



## BANKRUPTCY AND THE HOLIDAYS

Office Of The Chapter 13 Trustee,  
Jeffrey M. Kellner, Trustee, Dayton, Ohio

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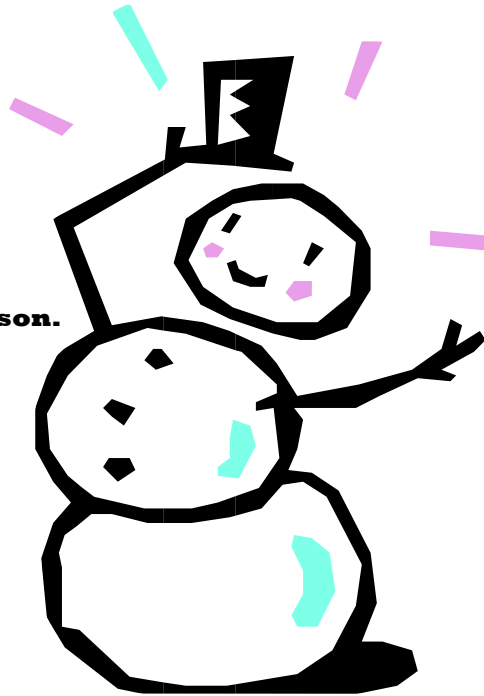
# HAPPY HOLIDAYS

FROM THE CHAPTER 13 STAFF

The Chapter 13 Staff wishes  
You and Yours  
**BEST WISHES** during the Holiday Season.

## RECORD FILINGS

The pre-BAPCPA filings set new records all over the country but nowhere greater than Ohio. For the time period starting October 1 and ending October 16, 2005, there were 736 new Chapter 13 filings in Dayton. Of the 736 filings, 547 chapter 13s were filed in the 10 days before the deadline, with 114 cases being filed on Saturday, October 15th.



**Happy Holidays To One And All**

### Special points of interest:

- Check out new Court decisions affected by the new ACT
- Do you know where to find the General Orders issued by the Court for the new ACT?
- Local Rules ready for your use
- Clear your calendar for more confirmation hearings
- Are you on the One List?
- A website unused is like a gift unopened. Untie the ribbons.

## NOTICING

The Clerk's Office is now noticing all §341s and original confirmation hearings. If you file a case with no plan, there will be no confirmation date. When the plan is filed the Court will notice the date. However, the date of the confirmation does come from our office. It is now more important than ever to let us know as soon as possible if you will be on vacation so we do not schedule §341s while you are gone.

Furthermore, since the §341 notice and plan now come from Court, there no longer will be a plan summary.

**Creditors take note of this change.** There is a .pdf writable Proof of Claim available on the Court website at : [ohsb.uscourts.gov](http://ohsb.uscourts.gov). There is also a Proof of Claim form on our website but it is not .pdf writable. However,

attachments for mortgage Proof of Claims and Lease Proof of Claims will be on our website and not the Court's. We would prefer creditors use our forms to ensure creditor's claims get put into the system properly.

Our website does have §341 Meeting of Creditors dates, as well as confirmation hearings posted. You need to check the web site periodically so **you do not miss a §341**. Several attorneys have missed §341s and have been brought before the Court which has resulted in loss of attorney fees for the failure to attend the §341. There is **no excuse** for missing a §341 now that it is posted on our website

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## New Cases Decided Under BAPCPA

### *In re: Attorneys at law and Debt Relief Agencies, (U.S.Bky Ct. S.D. of Georgia, October 17, 2005) 2005 WL 2626199*

Court order found attorneys are not covered by BAPCPA regulating debt relief agencies, including §§101(12A), 101(4A), 526, 527 and 528.

(Under Appeal)

### *In re: Hubbard, (U.S.Bky Ct. S.D. Tx, October 31, 2005)*

A Debtor who failed to receive credit counseling as required under §109(h)(3) of BAPCPA and failed to certify that exigent circumstances merit the waiver of the credit counseling requirement is not

entitled to an extension of time.



### *In re: Cleaver, Judge Walter case #05-46572*

In essence Judge Walter followed **Hubbard** and denied Debtor's waiver of the credit counseling requirement and dismissed the case.

### *In re: Watson, 2005 Bankr.Lexis 2151 (Bkcty Ct. E.D. VA, November 3, 2005)*

The Court denied a request for an extension of time to obtain credit counseling under §109(h)(3)(A) for failing the three-part test by a plain reading of the statute. The case was dismissed.

### *In re: Alcydee, 2005 WL 2897462 (Bankr.S.D. Tex, November 4, 2005)*

Debtor filed for a continuation of the automatic stay and requested an expedited hearing. The Court held that the Debtor's motion was inadequate to

extend stay to all creditors, except to the mortgage company. Court granted expedited hearing on stay and gave Debtor the opportunity to file an amended motion as to all creditors.

