

# The 4th Advanced Consumer Bankruptcy Practice Institute and the 40th Annual NACTT Seminar

The 4th Annual Advanced Practice Institute was held in Orlando (immediately preceding the NACTT). It was devoted to the Bankruptcy Abuse Prevention Consumer Protection Act of 2005 (hereafter referred to as BAPCPA) and was the single best CLE event I've ever attended. I earned 14.0 of CLE credits and took notes as if it was my first year in law school. Judge Keith Lundin and Chapter 13 Trustee Hank Hildebrand introduced us to the institute and the instructors. The instructors were Richardo Kilpatrick, Ray Mullins, Williams Brown, Dean Rappaport and Tom Waldron. As I will outline, each of the instructors covered a section of BAPCPA.

The message of the seminar was simple. Do not let anyone tell you what the law says – “Read it for yourself, look at every single word, look for the Easter eggs, and the plain meaning of the law.” Easter eggs are Hank’s description of hidden meanings in the Code and I will explain his example in the training sessions, that I will conduct in our area on behalf of the NACTT before October 2005.

If this article gets too boring and you don't get through the whole article, please make a note to read the following key sections of the Bankruptcy Code for yourself.



An aerial view of the Gaylord Palms Resort and Convention Center.

## KEY SECTIONS OF THE CODE

- 101(10A) – Definition of Current Monthly Income (CMI)
- 101(12A) – Definition of Debt Relief Agency (DRA)
- 101(14A) – Definition of Domestic Support Obligation (DSO)
- Section 342 – Notice
- Section 362 (b) & (c) – Automatic Stay
- Section 521 – Debtors Duties
- Section 522 – Exemptions
- Section 707 – Means Test
- Section 1325 – Chapter 13 Plans

## DAY ONE

This institute reminded me of my first NACTT seminar I attended in San Diego in July, 2001, prior to my appointment in September 2001, I had been told by Julia Russell at the UST office to introduce myself to Glenn Stearns and if I had any questions, just ask Glenn, he would be more than willing to show me around and answer my questions. Through the years, that turned out to be some of the best advice I received. At this institute both Glenn and I were looking for answers, so we found seats together in the middle section of the room on the front row (we soon discovered this was the coldest area of the room and most uncomfortable) as we began to take notes and highlight sections of the code. We were armed with the Blue Bankruptcy Code, which was given to us in our packets, and we had the Green Book – 2005 Bankruptcy Reform Legislation with Analysis written by Honorable William Brown and Lawrence R. Ahern III. Following are notes taken at the institute, interpretation of the code by the instructors, highlights of code sections, and questions, some of which still remain unanswered even after 18 hours of classes and reading every word myself.

Richardo Kilpatrick covered Notice-§342. There are three different addresses which can be designated by the creditor as the address to use for notice.

The code will impose substantial and significant obligations on debtors, courts, and trustees in reference to notice. Any notice to be given by a debtor to a creditor must include the account number and must be sent to the address designated by the creditor if the creditor sent two communications to the debtor within 90 days of the filing of the petition that included the debtors account number and the creditors correspondence address. §342(c)(2) A notice to the creditor must contain the debtor's address, the  
(See NACTT on page 2.)

**NACTT** (Continued from page 1.)

account number and the last four digits of the Social Security number. Questions concerning privacy issues were not answered.

Any entity may file with any bankruptcy court a “notice of address” for all notices in all cases under Chapter 7 and Chapter 13 in all bankruptcy courts. This “notice of address” must be used for all noticing by a court 30 days after filing unless the entity files a (different) “notice of address” in a specific case. A notice of address filed in a specific case must be used by the court or by the debtor five days after filing. §342 (e) and (f). Note: This may be a problem for the Clerk’s office.

A notice is not effective if it is not “brought to the attention” of the creditor and a monetary penalty may not be imposed.

It appears that the trustee may receive four separate addresses. The trustee will have the address from the debtor matrix, address selected by creditor, address given to court on proof of claims and address of attorney who represents creditors. A trustee may have to add all of these addresses in their case administration system.

Getting In-§109(h) was covered by Ray Mullins. The debtor must obtain a briefing from a non-profit budget credit counseling agency and a related budget analysis in order to file a bankruptcy petition. The new law mandates a credit briefing for the debtor within the 180-day period preceding the bankruptcy filing, either by telephone or over the Internet, by a non-profit credit-counseling agency. The briefing will introduce the debtor to the services of credit counseling and assist with a budget

analysis. The debtor is required to submit a certificate from the credit counseling agency describing the services provided, and may not obtain a discharge until completion of a personal financial management instruction course.

The briefing is not required if court determines that debtor is incapacitated (mentally), disabled (physically), or active military in a combat zone. §109(h)(1)

The requirements to become a Nonprofit Budget Credit Counseling Agency (NBCCA) are covered in §111(c)(1) and what it takes to be approved by the UST or BA (Bankruptcy Administrator) is covered in §111(c)(2).

William Brown covered Automatic Stay – §362. The automatic stay is not so automatic. BAPCPA denies automatic stay for repeat filings, unless made in good faith, and denies automatic stay for certain evictions. BAPCPA seeks to curb the abuse found in repeat filings by adjusting the scope and extent of the automatic stay and the availability of serial discharges. The question is: how will the court or trustee deal with the repeat filer? I think this is an area where uniformity among the court and trustees is key. How do we define serial filer? Is it the number of filings, whether the case was filed in good faith, or, if there is no stay, does the number of filings matter?

Except in a Chapter 11 or 13 case refiled after dismissal under 707(b), the automatic stay with respect to leases, debt and property securing debt expires 30 days after the later filing if the debtor had another case pending within one year and that prior case was dismissed. The court can continue the stay, after a hearing that must be completed within 30 days after the later filing, only if the moving party proves that the later case was filed in good faith “as to creditors to be stayed.” As to all creditors, there is a (rebuttable) presumption of a lack of good faith if:

- 1) The debtor had more than one previous case pending within one year; or
- 2) Previous case was dismissed within the preceding year, after the debtor failed to:
  - (a) File or amend required documents without substantial excuse.
  - (b) Provide adequate protection ordered by the court, or
  - (c) Perform the terms of a confirmed plan, or
- 3) There has not been a substantial change in the financial or personal affairs of the debtor since dismissal of the last case, or any reason (not?) to conclude the later case will be concluded with a Chapter 7 discharge or a confirmed, fully performed plan. (See NACTT on page 3.)

<b>THE MARSHALL CHRONICLES</b>	
<b>The Editorial Staff:</b> Kimberly Grief, Cheryl Jones, Joanne Coshonis, Kyle Issleb, Cheri Johnson, Eileen Downes, HVB and Dave Latz.	
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Our representatives at the NACTT conference: Anthony Olivadoti, Karen Barron, Dan Lyons, Trustee Marilyn Marshall and Jay Tribou.

