EXXTRA! EXXTRA!
READ ALL ABOUT IT

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

Volume 2, Issue 1
February 06, 2004

A WORD FROM THE U. S. TRUSTEE

It's the start of a New Year and already much has been happening in Region 20 –

- Civil Enforcement remains a top priority for the Program and Region 20. Everyone is familiar with our efforts to dismiss cases which are a substantial abuse of the process and to seek a denial or revocation of discharge when the debtor has failed to "play by the rules." But that's not all we've been up to.

Civil Enforcement in Region 20 also includes a consumer protection component. Attorneys hired to represent debtors sometimes engage in unethical conduct or sloppy practice. This conduct tarnishes the system as a whole and prevents debtors from receiving the representation and relief to which they are entitled. Our Civil Enforcement efforts are also designed to provide assistance to those vulnerable to such abuses.

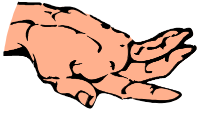
- Director Larry Friedman, who had visited the Albuquerque office via video conference once before, made his official visit to the office on January 27, 2004. The visit gave the Director a chance to meet with staff, judges, trustees, attorneys from the U.S. Attorney's office and bankruptcy practitioners.
- The Albuquerque office also played host to the U.S. Trustees' Conference, which followed closely on the heels of the Director's visit. As usual, the agenda was packed with information. And, as usual, it was good to see my friends and colleagues again.
- On the training front, Region 20 has joined forces with Region 13 (Missouri, Arkansas and Nebraska) and Region 12 (Iowa, Minnesota, and the Dakotas) to organize our first Three-Region Chapter 13 Standing Trustee Conference. The Conference is scheduled for April 1 and 2 in Kansas City, Missouri. Speakers from throughout the three Regions will be joined by Executive Office staff, including Director Friedman. It's an ambitious venture, but one we're certainly excited about.
- Joyce Owen and Dick Wieland from the Wichita office recently spent a few weeks in Peoria, Illinois, to help out that office. Although the hospitality they received was great, I am told by both that Peoria is not a winter vacation spot.
- As for me, in January, 2004, I participated in one of the Program's bi-weekly presentations to Associate Attorney General Robert McCallum. What an honor! U.S. Trustees Nancy Gargula (Region 10), Steve Katzman (Regions 15 and 16) and I joined Director Friedman and Deputy Director Clifford White in Washington, D. C. for the briefing, which provided a field's-eye view of how the Program's policies and goals are implemented.
- Finally, I would like to thank Nancy Gargula for allowing us to reprint her article, *Bankruptcy Fraud: The Credit Card Bust-Out Scheme.* Until I was appointed to serve as U.S. Trustee, I had never heard of a "credit card bust-out." If you are unfamiliar with these schemes, I encourage you to carefully read Nancy's article. And, don't think it can't happen here, because it can – and has.

Until next time, **Mary E. May,** U. S. Trustee

Inside this issue:

We're From the Government and We're Here to Help	2
10th Circuit Review	3
Best of Civil Enforcement	7
Analyze This	8
Point of Interest	9
Feature	10
From Around the Region	11
Let's Eat	12

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



Michele Lombard, Bankruptcy Analyst. Born and raised in Chicago, IL. City girl through and through. Came out to New Mexico to go to school and yes, I did know then that New Mexico was part of the United States; to this day though, I still am asked such a question as "what made you move to a foreign country? I was a student of the "ologies" - psychology, sociology, anthropology and eventually earned a BS degree in criminology. Did pursue advanced degrees doing a few semesters at a time in both public administration and business administration (where I picked up some bean counting). I took my criminology degree and worked in the state's criminal justice system for a period of time. However, I found that I liked court systems more than I liked the people I was dealing with before the court. I came into the bankruptcy court as the Estate Administrator - the precursor to the U. S. Trustee program (Katherine Vance and I are fellow "EA" alumni). I was extended an offer to work in the U.S. Trustee program when it moved out of pilot and went nationwide. To this day, I find the work in the bankruptcy system interesting and challenging. It has not escaped me that I may be coming full circle - what with the Program's emphasis on fighting fraud, abuse and bankruptcy crime, I am scratching at my criminology roots.

