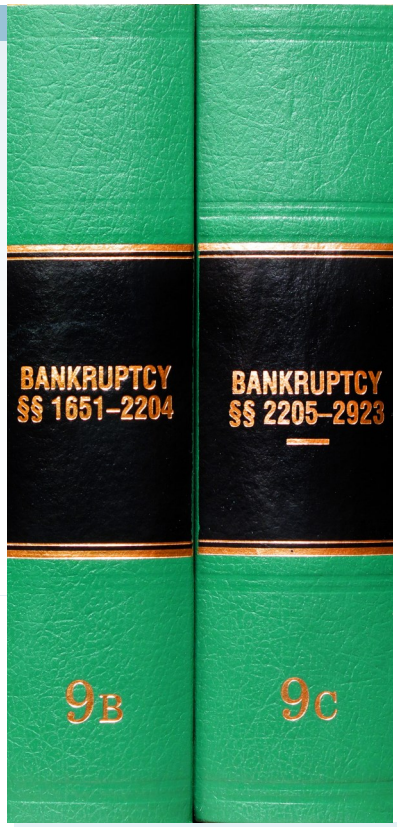
Fall 2022

Bankruptcy Court Liaison Committee Newsletter



Foreword from the Co-Chairs
Peter C. Bastianen and Desirae Bedford

Dear Bankruptcy Colleagues:

In August 2022, we welcomed 8 new members to the committee, which consists of commercial and consumer bankruptcy practitioners, judges, clerks and trustees in the Northern District of Illinois. We would like to thank our members for their continuing efforts to make the committee a useful and productive organization. We remain committed to promoting communication between the Bankrupty Bar and the Court on issues in Chapter 7, 13, 11, as well as appeals, diversity and other issues affecting our practice. Our LinkedIn page is frequently updated with new information, and we encourage anyone who does not already follow the page to do so (see Announcements on page 12). On behalf of the committee, we wish you a safe, happy and healthy end of 2022 and look forward to 2023. We hope you enjoy this edition of the newsletter.

Sub-Chapter V Trustee Neema T. Varghese

Ms. Varghese is a seasoned financial advisor with over 15 years of experience in complex situations involving liquidity management, transaction advisory services and turnarounds. Her experience as an adviser to both creditors and debtors in bankruptcy proceedings makes her a natural fit for the role of sub-chapter V trustee. Ms. Varghese was kind enough to answer some questions about sub-chapter V.

Q. What are your views on the debt limits in sub-chapter V?

A. I think the original limit 2.75 million was too low, the current $7.5million is better, but in my view it should be even higher, about 10-12 million, because more businesses would qualify for relief.

Inside this Issue

Co-Editors

Peter C. Bastianen
Codilis & Associates, P.C.

Julia Jensen Smolka
Robbins Dimonte

Sub-Chapter V Trustee Neema T. Varghese continued

Q. What do you think are the most important issues when filing a sub-chapter V case.

A. I think debtor's counsel should have a good idea of what the plan is going to look like at filing. Not quite a pre-packaged bankruptcy, but if possible, a solid understanding of the financial situation and what amounts are realistically available to pay creditors. This often allows the process to move in that direction and not miss critical deadlines.

Also, communication between the debtor, creditors and the trustee is key to a successful sub-chapter V. The sub-chapter V trustees are well-informed and are there to help. Sending a draft of certain motions before filing to the trustee and U.S. Trustee often alleviates the need for amendments later.

Q. Is there anything else you would like to address?

A. Payment of Trustee fees. In other jurisdictions, there is an immediate carveout in the cash collateral order or a retainer/interim procedures order that allows payments to the trustee throughout the case. Trustees do not want to have to engage in collection activities to get their fees paid. I would like to see something similar in our district.

Debt Limits Increase for Chapter 13 Cases

On, June 21, 2022, President Joe Biden signed the Bankruptcy Threshold Adjustment and Technical Corrections Act which increased the debt limits of chapter 13 bankruptcy proceedings to a combined total of $2,750,000. Previously, the Bankruptcy Code limited chapter 13 eligibility to individuals with unsecured debts of no more than $465,275 and secured debts of no more than $1,395,875. Additionally, under the new law, debtors no longer are required to limit debts in specific categories as secured and unsecured. Total combined unsecured and secured non-contingent, liquidated debts need only not exceed $2,750,000 to be eligible for chapter 13.

Debt Limit Increase for Chapter 13 Cases continued

These changes to the eligibility requirements for a chapter 13 filing are important given that real estate property values, student loans, and credit card obligations are at all-time highs across the country. The increase in the chapter 13 debt eligibility limits allows small business owners and consumers with large mortgages to qualify for chapter 13, which are far simpler and more economical than traditional or "sub-chapter V" chapter 11 cases. Individuals with both consumer and business debt are eligible to file under chapter 13 as long as the debt limits are met.

The revised debt limit for chapter 13 debtors expires on June 21, 2024, after which the eligibility limits for chapter 13 filings will revert to the prior amounts absent extension by Congress. Significantly, the Act was adopted by unanimous consent in the Senate. Who thought the politicians could agree on anything? And in the House, the bill passed with overwhelming bipartisan support of 392 for and only 21 against. This strong support signals that the debt limits may well be extended again or made permanent before the bill sunsets.

