

DEBTOR-CREDITOR SECTION CONSUMER COMMITTEE REPORT

April 10, 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 June 19, 2008 at 4:30 PM. The committee is chaired by Laura Donaldson, who can be reached at 503-241-4869 or laurad@vbcattorneys.com . To learn more about the Committee or to be added to the mailing list, please contact Ms. Donaldson.

April 10, 2008 meeting:

There was a presentation by James Penney of Royal Moore Auto – Penney indicated the used car market was getting much tighter, as lenders were pulling out of the market, including Citifinancial. Penney states that UACC, Prestige, and Zions Bank were still in the financing market.

Brian Lynch indicated that \$400/month payments would be allowed for a car; up to a value of \$14,000 if there is “thriftiness” shown in the debtor's budget. Ann Chapman stated that she believed the \$471/month IRS allowance for a vehicle should be presumed reasonable.

Chapter 13 Trustee Brian Lynch reported that the office will not pursue economic stimulus payments from debtors. Lynch reported the *In re Johnson* and *In re Riack* cases, which state that negative equity (where the unsecured portion of a previous auto loan is rolled into the new loan) is not considered a purchase-money security interest for a cramdown if the vehicle is purchased within 910 days of filing. Lynch reported that Judge Radcliffe in the *Riack* case indicated that the formula is the ratio of the negative equity versus the total amount of the loan.

In re Sanchez indicates that an equal monthly payment has to be started at the time of confirmation – the car gets paid before the attorney's fees can be paid.

Judge Brown stated that if the IRS does not file an amended claim, the debtor's attorney should object to an unassessed taxes claim until the IRS files an amended claim based on recently-filed tax return.

A case from Montana (MT 07-1431) indicates that business expenses are to be taken below the applicable commitment period line to determine CMI, and it is more likely to indicate a 60-month plan. The business expenses are to be listed on Line 60 of Form B22C. Judge Dunn indicated that business expenses are not deducted from CMI, but is

deducted from disposable income, and approves of the treatment in *In re Arnold*, 376 B.R. 52.

Lynch distributed the revised language for standard language paragraphs.

Judge Perris distributed a draft revision for the Application for Supplemental Compensation – in response to the complicated previous form, particularly the economic analysis of the impact of plan. Paragraph 6 relating to the effect on creditors, and paragraph 8, relating to time concerns, were added. The judge will have flexibility to order more documentation if requested.

Unbundling was discussed, and there seems to be little enthusiasm for low-level services. The judges may agree to unbundling through the 341 hearing or excluding adversary proceedings.

Questions about motions to withdraw were posed to the judges; they indicated that if there were agreed services to be provided, plus disclosure, the judge has discretion to grant the motion or hold a phone hearing, based on whether there were adequate warnings and did the client actually agree to the limited representation.

Chapter 7 trustee Tom Renn stated that his office will be going after stimulus checks as part of the bankruptcy estate if the case was filed after February 13, 2008, and that if a debtor is getting a tax refund from the IRS but owes Oregon, that the debtor should turn the check over to the trustee, who will then pay the taxes owed to Oregon.

Renn expressed displeasure with debtors and attorneys who do not fully disclose information to the trustee in documentation or at the 341 hearing. He indicated that it is the debtor's duty to disclose information, particularly family contributions to the debtor's expenses.

Renn also suggests that documents be sent to the trustees' e-mail addresses available on the Debtor-Creditor Section website or the U.S. Trustee's Office website, not to the court's e-mail address.

Renn observed that more blank Statements of Intent for secured debts were appearing, and that *In re Antoinette Dumont*, **SC- 07- 1155- BaMoD** (9th Cir. BAP, 2/6/2008) indicates that the Parker ride-through is no longer applicable; debtors must state whether they wish to reaffirm, redeem, or surrender property subject to a secured debt.

The next meeting will be Thursday, June 19, 2008, at 4:30 PM. All consumer bankruptcy practitioners, trustees, judges, and others interested are welcome.