



Chapter 13 Payment Address
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Office of the Chapter 13 Trustee - Akron Office
Keith L. Rucinski - Trustee

September 2009 Chapter 13 Newsletter

1. Financial Management Instructional Course - Saturday November 14, 2009.

Please take note that the Chapter 13 office will hold its last Financial Management Instructional Course for this year on Saturday, November 14, 2009, at the Akron Public Library in downtown Akron. The course will run from 9:30 A.M. to 12:00 P.M. As you are aware, if debtors fail to take this course, they cannot receive a discharge in a Chapter 13 Plan. The Chapter 13 office has had to file a dozen pleadings this year asking cases to be closed without receiving a discharge due to debtors' failure to take a Financial Management Instructional Course. The motion warns the debtor of the consequences and advises the debtor of various ways to satisfy the course requirement. Most debtors who have received this pleading have been responsive, have taken the course and have received a discharge.

The Chapter 13 office would ask that all attorneys review their cases to ensure that all Chapter 13 debtors have taken the Financial Management Instructional Course within sixty (60) days from the date of filing. The Chapter 13 office does provide this class free of charge and does file Form 23 with the Court on behalf of the debtor. Attached to this newsletter is the current flyer which has the course information, the Chapter 13 contact numbers and directions to the Akron Public Library in downtown Akron. The Trustee asks all counsel to work with their debtors to either sign them up for the class or help the debtors make arrangements to take the course through one of the other providers.

The Chapter 13 office has offered the course three (3) times in 2009 during the week. The class to be held on Saturday, November 14, 2009 is to allow debtors who cannot attend during the week, due to work schedules or other commitments, an opportunity to take the class free of charge. The room at the library can accommodate up to 350 people and the Trustee encourages all counsel to ask their debtors to attend the class.

As always, the Chapter 13 office welcomes all attorneys who would like to attend the class, or even better, to participate as speakers in the class.

2. Help the Debtors get that Discharge - It's Time to Review Those Old Cases

The Chapter 13 office has begun an audit process of old cases which have been pending for four (4) or more years. In many of these cases, the debtors have paid in significant sums of money and to date; have completed payment of the secured and priority creditors. These cases do have unsecured debt that remains to be paid.

Given the current economy (the unemployment rate for Akron, Ohio is now over 11%), the percentage dividend in these cases may need to be adjusted. Most of the older cases



do not have equity issues but the percentage dividend was set at a time the debtors had more income or a more reliable source of income. The Trustee is now sending e-mail notifications to many counsel asking that the Plan be amended, often times to lower the percentage, to allow the debtors to be eligible for a discharge, or to complete the Plan with lower payments so that the debtors can finish the Plan with a discharge. The Trustee is asking all counsel to review their older open cases. Counsel should contact the Chapter 13 office (see item below for contact information) and ask that the file be audited. The Chapter 13 staff person can work through issues with counsel and advise if there are any equity issues or any open pending issues. The Trustee wants to work with counsel in modifying these older Plans and to resolve any pending issues before counsel files the modification. This is a serious and growing issue as many debtors do want to finish their Plan but have begun contacting the Chapter 13 office stating that they can make some payments but cannot make the Plan payment as originally proposed.

Counsel can also check the status of their cases free of charge by accessing the Chapter 13 website: www.chapter13info.com. Counsel can access the Chapter 13 records either through the National Data Center or the Bankruptcy Link programs on the Trustee's website.

3. Chapter 13 Contact Information for Post-Confirmation Issues

All Chapter 13 cases have now been assigned to a specific staff person within the Chapter 13 office. Please find attached a listing of the staff persons with their phone number and email. Counsel should contact these staff persons to request audits on older cases that need modifications or any other questions counsel may have. When submitting orders for review and approval to the Chapter 13 office, counsel should also submit those orders directly to the assigned staff person. The cases have been divided by using the last two digits of the case number (similar to the system used by the US Bankruptcy Court in Akron). By directing questions and submitting documents directly to the staff person who is responsible for the case, counsel will receive a timely response.

4. New Administrative Order Authorizing "No Look Fee" for Creditor Attorneys in Second Chance Relief Order

The US Bankruptcy Court in Akron has recently issued Administrative Order 09-06 regarding creditor attorney fees and second chance relief orders. The second chance relief orders are used when the debtor has fallen behind in post-petition mortgage payments and the creditor is willing to allow the debtor an opportunity to become current in said post-petition payments. The Administrative Order authorizes a "no look fee" for creditor attorneys in the amount of \$425.00 + \$150.00 relief from stay filing fee. Thus, the total "no look fee" shall be \$575.00. The post-petition arrearage must come into the Chapter 13 Plan and be paid as a secured claim prior to the payment of unsecured creditors. The Trustee must be a signor on all second chance relief orders.