Student Loan Bankruptcy Bill

On October 6, 2022, House Judiciary Committee Chairman Jerrold Nadler (D-NY) and Congressman David N. Cicilline (D-RI), Chair of the Subcommittee on Antitrust, Commercial, and Administrative Law, introduced a bill that would give Americans overwhelmed by student loan debt the option of obtaining meaningful bankruptcy relief. *The Student Borrower Bankruptcy Relief Act of 2022* would eliminate the section of the bankruptcy code that makes private and federal student loans nondischargeable, allowing these loans to be treated like nearly all other forms of consumer debt.

"Americans across the nation are facing crushing student loan debt that is preventing them from purchasing homes and living the true American dream. We must ensure that Americans are able to invest in their education and then go on to live quality lives without the cloud of rising debt hanging over their heads. I am pleased to introduce the bipartisan Student Borrower Bankruptcy Relief Act of 2022, which is a positive step in that effort. This legislation updates the federal bankruptcy code to ensure student loan debt is

treated like almost every other form of consumer debt that can be discharged in bankruptcy," said Chairman Nadler.

"Far too many people across the country have been forced to take on massive and often insurmountable debt to pay for education," said Congressman Cicilline. "The system is clearly broken and needs massive reform. A college education cannot be a privilege just for the wealthiest few, but rather must be accessible to every student who wants to further their studies and pursue the career path of their choosing."

Most forms of debt, such as credit card debt and medical debt, can be discharged through the bankruptcy process. Only a limited number of debts, such as child support payments, alimony, overdue taxes, and criminal fines, are treated as nondischargeable in bankruptcy. Current federal law also makes student loan debt nondischargeable except in extremely rare cases.

Student debt has not always been given special exemption by the bankruptcy code. Prior to 1976, federal and private student loan debt were both fully dischargeable. Congress then began steadily narrowing the grounds upon which student loan bankruptcy relief could be granted until, in 1998, federal student loans were made completely nondischargeable absent a showing of "undue hardship" which courts have construed to be nearly impossible to demonstrate. In 2005, Congress also made private student loans nondischargeable in bankruptcy. As a result, student borrowers who find themselves unable to repay their loans are now saddled with this debt for life.

Forty-eight million Americans owe more than $1.75 trillion in student loan debt. Cumulative student loan debt has surpassed credit card debt to become the second largest category of private consumer debt after mortgages, and student loan debt is the fastest growing segment of U.S. household debt, increasing by 263 percent since 2006. Nondischargeable student debt is constraining the career and life choices of student borrowers, and analyses by the Federal Reserve show that the student debt burden is affecting the broader economy.

Since this country's founding, Americans have had the ability to start over through bankruptcy. Filing for bankruptcy is not a step that student borrowers would take lightly, and the strict means test for bankruptcy filing that Congress imposed in 2005 would ensure that borrowers who have the means to repay student debts cannot simply liquidate them in bankruptcy. However, for those student borrowers who have no realistic path to pay back their student loan debt burden, bankruptcy should be available as an option to help them get back on their feet.

https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=5066

Credit Abuse Resistance Education (C.A.R.E.)

Credit Abuse Resistance Education (C.A.R.E.) is a nationwide, all-volunteer organization that teaches basic financial literacy to high school students and adults. The Chicago chapter of CARE is particularly robust. CARE's volunteers present primarily to high school students throughout the Chicagoland area, both remotely and in-person. CARE also presents to community and professional groups. CARE provides a brief training seminar to volunteers, who may sign up to give presentations at their convenience. At the onset of the pandemic in 2020, CARE made an abrupt pivot into "virtual" presentations to carry on the vital wok of spreading financial literacy. The organization's website, recently updated, and found at www.carechicago.org, houses presentations and quick access to schools and groups wanting to invite CARE to present. Presentations, which run 40 minutes to an hour, cover student loans, credit basics, credit scores and reports, identity theft, budgets and savings, and bankruptcy. CARE also publish a weekly newsletter through which it solicits volunteers for upcoming presentations. Volunteer opportunities are currently available for presentations on various topics. If you are interested in volunteering with CARE, please submit a volunteer application from www.carechicago.org.

Attorney Spotlight

In order for our readers to become better acquainted with fellow members of the bankruptcy community in the Northern District of Illinois, the committee will spotlight two attorneys in each newsletter.

Carolina Y. Sales

Partner

Bauch & Michaels, LLC

Q. How did you become interested and involved in bankruptcy?

A. I was working as a law clerk at Bauch & Michaels, LLC in the fall of 2005, and two of the matters we were working on were bankruptcy related: (1) representing defendants in adversaries filed by a trustee for the estate of a Chicago department store group and (2) a chapter 7 for a bariatric surgeon and a nurse filed on October 16, 2005, the day before BAPCPA's effective date. I was licensed to practice in Illinois three weeks later, and there was a lot of trepidation in the legal community about BAPCPA. In addition, the pre-BAPCPA chapter 7 later involved an adversary and appeal. I was also in the process of obtaining an LL.M. and took a bankruptcy course that was co-taught by a local bankruptcy attorney and a former bankruptcy judge.

Q. What are your typical types of engagements?

A. We typically represent small businesses and individual small business owners and professionals in connection with their debt-related issues.

Q. What are you most looking forward to this year, personally and professionally?

A. I'm running for another four-year term on the District 64 school board for the April 4, 2023 consolidated election and look forward to working to improve the district. Professionally, I'm excited about the addition of two attorneys to our firm within the next several months and learning more about e-discovery.