**NACTT** *(Continued from page 2.)*

§362 (b)(2) Lists exceptions to the stay (this list is not all-inclusive).

- (18) Creation of a lien
- (19) Employer can continue to deduct for retirement loans
- (20) Court may grant in rem relief as to real property if filed as part of scheme to hinder, delay or defraud.
- (21) Ineligible debtor-§109(g) – no stay
- (22) Lessor of residential property obtained judgment of possession before the petition – no stay debtor must file
  - (a) with the petition a “certification”
    - (i) state whether judgment of possession was obtained before petition
    - (ii) under non-bankruptcy law, cure the monetary default
    - (iii) deposit funds with the court (bankruptcy court?) any rent that would become due; and
  - (b) hearing within 30 days
- (23) The stay does not apply if landlord files certificate that
  - 1) eviction based on debtor endangerment of property
  - 2) debtor endangered property or used or allowed use of controlled substances

Attorney Responsibilities – (DRA) was covered by Tom Waldron. BAPCPA imposes new obligations and restrictions on attorneys and others providing assistance to debtors. Prior to this meeting, there were discussions as to whether a trustee was a DRA. We all agreed that a trustee is not a debt relief agency.

Greater burden is placed on the attorney to verify the debtor’s information, stating that the signature of an attorney on a petition shall constitute a certification that the attorney has performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; that the petition is well grounded in fact and is warranted by existing law; and that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

Our office procedures will not change much. We will continue to verify information submitted to the office. In the past, we have looked on Pacer for prior cases, reviewed the valuation of property, required proof of I.D, requested specific income, asked for proof of ownership of property, conducted UCC searches and looked at real estate sales. We will add to that list, transcripts of tax returns/tax returns and credit reports. Since more information is disclosed to the Debtor Attorney, we will implement forms and checklists to ensure that the §342(b) Notice and §527(a) & (b) disclosures have been followed. (I have a note to discuss Model Retention Agreement in Northern District of Illinois with my colleagues. I’ll have the opportunity to discuss this with them on September 23 & 24 at our Region 11 UST Training.)

Chapter 13 – Keith Lundin and Hank Hildebrand covered The New Chapter

The New Chapter 13 was an overview of the changes to Title 11 USC 1301 et. seq.

- 1301. Stay of action against co debtor
  - No change to the co-debtor stay except as to §365(p)(3).
- 1302. Trustee
  - New Trustee noticing responsibilities with respect to a domestic support obligation. The trustee shall provide “written” notice to the holder of a DSO and to the support enforcement agency



for the state in which the holder resides. We were giving a CD with the names and address of all the Child Support Agencies.

- 1303. Rights and powers of Debtor
  - No changes
- 1304. Debtor engaged in business
  - No changes
- 1305. Filing an allowance of post petition claims
  - No changes
- 1306. Property of the Estate
  - No changes
  - Read §541(b)(5) and (b)(6)-excluding education IRA and State tuition credit account from property of the estate.
- 1307. Conversion or dismissal
 

New grounds for conversion or dismissal.

  - Section 1307(c)(11) is a new ground for conversion or dismissal: failure of the debtor to pay any domestic support obligation that “first becomes payable after the date of the filing of the petition.”
  - New §1307(e) mandates (“shall”) dismissal or conversion to Chapter 7 “Upon the failure of the debtor to file a tax return under §1308.”
  - Section 521(j) provides “notwithstanding any other provision of this title,” a taxing authority may request a conversion or dismissal if the debtor fails to file a tax return that “becomes due after the commencement of the case;” and upon such request, the debtor has 90 days to file the required return (or request an extension) else the court “shall” convert or dismiss.
  - Read §348(f), which has been substantially amended to change the effects of conversion from Chapter 13 to Chapter 7. The valuations of property and of allowed secured claims in the Chapter 13 case that applied at conversion to Chapter 7 under former law now applies only in a case converted from Chapter 13 to Chapter 11 or Chapter 12.
- 1308. Filing of pre-petition tax returns
  - Debtors are required to provide copies of the prior year’s federal tax return within seven days of the §341 meeting to the trustee or requesting creditor, and current returns upon the request of a judge or interested party.
  - The day before the first scheduled §34(a) meeting of creditors is a new deadline.
  - Look at §521(e) and (f).
  - New §1308 (b) permits (“may”) the trustee to “hold open” the first scheduled meeting of creditors “for a reasonable period of time” to allow the debtor to file “required returns.
  - Look at §1325(a)(9) – confirmation is conditioned that the debtor has filed all federal, state and local tax returns “required” by §1308.
- 1321. Filing of plan
  - No changes – The debtor shall file a plan.
- 1322. Contents of plan
  - New §1322(a)(4) looks like a permissive (“may”) exception to the full payment of priority claims requirement in §1322(a)(2)

*(See NACTT on page 4.)*

**NACTT** *(Continued from page 3.)*



- with respect to a narrow class of domestic support obligations assigned to governmental units in five-year plans. But it was added to the mandatory (“shall”) provision of the plan in §1322(a).
- Projected disposable income is defined in §1325(b) and it does not mean the same thing for over median income debtors as it does for under median income debtors.
  - For over median income debtors, the projected disposable income test refers to §707(b)(2)(A) and (B) and full payment of all priority claims is netted out of the calculation.
  - Over median income debtors in Chapter 13 cases will always have to propose five-year plans under §1325(b)(4)(A)(ii).
  - There is a question as to whether §1322(a)(4) will be read as an exception to the unfair discrimination test for separate classification in §1322(b)(1).
  - New §1322(b)(10) permits the Chapter 13 plan to pay interest accruing after the petition on unsecured claims that are nondischargeable under §1328(a) “to the extent that the debtor has disposable income available to pay such interests after making provision for full payment of all claims.
  - New §1322(d) fixes duration requirement for Chapter 13 cases with reference to the median family income statistics. The section measures “the current monthly income of the debtor and the debtor’s spouse combined”—without regard to whether the spouse is a joint debtor in the Chapter 13 case.
  - “Current monthly income (101(10A)) measures only income received by the debtor “or in joint case the debtor and the debtor’s spouse.” CMI includes in the debtor’s income amounts paid on a “regular basis” by a nonfiling spouse for the household expenses of the debtor or the debtor’s dependents.
  - The use of CMI in §1322(d) requires averaging the monthly income received by the debtor (and the debtor’s spouse, combined) from all sources during the six-month period prior to the petition with the inclusion found in §101(10A).
  - If the amount calculated exceeds median income for the applicable family, then §1322(d) states that the plan “may not provide for payments over a period that is longer than five years”. If the income calculation produces a number less than the applicable median family income, then the plan may not provide for payments over a period that is longer than three years unless the court approves for cause a longer period and then the court may not approve a period that is longer than five years.
- Under new §1322(f) “any amounts required to repay” a pension or profit-sharing loan described in §362(b)(19) shall not constitute “disposable income” under section 1325.

