

Unintended Results???

Section 526(a)(4) states that debt relief agencies cannot advise an assisted person or a prospective assisted person to incur more debt in contemplation of such person filing bankruptcy. The first time I read this provision, I thought it was unnecessary. It was my belief that most practitioners already advised their clients against incurring additional debt. During my days as a debtor's attorney, I would routinely instruct my clients to stop using credit cards for fear of a dischargeability action.

I also thought that this section was designed to discourage against pension loans. Since amounts used to repay pension loans are excluded from disposable income, debtors could manipulate the Code by borrowing against their retirement funds prior to filing for bankruptcy – see §362(b)(19) and §1322(f).

Now that I have been practicing under BAPCPA for almost two years, I have come to realize that this provision is about more than pension loans, luxury purchases and cash advances. This provision is necessary because of the “unexpected” benefits of having secured debts. Based on my professional experience, the newly created “means test” favors borrowers. I can only assume that Congress knew this fact and added §526(a)(4) to safeguard against exploiting this loophole.

Consider my “Tale of Two Above the Median Debtors.” This brief anecdote will explain why I believe that means test rewards those who are in debt. Imagine two above the median debtors: Owner and Renter. These debtors' finances are identical except that one owns his home and the other rents his home. In this tale, Owner's monthly mortgage payment is \$2,500, and Renter pays \$2,500 a month for rent. Both debtors spend the same amount for shelter, yet the means test treats their payments quite differently.

According to the IRS Local Housing Standard, a single person is allowed to spend \$980 for his rent or mortgage payment. Consequently, Renter would only be allowed to deduct \$980 for his

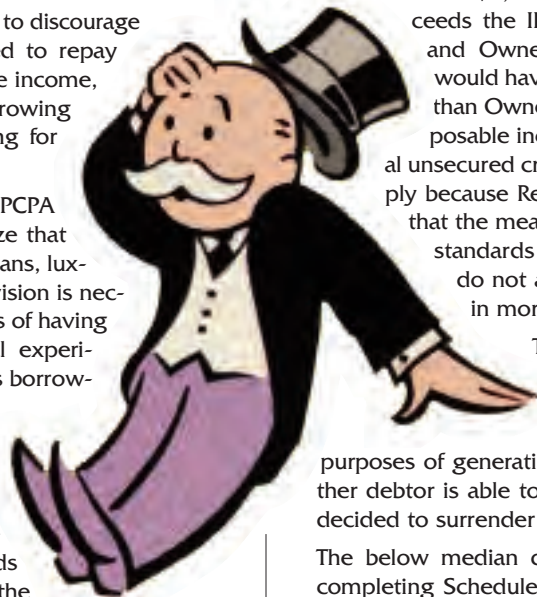
housing expense, not his actual \$2,500 expense. However, Owner will be allowed to deduct his full mortgage payment since it is a secured debt.

Section 707(b)(2)(A)(iii)(I) allows a deduction for secured debts that will become due during the 60 months following the filing date. Assuming Owner's mortgage will not mature in the next five years, many bankruptcy courts would allow Owner to deduct the full \$2,500 expense even though that amount exceeds the IRS Housing Standard for shelter. If Renter and Owner's other deductions were equal, Renter would have \$1,520 more monthly disposable income than Owner. Depending on a court's definition of disposable income, Renter would have to pay his general unsecured creditors substantially more than Owner simply because Renter does not have a mortgage. I thought that the means test was designed to establish objective standards for expenses. It seems that these standards do not apply equally to all debtors, and can result in more favorable treatment of borrowers.

The story can get worse. Imagine two debtors, one is above the median, and the other is below the median. Both debtors purchased rental properties for the purposes of generating investment income. Unfortunately, neither debtor is able to find tenants for their properties and have decided to surrender their parcels in a Chapter 13.

The below median debtor would determine his expenses by completing Schedule J, a statement of his current monthly expenditures. In preparing this schedule, the below median debtor would not include the expenses for the properties he intends to surrender. The traditional “reasonably necessary” standard still applies to below the median debtors. Consequently, these expenses would not be permitted since the properties are not generating income. Most courts would find that it is not necessary to pay the mortgage for a property that is not benefiting the debtor or the estate. Furthermore, Schedule J lists **current** expenses. Since the debtor has declared his intention is to surrender the home,

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Unintended Results???

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it is safe to assume that he is not paying the mortgage currently. Therefore, the expense should not appear on Schedule J.