Q. Share any other information about yourself that you think our readers would enjoy.

A. The attorneys at Bauch & Michaels learned early on to stop asking, "What's wrong?" Despite my resting facial expression, I'm most likely not really angry or annoyed—that's just my unintentionally glum face!

Jeffrey K. Paulsen

Partner

FactorLaw, Ltd.

Q. How did you become interested and involved in bankruptcy?

A. During and after college, I worked for a company that made bankruptcy forms preparation software. When the 2005 amendment was passed, I was heavily involved in updating the software to comply with the new law. I spent a lot of time at CLEs learning from law professors and lawyers, and I decided to go to law school myself. I've stayed on the bankruptcy path ever since.

Q. What are your typical types of engagements?

A. My practice has ranged quite a bit. In the past couple of years, I have done a lot of work for trustees, investigating and collecting estate assets. But I've also worked on chapter 11s and 7s for individuals and businesses, both debtors and creditors.

Q. What are you most looking forward to this year, personally and professionally?

A. Several people close to me, both at home and at work, have taken on new roles recently. It's been great seeing them grow into their roles, and I'm looking forward to helping them meet their goals and take things to the next level in the year to come.

Q. Share any other information about yourself that you think our readers would enjoy.

A. My current non-work obsession is backpacking. I've been fortunate to have camped in the backcountry of several national parks, and I'll be returning to Death Valley this Winter. I'd recommend the hobby to any lawyer. Our wild places often have little or no cell phone coverage, so it's a great way to disconnect and reset.

Catching up with Chapter 13 Trustee Glenn Stearns

Glenn Stearns just celebrated 23 years as the collar county Chapter 13 Trustee. Prior to becoming a 13 trustee, Glenn was finance manager for an electrical apparatus supply wholesaler and, interestingly, even spent a bit of time working at a payday loan store until his "conscience got to him." Glenn was kind enough to answer some questions about his role as a trustee.

Q: Given your non legal background, what led you to the bankruptcy field and becoming a 13 trustee?

A: I'm a trustee all because I ignored my boss's directive at the time (because he was wrong!). A company who wasn't paying my employer filed a Chapter 11, and my boss told me to write it off. Instead, I went to the creditors meeting, and as the only suit in the room I was elected as chairman of the creditors committee. I was chairman a few more times in other Chapter 11s and from there I made connections that eventually led to me being asked to apply to be a trustee. The elements of being a trustee that can get you into trouble are all on the financial side, so since that's my background, it is a really good fit.

Q: What is your view of the role of the trustee in the chapter 13 process?

A: It is in the code that the trustee is supposed to help debtor execute their plans, so it's an important role. We try to help the honest but unfortunate debtors get through the process and dismiss the ones that are playing games. We are supposed to make the process work better. We are also making sure the unsecured creditors get what they are legally entitled to and help debtors get a fresh start while not squeezing every drop of blood out of them.

Q: What do you think of the national model form chapter 13 plan?

A: It's funny you say "national" because it's not national. I think there should be a uniform plan. To quote Judge Goldgar "it's just a form" and the debtors can accomplish anything they want to accomplish under the code on that form. It was amusing, and at the same time frightening, to see everyone's reactions to the idea that they would have to use a form plan. Some Trustees thought the world would literally stop spinning if they had to use the form plan, but the world hasn't stopped spinning, right? But only around 10% of districts use it. I'm 100% in favor of a form plan. Whether it's the one we had we had before, or this current one. As long as it is uniform and required. Also, ideally it could be a little clearer (such as the recent Judge Cleary decision of whether a paragraph means all of part 3, and not just section 3.1).

Q: What are your views on pot plans v. percentage plans?

A: I'm not a big fan of a 1% plan - if you want one file a Chapter 7. But a debtor can propose a plan and I'll administer it if it meets the code. We have a culture in this district of a minimum 10% plan, but I don't have a feeling one way or otherwise. If it's a 1% plan you better be kicking in refunds and have a defendable budget. It all comes down to the honest and unfortunate debtor with tough facts.

Q: Is there any preferred language you would like to see in proposed orders on common motions?

A: Everyone should spend some time in Judge Goldgar's court room and hear what he has to say about orders. If it's a 1329 order, be precise. Err on the side of over explaining things. I have to administer that order. Don't assume everyone understands what you mean or your intent. Read Judge Doyle's Guidelines for Proposed Orders too, it's on her website and on mine.

Q: Should student loans be dischargeable?

A: Of course, they should. A never-ending spigot of money has created a huge imbalance in the market where universities know they have an unlimited flow of money so they can raise prices as much as they want. It's not a fair and efficient marketplace.

Q: Is there anything new coming down the pike from your office?

A: We expect zoom meetings to be a permeant fixture going forward for 341s.

Q: What do you want attorneys to know who file cases in your office?

A: There are a hundred things I could say. Proofread

before filing. File your plan on day one but if you don't you have to give notice! Read rule 3015(d) and follow it. Give notice to DSO creditors and not just the state. Please only use the standard notice IRS/IDOR addresses. Double check math. Give notice to the count treasurer if there is no escrow. Show us how you calculate line 8 self-employment income, don't just send me bank statements! Prepare clients for 341 meetings. Speaking of 341 meetings, all I need to make me happy is taxes and pay advices at least a week before the meeting and a legible id and ss card. Then I'm a happy camper. Wow, I could go on, how much time do you have?

