THE MARSHALL CHRONICLES

MAY 2008
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TAX REFUNDS... DISPOSABLE INCOME?

The Trustee's offices around the country have been receiving and reviewing debtor's income tax returns that are required to be provided under the Bankruptcy Abuse and Consumer Protection Act (BAPCPA) for almost three years now. One of the more interesting discoveries is that many debtors are getting sizable tax refunds each year. Some of these same debtors list little or no available regular monthly income to repay creditors who provided them with a source of money at the request of their customers, the debtors. One might wonder why this money is not being dedicated to repaying these creditors. Isn't the income tax refund that a debtor receives income? That's a good question, but may not quite be the proper term to use in approaching the real issue. That is: aren't the excess amounts being withheld by employers, and ultimately held by the IRS, from the regular wages of the debtors (or excess voluntary payments made by self-employed debtors), in fact part of their current monthly income, or their projected monthly income? Or in other words, aren't the excess deductions (or voluntary payments) improper to the extent that they exceed the needed amount to cover tax liability thereby minimizing the net income or disposable monthly income received by debtors?

This writer suggests that the answer is yes. The tax refunds themselves may not be income in the sense that those amounts cannot be taxed, since they already have been subject to taxation. However, the fact that the refunds exist, frequently, if not always, suggests that there have been excess withholdings or deductions that gave rise to the refunds. The amount withheld from an individual's pay or the voluntary payments made are to a large extent within the control of the individual. Only a minimum level of understanding is required to know that the fewer exemptions claimed on the W4 form submitted to your employer, the greater the deduction from wages for income tax withholding and, therefore, the larger your income tax refund.

Under §1325(b)(2), to calculate disposable monthly income, amounts reasonably necessary to be expended for the maintenance or support of the debtor are to be deducted from the current monthly income determined under §101(10A). And, pursuant to §1325(b)(3), for an "above-median" debtor, those reasonable necessary amounts allowed to be deducted are to be determined under §707(b)(2)(A) and §707(b)(2)(B). Those expenses include "debtor's actual monthly expenses for the categories specified as Other Necessary Expenses" in the standards issued by the Internal Revenue Service for the area in which the debtor resides. One of the categories is for taxes, which includes federal, state, local, self-employment income tax expenses as well as Social Security (FICA), and Medicare taxes. The mechanism for taking the deduction is found on line 30 of the B22C form for Chapter 13 debtors. Line 30 provides that the deducted amount should be "the total average monthly expense that [debtors] actually incur for federal, state and local [income] taxes…" including "social-security taxes and Medicare taxes" but specifically excluding real estate and sales taxes. Various courts have used a number of different approaches to give effect to the provisions allowing, but limiting, deductions from income in determining the disposable monthly income to be dedicated to unsecured creditors.

The general consensus among the courts is that if the debtor receives a refund, then the withholding from gross pay by the employer are excessive. Therefore, the withholdings from pay are not an accurate representation of the total average monthly expense that debtor actually incurs for tax liability. As such, an above-median income debtor must subtract on line 30 of Form B22C, his best estimate of the average monthly amount of all federal, state, local, self-employment, Social Security and Medicare that he will actually incur, not the amounts that he has withheld from his paycheck.

(Continued on page 2.)

Tax Refunds... Disposable Income?

(Continued from page 1.)

In line with a number of pre-BAPCPA cases, some courts have required debtors to provide in their plan that the tax refund will be paid into the plan on a yearly basis to increase the total pot available for distribution to allowed unsecured creditors. (See In re Schiffman, 338 B.R. 422, Bankr. D.Or. 2006 and In re Risher, 344 B.R. 833 Bankr. W.D.Ky. 2006.) While this approach may be an acceptable practical alternative to ensure that excess withholdings from pay are dedicated to payment of unsecured creditors claims rather than returned to the debtor, for cases involving an above-median debtor it is not the legally correct approach. However, for cases involving below median income debtors, requiring tax refunds to be paid into the plan on a yearly basis to increase the total pot available for distribution to allowed unsecured creditors is likely the best practical as well as legally defensible approach to correct the issue of over-withholdings of tax liability from gross wages.