Conversely, some bankruptcy courts would allow an above the median debtor to deduct the mortgage expenses, irrespective of the debtor's intention or the necessity of the expense – the debtor may not be permitted to deduct the mortgage arrears since the necessity standard applies to the cure amounts. See §707(b)(2)(A)(iii)(II). According to §1325(b), reasonably necessary expenses for an above the median debtor are determined by §707(b). As discussed above, §707(b)(2)(A)(iii)(I) permits a deduction for secured debts that will become contractually due in the following 60 months. The fact that the debtor will not continue to pay the expense is irrelevant – see *In re Randle*, 358 B.R. 360 (Bankr. N.D. II. 2006), *aff'd* 2007 WL 2668727 (N.D.II. 2007). See also *In re Haar*, 360 B.R. 759 (Bankr. N.D. Ohio 2007); *In re Hayes*, 2007 WL 2815983 (Bankr. D.Mass. 2007); *In re Oliver*, 2006 WL 2086691 (Bankr. D.Or. 2006); *In re Walker*, 2006 WL 1314125 (Bankr. N.D.Ga. 2006). Once again, the above the median debtor has reduced his disposable income simply because he has accu-

mulated secured debt. As a result, he may end up paying less to general unsecured creditors than his lower income counterpart.

It seems rather ironic having large amounts of secured debts is a way to avoid paying more to general unsecured creditors. Perhaps this is why debt relief agents cannot inform their potential clients of the benefits of incurring secured debts prior to filing. BAPCPA was marketed to Americans as an act that would require those who could afford to pay more to indeed pay more. Instead, it harms lower income debtors and those who have kept their secured debts to a minimum. From my perspective, BAPCPA may not have lived up to that expectation. It is clear to me that BAPCPA has produced a number of unintended results. *Keisha Hooks*

Case Administration Document Destruction

In pre-BAPCPA, days to create space we would send closed case files to our off-site storage center every four months or at least twice a year. For the past two years, new case filings have been lower, so the need to send documents to storage went down. In fact, the last time we sent documents to storage was December 2005. Needless to say, our filing area can use some breathing room, so we have started to pull files for storage again. In the process of doing that we had to address the issue of what to do with all the confidential information that we receive from debtors, like tax returns, pay stubs and copies of social security card information. BAPCPA requires that we destroy these documents, so we will have several containers of documents that will be picked up and taken straight to the destruction process.

The same vendor that has our off-site storage account will also handle the destruction of these documents. They have a new facility where everything is done in a secured and videotaped environment. We will also be sending some data CDs, old audio cassette tapes (*remember those?*) that were used to record §341 meetings back when we stated the full social security number on the record, and some miscellaneous financial documents.

Why do we need to destroy these documents instead of just putting them in the trash? Remember we are in the days and times of identity theft. Just about everyone I know owns a shredder at home to discard his or her personal mail, so it's the same deal at work. Hopefully our clients will be in a position to re-establish their credit one day, so we want to ensure that the documents we have been entrusted with are appropriately handled.

We ask that all Chapter 13 employees be conscious of the documents that you process or receive and make sure any confidential material is discarded according to office protocol.

Rosalind Lanier



THE MARSHALL CHRONICLES

The Editorial Staff: Cheryl Jones, HVB and Dave Latz.

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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

State Of The Trusteeship – Year Ending September 30, 2007



It has been two years since the implementation of BAPCPA and we still call it the “new law.” Some things have changed and some remain the same. Courts nationally have been interpreting the meaning of the “hanging paragraph” in relation to the 910 claims, applicable commitment period in §1325 (b)(1)(4) and projected disposable income in §1325 (b)(1)(B). Even in our district most of the courts have interpreted them differently. It goes without saying it has been a busy year, but I am happy to report we are getting the job done.

We are still trying to get tax returns and pay advices prior to the §341 meeting, and I am pleased to report that most attorneys have been sending them electronically to taxreturns@chi13.com and to payadvices@chi13.com to avoid delays.

During the year, Mr. Tim O’Neal, Assistant United States Trustee from Tyler, Texas, trained the standing trustees, their staff attorneys, their case analysts and some of the UST staff on the means test and how to properly complete the “B22C Statement of Current Monthly Income and Disposable Income” form. Based upon the office analysis and review, this training should be extended to the bankruptcy community at large since things haven’t gone as smoothly as they should with the completion of the B22C forms. Making adequate protection payments have proven to be a major chore, because getting everyone to check the boxes on the Model Plan and to put a fixed payment amount for E3 creditors has not been easy. Even though The Model Plan makes it so simple, the Trustee cannot determine what amount to pay the E3 creditors when there is no fixed amount on the line.