Q: What is a trend that you see in practice currently that you wish you could change?

A: 3015(d) and DSO. I think some firms do that [lack of noticing DSO recipient] intentionally. I understand sometimes the DSO creditor is from years ago and the debtor hasn't had contact with that person. They may be unable to locate them, as they have just been paying the state directly. I get that sometimes it's impossible to find out the information. But that's only 5% of the time.

Q: Is there anything else you want people to know?

A: I have the best job ever and the best staff in the world because they make this the easiest job I've ever had. I want that in there. This is what I want for my closing line because it's true. Also, we publish our intentions regarding the cases online. READ THAT. I wish everyone would read it. We are trying to make your life easier. You don't have to just email us and ask. Just look at the website. It's all there.

Opinion Summaries: Decisions by the Bankruptcy Judges of the Northern District of Illinois March 2022 to October 2022

Chief Judge Goldgar

In re: Garcia, 22 B 00130 (unpublished) (03/07/22). Mortgage lender filed foreclosure against commercial property owned by debtors and state court appointed a receiver. Debtors filed three bankruptcy cases that stayed foreclosure. In third case, mortgage lender filed motion for stay relief pursuant to §362(d)(4) seeking recordable

order that would prevent stay from going into effect with respect to commercial property in any bankruptcy case filed for two years. Court granted mortgage lender's motion because record showed that debtors' three bankruptcy cases were a scheme to hinder or delay mortgage lender from completing foreclosure. Court denied debtors' motion to compel receiver to turnover property, and granted receiver's motion to excuse turnover requirements because, having granted stay relief, mortgage lender had a presumptive right to possession under Illinois foreclosure law.

In re: Krihak, 637 B.R. 610 (03/14/22). Chapter 11 debtor filed a motion to reopen closed case in order to file a motion requesting the entry of a discharge. Motion requested that Court waive $1,167.00 filing fee. Court denied motion because legislative history regarding Bankruptcy Court Miscellaneous Fee Schedule clarified that filing fee must be paid.

In re: Cashion, 2022 Bank. LEXIS 1098 (04/21/22). Creditor in a chapter 7 case filed motion for agreed order declaring debt procured by fraud non-dischargeable pursuant to §524(c). Court denied motion because only way for a debt procured by fraud to survive discharge is via a reaffirmation agreement or adversary proceeding. Subsequently, a reaffirmation agreement was filed, debtor obtained a discharge, and then timely rescinded reaffirmation agreement. Creditor then brought a motion pursuant to Fed. R. Bankr. P. 60(b) that Court's denial of its prior motion for agreed order declaring debt non-dischargeable was legal error. Court denied motion because even if there was legal error, which there was not, legal error is not grounds for relief under Rule 60(b). Creditor's recourse was to appeal denial of prior motion for agreed order. Having failed to appeal, Creditor could not obtain relief under Rule 60(b).

In re: Kenneth Fixler, 21-00215 (unpublished) (07/22/22). Creditor in chapter 7 case filed two-count adversary to declare debt non-dischargeable under §523(a)(2) and (4). Debtor filed motion to dismiss for failure to plead fraud with particularity and failure to state a claim. Court granted motion because allegations of fraud were made on information and belief, and allegations that debtor was a fiduciary were insufficient to state a plausible claim.

Stryjewski v. Javalera, 642 B.R. 451 (08/31/22). Plaintiff mother of a child diagnosed with shaken baby syndrome filed adversary against defendant owners of day care that cared for child when symptoms originated, seeking to

except debt from discharge pursuant to §523(a)(5) for willful and malicious injury. Owners moved for summary judgment. Court granted motion because owners denied causing injury and mother presented no evidence that owners caused injury.

In re: Douglas, 22-00054 (unpublished) (09/14/22). After chapter 7 debtor obtained a discharge, an unscheduled creditor filed quiet title action in state court alleging that debtor, a notary, fraudulently notarized a living trust and quitclaim deed that transferred real property to transferee. Before trial in the state court, creditor reopened bankruptcy and filed nondischargeability adversary pursuant to §§523(a)(2) and (6). Debtor moved to dismiss for failure to state a claim. Court granted motion to dismiss because complaint failed to allege facts sufficient to support creditor's conclusion that debtor engaged in a conspiracy or fraud. Dismissal was without prejudice; Court granted creditor leave to amend adversary complaint.

Judge Baer

In re: Mukenschnabl, 643 B.R. 218 (09/08/22). Plaintiff, a former business partner of chapter 7 debtor, filed adversary to declare $400,000.00 state court judgment against debtor nondischargeable pursuant to §§ 523(a)(3), (4) and (6). Debtor answered and plaintiff moved for summary judgment. Court granted summary judgment pursuant to collateral estoppel because (a) record of state court proceedings were sufficient to establish that there were no issues of material fact that could be re-litigated by debtor in adversary and (b) elements of nondischargeability had been met.

In re: LB Steel, LLC, 2022 Bankr. LEXIS 2894, (10/11/22). Chapter 11 Unsecured Creditors Committee filed adversary against one of debtor's creditors pursuant to §§547 (b), 550(a) and 502(d) seeking to avoid and recover $252,393.00 in allegedly preferential payments made by debtor to creditor within 90 days of filing bankruptcy. Sole issue was whether debtor was insolvent during 90 day preference period. Following trial, court found that creditor's expert's opinion that debtor was solvent when preferential payments were made unjustifiably disregarded a contingent liability of debtor on another debt that was the subject of pending litigation. Court concluded that debtor was insolvent when preferential payments were made and ordered creditor to pay debtor's estate $252,393.00.