I stayed put in New Mexico because it is the "Land of Enchantment", which to me means no more Chicago winters. I do; however, love to visit family and friends and get a "city fix". "City fix" includes tall buildings, Chicago deep dish pizza, the lakefront, shopping and more Chicago deep dish pizza. As many of you know, I don't "do lunch" because I enjoy a work out everyday. Studio cycling is part of my fitness routine. I am looking to take the indoor cycling on the road this spring by entering the "Santa Fe Century", a 100 mile *bike ride* to Santa Fe. Running remains the mainstay of my keeping fit. Or maybe it is more jogging these days. Lately I have noticed that I rely on my dog, Pete, the "terrorist Jack Russell terrier", to drag me along ......

End of story.

Janneane Cruse, Bankruptcy Analyst. I have lived in Kansas all my life, so it is not that remarkable to note that I grew up on a farm just a couple of miles from a small town and its public school where I attended all twelve grades. The town of Alden and its surrounding community had a population of approximately 200 people. The year that I graduated from high school, there were 17 pupils in my senior class, and that was counting the class members who had transferred in from the neighboring town of Raymond when the two high schools were consolidated.

I liked growing up in a small town. Everyone knew everyone else; every person mattered. There were so few customers on our rural telephone service that telephone numbers were only two digits. In fact, the entire county was so sparsely populated that, for many years, my father managed to have the same two digits of our phone number assigned as his car tag number, too. In our town, nicknames were bestowed as a badge of acceptance. There were the common ones you would expect to find: Shorty, Red, Hank and Butch. Some nicknames were more creative: Possum, Pistol and Mutt. Somehow I was overlooked when these universal nicknames were assigned, but, lest you think that I felt deprived, you needn't worry. I had four older brothers who were skilled "appellationists". Thank goodness I had an older sister and the prevailing "sticks and stones…" mantra as my defense.

After graduation from high school, I took a job with a bank in Sterling. I worked there seven years. The job required confidentiality, accuracy, legible handwriting and attention to detail. Customer service was paramount, thus people skills were a necessity. My employers were honest, hard-working and patient. Almost every day of my working life since then, I have drawn on lessons learned in that small, Midwestern country bank.

My husband and I met through the able assistance of mutual friends who thought we would make a good couple. My husband is a commercial artist who was raised in St. Louis; our backgrounds and personalities are polar opposites. But, those matchmaking friends were right as rain. We celebrated our 35th wedding anniversary last year. We have two grown children, a son and a daughter, and four grandchildren. In the years when we were rearing our children, I worked at several consecutive jobs to help make ends meet, always choosing occupations involving my love of number-crunching. When our kids reached their teen years, I decided to pursue my lifelong dream of a college education. I had the support of my husband and children, and the encouragement of my brother (now deceased) who was a professor at Bethany College in Lindsborg, Kansas. I attended and graduated from Bethany College in 1982.

In 1989, I accepted a job with the office of the United States Trustee in Wichita. Not long after taking the job, I studied for and passed the CPA exam. I find that it takes both things, the knowledge gleaned from formal study and the skills learned in previous work experience, to be able to do my job well. On weekends, I hang out with my husband. Despite the disparities in our upbringing, he and I share a love of family and friends, travel, history, archaeology, museums and gardening. We also enjoy good movies, good music and good food.

Clara Dykes, Bankruptcy Analyst. An "Okie", but not from Muskogee. Henryetta, home of the world famous cowboys, Troy Aikman and Jim Shoulders, is my birthplace. It's also within a few miles of my residence and will, I'm sure, be very close to my burial place.

I have a Bachelor's degree in accounting from Northeastern State University in Tahlequah, Oklahoma, (yes, Oklahoma has more than two universities!) and hold a Certified Public Accountant certificate issued by the Oklahoma State Board of Public Accountancy.

Please see **Government**, Page 3

Government

From Page 2

Life with the U.S. Trustee's Office started in September of 1992. After spending a couple of years booking oil revenue, a little voice said, "Go west, young woman." Not being very adventurous, I looked west only a couple of city blocks. And, what to my wondering eyes did I see? Katherine Vance...and the U.S. Trustee's Office. I was familiar with the Office, having worked several years "on the outside" (in a law office), and it seemed like the perfect marriage of law and accounting. Interestingly, the Tulsa U.S. Trustee's Office is responsible for both the Northern and Eastern Districts of Oklahoma, and I resided in one and worked in the other. Was this a match made in Heaven, or what? I won't say Ms. Vance made me an offer I couldn't refuse...but, money isn't everything, right? Besides, there are glorious sunsets (and sunrises) along Highway 75.

