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A PERIODIC NEWSLETTER BY THE
OFFICE OF THE UNITED STATES TRUSTEE, REGION 20

Volume 1, Issue 2
August 2003

# A WORD FROM THE U. S. TRUSTEE

The past couple of months have seen a whirlwind of activity around the Region.

First and foremost, was the visit to the Region by Director Larry Friedman. On his first trip to Region 20, Director Friedman was able to visit the Wichita, Tulsa and Oklahoma City offices – in person. His visit to the Albuquerque office was by video conference. Each office on his personal tour rolled out the red carpet, and a good time was had by all. Larry met staff, trustees, judges, and a U.S. Attorney or two. His enthusiasm for Civil Enforcement and the important work we do was contagious and energizing. Elsewhere in this Newsletter you'll find more pictures from his visit.

As of June, 2003, each of the offices in the Region began or re-started its Bankruptcy Working Group, a critical element of the Civil Enforcement Initiative. Each Office reports resounding success with its Group by finding various other agencies interested in what we've so far discovered in a bankruptcy case or two. Albuquerque, in particular, gets bragging rights this go-round, with two criminal indictments. For complete details, see *The Best of Civil Enforcement*.

Our "civil" Civil Enforcement efforts are also on the rise in the Region. The Wichita office stands out with the most Section 707(b) motions granted in the Region. Likewise, Tulsa leads the Region in successful inquiries.

Things are hopping "externally," too. The Oklahoma City office is getting a long-overdue facelift. Plans are also underway to do the same in Albuquerque.

As for me, I recently spent a couple of days in Washington, D. C. and a considerable amount of time in the Albuquerque office. I will be in Albuquerque often over the next several months. After all, why should Joyce Owen and the rest of the Wichita staff get to have all of the fun?

One New Mexico trip included a weekend stay and a trip to El Morro National Monument, which is also known as Inscription Rock (see *Points of Interest* in the first issue of the Newsletter). One inscription in particular caught my eye. In it, the writer described his accomplishments in glowing terms. However, his opinion of himself and his accomplishments was not shared by all, as much of the "glow" was subsequently scratched-out. There's a lesson to be learned here. We touch many people during our lifetime, and we need to be "gallant" and proceed with "prudence" and "clemency" in our treatment of them, since we don't know which ones own an eraser.

Until next time,

**Mary E. May,** U.S. Trustee

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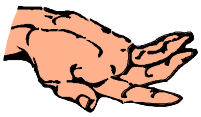
# WE'RE FROM THE GOVERNMENT AND WE'RE HERE TO HELP



**Charlie Snyder, Attorney**. I moved to Oklahoma City in 1979 from the Buffalo, New York area. Other than a short move to Fort Worth, Texas, in 1987-88, I've lived in the Oklahoma City area since 1979. In my life before becoming a lawyer, I worked as a small engine mechanic, dock worker, truck driver and driving instructor at a truck driving training school. During one summer, between law school semesters, I delivered frozen and refrigerated food throughout the State of Oklahoma. I got to see the State and decided to stay.

I joined the United States trustee program in 1991 because I wanted to work exclusively in bankruptcy without the attendant hassles of private practice. My soiree with bankruptcy began when I served as a law clerk to the Honorable Richard L. Bohanon, Bankruptcy Judge for the Western District of Oklahoma, from 1985 through 1987. After I left Judge Bohanon, I practiced primarily in the area of bankruptcy law in Fort Worth and Oklahoma City.

I met my wife and best-friend, Kathy Himmler, who I affectionately call "Himmler," while we were both attending law school. She was also born in Buffalo, NY, but grew up primarily in New Jersey. She is a retired workers' compensation defense attorney who is now overworked and underpaid at "Casa Himmler," a lavish estate we call home. We have three fun kids, Joseph, Shauna and Cole, who are all smarter than Himmler and me.

My interests include the Sunbelt Chapter of the BMW Car Club of America consisting of members who drive and appreciate BMW automobiles. I serve as Secretary–Treasurer for the chapter. The club sponsors events for our members as well as car shows and other events to raise money for various charitable organizations. I am also a member of the Putnam City Optimists and serve as a baseball coordinator. PCO runs sports programs, including two baseball complexes in the Oklahoma City area serving over 5,000 youth per year. So, all things considered, I'm an average, ordinary guy who has been very lucky!

**Paul Thomas, Attorney**. I wanted to be a teacher, but I couldn't find a job teaching English in New Jersey or Pennsylvania. My degree in English from Albright College in bustling Reading, Pennsylvania qualified me to either teach or . . . pretty much keep going to school. Nonetheless, I took a job as a salesman for Random House Publishing Co. in New York with the foolish hope that an editor's job would naturally flow from being in sales. I was promptly transferred to Oklahoma (where there were no editor openings). I was quite sure the world ended at the Mississippi River, but was very pleasantly surprised when the plane landed in Tulsa and I was not greeted by hard-ridden cowboys in horse-drawn coaches. My family, who were baffled by my willingness to give up the overwhelming beauty of the Northeast, asked for years when I would be moving "home." It wasn't until just a few years ago that they stopped asking—apparently resigned to the fact that Oklahoma is "home."

Between selling books and becoming a lawyer, there are lots of weird stories. I won't tell them here. . .you wouldn't believe half of them. Ask me sometime about taking my Oklahoma drivers test in a cab.

I went to law school at the University of Tulsa College of Law—the only school I applied to. I figured if I were meant to go to law school, I would get in. The theory worked and I graduated in 1985, the same year I married Julie (who had graduated from T.U. with a J.D. in 1983). I worked as a legal intern at Reading & Bates Petroleum during my third year in law school. They made me an offer I couldn't refuse after I graduated. Within eighteen months, the oil bust took its toll on the company and I was laid off. I then went to work for a small firm outside of Tulsa for about a year where I did everything from wills to buying groceries for lunch. Seeking a less drastic commute, I went to work for an attorney and chapter 7 trustee who showed me the bankruptcy ropes by having me work his "old dog" asset cases. You might think that four years of that would have been enough bankruptcy, but I enjoyed it so much, when I heard about an attorney spot opening up in the U.S. Trustee's office, I put my name in the hat. That was 1991. . .the rest is history. The people I get to work with are the best.