Judge Barnes

In re: Propst, 637 B.R. 489 (03/04/22). Debtor filed chapter 7 case using an attorney which discharged and closed. Four years later, different attorney representing debtor moved to reopen case for purpose of prosecuting a motion to avoid judicial lien against debtor's real property under §522(f). Following a series of procedural problems, Court reopened case and granted motion to avoid judicial lien. Shortly thereafter, creditor whose judicial lien had been avoided filed motion to reconsider. Following more procedural problems, Court granted motion to reconsider because, based on value of property and balance owed on only other lien against property (a mortgage) as alleged by debtor, there was value to support judicial lien rendering it unavoidable. A year and a half later, a third attorney representing debtor moved to reopen case for purpose of prosecuting motion to avoid judicial lien again, alleging that when case was originally filed, value of debtor's real property was less than what was listed in original schedules. Court reopened case again, but denied motion to avoid judicial lien, this time with prejudice, because debtor was not entitled to relief under Fed. R. Bankr. P. 60 and law of the case doctrine.

In re: Spiegel, 638 B.R. 606 (03/11/22). Creditor in chapter 11 case filed proof of claim based on draw on letter of credit in excess of $1,000,000.00. Debtor objected to claim arguing that creditor improperly honored draw without strictly complying with terms of letter of credit. Specifically, debtor argued that terms of letter of credit required a certified copy of a state court order/opinion issued in underlying litigation to be supplied to creditor, and that creditor improperly honored draw based on a non-certified copy of order/opinion. Court overruled objection to claim because debtor offered insufficient authority in support of objection and therefore failed to sustain burden to overcome prima facie presumption that claim was valid.

In re: Carter, 638 B.R. 379 (03/30/22). Chapter 13 debtor confirmed a plan that required debtor to supply copies of income tax returns received while case was pending and pay tax refunds to trustee. In 2018 and 2019, debtor failed to supply copies of tax returns and trustee filed motions to dismiss. In response, debtor supplied tax returns showing refunds, but argued refunds were exempt from being paid to trustee because they were the result of tax credits. Trustee then withdrew motions to dismiss. In 2020 and 2021, debtor supplied trustee with copies of tax returns showing refunds again. However, trustee did not

move to dismiss at that time. Instead, trustee filed motion to dismiss toward very end of maximum 60-month plan term based on failure pay trustee tax refunds for all prior years. Unable to pay amounts allegedly due within 60 months, debtor filed motion to modify plan to excuse non-compliance. Noting problems with arguments on both sides, Court denied trustee's motion and granted debtor's motion pursuant to §105 and Fed. R. Civ. P. 60 (b)(5).

Judge Cassling

Renew Packaging LLC v. Camilo Andres Ferro, 639 B.R. 498 (04/04/22). Creditor obtained an arbitrator's award for damages against debtor based, among other things, on tortious interference with prospective economic advance. Arbitrator's award was confirmed by state court. Debtor then filed chapter 7 case and creditor filed adversary to declare debt non-dischargeable pursuant to §523 (a)(6). Debtor answered and creditor filed motion for summary judgment. Court granted summary judgment based on collateral estoppel effect of state court judgment, directed creditor to file motion requesting state court to clarify which portion of its judgment for damages applied to tortious interference claim, and held that the designated portion would be non-dischargeable.

Martino v. Shakir, 643 B.R. 203 (09/06/22). Chapter 7 trustee filed six count amended adversary for declaratory judgments that debtor's LLC's were alter egos and that debtor was equitable owner of trust assets and certain financial accounts held in name of debtor's spouse. Debtor moved to dismiss for failure to state a claim. Court denied motion because amended complaint alleged facts sufficient to state a plausible claim, trustee's legal theory (reverse veil piercing) was viable under Illinois law and trustee had standing to assert claim on behalf of all creditors.

In re: Zambrano, 22-04462 (unpublished) (10/07/22 amended 11/03/22). Chapter 13 debtor entered into Court-Approved Retention Agreement ("CARA") with attorney. CARA authorizes a flat fee of $4,500.00 without requiring a fee itemization. Only a portion of full fee was paid by debtor before case was filed. Balance of fee was to be paid to debtor's attorney through the plan. As a condition of representation, attorney also required debtor to sign wage assignment that allowed attorney to collect unpaid fees from debtor's wages if bankruptcy case was dismissed. U.S. Trustee objected to attorney's fee application. Court denied fees because wage assignment violated §526(a)(2) and Local Rule 5082-2 (C)(3). Court also sanctioned attorney by requiring attorney to disgorge fees in other cases in which wage assignment was used and complete an ethics course from an accredited law school.

Judge Cleary

In re: Tsanos, 22-00998 (unpublished) (04/29/22). Chapter 13 trustee filed motion to dismiss, with a 180 day bar to refiling, alleging debtor filed case in bad faith because he could not propose feasible plan, failed to file certain required documents, failed to make plan payments and failed to show an ability or willingness to reorganize. Following briefing, the court dismissed the case for cause but declined to impose a bar to refiling because the trustee did not meet her burden to show that case was filed in bad faith.