This process will allow Chapter 13 debtors in Akron to save approximately \$75,000.00 annually. It is also hoped that by allowing the debtors to have longer than the historic six (6) month payment period that more debtors will be able to retain their residence.

The Trustee thanks members of the creditor bar for their efforts in working on this Administrative Order.

A copy of Administrative Order 09-06 is attached to this newsletter.

5. Trustee Intent to Pay Claim

Effective July 2009, the Chapter 13 office has begun filing a pleading titled “Trustee’s Intent to Pay Claim”. This pleading will be filed by the Chapter 13 office at the time the case is confirmed by the Court and processed for payment in the Chapter 13 computer system. The pleading will give a listing of all creditors listed in the schedules (including the previous owner of the claim if the claim has been sold), the amount which was listed in the schedules and the amount of the claim actually filed including any interest rate claimed by the creditor on the actual proof of claim.

This type of pleading has been used successfully throughout the United States by many Chapter 13 offices. The pleading is served on debtors’ counsel (through ECF) and to the debtor by U.S. Mail. The pleading allows both debtor’s counsel and their client to see how claims were scheduled and how claims were actually filed. If there is a large difference between the amount scheduled and the amount filed it is most likely that at some point during the Plan a motion will be filed by the Trustee to increase the debtor’s payments. The goal with this type of pleading is to allow debtor’s counsel a quick and easy review of claims and should a claim appear to be incorrect, counsel will undertake the necessary steps to object to the claim.

The Trustee will also attempt to file an updated Trustee’s Intent to Pay Claim 18 to 24 months into the Plan to make debtor’s counsel and the debtor aware of any changes which may have occurred since confirmation.

The Trustee’s Intent to Pay Claim does not require a response if counsel and debtor are in agreement with the way the claims are filed. This pleading is meant as a notice pleading and to provide useful information to the parties.

This pleading is different than the Trustee’s Recommendation as the Recommendation attempts to pay the claim different than how the claim was filed. The Trustee’s Intent to Pay Claim is simply a notice to the parties to help with a quick and easy review of claims. Absent any objection, the Trustee will pay the claims as filed.



6. Trustee's Supplemental Intent to Pay Claim

Throughout the Chapter 13 case the Trustee will also attempt to file a pleading called "Trustee's Supplemental Intent to Pay Claim." This type of pleading will list individual claims (the Trustee's Intent to Pay Claim will list all claims in the case). The Trustee will attempt to file this type of pleading whenever a claim has been filed post-confirmation for a claim which is substantially higher than what was included in the Plan. For instance, often times the I.R.S. or post-petition mortgage arrearages are added to the Plan and this pleading will put the parties on notice that said claim has been filed. If the debtor and debtor's counsel are not in agreement with the claim it is their responsibility to take appropriate action to challenge the claim.

7. Accessing Trustee Records

As stated above, counsel can access the Trustee's records through the Chapter 13 website: www.chapter13info.com. Attorneys can access the information through the National Data Center or the Bankruptcy Link program. There is no charge for debtor's counsel to use either of these programs to obtain information regarding their cases.

If counsel has any questions on how to access these programs, please contact Jason Hauser, the Chapter 13 Systems Administrator, who will try to help resolve any questions that arise regarding these programs. Jason's contact information is jhauser@ch13akron.com or 330-762-6335 ext. 232.

8. Remind the Debtors to use the Chapter 13 Webpage

The Chapter 13 webpage has been recently updated and is designed to provide practical and useful information regarding the Chapter 13 process, definitions about legal terms that debtors may see in pleadings and other frequently asked questions. The Trustee suggests that at the time the debtor signs the petition that counsel should provide this website to them so that they may do some homework before the Chapter 13 341 Meeting of Creditors.

Currently, fifty (50) percent of debtors filing a Chapter 13 Plan in Akron are earning a discharge. The Trustee strongly believes that one of the reasons this percentage is higher than the national average is the Court, counsel, and the Chapter 13 office offer many opportunities for the debtor to become educated about the Chapter 13 process. It does appear that the more the debtor becomes educated about the process, the greater the chance the debtor will earn a discharge.

The Trustee welcomes suggestions on any topic that counsel feel would be useful to debtors and will seek to update the webpage in the future with those suggestions.



9. Schedules I and J are still Relevant when Modifying the Plan - the Means Test does not Prohibit Post-Confirmation Modifications

The Chapter 13 office has recently been receiving calls from counsel which suggests that counsel are not modifying Plans post-confirmation as counsel believe they are prohibited from lowering the debtor's payments given the disposable income on the Means Test.

