

DEBTOR-CREDITOR SECTION CONSUMER COMMITTEE REPORT

January 17, 2008, 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, April 10, 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.

January 17, 2008 meeting:

Todd Trierweiler informed the group about an opening at his law practice. Laura Donaldson mentioned the Young Lawyers Group of the Debtor-Creditor Section to get younger lawyers to be more active.

Laura Donaldson brought in copies of the January 8 New York Times article discussing Countrywide’s “Re-creation” of letters changing escrow amounts for borrowers. Pamela Griffith of the U.S. Trustee’s office indicates she wants examples of creditor misconduct from member attorneys, particularly those involving larger lenders.

The Chapter 13 office indicates that they need proof of charitable contributions, and that most of the time, the hold up in discharge is final audit and setting proof of reserve.

Todd Trierweiler’s office indicates that the Chapter 13 Trustee may not allow the Earned Income Tax Credit and Additional Child Tax Credit on Schedule I as income because of problems with the final audit.

Lawyers are informed to change the initials on pleadings and other court documents to reflect current judge caseload as of the January 1 docket shift. The judge designated on the online docket should be correct.

Pamela Griffith of the U.S. Trustee’s Office indicated that new debtor audits are suspended for lack of funding, but existing ones will continue. Ms. Griffith also indicates that creditors have been lax in filing claims.

Judge Perris stated that draft revisions of Local Rules will be out around February 14, and informed everyone that the court’s Saturday Session is February 23 – admission is first-come, first-served, with one person per firm.

Jeff Werstler of the IRS stated that there will be a different IRS manager for Portland for next year at least. Mr. Werstler indicated that the IRS was getting requests from trustees

for future years' refunds; the IRS does not have the authority to direct turnover of straddling refunds to Chapter 7 trustees. Judge Dunn indicates that there is a draft local rule requiring debtors to turn over tax refund checks to the trustee; Werstler indicates that debtors should physically turn over checks to the trustee themselves – the IRS can only seize tax refunds for child support and state taxes.

Mr. Werstler discussed possible tax liability not being discharged because of “attempts to evade or defeat” collection of tax – he will look to *U.S. V. Merrill*, 336 B.R. 804 (D. Or. 2005) and factors such as 1.) The number of periods taxes are due, particularly with previous bankruptcies; 2.) The amount of tax paid on time (whether enough is being withheld); 3.) Self-employed people paying little or no tax; 4.) Tax debt compared to total debt; 5.) Collectibility of the tax debt; 6.) Timing of the bankruptcy – is it right after assets are transferred; 7.) Whether the taxpayer provides information or turns over assets to the IRS; 8.) Dissipation of assets before filing or purchase afterwards; 9.) Unusual divorces that place assets out of reach of the IRS, such as property going to one spouse and debts to another, but the ex-spouses still live together; 10.) Previous relationship between the taxpayer and the IRS.

After discussion, particularly between Mr. Wertsler and Ann Chapman about whether a debtor can rely on the bankruptcy discharge regarding tax debt, Mr. Wertsler indicated that the IRS will usually send a warning letter before the statute of limitations expires for challenging a discharge for an attempt to “evade or defeat” collection.

The next meeting will be April 10, 2008, 4:30 PM. All consumer bankruptcy practitioners, trustees, judges, and others interested are welcome.