1323. Modification of plan before confirmation

- No changes

1324. Confirmation Hearing

- There is a question as to whether the date of the confirmation hearing is counted from the “date of the meeting of creditors” or the “first date set for the meeting of creditors.”
- Under Bankruptcy Rule 2003(a), the United States trustee is required to call a meeting of creditors in Chapter 13 cases “no fewer than 20 and no more than 50 days” after the petition. Under new §1324(b), the range of possible dates for the hearing on confirmation of a Chapter 13 plan would be no earlier than 40 days after the petition and no later than 95 days after the petition, unless the court fixes an earlier date under new §1324(b).

1325. Confirmation of plan

- The requirement in old §1325(a)(3) that “the plan has been proposed in good faith” is supplemented in new §1325(a)(7) that “the action of the debtor in filing the petition was in good faith.”
- The best-interest-of-creditors test in §1325(a)(4) was not amended by BAPCPA, but new exclusion from property of the estate may affect the 1325(a)(4) calculation.
- Section 1325(a)(5)(B)(i) contains a new lien retention requirement.
- Determining the amount of “each secured claim” invokes §§502 and 506 of bankruptcy law; determining when “payment of the underlying debt determined under nonbankruptcy law” occurs invokes the contract and state law and will produce a different amount in many circumstances.
- Under §1325(a)(5)(B)(ii), the requirement remains that the value of property to be distributed under the plan on account of “such claim” must be not less than the allowed amount of “such claim” as of the effective date of the plan.
- New §1325(a)(5)(B)(ii) states that if property distributed “pursuant to this subsection” is in the form of “periodic payments” then such payments shall be in equal monthly amounts.
- Does this mean that over the life of the plan the amount paid each month must be the same amount?
- §1325(a)(5)(B)(iii) (II) provides that payments to the holder of a claim “secured by personal property shall be not less than an amount sufficient to provide “adequate protection” during the period of the plan.
- Section 1325(a)(5)(C) preserves the right of the debtor to surrender the property securing “such claim.”
- Section 1328(a)(8) adds a new confirmation requirement that the debtor has paid all domestic support obligations (see §101(14A)) that “first become payable after the date of the filing of the petition,” requires “by a judicial or administrative order, or by statute.”
- New §1325(a)(9) requires the debtor “has filed all applicable federal, state, and local tax returns as required by §1308.
- New §1325(b) now requires (upon objection) that all of the debtor’s “projected disposable income” to be received in the “applicable commitment period” will be applied to payments to “unsecured creditors” under the plan.
- Disposable income is based on “current monthly income” – a term of art under §101(10A) that looks backwards to the six months before the month in which the petition was filed.
- You must learn the distinction between over the median and under the median income because it drives the means test and the disposable income test. Everyone is “freaking out” about the “means test,” how to calculate it, who will calculate it, how hard it is to calculate and who will check the people that do the calculations.
- With respect to over median income debtors, the disposable income test is no longer a measure of the debtor’s ability to pay. The mathematical formula incorporated from §707(b)(2) is unrelated to the provision of the proposed plan and bear no obvious relations to the amount of money that will actually be available from the debtor for payments to unsecured creditors if the plan is confirmed.

*(See NACTT on page 5.)*

**NACTT** (Continued from page 4.)

- The means test starts with the debtor's monthly income and subtracts:
  - Recognized local and national IRS standard expenses for food, clothing, utilities, car and housing.
  - Secured debt that will become due in five years
  - All priority debts
  - A few other expenses in recognize categories, such as continued charitable contributions, education expenses, and continued care of a sick or elderly relative who is unable to pay the expenses of care.
- The net amount after deducting these expenses is considered "disposable income."

## 1326. Payments

- New §1326 requires the debtor to make payments before confirmation to certain creditors. Direct payments by debtors before confirmation is really a bad idea. Direct payments interfere with the commencement of payment to the trustee to fund the plan and complicate getting an income deduction order in the correct amount through the debtor's employer.
- Hopefully, the Standing Order proposed by Judge Wedoff to be signed by all the Judges will eliminate any problems in the Northern District of Illinois.

## 1327. Effect of Confirmation

- No changes to the text

## 1328. Discharge

- There is a new certificate requirement for discharge in §1328(a). There are seven new exceptions to discharge in §1328(a) at the completion of payments under a Chapter 13 plan
  1. Section 507(a)(8)(C)
  2. Section 523(a)(1)(B)
  3. Section 523(a)(1)(C)
  4. Section 523(a)(2)
  5. Section 523(a)(3)
  6. Section 523(a)(4)
  7. Section 1328 (a)(4)
- Nothing in new §1328(f) prevents the filing of a Chapter 13 case after discharge in a prior Chapter 7 or Chapter 13 case if the debtor does not seek a discharge in the subsequent Chapter 13 case. §1328(f) is a limitation on the granting of a discharge, not a limitation on the eligibility of the debtor in a Chapter 13 case.

## 1329. Modification of plan after confirmation

- Section 1329 is amended to add a fourth ground for modification after confirmation: to reduce the amount paid under the plan by the "actual amount" expended by the debtor to purchase health insurance for the debtor or for a dependent of the debtor if the debtor documents the cost of the insurance.
- We have been successful recently in having written opinions from Judge Squires, Hollis, Black and Doyle regarding Modification of Plan After Confirmation to increase plan payments when the debtor files a Motion to Refinance or a Motion to Sell the property. We will have discussions with the other trustees on the "commitment period" and how the new law affects modification of plans.
- How will the new definition of current monthly income affect modification after confirmation because the income-based

tests in §1325(b) will always look back to the six months before the petition? Post-petition changes in income will not be reflected in any disposable income test analysis that might be appropriate at modification after confirmation.



## 1330. Revocation of an order of confirmation

- No changes

This ended Day One. I just wanted to take a nap.

**DAY TWO**

Day Two started promptly at 8:30 a.m. Since Day One had been so intense, Glenn and I moved to the back of the room and took our seats next to Lydia Meyer for more enforcement. If one of us had missed anything, we knew Lydia had it covered.

Exemption-§522 was covered by William Brown

- "Opting Out" has been changed
- The current state of domicile will no longer be the state that defines the debtor's exemptions in bankruptcy.
- A debtor can exempt property under one of two exemption schemes under the Bankruptcy Code—the "federal exemptions of Section 522(b)(2) or the "state" exemptions of Section 522(b).
- State exemptions have changed drastically in several areas. However, the "other federal law" exemptions have not changed.
- Homestead Exemption Changes:

Limits state homestead exemptions such that the debtor may not exempt the amount of interest acquired within 3.3 years of filing which exceeds the aggregate of \$125,000, unless the value in excess of that amount occurs from a transfer of residences with the same state.

