

May 12, 2009 [www.orb.uscourts.gov](http://www.orb.uscourts.gov)

### **Recent Opinions**

*Gelco Construction Co. v. Plum*, Adv. No. 08-6041-fra, Case No. 07-63624-fra7  
March 20, 2009

Dischargeability, §523(a)(2)(A), debt for business loans

Loan of about \$300,000 held nondischargeable, where debtor did not inform lender either that a portion of what purported to be a business loan was to be used to pay off personal credit card debt, or that the loan covered only a down payment on the business, not the whole purchase price.

*In re 10 Bears at Chiloquin, Inc.*, Case No. 06-62079-fra7, Appellate No. 08-6322-HO  
April 8, 2009

*Marrama v. Citizens Bank*, denial of conversion to chapter 11, bad faith, §706(c)

The District Court affirmed the bankruptcy court's ruling that a chapter 7 debtor does not have an absolute right to convert to chapter 11. It also affirmed the holding that in the circumstances of this case conversion should be denied.

*In re Applebaum/Finley*, Case No. 08-63391-fra7

April 17, 2009

California dual exemption scheme

In the case of a couple who resided in California before moving to Oregon and filing for bankruptcy here, the trustee objected to exemptions claimed under the California exemption scheme, arguing the scheme was unconstitutional. The bankruptcy court disagreed. The decision is on appeal to the BAP.

*In re Goss*, Case No. 06-31932-rld13

April 29, 2009

Claim, domestic support obligation, judgment lien, marital dissolution, priority claim, property division, relief from stay, ORS 18.150

The bankruptcy case was filed while a marital dissolution proceeding was pending. Debtor's spouse obtained relief from stay to allow completion of the dissolution proceeding and entry of judgment. The state court Property Division Judgment provided for payment before conclusion of the debtor's confirmed 100% plan, however. The bankruptcy court denied former spouse's motion for relief from stay to enforce the Property Division Judgment lien, and noted that it would "ride through" the plan.

*In re Orchards Village Investments, LLC*, Case No. 09-30893-rld11

April 30, 2009

Cash collateral, corporate authority, dismissal, limited liability company, receiver, turnover, Constitution Art 1 §8 cl. 4, 11 USC §543

The debtor LLC owns partial interests in a retirement community. In a lengthy opinion addressing numerous issues, the court concluded that a receivership in August of 2008 did not preclude the filing of a chapter 11 petition in February 2009. The court also concluded that the LLC manager had authority to file the bankruptcy case. It held as well, however, that the receiver, which had improved operations of the community,

would not be required to turn over the community under §543.

Click on [Opinions](#) (the last item in the column headed **Information for Attorneys**), for two search options. Clicking on [To view a list of all current opinions](#) takes you to a list of opinions organized by date, most recent to oldest. Entering a search term in the box on the Opinions page produces a list of results. Search logic for opinion searches appears on the [Opinions](#) page.

### **NEW ITEMS:**

#### **Local Bankruptcy Forms**

Local bankruptcy form 120 has been updated, as has the Index of Local Bankruptcy Forms.

#### **ECF Registration Forms**

ECF registration forms for attorneys and creditors were updated on April 27. The court no longer requires a proficiency exam for attorneys currently using ECF in other districts.

On the home page under **Court Rules and Announcements**, click on the first item, "4/27 - Local Form (LBF) Updates," for links to both the **updated LBF** and the **updated ECF registration forms**.

### **PREVIOUSLY PUBLISHED ITEMS:**

The following is a summary of items added in the past several weeks.

#### **ECF Training**

Lawyers get 4 CLE credits for ECF training. Sessions run from 8:30 am to 12:30 pm. The currently scheduled training dates for **Eugene and Portland** are May 20, June 18, July 15 and August 13.

#### **General Order #09-2**

General Order #09-2 was posted April 7 and is effective immediately. It modifies local bankruptcy rules 2002-1(b)(3), 2015-1(a), 2015-1(b)(2)(B), 2015-1(c), 4008-1(b), 7007-1(b)(1)(D) and (E), 7007-1(b)(3)(A), 7026-1(c), 7037-1, 9013-1(b)(1), and 9013-1(d).

On the home page under **Court Rules and Announcements**, click on 8 04/7/09 - General Order (G.O.) #09-2." It can also be found under **Rules and Forms**, "Oregon US Bankruptcy Court General Orders (GO)."

#### **Local Bankruptcy Forms**

The following modified LBFs are all required to be used currently: 720.80, 721.3, 1124, 1198, 1305, 1355.05, 1355.10, and 1366.3.

#### **Chapter 7/13 Relief from Stay Hearings**

The specific link for RFS hearings has been removed. Use the [Judges' Calendars](#) page,

which can be found under **Calendars** on the main page, and select Relief from Stay in the “Hearing Type” box.

### **ECF Online Manual**

Several procedures in the ECF Online Manual have been updated in accord with the upgrade to ECF 3.3. Click on **ECF** on the top index, then **Using ECF**, then **Manuals**.

The following ECF Manuals were updated on March 30, 2009:

**Basic** - “ECF Filing Manual”

**Case Opening** - “Involuntary Petition” and “Open a BK Case”

**Claims** - “File Proof of Claim”

**Creditor** - “Attorney Creditor Manual” and “Creditor Manual (Non-Attorney)”

**Miscellaneous** - “Missing Documents Filed”

**Query** - “Query”

**Reports** - “Reports”

**Utilities** - “Utilities”

### **ECF Upgrade**

The upgrade to ECF version 3.3 is now in effect.

### **Message from Clerks Office**

Please **do not=2 0modify** the fixed text in a local bankruptcy form (LBRs 1001.1.F. and G.)! If adequate room does not exist in any area, attachment pages may be added to the end of the form for inclusion of essential text.

### **Debtor-Creditor Section Website**

An archive of these court updates is maintained on the Debtor-Creditor Section website at <http://www.osb-dc.org/orb.htm>.