BANKRUPTCY LAW NEWSLETTER

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SECTION 1328(a) REVISITED

By Steven J. Carpenter *

The Chapter 13 discharge has now been around for so long complacency about its breadth has set in where once amazed disbelief did abound. "What about taxes?" "What about fines and student loans?" "Certainly not claims based upon embezzlement or armed robbery?" "Can drunk drivers causing damages use this?"

Many believed and still do that the policy judgment made by Congress in enacting the broad discharge provision under Chapter 13 to encourage debtors to pay such claims to the best of their ability over three years rather than having to live with them indefinitely was going too far, encouraging dishonest behavior. Others argue that holders of non-dischargeable claims seldom collect anything in any event and that Chapter 13 has provided an efficient tool for the settlement of these claims, a solution rather than an incentive.

Both Congress and the Courts have responded to those seeking to limit or rescind the Section 1328(a) provisions. The response has for the most part been measured, leaving for all practical purposes intact what, without much question, remains one of the most powerful and controversial provisions of the Bankruptcy Code.

Since many are still not sure as to what, if any, are the limitations upon the Chapter 13 discharge, let's take a look at Section 1328(a) a decade or so after its enactment.

Priority Tax Claims

Yes, priority tax claims are truly dischargeable in Chapter 13! The only hitch is that they are normally not discharged until the debtor has paid them due to Section 1322(a)(2) which requires as a mandatory plan provision the full payment of all claims entitled to priority under Section 507 unless the claimant otherwise agrees.

The interesting facet of constructing the Code in this manner is to leave open the possibility for the debtor to discharge Section 507 priority claims should the claimant not properly file its claim. [See In re: Goodwin, 58

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Bankr. 75 (B.Ct., D Me. 1986), and In re: Ryan, 78 Bankr. 175 (B.Ct. E.D. Tenn. 1987)]. Therefore, it is possible to discharge in Chapter 13 a priority tax claim which would be excepted from discharge in a Chapter 7 case under Section 523(a)(1).

This provision combined with other factors may be in part responsible for the turnaround made by the IRS in its responsiveness to bankruptcy proceedings. In any event, it is no longer very likely that a debtor will be the recipient of such a "windfall" due to the failure of the IRS to properly file its claim.

Another advantage to the debtor, however, arises from the fact that although Section 1322(a)(2) requires full payment of Section 507 priority claims, assuming they are properly filed, it makes no mention of present value. These claims may, therefore, be paid without interest unless required by the Section 1325(g)(4) best interest test [See In re: Christian, 8 C.B.C.2d 14 (B.Ct. D. N.M. 1982)].

Support

It is interesting that the only parallel dischargeability provision under Chapters 7 and 13 are found at Section 523(a)(5) by reason of the reference thereto in Section 1328(a). Certain debts for alimony, maintenance, or support assigned under the Social Security Act or to the federal government or to a state or political subdivision of a state which were dischargeable under the original provision of the Code are now rendered non-dischargeable in both proceedings by reason of Section 2334(b) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35 and amendments to Section 523(a)(5) by the Bankruptcy Amendments and Federal Judgeship Act of 1984.

Now such debts are subject to classification in Chapter 13 plans under Section 1322(b)(2) for payment in full or, in the alternative, may often be continued under nominal payment arrangements existing prior to the Chapter 13 proceeding for payment during and then subsequent to the plan under Section 1322(b)(5). See In re: Curtis, 2 Bankr. 43 (Bankr. W.D. Mo. 1979) wherein the Court concluded that a 100 percent classification for a support claim where 10 percent was proposed to other creditors was equitable given the non-dischargeable character of the claim. But, In re: Stewart, 52 Bankr. 281 (Bankr. W.D. N.Y. 1985) holding contra, the Court determined such classification to be unfair discrimination, congressional intent being to limit classification to co-signed debts as evidenced in the 1984 amendment to Section 1322(b)(1). The general and better reasoned approach is, however, to allow such classification assuming the Chapter 7 liquidation and other confirmation tests are met. [See In re: Davidson, 72 Bankr. 384 (Bankr. D. Colo. 1987) and In re: Haag, 3 Bankr. 649 (Bankr. D. Or. 1980)].