Reduces homestead exemption for fraud if debtor disposed of the property with the intent to hinder, delay or default a creditor.

- Provides a new definition of household goods for purposes of lien avoidance – limited to one radio, one TV, one computer, and one VCR. Excludes motor vehicles, art not created by debtor/relative, jewelry worth > \$500 (excludes wedding rings).

Court and Clerk Responsibilities was covered by Tom Waldron

- There are new hearings which the court will have to conduct for "Getting In," "Staying In" and "Getting Out" of bankruptcy.
- The notice requirement of §342 may present the biggest problem for BNC.

We all went into our breakout session to discuss the problem of TC (a hypothetical debtor). TC Needs Help was like a "bar exam question" which tried to cover every aspect of the BAPCPA. Tom Vaughn and I were in the same group lead by Judge Lundin. I don't think we got any answers in this session. It stimulated the brain enough to ask more questions.

After the TC breakout session, we had the choice of going to the Trustee luncheon or going back to class to attend the next session. We all went back to class because there was always this feeling that we were missing something and needed to learn more. Tom joined us in the back but left so that he wouldn't miss all of the luncheon.

(See NACTT on page 6.)

**NACTT** *(Continued from page 5.)*

Discharge and Dischargability was covered by Richardo Kilpatrick and Keith Lundin.

- Everything covered in this session had been covered by Hank and Keith in The New Chapter 13 as discussed above.

Richardo Kilpatrick covered reaffirmation.

Glenn and I left before this section began. I couldn't think of any thing that I had done with reaffirmation in the past, but that does not mean we won't be doing anything in the future. We tried to get Lydia to leave but she would not be moved, it was as if she was glued to the seat. So, if you have any questions on Reaffirmations \$524, call Lydia. We had missed the Trustee's luncheon. We should have left with Tom who was complaining because sitting through the last session had caused him to miss the desserts. I'll remember to buy him dessert in Chicago.

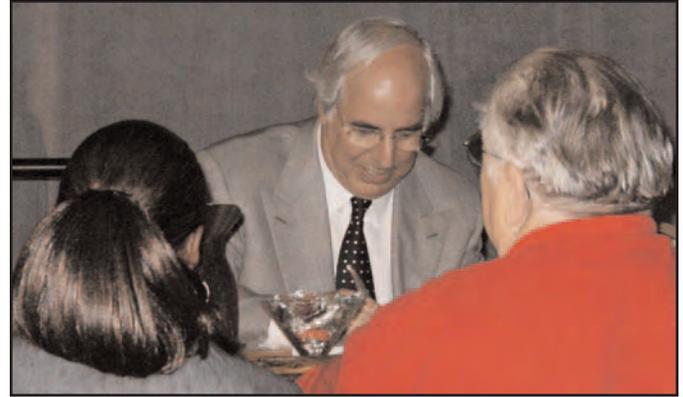
The presenters and instructors at this institute were very well prepared. A lot of time and preparation had gone into the presentation. Every part of the institute was interesting and so exciting that you stayed glued to your seats. Everyone was so excited after each presentation and couldn't wait for the next session. BAPCPA is a challenge, and I do enjoy a challenge.

I missed the opening reception because I took a nap after the institute ended and didn't wake up until the next morning.

**DAY THREE – THE CONFERENCE BEGINS**

Frank W. Abagnale was the keynote speaker. I had never seen the movie "Catch Me If You Can," but was familiar with the story. The address was awesome and the two-hour fraud workshop, which followed, was just as good. I immediately requested PNV-Payee Name Verification from LaSalle Bank. We already use positive pay, but PNV matches the payee name, check number and dollar amount, and I ordered those Uniball 270 gel ballpoint pens to use to sign all checks since the ink cannot be erased or lifted from a check by a thief. At the end of the workshop, I purchased both of his books but have been too busy reading the Code to read the books.

The overview of the BAPCPA on the third day was a summary of what we had covered in the institute. Hearing it a second time



*Frank Abagnale, of "Catch Me If You Can" fame, autographs copies of his books for Trustees Marilyn Marshall and Jimmy Bone.*

was a big help. I kept thinking that if I would hear it two or three more times, I would start to feel confident about what I was reading. With all the focus on offering training, going to training, implementing procedures and being prepared before October 17, 2005, it just seemed like I was running out of time.

After all of the above, everything else about the conference was uneventful. The Gaylord Palms is a beautiful place to stay. I didn't make it to the alligator feeding at 6:30 p.m. each day but I did visit the Canyon Ranch Spa. I hope this article is helpful; it is a recap of what was covered at the institute. I should be receiving the DVDs sometime in September. I don't think you can ever read or hear enough of BAPCPA. Remember, you have to read the "Key Sessions" for yourself. The information is everywhere. In prior articles, I have referred readers to our court's website because the information there is also very helpful. I presented, for those of you who didn't attend the institute or the conference, or those of you who don't have a Code or even those of you who have been sleeping for the last four months, information which I suggest you read. I only have these parting words: "You can lead a horse to water, but you can't make him drink."

*Marilyn O. Marshall, Standing Trustee*

**Marathon Update**

In my last article about my training for running in The LaSalle Bank Chicago Marathon I left you with me doing a run of seven miles on Saturday morning and three runs of three miles each during the week. By the time you read this, I will have run 12 miles on Saturday, six miles on Wednesday and two other runs of three miles each. Believe it or not, this mileage seems about the same to me as what as I was running five weeks ago, the hot weather is more a bother than is the extra mileage. This gradual (that's CARA's word not mine) planned out progression has allowed my body to adapt and made it possible for me to complete these distances. Since Lizzy (the golden retriever) only goes on three mile runs and only when it is below 90 degrees, she probably can't trot more than five miles and won't be running the marathon.

Since last month's article, I heard comments from many of you. I found out that our own Joanne Coshonis has run the marathon six times, and there are a couple of you interested enough that I think one of you will do this yourself some year. When I run on Saturday mornings with the Chicago Area Runners Association (CARA), we are paced at a speed we select and run with a group of runners, both experienced and novices like myself; young and older (you put me in your own category). We are supposed to run at a pace where we can converse. Because of this, it is possible to meet new people while you get in better shape. They run along the lakefront as well as locations in Niles, Lake Zurich, Elmhurst, Oak Brook, Wheaton, Warrenville, St. Charles and Oak Forest (where I run).