In my other life, I'm known as a wife and mother. If I had spare time, I'm sure there's some sport or hobby I would enjoy. Hold that thought for about fifteen years...

10TH CIRCUIT REVIEW

U.S. SUPREME COURT

Lamie v. United States Trustee, — U.S. — (2004).

The Supreme Court held in a chapter 7 case that under the plain language of Section 330(a)(1) the Bankruptcy Code does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed under Section 327. If the debtor's attorney is to be paid from estate funds, then the attorney must be employed by the trustee and such employment approved by the court. The Supreme Court thus upheld the position of the Fifth, Eleventh and Fourth Circuits and reversed the position of the Second, Third and Ninth Circuits.

Kontrick v. Ryan, — U.S. — (2004).

Bankruptcy Rules cannot be used to extend or limit the jurisdiction of a bankruptcy court. As a result, the 60-day limitation set forth in Bankruptcy Rule 4004 is an affirmative defense and must be asserted by the debtor or it is waived. The sole question before the Supreme Court was whether the debtor forfeited his right to assert the untimeliness of the creditor's amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits. According to the Court, time bars must generally be raised in the debtor's responsive pleading, although a responsive pleading may be amended to include an inadvertently omitted affirmative defense, even if the time to amend has passed, since "leave [to amend] shall be freely given when justice so requires." However, even if a defense based on Bankruptcy Rule 4004 could be equated to "failure to state a claim upon which relief can be granted," the issue could be raised, at the latest, "at the trial on the merits." Fed. Rule Civ. Proc. 12(h)(2). Only lack of subject-matter jurisdiction is preserved post-trial. Fed. Rule Civ. Proc. 12 (h)(3).

BANKRUPTCY APPELLATE PANEL

Compass Bank v. Investment Co. of the Southwest, Inc. (In re Investment Co. of the Southwest, Inc.,) 302 B.R. 112, 2003 WL 22900480, (Judges Clark, Bohanon and Thurman) (Unpublished - New Mexico).

The Chapter 11 debtor was a corporation that owned and developed real estate. One of its primary assets was a parcel of land divided into 70+ lots. Compass Bank held a lien against most of the debtor's assets, including the lots. In addition, prior to the bankruptcy, Compass Bank obtained a $2.1 million judgment against the debtor, which imposed a lien against the lots. Compass sought relief from the automatic stay or adequate protection. The bankruptcy court ordered adequate protection payments of $15,000 and established deadlines for the debtor's filing of a plan and disclosure statement. The bankruptcy court also ordered that Compass and the debtor meet and negotiate "release prices" on all assets secured to Compass. No agreement was ever reached, and further litigation ensued. Eventually, the bankruptcy court ordered Compass to release its lien in each of the 70+ lots in exchange for $14,865 per lot. Pursuant to the order, the debtor was entitled to keep excess proceeds. In reversing the bankruptcy court, the BAP found that "Section 363(f) expressly states that a free and clear sale may only occur if a showing thereunder is made in connection with a particular property. The release order authorized future sales of "unknown" lots which is not permitted under Section 363(f). With respect to the "known" lots, the release order authorized sale for turnover of less than all of the net proceeds, for which the BAP could find no authority under non-bankruptcy law. Neither did the BAP speculate as to the applicability of Section 363(f) (5). Finally, the BAP found the release order should be vacated, because it established treatment of Compass' claim without affording Compass the protections of the plan confirmation process.

In re Miller, — B.R. —, 2004 WL 32923 (BAP. 10th Cir. 2003). (Judges McFeeley, Nugent and Rasure) (Utah).

An involuntary Chapter 7 petition was filed against Miller. He subsequently filed a motion to convert the case to Chapter 13. Although neither element of Section 706 was present, the bankruptcy court applied the "totality of the circumstances" test – debtor or debtor and his wife had filed 10 separate bankruptcy petitions since January of 1999, at least four of the cases were dismissed with prejudice, and debtor and his attorney were sanctioned in at least one case for an improper filing – and exercising its discretion under § 105(a), denied the motion. The BAP reversed and remanded, finding that a "bankruptcy court may not exercise its discretion to evaluate other circumstances when considering a motion to convert under § 706, but is restricted to considering whether the debtor meets the requirements delineated in the plain language of the statute."