Student Loans

Student loans, even though government direct or guaranteed, are dischargeable in Chapter 13. This seems to come as a surprise to most individuals who, in spite of the Section 1328(a) language, assume some other statute must protect against this possibility.

The Courts are virtually uniform in properly concluding the dischargeability distinction between Chapters 7 and 13 as did the Court in United States v. Estus, 695 F.2d 311 (8th Cir. 1982). The Court in Powell v. State of Illinois, 29 Bankr. 346 (Bankr. D. Colo. 1983) determined invalid an Illinois statute declaring educational loans to be non-dischargeable by reason of the supremacy clause and its conflict with Section 1328(a). An attempt by debtor and a state commission to, in effect, agree to the long-term nature and, therefore, non-

dischargeability of a student loan was foiled by the Court in In re: Hayes, 73 Bankr. 2 (Bankr. S.D. Ohio 1987).

There exists only minor exception to the general rule regarding student loans. It is found at 42 U.S.C., Section 294f(g) which contains its own conditions for the non-dischargeability of Health Education Assistance Loans (HEAL), therefore rendering such claims non-dischargeable in Chapter 13 unless those conditions are met [See In re: Johnson, 787 F.2d 1179 (7th Cir. 1986), In re: Gronski, 65 Bankr. 932 (Bankr. E.D. Pa. 1986)].

The Bankruptcy Court in United States v. Cleveland, 89 Bankr. 69 (Bankr. 9th Cir. 1988) concluded that a determination of dischargeability under 42 U.S.C. 294f(g)(2) could not be made until five years from the date payments first became due under HEAL loans. Therefore, the claim would be treated with other unsecured claims, delaying determination by the Bankruptcy Court as to the dischargeability of the claim until after expiration of the five-year period.

Lest you forget, the good faith test upon confirmation under Section 1325(a)(3) is always a factor and although certain claims may be dischargeable, confirmation of plans proposing their discharge may be withheld by the Court. [See In re: Doersam, 849 F.2d 237 (6th Cir. 1988) (Confirmation denied for lack of good faith of plan proposing to discharge majority of debt 81 percent of which consisted of student loans)].

Fines, Penalties, and Criminal Restitution

Is criminal restitution a debt as defined at Section 101(4)? The Courts are split on this issue and little wonder since the only Supreme Court decision on the issue seems to take a duplicitous position. On the one hand, the Court that concluded that criminal restitution was excepted from discharge pursuant to Section 523(a)(7); on the other hand, it indicated criminal restitution was not likely a debt as defined in the Code. See Kelly v. Robinson, 479 U.S. 36 (1986).

Some Courts, including the Court of Appeals for the Third Circuit in In re: Lorraine Johnson-Allen, 871 F.2d 421 (3rd Cir. 1989), have taken to heart Justice Marshall's dissent in Kelly and concluded that since the Court in Kelly did find criminal restitution included within the Section 523(a)(7) exception to discharge that it must be considered to be a debt, otherwise no purpose would be served by including it within the exception. The same Courts generally conclude, in addition, that criminal restitution falls within the broad definition of debt provided in the Code; that the right to payment may be separate from the right to enforce payment (relying on In re: Robinson, 776 F.2d 35-36); that the Court in Kelly concluded that Congress excepted restitution obligations from discharge under Chapter 7 by virtue of Section 523(a)(7) precisely because restitution focuses on rehabilitation and punishment rather than compensation; that Section 523(a)(7) represents a codification of pre-code judicial law which Congress could have applied in Chapter 13 but chose not to do based upon the rehabilitative purpose of the Chapter; and that it is up to the Congress and not the Courts to cure any perceived defects in the legislation such as any impingement upon the principles of federalism. [See also In re: Cancel, 93 Bankr. 729 (Bankr. D. Col. 1988)].

Those Courts which conclude that such restitution obligations are non-dischargeable in Chapter 13 find them not to be debts within the meaning of the Code and as did the dissent in Johnson-Allen, supra, rely on the dicta and Marshall's dissent in Kelly, federalism arguments and doubts that Congress intended to affect "criminal judgments" in this matter. [See In re: Ferris, 93 Bankr. 729 (Bankr. D. Col. 1988) and In re: Norman, 95 Bankr. 771 (Bankr.

D. Col. 1988)]. Concluding that such obligations are not debts also preclu them from any share of the distributions in bankruptcy.