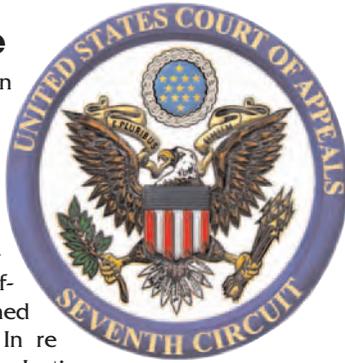
While attending the NACTT convention in Orlando, it was too hot and humid to run outside so I did my running on a treadmill at the resort. I find this much more difficult than running outside, but other people find it quite the opposite. The latest of the eight one-hour seminars focused on nutrition. The basic goal (unlike all of the latest in fad diets) is to load up on carbohydrates and don't worry about calories. Beer (in moderation) is even okay because of the carbs. Now if I could only get someone to say that pizza was good for me, I would be set. Hopefully we will start to get a break from the heat soon. Before August is over I will be up to a 16 mile Saturday run and a total of 32 miles for the week.

*Dan Lyons*



### Legal Appeals Update

We finally have an update on the two cases we have been involved in that were appealed to the 7th Circuit Court of Appeals. After lots of briefing, hours of research and a few beads of sweat before delivering oral arguments, it is official – both cases were deemed moot. We just received the In re Belda decision and though the Justices found the non-discrimination issue in proposing to pay unsecured creditors differently in a chapter 13 plan to be good issue, they could not get to it because the case had been dismissed and the Beldas have a new case with no discrimination issue. So technically we won at the District Court level, and we're running with that theory. As to our Hogan appeal, one has to read the decision to truly comprehend the mootness ruling. In re Hogan dealt with the §109(g) bar and its application. The result of the "mootness" decision leaves open a whole new host of arguments as to what it means, and I'm sure we will be litigating that issue another day. Both opinions can be found on the United States Court of Appeals web site: <http://www.ca7.uscourts.gov/>



Anthony Olivadoti

### Case Confirmation What Is A DOTF Or DTF?

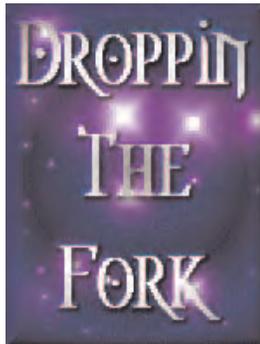
The bankruptcy world, like other areas of law, has its own acronyms that are commonly used. Draft Order To Follow is also known as a DOTF or DTF. Okay, now we all know what it stands for, but what does it mean?

When a motion is filed with the court, it is required to have an attached order accompanying it. Sometimes after the matter is heard, an agreement is reached which includes additional or entirely different language. When this scenario occurs, counsel will state on the record "a draft order to follow will be submitted to chambers." Often times the DOTF is a minute order or the attorney will edit the original order to submit or prepare a new order.

Depending on the situation in court, sometimes there is a deadline for which DOTFs are to be submitted. The most common deadline is 14 days, and these are typically for creditors which desire to modify their original order. Minute orders are often submitted at the end of the court call or by the end of the day.

The trustee's office also submits DOTF for confirmation orders. It is common practice for our paralegals to go through the call when the attorney returns from court and separate the confirmed cases. The cases that are confirmed are reviewed by the paralegal to be sure the latest plan date is on the confirmation order before sending them to chambers the following day.

Cheri Johnson



### Case Administration Secured Or Unsecured?

Lately, it's becoming hard to tell whether a creditor is filing their claim as secured or unsecured. A proof of claim form and instructions are sent to each creditor listed in the case by the bankruptcy court. The instructions for the secured section of the claim form state that the creditor should check the appropriate place if the claim is secured, assign a value and provide documentation of the lien. The two issues that we encounter is when the creditor fails to check the secured box, but they do all of the following:



- ☞ List a description of the collateral
- ☞ Assign a value amount to the collateral
- ☞ Provide documentation of security

Or the creditor doesn't check the box or assign a value amount but they:

- ☞ List a description of the collateral
- ☞ Provide documentation of security

All evidence in the first and second scenario would point to the claim being secured in addition to the plan listing the debt as secured, but because the secured box is not checked, we can't be positive.

Based on the secured box not being selected, we could enter the claim as unsecured, which could have an adverse result for the creditor and the debtor. The creditor would not receive what they were entitled under the plan and debtor may not receive a discharge for the debt at the end of case. To ensure correct administration of the confirmed plan, the claims department will send a notice to the creditor that the claim they filed should be amended with the court to clarify the debt treatment as secured or unsecured. The claim will be entered as secured and funds allocated but not disbursed until the creditor responds to the notice. If the creditor amends the claim to be paid as secured, then all funds being held will be released in the next disbursement. If the claim is amended to unsecured, the money will be reallocated to the case and the debt treatment corrected accordingly.

Rosalind Lanier

### Legal Filing ECF Documents

ECF reminder. Now that everyone is on board the electronic case filing band wagon, people need to be much more cognizant of what they are filing. We have had a few §341 meetings where the attorney had one set of documents they thought they filed, and we printed out what they actually filed. What gets filed has consequence. Each document filed with the clerk is coded into a preset "event" that may trigger a later event. The clerk, as well as the trustee, monitors the docket for a chapter 13 plan to get filed. Upon its filing, the clerk's office generates a notice. Filers need to be sure that they file the plan as a separate document. If they file the plan as an exhibit or attachment to some other motion, it may not get picked up properly and it's questionable whether a plan filed as an exhibit constitutes a "filed" plan. Our hopes are that filers just do it right in the first place, it makes it easier on everyone, including the debtors.



Anthony Olivadoti

## Information Services Cashflow Module Update

How about an update on the Cashflow Module? OK. The group had a quick meeting on Tuesday, July 19 because Cliff had gotten to a point in the programming where he needed a little clarification. Many moons ago, the primary reason for the Cashflow module was to provide a mechanism for reviewing the percentage that would be paid to unsecured creditors before we started disbursing funds to such creditors. Now that's a concept. Review *before* disbursing.

We have a CaseNET job that will allow just that. It's called the mid-case audit. Though we originally thought the purpose of this audit would be to determine the unsecured disbursement rate, as development has proceeded, the emphasis has shifted to making sure that all eligible 100% creditors have received their due, and everything is in order for the unsecured creditors to begin receiving their disbursements. It's like the final audit, with the added benefit that any unhappy surprises come before money has been sent out the door.

We determined that there will be a break point in the allocation code when we have made the last disbursement to 100% creditors. The program will then test to see if the case has been through a mid-case audit. If so, the allocation code will begin allocating to the unsecured creditors. If not, the case will be tagged to be included in the next run of the mid-case audit. There are two ways a case can get selected for a mid-case audit: either it was flagged during the monthly allocation program, or it has been 18 months since the date of confirmation.