A recent slip opinion issued by Judge A. Benjamin Goldgar on March 28, 2008, in In re McPherson, 07 B 17724, follows what appears to be the majority view on the issue as it relates to debtor's with current monthly income that puts them above the median. The well-written opinion is simple, direct, logical and, I believe, legally correct. In that case, the debtor's actual federal tax liability for the year prior to filing was $1,701 or about $142 per month. The debtor had claimed a monthly deduction on line 30 of $1,730, which equates to a yearly federal tax liability of $20,760. The debtor had received an income tax refund of $10,704 due to the excess withholdings. The amounts that the debtor used for his line 30 deductions were taken from an average of the amounts withheld by his employer during the same 6-month period used to calculate his current monthly income (CMI). The Judge ruled that those were not the proper amounts to be used for the line 30 deduction for tax liabilities. In arriving at his conclusion that the amounts withheld from his paycheck were improper and that the debtor must subtract on line 30 of Form B22C, his best estimate of the average monthly amount of all federal, state, local, self-employment, Social Security and Medicare that he will actually incur, the court relied in part on the analysis of the courts in In re Johnson, 346 B.R. 256 Bankr. S.D.Ga. 2006 and In re Balcerowski, 353 B.R. 581 Bankr. E.D.Wis. 2006. Judge Goldgar recognized that the debtor's estimate of liability would consist of more than federal tax and would include estimated monthly amounts for state, local, FICA and Medicare but also noted that it is the debtor's burden to demonstrate that those amounts would make up the additional difference (of $1,588 per month) between actual federal liability and the amount claimed by the debtor. Since the debtor offered no support for his speculation that the B22C deduction on line 30 more closely approximated what he estimated his future tax liability to be, the court sustained the Trustee's objection and denied confirmation of the proposed plan. (See also, In re Raybon, 364 B.R. 587 Bankr. D.S.C. 2007 and In re Mullen, 369 B.R. 25 Bankr.D.Or. 2007.) Courts have applied the same approach in Chapter 7 cases when deciding the United States Trustee's motion for dismissal based on substantial abuse. (See In re Edighoffer, 375 B.R. 789 Bankr. N.D.Ohio 2007, In re Hand, 323 B.R. 14 Bankr. D.N.H. 2005, and In re Hutton, 158 B.R. 648 Bankr. E.D.Ky. 1993.)

This writer suggests that the above analysis applies equally to Chapter 13 cases involving debtors whose income falls below the median. In these cases, the deduction for tax withholdings is typically itemized on the schedule I – statement of monthly income. In the Raybon case, the debtor was an above-median debtor but had included on her schedule I as income an amount intended to reflect and offset, at least in part, the tax refund received by the debtor. While this approach should not be utilized by above-median debtors since an accurate deduction for line 30 of the B22C form is the proper approach, this would at first glance appear to be a reasonable approach for a below-median debtor. The problem is that dividing the estimated tax refund by 12 and adding it back to income assumes that the debtor will in fact set the refund aside to add to the regular net income received so that the debtor can fund the plan payments arrived at by subtracting the expenses of schedule J from the net income listed on schedule I. This assumption, however, is seriously flawed in light of the fact that most debtors are not likely to have the necessary budgetary discipline or restraint to manage the refund as required by this approach. Oftentimes debtors find themselves in financial difficulty to a great degree due to ineffective spending restraint and/or budget management. Thus, to rely on the debtor setting aside the tax refund and only use one-twelfth of it on a monthly basis is setting the debtor and the case up for

(Continued on page 7.)

THE MARSHALL CHRONICLES

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Newsletter Information:

If you would like to contact us or submit ideas or articles for the newsletter, you can do so by:

- ✓ e-mailing us at newsletter@chi13.com,
- ✓ dropping your submission or idea in the anonymous newsletter folder located in the mail room, or
- ✓ leaving them with Dave Latz.

Please remember when making a submission to the newsletter, it must be:

- ✓ type-written and
- ✓ submitted by the third Wednesday of the month via e-mail, a Word document or an ASCII file.

We also ask that anyone who attends a seminar please be prepared to furnish the committee with a detailed article on its subject.

You may also view this edition of THE MARSHALL CHRONICLES, as well as all the previously published issues, on the Chapter 13 Trustee website at http://www.chicago13.com/.