A solution might be found in a better case-by-case analysis of the particular obligation involved. If in fact the obligation is in the nature of a true fine or penalty to the State who may take action to collect it, the claim is without much question a debt which would be dischargeable in Chapter 13. If, on the other hand, the restitution is a pure condition of probation, the debtor being able to elect whether or not to pay, then there is arguably no "right to payment" and, therefore, no debt. Under these circumstances the restitution payment might be considered part of the debtor's budget in Chapter 13, reducing the disposable income available to other creditors in the plan.

What about hybrid situations or the argument that the probation contingency is the ultimate right of enforcement? Well, you folks will just have to refer to Kelly, supra, for your answer. Good luck!

One final note -- certain Courts have concluded that until the debtor has completed the plan that a determination as to the dischargeability of such obligations is not ripe for consideration. [See In re: Lorraine Johnson-Allen, supra, and In re: Henry, 858 F.2d 548 (9th Cir. 1988)]. In light of Bankruptcy Rule 4007(b) providing for the filing of such complaints other than under Section 523(c), "at any time", as well as the debtor's need to know the consequences of any proposed plan, the conclusion of the Courts in these cases appears not to be well founded.

Claims Based on Fraud, Embezzlement, Conversion, Larceny, Willful and Malicious Conduct and the Like

The challenges to the discharge of these types of claims in Chapter 13 have come primarily through objections under Section 1325 to the confirmation of plans which seek to compromise the claims on the grounds that such plans are lacking in good faith [Section 1325(a)(3)] and that they result in such claimants receiving less under the Chapter 13 plan than they would have obtained under Chapter 7 [Section 1325(a)(4)].

The Courts have for the most part concluded that the mere inclusion of debts which would be non-dischargeable under Chapter 7 for compromise in a Chapter 13 plan does not without other factors require a finding that the plan has not been proposed in good faith. Courts have uniformly concluded that the Chapter 7 analysis is strictly a liquidation test and would not include speculative collection after a non-dischargeability judgment and subsequent to or outside of the bankruptcy proceeding.

As to the liquidation test under Section 1325(a)(4), see In re: Rimgale, 669 F.2d 427 (7th Cir. 1982), In re: Syrus, 4 C.B.C.2d. 1172 (B.Ct. D. Kan. 1981), an In re: Marlow, 1 C.B.C.2d. 705 (B.Ct. N.D. Ill. 1980).

The law in this Circuit as it relates to the good faith standard has been pretty well defined. "A good faith determination under Section 1325(a)(3) requires an inquiry into all the facts and circumstances of a debtor's proposed plan", stated the Court in In re: Okoreeh-Baah, 836 F.2d. 1030, 1033 (6th Cir. 1988). The Court then specifically rejected the requirement of 100 percent repayment of a debt when debtor's pre-plan conduct in incurring that debt was "questionable". The Court stated that pre-petition conduct was only one element in the debtor's total circumstances and concluded that factors cited by Courts in Matter of Kull, 12 Bank. 654 (S.D. Ga. 1981), aff'd. Sub. Nom. In re: Kitchens, 702 F.2d. 885 (11th Cir. 1983), and In re: Estus, 695 F.2d. 311, 316-17 (8th Cir. 1982) applied.

Later the Court in In re: Caldwell, 851 F.2d. 852 (6th Cir. 1988) concluded that the factors list in Estus, supra, at 317 was a particularly clear and succinct list of "some of the factors a Court may find meaningful in making its determination of good faith". They are hereafter listed:

> " . . . (1) the amount of the proposed payments and the amount of the debtor's surplus;
>
> (2) the debtor's employment history, ability to earn and likelihood of future increases in income;
>
> (3) the probable or expected duration of the plan;
>
> (4) the accuracy of the plan's statements of the debts, expenses, and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;
>
> (5) the extent of preferential treatment between classes of creditors;
>
> (6) the extent to which secured claims are modified;
>
> (7) the type of debt sought to be discharged and whether any such debt is non-dischargeable in Chapter 7;
>
> (8) the existence of special circumstances such as inordinate medical expenses;
>
> (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
>
> (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief; and
>
> (11) the burden which the plan's administration would place upon the trustee. . . . "