Please see 10th Circuit, Page 4

10th Circuit

From Page 3

In re Miller (Miller v. Trustee), 302 B.R. 705(BAP 10th Cir. 2003). (Judges Bohanon, Cornish and Michael) (Utah).

Debtor sought to remove the trustee (appointed in his involuntary Chapter 7 case) for alleged misconduct in securing and maintaining some of the estate's assets, for showing favoritism to the petitioning creditors and for other misconduct. The debtor also requested that the trustee be required to turn over property to persons other than the debtors. The bankruptcy court denied the motions, and debtor appealed. With respect to the first issue, the BAP noted that "[r]emoval of a trustee is committed to the sound discretion of the bankruptcy court," and absent a "definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances" the bankruptcy court's decision would not be disturbed. The bankruptcy court's decision here was not disturbed. With respect to the second issue, there was a question regarding ownership of property that the debtor claimed belonged to others. A determination of ownership requires an adversary proceeding. The debtor's motion did not comply with procedural requirements and was denied. The BAP further found that even if the court could consider the motion, the debtor was not the proper party to request the relief, as a party may not assert the rights of another to justify relief for himself – not in the lower court and not on appeal.

In re Chavez, 2003 WL 23120081 (BAP 10th Cir. 2003). (Judges Clark, Michael and Brown) (Unpublished - New Mexico).

This is "a case of failures" – a failed marriage, a failed business and a failure by the debtor's husband to properly report income from the business to the state taxing authorities. The failure to pay taxes resulted in tax liens being recorded against the debtor's marital residence. The debtor claimed that the liens should be avoided because they (i) violated her due process rights, (ii) were levied without her first acknowledging in writing the validity and amounts of the taxes and (iii) the amounts owed were not determined by the trial court. In finding for the taxing authorities on all issues the court found: (i) New Mexico is a community property state, so "community debt" is a "debt contracted or incurred by either or both spouses during the marriage which is not separate debt." The tax debts were "community debt" properly payable from "community property," which in this case included the marital residence; (ii) the New Mexico homestead exemption expressly states that such exemption is inferior to the rights of the taxing authorities, that the debtor received all of the notice to which she was entitled, and no consent or acknowledgment by the debtor was needed; and (iii) the amounts assessed "are assumed to be correct as a matter of New Mexico law." The burden is on the taxpayer to overcome the presumption, and that burden was not met here.

In re Solomon, 299 B.R. 626 (BAP 10th Cir. 2003). (Judges Nugent, Clark and Thurman) (Oklahoma).

Chapter 7 trustee brought an adversary proceeding to set aside, as constructively fraudulent under both bankruptcy and Oklahoma law, debtors' grant of mortgages to lender to secure their previously unsecured debt on their guarantees of corporate indebtedness. Both the Bankruptcy Code and Oklahoma law require a showing of insolvency and lack of reasonably equivalent value. The BAP found *Clark v. Sec. Pacific Business Credit, Inc. (In re Wesdor),* 996 F.2d 237 (10th Cir. 1993) to be closely analogous. According to the BAP, at best, the debtors temporarily received forbearance by the Bank from enforcement of the notes and guaranties and other indirect benefits, but those benefits could not be quantified, resulting in the conclusion by the BAP that the debtors did not receive reasonably equivalent value for the mortgage-transfer. As for the insolvency element, the "balance sheet" test – focusing on non-exempt and unencumbered assets that would be susceptible to liquidation – was applied. The debtor was found to be insolvent at the time of the transfer, and the mortgages were avoided as constructively fraudulent conveyances.

Snyder v. Key Bank, U.S.A. (In re Snyder), Case No. 02T-32950, BAP No. UT-03-055 (BAP 10th Cir. 2003). (Judges Cornish, Bohanon and McNiff) (Utah).