We ended FY 07 with 6,838 cases and will begin FY 2008 with the same number. This represents a 1.3% increase in the total caseload from FY 06. New petitions filed totaled 3,420, a 26% increase over last year’s new filings. We received plan payments, which totaled \$54,475,951, a 12.2% decrease from last year. We processed \$3,595,573 in debtor refunds, which is a 50% decrease from the number of refunds in FY 06. It appears that the issues we had due to the high volume of refinancing and the number of requests for payoffs cleared itself. Disbursements to creditors was \$51,874,388, a 7.8% decrease from last year. Receipts and disbursements were down. Our average plan payment in FY 07 was lower than the average plan payment in FY 06.

As of September 30, 2007, there are 28 full-time employees and no part-time employees with the trusteeship. Salary increases were issued on October 8, 2007, based upon merit. Of our 28 full time employees, 17% received 7.4% increases, 63% received 3.55% increases, 20% received 1.85% increases and four employees were not eligible to participate in the merit pool because they were new employees. Again, the recommended performance evaluations from Organizational Diagnostics were used for evaluations. A new Wage Class study was conducted for this Region in February, 2007, and the staff benefited from the change in benchmarks and the external data that was used to reclassify some Chapter 13 positions. In the performance evaluations, quantity and quality of work, along with job knowledge were scrutinized due to the drop in the volume of cases. This was offset somewhat due to an increase in the number of claims to be processed, and because of the additional detail that needs to be followed in administering BAPCPA cases. Since training is an important role in performance evaluations and the ability to perform the task assigned in an effective and efficient manner is important, we are committed to providing training to our employees so that each of them are prepared to accept the challenges of their positions. In FY 07, 12 employees attended the NACTT Staff Symposium training held in St. Louis, two attended the training in Atlanta and five employees accompanied the Trustee to the NACTT annual meeting in Baltimore. The Trustee also attended training at the “NAC” in South Carolina. Staff Symposium training will be held in Phoenix, Miami and Chicago in FY 08. I have budgeted for the majority of the employees to attend the training in Chicago in FY 08. Because things are constantly changing, it is my goal to make sure everyone in the office has the opportunity to participate in off-site training. The managers will continue meeting with their staff the week before the monthly staff meeting to address training issues and brainstorm on improving procedures.

After reviewing the managers goals submitted in FY 07, there remains some unfinished business which we will continue to tackle in FY 08. Our management team has provided the Trustee with their departmental goals and objectives for FY 08, and the Trustee has moved to make sure resources are available and planning is in place to meet the goals for FY 08. It has been a six-year journey upward and the Trustee has developed a plan for the next five years which will keep the trusteeship moving forward as times change. However, the Trustee still remains committed to keeping the staff motivated, challenged and committed to excellence.

We appear before Judges Hollis (2211), Doyle/Wedoff (2207), Squires (1234) and Goldgar (1186). On July 2, 2007, Judge Wedoff became one of our four Judges handling the Chapter 13 cases previously assigned to Judge Doyle. Judge Doyle became the Chief Judge and will not have Chapter 13 cases assigned to her. These are some of the published opinions issued by the Bankruptcy Judges during FY 07.

Summary of Opinions Rendered in FY 07

Judge	Case Name/No	Summary of Opinions
Doyle	In Re: Samuel and Denise Mathis 06-11395 May 4, 2007	Debtors’ income was “over the median.” After completing their form B22C, calculated in accordance with §1325(b)(1)(B), debtors’ resulting projected disposable income figure was a negative number. The issue presented was whether §1325(b)(1)(B) can be satisfied when unsecured creditors receive more than they are entitled to in a period shorter than the “applicable commitment period.” Held: Applying the applicable commitment period as a multiplier gives full meaning to each word of §1325(b)(1)(B). Over the median debtors can confirm plans proposing payments for less than 60 months provided that unsecured creditors receive “projected disposable income” times 60.

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Trustee Matters (Continued from page 3.)