The Court then went on to supplement the above list with the following considerations:

> " . . . (1) whether the debtor is attempting 'to abuse the spirit of the Bankruptcy Code,' is a legitimate factor to consider, . . .
>
> . . . (2) 'good faith does not necessarily require substantial repayment of the unsecured claims,' . . .
>
> . . . (3) the fact a debt 'is non-dischargeable under Chapter 7 does not make it non-dischargeable under Chapter 13,' . . .
>
> . . . (4) the fact that a debtor seeks to discharge an otherwise non-dischargeable debt is not, per se, evidence of bad faith but may be considered as part of the totality of the circumstances analysis, . . . "

The above was not intended by the Court as an exhaustive list but rather a guide to the exercise by the Judge of his discretion in making a good faith finding under Section 1325(a)(4).

The fact is that the discretion of the Bankruptcy Judge with respect to finding of good faith in the proposing of a Chapter 13 plan is the primary control mechanism influencing the impact of the broad discharge under Section 1328(a). A Bankruptcy Judge's finding with respect to whether a debtor's plan has been proposed in good faith is a finding of fact reviewed under the clearly erroneous standard. [See Matter of Metz, 820 F.2d. 1495, 1497 (9th Cir. 1987)].

Other Matters

It still surprises many individuals that the bar on successive discharges within six years is not applicable in Chapter 13 cases. But, of course, the bar is found at Section 727 and is clearly only applicable in Chapter 7. [See In re: Galt, 70 Bankr. 57 (Bankr. S.D. Ohio 1987), In re: Ponteri, 31 Bankr. 859 (Bankr. D. N.J. 1983), and In re: Meltzer, 11 Bankr. 624 (Bankr. E.D. N.J. 1981)].

Another source of amazement to the uninitiated is the fact that claims determined to be non-dischargeable in prior proceedings may be discharged in Chapter 13. See In re: Tinntberg, 59 Bankr. 634 (Bankr. E.D. N.Y. 1986). (Claim determined not to be discharged in prior Chapter 7 case under Section 523(a)(3) for failure to schedule may be discharged in subsequent Chapter 13.) See also In re: Whitehead, 61 Bankr. 397 (Bankr. D. Or. 1986). (Chapter 13, Section 1328(a) discharge includes discharge of claim determined to be non-dischargeable in prior Chapter 7 case even though no payment to holder proposed.) See also Blair v. Spada, 32 Bankr. 105 (Bankr. E.D. Cal. 1983).

Conclusion

The Chapter 13 discharge remains one of the more powerful provisions of the Bankruptcy Code. The Courts have, for the most part, refrained from limiting its scope thereby effectuating the congressional intent of encouraging the use of Chapter 13 by debtors who can propose some type of repayment. Glaring abuse of the provision is prevented by the use of the "good faith test" which, at least in this Circuit, is guided by case law which incorporates a reasonable and somewhat defined approach to such an evaluation.

RECENT BANKRUPTCY DECISIONS

The following are summaries of recent court decisions that address important issues of bankruptcy law and procedure. These summaries were prepared by Patrick E. Mears with the assistance of Larry A. Ver Merris.

First National Bank & Trust Co. of Escanaba v. Blackmore, Adversary Proceeding No. 86-0038 (Bankr. W.D. Mich. Nov. 13, 1989). This opinion, authored by Bankruptcy Judge Laurence Howard, addresses a choice-of-law issue in determining whether a party to this adversary proceeding would be entitled to an award of punitive damages. Before Thomas LaCosse commenced a bankruptcy case, one of his creditors, William Blackmore, obtained a money judgment

ainst him based on fraud in an Illinois federal district court. Blackmore hen registered this foreign judgment in Michigan. Thereafter, First National Bank & Trust Company of Escanaba ("Bank") sought to stay the enforcement of the judgment by alleging that it held an interest in certain property that Blackmore sought to levy upon. In the subsequently filed adversary proceeding, Blackmore asserted that the Bank was guilty of fraud by misrepresenting LaCosse's financial condition when the Bank obtained Blackmore's guaranty of a loan made by Bank to LaCosse. The Bank thereafter filed a motion for partial summary judgment in the adversary proceeding requesting that Blackmore's claim for punitive damages be dismissed. This motion was denied by Judge Howard.

