

DAYTON CHAPTER 13 TRUSTEE NEWSLETTER

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September 10, 2003

DAYTON, OH

FROM THE CHAPTER 13 TRUSTEE & STAFF

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NATIONAL ASSOCIATION OF CHAPTER 13 TRUSTEE'S ANNUAL CONFERENCE

CHICAGO, JULY 16 - 20, 2003

Jeff Kellner, Linda Wright, Scott Stout and Malcolm Treon of our office attended the NACTT national conference this past summer in Chicago. Over 1,000 trustees, staff, debtors' and creditors' attorneys and vendors attended the conference. Linda moderated and participated in a Staff Symposium for a day and Jeff attended an Advanced Consumer Bankruptcy Practice Institute for two days prior to the conference. There was great entertainment, food and, of course, educational sessions. Some of the highlights included sessions on Case Law Update by Judge Lundin and Hank Hildebrand, Soldiers and Sailors' Relief Act, and legislative update. Next year's conference is scheduled for Las Vegas in late June, 2004.

NEW JUDGE

The Sixth Circuit has named **Larry Walter** as our new Bankruptcy Judge replacing Judge Hoffman. Judge Walter should be taking the bench sometime this fall. We at the Chapter 13 Office would like to congratulate Judge Walter and welcome him to the Bench. We also would like to wish Judge Hoffman good luck in his new posting in Columbus.



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**SHOW ME THE
\$\$\$\$\$\$\$\$\$\$\$\$**



By now you have received your **Motions to Dismiss** for failure to turn over tax returns/proceeds. In order to trigger the hearing (dates listed below), you **must file a formal response** with the Court and **serve a copy on our office**. I would strongly suggest attaching a copy of the return to the response. Just sending the return and/or money to us without a response will lead to dismissal of the case with a 180 day bar. Unless we have the return and all the money requested from the debtor from the return, the matter will go to hearing provided the response has been filed. The dates are as follows:

**Judge Waldron September 2, 2003 at 2:30 p.m.
(Already held)**

Judge Hoffman September 23, 2003 at 1:30 p.m.

**DO'S and DON'TS
IN CHAPTER 13**

DO's:

- 1) Serve us with everything!
 - A. This is especially true with post-confirmation modifications. If we are not served we do not know about it. Also, submit your order to us, not to the Court (post-confirmation only-we do orders on pre-confirmation modifications).
 - B. Also, make sure we are served the motions for reductions/suspensions of payments. If we are not served, we will not be reserving money to refund to the debtor. When we get the order, the money will be gone and the debtor will lose the relief requested.
- 2) Run all orders through our office for approval.

We prefer to have the original and we will file it with the Court.

3) Have all your 341 documents compiled so that you, the attorney, can hand them to us at the Meeting of Creditors. It slows down the 341's when debtors are hunting for the documents to give to us.

4) File your motion to cease 401(k) loans at the time of filing so the order will be approved **BEFORE** the 341.

5) Appoint any professional for any reason!

6) Limited Title Searches on real estate. Judge Waldron has mentioned at confirmations that failure to do so could lead to Rule 9011 Sanctions!

7) Check PACER for prior bankruptcy filings.

8) Disclose! Disclose! Disclose!

DONT'S

1) DO NOT use Power of Attorneys to attend hearings. The U . S . T . mandates all debtors be examined. In extraordinary circumstances you can file a motion to excuse a debtor. If a debtor is incompetent, then it may be necessary to file a guardianship and ask the Probate Court for permission to file the case.



2) DO NOT file orders on modifications with the Court.

3) DO NOT file modifications to increase the percent to unsecured creditors or increase payments just to satisfy a Trustee's Objection. This can be done by agreed order thereby saving you time and postage.

4) DO NOT rely on the debtors to stop 401(k) loans. Most employers require a Court order to

stop the deductions.

5) DO NOT use the same numbers on your schedules A and B from a prior petition for a new petition. We are starting to see more of this. You should be verifying each debtor's assets. Remember Blood Letting Day! Remember Rule 11.

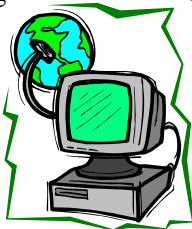
6) DO NOT rely on the debtors sending money to the lock box after a motion to dismiss has been filed. Make them bring the funds to your office for mailing. Scott will believe you, not necessarily your debtors!

