In a case out of Columbus, #03-64533, the U.S.T. filed a Motion to Dismiss the Debtor's Chapter 7 proceeding because the case was filed within six years of a prior discharge in a Chapter 13 where the Debtor did not repay creditors more than 70%. The U.S.T. relied on 11 U.S.C. §727(a)(9). The Debtor converted to another Chapter 13.

Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act, 50 U.S.C. §501, et seq., became effective in December 2003. This is the old Soldiers and Sailors Civil Relief Act. Our office is currently reviewing this to ascertain whether any changes in procedure need to be done in light of the Act.

Suffice it to say that you need to start asking your clients if they are in the military or reserves, (including non-filing spouses). The Act classifies you as the military Debtors legal representative. See 50 U.S.C. §519.

Scott, Staff Attorney

Scott G. Stout is the staff attorney for Jeffrey M. Kellner, Chapter 13 Trustee in Dayton. He has practiced there exclusively for seven years. Previously Mr. Stout was a debtor's attorney for 15 years. He has lectured at many seminars, including the Region Nine U.S. Trustee Seminar in Detroit, the Dayton Bar Association and the American Bankruptcy Law Forum. Mr. Stout is a member of the American Bankruptcy Law Forum. He received his BA and JD from Ohio Northern University.

Calculation on the Web

Our Internet site now has a program to calculate plans. The site can be used to help you with modifications or if you are filing a new plan. On current cases, the information is current (within 1 day) and can be used to determine if your plan will timely complete or can be manipulated to help you determine how to modify the plan. Remember that if you are trying to calculate a modification on a confirmed plan, you **MUST CHANGE THE NUMBER OF MONTHS**. What will show on the screen is the number of months originally in the plan times the monthly plan payments. You must subtract the number of months since the case was confirmed and use that number to accurately calculate the mod. For new cases, use 9509991 (Test case) for calculations. We will have classes at the office to go into more details as to how the calculations are done and some of the tricks you need to know to make it work accurately. Call Linda if you or a member of your staff is interested in taking part in a class.

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Office of the Chapter 13 Trustee

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TIPS FROM THE DEPARTMENTS

Pre-Confirmation Department

Remember that you are responsible for submitting orders on POST-confirmation modifications. **DO NOT** submit orders on PRE-confirmation modifications, as we will pick up the modification in the original confirmation order. If there is a pending objection to the Post-confirmation modification do not submit the order confirming. We will pick it up through the hearing process.

On modifications adding mortgage payments as Trustee disburse from Debtor disburse, make sure you include the amount of the on-going monthly mortgage payment as well as the amount of the arrearage. The safest thing

to do is attach an amended real estate page from the original plan as that has the information we need. Remember: If the case is less than 100%, we need an appraisal. If you lower the percent to unsecured creditors by bringing in a Debtor disburse mortgage, you will get an objection to the modification.

On hearing dates for modification (or any other motion for that matter), pick a hearing date at least 30 days from when the motion is filed. If a shorter time period is needed, you will need to file a motion with Court to reduce the response period.

Claims Department

In regards to the tax returns which are now due, **DO NOT** send us all returns on all cases. We only need returns where the plan calls for tax refunds to come into the plan. Once we get the returns you will receive a letter from us telling the Debtors how much they need to forward to us.

Those of you getting tax refunds as a result of the Power of Attorney, it is quicker to run the checks through your trust account than through us. When you get your notice on how much to send us, then you can send us our share and return the Debtors' portion to them.

In regards to avoiding wholly unsecured second (or more) mortgages, please make sure we are served a copy of your complaint so we know to shut the claim down. You can also object to the claim to make sure we do not pay on the claim. However, **DO NOT** file an objection to claim if you already have an order in the adversary. The order tells us to treat the claim as unsecured. Make sure the order treats the claim as unsecured!

If you avoid a second mortgage that is Debtor disburse, then you will need to do a modification to bring the debt back into the plan.