Trustee Matters

Chicago Trustee Conference
May 6, 2008

With the Chicago River and sailboats as the backdrop, we received a warm welcome to the Chicago Trustee Conference held at the East Bank Club from William T. Neary, United States Trustee, Region 11. The UST and his staff served as hosts to the Chapter 7 Panel Trustee, the Chapter 13 Standing Trustees and some of their staff, and other guests. After the welcome, the conference began with updates from the two Assistant USTs in Chicago, Sandra Taliani Rasnak, and Dean C. Harvalis. Both reviewed "Important Reminders" regarding Security, Converted Chapter 11 Case – §506 (c) Awards and UST Quarter Fees, Chapter 7 Trustees Role in Means Testing, Chapter 7 Trustee Calls, Motion to Dismiss/vacate discharge, Trustee Conducts, Final reports, Shorts sales, Meaningful distributions, Economic Stimulus Payments and Payment Advices. As a Chapter 13 Trustee, I underlined the information from the handout on Re-converted Chapter 13s and Bad Faith Conversions from Chapter 7 to Chapter 13. Since Chapter 13 Trustees are required to discuss with our supervisory UST attorney whether cases, which started in Chapter 7, should be converted back to Chapter 7 or dismissed, once the Chapter 13 Trustee determines that the Chapter 13 cases should not go forward and Chapter 13 Trustees should notice the prior Chapter 7 Trustee with all such motions, I looked around and found our supervisory attorney, Katy Gleason, and gave her a nod to let her know that we will continue to do just that. As for Bad Faith Conversions, the U.S. Supreme Court held last year that debtors do NOT have an absolute right to convert under section 706(a) and that bankruptcy courts may deny a debtor's request to convert to Chapter 13 on grounds of bad faith. *Marrama v. Cit Bank of Mass*, 166 L. Rd. 2d 956 (Feb. 2007)

Kenneth Gardner, Clerk of the Court, U.S. Bankruptcy Court, reviewed a lot of helpful statistical data on filings since BAPCPA. The Bankruptcy Court is continuing to follow-up on the surveys it has conducted this year and he announced that the Court will be upgrading to 3.2. It was news to learn that beginning in June, 2008, attorneys and the public will be able to use the PACER system to view transcripts of court proceedings in civil and criminal cases in the Northern District of Illinois filed on or after June 2, 2008. For the first ninety days after transcripts are filed, remote access will be limited to the party who purchased the transcript. After the ninety-day period, transcripts may be viewed by any PACER user.

After a very hefty and delightful lunch, if you thought for one minute you could sneak in a nap, you were mistaken. The Honorable Eugene Wedoff, Bankruptcy Judge, U.S. Bankrutpcy Court for the Northern District of Illinois, was on the Agenda to discuss BAPCPA Two Years Later. If you have ever felt uneasy about what to call the Bankruptcy Abuse Prevention Consumer Protection Act, he broke it down into syllables for us. BAPCPA is pronounced "**bap•c•pa**." He immediately put everyone at ease with the name and proceeded to discuss some of the testimony of Professor Todd Zywicki who has testified several times before Congress on issues of consumer bankruptcy law and consumer credit.

To emphasize his points, Judge Wedoff incorporated a movie clip from "Time Bandits" by Terry Gilliam into his presentation. Once he showed the movie clip, he asked the audience why the bandits punched the poor people in the face after they came up to get some of the loot that Robin Hood had stolen from the rich and was giving to the poor. Robin Hood asked the bandit was the punch necessary. Judge Wedoff solicited the correct answer from the audience. The "proverbial punch" was given to deter the poor from coming back again. He discussed and explained "Seven punches" in BAPCPA.

1. Means Testing
2. Debtor Audits
3. Costs of Repeat Filing – 1328 (f)
4. Secured Debtor Treatment – 1325 (a)
5. Credit Counseling and Debtor Education
6. Tax Returns and Pay Stubs; and,
7. Debtor Attorney Regulation

It was definitely a "must see" and enjoyable summary of BAPCPA Two Years Later. When people say, I heard that Judge Wedoff was a presenter at the conference, I immediately correct them. Judge Wedoff's presentation was a Hollywood production.

As always, The Civil and Criminal Enforcement Update from the UST Office was received with anticipation. We are always eager to see if we recognize any of the names or cases from our referrals. Sandra Rasnak and Patrick S. Layng, Regional Coordinator, Criminal Enforcement Unit, updated the cases handled in Region 11 since our last meeting. I am sharing the "Bankruptcy's Intersection with Mortgage Fraud" handout with my staff. Because of the coverage in the media on mortgage fraud, and the increase in foreclosures, this handout will help us to recognize the jargon, flipping, equity thief, equity skim, and fractional interests. Our hearing officers are being trained to "Look for the Out of the Ordinary, the Disproportional and the Vague and Unusual.

Strategies for Working with the IRS as covered by Mayer Silber, Sr., Attorney, Office of Chief Counsel, Denise DeLaurent, Trail Attorney, UST Office and Richard Fogel, Panel Trustee was informative. The handout included contact numbers for Proof of Claims Issues in addition to forms to request Tax Transcripts of Tax Returns. Mr. Silber provided the Chapter 7 Trustees with "Useful Information to the Chapter 7 Trustees for Handling IRS Issues."