Another thing we discussed in the CashFlow meeting was how to get feedback on a new feature that Cliff has introduced in CaseNET. From the Plan tab, you can click on a button called "Cashflow Details." This will provide a screen with loads of information on plan payoff amounts and what has been received and disbursed on a case. This screen is in the early stages of development but Cliff wanted to get it out there so that our great users could let him know how it really should look. Try using it for any case review you are performing and see if it gives you the information you're looking for. Here's a tip: jot down some quick notes: What were you trying to find out? How hard was it to find it? What got in the way? Did you have to do additional calculations or look in multiple places to get what you were looking for? If putting this into words doesn't work for you, try drawing a sketch of how the screen(s) could be better. Don't worry, no art critics will be allowed to look at what you've drawn!

*Cliff Tarrance and Sandra Pillar*

Cashflow Details: 99 B 37411

CaseNET Cashflow Details 34509944

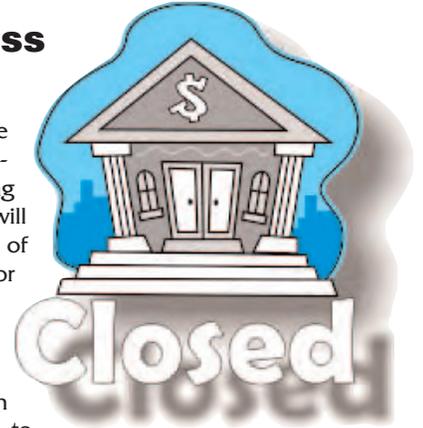
99 B 37411 Jordan, Dorene Case payoff \$ (19.97)

Summary Claims: 100 Percent Claims: Accrual Claims: Unsecured

Creditor	Claimed	Disb To Date	Bal Due	Repaid Rate	Correct Rate
Citibank NA Student Loan	4,084.02	2,197.54	252.87	53.81%	60%
Hurley State Bank	518.19	266.66	32.07	53.81%	60%
Max Recovery Inc	5,953.54	3,201.00	371.12	53.77%	60%
Resurgent Capital Services	398.92	204.97	24.99	53.74%	60%
Trinity Hospital	50.00	15.84	2.92	54.16%	60%
<b>Totals</b>	<b>11,004.67</b>	<b>5,886.01</b>	<b>685.97</b>		

Done

## Financial Closing Process (Part 2)



In last month's issue, we discussed Part 1 of the closing process – "the closing audit." This month, we will focus on the last two steps of the closing process: 2) Debtor Discharge Job and 3) Case Completion Report.

The Debtor Discharge Job in CaseNET runs weekly on Thursday and can take up to two days to review. There is "defined criteria" in the CaseNET job to select a case to be reviewed for discharge. First, the case must have a final audit that is not more than six months old without any findings. If audit discrepancies exist, they must be resolved. Second, the case balance must be zero or negative. This means that the debtors have met their obligations under the plan.

A discharge to the debtor does not release or discharge the Trustee from the case; we still are required to make the final disbursements to the creditors. We check any odd receipts to assure the accuracy of the posted receipts. We then verify all claims for timeliness, for duplication and for any claim whose allocation has been turned off. Claims with allocation turned off may result from a mortgage which has a stay lifted, a claim that has been paid in full, or a creditor has withdrawn a claim.

After review, we inform the proper team at court, via email, that the debtor is entitled to a discharge. The court will then send out a notice of discharge to the debtor, the debtor attorney and to all the creditors in the case. It is important that the debtor's address is correct at court in order for debtor(s) to receive this notice.

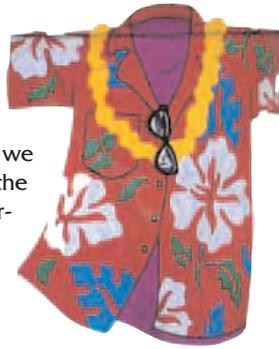
Once the last disbursements have been issued in a case, we run a job called Case Completion Report. This job is run monthly on the second Monday after disbursements. This allows us to change the status of a case from confirmed to complete. This is a manual process, since we have several things to review: 1) to make sure every check has cleared, 2) the discharge has been entered at court, 3) all receipts have been reviewed a second time, 4) no money is in the claim reserves and 5) the debtor has stopped sending in plan payments, and/or that payroll has been stopped. We again check claims that have been turned off due to a stay being lifted, the claim being paid in full, or having been withdrawn. Finally, we check the dockets for any information on creditors who have returned funds and verify that they are recorded correctly against the proper claim.

The closing process is an important process to the Trusteeship. This process attests to the accuracy of the financial information and legal information of each case and acts as an individual compliance audit of each case. Many people ask "Why does it take so long?" We can only say that we have all parties' best interests at heart as we try to close out a case. Most importantly, we want each and every debtor to enjoy their discharge and get the fresh start that they have earned.

*Mark Caffarini*

**ERC Update  
It's Here!**

All the time and preparation has finally paid off! The Annual Office Picnic will be held (rain or shine, and we all have our fingers crossed for the shine) on August 12, 2005, at the corner of Columbus and Balbo. This year's theme is "Hawaiian." There will be music, games and food, food and more food!!!

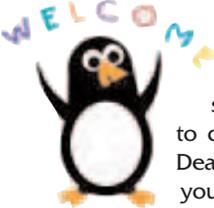


So grab those grass skirts, eye catching Hawaiian shirts and join in on the fun!! Bring your lawn chairs, blankets and appetites!!

*Catherine Mendoza*

**Kid's Korner  
ChicagoKids.com**

While I was trying to come up with a topic for this month's Kids Corner article, I stumbled upon this website. If you were ever wondering what to do with the kids, this website gives you some great ideas. It has a monthly calendar with all kinds of special events and a search engine to find different activities to do in all areas of the city and suburbs.



There is also a great resource center where you can find all kinds of information, from finding a baby sitter to party ideas; book-stores to movie listings; and dance classes to day camps. I also saw a link for a "Special Deals" page. In that page, there are coupons you can print to save money.

This website is not just for parents though. There is also a page called "Fun & Games" where kids can play computer games like crosswords, scrambles, or mazes or then can print out pages to color.

During my visit, I also signed up for the monthly newsletter. Therefore, I can include any upcoming events in this column. Take a few minutes to visit [www.chicagokids.com](http://www.chicagokids.com) next time you need to find something to do with your kids.

*Eileen Downes*

**August Birthdays And  
Other Notable Events**

**National Night Out** on August 2nd.  
Happy Birthday to **Brandon Vaughn** on August 3rd!

**Coast Guard Day** on August 4th.  
Happy Birthday to **Kim Grief** on August 5th!

**All Staff Meeting** on August 5th.

**Office Picnic** on August 12th.

**National Underwear Day** on August 13th.  
Happy Birthday to **Lavone Kizer-Merritt** on August 14th!

Happy Birthday to **Dan Lyons** on August 21st!