Summary of Opinions Rendered in FY 07 (Continued)

Judge	Case Name/No	Summary of Opinions
Goldgar	In Re: Helene Hopkins 07 B 1134 July 10, 2007	Chapter 13 debtor sought to retain her car over secured creditor’s objection. Since debtor was not entitled to a discharge pursuant to 11 USC 1328(f), plan had to provide that the creditor retain its lien until payment of “the underlying debt determined under nonbankruptcy law.” 11 USC 1325(a)(5)(B)(i)(I)(aa). Secured creditor objected on the grounds that the plan failed to do so. The issue was whether that phrase meant that the debtor had to pay the contract rate of interest or whether a prime-plus-risk-factor rate of interest as described in <i>Till v. SCS Credit Corp.</i> , 541 U.S. 465, 474 (2004), would be sufficient. Held: For purposes of 1325(a)(5)(B)(i)(I)(aa), the “debt determined under non-bankruptcy law” is whatever amount the debtor owed the creditor under the contract at the time the petition was filed. When the creditor’s claim is secured by a lien on a “910 vehicle,” the amount of the claim is treated as fully secured, and under 1325(a)(5)(B)(i)(I)(aa) the creditor retains its lien until the claim is paid in full. But how Hopkins goes about paying that amount under her plan – the monthly payment, the number of months, and so on – is not dependent on the contract. And neither is the interest rate, which is governed by <i>Till v. SCS Credit Corp.</i> , 541 U.S. 465 (2004), a point on which nearly all courts agree.
Hollis	In Re: Darlene Williams 06 B 15945 April 23, 2007	Chapter 13 debtor sought to retain her car over secured creditor’s objection. Since debtor was not entitled to a discharge pursuant to 11 USC 1328(f), plan had to provide that the creditor retain its lien until payment of “the underlying debt determined under nonbankruptcy law.” 11 USC 1325(a)(5)(B)(i)(I)(aa). Secured creditor objected on the grounds that the plan failed to do so. The issue was whether that phrase meant that the debtor had to pay the contract rate of interest or whether a prime-plus-risk-factor rate of interest as described in <i>Till v. SCS Credit Corp.</i> , 541 U.S. 465, 474 (2004), would be sufficient. Held: <i>Till</i> and its prime-plus-risk-factor analysis does not apply to the interpretation of 1325(a)(5)(B)(i)(I)(aa). Plan must provide that Debtor pay the contract rate of interest. Issued on April 23, 2007.
Squires	In Re: Robert Charles Ross 07 B 05138 September 13, 2007	“Over the median” Chapter 13 debtors proposed to make plan payments based on their disposable income as determined by schedules I & J...reasonable income less reasonable expenses. Debtor’s income as determined by filling out the required form B22C required a much higher calculated plan payment. Trustee objected to the lower payment unless the debtor proposed to pay interest to the unsecured creditors to compensate for the loss of the time value of money due to the delayed payments through the lower plan payments. Held: Projected disposable income should be calculated based on for B22C. Schedules I & J have no bearing on reaching the projected disposable income figure and the Court denied confirmation. Further, the Court rejected the Trustee’s argument that interest must be paid to unsecured creditors for the time value aspect. The Court also ruled that debtors, who propose to pay their unsecured creditors in full, do not have to pay interest.

The Trustee held 2,809 meeting of creditors. Debtors failed to appear for their meetings of creditors in 537 instances. We filed 1,592 motions to dismiss for material default. Of those, 1,025 resulted in the case being dismissed, 38 were continued, six were denied, three were mooted, five are still pending and 515 were withdrawn by the Trustee. Even with the new filing requirements, we were able to guide 2,201 cases successfully through the confirmation process. As for the rest, 165 cases are continued and still in the confirmation process, 16 with no confirmation order, 228 cases no hearing held, 70 were renoticed, two under court advisement, and in 503 cases, confirmation was denied. Based upon information tracked on the B22C form 2,084 debtors were under median income, 965 were above median income, and in 371 of the cases, income status was undetermined.

We set 222 motions to dismiss on cases failing to comply with confirmation requirements. Of those, 56 motions were eventually withdrawn, one was continued, one denied, three mooted and 161 lead to the dismissal of the case. We set 281 motions to dismiss for missing documents or not filing documents timely. Of those motions set, 199 cases were dismissed, two cases dismissed with a 180 day bar, two were continued, three denied, 11 mooted, four are pending set, and the remaining 60 motions withdrawn. We dismissed and barred 11 abusive filings. This year, under BAPCPA, there were 374 motions to extend stay filed. Judge Doyle/Wedoff denied three motions, 84 were granted as to all creditors, and three as to specific creditors and 1 was withdrawn. Judge Goldgar denied six motions, 54 were granted as to all creditors, and four as to specific creditors, one withdraw. Judge Hollis denied 13 motions, 94 were granted as to all creditors, two as to specific creditors, and three withdrawn. Judge Squires denied three motions, 87 were granted as to all creditors, four as to specific creditors, one mooted.

