

B22c Means Test Line 57

Even after the Supreme Court's decision in *Lanning*, the B22C or Means test is still valid. *Hamilton v. Lanning*, — U.S. —, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010). Courts continue to look to the Means Test to determine whether an above median income debtor is making his or her best efforts in proposing a plan. The ruling in *Lanning* did not change the standard used by courts in determining whether the "special circumstances" deductions are permissible on line 57 of the Means Test.

The source of the special circumstances line item on the Means Test comes from §707(b)(2)(B)(i), which states "the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. §707(b)(2)(B)(i). See, *In re Renicker*, 342 B.R. 304, 310 (Bankr. W. D. Mo. 2006), applying §707(b)(2)(B) to Chapter 13 cases. "The debtor shall be required to itemize each additional expense or adjustment of income and to provide - (I) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstance that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. §707(b)(2)(B)(ii).

These requirements are imported into Chapter 13 by the confirmation requirements of §1325(b). "If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan

unless...the plan provides that all of the debtor's projected disposable income...will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. §1325(b)(2). "Amounts reasonably necessary to be expended...shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." §1325(b)(3).

Several courts have determined that "Congress intended to set this bar extremely high, placing it effectively off limits for most debtors." *In re Zahringer* at 3, citing *In re Haar*, 360 B.R. 759, 760 (Bankr. N.D. Ohio, 2007) (Chapter 7 case). Medical conditions and active duty expenses are not the only allowed deductions, but they show that the range of allow-

able deductions is limited. These special circumstances are not "[to] be used as a convenient way for debtors to choose a more expensive lifestyle." *In re Melvin*, 411 B.R. 715, 728 (Bank. D. Kan.

2008). However, one court found the term to be ambiguous, and held that "special" did not mean "extraordinary." *In re Champagne*, 389 B.R. 191, 196 (Bankr. D. Kan. 2008) (Chapter 7 case).

The Court in *Zahringer* found that student loan payments were not special circumstances. *In re Zahringer*, 2008 WL 2245864 (Bankr. E.D. Wisc. 2008), not reported in B.R. The Court found that the payment of student loan debt was "not of the same nature as a serious medical condition or active military service. If Congress had intended for student loans to be deducted from the bottom line of the means test...it could have done so." *Id.* at 1 - 2. Mere nondischargeability alone is not a basis for a special circumstance. However, one

(Continued on page 2.)

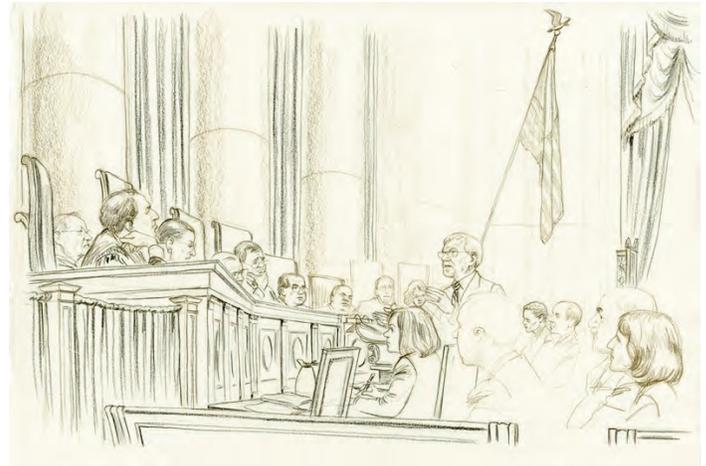


B22c Means Test Line 57

(Continued from page 1.)

court noted a distinction between student loans incurred as “part of retraining necessitated by a permanent injury, disability, plant closing and the like, and those taken out in the ordinary course of acquiring an education.” *In re Pageau*, 383 B.R. 221, 228 (Bankr. D.N.H. 2008). See also, *In re Champagne*, 389 B.R. 191 (D. Ka. 2008), discussing whether student loans were taken for obtaining a more advantageous income were special circumstances. The Court in *In re Martellaro* found that “student loan debt among bankruptcy debtors is a common and ordinary circumstance, not a special circumstance.” *In re Martellaro*, 404 B.R. 548, 561 (Bankr. D. Mont. 2008).