The Means Test is a historic look back period (based on the debtor's income in the six (6) month period prior to filing, and does not reflect projected "future" income over the life of the Chapter 13 Plan. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 did not void the debtor's opportunity to modify the Plan post-confirmation pursuant to 11 USC § 1329.

As debtor's income fluctuates (both up and down) over the course of the Chapter 13 Plan, debtor's counsel can modify the Plan based on the debtor's actual income at the time of modification. The debtor's counsel should file a modification which includes amended I and J and provide current payroll or other proof of income to the Chapter 13 office for review.

For a full discussion regarding the Means Test and the roll of I and J post-BAPCPA please see In Re McCarty, 376 B.R. 819 (Bankr. N.D. Ohio 2007) and In Re Petro, 395 B.R. 369 (6th Cir. B.A.P. 2008), as a copy of both opinions are attached to this newsletter for review.

10. Claim Controls not the Plan

The Akron Court recently reinforced its long standing view that the claim controls and not the Plan. Some counsel have recently been trying to advocate that their "cram-down" values and other treatment regarding the value of the claim and interest rate to be charged on the claim is set at confirmation and cannot later be challenged by the creditor.

In a recent ruling, In Re Figuero, Case Number 08-51263, the US Bankruptcy Court in Akron recently reinforced its long standing order that a claim filed by the creditor is valid unless there is an objection to the claim. Furthermore, the Trustee is authorized to pay the claim as filed, absent an objection to the claim.

A copy of In Re Figuero is attached to this newsletter for review.

11. It is O.K. to Challenge an Interest Rate on a 910 Car even if you cannot Challenge the Principal Balance.

Claims for secured assets, mainly automobiles, are often filed with interest rates at twenty (20) percent or higher when debtors counsel have put a Plan together expecting an interest rate of around ten (10) percent.



As stated above in the Figuro decision, the claim filed by the creditor including the interest rate, will control absent an objection to the claim. The higher interest rate on the claim often results in a plan having feasibility issues.

Even though BAPCPA prohibits an objection to the principal value of a claim on a car purchased within 910 days of the petition filing, the interest rate on a claim can still be challenged. See In Re Vagi, 351 B.R. 881 (Bankr. N.D. Ohio 2007), In Re Johnson, 2009 Bankr. LEXIS 811, (C.D. of Illinois)(decided April 15, 2009).

If the objection to the claim is filed after the Chapter 13 office has begun making principal and interest payments to the creditor, the challenge to the claim should include a request to have the Trustee re-amortize the claim at the lower interest rate. Please contact the Chapter 13 office on how to word the re-amortization request in your pleading.

Often an important factor to determine plan feasibility and whether the debtor can successfully earn a discharge, is effectively dealing with an excessive interest rate being charged on a claim which was not challenged by debtor's counsel. Hopefully the "Trustee's Intent to Pay Claim" as described in above sections will give counsel an opportunity to see the amount of interest rate being filed on a claim sooner, rather than later.

Please remember that objecting to the interest rate on a claim after the claim has been paid may not help the debtor as laches may bar the recovery of funds from the creditor.

12. Second Chance Banking Programs

As discussed in the June 2009 newsletter, some of the local banks have second chance banking programs to help debtors get back into the banking system.

A number of Chapter 13 debtors are appearing at 341 meetings stating that they do not have bank accounts. What is perplexing to the Trustee is debtor's counsel are not inquiring why they do not have bank accounts. Some of these debtors are on a check system which requires a fine to be paid before they are allowed to participate back in the banking system. Ironically, that fine is not included in a Chapter 13 Plan for payment. Debtors cannot get a fresh start, enjoy their discharge and build a new credit history without being part of the banking system.

Many banks have second chance programs for debtors who have gotten into problems in the past and offer non-interest bearing checking accounts for debtors who agree to have their paychecks directly deposited into the bank. One such bank who has offered to review a debtor's situation is National City, now part of P.N.C. If a debtor does not have a banking account at the time of the petition filing, you should encourage the debtor to contact Michelle Shyjka, Office Manager at National City Bank at 330-375-8342 or at michelle.shyjka@nationalcity.com.



The Trustee is aware that other banks do offer a similar type of program and if counsel is aware of other banks that do so the Trustee will so advise in future newsletters.

The reason the Trustee is advocating that the debtors get back into the banking system is many of these debtors use a check into cash place which can take up to 25 percent of the debtor's check to cash the check. Within the last year, one Chapter 13 debtor had a \$3,000.00 refund at the end of her Chapter 13 case. This debtor did not have a bank account and went to a check cashing facility where they charged her \$750.00 to cash her check. If the debtor had gone to National City, they would have charged her \$10.00 to cash her check and if she had opened a checking account she would have had no fees taken from her check.