In re: Szafraniec, 21-10216 (unpublished) (05/27/22). Chapter 13 trustee objected to confirmation of plan alleging that plan was not proposed in good faith and debtor failed to contribute all projected disposable income. Following trial where the debtor was the only witness, court overruled the trustee's objection because debtor met his burden to show that plan was proposed in good faith and committed all his projected disposable income.

In re: National Tractor Parts, Inc., 2022 Bankr. LEXIS 1591 (06/06/22). Chapter 11 subchapter 5 debtor filed motion to modify confirmed plan pursuant to §1193(b) and UST objected. Section 1193(b) allows post-confirmation modification of a plan only if plan has not been "substantially consummated." "Substantial consummation" is defined in §1101(2). Only issue in dispute was whether there had been a "commencement of distribution under the plan" per §1101(2)(C). Debtor argued that there had not been a commencement of distribution under the plan because although it had commenced making payments to some creditors, it had not yet commenced making payments to all creditors. Lacking any binding authority, Court applied principles of statutory construction, held that distributions commence under a plan once any payment to any creditor has been made, and denied motion.

In re: Giannini, 21-13170 (unpublished) (07/27/22). Chapter 13 trustee filed motion to dismiss alleging, among other things, that proposed monthly plan was not feasible because debtor's schedules showed monthly expenses that exceeded net monthly income. Court construed trustee's motion to dismiss as an objection to confirmation and denied confirmation because, while negative net monthly disposable income is not necessarily dispositive of feasibility if there is a reasonable likelihood that debtor's income will increase or expenses will decrease, no such showing was made in this case.

In re: Cahill, 642 B.R. 813 (08/15/22). Creditor in chapter 7 case filed motion to compel trustee to comply with statutory duties under §704(a). Court granted motion in part and denied motion in part. Request that trustee provide information to creditor regarding decision to dismiss prior adversary to recover diamond transferred by debtor to her daughter granted because trustee had previously agreed to provide the requested information. Request to disqualify trustee's counsel due to alleged conflict denied because it was an impermissible collateral attack on order granting trustee's motion to employ counsel. Request for determination that estate contained a surplus denied because it was an impermissible request for an advisory opinion.

Friedman v. Harshfield, 22-00008 (unpublished) (09/16/22). Creditor in chapter 7 case filed 4 count adversary to declare debt non-dischargeable pursuant to §523(a)(2)(A), (a)(4) and (a)(6). Debtor moved to dismiss for failure to state a claim. Court granted motion to dismiss as to 3 of 4 counts, with leave to amend as set forth in opinion, and denied as to remaining count.

In re: Stamps, 2022 Bankr. LEXIS 2749 (09/30/22). Following confirmation of chapter 13 plan, mortgage lender whose claim was treated in section 3.1 of plan obtained stay relief pursuant to previously entered order conditioning stay. Section 3.1 of national form chapter 13 plan contains following language: "If relief from stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan." Based on that language, trustee stopped paying city of Chicago's claim treated in section 3.2 of plan and secured by same collateral as mortgage lender's claim. City filed motion that trustee wrongly interpreted language contained in section 3.1 and should not have stopped paying city's claim in section 3.2. Court denied motion because plain meaning of language in section 3.1 required trustee to stop paying city's claim.

Judge Cox

In re: Green, 637 B.R. 605 (03/09/22). Chapter 7 debtor claimed exemption pursuant to 735 ILCS 5/12-1006(a) in retirement plan created or organized in Canada. Trustee objected to exemption. Court sustained objection and disallowed exemption because exemption applies only to retirement plans created or organized in United States.

In re: Helmsetter, 639 B.R. 449 (05/19/22). Before he filed a chapter 7 bankruptcy, debtor retained law firm to prosecute state law claim and signed retainer agreement. Debtor then filed bankruptcy and chapter 7 trustee settled state law claim. Law firm retained by debtor filed a proof of claim in the bankruptcy case for approximately $220,000.00 based its retainer agreement and asserted that approximately $166,500.00 of claim was secured pursuant to Illinois Attorney's Fees Lien Act. Trustee filed adversary against law firm to invalidate attorney fee lien and limit law firm's recovery of fees. Law firm filed motion to dismiss for failure to state a claim. Court denied motion because trustee's complaint stated a plausible claim that attorney fee lien was invalid and that recovery of law firm's fees should be limited.

In re: 318 Retail, LLC, 640 B.R. 407 (05/27/22). State court receiver in domestic relations case sought to respond to an involuntary bankruptcy petition filed by creditor against debtor. Court held that receiver could move to intervene or dismiss involuntary petition but could not answer or otherwise contest involuntary petition because §303(d) and Fed. R. Bankr. P. 1011(a) only allow debtors and non-petition general partners of debtors subject to an involuntary petition to do so.

In re: Renee Julia Liss, 10-11690 (unpublished) (07/21/22). Chapter 7 debtor filed motion to reopen bankruptcy case and motion avoid a creditor's judgment lien. Creditor filed objection to motion. Following evidentiary hearing where debtor was the only witness, Court granted motion to avoid lien because creditor failed to meet its burden that debtor's homestead exemption was improperly claimed and that value of property was sufficient to prevent its judgment lien from being avoided.