Closing Department

Confirmation and Closing seems to be running smoother. Thank you for your help in filing your orders and getting them to our office.

When you file a Motion to Dismiss, please remember to timely file your Order of Dismissal.

Also, when converting from Chapter 13 to Chapter 7, do it by Notice and not by Motion. (See the Local Rules!)

When cases are closing, we are still finding Motions for Additional Attorney Fees that do

not have filed orders. It is a good idea to keep track of these motions and file the orders as soon as possible or these motions will stall closing of the case.

Sixty month letters have been backed up to the 48th month to allow twelve months in order to fix the case for timely completion. Just a reminder that our office does not accept payments. All monies should be sent to our lock-box.



Legal Department

All hearings on objections to confirmation, motions to dismiss, etc. must be resolved by the Friday before the hearing. If the matter is not resolved before then, the hearing will go forward.

All agreed orders on confirmation and valuation must be approved by the Trustee. This is problematic in creditor objections, as more of you are agreeing and filing orders without the Trustee's approval. Again, if the case is resolved, we must be informed by the Friday before the hearing.

All 401(k) loans must now be stopped or a motion to cease filed before the §341 Meeting of Creditors. Over 75% of the Trustee objections deal with 401(k) loans, which tells us you as attorneys are not doing your job. If an objection has to be filed, it will go to hearing when scheduled. The objection will not be withdrawn even if the loan is stopped before the hearing. Sanctions may be asked for in the future if this issue is not cleaned up.

We are receiving too many modifications and a lot of these modifications deal with sloppy preparation, lack of 20 day notice, failure to include items in a prior modification that was denied, etc. From now on, you will have one

chance to get it right. If not, the matter will go to hearing and a motion to dismiss may be filed for failure to file a confirmable plan.

In regards to agreed orders or withdrawals from hearings by creditors, we need those documents filed within two weeks or the matters will be reset and not removed from the Court Docket.

In regards to agreed orders on Trustee motions, you will have one week to approve the order and return the order to us. If it is not received during this time frame, the matter will be reset for hearing and not resolved even if the orders are subsequently returned.

Hearings on the Court and Consent Dockets are being updated daily on our web site at: www.dayton13.com. If an issue is listed on the Court Docket, this matter is set for hearing and has not been resolved. When a matter is resolved, they will drop off the Docket and an agreed order will be faxed for your approval. If a hearing should be listed on the Docket and does not appear, please contact either Scott (ext. 137) or Ginger (ext. 114) to see if our office has received the matter in question.

Make sure to watch your e-mails for pleadings as we are filing more and more motions, etc. by E.C.F.



Newsletter Contributions
If you would like to contribute an article to the newsletter, please submit it to Scott. At some point we will do a Debtor/Creditor corner on an issue the bar deems relevant.



Budgets
Due to increased living expense, we have **increased** the **budget amounts** to \$1,700.00 (single) and \$100.00 per dependent, not counting housing, taxes or day care. A **family of four** should have a **budget of about \$2,000.00.**

Mortgages In Or Out

Lately there has been a growing discussion of whether current mortgages should be paid through the plan. As you know, local rules require mortgages to be paid by the Trustee where there is an arrearage. Current mortgages can be Debtor disburse. However, there is a growing trend to include all mortgages in the plan whether current or in arrears. The simple reason is there is more control and less chance of a relief from stay motion for failure to pay

the mortgage outside. The vast majority of relief from stays deal with Debtor disburse mortgages.

The argument that the Trustee's expense is too high does not carry much weight anymore. The more money we distribute to creditors, the lower our Trustee's expense becomes.

Personal Injury Attorneys

Recently Scott has had several personal injury/workers compensation attorneys contract him concerning debtors filing chapter 13 cases and not being informed of the filing. We would request that a letter be sent by debtor's attorney

to the personal injury attorney advising the personal injury attorney of the debtor's filing and the need to file appropriate applications with the Court. Please carbon copy us on the letter.