In *In re Moore*, a debtor incurred tax liability on account of the U.S. Army paying down her student loan debt. While the contribution resulted in no cash to the debtor, it was considered taxable income. The debtor included her current taxes on line 30, priority debt based on the imputed income on line 49 and also included a post petition tax liability deduction on line 57 as a special circumstance. The Court found that between lines 30 and 49, the full amount of the debtor’s



Supreme Court, *Hamilton v. Lanning*, March 22, 2010

tax liability was accounted for and there was no need for an additional special circumstance deduction.

In *In re Tuss*, the debtor’s additional food and personal care expenses were disallowed. *In re Tuss*, 360 B.R. 684 (Bankr. D. Mont. 2007). The debtor worked out of state and deducted the additional food, clothing and personal care items to cover the amount he spent on going out to eat and necessities created from being away from home. However, the “Court concludes that the Debtor failed to satisfy the element of showing that no reasonable alternative exists, and that he failed to show that the additional expenses are necessary for him to produce income or for his health and welfare.” *Id.* at 700. “The bulk of the [deduction] consists of restaurant and fast food expenses...He failed to explain why he cannot reduce or eliminate his expenses out by preparing his own meals.” *Id.*

Additional travel expenses have also been held not to constitute a special circumstance. In *In re Tranmer*, the debtors claimed an additional \$180 in travel expenses on their Means Test. *In re Tranmer*, 355 B.R. 234 (Bankr. D. Mont. 2006). The debtors lived in Montana and drove a combined 130 miles to commute to and from work. The Court held that “the debtors’ evidence of special circumstances falls well short of satisfying §707(b)(2)(B) such as a serious medical condition or call to active duty.” *Id.* at 250. The court concluded the debtors failed to satisfy the element of showing that there was no reasonable alternative for the long drive since they lived in a town in which neither of them were employed, and their residence was not between the two towns where their jobs were. The Court found that “‘special circumstances’ does not include debtor’s desire to remain living wherever they choose.” *Id.* at 251.

The burden of proof is on the debtor to show that the deductions are allowable. One early BAPCPA case examined the extra expenses deducted on the Means Test by the debtors.

(Continued on page 3.)

THE MARSHALL CHRONICLES

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

Contents and Contributors:

B22c Means Test Line 57, pgs. 1, 2 and 3*Stewart Chapman*
 Trustee Matters, pg. 3.....*Reprinted from Consumer Bankruptcy News*
 Under Construction, pg. 4.....*Marilyn O. Marshall*
 Between The Sessions, pg. 5.....*Terry Gallagher*
 Electronic Funds Transfer, pg. 5.....*Rita M. Saunders*
 August’s Notable Events, pg. 5.....*Dave Latz*
 Web Access Will Be Uninterrupted, pg. 6.....*Sandra Pillar*
 Internet Tidbit, pg. 6.....*Helpful Information*
 20 Questions For: Stephanie Lillie, pg. 6.....*Stephanie Lillie*
 Five Steps To Forgiveness, pg. 7.....*Helpful Information*
 Vacations, pg. 7.....*Quotations*
 Things To Do Now... To Save You Money In The Long Run, pg. 7.....
*Financial Information*
 Trivia Quiz Answers: Those Buggy Bugs, pg. 7.....*Trivia Quiz*
 Trivia Quiz: Those Buggy Bugs, pg. 8.....*Trivia Quiz*
 Did You Know: Left-Handers, pg. 8.....*Trivia*

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, all in full color, on the Chapter 13 Trustee website at <http://www.chicago13.com/>.

Trustee Matters

Following, courtesy of Consumer Bankruptcy News, is a bit of background information on the new judges who are serving in Region 11, the Northern District of Illinois.

New Judges Take Bench In Chicago

The U.S. Bankruptcy Court, Northern District of Illinois has added three bankruptcy judges to replace retiring Judges Jack B. Schmetterer, Susan Pierson Sonderby, and John H. Squires. Judge Donald R. Cassling, who replaced Judge Schmetterer, took the bench in January. Judge Janet S. Baer, who replaced Judge Squires, took the bench in March. Judge Timothy A. Barnes, who replaced Judge Sonderby, took the bench in May.

Judge Cassling was a partner at Quarles & Brady LLP who handled bankruptcy and commercial litigation prior to joining the bench. Prior to joining Quarles & Brady, Judge Cassling was a partner with the firm of Jenner & Block LLP in Chicago for almost 25 years, where he co-chaired the Commercial Law and Uniform Commercial Code practice and served as a member of the Business Litigation and Bankruptcy, Workout and Corporate Reorganization practices.