Julie and I have three children and two dogs. The dogs came first, but we love the kids too. We are active in our church and are spurred on to love and good works through our church family. I have completed two marathons—New York in 1988 and Chicago in 2002. In January of 2002, I had the unique and thrilling experience of carrying the Olympic Torch as it wound its way through Oklahoma toward its final destination in Salt Lake City to open the Winter Olympic Games. I am a would-be writer—I have two kids' books in manuscript form. If you have a publishing connection, let me know.

That's my story and I'm sticking to it.

**William Schantz, Attorney**. I was born in Kansas City, Missouri in 1947. I graduated from Westport High School in 1965 and the University of Missouri - Kansas City in 1969 with a B.S. in Mathematics. Upon graduation, I headed east, taking a computer programming job with Western Electric just outside New York City. I just missed Woodstock, but was there for World Championships for the Knicks, Jets and Mets. After *"looking for Ms. Goodbar"* in the Big Apple and the Jersey Shore for about two years, I decided that sitting at a desk writing COBOL programs was not for me.

I returned to UMKC and took education and physical education classes, receiving a degree in P.E. and a teaching certificate. After subbing in the Shawnee Mission School District for one year (as well as working at Lykins Community Center and refereeing high school basketball games), I was hired at Derby High School in 1973, to teach math and coach. During my high school tenure, I was privileged to coach the soon to be Honorable Robert Berger in basketball.

In June of 1980, I left teaching and sold life insurance for about three days. I then got on at Boeing as a Numerical Control Programmer (programming machines to cut out parts).

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After about a year, I recalled why I had left programming in the first place. I was seeing my present wife at the time, the talented and lovely Carol Bacon, who had decided to go to law school. Having never been to law school myself, I figured that might be an interesting endeavor. So I took the LSAT and we both went to K.U. Law School in 1982.

We survived law school and married in 1985. Carol became a Public Defender and I worked for a tax processing company in Wichita. Our son Spencer was born January 24, 1989. Shortly thereafter, the company I was working for went into Chapter 11, and I was let go. Fortunately, I had already interviewed with the United States Trustee's Office and had been told I had the job, pending the background check. The background check took about nine months (perhaps a statement on my background), which was actually a blessing, as I got to take care of my young son during that period.

I started with United States Trustee's Office on July 6, 1990. In 1992, Carol became a Sedgwick County District Court Judge. She remained in that position until the 2000 election when all seven of the Democratic judicial candidates were decimated by the Bush landslide in Kansas. Carol's parents came to live with us in December of 1999, but her father passed away six days after they arrived. Carol took a position with the Sedgwick County Prosecutor's Office in early 2000, but had to resign soon after because her mother was not doing well, although she has since rebounded. This allowed her to be home for her mom as well as our son. Our son had seizure disorders and had had two twelve hour brain surgeries in 1998 and 2001, in an attempt to control the seizure activity. He died unexpectedly in his sleep on November 14, 2002. We are attempting to cope with this devastating loss, but it is unbelievably difficult. However, it has taught me at least one thing—not to waste a single day of this life.

## 10TH CIRCUIT REVIEW

Once again, the courts of the Tenth Circuit put pen to paper and issued a number of opinions. Those of particular interest to Region 20 are summarized below.

***Katz v. Comm. of Internal Rev. Serv.***, — F.3d —, 2003 WL 2151994 (10th Cir. 2003). In a lengthy opinion, the Tenth Circuit found that the IRS must first bring a partnership-level proceeding, rather than a proceeding involving only the taxpayer, to challenge a taxpayer/debtor's petition year allocation of losses between his bankruptcy estate and the partnerships in which the debtor was a partner. (Judge Julie Robinson, sitting by designation, dissented.)

***Lampe v. Williamson (In re Lampe)***, *331 F.3d 750 (10th Cir. 2003)*. The debtors are husband and wife, and each claimed a "tools of trade" exemption under Kansas law. The trustee objected to the wife's claimed exemption, arguing that the wife did not have sufficient ownership interest in the farm equipment to claim the exemption. Although the debtors' joint tax return showed that the husband was the sole owner of the farming business, that the business took depreciation for the farm equipment and only the husband reported self-employment income, both the Bankruptcy Appellate Panel (which reversed the bankruptcy court) and the Tenth Circuit found that the debtors' intent, their purchase of the farm equipment from a joint account and their joint pledge of the equipment as security for operating loans, was sufficient to establish the wife's ownership interest in the equipment. The Tenth Circuit further affirmed the Bankruptcy Appellate Court's analysis that the farming operation " was not a partnership in the legal sense, but a family business operated as a proprietorship with each Debtor as co-owner of the property."

***Robinson v. Sanchez (In re Robinson)***, — B.R. — , 2003 WL 21635283 (10th Cir. BAP 2003) (Judges McFeeley, Boulden and Nugent). The debtor owned a house in Tulsa. Her father lived in the house until his death in 1999. After his death, the house fell into serious disrepair. The house remained vacant until April, 2001, when it was occupied by tenants. The tenants "trashed" the house and made threats against the neighbors. The tenants lived in the property for about one year. Eventually, the neighbors obtained a judgment against the debtor, which became a lien on the house. The property again stood vacant until June of 2002, when the debtor's son and daughter-in-law moved in. During this time, the debtor resided in rented property elsewhere in Tulsa, until August 18 and 19, when she spent the night at the house. On August 20, 2002, the debtor filed a Chapter 7 bankruptcy petition and claimed the house as exempt. Both the neighbors and the trustee objected to the claimed exemption. In affirming the bankruptcy court's order denying the exemption, the Bankruptcy Appellate Panel found that the debtor did not "reside" in the house as her principal residence, as under Oklahoma law intent to establish a homestead cannot be ascertained by a single point in time.