The BAPCPA Caselaw Update was premiered with a fashion statement. All of the presenters wore bow ties, so it was hard to guess which one was Richard Friedman, Trial Attorney, UST Office. Both Dean Harvalis and James Sowka, Trial Attorney, UST Office dressed accordingly. I was so impressed with the fashion statement and caselaw update, since all three of my attorneys attended the conference with me, I told them that I wanted the cases briefed. The cases and holding discussed at the conference are printed below:

***In re Ross-Tousey*.....368 B.R. 762 .....E.D.Wis.,2007.**
May 21, 2007

Background: United States Trustee (UST) moved to dismiss debtors' Chapter 7 case as abuse of provisions of that chapter. In moving to dismiss, the UST relied on presumption of abuse that allegedly arose from application of the "means" test or, in alternative, on theory that debtors' ability to pay their debts out of future income rendered their Chapter 7 filing abusive based on totality of circumstances. The Bankruptcy Court entered order denying the UST's motion, and the UST appealed.

(Continued on page 4.)

Trustee Matters (Continued from page 3.)

Holding: The District Court, William C. Griesbach, Judge, held that, in applying "means" test, bankruptcy court should not have allowed debtors to deduct, as "applicable monthly expense amount" specified under the Internal Revenue Service's (IRS's) National and Local Standards, a vehicle ownership expense for motor vehicles which they owned outright. Reversed.

In re Randle**.....Slip Copy, 2007 WL 2668727....N.D.Ill.,2007.**
July 20, 2007

Debtor Ernestine Randle ("Randle") filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Northern District of Illinois on May 23, 2006. In response, United States Trustee, William T. Neary ("the Trustee"), filed a motion to dismiss Randle's petition under 11 U.S.C. §707(b)(2), arguing that granting Randle a discharge of her debts would be an abuse of Chapter 7 of the Bankruptcy Code. Bankruptcy denied the Trustee's motion to dismiss, and the Trustee now appeals that decision (Dkt. No. 1). Because this appeal presents an issue of first impression for the district courts, the court held oral argument on the appeal on June 19, 2007. For the reasons stated below, the court affirms the judgment of the Bankruptcy Court.

The Bankruptcy Court determined, after interpreting the statute, that §707(b)(2)(A)(iii) permits Randle to deduct her actual mortgage payments from her CMI, even though she stated her intention to surrender her home to the mortgage company when she filed a Chapter 7 bankruptcy petition. In reaching this decision, the Bankruptcy Court based its decision first on the plain language of §707(b)(2)(A)(iii), which says that the debtor "shall" deduct the amounts "scheduled as contractually due in each month of the 60 months following the date of the petition."

Judgment is entered in favor of debtor Ernestine Randle and against U.S. Trustee William T. Neary.

In re Wright**.....492 F.3d 829 .....C.A.7 (Ill.),2007.**
July 03, 2007

Background: Chapter 13 debtors proposed plan under which they would surrender vehicle securing purchase-money loan and pay nothing to creditor due to difference between loan balance and vehicle's market value. The United States Bankruptcy Court for the Northern District of Illinois, A. Benjamin Goldgar, Bankruptcy Judge, denied plan confirmation and certified its decision. Debtors appealed.

Holdings: After accepting appeal, the Court of Appeals, Easterbrook, Chief Judge, held that:

(1) plan confirmation statute's hanging paragraph provision leaves affected parties to their contractual entitlements, and

(2) any shortfall between value of vehicle and balance on loan that remained after debtors surrendered vehicle had to be treated as unsecured debt.

Affirmed.

In re Burmeister**.....378 B.R. 227 .....Bkrtcy.N.D.Ill.,2007.**
November 16, 2007

Background: Trustee objected to confirmation of debtors' proposed Chapter 13 plan on ground that debtors, in deducting their mortgage payments both for new residence on which they were actually making such payments and for old residence on which they were no longer making, and had no intention of making, such payments, debtors had miscalculated the "projected disposable income" that they would have to devote to payment of unsecured creditors.

Holdings: The Bankruptcy Court, A. Benjamin Goldgar, Judge, held that:

(1) debtors were entitled to deduction for both sets of mortgage payments, as "amounts scheduled as contractually due to secured creditors" on petition date; and

(2) lack of good faith in proposing plan was not proper basis for objecting to any alleged miscalculation by debtors of their projected disposable income. Objections overruled; plan confirmed.