Judge Cassling received his undergraduate degree from Duke University and his law degree from the University of Chicago Law School, where he served as an editor of the Law Review.

Judge Baer joined the court from Baer, Higgins, Fruchtmann LLC. She has more than 25 years experience as a restructuring lawyer. Her practice focused primarily on the representation of large publicly held debtors in both restructuring and Chapter 11 matters.

Judge Baer was included in the Illinois "Super Lawyers," the Chicago Magazine's "Top Attorneys in Illinois," and the

"Leading Lawyers" in Illinois. Prior to forming the law firm of Baer, Higgins, Fruchtmann LLC with Roger Higgins and Rebecca Fruchtmann, Judge Baer was a partner in the Restructuring Groups of Kirkland & Ellis LLP and Winston & Strawn.

Judge Baer received her undergraduate degree at the University of Wisconsin, and her law degree at DePaul University College of Law. Baer received the DePaul College of Law Scholarship for Academic Excellence.

Judge Barnes was a partner at Curtis, Mallet-Prevost, Colt & Mosle LLP, prior to taking the bench. He practiced out of the firm's New York and London offices, specializing in bankruptcy and debt restructuring, representing debtors, lenders, creditors, investors and other parties of interest in complex restructuring matters. He worked on numerous cross-border and international insolvency matters.

Judge Barnes was named a Fellow of INSOL International in 2011. He received this distinction upon graduating (with honors) from INSOL International's Global Insolvency Practice Course, an LL.M.-level program that teaches participants the underlying principles, statutes, regulatory frameworks and insolvency restructuring regimes in countries around the globe.

Judge Barnes earned his law and master's degrees at Ohio State University after receiving his undergraduate degree at Miami University. After law school, he served as a law clerk to Chief United States Bankruptcy Judge William A. Clark of the Southern District of Ohio.

*Reprinted from Consumer Bankruptcy News
July 17, 2012 | Volume 22 | Issue 16*



B22c Means Test Line 57

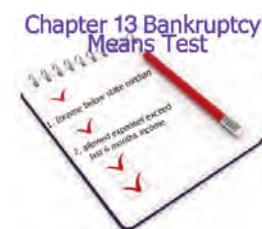
(Continued from page 3.)

In re Renicker, 342 B.R. 304 (Bankr. W. D. Mo. 2006). The Court noted "the Debtors' failure to submit any documentation in support of their extraordinary expenses relieves this Court from having to develop, possibly from whole cloth, a detailed definition of 'special circumstances.'" *Renicker* at 310. Even in this case, where the debtor suffered from multiple sclerosis, she was required to show that her extraordinary expenses were caused by her condition. *Id.* See also, *In re Melvin*, 411 B.R. 715, 729 (Bankr. D. Kan 2008).

After the Supreme Court decision in *Lanning*, one court held that the change in circumstance was incorrectly listed as a special circumstance deduction. *In re Moore*, 446 B.R. 458, 463 (Bankr. D. Colo 2011). "A changed circumstance under *Lanning* is not necessarily a "special circumstance" on line

57." *Id.* The Court in the *Moore* case suggested filing an original B22 and then an amended B22 showing the change as opposed to listing the change on line 57 of the original B22C form.

The finding of whether one or another particular expense deduction on the Means Test is allowable as a special circumstances deduction is to be determined on a case-by-case basis. The debtor, as the proponent of the plan and the one with the knowledge of the special circumstance, has the burden to show that the deduction is allowable. Parties claiming the special circumstance should be prepared to prove up the expense as required as the failure to show proof of the expense has led to the denial of potentially valid deductions. *Stewart Chapman, Staff Attorney*



UNDER CONSTRUCTION

ANNOUNCEMENT:

**THE OFFICE OF THE CHAPTER 13 TRUSTEE,
MARILYN O. MARSHALL, WILL CHANGE
CASE ADMINISTRATION SOFTWARE
FROM CASENET TO BSS-TNG.**

THE OFFICE IS SET TO “GO LIVE” SOON.