PETITION PREPARERS

This is becoming such a problem that we must reiterate what we said in the last newsletter. We are seeing an unbelievable amount of *pro se* filings and almost all are related to petition preparers. When you see a debtor that has a foreclosure complaint filed against them, please ask them if they have been contacted by anyone saying they can save their home. Also ask if any monies have been paid to any individual or organization. At present, Scott, in conjunction with the U.S.T. and U.S. Attorney, is looking at these individuals and/or organizations involved in deceptive practices in this area.

ELECTRONIC CASE FILING

Electronic Case Filing is still slated to be mandatory by July 2004. The Chapter 13 Office and some attorneys will be acting as test sites beginning in either September or October. The Clerk's Office will be providing mandatory training before you are ECF. The Procedures for administrative ECF can be reviewed at www.ohsb.uscourts.gov



NEW EMPLOYEES

We would like to introduce you to our two new employees, Stephanie Jackson and Gina Williams. Stephanie is our ECF Clerk and will be handling those duties associated with ECF. Gina is our newest Claims Clerk.

Stop by and welcome Stephanie and Gina when you are in the area.

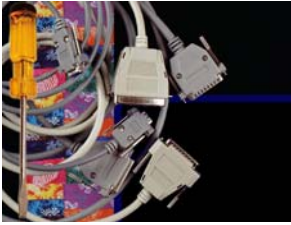


7016's AND HEARING PACKET

It has come to our attention that the servicing center has not been serving the entire 7016 hearing packet on objections to proofs of claim and objections to final reports. All that is being served is the hearing notice, even though the servicing center says they are serving it all! For the scheduled hearing, you will need to get on PACER and download the packet or get a copy from Court.

PICTURE IDENTIFICATION

Please remind your debtors that they **MUST** bring picture identification and proof of Social Security number to the 341 Meeting. The picture identification is extremely important as the guards will no longer allow the debtors to attend any hearings unless they provide a picture ID.



NEW PLAN CALCULATION

We are still working with our software provider on changes on our website. CBIS has introduced a program that is more Windows based than the current website. One big advantage is that you will actually be able to do plan calculations using the same information which we have on our system. Right now we are having a problem with the print inquiry (Form 72). As soon as we are able to resolve those issues, we will have training classes for you and/or your staff.



LOCK BOX

Remember, except in rare and unusual circumstances, **ALL PAYMENTS**, either from debtors or from you, must go to the lock box and not sent to our office. If sent to our office, they will be sent back to the person who mailed them in. Returned payments will not stop motions to dismiss.

Also, no third party checks are accepted.

The Lock Box address is:

***Jeffrey M. Kellner, Chapter 13 Trustee
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FORMS

Remember we have some forms, including our recommended Chapter 13 Plan, available on our web site. The address is www.dayton13.com

ABLF 2003-2004

September 16, 2003

*Golf Outing
at the Miami Valley Country Club
Case Law Update*

October 21, 2003

*at U.D.
Electronic Case Filing*

November 18, 2003

Ethics (with Ethics CLE given)

January 20, 2003

*Judge Barry Russell
Central District of California
Avoiding Evidentiary Pitfalls In Bankruptcy Litigation*

February 17, 2004

*Judge Steven W. Rhodes
Eastern Division of Michigan
Consumer Bankruptcy Filings*

March 16, 2004

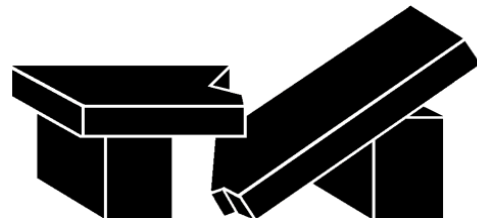
*Judge William H. Brown
Western District of Tennessee
Bankruptcy And Family Law*

April 20, 2004

*Bankruptcy Practice and Electronic Case Filing Update
John Cannizzaro and John Rieser*

May 18, 2004

*Annual Meeting and Banquet
Miami Valley Golf Club*



CONFIRMATION HEARINGS

All hearings are held at 1:30 P.M. unless otherwise designated.