In this decision, Judge Howard first addressed the question of whether the law of Michigan or Illinois applied concerning Blackmore's claim for punitive damages against the Bank. In deciding this issue, Judge Howard referred to the choice-of-law rules of the forum state, i.e. Michigan. Judge Howard then examined the policies underlying the laws governing punitive damage awards in Michigan and Illinois. After reviewing these policies, Judge Howard applied Michigan law which permits an injured party such as Blackmore to recover exemplary damages as a means to compensate him for the losses he suffered. Illinois law, on the other hand, permits an award of punitive damages to punish the wrongdoer. Upon finding that Michigan law applies, Judge Howard denied the Bank's motion for summary judgment.

In re David, 106 Bankr. 126 (Bankr. E.D. Mich. 1989). In 1984, the Debtor, an individual, and his business partner executed a promissory note for $25,000 payable to Jerome and Julia Lamparski ("Creditors") for use in a corporate business venture. This venture failed and, in January, 1986, Debtor commenced a Chapter 7 case in the Flint Bankruptcy Court. In his schedules, Debtor failed to list the Creditors. In May, 1986, Debtor received a general discharge and approximately one year later, his Chapter 7 case was closed.

In May, 1988, Creditors commenced an action against Debtor in state court seeking recovery of approximately $24,000 remaining due under the promissory note executed by Debtor in 1984. On July 12, 1989, two days before trial of this action was scheduled to begin in state court, Debtor moved to reopen his bankruptcy case. Bankruptcy Judge Arthur Spector granted this motion. On August 1, 1989, Debtor moved to amend his schedules to add Creditors. The Creditors objected to this motion and sought to set aside the order reopening the case. At the hearing on the motion to amend schedules, Debtor testified that he did not believe he was liable to Creditors at the time he filed his Chapter 7 petition. Therefore, the Debtor argued that his failure to list Creditors "was due to mere inadvertence and mistake." In support of the Creditors' objection, Jerome Lamparski testified that he did not become aware of the Chapter 7 case until May, 1989, one year after the state court action was instituted.

In his decision, Judge Spector first denied the Creditors' request to set aside the order reopening Debtor's Chapter 7 case. Judge Spector noted that the mere reopening of a case under 11 U.S.C. § 350 does not afford any independent relief. Judge Spector then granted the Debtor's motion to amend his schedules to add Creditors upon finding that the Debtor's failure to list them originally was due to inadvertence. Furthermore, Judge Spector found that Creditors would not suffer any "cognizable prejudice" if this motion was granted. However, Judge Spector expressly refused to rule as to whether the debt owing by Debtor to Creditors would be nondischargeable under 11 U.S.C. § 523(a)(3). He noted that Creditors could file such an action to determine the dischargeability of this debt in either bankruptcy or state court.

In re Tarkowski, 104 Bankr. 828 (Bankr. E.D. Mich. 1989). In this decision, Bankruptcy Judge Spector addressed the issue of whether counsel to an examiner

appointed in a Chapter 11 case may be compensated from estate assets. Judge Spector answered this question in the affirmative even though there is no specific statutory authority upon which to base such an award. Judge Spector relied on section 105 of the Bankruptcy Code in awarding these fees. See also Snider, The Examiner in the Reorganization Process: A Need to Modify, 45 Bus.Law 35, 52-53 (Nov. 1989).

FROM THE ADMINISTRATIVE OFFICES OF THE UNITED STATES COURTS

Pursuant to a December 11, 1989 Memorandum, a copy of which can be obtained from the Clerk of the Bankruptcy Court, the following revisions and additions have been made in regard to filing fees:

1. Effective December 21, 1989:

   A fee of $60.00 will be charged for the filing of the following motions:

   a. Motion to vacate or modify the automatic stay pursuant to 11 USC §362(a)(d).

   b. Motion to withdraw the reference of a case or proceeding referred to a bankruptcy judge by the district court under 28 USC §157(d).

   c. Motion requiring a trustee or debtor-in-possession to abandon property of the estate as provided by Bankruptcy Rule 6007(b).

   Under 28 USC §1930(a)(1), a statutory change is made to increase the filing fee for a case commenced under Chapter 7 or Chapter 13 of Title 11 from $90.00 to $120.00.