Our civil enforcements this past fiscal year included only two cases that were dismissed with bars to re-filing. Since the Bankruptcy Code now provides an internal remedy to serial filed cases in the way of limited stay protection, the Trustee did not seek bars against serial filers. In fact, only two cases were dismissed during the fiscal period with 180-day bars. The Trustee has investigated a number of bankruptcy petition preparers. In the case of Claude Surpris, the Trustee investigated and pursued a BPP by the name of Gail/Stacy Strong. Pursuant to the

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Trustee Matters *(Continued from page 4.)*



Trustee’s motion, the Court awarded fines and sanctions against Ms. Strong, aka Foreclosure Experts, totaling over \$14,500. Of this total amount, \$2,600 is to be paid to the debtor, \$1,500 to the Chapter 13 Trustee and the remaining amounts to be paid to the United States Trustee. The Trustee has a second investigation pending that includes a group of approximately seven related Petition Preparers whom together are responsible for the preparation and filing of 18 or more cases.

In terms of abusive filings, the Trustee successfully sought conversion of two cases that appeared to have been filed for the sole purpose of collecting attorney fees and not necessarily in the best interest of the debtor. Additionally, three cases were referred to the UST for debtors using what appeared to be fraudulent social security numbers.

Customer service and communication remains a priority. The office now provides information to the National Data Center (NDC). The NDC was established by Chapter 13 Trustees and is the exclusive source for comprehensive Chapter 13 case and claims data. It provides ongoing details of case and claims information, as recorded and stored within the Trustee’s office. Debtors are provided free access to view their case information. The emphasis during FY 07 was helping others to help us to do a better job. We answered inquiries from several attorneys on how to get cases confirmed and how we review cases. Hopefully, this will help to improve communications with the debtors’ attorneys. Also, we resolved issues regarding the receipt of documents electronically. The Office of the Chapter 13 Trustee is still committed to providing the highest quality of service to our customers. My ears are always open to hear what we can do to improve service to the bankruptcy community. We are working to improve some procedures and other processes we discovered that are working, we will not change. I still believe that communication helps to foster better relationships.

I established an ad hoc committee to review the financial management courses offered in our area by the other standing trustees. Both Glenn Stearns and Tom Vaughn are approved providers. At one of the judge’s liaison meetings, Judge Wedoff indicated that he would like to see all of the trustees offering this service to debtors. So, the committee was charged with accessing, reviewing and visiting programs in order to make a recommendation to the Trustee on which program to adopt and how to establish the best program to meet the needs of our customers. The committee has made its recommendation, and I have completed the application process to the EOUST for approval to offer a financial management course to debtors assigned to our office.

The Employee Recognition Committee did not sponsor its summer event again this year. The number of claims we have to enter in anticipation of the new requirements for the final report kept us swamped. We now have three new case administrators who will help to make the procedures manageable. I think the staff has learned that sometimes work is much more fun than play. Once we master the new process and procedures, we will look forward to an event to relax and reflect on our accomplishments. We will continue to have work related social activities to promote a wholesome working environment, however, the rewards have been delayed. Hats off again to the Newsletter Committee who worked diligently this year to keep the staff informed and entertained. The entire Newsletter is now being printed in color. Our circulation audience has been expanded and more and more people are asking to be included on the mailing list even though all volumes can be found on our web site at <http://www.chi3.com>.

Our commitment to remain active and involved with the U. S. Trustee’s office, the judge’s liaison committee, the bankruptcy clerk, and the debtor and creditor bar and to better serve the debtors will continue. The trusteeship will move forward, promote and show respect for the law, accept the challenges ahead and strive toward excellence. This, too, was a good year. Next year will be even better as filings continue to rise. The answer to the question remains the same. Am I pleased? “Yes.”

