

DEBTOR-CREDITOR SECTION CONSUMER COMMITTEE REPORT

November 15, 2007, 4:30 PM

By Aaron R. Varhola

The Consumer Bankruptcy Committee (also known as the “Circle of Love”) usually meets every other month on the third Thursday of the month in the 8th Floor conference room at the United States Bankruptcy Court – 1001 SW 5th Avenue, Portland, Oregon 97204. Our next meeting will be on Thursday, January 17, 2008 at 4:30 PM. The committee is chaired by Laura Donaldson, who can be reached at 503-241-4869 or laura@vbcattorneys.com . To learn more about the Committee or to be added to the mailing list, please contact Ms. Donaldson.

November 15, 2007 meeting:

Todd Trierweiler asked about DSO obligation form, and what would happen if the recipient or clients move and cannot complete the DSO form. Judge Dunn indicated that keeping the case open for a brief time isn’t a problem, but not indefinitely.

Discussion turned to alleged misconduct by creditors and collection agencies. Brian Lynch stated that there was a decision against B-Line for a lack of due diligence, and Judge Brown indicated that she awarded \$10,000 against a collection agency for egregious conduct. Judge Dunn asks if there is an escrow holdback, and awarded \$2300 in attorneys’ fees against a creditor for double-charging attorneys’ fees.

Aaron Varhola notes that other collectors are entering cases after filing, and collectors are being more negligent with docketing notices of bankruptcy and objections to collection activity.

FEE WAIVER OBJECTIONS – One trustee will always file objections in fee waiver Chapter 7 cases. That trustee objects because of small increases in income. Judge Dunn indicates that independent evidence can sometimes show a debtor is making under 150% of the poverty line.

CHAPTER 13 TRUSTEE’S OFFICE – Brian Lynch will presume wage orders are necessary in all Chapter 13 cases. He indicated that the only good argument against entry of a wage order would be if the debtor’s job is negatively affected by entry – all petitions against entry should be sent at least a week before the Section 341 hearing to precon@portland13.com to avoid the conversation about it at the hearing

Brian Lynch indicated that the Chapter 13 Trustee’s Office will not seek to take Oregon tax kicker checks, although a creditor might object to a debtor keeping the kicker check. A kicker check can be used to pay off IRS tax liability.

Judge Dunn's decision in *In re Pak* indicates that B22 income (CMI) is a starting point for determining actual monthly income; a party wanting to disagree with the B22 income has latitude to object and prove otherwise.

Brian Lynch's office is approaching big lenders about what they will do to mitigate losses in a refinancing crunch.

New rules are in effect as of December 1, 2007, most significantly Rule 9037, which requires redaction of Social Security numbers, minors' names or initials, or account numbers on filings with the court.

PAM GRIFFITH, U.S. TRUSTEE'S OFFICE – Ms. Griffith reports that Tom Renn called and wanted to distinguish between trustees “running late” vs. “running behind” – he says that a big problem is document production deficiencies by debtors.

The U.S. Trustee is looking at Social Security numbers more carefully for both bankruptcy or criminal violations if false Social Security numbers pop up during document requests. The U.S. Trustee's office will seek to file more 727 motions, objections to confirmation, or seek dismissal of cases.

Ms. Griffith described the *Ellett* case, where the Social Security number of debtor's was wrong, and a state tax board didn't object, the 9th Circuit indicated that the tax debt was not discharged, as well as the *Arando-Perez* case (374 B.R. 800), where a 727 motion was filed when a debtor reported two Social Security numbers. Judge refused to grant a stipulated motion to dismiss an adversary proceeding over the Social Security numbers.

JEFF WERSTLER OF THE IRS – Mr. Werstler indicated that attorneys can now access online tax information with a 2848 form, and with an 8821, they can get up to 3 future years of tax returns. He also explained the 4506 transcript form.

Mr. Werstler notes that limits to Section 1305 claims are put in orders confirming plan. Clients may also get a “lock-in letter”, automatically setting their number of exemptions at zero, but can petition to get the number of exemptions changed. Discussion centered on the 1305 claims and IRS objections.

Rich Parker noted that he sent an e-mail concerning restricting access to drivers' licenses without proof of citizenship.

Pamela Griffith indicated the U.S. Trustee's office will float the idea of a committee on unbundling legal services (petitions vs. adversaries).

Judge Dunn indicates he lets attorneys out of adversary proceedings who cannot contact their clients. Judge Dunn is also concerned about pro se debtors who don't know how to settle their adversary proceedings and waste court time.

Rich Parker requests people read the PLF newsletter – SB 176 allows the ODR to collect debts from a successor business.

Next meeting – January 17, 2008, 4:30 PM. Judge Brown will bring refreshments.