2. Effective January 11, 1990:

   a. 28 USC §1930(b) is further modified to provide for a fee of one-half the filing fee for deconsolidation of a joint petition. The discussion which accompanies such statement indicates that a Chapter 7 or 13 deconsolidation would be assessed a fee of $60.00; a Chapter 11 deconsolidation would be assessed a fee of $250.00; and a Chapter 12 deconsolidation would be assessed a fee of $100.00. The Comment goes on to recite that if an estate is deconsolidated and subsequently converted to a Chapter other than that under which it was originally filed, the fee due on conversion would be the full fee due under the Chapter to which the case is being converted less any amount paid upon deconsolidation. As "deconsolidation" is not defined in this Memorandum, we suggest that you contact the Court should further clarification be needed.

   b. The fee for docketing a cross-appeal from a bankruptcy court determination will be $100.00. This will bring such cross-appeal fee in line with the fee for perfecting an appeal.

r more information concerning the discussion of these rules, the purpose for ne same and indication as to what is to be done with the additional fees, we would suggest that you obtain a copy of such Memorandum from the Clerk of the Court. Please see the column labeled "From the Bankruptcy Court" as to what action the Clerk's office will take for petitions and motions filed after December 20, 1989 which did not include the new requisite filing fee.

STEERING COMMITTEE MEETING MINUTES

A meeting was held on December 1, 1989 at noon at the Peninsular Club.

1. Extensive discussion was had regarding the proposed new local rules and various modifications thereof. The judges will be meeting shortly to review and discuss the modifications which were brought up at such meeting, as well as any other comments which might be received before the December 15, 1989 deadline. To the extent that modifications are made to the proposed rules, notification thereof will be given in some fashion. It is not expected that the rules will be adopted until sometime in early 1990.

2. It was suggested that all practitioners review proposed local rule 4, "Rejection of Pleadings", which describes grounds for rejection of pleadings and the procedure for review of such rejections.

3. It was agreed that next Summer's bankruptcy seminar would, again, be held at Shanty Creek on August 23 - 26, 1990. Watch this publication for future announcements concerning registration. As registration may be limited to 100 participants, you should try to sign up as soon as possible.

4. It was recommended that we have regular Steering Committee participation by a practitioner in the Kalamazoo area. If any of the Kalamazoo readers are interested in participating in Steering Committee meetings, please give Brett Rodgers a call.

5. The next Steering Committee meeting will be held at the Peninsular Club on Friday, January 19, 1990, at noon.

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United States Bankruptcy Court for the Western District of Michigan during the period from January 1, 1989 through November 30, 1989. These filings are compared to those made during that same period 1 year ago.

	1/1/89-11/30/89	1/1/88-11/30/88
Chapter 7	3,031	2,531
Chapter 11	89	78
Chapter 12	16	33
Chapter 13	1,186	1,102

EDITOR'S NOTEBOOK

On October 2, 1989, the U.S. Supreme Court granted Cert in Pa Dept of Public Welfare v Davenport (1989, US), 58 US LW 3213, Docket No. 89-156; In re Johnson-Allen (1989, CA 3 PA), 871 F2d 821, 19 BCD 280, 20 CBC2d 966, concerning the Third Circuit's holding that criminal restitution debts are dischargeable in Chapter 13. The U.S. Supreme Court has previously held in Kelly v Robinson, 479 US 36, 93 L Ed 2d 216, 107 S Ct 353 (1986), that such debts are not dischargeable in Chapter 7.

Certiorari was also granted in Pension Benefit Guaranty Corp v LTV Corp (1989, CA 2 NY), 875 F2d 1008, after the Second Circuit Court of Appeals upheld the District Court's vacation of the PBGC's issuance of a notice of restoration of several pension plans that were maintained and administered by LTV Corporation, a Chapter 11 debtor. The PBGC had filed a request for Cert which was granted on October 30, 1989. See 58 US LW 3288, Docket No. 89-390.

For those of you who are interested in further followup concerning "serial" filings following James W. Batchelor's article in the October, 1989 Newsletter ("Serial Filings -- Even Mikey Doesn't Like Them"), we would suggest that you turn to the November Current Awareness Alert to Bankruptcy Service, Lawyers Edition, for a discussion concerning serial filings in Chapter 11 [In re Jartran, Inc, (7th Cir, 1989)], and Chapter 13 [In re Jones (US DC ND Ala, 1989)] settings.