Happy Birthday to **Joanne Coshonis** on August 24th!

**Kiss and Make Up Day** on August 25th.



**Employee Bio  
Anthony Olivadoti**



*Nickname:* Ono (not many people know my real first name is Onofrio).

*Birth date:* May 13, 19XX.

*Birthplace:* Gary, IN.

*Family:* Partner of 13 years, father, mother, one sister, two brothers, and...do dogs count?

*Position:* Managing Attorney.

*Hobbies:* Traveling, scuba diving, sitting by the beach, home improvement projects that I start and never finish.

*Favorite Food:* Pizza. There's just something about bread with veggies and meat smothered in cheese that sits in your stomach for days...mmm good.

*Favorite TV program:* I use a TV for white noise, but I do enjoy any mindless cartoon I can watch while on the treadmill. Go SpongeBob!

*Favorite Color:* Yellow unless it's about clothes, then I tend to be more of a green or blue.

*Favorite expression:* Dumb \* \* \*. (Edited by Dave.)

*Favorite Smell:* Puppy.

*Favorite Childhood memory:* Getting a horse, taking care of one afterwards was a fast slap back into reality.

*If you could meet one person in the world, either dead or alive, who would it be?* My grandfather on my dad's side. All my relatives say he would have spoiled me rotten.

*What's most important in life?* Being content...but then I get bored and go looking for trouble.

*Is the glass half full or half empty?* Half full...and you wouldn't mind topping that off for me would you?

*What's guaranteed to make you smile?* My dogs falling over themselves and each other every day when I get home acting like I've been gone for weeks just so that they can sit in my lap – they're 9 year old lab/vizla mixes that weigh 65 and 78 pounds each, yet they still think they're puppies.

*First thing you do in the morning when you wake?* Read the Tribune.

*My friends would describe me as:* Loyal and carefree – they just don't understand that I internalize stress and then take it out on bad attorneys.

*A perfect day for me would be:* Riding in a hot air balloon on a sunny but slightly cool day soaring through the mountains of Hawaii with a martini in hand before coming to rest on a Maui beach to go diving before heading to Paris for dinner and Barcelona for dancing and drinks with all my friends...hey, it says, perfect, not realistic.

*Most embarrassing moment:* On a personal level? We won't go there – not enough space – but professionally I'd have to say the day Judge Squires pulled out a copy of a "Discovery Center" catalog in Court with my picture on it...I think I turned a few unique shades of red that day

*Proudest moment:* Buying my condo.

*In 5 years I see myself:* Turning 27 (stop laughing!).

*Anything else you'd like to tell us?* Get back to work and get your nose out of my business...

## Northerly Island (F.K.A. Meigs Field)

The former Meigs Field has been remodeled with a new name – Northerly Island – and is a new concert venue. The amphitheater holds a capacity of 7,500 and is expected to raise over \$800,000 this year. The amphitheater is named the Charter One Pavilion and was constructed to be a temporary venue to raise money to make the whole Northerly Island peninsula a nature park.

The venue is run by Clear Channel Entertainment and has been given a three-year contract to put on concerts. Most of the structures are temporary and will be disassembled at the end of the summer.



Here is a list of the upcoming concerts at Charter One Pavilion through Labor Day weekend:

- Sugar Water Festival – July 29th with Erykah Badu, Jill Scott, Queen Latifah and Floetry
- Loggins & Messina – August 4th
- Wiggleworms – August 6th presented by The Old Town School of Folk Music
- Trey Anastasio – August 10th
- 311 – August 11th with Unwritten Law and Papa Roach
- Cinderella, Ratt, Quiet Riot, Firehouse – August 12th
- Kelly Clarkson – August 13th
- Destiny's Child – August 16th with Mario
- Backstreet Boys – August 19th
- Feeling Better Than Everfine Festival – August 20th with O.A.R., Pepper, Michael Tolcher, Citizen Cope, Ludo, As Fast As, Small Town Workers, The Althernate Routes, State Radio, Stephen Kellogg and The Sixers
- Mike and Joe – August 21st with Hairbanger's Ball, Catfight and Maggie Speaks
- John Hiatt – August 24th with Shawn Colvin
- Jack Johnson – August 28th with Alo and Matt Costa
- BoDeans, Los Lobos – September 2nd
- Loopfest – September 4th with Def Leppard and Billy Squier

For more information go to [www.charteronepavilion.com](http://www.charteronepavilion.com) or contact Ticketmaster at 312-559-1212 or [www.ticketmaster.com](http://www.ticketmaster.com). The box office at the pavilion opens at 12:00 p.m. on the day of the show.

Cheri Johnson

## Dear Kyle...

*Can the rumors be true? Are you really leaving your job and your column behind? I don't know what I would do if I no longer had your articles to guide me through life. I will be cast rudder-less into the raging sea of life. Please stay!*

*Upset in the Office of  
the Chapter 13 Trustee*



Dear Upset: It's nice to know I can inspire such devotion. Of course, I wish you'd told me when I could have put your obsession to good use. Filing is so much easier when I have an Igor to carry piles or kill coworkers who put reams of paper in the wrong baskets. Alas, I have little use for your skills now. I am indeed leaving the office for greener pastures. Well, overstuffed, brown couch pastures. With embroidered fish, no less.

In fact, I'll already be gone by the time you read this article. Since the newsletter is rarely published in the month it's written, I'll have to say my goodbyes from the distant past of July. I can't imagine the technical utopia you must live in. Right now we just drive cars; I hope the August you're reading this from has hovercraft and cyborgs. It would sadden me greatly to think Segways are really the future of transportation.

I won't lie; working hasn't been fun. I hate waking up early and processing petitions isn't among the joys of life. It had its moments though. Like the time when Eileen broke the...uh, forget it. Or that Friday when everyone was gone and Carlos...well, nevermind. I'd rather not take anyone with me when I finally clock out for the last time. They might thank me later, but they'd certainly beat me down now. Suffice it to say work was grueling, but certain people made the time manageable.

While I'm at it I'd like to specifically thank some of my coworkers who've helped me become the great man I am today. And I'll start with me. I couldn't have done it without you, Kyle! You're so smart and wonderful and just a swell guy. I love you, man. Oh, and I guess Ms Marshall helped a little by, you know, paying me. That certainly didn't hurt...at least until I saw the size of my checks.

And so ends my final column. I've had a grand time writing these over the years. I hope you've had a grand time reading them. I know this isn't the funniest article I've written or even the most memorable, but it's hard compressing five years into a few column inches of space. Besides, I've got three weeks of vacation and sixty years of life to plan, and your reading pleasure is rather low on my personal totem pole. Constant reader, you just demand too much of a poor college boy; I quit.