Summary End of Fiscal Year 2007	Summary End of Fiscal Year 2006
Receipts.....\$54,475,951	Receipts.....\$61,122,138
Refunds\$3,595,573	Refunds\$5,406,852
Disbursements.....\$51,874,388	Disbursements.....\$55,931,763
Number of Cases Beginning of Year.....6,750	Number of Cases Beginning of Year.....7,445
Number of Cases Filed in FY 07.....3,420	Number of Cases Filed in FY 06.....2,715
Number of Cases Reopened.....69	Number of Cases Reopened.....139
Number of Cases Reopened Because of Transfers.....25	Number of Cases Reopened Because of Transfers.....50
Adjustments During the Fiscal Year:	
Conversions To Another Chapter (Pre-Confirmation).....56	Conversions To Another Chapter (Pre-Confirmation).....72
Conversions To Another Chapter (Post-Confirmation).....146	Conversions To Another Chapter (Post-Confirmation).....195
Dismissals Pre-Confirmation.....747	Dismissals Pre-Confirmation.....697
Dismissals Post-Confirmation.....1,113	Dismissals Post-Confirmation.....1,433
Conversions From Another Chapter.....10	Conversions From Another Chapter.....79
All Other Adjustments.....3	All Other Adjustments.....7
Number of Cases Completed.....1,326	Number of Cases Completed.....1,171
Number of Hardship Discharges.....1	Number of Hardship Discharges.....3
Total Cases at End of Year.....6,838	Total Cases at End of Year.....6,750
Number of Cases Greater Than 60 Months.....35	Number of Cases Greater Than 60 Months.....40
Number of Full Time Employees.....28	Number of Full Time Employees.....27
Operating Expenses.....\$2,864,448	Operating Expenses.....\$2,793,922
Trustee Fee at End of Year.....5.4%	Trustee Fee at End of Year.....5.0%

Marilyn O. Marshall, Standing Trustee

Information Services Payoff Planner Provides Provisional Payoffs Promptly!

A new feature added recently to CaseNET allows the closing department to calculate a case payoff amount quickly and safely.

The Payoff Planner dialog is triggered by a new button on the receipts tab. Using the dialog, the closing department can create "what-if" scenarios to come up with a calculated payoff amount without affecting any of the case's data.

Previously, if they wanted to exclude the current mortgage from the payoff amount, for example, they would have to turn off "OK to allocate" in the claim window, docketing that they made this change as they were saving the claim. Then they'd close and re-open the case to nudge CaseNET into recalculating the payoff amount. After the payoff letter was created with this new amount, they would have to remember to go back into the claim and turn back on "OK to allocate" and, of course, docket that they made that change. Very time consuming, and also a little risky, since they had to remember to go back into a claim and turn allocation back on.

The programming of this feature got bumped to the front of the list as the result of another feature added to CaseNET recently: automatic movement of money from claim reserves.

When "OK to allocate" is switched off at the claim level, if there is money in claim reserves, it automatically moves to the case reserves. You can see why we had to provide the closing department with the payoff planner now. If they turn off a claim just to get a re-calculated payoff and there is money in the claim, it would automatically move to the case.

Claim reserves also move automatically to the case reserves when paralegals docket a dismissal or conversion, unless the claim is an attorney fee or if the funds were designated to be sent to the Clerk of the Court.

Moving money during disbursement week is another hazard we are now addressing. Since disbursement items (those work records which represent line items on a check) are created on Tuesday night of disbursement week, we need to prevent automatic moving of money on the Wednesday, Thursday and Friday of disbursement week. Cliff is making a programming change that will test to see if we are in the last three days of disbursement week and if there is money in the claim, to not allow the user to turn off "OK to allocate."

Sandra Pillar



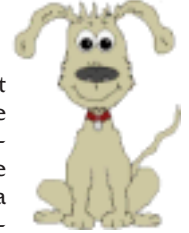
Legal Stay Motions

Motions to extend or impose a stay in repeat cases appear on nearly every court call. As we now know, the automatic stay is no longer always automatic and in certain cases it must be obtained, as opposed to freely given. When a debtor has their case dismissed and files a subsequent case in a year, pursuant to 11 USC §3619(c), the subsequently filed case is "presumptively filed not in good faith" and the presumption may be rebutted by "clear and convincing evidence to the contrary." Clear and convincing proof is defined by Black's Law Dictionary as: "That proof which results in reasonable certainty of the truth of the ultimate fact in controversy. Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable." Now that two years have passed since the Bankruptcy Code was changed, we have some statistical data regarding this issue.

For this Trusteeship since implementation of BAPCPA to date, 736 motions to extend or impose an automatic stay have been set. Of those motions set, only 97 of the motions were denied. Soon after the Bankruptcy Law was changed, these motions tended to be denied due to either poor noticing practice or because the debtors failed to meet their burden of proof. As time has progressed, motions to extend stay generally tend to be granted despite notice and evidentiary issues. The trend seems to have shifted to allow debtors that second chance to try and make a bankruptcy work for them.