In re Saffrin**.....380 B.R. 191 .....Bkrtcy.N.D.Ill.,2007.**
December 21, 2007

Background: Trustee objected to confirmation of plan proposed by above-median-income Chapter 13 debtors, as allegedly failing to satisfy "projected disposable income" requirement.

Holding: The Bankruptcy Court, A. Benjamin Goldgar, Judge, held that, in calculating the "projected disposable income" that they would have to devote to payment of unsecured creditors, debtors were not entitled to deduct, either as educational expense or as "Other Necessary Expense," the $1,000 per month which they allegedly paid for college expenses of daughter who was at least 18 years old. Objection sustained; confirmation denied

Clippard v. Crocker**.....384 B.R. 484.....M.D.Tenn.,2008.**
January 07, 2008

Background: In a case in which a surplus was due to be paid to debtor, Chapter 7 Trustee sought payment of interest on his compensation and on his attorneys' fees and expenses. United States Trustee (UST) objected. On the parties' cross-motions for summary judgment, the Bankruptcy Court, Harrison, Judge, overruled the objection and allowed the payment of interest. UST appealed.

Holding: The District Court, Aleta A. Trauger, Judge, held that neither trustee compensation nor that of trustee's attorney is eligible to receive interest in a surplus Chapter 7 case.

Reversed.

In re MarchFirst Inc.**.....378 B.R. 563 .....Bkrtcy.N.D.Ill.,2007.**
November 15, 2007

Background: Equipment lessor brought cause of action against Chapter 7 trustee to recover for trustee's failure to preserve this equipment and to turn it over to lessor following debtor's rejection of underlying leases. Trustee moved to dismiss based, inter alia, on Barton doctrine and on fact that cause of action was not timely brought.

Holdings: The Bankruptcy Court, John D. Schwartz, Judge, held that:

(1) Barton doctrine, as applied in bankruptcy context to prevent party from suing bankruptcy trustee for his conduct as trustee without first obtaining leave of court that appointed him, is applicable not only when party seeks to sue trustee in forum other than that which appointed him, but when party seeks to sue in the appointing court; and

(2) equipment lessor's cause of action was time-barred.

Motion granted.

(Continued on page 5.)

Trustee Matters *(Continued from page 4.)*

***In re Weitzman*.....381 B.R. 874 .....Bkrtcy.N.D.Ill.,2008.**
February 07, 2008

Background: Judgment creditor that, on being advised that Chapter 13 case was about to be dismissed and that trustee was holding more than $52,000 in payments that debtor had made toward proposed plan, had obtained citation to discover assets from state court and served citation on some unidentified individual in trustee's office moved to reopen bankruptcy case for purpose of seeking permission to sue trustee for his alleged improper disbursal of plan payments that he was holding in violation of prohibition against transfer in citation to discover assets.

Holdings: The Bankruptcy Court, Susan Pierson Sonderby, Judge, held that:

(1) case would be reopened both to allow invocation of Barton doctrine by trustee and to allow judgment creditor to seek permission from bankruptcy court to sue trustee in non-bankruptcy forum; and

(2) judgment creditor failed to establish requisite prima facie case of liability on trustee's part, and would not be granted permission to sue.

So ordered.

In re Automotive Professionals, Inc.
Slip Copy, 2007 WL 1958595.....Bkrtcy.N.D.Ill.,2007.
July 03, 2007

The following constitute my findings of fact and conclusions of law with respect to Automotive Professionals, Inc.'s ("API") motion to compel the Illinois Director of Insurance, Michael T. McRaith ("Director"), in his capacity as conservator of API's assets, to turn over any property of the estate in his possession and for an accounting of all such property. API argues that the Director is a "custodian" of API's assets pursuant to §101(11) of the Bankruptcy Code, and therefore must turn over those assets pursuant to §543(b). The State counters that

(1) sovereign immunity protects the Director from any order of turnover issued by this court;

(2) his actions in the state court proceedings fall within the regulatory power exception to the automatic stay in §362(b)(4);

(3) API cannot unwind its pre-petition assignment for the benefit of creditors;

(4) compelling turnover will harm API's consumer creditors;

(5) API must seek leave from the state court to proceed with this motion; and

(6) the Rooker-Feldman doctrine bars this court from ordering turnover of property in the control of the Director pursuant to a state court order of conservation. None of these arguments has merit. For the reasons set forth below,

API's motion to compel turnover and an accounting is granted.