***In re Miller***, 288 B.R. 879 (10th Cir. BAP 2003) (Judges Pusateri, Cornish and Nugent). Debtor's counsel applied for attorney fees to which the United States Trustee objected. The Court held a hearing and reduced counsel's fees from $225 per hour to $200 per hour, awarding total fees of $68,902.50. The fees were to be paid through the plan. Debtor moved for reconsideration and upon denial appealed. On appeal, the Bankruptcy Appellate Panel affirmed, finding no error on the trial court's part, and noted that the fees were identified to be paid through the plan as an administrative expense. Because the plan called for the payments to be made through the plan, Debtor's counsel could not be paid directly by the debtor or any other party outside the plan.

***In re Kleinfeldt***, 287 B.R. 291, (10th Cir. BAP 2002) (Judges Bohanon, Boulden and Cornish). The Chapter 7 trustee claimed $1,514.64 of the debtor's tax refund as property of the debtor's bankruptcy estate. The debtor was married and he and his spouse filed a joint return. However, the wife did not work outside the home. The trustee claimed that the entire

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amount was property of the estate while the debtor claimed his wife was entitled to half of the tax refund as a jointly filing taxpayer. The Bankruptcy Appellate Panel agreed with the trustee citing the majority rule which "holds that the non-debtor spouse who had no tax withholdings for the year in question is not entitled to any portion of a joint tax return." The Court noted there are three approaches to the issue, but adopted the majority rule. *See Lyall,* 191 B.R. at 85.

***In re Henry,*** 293 B.R. 72 (Bankr.W.D.Okla. 2003) (Judge Niles Jackson) Following confirmation of debtors' Chapter 13 plan, Debtors objected to the claim of the mortgagee because the mortgagee continued to collect credit life insurance premiums after the insurance had been cancelled. The objection also asked the bankruptcy court to order payment of debtors' attorneys fees in the amount of $500 for its failure to timely reduce the monthly payment. Default judgment was entered against the mortgage company, and the UST timely objected to the order, insofar as it granted debtors' attorney a fee of $500. The court found that debtors' counsel was entitled to payment for his post-petition services; however, based upon the apparent simplicity of the research and pleadings, the court found "that a reasonable fee in this case is $200."

***In re Reed***, 293 B.R. 65 (Bankr.D.Kan. 2003) (Judge John T. Flannagan) Debtor's bankruptcy pleadings failed to disclose debtor's receipt of about $35,000 from his father within 90 days prior to the date the debtor's bankruptcy was commenced, as well as a number of transfers and gifts made by the debtor within that 90-day period. At the 341 Meeting, however, the debtor testified that he had, among other things, given an unnamed woman an engagement ring that cost about $11,000, paid one credit card creditor $21,000 and paid a number of other unsecured creditors each more than $600. Nevertheless, the debtor testified that there were no errors or omission in his bankruptcy pleadings and that he had listed all of his assets and his creditors. The court found that the omissions were material and fraudulent and granted the trustee's motion for summary judgment seeking a denial of the debtor's discharge under 11 U.S.C. § 727(a)(4)(A) and (6)(A).

***In re Smith,*** 293 B.R. 786 (Bankr.D.Kan. 2003) (Judge John T. Flannagan) Prior to the date the debtor filed her Chapter 7 bankruptcy petition, she had been using a weight-reduction drug (Fen Phen), without experiencing any deleterious effects. She stopped taking the drug when it was removed from the market. After her bankruptcy case was closed, she experienced shortness of breath, which presumably was caused by the diet drug. Since she recovered a settlement of $17,188.99 from the class action suit filed against the drug manufacturer. The trustee learned of the settlement and filed a motion to reopen the case. The bankruptcy court denied the motion finding that under Kansas law, when a wrongful act and the resulting injury are separated in time, the cause of action does not accrue "until the fact of injury is reasonably ascertainable by the injured party." Since the debtor was asymptomatic at the time the bankruptcy was filed, she could not reasonably have ascertained the fact of her injury until sometime after her bankruptcy case was filed. As a result, the cause of action and therefore, the settlement, were not property of the estate.

***In re Stidham***, 292 B.R. 204 (Bankr.W.D.Okla. 2003) (Judge Niles Jackson) Debtor's Chapter 12 plan bifurcated the undersecured creditor's claim. Pursuant to the plan, payment of the creditors $75,000 secured claim was to extend beyond the term of the plan. Debtor completed the payments due under the plan, received a discharge and the case was closed. Thereafter, debtor then defaulted on two post-discharge payments, and the creditor sought to collect the full amount of its pre-bankruptcy claim. The bankruptcy court found that in this Chapter 12 proceeding the unsecured portion of creditor's undersecured debt was discharged when the debtor successfully completed his plan payments and received his discharge.

***In re Carpenter***, Case No. 02-12581 (Bankr.D.Kan. 2003) (Judge Robert Nugent) The Chapter 7 trustee objected to the debtor's claimed "means of conveyance" exemption for her Peterbilt truck valued at $13,000 . The debtor was employed as an over-the-road trucker and leased the truck to her employer. The debtor also owned a Chevy Blazer which she used for personal errands, except for a 5-month period when the Blazer was inoperable and she drove the truck. The trustee claimed that the proper exemption for the truck was "tools of the trade," which limited the exemption to $7,500, as opposed to $20,000 for means of conveyance. The court sided with the debtor finding that "while the truck may well qualify as a tool of the trade, this Court cannot say the debtor's choice of exemption must be restricted to that category when the vehicle, as used in this case, also clearly fits into the statutory definition of means of conveyance."

***Gable v. Educational Credit Mgt. Corp. (In re Gable***, Case No. 97-11130), Adv. No. 02-5294 (Bankr.D.Kan. 2003) (Judge Robert Nugent) Debtor's confirmed Chapter 13 plan provided for repayment of the principal portion of her student loan, with no interest accruing on the loan, and a declaration that all penalties for default were unsecured. The defendant claimed all post-petition interest and any other charges on the loan on a nondischargeable debt are excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(8) and 1328(a)(2). Neither the defendant, nor defendant's predecessor in interest, objected to this treatment under the plan, and as a result, the debtor claimed that the plan controlled, even though no adversary complaint had been filed. The court found that the content of the discharge order expressly excepted student loans from discharge, and as a result (and based, in part, on *Fullmer v. United States,* 962 F.2d 1463, 1468, (10th Cir. 1992) and the prior rulings of the Court, *see, e.g., In re Delgado,* Case No. 99-13234 (Bankr. D. Kan. July 14, 2000)), interest and penalties on the nondischargeable loan which continued to accrue were nondischargeable.