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FROM THE BANKRUPTCY COURT:

There are several immediate problems which I hope the bankruptcy bar can help the Court to resolve in the last days of 1989:

NEW FEES: The Administrative Office of the U.S. Courts, in their complete wisdom, waited until December 19 to inform the various clerks of the increase of filing fees which went into effect on December 21. This lack of prior notice has forced the court to decide whether to reject numerous notices and petitions which are not accompanied by the correct filing fees or take some other action.

For the next 2 or 3 weeks, the Court will take the following action with respect to pleadings which are filed with the incorrect fees: New cases will be filed and the $90.00 checks will be accepted. The Court will bill the filing attorneys for the difference of $30.00. Motions which now require fees will be returned, since many of the creditors who filed petitions for relief from stay may be able to resolve the matter and submit a stipulation and order which will not require the fee. We are trying however to call attorneys who file such motions to ask whether they should be filed or returned.

CHAPTER 13 CLAIMS: When the new local court rules become effective, creditors will be required to file one original and one copy of their Chapter 13 claims with the Clerk of the Court and not with the Chapter 13 Trustees, the current practice. Although the effective date of the court rules has not been decided, the Clerk and Trustees have agreed to implement the new procedure starting February 1, 1990.

It is very important for the processing and transmittal of these claims to the proper Trustee that creditors' attorneys use the claim forms sent with the 341 meeting notices or, if that is not possible, that they label the claim as a Chapter 13 claim very distinctly.

The filing date of such claims in the future will be the date they arrive at the Court even if they are sent to the Trustee.

ORDERS AWARDING PROFESSIONAL FEES: A few attorneys do not state the amount of fees which have been awarded by the Court following an application for fees. This is a major problem for the Clerk's office which must keep track of the exact amount of fees awarded to each professional. This is particularly true in the Chapter 13 context, when the judges sign confirmation orders which provide for payment of attorneys' fees.

Whenever you prepare an order awarding fees and expenses, or a confirmation order which provided for the payment of fees and expenses, please make sure that the order states the following:

1. The person to whom the fees are to be paid.

2. The exact dollar amount of the fees and the amount of expenses.

3. If part of the amount has already been paid, the amount to be paid.

Mark Van Allsburg

United States Bankruptcy Court

Western District of Michigan

December 18, 1989

NOTICE	
On Thursday, December 21, new filing fees will become effective. The fees will remain the same except the following:	
Chapter 7 Fees:	**$120.00**
Chapter 13 Fees:	**$120.00**
Petition For Relief From Stay:	**$ 60.00**
Petitions to Compel Abandonments:	**$ 60.00**
Petitions to Withdraw Reference:	**$ 60.00**

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NOTICE

A district-wide training seminar will be held all day **Tuesday, January 30, 1990;** therefore, on **Monday, January 29, 1990,** the Bankruptcy Court divisional office located in Bay City will close at 2:00 p.m. and the divisional office located in Flint will close at 3:00 p.m. and remain closed through **Tuesday, January 30, 1990.** The Bankruptcy Court in Detroit will be closed **Tuesday, January 30, 1990.** During this period, emergency pleadings will be accepted by the District Court in the above respective locations.

Arthur J. Spector

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NEW FEES

At the September 20, 1989 meeting, the Judicial Conference on the recommendation of the Committee of Judicial Improvements approved revisions to the miscellaneous fee schedule for Bankruptcy Courts promulgated under the authority of U.S.C. Section 1930(b) have added the following items:

A. EFFECTIVE DECEMBER 21, 1989

1. The filing fee for cases commenced under Chapter 7 or Chapter 13 will increase to $120.00.
2. NEW FEE for a motion under 11 U.S.C. 362(d) to vacate or modify the automatic stay provided by 11 U.S.C. Section 362(a) will be $60.00.
3. NEW FEE for a motion under 28 U.S.C. Section 157(d) to withdraw any case or proceeding referred to a Bankruptcy Judge by the U.S. District Court will be $60.00.
4. NEW FEE for a motion to compel a trustee or debtor in possession to abandon property of the estate as provided by Bankruptcy Rule 6007(b) will be $60.00.

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