### *In re: Maronde, (Bankr. D.MN, November 8, 2005)*

Debtor used credit cards and sold personal property to pay off an equity line of credit and then claimed an exemption. The Chapter 13 Trustee objected under §522(o) of BAPCPA, and attempted to reduce the exemption due to Debtor's attempt to hinder, delay or defraud a creditor. The Court paralleled the language of §522(o) to that of the language found in §§548(a)(1) and 727(a)(2). The Court ruled in favor of the Trustee, denied the exemption, found that the Plan failed the best interest of creditors test and was not filed in good faith. The Court denied confirmation.

## General Orders

### General Order #1

Adopts Interim Bankruptcy Rules to Conform with BAPCPA.

### General Order #2

- (1) For BAPCPA cases— personal property lease under §1326(a)(1)(B) shall only be made as part of the plan payment and shall be paid by the Trustee upon the filing of a Proof of Claim.
- (2) For BAPCPA cases—Pre-Confirmation adequate protection payments under §1326(a)(1)(C) shall only be made as part of the total plan payment and paid by the Trustee following the filing of a Proof of Claim.

### General Order #3

For BAPCPA cases—unless otherwise ordered by the Court, copies of all payment advices received 60 days before filing shall not be filed with the Court but shall be provided to the Trustee at least 7 days before the first date set for the §341 but no later than 45 days after the filing of the petition. A certificate must be filed with the Court evidencing compliance.

### General Order #4

Implements the notice of preferred addresses under §§342(e) and (g) and the National Credit Registration Service.

See [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov)

For the entire version of the General Orders.





## Chapter 13 Trustee's Corner



Before BAPCPA



After BAPCPA

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") was signed by the President on April 20, 2005, with the effective date of October 17, 2005 for a majority of the legislation. While Ohio experienced record filings for the pre-BAPCPA period, filings have significantly slowed for the post-BAPCPA period. An example is that Dayton had 736 new Chapter 13 cases filed in the two weeks in October pre-BAPCPA, and only 37 Chapter 13 cases were filed in the month of November. Many bankruptcy experts predict it will take six months until we see Chapter 13 cases pick up in volume, but most predict that the filings will not exceed the record number of the pre-BAPCPA era. However, Dayton and the surrounding counties may surprise everyone, especially with the large number of Delphi and General Motor plants and the possible layoffs and plant closings.

The "strongly recommended" Chapter 13 Plan for Dayton (BAPCPA revised) is available on our "Dayton13.com" website, as well as other revised forms. We will continue to have lunch meetings with the debtor bar on issues involving BAPCPA. Make sure you are on the Chapter 13 One List for e-mailings on new meetings and any local or national bankruptcy case involving BAPCPA. You can contact Tim in our office to get on the One List.

While BAPCPA caused significant changes to the Bankruptcy Code, we are working through the issues (and problems) as a result of the legislation. As the dedication states in the "2005 Bankruptcy Reform Legislation with Analysis" by Brown and Ahern, "We dedicate this publication to the United States Bankruptcy Judges who, with the assistance of experienced members of the bankruptcy bar, will make the changes found in these amendments work in the real world of debtors and creditor."

We will get through this and make it work.

Happy Holidays from the Chapter 13 Office,

*Jeff Kellner, Chapter 13 Trustee*



## CONFIRMATION AND 341s HEARINGS

Due to the number of filings, the United States Trustee has eased the time limits whereby we must hold the §341 Meeting of Creditors. Most of the recent filings will have §341s in late December, 2005 and early January, 2006.

To further ease the crunch and to meet the deadlines of BAPCPA, which requires the confirmation hearings must be held within 45 days from the conclusion of the §341, confirmation hearings will be held weekly for cases filed under BAPCPA that are contested. The Court will hold a joint hearing on the major issues to ensure consistency between the Judges. One major change for confirmation is that if there is no objection to confirmation timely filed, the Court may confirm the case without further hearing. The original joint date has been postponed due to relatively few cases being filed under BAPCPA. The future date, probably sometime in March, 2006, will be posted on the One-List and the Chapter 13 website, [www.Dayton13.com](http://www.Dayton13.com).

## Confirmation Hearing Dates

Judge Waldron:	Judge Walter:
January 3, 2006	January 10, 2006
January 17, 2006	January 24, 2006
January 31, 2006	February 14, 2006
February 7, 2006	February 28, 2006
February 21, 2006	

## Proof of Claims    Sales of Real Estate    Tax Returns

We will no longer be objecting to duplicate claims or late filed claims as we have done in the past. Debtor's attorneys will need to pay attention to the Master Intention, as well as any other Intention to Pay Claim received in the future. Make sure you timely object so no monies are paid on the objectionable claim.