***Maxwell v. KPMG LLP*.....520 F.3d 713 .....C.A.7 (Ill.),2008.**
March 21, 2008

Background: Trustee of Chapter 7 estate of corporation that was allegedly doomed as result of its decision to acquire "dot.com" company shortly prior to collapse of "dot.com" market brought adversary proceeding against accounting firm that had audited corporation's books for firm's alleged professional malpractice. Reference was withdrawn, and the United States District Court for the Northern District of Illinois, Joan B. Gottschall, Judge, 2007 WL 2091184, granted defendant's motion for summary judgment. Trustee appealed.

Holding: The Court of Appeals, Posner, Circuit Judge, held that accounting firm's alleged malpractice was not cause, in any meaningful sense, of injury to debtor or its creditors.

Affirmed.

In re Chicago Art Glass, Inc.
155 B.R. 180 .....Bkrtcy.N.D.Ill.,1993.
April 12, 1993

The United States objected to Chapter 7 trustee's application for payment of commissions and reimbursement of expenses incurred by auctioneer, which conducted two auctions of debtor's assets. The Bankruptcy Court, David H. Coar, Judge, held that:

(1) auctioneer was not entitled to reimbursement of expenses incurred in first auction;

(2) auctioneer was entitled to reimbursement of expenses incurred in second auction and to commission on gross sales proceeds from both auctions; and

(3) trustee's apparent negligence in overseeing the first auction mandated that trustee be directed to respond in writing to the Bankruptcy Court's sua sponte motion to vacate order awarding fees to trustee and trustee's counsel.

So ordered.

Matter of Central Ice Cream Co.
836 F.2d 1068 .....C.A.7 (Ill.),1987.
December 31, 1987

Trustee's application for approval of amended settlement agreement was granted by the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 59 B.R. 476, and shareholders appealed. The United States District Court for the Northern District of Illinois, Eastern Division, 62 B.R. 357, Harry D. Leinenweber, Judge, dismissed appeals and awarded sanctions. The Court of Appeals, Easterbrook, Circuit Judge, held that:

(1) appeal of bankruptcy court approval of settlement was not frivolous, as would warrant imposition of sanctions, and

(2) sanctions were appropriate for appeal to Court of Appeals.

Order accordingly.

***In re Wingerter*.....376 B.R. 221 ....Bkrtcy.N.D.Ohio,2007.**
October 01, 2007

Background: After Chapter 7 debtors objected to proof of claim for "money loaned" filed by claimant, a company that was in the business of bulk bankruptcy claims trading, and claimant purported to withdraw its proof of claim, thereby ignoring a specific court order as well as the bankruptcy rule governing withdrawal of claims, a show cause order was entered directing claimant to explain fully its routine for filing proofs of claim in bankruptcy cases and raising issue of whether Rule 9011 sanctions should be assessed against it for having filed an unsubstantiated claim.

(Continued on page 6.)

Trustee Matters

(Continued from page 5.)

Holdings: The Bankruptcy Court, Marilyn Shea-Stonum, Judge, held that:

(1) in filing its proof of claim, claimant did not comply with its Rule 9011 obligation to make a reasonable pre-filing inquiry;

(2) whether the form of a proof of claim and its attachments, or lack thereof, creates prima facie evidence of a claim does not control the question, under Rule 9011, whether under the circumstances it was reasonable for the claimant to file the claim in the first place; and

(3) in light of the time and energy devoted by claimant's senior management in response to the court's show cause order, no further sanctions would be assessed for the Rule 9011 violation. So ordered.

The Department of Labor – Trustees and Employee Benefits Plans presented valuable information on how Chapter 7 Trustees can wrap up ERISA sponsored pension programs in Chapter 7 cases. The presenters were Kelli R. Hammerl, Senior Investigator, Ann-Marie Harline, Lead Benefits Advisor, Crystal Coleman, Criminal Coordinator, U.S. Department of Labor Employee Benefits Security Administration and Christine Heri, Senior Trial Attorney U.S. Department of Labor, Office of the Solicitor.

At the conclusion of the conference, Mr. Neary expressed his pleasure with the program and the participation. He thought that the site of this meeting had set the tone for a very successful program. As an attendee who enjoyed the program and the information disseminated, I agreed. Special thanks to the US Trustee and his office for a great agenda for the Chicago Trustee Conference.

Marilyn O. Marshall, Chapter 13 Trustee

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Information Services

CaseNET After Dark

The other day, a bunch of us were relaxing in the grotto at the CaseNET Mansion, sipping mojitos between dips in the pool, when somebody – I think it was Hef – suggested it might be cool for me to do a newsletter article on the glamour and hedonism of CaseNET After Dark. So, here it is. But, all fantasies aside, the reality doesn't include any mojitos.