***In re Luarks***, Case No. 02-41640 (Bankr.D.Kan. 2003) (Judge Janice Karlin) Debtors' Chapter 13 Plan apparently provided for payment of taxes as a priority claim, but a footnote in the Plan provided that interest and penalties "shall be treated as general unsecured." Neither the IRS nor the Kansas Department of Revenue objected to the Plan, and the Plan was confirmed. The trustee objected to the claims of both the IRS and KDOR, claiming that pursuant to the confirmed Plan

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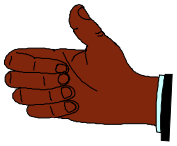
# BEST OF CIVIL ENFORCEMENT



The Civil Enforcement Initiative is alive and well in Region 20, as evidenced by the cases below. These cases represent only a small sample of activity over the past few months.

***Serial filer indicted***. On June 26, 2003, a federal grand jury issued a four count indictment against Sharyn Paradise-Koroser charging violations of 18 U.S.C. § 152 (2). Ms. Koroser had filed a series of bankruptcy petitions beginning in 1993. The indictment charges that in 1998, Ms. Koroser fraudulently used her mother's Social Security number in her bankruptcy petition and falsely swore that she had not filed any bankruptcy proceedings in the preceding six years. The indictment further charges that at the § 341 creditors meeting held in October 1998, Ms. Koroser falsely testified that Sharyn Paradise Koroser was her sister (as opposed to herself). A Special Assistant U.S. Attorney from the Albuquerque office of the U.S. Trustee referred and assisted the U.S. Attorney in preparing the case for presentation to the grand jury.

**Principal of Chapter 11 debtor indicted**. On June 26, 2003, James Bryan Menke was indicted on 21 counts of concealment of bankruptcy estate property in violation of 18 U.S.C. § 152 (1). Mr. Menke was the managing member of Sandia Storage LLC, when that entity filed a Chapter 11 bankruptcy on March 30, 2001. The indictment charges that Mr. Menke withdrew funds from estate bank accounts on 21 separate occasions for other than estate purposes. The funds totaled $19,000. The Albuquerque office of the U.S. Trustee referred the matter and a Special Assistant U.S. Attorney from that office assisted the U.S. Attorney in preparing the case for presentation to the grand jury.

***Debtor Agrees to Denial of Discharge***. The Wichita office reports that on July 14, 2003, the Court entered an agreed order denying the debtor's discharge pursuant to 11 U.S.C. § 727(a)(5) in *Haidar*, Case No. 02-14600-7, Adv. No. 03-5077. The debtor agreed to denial of discharge under this ground rather than litigate the issue, where Section 727(a)(3) and (4) were also alleged in the complaint. The debtor sought to discharge $298,609.00 of unsecured debt. The debtor listed 43 credit cards on Schedule F with no secured debt shown and few assets.

***Dismissal Prevents Trapping $250,000.00 of Income Taxes***. The Wichita office reports that on July 21, 2003, debtor Ronald E. Kleier agreed to dismissal after the U.S. Trustee filed a motion to dismiss based on a bad faith filing. The individual debtor filed Chapter 11 on June 24, 2002, creating a separate taxable entity. It was discovered at the initial debtor interview that the debtor was attempting to abuse the bankruptcy system by trapping an estimated $250,000.00 income tax liability in the bankruptcy estate before converting to Chapter 7. The dismissal will allow the IRS to pursue collection of the $250,000 income tax liability against the individual. The debtor has an exempt homestead valued at $800,000.00, with a secured claim of only $140,000.00.

***Preliminary Injunction Granted Against Internet Bankruptcy Petition Preparer, ziinet***. The Tulsa office sought an injunction against Frankfort Digital Services, LTD doing business under the trade name of "ziinet", in the debtor's case of Brodie Farrar, Case No. 02-05340-R, Northern District of Oklahoma. The Court issued a Preliminary Injunction, finding that Frankfort had violated Section 110 of the Bankruptcy Code, has engaged in actions constituting the unauthorized practice of law, and that broad injunctive relief is necessary to prevent Frankfort's interference with the proper administration of title 11. The Court extended the relief to any related or successor entity, their officers, agents, servants, employees, and those persons in active concert or participation with them, from directly or indirectly engaging in the unauthorized practice of law and providing any services as a bankruptcy petition preparer for any debtor or prospective debtor in the Northern District of Oklahoma in any manner, on April 4, 2003. The office will proceed to trial on the complaint, and has identified several more new cases filed in violation of the Preliminary Injunction which will also be pursued.

***Four Consumer Cases Dismissed***. The Oklahoma City field office reports the dismissal of two chapter 7 cases pursuant to 11 U.S.C. § 707(a) on June 18, 2003, (Brunskole, BK-03-14099; *Epperson*, BK-03-14436). In both cases, the petitions were filed without either schedules or statement of financial affairs. The U.S. Trustee filed motions to dismiss because the schedules and statement of financial affairs were not filed within the fifteen period allowed by Rule 1007(c), Federal Rules of Bankruptcy Procedure. The debtors defaulted in both cases filing neither an answer, schedules nor statement of financial affairs and the Bankruptcy Court ordered the cases dismissed. In addition, the Oklahoma City field office also reports the dismissal of two additional cases pursuant to 11 U.S.C. § 707(b) resulting in a total of $58,801 of unsecured debt not being discharged. In *Corson*, BK-03-13065, granted June 18, 2003, the debtor defaulted, but in *Craven*, BK-03-13728, granted June 20, 2003, the debtor entered into an agreed order of dismissal confessing the U. S. Trustee's motion after having filed an answer denying "substantial abuse."

***Debtors stipulate to dismissal***. On June 10, 2003, William and Kathy Killen stipulated to the dismissal of their Chapter 7 proceeding in response to the motion to dismiss under § 707(b) compiled by the Albuquerque office of the U.S. Trustee. The motion alleged that debtors had significant monthly disposable income, based on excessive and unnecessary expenses listed in their schedules. These included $1600 in monthly payments on several vehicles.