In re: 318 Retail, LLC, 22-02485 (unpublished) (07/28/22). State court receiver in domestic relations case filed motion to dismiss involuntary bankruptcy petition filed by creditor against debtor, or in the alternative that bankruptcy court abstain. Court denied motion because the issue of whether case was eligible for involuntary bankruptcy relief was waived and relevant factors weighed against absention. State court case involved many creditors and had been pending for 11 years. Bankruptcy case involved only one creditor, and that creditor's collateral was likely to be liquidated more quickly in bankruptcy case than in state court domestic relations case.

In re: Petti, 19-00592 (unpublished) (08/31/22). Creditor in chapter 7 case filed adversary to declare $600,000.00 debt non-dischargeable under §§523(a)(2)(A), (a)(4) and (a)(6). Following trial, Court entered judgment in favor of debtor because creditor failed to show that debtor made false representation, that a fiduciary relationship existed or that debtor's mere breach of contract constituted a deliberate or intentional injury.

Judge Doyle

In re: Taylor St. John, 22-02548 (unpublished) (09/30/22). Chapter 13 debtor entered into Court-Approved Retention Agreement ("CARA") with attorney. CARA authorizes a flat fee of $4,500.00 without requiring a fee itemization. Only a portion of full fee was paid by debtor before case was filed. Balance of fee was to be paid to debtor's attorney through the plan. As a condition of representation, attorney also required debtor to sign wage assignment that allowed attorney to collect unpaid fees from debtor's wages if bankruptcy case was dismissed. Court denied fees because wage assignment violated Local Rule 5082-2(C)(3).

Judge Hunt

In re: Mauriello, 18-00290 (unpublished) (04/27/22). Debtor's employer agreed to loan debtor $85,000.00 to largely pay off balance owed by debtor's fiancé on a mortgage against debtor's fiancé's residence. Employer wrote $85,000.00 check payable to mortgage lender. Debtor delivered check to fiancé who delivered it to mortgage lender. Debtor did not repay any of the $85,000.00 to employer. About 3 years later, debtor filed chapter 7. Trustee filed adversary to avoid and recover the $85,000.00 pursuant to §§544, 550 and Illinois Fraudulent Transfer Act. At trial, debtor asserted Fifth Amendment privilege due to a pending related criminal matter and refused to testify. Following trial, Court entered judgment in favor of debtor because trustee did not demonstrate that debtor had sufficient control over the $85,000.00 to establish an avoidable transfer under bankruptcy law or fraudulent transfer under Illinois law.

In re: Sorensen, 11-33448 (unpublished) (07/13/22). Chapter 7 debtors who had obtained discharge reopened bankruptcy case and filed motion for civil contempt against creditor (an individual) and creditor's counsel alleging that post-discharge state court collection actions on prepetition debts violated discharge. Following a contested hearing, Court granted motion because collection actions were willful violations of discharge and awarded punitive damages, attorney fees and injunctive relief.

In re: Channel Clarity Holdings LLC, 21-00111 (unpublished) (07/18/22). Chapter 11 subchapter 5 debtor filed adversary against unsecured creditor pursuant to §510(b) to subordinate unsecured creditor's claim to other unsecured claims. Following trial, Court entered judgment in favor of unsecured creditor because debtor failed to establish that unsecured creditor's claim arose from purchase or sale of securities of debtor or an affiliate of debtor.

In re: Channel Clarity Holdings LLC, 21-07972 (unpublished) (07/19/22). Chapter 11 subchapter 5 debtor sought confirmation of proposed plan over objection of its largest unsecured creditor and a minority shareholder. Following a contested hearing, Court denied confirmation because proposed plan did not meet requirements for nonconsensual confirmation under §1191.

In re: Montilla, 22-02585 (unpublished) (10/12/22). Chapter 13 debtor converted to chapter 7 before a plan was confirmed. Debtor's attorney sought court order directing chapter 13 trustee to pay attorney fees with funds paid into the proposed chapter 13 plan before the case was converted. Trustee objected, citing U.S. Supreme Court decision in *Harris v. Viegelahn*, 525 U.S. 510 (2015) which held that pursuant to §348(f) a debtor who converts to chapter 7 is entitled to return of any postpetition wages not yet distributed by the chapter 13 trustee. Debtor's attorney attempted to distinguish *Harris* because that case involved a post-conversion creditor seeking payments from the trustee, as opposed to an administrative claim for attorney's fees which the attorney contended was governed by §1326(a)(2) not §348(f). Court denied attorney's request that fees be paid by the trustee, adopting the majority view that funds held by chapter 13 trustee in a case converted to chapter 7 are not available to pay any claims, including administrative claims, because

funds are no longer property of the now-terminated chapter 13 estate. Subsequently, Court granted debtor's motion to certify direct appeal to 7th Circuit.

Judge Lynch

In re: Gelb, 2022 Bankr. LEXIS 858 (03/31/22). U.S. Trustee brought adversary against debtor's attorney alleging violations of various obligations imposed on debtor's attorney by Bankruptcy Code. Debtor's attorney failed to properly answer or respond to complaint. Court entered default judgment against debtor's attorney and ordered injunctive and other relief.

Judge Thorne

In re: Galloway, 18-04903 (unpublished) (04/05/22). In chapter 13 cases in the Northern District of Illinois, a discharge order is customarily entered shortly after the chapter 13 trustee completes an audit of the case and files a notice of completion of plan payments. In this case, 25 weeks after debtor had completed plan payments, the trustee had not yet completed an audit of the case, so no notice of completion of plan payments had been filed, and no discharge had been entered. Debtor brought a motion to compel the entry of a discharge order. Court granted motion, entered discharge order, and drafted a sample form "Certification of Plan Completion" to be used in other cases in support of a motion to enter a discharge order, when appropriate.