As for how those motions translate into successful cases? There have been approximately 543 cases where motions to extend or impose the stay have been granted in some fashion. The stay was either extended/imposed to one creditor or all the debtors' creditors. In four of those cases, the debtors were able to either refinance or sell their property, or borrow funds, and they completed their cases successfully. In two cases, the debtors converted to chapter 7 shortly after the stay was extended. Additionally, 338 of the cases remain today with a "confirmed" status. On the down side, 199 of the cases were either dismissed or confirmation was denied. Unfortunately, these figures tend to show that in those cases where debtors initially met their burden of proof to show that the case would be successful, 37% of the time the case failed shortly thereafter. In over one third of the serial cases filed, the debtors ended up no better off than they were in the initial failed filing and in many cases probably ended up worse off after incurring additional fees and costs.

Anthony Olivadoti



November Birthdays, Anniversaries, And Other Notable Events

All Staff Meeting on November 2nd.

Happy 9th Anniversary to **Lavone Kizer-Merritt** on November 2nd!

Sadie Hawkins Day on November 3rd.

Happy Birthday to **Laura Mendoza** on November 3rd!

Happy 4th Anniversary to **Dan Lyons** on November 3rd!

Daylight Saving Time Ends on November 4th.

Happy Birthday to **Catherine Mendoza** on November 7th!



Happy 9th Anniversary to **Mark Caffarini** on November 9th!

Veterans Day on November 11th.

Great American Smokeout on November 11th.

Happy 7th Anniversary to **Cheryl Jones** on November 20th!

Tie One On Day on November 21st.

Thanksgiving Day on November 22nd.



Financial The Importance Of Listening Skills



How good are you at listening? A wise man once said, "God gave us two ears and one mouth so we can listen twice as much as we talk." Listening is not the same as hearing. Listening is a communication skill that takes practice. Effective listening requires as much skill as the other forms of communication: reading, writing and speaking. Becoming a better listener can decrease errors in the workplace and improve relationships between manager and employee. Effective listening is a tool that is essential to your success as an employee, partner, student and friend, yet most of us have never been taught how to listen. Most of us listen poorly. We concentrate more on ourselves than on what other people are telling us. Instead of listening to what a person is saying, you're organizing your thoughts on how to respond.

Effective listening calls for the listener to devote his full attention to the speaker, to genuinely care what the other person is saying and to encourage the speaker to keep talking. Instead of listening carefully, many people subconsciously send the message "I want you to hurry up and shut up so I can talk."

Many may wonder, am I a poor listener? There are certain signs that can alert you to poor listening skills on the job. Most people will not tell an individual they are a poor listener; you must monitor your own behavior. There are many mixed reasons for poor listening. Here are a few problems that could affect your performance at work:

Daydreaming*: Daydreaming is the most common listening problem that affects everyone. When returning to reality we find we have missed a lot of important information. Sometimes we are thinking about our personal finances, children, partners, pets or even how much our manager has made us upset.

Closed-Mindedness*: We often refuse to listen to the other side of the argument, especially when we've already made up our minds. We think there's no use in listening since we know all there is to know. Anytime you fail to listen with an open-mind, you may lose valuable information. Closed-mindedness interferes with learning and relationships. It's not fair to the speaker, your family, your co-worker or your partner. If your position is wrong, refusing to listen won't make it right.

Visual Barriers*: Many times a speaker will be tuned out because of physical appearance. We may not like their voice, shoes, haircut or the suit they are wearing. Again, we must remember it's important to listen because we might miss key facts that could cause us to miss the whole message. Personal barriers are a natural human tendency, but it's critical to put aside physical and psychological barriers and concentrate on listening effectively.

Breaking the Chain of Command*: As a manager, one of the signs of poor listening is that employees go around you or over your head to talk to others. Breaking the chain of command leaves both managers and employees frustrated. The manager's poor listening leaves the employee with no alternative. In order to carry out their responsibilities effectively, employees must have someone in authority that will listen to them. If you find that others are going around you or over your head to talk about issues that are really your business, it may indicate that you have demonstrated poor listening skills.

It is obvious to say that if you have poor communication skills, your productivity will suffer simply because you do not have the tools needed to influence and persuade, all necessary for workplace success. Lines of communication must be open between people who rely on one another to get work done. You must be able to listen attentively if you are to perform to expectations, avoid conflicts and misunderstandings, and to succeed in any arena.

Santricia Mack (* excerpts from "Communicating for Results" by Cheryl Hamilton)

Around Town...