**CLASSES FOR DEBTOR AND CREDITOR
ATTORNEYS WILL BE OFFERED
ONCE THE SYSTEM IS “LIVE.”**

PLEASE SEND AN EMAIL TO:

BSS_TNG_LIVE@CHI13.COM

**IF YOU ARE INTERESTED IN ATTENDING A
TRAINING SESSION AT OUR OFFICE.**



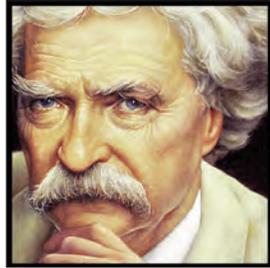
**MARILYN O. MARSHALL
CHAPTER 13 TRUSTEE**

NACTT Staff Symposium Between The Sessions

In May, I attended the NACTT Staff Symposium held in Chicago. (Thank you, Ms. Marshall). In between sessions, the moderators held a mini game show for the attendees. The questions were, of course, all bankruptcy related. This question was posed: "Name the famous 19th century author who was forced into bankruptcy?" I took a stab at this and said "Mark Twain." I was correct. I thought that was interesting and made a mental note to seek out the details. Apparently, Mark Twain was not afraid of "new technology" in the 19th century.

The technology Twain was interested in was the advancement in "word processing." In this case, advances in type setting. This new technology would allow books to be mass produced, thus increasing availability of books and increased sales (Twain hoped). Unfortunately, the research and development took longer than expected, and costs (financed primarily by Twain) increased. Eventually, the process stalled and Twain found himself in financial trouble. Just as is the case in the 21st century, creditors demanded their money. Twain had no choice but to declare bankruptcy. Fortunately for Twain he was able to work his way out of bankruptcy by writing more novels.

The Twain story made me curious about other famous Americans who have been forced into bankruptcy. Here are a few:



Abraham Lincoln ~ Honest Abe Lincoln opened a store in New Salem, IL, but when the economy fell off he had to close up shop and could not pay back his bank.



Ulysses S Grant ~ Lost a fortune in a pyramid scheme. Ironically, Mark Twain helped Grant recover from bankruptcy by helping Grant write his memoirs.



Daniel Boone ~ Borrowing to fund fur-hunting expeditions, Boone often came back empty handed, sometimes because he had to trade his catch to unfriendly Indians to save his life.



Thomas Jefferson ~ President Jefferson used so much of his personal funds to pay for White House expenses that he was flat broke by the time he left office.

It just goes to show that bankruptcy can affect everyone. It is important to remember this when dealing with our debtors. They're just like everyone else, they have just had bad things happen to them and they need our help.

Terry Gallagher, Administrative Clerk

Financial Electronic Funds Transfer

An Electronic Funds Transfer (EFT) is the transmission of money from one business to another.

This method of payment is available to creditors for our monthly disbursement.

Money is transferred via computer from our bank account to your bank account. This transfer replaces the mailing of standard checks and creates a single deposit transaction on your bank statement.

We are currently using this process with over 70 creditors.

EFTs eliminates postal service delays. "The check is in the mail" will be a phrase of the past! Disbursements are made the third Friday of each month and the funds are immediately available to you.

This is an easy and efficient way for us to process disbursements and for creditors to receive their disbursements.

If you are interested in receiving your disbursements from our office through Electronic Funds Transfers, please call our office and ask for Rita Saunders to obtain an EFT Brochure, and EFT Data and Acceptance Form.

You can also log into our website at www.chi13.com to obtain an EFT Data and Acceptance Form.

Rita M. Saunders, Financial Manager



August's Notable Events

All Staff Meeting on August 3rd.

Coast Guard Day on August 4th.

National Night Out on August 7th.

National Garage Sale Day on August 11th.

International Left-Handers Day on August 13th.

Happy Birthday to **Stewart Chapman** on August 15th!

Happy Birthday to **Terry Gallagher** on August 15th!

National Aviation Day on August 19th.

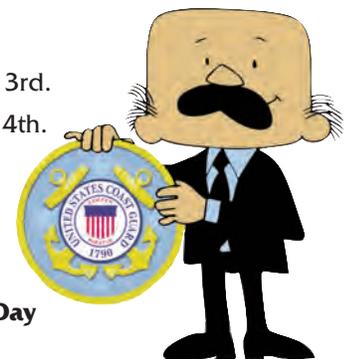
Happy Birthday to **Dan Lyons** on August 21st!

Be an Angel Day on August 22nd.

Women's Equality Day on August 26th.

National Toasted Marshmallow Day on August 30th.

Happy Birthday to **Jennafer Kempf** on August 31st!



**Information Services
Web Access Will
Be Uninterrupted**



Changing systems means changing web databases. What will happen to our website when we convert to TNG? The many trusteeships across the country that use TNG send their Chapter 13 data to Memphis every night to be served up from a website called 13network. The trustee offices control who has access to view their data.