***Debtors voluntarily convert to Chapter 13 proceeding***. On June 2, 2003, Joe and Mary Ellen Parker voluntarily converted their Chapter 7 to a Chapter 13 proceeding in response to a §707(b) motion filed by the Albuquerque office of the U.S. Trustee. The U.S. Trustee alleged that the Parkers had approximate $720 in monthly disposable income. The allegation was in part based on a $311 payment to a 401(k) plan and a $255 payment on a Harley-Davidson motorcycle.

***Homestead Exemption May Not Be Stacked In Oklahoma***. The Oklahoma City office reports that the Oklahoma Supreme Court has answered a certified question denying the married debtors' claim of exemption in 320 acres of rural land. The debtors are engaged in farming operations in rural Oklahoma

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in a pending jointly filed Chapter 11 case. Each debtor claimed the160 acre homestead exemption for a total of 320 acres based upon on a 1997 amendment to the Oklahoma homestead statute wherein the Oklahoma Legislature replaced the word "family" with "person." The Oklahoma City office had filed an objection to the exemption arguing that the joint debtors, as husband and wife, living together, may only claim one exemption in 160 acres. The Bankruptcy Court certified the question to the Oklahoma Supreme Court which agreed with the U. S. Trustee's argument that homestead is a character or attribute that attaches to property rather than an ownership interest in real property. *In re Arnold*, BK-01-21368-WV. The Oklahoma Supreme Court decision may be found at "www.oscn.net" under, 2003 OK 63 (No. 97,700 July 24, 2003).

***Chapter 7 Conversion prevents Discharge of $63,785.70***. The debtors contributed $639 per month to 401(k) plans and failed to include a bonus that the debtor had received on Schedule I. The debtors also included $202 of payments to unsecured creditors on Schedule J that would be discharged in the Chapter 7 bankruptcy. After the Wichita office filed a Motion to Dismiss, the debtors converted their case to Chapter 13 on May 15, 2003, thus preventing the discharge of $63,785.70.

***Chapter 7 Dismissal Prevents Discharge of $116,343.40***. On May 13, 2003, the Honorable Judge Terrence Michael entered a Judgment and Memorandum Opinion dismissing the case of Frankie and Cynthia Prado, No. 02-05416-M, in the Bankruptcy Court for the Eastern District of Oklahoma. The Tulsa office filed a Motion to Dismiss Under § 707(b) on January 23, 2003, and a trial was held on April 17, 2003. The Judge concurred with the U.S. Trustee's contention that support of adult children is not a reasonable expense item for purposes of substantial abuse analysis, stating that "such largesse should not come at the expense of creditors."

***Motion Results in Voluntary Conversion of Case to Chapter 13***. In the Marple case, 02-14618-7, the debtors voluntarily converted their case to Chapter 13 prior to the evidentiary hearing on the Wichita office's motion to dismiss under 11 U.S.C. § 707(b). The debtors had under-reported their income by $525, plus there was no history to substantiate their purported $324 monthly charitable contribution shown on Schedule J. A total of $30,485.00 was reported on Schedule F.

***Debtors Agree to Dismissal***. On April 22, 2003, an order dismissing the case of Beatrice Lybarger was entered by the Bankruptcy Court for the District of New Mexico. The order resolved a motion to dismiss filed under § 707(b) by the Albuquerque office in which it was alleged that the debtor had over $1600 in monthly disposable income. As a result of the motion, $122,038 of debt to creditors was not discharged.

***Case Reopened Based on Misrepresentation of Scheduled Asset***. On May 1, 2003, the Bankruptcy Court for the District of New Mexico issued an opinion and order granting the U.S. Trustee's motion to reopen the Chapter 7 proceeding of Carl L. Eppers and Sandra R. Eppers based on Rule 60 (b) (1) & (3). On the filing of the bankruptcy proceeding in 2002, debtor Sandra Eppers listed her interest in a residence as a life estate valued at $1. At the § 341 meeting, the debtor testified that she owned no real estate. Based on the schedules and the testimony of the debtor, the Chapter 7 Trustee filed a no asset report. Subsequently, the U.S. Trustee was informed that Debtor was in fact the fee simple owner of the property under a divorce decree entered in state court in 1998. When the Albuquerque office filed a motion to reopen the case so the asset could be administered, the debtor filed an objection. She contended that she had relied on her attorney to properly list the residence in her schedules and that, in any event, the property had been listed with the burden on the Chapter 7 trustee to determine whether the residence was a valuable asset. The Bankruptcy Court found the case could be reopened based on the trustee's excusable neglect in relying on the false description of the asset. Further, the Court also found that the debtor had misrepresented the nature of her ownership interest. As a result of the motion, it is estimated that approximately $25,000 will be disbursed to creditors.

***Chapter 7 Dismissal Prevents Discharge of $207,764.50***. The debtors filed a Chapter 13 bankruptcy, because they wanted to keep their house valued at approximately $500,000.00, with monthly payments of $4,910.00 per month. The Chapter 13 Trustee objected to the debtors' plan and their homestead exemption, arguing that a house payment equal to 70% of their take-home pay constituted "bad faith." The debtors voluntarily converted to Chapter 7. The Wichita office filed a motion to dismiss pursuant to 11 U.S.C. § 707(b), even though the debtors had no disposable income, on the theory that it was abusive to devote $4,910.00 to a house payment while paying nothing to unsecured claims. The debtors then filed a motion to reconvert their case to Chapter 13. The UST objected to the reconversion. On May 8, 2003, the bankruptcy court denied the debtors' motion to reconvert and dismissed the case. The dismissal prevented the discharge of $207,764.50 in unsecured debt.

***Motion Forces Case Conversion***. On April 29, 2003, debtors David and Cynthia Lee filed a Motion to Convert Case from Chapter 7 to Chapter 13 in their case, No. 02-74184, in the Bankruptcy Court for the Eastern District of Oklahoma, on the eve of the hearing on the Tulsa office's Motion to Dismiss Under § 707(b). Debtors net income was $10,000.00 per month, and Schedule J showed high expenses and an excessive lifestyle. The unsecured debt was scheduled at $178,403.