In re: Kubin, 2022 Bankr. LEXIS 1371 (05/09/22). Four years after chapter 7 bankruptcy case was discharged and closed, creditor's motion to reopen case was granted and creditor filed four-count adversary to declare debt non-dischargeable, or in the alternative to revoke debtor's discharge. Debtor filed motion to dismiss. Court granted motion in part and denied motion in part. Motion to dismiss counts to declare debts non-dischargeable denied because creditor alleged facts sufficient to plausible claims that debt was non-dischargeable. Motion to dismiss count to revoke debtor's discharge granted because it was untimely pursuant to §727(e)(1).

In re: Argon Credit, LLC, 2022 Bankr. LEXIS 2543 (09/15/22). Court granted plaintiff consumers' motion for class certification in adversary filed by consumers against debt collector because plaintiff class was ascertainable, and requirements of class certification pursuant to Fed. R. Civ. P. 23(a) (numerosity, commonality, typicality and adequacy of representation) and 23(b) (predominance and superiority) were all met.

In re: Nakhshin, 2022 Bankr. LEXIS 2715 (09/28/22). Chapter 7 debtor who owned two parcels of real estate in joint tenancy with non-filing spouse died shortly after filing case. Chapter 7 trustee filed motion and adversary to sell real estate. Court denied motion to sell because estate's interest in properties transferred to debtor's non-filing spouse upon death, so properties were no longer properties of bankruptcy estate and therefore could not be sold by trustee. Adversary closed as moot.

In re Knight, 20-00096 (unpublished) (10/11/22). Chapter 7 trustee filed 3 count adversary complaint against debtor's spouse pursuant to §§ 548(a)(1)(B), 550 and 502(d) seeking to avoid and recover an allegedly fraudulent transfer of $375,000.00 made by debtor to his spouse for less than reasonably equivalent value while debtor was insolvent. Spouse filed motion to dismiss for failure to state a claim alleging debtor was not the transferor and spouse was not the transferee because the transfer was made between accounts held in the name of other entities. Court denied motion to dismiss and ordered spouse to file an answer because the complaint stated plausible claims for fraudulent transfer. Court denied spouse's request to treat motion to dismiss as a motion for summary judgment in the alternative.

ANNOUNCEMENTS

If anyone has ideas for rules changes or possible modification of administrative procedures that they believe would improve the efficiency of the court functioning please submit those to the BCLC portal on the court's website or by emailing to either co-chair.

Stay in touch! Follow the Liaison Committee on **LinkedIn** to receive all the latest news and announcements: http://www.linkedin.com/company/ilnb-bclc

The BCLC formed a diversity committee in 2021 and will be seeking to continue to increase the diversity of our committee with the new members beginning their terms in August 2023.

With that in mind please consider applying or nominating someone you know beginning June 1, 2023.

You may send a letter of application and resume or CV to any of the attorney members via email who will pass it on to either of the co-chairs.

Mission Statement

The Bankruptcy Court Liaison Committee for the Northern District of Illinois was formed to assist the Bankruptcy Court and its practitioners to create a more efficient and collegial environment throughout the entire Northern District of Illinois. To further that purpose, the Liaison Committee publishes a periodic newsletter, develops local practice questionnaires, and sponsors educational programs and social events to encourage interaction among judges and practitioners. Additionally, section 2.01 of the Committee's bylaws provides that practitioners may relay issues, concerns, or complaints about bankruptcy judges or the bankruptcy court to the Committee – anonymously – through the co-chairs or any other committee member. The information will then be anonymously presented to the appropriate bankruptcy judges for review and consideration under 28 U.S.C. § 154(b), which provides that the chief judge of the bankruptcy court "shall ensure that the business of the bankruptcy court is handled effectively and expeditiously."

Practitioners wishing to share any issues, concerns, or complaints with the Committee may contact any of its Members anonymously via mail, email, phone, or on the Bankruptcy Court's website at: http://www.ilnb.uscourts.gov/bankruptcy-court-liaison-committee.

United States Bankruptcy Court
For The Northern District of Illinois

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Judge Timothy A. Barnes

Judge Donald R. Cassling

Judge David D. Cleary

Judge Jacqueline P. Cox

Judge Carol A. Doyle

Judge LaShonda A. Hunt

Judge Thomas M. Lynch

Judge Deborah L. Thorne

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Recovery Law Group

Gretchen Silver (Permanent Member)
Office of the U.S. Trustee (Chicago)

Paul M. Bach Term 2021-2023
Bach Law Offices , Inc.

Alexander F. Berk Term 2021-2023
Barack, Ferrazano, Kirschbaum & Nagelberg, LLP

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Legal Aid Chicago

Jamie Dowell Term 2022-2024
City of Chicago

Michael D. Leifman Term 2022-2024
Vedder Price, P.C.

Jennifer Neimeier Term 2022-2024
Office of the U.S. Trustee (Madison)

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Dentons US, LLP

Julia Jensen Smolka Term 2022-2024
Robbins Dimonte, Ltd.

Kenneth M. Thomas Term 2022-2024
Fox, Swibel, Levin & Carroll, LLP

Neema T. Varghese Term 2022-2024
NV Consulting Services