By five o'clock each afternoon things tend to quiet down in our office, but there's almost always somebody working until six or even seven o'clock. While there are fewer distractions at that time of day, there have been other factors that can limit productivity. To be specific, if you've worked after five in CaseNET, you have had to compete with some rather intense processing that occurs daily when we export data for the National Data Center (NDC).

The NDC export includes boatloads of data from every open case. It takes hours to export all that data. Every night we also upload the exported data to NDC, run our own web export, run a different job to update case balances and complete a full backup of CaseNET. It's been a challenge to schedule all these tasks in a way that minimizes disruption to everybody's schedules and sleep patterns.

We've changed our scheduling several times and have been working on automating tasks so they can happen without somebody having to push the button in real time. Recently we've worked out a way to launch CaseNET jobs automatically on a schedule, and that should make a difference for you hard workers who stay past five. Now you will have the server's full attention for up to two hours after everyone else has gone home.

Under the new schedule, the NDC export job initiates automatically at seven. When that's done, our own web export begins. We also have a scheduled task that automatically uploads the NDC data before their daily deadline. Our CaseNET backup runs at four a.m., followed shortly by jobs that update case balances and receipts due.

So, please keep this in mind when you come in each morning. If CaseNET looks a little haggard, it's probably because it just pulled an all-nighter.

Cliff Tarrance, Programmer/Analyst

Internet Tidbit

Read any good books lately? If you're looking for something interesting to read, head over to http://www.gutenberg.org/, home of Project Gutenberg. This ambitious project has over 20,000 free e-books available for download, with about 400 more added each month. Founded in 1971, Project Gutenberg is the original e-text project on the Internet. These e-books are offered free when the copyright expires, making them available for public use. There are e-books in dozens of languages and some are even offered as audio files, read by volunteers. So, next time you want to read a good book, get online and browse through Project Gutenberg's offering.

Tax Refunds... Disposable Income?

(Continued from page 2.)

likely default on plan payments and ultimate failure. (As an aside, plans set up in this manner at this time of the year are particularly problematic because the tax refund has been received and already spent.)

Judge Goldgar also recently sustained the Trustee's objection to a proposed plan involving a below-median income debtor where one-twelfth of the tax refund was listed as income on schedule I. (In re Felix, 07 B 19565). In his oral ruling, the court noted the speculative nature of the claimed income expressing concerns like those noted above and suggested that such a plan, therefore, fails to satisfy the confirmation requirement of feasibility set forth in §1325(a)(6). The court opined that the more practical, feasible and, thus, confirmable approach is to simply provide in the plan that the yearly income tax refund, for each year during the applicable commitment period, be paid into the plan in addition to the regular monthly plan payments. The effect is to allow the debtor to continue the over-withholdings, which may be required as a safeguard against unanticipated changes that would create higher tax liability than expected, while at the same time recognizing that the excess deductions constitute income that rightly should be dedicated to repayment of allowed unsecured creditors claims.

In conclusion, an above-median income debtor must subtract on line 30 of Form B22C, to the best that he is able to estimate it, the average monthly amount of all federal, state, local, self-employment, Social Security and Medicare that he actually will incur, not the amounts that he has withheld from his paycheck. Special care must be used when preparing the B22C form to ensure that there is an adjustment for excess withholdings from a debtor's gross pay. A below-median debtor may simply propose a plan as indicated above to offset the adverse impact over-withholding has on unsecured creditors. Of course, in any case where the dividend proposed to be paid to allowed unsecured claimants is 100%, the entire discussion above is largely moot.

Jay Tribou, Staff Attorney

June Anniversaries, Birthdays, And Other Notable Events

Adopt a Shelter Cat Month
National Lady Lawyers Month
National Cancer Survivors Day on June 1st.
All Staff Meeting on June 6th.
Happy Birthday to **Elise Taylor** on June 8th!
Happy Birthday to **Trustee Marilyn O. Marshall** on June 11th!

Flag Day on June 14th.
Father's Day on June 15th.
Happy 1st Anniversary to **Paulina Garga**, **Alma Martinez** and **Elise Taylor** on June 18th!
Juneteenth on June 19th.
First Day of Summer on June 20th.
Let It Go Day on June 23rd.

Spring Congratulations

Congratulations to my son Q. Jones for successfully completing his four years of High School. Now life begins. He plans to attend Columbia College and major in Arts, Entertainment and Fashion with a minor in Management. Once completed, he will enter the Fashion Industry and become a fashion designer, then later an entrepreneur. I wish him the best of luck in his endeavors.