OFFICE OF THE CHAPTER 13 TRUSTEE

<u>Name</u>	<u>Extension</u>	<u>Name</u>	<u>Extension</u>
Barb <i>Service Clerk</i>	136	Mary <i>Modification Analyst</i>	111
Brenda <i>Senior Supervisor</i>	130	Michelle <i>Claims Sup. & Asst. Op. Manager</i>	138
Cathy <i>Special Procedures Analyst</i>	104	Pam <i>Pre-Confirmation Analyst</i>	112
Claire <i>Closing Clerk</i>	129	Patty <i>Pre-Confirmation Analyst</i>	108
Diane <i>Public Relations Clerk</i>	101	Sandy <i>Receipts Clerk</i>	135
Gina <i>Claims Analyst</i>	146	Scott <i>Staff Attorney</i>	137
Ginger <i>Legal Assistant</i>	114	Shelley B. <i>Claims Analyst/Trainer</i>	143
Jeff <i>Trustee</i>	128	Shelly C. <i>Process Clerk</i>	145
Jenny <i>Confirmation/Closing Analyst</i>	125	Sheri <i>Delinquency Clerk</i>	102
Joan <i>Claims Clerk</i>	144	Stephanie <i>ECF Clerk</i>	142
Johnnie <i>Legal Clerk</i>	115	Susan <i>Confirmation/Closing Analyst</i>	116
Julie <i>Pre-Confirmation Analyst Trainer</i>	110	Takelia <i>Pre-Confirmation Analyst</i>	109
Linda O. <i>Claims Analyst</i>	140	Tim <i>Systems Manager</i>	105
Linda W. <i>Operations and Personnel Manager</i>	126	Traci <i>Claims Analyst</i>	133
Lisa <i>Receipts Clerk</i>	134	Valerie <i>Pre-Confirmation Supervisor</i>	113
Malcolm <i>Controller</i>	127		



Chapter 13 Trustee's Corner



Jeffrey M. Kellner
Chapter 13 Trustee

*We are happy to announce our upcoming **Chapter 13 Seminar**. It will be held **October 8, 2004** at the **Doubletree Dayton Downtown**. This will be an all day seminar with special speakers and the updated **Chapter 13 Practice "bible"** complete with forms. Breakfast, lunch and two breaks will be included and C.L.E. will be available. Whether you are new to the practice or a seasoned veteran, this will be an informative seminar for everyone. More information will be released at a later time. The only way to receive the new updated "bible" and forms will be by attending, so please put this on your calendar and plan to attend. The information provided should prove valuable for everyone attending.*

If you have any suggestions or topics, please contact Jeff immediately as we are now scheduling speakers sessions and topics. We are planning on the local Bankruptcy Judges, United States Trustee and their staff and local practitioners to speak, along with the Chapter 13 staff.

Please check out our website at www.dayton13.com for forms, the recommended Chapter 13 Plan, hearing schedules, both for the year and what is being heard for that month, links to various bankruptcy sites, and copies of our newsletter.

For debtor's and creditor's attorneys, make sure you are signed up for our www.13network.com website. This shows the history of each of our chapter 13 cases, including payments, disbursements and claims. Contact Tim in our office to get a password.

*Finally, we try to communicate by email with our local attorneys through our **One-List** to receive up to date information on cases, issues or just to ask questions. Contact Jeff to be added to the list.*



C.L.E.
Will be available

**Chapter 13 Practice
Seminar
October 8, 2004**



OFFICE OF THE CHAPTER 13 TRUSTEE
 JEFFREY M. KELLNER, TRUSTEE
 DAYTON, OHIO

131 N. Ludlow St
 Suite 900
 Dayton, OH 45402

WE'RE ON THE WEB!
www.dayton13.com



Chapter 13 Practice

Seminar

October 8, 2004

October 2004

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Put this date on your calendar.

You do not want to miss this important update.

