

## **February 16, 2006**

The Consumer Bankruptcy Committee of the Debtor-Creditor Section met on February 16, 2006.

Thank you to Laura Donaldson and Chris Kane for providing the snacks. Our next meeting will be held on March 23, 2006. The United States Trustee's office will provide snacks for that meeting.

### **Upcoming Conferences:**

- The 19th annual Northwest Bankruptcy Institute will meet in downtown Portland on April 14th and April 15th. The CLE will provide 9.25 general credits and 1 ethics credit. You can refer to the Oregon State Bar's web site at [www.osbar.org](http://www.osbar.org) for more information.
- The 14th annual National Association of Consumer Bankruptcy Attorneys will meet in New Orleans from May 19th to May 21st. You can register online at [www.nacba.org](http://www.nacba.org).
- The Chapter 13's Trustee's conference will meet June 28th through July 2nd in Denver.

### **Chapter 13 Trustee Announcements:**

- Chapter 13 Trustee, Brian Lynch, raised a question regarding noticing sales in Chapter 13 cases. Language in the Order Confirming Plan prohibits a debtor from selling or otherwise encumbering their real property without a notice to creditors and the Trustee, and without an opportunity for a hearing. Up until now, if a debtor indicated in their plan that they would sell or refinance property and the Trustee raised no objections, the sale would be approved. The Trustee's office encourages debtor's counsel to give more information in the plan regarding sales or refinances of real property, including requesting that creditors object immediately to the sale or refinance if a debtor wishes to complete the sale or refinance without any additional notice. This may satisfy concerns that proper notice has been given to all affected parties.
- A recent decision out of the BAP held that a debtor's sale of real property without notice to a Trustee or creditors would stand so as to not divest a bonafide purchaser for value, although the Court specifically reserved the question of whether the debtor should be denied a discharge because of these actions.
- The Chapter 13 office is not requiring hard copies from creditors on Motions for Relief.
- Modified Plans in response to a post-confirmation Motion to Dismiss should be filed with the Court within 30 days despite any potential objections from the Trustee's office. By filing the plan and having a hearing set on the matter, debtor's counsel can avoid an Order of Non-Compliance if all objections to the Modified Plan have not been resolved prior to the expiration of the 30 day period in the Motion to Dismiss. Debtors should make their new plan payments while any objections are being resolved.

### **Chapter 7 Trustee Announcements:**

- Chapter 7 Trustees, Tom Renn and Michael Grassmueck, attended the meeting. The Portland Chapter 7 Trustees have distributed a form that they will require debtor's counsel to fill out providing domestic support obligation information. This form

should be submitted to the Trustee as soon after the filing date as possible. A copy of the form has been attached. [ See [Page Contents](#) for links to Word and Word Perfect versions. Webmaster]

- The Trustees will continue to work on a document production checklist. While the Trustees may differ in the specific documents that they will require, they are working on becoming as consistent as possible in these areas. The goal will be to have all of this information collected and continually updated on the debtor creditor web site, along with information specific to each Trustee. The debtor creditor web site can be found at <http://osb-dc.org>. Once the web site is up and running, it will include information regarding each particular Trustee's individual request and policies, such as whether the Trustee is willing to accept documents the day of the hearing, whether they would like documents in electronic form (such as through e-mail), or whether they will require hard copies.
- The debtor creditor web site also has a help section summarizing any changes to the Bankruptcy Court's web site. This web site will also include job postings. If you have any suggestions regarding this web site, you can direct them to Thomas Renn or to the site's web master.
- If a debtor or debtor's counsel is unable to get specific information required for domestic support obligation notification, for example in cases where there is a restraining order, as much information as possible should be provided to the Trustee. At the very least, the debtor or debtor's counsel should be able to determine who is collecting the payments and provide this agency information to the Trustee.

#### **Miscellaneous:**

- Income in Oregon has gone up slightly for purposes of means testing while expenses have decreased.
- The Court will be getting new telephone numbers. This information can be found on the Court's web site, and the changes will take effect on March 1, 2006.
- Pam Griffith from the U.S. Trustee's office reminded debtor's counsel that they do need to file pre-filing counseling certificates and post-filing debtor education certificates with the Court.

At the last Circle of Love meeting, attendees discussed whether Trustees were actually dismissing cases for failure to provide tax returns or tax transcripts within 7 days of the 341(a) Hearing. Since our last meeting, one Trustee has filed a Motion to Dismiss. This hearing was held in front of Judge Alley. The case was not dismissed for failure to provide tax returns or transcripts within 7 days prior to the 341a hearing. [[text of opinion, pdf file](#)] According to the code, if the failure to provide returns or transcripts is beyond the debtor's control, the debtor can file an appropriate pleading setting forth the reasons that they are unable to provide the returns or transcripts for the Court's review. Counsel should watch closely for developments in this area.