Judge Waldron

October 7, 2003
November 4, 2003
*December 2, 2003

Judge Hoffman / Judge Walter

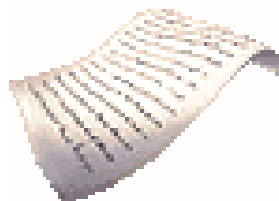
September 16, 2003 at **9:00 a.m.**
October 21, 2003
November 18, 2003
*December 16, 2003

**Subject to change*

341 MEETING OF CREDITORS

September 16, 2003
September 23, 2003
September 30, 2003
October 7, 2003
October 14, 2003
October 21, 2003

CASE LAW UPDATE



Be advised that the U.S. Supreme Court has granted certiorari in a case from the 7th Circuit (Indiana) and will ultimately decide the correct approach to the cram down rate of interest in a Chapter 13 case. The case on appeal used the “coerced loan” approach and not the “cost of funds” or “formula” approach. In the absence of testimony it is presumed to be contract rate. The case is *Till v. SCS Credit Corp.*(In re *Till*), 301F.3d. 583 (C.A.7-Ind.2002). **This case bears watching!**

In re *Fearn*, 2003 WL 21639175 (Bkrcty S.D.OH). Judge Calhoun has ruled in this case that the mere consumption of alcohol, where the debtor rear ended the creditors, and creditor was injured, without more evidence, did not establish nondischargability.

DEBTOR'S ATTORNEY

If you are going on vacation, contact our office with at least six (6) weeks notice of your vacation week so we will not set meeting of creditors' hearings for your cases. Depending on timing, we might not be able to accommodate your request.

FINAL THOUGHT

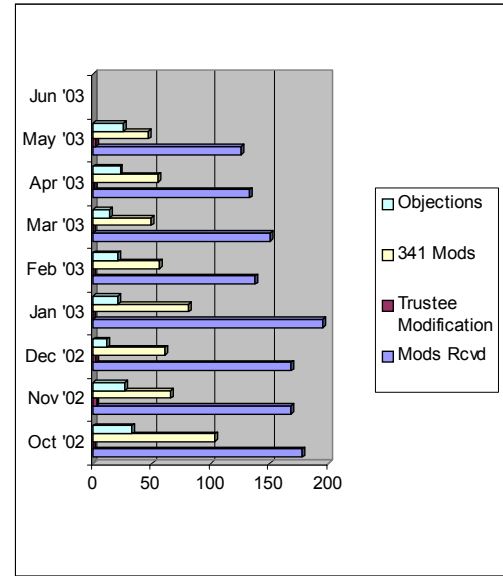
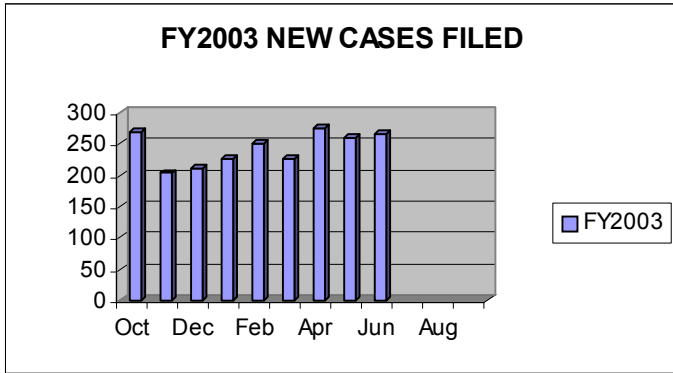
Please double check your petitions before you file them. A lot of objections and problems can be avoided by simply taking the time to review your work. Nothing is worse than looking bad in front of your debtor at a hearing or getting chewed out by the Trustee or Judge because schedules are inaccurate or you forgot a major asset or debt.



Also, check your debtor pay stubs for the dreaded 401(k) loan. Too many of you appear surprised at 341 to know that there is a 401(k) loan. You know the question will be asked so please head it off before hand. We object to at least 5 cases a week because of 401(k) loans.

Also, make sure your clients have all prior year tax returns filed. Again, it is an automatic objection if any return is not filed. If the debtors file late, make sure they send the return to the I.R.S. by certified mail, return receipt requested.

Cases have been coming in at a record number. As of August 22, 2003, our office has received a total of 2,775 cases. We have 3 ½ weeks to surpass our two highest years - 1998 with 2,744 cases and 1997 with 2,828 cases. Our average caseload per month this year is 246.



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