Cheryl Jones, Case Administrator

On May 8, 2008, my brother, James B. Hooks, III, joined me as a member of the Bar for the State of Illinois. I was so proud of my "big brother" when he graduated from DePaul Law, and I'm even happier now that he is licensed to practice in this most honorable profession

Keisha M. Hooks, Esq., Staff Attorney

Congratulations to my daughter Jacqueline Mendoza. She will be graduating from kindergarten June 11, 2008. She's eligible to be placed in a gifted program starting the next school year. I'm very proud of how hard she worked this past year. Keep up the good work, Jackie. Mommy loves you.

And congratulations to my niece Vanessa Morales. She will be graduating from Morton East High School on June 6th. In the fall, she will attend DePaul University. I'm not sure what her major will be, but she loves money, so I'm certain it will be a profession that makes a lot of it! Congratulations, Vanessa.

Laura Mendoza, Mortgage Specialist

Congratulations to Abril Danyielle Marshall. Abril graduated from Union High School in Tulsa, OK, on May 16. She was awarded the Dean's scholarship which was based upon her ACT scores, and she has also accepted a scholarship in basketball and band to Friends University in Wichita, KS. Both Uncle Ozell and I regret that we could not share this moment with you, but we are very proud of you.

Marilyn O. Marshall, Trustee

Congratulations to my daughter LaKesha A. Johnson, She will receive her Master's of Arts Degree in Forensic Psychology from the "Chicago School of Professional Psychology" on June 13, 2008. Our family is extremely proud of her; we have all been inspired by her hard work and dedication. *Darlene Odom, Paralegal*

I am pleased to announce that my oldest son Anthony will be graduating from Horace Mann Elementary on Tuesday, June 10th. He will be attending the School of the Arts this fall. I am extremely proud of him and wish him the best of luck in high school. *Elise Taylor, Case Administrator*

Shoot for the moon. Even if you miss, you'll land among the stars. **– *Les Brown***

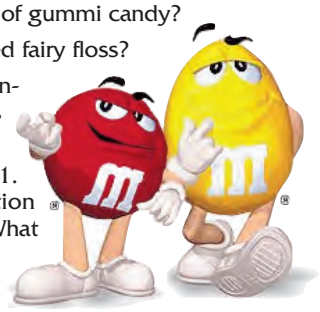
Trivia Quiz: Something Sweet

June is National Candy Month. Test your candy knowledge with this sweet trivia quiz.

1. What percentage of American candy brands have been around for more than 50 years?
2. Which holiday results in the highest candy sales?
3. Which candy is sometimes referred to as Spanish Juice or Sweet Wood?
4. What is the most popular taffy flavor?
5. True or False: Each year, U.S. manufacturers produce more than 16 billion jelly beans for Easter.
6. What percentage of American chocolate eaters prefer milk chocolate to other types of chocolate?

Jelly Bean George
A portrait of George Clooney made completely of jelly beans.

7. What is the most popular color of gummi candy?
8. What candy was originally called fairy floss?
9. Which classic candy bar was included in U.S. soldiers' rations during World War II?
10. M&M's were first sold in 1941. There was a major innovation made to the candy in 1954. What was it?



The Answers:

1. About 65%.	5. True.	9. Heath bars.
2. Halloween.	6. 65%.	10. Peanuts were added to M&M's for the first time.
3. Licorice.	7. Red.	
4. Peppermint.	8. Cotton candy.	

Did You know? Dairy

June is Dairy Month. Here are some interesting facts to know:

- While most people think of cheddar cheese as being orange, its natural color is actually white. Orange cheddar cheese gets its hue from the addition of a carrot-based food coloring.
- Milk ranks fifth as the beverage of choice among American consumers. The beverages that beat it are, in order, soft drinks, water, beer, and coffee.
- A quart of ice cream contains as much cholesterol as 68 slices of bacon.
- A single cow produces about 350,000 glasses of milk in her lifetime.

- Butter obtains its yellow color from the beta-carotene that is in the grass the cows eat.
- More ice cream is sold on Sunday than on any other day of the week.
- The first celebrity to sport a milk mustache in ads for milk was supermodel/actress Naomi Campbell in November of 1994.
- The highest day for cheese use is Super Bowl Sunday, mainly due to pizza consumption on that day. The second highest day is the day before Thanksgiving.
- It takes more than 21 pounds of milk to make a pound of butter and more than 10 pounds to make a pound of cheese. 12 pounds of milk are needed to make a gallon of ice cream.