***Debtors' Case Dismissed under §707(b)***. On April 30, 2003, debtors Lester and Norma Nuss agreed to the dismissal of their case, No. 02-73394, after the Tulsa office's filed a Motion to Dismiss Under § 707(b) in the Bankruptcy Court for the Eastern District of Oklahoma. Debtors had included over $1,500 of credit card payments on Schedule J, and had numerous excessive expenses. As a result of the dismissal, $95,019.81 was not discharged.

***Permanent Injunction Entered Against Bankruptcy Petition Preparer***. The Oklahoma City office reports that a permanent injunction was entered against bankruptcy petition preparer, Gary Smith on April 9, 2003. The Oklahoma City office had previously obtained an permanent injunction against Smith in 1996 from offering or performing services as a bankruptcy

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## BEST OF

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petition preparer. In 2002 the Oklahoma City office verified information that Smith, while performing services as a mortgage consultant, was advising the mortgagors to file Chapter 13 "short" petitions to stop pending foreclosure sales and preparing or providing the necessary forms. Smith further advised debtors to request payment of filing fees in installments but not pay them; not file any other documents; not to appear at the meeting of creditors or any hearing; and not to identify Smith in connection with the bankruptcy filing. Many of the debtors filed multiple cases. Ultimately the Court entered an order of dismissal with prejudice. The complaint filed by the Oklahoma City office alleged causes of action for violation of the 1996 injunction, fraudulent transfer, violations of section 110 as well as requests for contempt and sanctions and an accounting. Smith's primary defense was that he did not specifically charge for bankruptcy related services. Smith closed his mortgage consultant business and rather than face trial, agreed to not engage in any business in which he solicits, offers or performs services for the general public, directly or indirectly, in any way relating to real property; finance or financial matters; or bankruptcy, unless he or his employer holds a valid license, issued by the appropriate governmental agency. Smith also agreed to perform an accounting. Smith also agreed to pay all filing fees in cases where he advised the debtor to file bankruptcy. A permanent injunction adopting the stipulation was entered by the Bankruptcy Court for the Western District of Oklahoma.

# FROM AROUND THE REGION


**ALBUQUERQUE.** Flush with the success of their criminal indictments, the Albuquerque Office gathered enough courage to embark, albeit belatedly, on a week-long session of Spring cleaning. Michele Campbell, the Region's Administrative Officer, organized the clean-up. The U.S. Trustee, Mary Fran Durham from the Dallas office, and everyone in the Albuquerque Office provided the "muscle." Although the task seemed overwhelming and the work tedious, it was completed in record fashion and with a good deal of laughter.

**OKLAHOMA CITY.** A review of the monthly filings in the bankruptcy court clerk's office for the Western District of Oklahoma reflects a new record for the month of June with a whopping 1,200 cases being filed. The former high for June was in 2001 when 1,115 cases were filed. Through June, a total of 7,126 cases had been filed as contrasted to 6,466 for the same period of 2002. That is a 10% increase. Assuming that the rate of filings continues, 2003 may close out with a record 14,000 plus cases being filed. When the Western District of Oklahoma last set a new record for bankruptcy filings, it was 2001 and there were 13,239 cases filed. When the current six month period is compared to 2002, it is noted there were 730 more chapter 7 cases filed and 92 less chapter 13 cases. If you like reorganization cases, then you are in luck. During the six month of 2002, there were 16 chapter 11s filed, but 27 filed in 2003 in the same period.

The Western District of Oklahoma is not on any list promulgated by the Administrative Office of Courts for the implementation of CM/ECF. A date when the District might be added is unknown.

The Oklahoma City office of the U. S. Trustee has been aggressive in monitoring the timely filing of schedules and statements of financial affairs. When a case is filed without the schedules and statements of financial affairs and no extension of the deadline is timely requested by motion, the office files a motion to dismiss pursuant to 11 U.S.C. 707(a). In addition, the office continues to monitor cases filed in the Western District of Oklahoma that properly belong either in the Northern District of Oklahoma or the Eastern District of Oklahoma. Motions objecting to venue and requesting dismissal or transfer of the case are filed with the bankruptcy court whenever the improperly filed cases are identified. Counsel wanting assistance in identifying the place of proper venue to file their case are invited to make an inquiry with the Oklahoma City office by calling (405) 231-5952.

**TULSA.** Keeping up with the national focus of internet bankruptcy petition preparers, the Tulsa office successfully sought an injunction against Frankfort Digital Services, LTD doing business under the trade name of "ziinet". See Best of Civil Enforcement.

The Tulsa office, along with counsel for the Unsecured Liquidating Trust ("UCLT"), argued before the 10th Circuit BAP on July 29, 2003, as appellee on a fee allowance issue arising out of the CFS bankruptcy. Appellant, Houlihan Lokey sought fees of approximately $1.9 Million for services to the ABS Committee, based on a monthly rate, under two separate engagements. The Bankruptcy Court found the fees were excessive and reduced the allowance by more than half, sustaining the objections of the United States Trustee and UCLT. The CFS bankruptcy was filed in December of 1998 and has a confirmed plan of liquidation, with over $200,000 Million distributed to creditors and substantial litigation still pending. One of the principals has pled guilty to fraud, and the founder, Bill Bartman, has been charged with multiple counts of fraud.

On July 15, 2003, Therese Buthod, the Clerk of the Bankruptcy Court for the Eastern District of Oklahoma, held the first Electronic Case Filing ("ECF") Attorney Users Committee. The Committee is made up of lawyers: a trial attorney from the

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Office of the United States Trustee and various bankruptcy practitioners who will be among the first to receive the required training before access passwords will be issued. The Court projects that the ECF system will go "live" sometime in late November of 2003. The Committee is charged with providing user input to assist in designing a system that will be as user-friendly as possible. Conversion to ECF in the Northern District of Oklahoma is about 3-6 months behind.