## Internet Tidbit

EssayGenerator.com offers a fun new way to look at everyday topics and ideas. Simply enter any topic and press go. A unique and humorous essay based on your topic will immediately appear complete with footnotes and a graph. Try topics ranging from watermelons to how to find a mate. You'll be surprised how entertaining the results are.



## How To Cancel A Credit Card The Right Way



When canceling a credit card, you want to make sure that you don't cause more harm than good. There are some important steps you must take to ensure that canceling your card does not negatively affect your credit report.

1. Wait until your card balance is paid in full. Canceling a credit card with a balance remaining may subject you to conditions in your card member agreement that allow the credit company to raise your interest rate.
2. Next you should give the credit card company a call. Call the customer service number that is on your statement or the back of your card. Confirm that the balance is zero, and notify the representative that you are canceling the card. You will probably find that you will be offered a lower interest rate or special promotional deal. Simply decline and assert that you wish to cancel your account. During this call, be sure to ask for an address to which you can send a confirmation letter.
3. Write a letter to confirm the closing of your account. In your letter, state that you've closed your account and that you wish this information to be reflected on your credit record. Be sure to include your name, address, and account number. Send your letter by certified mail, with return receipt requested.
4. Wait at least 30 days and then get a copy of your credit report. Check that account to be sure that it has been properly closed. It should state that the account was closed at your request, not "closed by creditor." If it does state that the credit company initiated the closure, this can negatively affect your credit rating. Follow the procedures for reporting this error to the credit report company, and include a copy of the letter you sent to the credit card company asking that your account be closed. You will also need to contact the credit card company, providing them with the same information.
5. Finally, you will need to repeat these steps as necessary. Until your card shows up on your credit report as being properly canceled, you will need to follow up with the same procedures listed above. It can be frustrating to go through these steps again, but it will help ensure that your credit rating stays up where it belongs without being damaged by a mistake made by a credit card company.

## Thunderstorm Safety

Thunderstorms often occur during the summer. When the sky begins to rumble, be sure to remember these tips from the National Weather Service.

Once you can hear thunder, lightning is close by. Seek shelter in a sturdy building or car immediately. If you are caught out in a storm, go to a low spot. Avoid trees, fences, or poles. If you are in an open area, squat low to the ground, stay on the balls of your feet, and place your hands and head between your legs. Don't lie flat on the ground. When indoors during a storm, don't take a bath or shower. Unplug everything electrical and avoid using the telephone.



## In The Classifieds

You never know what you'll find in the classified section of your daily newspaper. These are actual ads that have appeared.

For sale: Antique desk suitable for lady with thick legs and large drawers.

Vacation Special: Have your home exterminated!

For Rent: 3-room hated apartment.

Wanted: Hair-cutter. Excellent growth potential.

3-year-old teacher needed for pre-school. Experience preferred.

We will oil your sewing machine and adjust tension in your home for \$10.00.

Tired of working for only \$9.75 per hour? We offer profit-sharing and flexible hours. Starting pay: \$7-\$9 per hour.

Found: Dirty white dog, looks like a rat. Been out awhile. Better be a reward.

Free puppies – part German Shepherd, part dog.

Free Yorkshire Terrier, 8 years old. Unpleasant little dog.



## How To Say No

Saying **NO**

Although summertime is a slower time of year, you may still find yourself being asked to volunteer for projects. It can be hard to say no when people are asking for your assistance and input. But sometimes, we need to make choices of where we spend our time, and it becomes necessary to decline to participate. If you are uncomfortable with saying no to people, these phrases may help you.



- My past experience doing these types of jobs leads me to believe that I would not be effective on this project.
- I am trying to do my best in all I undertake and this would be one too many projects for me, making me mediocre rather than focused.
- Not right now, as my calendar is full.
- I've been busy with some unexpected projects and can't find the time to fit in any more.
- I have confidence that you will do a fine job, even without my help.
- I don't have the proper skills to do the job effectively.
- It would be against my better judgment at this time.
- I am trying to declutter my life by not taking on too much at once.
- There are others who need my attention and I am not able to spread myself so thin.
- I am just unable to at this time. I hope you understand.

## Oops! A Correction

In the June, 2005, edition of The Marshall Chronicles, on page 1, we inadvertently listed the wrong date that ECF became mandatory. The correct date was **July 1, 2005**.

## Quick Tips

### Car Tip

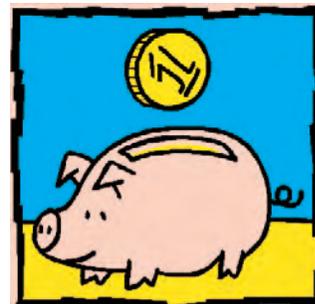
If you notice that your steering wheel shudders a lot, it probably means that your tires need balancing. Generally, the price of alignment is included in that of the tire balancing. If you still notice that your car quivers or swerves after your tires have been balanced, it can mean that you need front-end work.

### Organizing Tip

When packing for summer travel, plan on bringing your oldest undergarments. Collect your worn-out socks and underwear for several months before the trip. When traveling, you can then wear them and toss them out. Not only will you save on laundry, but you will make room in your luggage for all those souvenirs you'll pick up on your trip.

### Money Tip

Cooling your home can get costly during the summer months. To help cut your cooling costs and lower your energy bill, consider using portable or ceiling fans instead of your air conditioner on moderately warm days. When you do use your air conditioner, use a fan as well to help spread the cool air throughout your home. Use a programmable thermostat with your air conditioner to adjust the setting at night or when no one is home. Finally, don't place lamps or TVs near your air conditioning thermostat, as the heat from these appliances can cause the air conditioner to run longer.



**OFFICE OF THE  
CHAPTER 13 TRUSTEE  
MARILYN O. MARSHALL**  
224 S MICHIGAN AVE ☆ STE 800 ☆ CHICAGO IL 60604-2500

## Did You Know? August 6th Is National Mustard Day

George J. French introduced his "French's Mustard" in 1904, the same year that the hot dog was introduced to America at the St. Louis World's Fair.



- Canada produces about 90% of the world's supply of mustard seeds.
- Mustard has been used for seasoning for all of recorded history.
- Mustard plants produce about 1,000 pounds of seeds per acre.
- Over 700 million pounds of mustard are consumed each year.
- The Mustard Museum in Mount Horeb, Wisconsin, has over 3,500 varieties of mustard, making it the world's largest mustard collection.
- Prepared mustard can be stored for at least two years.

White mustard seeds are used to make yellow mustard, with the yellow coloring coming from turmeric. Spicy mustards are made from brown mustard seeds.

*Congratulations Kim and Sam Grief!*