Alert for all of you Holiday Lovers: as Macy's on State Street prepares to unveil its first holiday shopping windows, our city has announced this year's Annual Christmas Tree Lighting Ceremony to be happening (for the 94th time) on November 23rd. As the switch gets flipped and the lights begin to sparkle and shine in Daley Plaza, you will eventually get a chance to embrace the greatly anticipated warm sounds of holiday music, enjoy a visit and pictures with Santa Claus, as well as experience a traditional German Christmas at the 12th Annual Christkindlmarket, inspired by the famous Nuremberg Christmas market dating back to 1545. Just as it has in the past, this outdoor market offers something for everyone – exquisite handmade gifts, unique ornaments, rare European fabrics and textiles, and the opportunity to devour German delicacies like brats, goulash, potato pancakes, cookies and Gluhwein (a warm spiced wine).

If you have not been to Daley Plaza to view the tree before, this is the year to do it. The massive 90-foot tall, 2007 holiday tree is comprised of more than 130 smaller Balsam Fir trees, illuminated with thousands of lights and hundreds of ornaments. In addition, Santa's "workshop" will have a newly renovated home on the Plaza, at the base of the tree for the holiday season.

So if you are ready to start off your holiday season on the right foot, with delicious food and an opportunity to take a priceless picture with Santa, after you are done with your shopping craze of the "day after Thanksgiving," stop by at Daley Plaza to appreciate what the holiday season should be really about.

Christkindlmarket Chicago 2007 Schedule:

On Thanksgiving Day, November 22nd:

From 11:00 a.m. to 4:00 pm.

From November 23rd to December 23rd:

Monday through Thursday, from 11:00 am to 8:00 pm.

Friday and Saturday, from 11:00 am to 9:00 pm.

Sunday, from 11:00 am to 8:00 pm.

And on December 24th:

From 11:00 am to 4 pm.

There is additional information about Christkindlmarket Chicago 2007 on their website at <http://www.christkindlmarket.com/>.

Paulina Garga



Thankful For Thanksgiving - The Answers:

- | | |
|-----------------------|-------------------------|
| 1. 5.8 days. | 6. Massasoit. |
| 2. About 50 percent. | 7. The second Monday in |
| 3. 0.3 percent. | October. |
| 4. 10. | 8. True. |
| 5. Gimbels Department | 9. Only five. |
| Store. | 10. Three days. |

Trivia Quiz: Thankful For Thanksgiving

Thanksgiving is just around the corner. Test how much you know about this American holiday with this trivia quiz. (You can find the answers on page 7.)

1. According to a survey by Butterball, what is the average number of days that Americans begin thinking about Thanksgiving before the big day?
2. What percentage of Americans prepare dishes ahead of time to reduce stress during Thanksgiving?
3. In a recent survey, 66 percent of American households said the woman in the home (mom, wife, grandma or daughter) does most of the cooking for Thanksgiving. How many households said that grandpa does most of the work?
4. What is the average number of people at a Thanksgiving dinner?

5. Which department store was the first to hold a Thanksgiving parade in Philadelphia in 1920?
6. The Indians at the first Thanksgiving feast were of the Wampanoag tribe. Who was their chief?
7. Canadians also celebrate a Thanksgiving. What day does that fall on?
8. True or False. The Pilgrims had beer with them on their journey.
9. By the time the first Thanksgiving was celebrated, how many women from the Mayflower had survived?
10. How long did the first Thanksgiving last?



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Did You know? Aviation Trivia

November is Aviation History Month.

- ✈ The X-15 is the fastest manned aircraft, setting a world speed record of 4,520 mph.
- ✈ The world's largest aircraft was the Spruce Goose, weighing 400,000 pounds, with a length of 218.5 feet, and a wingspan of almost 320 feet. Its first flight was on November 21, 1947.
- ✈ The first around-the-world passenger service was started by Qantas Airlines in 1958. Qantas stands for "Queensland And Northern Territory Aerial Services" and is based in Australia.



- ✈ The Wright brothers made four flights on December 17, 1903, at Kill Devil Hills, in Kitty Hawk, North Carolina, in their plane named "Flyer." The fourth flight was the longest at 852 feet, lasting 59 seconds.
- ✈ Louis Bleriot was the first man to cross the English Channel in an aircraft on July 25, 1909. He left Les Baraques in France and landed near Dover Castle 36 minutes later.
- ✈ Sir John William Alcock and Sir Arthur Whitten Brown flew the first non-stop transatlantic flight on June 14 and 15, 1919. They flew from Newfoundland in Canada to Clifden in Ireland, taking 16 hours and 27 minutes. Instead of a smooth landing, they had to crash land.