**WICHITA.** While it isn't news to Kansas lawyers, we are pleased to announce that two new Bankruptcy Judges will take the bench this fall. The Honorable James A. Pusateri retired in May from the Topeka bench, and the Honorable John T. Flannagan will retire from the Kansas City bench in October. Robert Berger, who is currently with the law firm of Lentz & Clark in Overland Park, Kansas, will become the new Judge in Kansas City. Dale Somers, who is currently with the firm of Wright, Henson, Somers, Sebelius, Clark & Baker, LLP in Topeka, will become the traveling Judge, hearing cases in Wichita, Topeka, and Kansas City. We wish our departing Judges all the best and welcome our new Judges

Electronic Case Filing (CM/ECF) will be implemented in the Kansas Bankruptcy Court sometime this year. The new system will allow documents to be filed electronically, from a computer with internet access, as well as 24 hour electronic access to all filed documents. According to Judge Nugent, the Bankruptcy Court is preparing to do a test conversion of data to the new system in about two weeks. If all goes well, then the Court will begin implementing the Case Management portion of the system. The Court remains hopeful that it will be able to accept electronic filings by year's end. As implementation draws closer, the Court will provide information and training through a variety of sources, including the website for the U.S. Bankruptcy Court, District of Kansas, at www.ksb.uscourts.gov/index.html. At that site, choose the CM.ECF button. It takes you to the CM/ECF homepage at www.ksb.uscourts.gov/cmecfinfo.html.

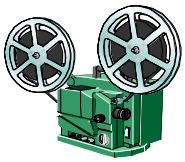
## HIGHLIGHTS FROM DIRECTOR FRIEDMAN'S VISIT

OKLAHOMA CITY

TULSA

WICHITA

# FEATURE



**CATCH ME IF YOU CAN**—Chapter 20: A game debtors should not play

by Richard A. Wieland (Wichita)

Chapter 20 is euphemistically defined as the filing of a case under Chapter 7 and then converting the case to Chapter 13 in order to avoid having the case dismissed as the result of an action filed by the United States Trustee under 11 U.S.C. § 707(b). The net effect of these conversions can sometimes trigger another enforcement action by the United States Trustee under the Civil Enforcement Initiative.

First, 11 U.S.C. § 707(b) gives the Court the authority to dismiss a case if granting a discharge to the debtor would be a "substantial abuse" of the bankruptcy system. Although several factors are to be considered by the court in determining if substantial abuse[1] exists, the primary factor is generally the debtor's ability to pay. Hence, a significant number of motions filed by the United States Trustee's office center on the debtor's ability to pay some, if not all, of the unsecured debt.

When the United States Trustee is successful in obtaining dismissal under 11 U.S.C. § 707(b), the dismissal is not effective until 10 days following the entry of the order, giving the debtor a 10-day window within which to convert the case to Chapter 13. If the case isn't converted within that time, the order of dismissal becomes effective.

Under this backdrop, the concern with Chapter 20 unfolds. The debtor converts his case to Chapter 13 in order to avoid dismissal under Section 707(b). The proposed plan filed by the debtor includes either no payment or a *de minimis* payment to unsecured creditors. Herein lies the rub, because these debtors are trying to receive essentially Chapter 7 discharge relief in their Chapter 13 case.

For example, in one Chapter 7, the debtor was willing to reaffirm the debt on his vehicle. In the converted case, the value of the vehicle set forth in the proposed Chapter 13 plan was much lower than it had been in the Chapter 7 and much lower than the amount of the secured claim. The debtor then tried to cram-down the secured claim and restructure the payments, so that the car loan was the only debt being paid in the Chapter 13.

Other debtors will attempt to establish a "Zero-Payment Plan" by amending their Schedules I and J and making their disposable income "magically" disappear. Both sets of Schedules are signed by the debtor under penalty of perjury. Which one is correct?

This effort to obtain Chapter 7 relief in a Chapter 13 case is an abuse of the system:

> Courts should not approve Chapter 13 plans which are nothing more than "veiled" Chapter 7 plans. A Chapter 13 plan which proposes to repay only a small portion of a debt which could not be discharged under Chapter 7 deserves particular scrutiny.

*In re Davis*, 239 B.R. 573, 577 (10thCir. BAP 1999). In Region 20, the United States Trustee has enlisted the assistance of the Standing Chapter 13 trustees in monitoring "Chapter 20" cases. In each case, the Standing Chapter 13 trustee will be told why the case was converted and given other relevant information, including the amount found or believed to be debtor's projected disposable income. If a debtor's Chapter 13 plan income differs from the Chapter 7 projected disposable income, then the budget, the plan and the veracity of the debtor will receive "particular scrutiny." And, if the facts warrant it, an objection to the proposed plan or a motion to dismiss the case for bad faith will be filed by the Standing Chapter 13 trustee and/or the United States Trustee. It will then be up to the debtor to explain to the bankruptcy court why the originally-filed Schedules, which the debtor signed under penalty of perjury, were not true and correct after all.

It cannot be said enough. The integrity of the bankruptcy system depends on the debtor's full and complete disclosure. That includes Schedules I and J. Once this process is compromised, the very foundation of the bankruptcy system begins to crumble. We don't intend to let that happen.

PRACTICE TIP. As noted in the article above, counsel must have a good understanding of the debtor's financial condition at the outset of the case, since counsel is required to provide advice regarding the appropriate type of bankruptcy to file, and the Bankruptcy Code requires that the Schedules be correct the first time. With respect to debtor's income, the best source is the debtor's pay stubs, as they contain a wealth of information that should be included on Schedule I. Contributions to a retirement account, payments on a retirement account loan, and the purchase of savings bonds or company stock will all be reflected on the debtor's pay stubs. The United States Trustee looks at pay stubs to get a better understanding of the debtor's financial position. Perhaps debtor's counsel should, too.

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[1] The Tenth Circuit has adopted the "totality of the circumstances" approach to determine if "substantial abuse" exists. *See In re Stewart*, 175 F.3d 796 (10th Cir. 1999).