We will no longer be objecting to the lease purchase price option if it is included in the claim amount. This is Debtor's attorney's responsibility.

If your deductions are greater than the sale price on your Motion to Sell Real Estate, you cannot do a conventional motion to sell. You need to file a Motion to Sell Real Estate Free and Clear of Liens with the proceeds to attach. If the sale does not pay off the plan, you may also have to file a separate application for attorney fees to be paid out of the bankruptcy estate.

We will no longer keep tax returns unless a business case is involved or some other issue related to confirmation. The returns will be returned to you at §341 Meeting of Creditors. **However, we need to know the date that the returns were filed (not just signed) because the information is needed for our final report.**



**Happy Holidays!**

## One List

Are you on the One List?

The One List is a yahoo group of Debtor's and Creditor's counsel that exchange ideas and questions to other bar members. This is an informative group that provides information from our office regarding changes in office procedures, announcements of upcoming changes and seminars. If you are not part of this yahoo group, just contact Tim at our office and you can be included in the loop.



## Check Out Our Websites



A screenshot of a web browser displaying the homepage of www.dayton13.com. The browser's address bar shows the URL. The page features a blue header with the word "Home" and a dark blue banner for "JEFFREY M. KELLNER, Chapter 13 Trustee, Dayton, OH". Below the banner is a navigation menu with buttons for Home, Docket, Communications, Hearing Dates, Forms, Newsletter, Seminars, Contacts, and Links.



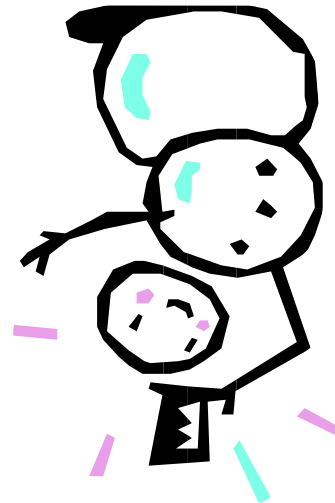
### Welcome

Welcome to the website of Jeffrey M Kellner, the Chapter 13 Trustee in Dayton Ohio.



A screenshot of the website www.ohsb.uscourts.gov. The browser address bar shows the URL. The page header identifies the "United States Bankruptcy Court Southern District of Ohio" and lists "Hon. Thomas F. Waldron, Chief Judge" and "Michael D. Webb, Clerk". A central announcement states: "By GENERAL ORDER, the U.S. Bankruptcy Court for the Southern District of Ohio has adopted the Interim Rules and Official Forms Implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective Oct. 17, 2005." A box below this announcement notes: "Effective August 28, 2005 - all CM/ECF users making fee payments by Internet credit card through Pay.gov must use Internet Explorer 5.5 or higher as their browser." The right side of the page lists office locations: Cincinnati (513 684-2572), Columbus (614 469-6638), and Dayton (937 225-2516), along with office hours (9:00 AM - 4:00 PM) and a link to Holidays. A left sidebar contains a menu with links for General Orders, BAPCPA, News, General Information, Case Information, ECF Home, Judges, Forms & Publications, and Links. The bottom of the page features links for ECF Login, ECF User's Manual, ECF Creditor Manual, Administrative Procedures, Local Rules, and Comments to Webmaster.

**Happy Holidays!**



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**Office Of The Chapter 13 Trustee,  
Jeffrey M. Kellner, Trustee, Dayton, Ohio**

## **Local Bankruptcy Rules, Forms and Procedures**

### *Amendments Effective January 1, 2006*

#### **L.B.R. 1071-1(a) Locational Assignment of cases and proceedings**

Butler County to Cincinnati Bankruptcy Court;  
Warren County to Dayton Bankruptcy Court.

#### **L.B.R. 2015-5(a) Fees and Expenses in Unconfirmed Cases**

Raised fees from \$50.00 to \$75.00 for a trustee administrative fee in any case that is dismissed or converted prior to confirmation

#### **L.B.R. 2016-1(b)(2)(A) Fees through Confirmation**

In Chapter 13 Case (A) Hearing and Itemization Not Required-Chapter 13  
“No look fee” raised to \$3,000. for services from initial interview through confirmation of the plan, and continuing with a review of the filed claims and the filing of objections to non-real estate and mortgage claims.

#### **L.B.R. 4001-3 Obtaining Credit**

The amount increased from \$500. to \$1,000. that Debtor must obtain approval from the Trustee or Court.



*For a complete copy of the Local Rules, Forms and Procedures,*