Members of our Chapter 13 community currently access our website www.chi13.com for up-to-date case information by querying a 4D database. This data gets updated every morning from changes made to CaseNET the previous day. Not having CaseNET doesn't mean we will give up this service. We will soon be one of the trustees that sends our data to Memphis.

I have been reviewing the log files of users that have accessed our web database in the past year. To limit the disruption to our customers, we will create logins to the 13network web database based on the user names and passwords that they are currently using.

Our website www.chi13.com will still be active and continue to be the place to go for information. It's just that when you click the link to "Query our Chapter 13 database" you will be querying data in Memphis instead of Chicago.

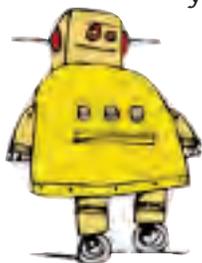
Sandra Pillar, IT Specialist

Query our Chapter 13 database

Internet Tidbit

Want to learn how to do something? Instructables.com is the place for you! On this site are over 65,000 projects that tell how to build, cook, create, modify, or design things that range from the simple to the very complex. Instructables is the ultimate DIY site, and every project features instructions, images, diagrams, and even videos.

If you have a project you'd like to share, you can upload it as well and then get users' comments to collaborate on your project. Best of all, it is free, so next time you're at home surfing the internet, get your creative juices flowing with a visit to Instructables.com.



instructables

20 Questions For: Stephanie Lillie



Office Title: Client Services

If you could have named yourself, how would your name appear on your birth certificate? I like my name just fine, but a lot of people say I look like a Megan. I wouldn't change my maiden name (Jungles) or my married name – I like them both.

If you could build a house anywhere in the U.S., where would it be? Montana.

When you were a kid, what profession or job did you want to have when you grew up? An Artist.

If they made a movie about your life, what current actor/actress would play you? Anne Hathaway.

What is your least favorite household chore? Laundry.

What are your favorite books? Pride & Prejudice, The Grapes of Wrath.

If you could bring anything back from your childhood, excluding people, what would it be? My cat that I had for 10 years.

When you were growing up what was your favorite...

Hair style/haircut? Anything long/curly. I permed my hair three times.

Cartoon? Looney Tunes. I'm not ashamed to say I still watch them.

Cereal? Lucky Charms – they are still my favorite.

Sport? White Sox Baseball.

Subject in school? English.

Author? Dr. Seuss.

*Singing group? *NSYNC*

Video game? I didn't have video games growing up, but I played Super Mario when I went to my cousin's house.

Family outing? Hiking at Starved Rock State Park.

Movie? Mary Poppins.

If you wanted to be cool: I really have/had no interest in being "cool." I like the way I am – just going with the flow.

I always wanted: To go skydiving.

Now that I'm older I wish: I could travel to all 50 states and every European country. Maybe someday I'll accomplish this.

Five Steps To Forgiveness

Grudges are easy to hold onto – it is forgiving that can be tough, but the benefits are enormous. Anger and resentment can not only harm you mentally, but studies have shown that there are increases in heart disease, cancer, and other deadly diseases when a person has pent-up anger. Go through these steps to help on your way to forgiving someone in your life.



1. Try to understand the pain in you. Recognizing how you really feel – your anger, fear, or grief – is important. Know that you are the only one who can change the situation you are in. No one else can.
2. Don't expect to understand why it happened in the first place. Knowing this probably won't lessen the pain and sometimes even the person who hurt you doesn't know why it occurred. Also, know that forgiving is entirely up to you and cannot always wait until the other person has admitted the wrong – this may never happen. But for your own sake, you should pursue forgiveness as a good for you.
3. Acknowledge your part. No one is perfect and conflicts are often caused by several factors. If you have harmed the person in your own way, take responsibility and ask for forgiveness yourself.
4. Don't tie your own forgiving to any forgiveness you may receive. Remember, that forgiving someone is for you, not for that person. You have the power here. It is an act of courage on your part and can help you to heal, despite what anyone else does.
5. Forgiving is not forgetting and it is not condoning. By forgiving someone, you are not saying that the behavior was acceptable. You are simply saying that you are ready to release the hurt and pain inside of you. Forgiveness does not always mean reconciling with that person. It is simply to give you peace.