# ANALYZE THIS

**$Ten Million Paid in Chapter 7.** There have been 1082 chapter 7 asset cases closed in Region 20 from January 1—June 30, 2003. Those cases had total receipts of $9.9 million. Unsecured creditors received $3.8 million and secured creditors received $2.0 million.

| | Small Asset Cases[1/] | Large Asset Cases[2/] | All Cases |
|---|---|---|---|
| # of cases | 793 | 289 | 1082 |
| Total receipts | $1,991,484 | $7,890,211 | $9,881,695 |
| Disbursements: | | | |
| Unsecured creditors | $1,196,233 | $2,611,908 | $3,808,141 |
| Secured creditors | $6,959 | $1,984,739 | $1,991,698 |

Thirty-one percent (31%) of the funds paid to unsecured creditors during this period came from the small asset cases. An analysis of small asset cases indicates that although the amount distributed in each individual case may not appear to be a substantial amount, the total distributed to unsecured creditors in all of these cases is significant—$1.2 million for the first six months of 2003. Unsecured creditors received 60% of the total receipts in the small asset cases, compared to 33% of the total receipts in the large asset cases.

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[1] Total receipts less than $5,000.

[2] Total receipts greater than $5,000.

# POINTS OF INTEREST


Bricktown. Wedged between the Santa Fe Railroad tracks on the west, Deep Deuce to the north and the Canadian River to the south is Oklahoma City's newest entertainment district. It was originally a military district for the Army's cavalry and infantry units that came to Military Hill east of the Santa Fe tracks after the Oklahoma Land Run of 1889. Their purpose was to impose law and order in the new frontier city. The old military district subsequently became the location of freight warehouses for railroad shippage for the Santa Fe, Rock Island, Frisco and MK&T (Katy) railroads. Built of red brick, the most common durable building material that could be had at the time, the oldest buildings date to around 1909, just two years after statehood. Deep Deuce, or NE 2nd Street, was the location for many of the city's African American businesses and became the site of well known clubs frequented by many of the country's most famous jazz musicians. Bricktown can trace its entertainment history directly to Deep Deuce, but was given life by Oklahoma City's citizens who were determined to breathe life into their City through public work projects. The passage of a one cent tax, to last for five years, raised almost $500 million. The initial public works projects were dedicated to Bricktown and consisted of a new baseball park, named "The Brick" and a canal that runs down former Oklahoma Street between warehouses. Come take a water taxi ride down the canal, watch the Oklahoma City Red Hawks play at The Brick, grab a beer at the Bricktown Brewery, sample some sushi at Bricktown's newest restaurant "Lotus" or just enjoy a nostalgic walk among the four story former warehouses on a summer evening. You might even hear some blues music drifting from The Fat Sow or jazz from Maker's Cigar & Piano Lounge or better yet, have dinner along the canal at the Bourbon Street Café. Come to Bricktown, come for fun!

# LET'S EAT

Tired of grilling the same old things? Here is a healthy low-fat recipe from *Cooking Light* cookbook. I made this recipe for my family along with regular burgers....the Greek Feta Burgers were the first to disappear!

Greek Feta Burgers

*Prep: 8 minutes*

*Cook: 12 minutes*

*Substitute ground round for the ground lamb, if desired.*

*10-ounce) package frozen chopped spinach, thawed, drained, and squeezed dry*

*1 tablespoon lemon juice*

*1/4 teaspoon black pepper*

*1 large egg white, lightly beaten*

*3/4 pound lean ground lamb (or substitute ground round)*

*½ cup (2 ounces) crumbled feta cheese*

*1/4 cup chopped fresh mint or 4 teaspoons dried mint flakes*

*Cooking spray*

*4 (2-ounce) hamburger buns with onions*

*1 cup fresh spinach leaves*

*½ cup diced tomato*

*Cucumber-Dill Sauce*

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**EAT**
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1. *Combine first 4 ingredients; add lamb, cheese, and mint, and stir well. Divide mixture into 4 equal portions, shaping each into a patty.*
2. *Prepare grill*
3. *Place patties on grill rack coated with cooking spray; grill, covered, 6 minutes on each side or until done.*
4. *Line bottom half of each bun with 1/4 cup spinach leaves; top each with a patty, 2 tablespoons tomato, 2 tablespoons Cucumber-Dill sauce, and top half of bun. Yield: 4 servings.*

*Cucumber-Dill Sauce*

*Prep: 5 minutes*

*1/4 cup diced seeded peeled cucumber*

*1/4 cup plain low-fat yogurt*

*1/2 teaspoon chopped fresh or 1/8 teaspoon dried dill*

*1 small garlic clove, minced*

1. *Combine all ingredients in a bowl. Serve with grilled trout, salmon, or shellfish or as a dip with fresh vegetables. Yield 1/2 cup (serving size: 2 tablespoons).*

Bon Appétit!

Kelly Jordan

**10TH CIRCUIT**
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that portion of their respective claims constituting interest and penalties was to be treated as unsecured. The taxing authorities objected. The court found this case distinguishable from *Anderson*, because it involved a nondischargeable debt, whereas *Anderson* involved a student loan, which under certain circumstances can be discharged. The court further found that "inserting a provision in a footnote only, in regular font and typeface . . . does not seem reasonably calculated to make the creditor aware of the impact confirmation will have on the creditor's rights." As a result, the court overruled the objection of the trustee and held that the failure of the IRS and KDOR to object to the plan did not estop them from requesting full payment of their respective priority claims.

In addition, in its opinion, the court generally addressed an issued raised by the case:

> As a preliminary matter, this Court finds that the intentional insertion of a plan provision that bypasses clear and unambiguous language of the Bankruptcy Code and controlling case law is unacceptable, and potentially sanctionable. This Court must rely on the fact that counsel appearing before it are officers of the Court and are ethically obligated to inform the Court if they are aware of the existence of a plan provision that renders the plan nonconfirmable.
>
> Within this context, the Court understands that *Anderson* permits a debtor, under unique factual circumstances to discharge certain debt – like student loans – through a plan. When those unique circumstances exist, this Court agrees with those courts that hold that any such plan must clearly and unambiguously state on its face that the debtor does not intend to file an adversary complaint or contested matter, that the confirmation order, alone, will result in discharge, and if the creditor wishes to contest this result, it must file an objection (Citations omitted.)

**A PERIODIC NEWSLETTER BY THE OFFICE OF THE UNITED STATES TRUSTEE,**

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We can be found at
http://www.usdoj.gov/
ust/r20/region_20.htm

*EXXTRA! EXXTRA! Read all about it*