Vacations

“No man needs a vacation so much as the person who has just had one.” – *Elbert Hubbard*

“A vacation is what you take when you can no longer take what you've been taking.” – *Earl Wilson*

“A vacation is like love: anticipated with pleasure, experienced with discomfort, and remembered with nostalgia.” – *Unknown*



Things To Do Now... To Save You Money In The Long Run

Want to keep more of your hard earned money? Who doesn't? Sometimes people avoid some simple things because they can't see the benefit immediately. But you can save yourself some money in the long run. Begin today with these simple ideas to benefit your future.



Buy insurance

Car, renters, homeowners, and disability insurance generally don't pay off unless you really need them. However, in the case of an accident or catastrophe, these types of insurance policies become invaluable. Don't neglect to spend a little now to ensure that you are protected.

Pay off your debt

The benefits of debt-free living are clear to everyone. But that debt that you are carrying could be costing you more than you think. Say you have a balance of \$5,000 on a credit card at 18% interest. If you make the minimum payment only each month, it will take you almost four years to pay off this debt. You will also pay \$1,983.61 in interest on top of the \$5,000 balance! Paying off balances on credit cards as soon as possible can add up to literally thousands more dollars in your pocket.

Work on your savings

It doesn't make much sense to place money in savings when the interest you are paying on your debt is higher than the interest you make from a savings account. But it is always helpful to have money put away for emergencies. Then, instead of running up your credit cards again, you will have funds to help you through difficult times. Once you do have your debt paid off, focus on ways to get the most out of your savings. Learn about the different options you have for your money and the tax benefits you'll get from each. If you are unsure which options are best for you, get the help of a financial advisor.

Trivia Quiz Answers:

Those Buggy Bugs

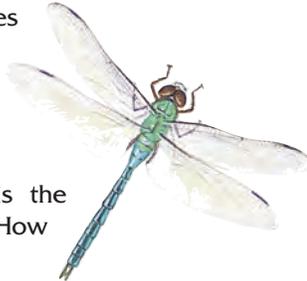


- | | |
|-----------------------------------|--|
| 10. 850. | 5. 50 to 60 mph. |
| 9. 1/12th of a teaspoon of honey. | 4. 3.5 ounces (the same as 33 pennies) |
| 8. The male cricket. | 3. True. |
| 7. Yellow. | 2. 6 billion. |
| 6. True. | 1. One week. |

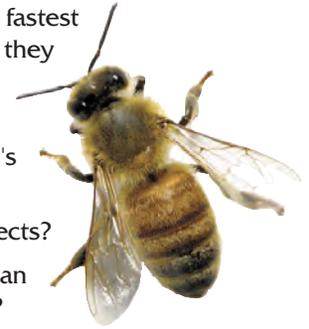
Trivia Quiz: Those Buggy Bugs

With summer heat comes lots of insects. How much do you know about the world of insects? Test your bug trivia with this quiz. *(The answers are on page 7.)*

1. How long can a cockroach live without a head?
2. About how many dust mites can you find on a typical bed? (Clue: There are a lot of them!)
3. True or False: Ants don't sleep.
4. The African Goliath beetle is the heaviest beetle in the world. How much does it weigh?



5. Dragonflies are one of the fastest moving insects. How fast can they fly?
6. True or False: Every year, insects eat 1/3 of the world's food crops.
7. What color is the blood of insects?
8. Which gender of crickets can chirp: the male or the female?
9. In its entire lifetime, how much honey does the average worker bee produce?
10. The rhinoceros beetle is the world's strongest insect. How many times its own body weight can it support?



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

The Marshall Chronicles is now available in full color, both in print and on-line at www.chicago13.com

Did You Know: Left-Handers

August 13th is International Left-Handers Day.

- ☞ Men are more likely to be left-handed than women.
- ☞ Around 11 percent of Americans and Europeans are left-handed.
- ☞ People of Asian or Hispanic lineage are slightly less likely to be left-handed than other ethnic backgrounds.
- ☞ No gene for left-handedness has been identified, but it does seem to run strongly in families.



- ☞ Most left-handers draw figures facing to the right.
- ☞ There is a high tendency in twins for one to be left-handed.
- ☞ Some famous left-handers: Queen Victoria, Alexander the Great, Babe Ruth, Richard Dreyfus, Ross Perot, Ronald Reagan, Bob Dylan, Harpo Marx, Ted Williams, Billy the Kid, Benjamin Franklin, Michelangelo, Nelson Rockefeller, Leonardo Da Vinci, Albert Einstein, Ludwig van Beethoven, Ringo Starr, Helen Keller, and Barack Obama.