In ruling on the debtors' motion to reopen their Chapter 7 case, the Utah bankruptcy court made its ruling on the record, but the written order that was entered was bereft of any detail – no findings of fact or conclusions of law. The debtors appealed the bankruptcy court's order, but failed to include a transcript of the hearing. As a result, the BAP could not determine which of the arguments made on appeal had been made to the bankruptcy court or the reasons those arguments had been rejected. The order denying the debtors' motion to reopen was affirmed:

> As this case illustrates, failure to file the required transcript involves more than noncompliance with useful but nonessential procedural admonition of primarily administrative focus. It raises an effective barrier to informed, substantive appellate review. *McGinnis v. Gustafson,* 978 F.2d 1199, 1201 (10th Cir. 1997).

Haddox v. Johnson (In re Haddox), 302 B.R. 112 (BAP 10th Cir. 2003). (Judges Nugent, McFeeley and McNiff) (Unpublished - Oklahoma).

Does the court have the authority to order the modification or reformation of a confirmed plan on its own motion, even when the plan contains provisions which violate one or more sections of the Bankruptcy Code (in this case, a provision which provided for the abatement and discharge of interest on a student loan)? No.

Delmer v. TEC Resources, LLC (In re TEC Resources, LLC), Case No. 00-03950-M, BAP No. NO 03-033 (BAP 10th Cir. 2003) (Judges McFeeley, Nugent and Brown) (Unpublished – Oklahoma).

Garrett was the lessor in an oil and gas lease with Cherokee Production Company, as the lessee. The lease covered certain mineral interests in Washington County, Oklahoma, and was duly filed of record. Defendants filed their Chapter 11 bankruptcy petitions in February, 2001, and Garrett filed a proof of claim, with the lease attached, in the amount of $18,500.

Please see 10th Circuit, Page 5

10th Circuit

From page 4

That claim was disallowed by the Oklahoma bankruptcy court in August, 2001, and no appeal was taken. In November, 2002, Garrett, appearing *pro se,* filed an adversary complaint against the defendants seeking to recover a property interest. On cross-motions for summary judgment, defendant's motion was granted. Garrett's motion was denied and his complaint dismissed. Garrett's motion for rehearing was also denied. In affirming the Oklahoma bankruptcy court, the BAP found that the order disallowing Garrett's claim was a final order, which left Garrett with no claim. As a result, any purported evidence that there might be a claim was irrelevant. Because there was no claim, there was no property that Garrett could recover from the estate and no facts at issue which could be resolved at trial.

In re Lucas, 300 B.R. 526 (BAP 10th Cir. 2003). (Judges McFeeley, Bohannon and Michael).

Two issues were before the appellate panel. The first was whether the Bankruptcy Code's provision, 11 U.S.C. § 523(a)(4), excepting from discharge individual debts incurred for fraud or defalcation while acting as a fiduciary or for embezzlement excepted a state court judgment debt after a trust and will leaving the debtor certain real and personal property were found to be void. This issue arose out of a trust and will contest in Kansas. Debtor was named co-trustee and beneficiary of a trust funded with all of the assets, and through the will by pour-over, of the deceased. The deceased's half-brother became the administrator of her estate and contested the will on the grounds that the debtor had exerted undue influence and that the will and the trust were void. The state court ruled in favor of the debtor. Administrator appealed the judgment but obtained neither a supersedeas bond nor a stay pending appeal. After the judgment in her favor, debtor sold real property and otherwise disposed of certain personal property. The Administrator ultimately prevailed four years after the first state court judgment and after a remand and second state court judgment. Debtors scheduled the house left to her through the will and a car purchased with property of the trust as exempt and there was no evidence that Administrator had objected to the claims of exemption. The bankruptcy court considered the debtor's conduct at two points in time. The first was at the time of the influence and the second after the first trial. The bankruptcy court held that the debt was dischargeable based upon the debtor's conduct at the time of the undue influence because there was no identity of issues with the state court judgment. The state court proceeding had not established undue influence, it was found only because debtor had not met her burden of rebutting the presumptions against her, and because there was no factual finding of fraud. The bankruptcy court held that the debt was dischargeable after the first state court trial because there was a judgment in favor of the debtor and therefore there was no embezzlement that would invoke § 523(a)(4). The appellate panel affirmed the bankruptcy court on appeal, holding that the debtor had a final judgment in her favor at the time of her disposition of the property of the trust, despite the appeal of the first state court judgment.

The second issue was whether the final state court judgment created a constructive trust with respect to funds of the trust or traceable assets of the trust. This was apparently Administrator's attempt to reach property excepted by the bankruptcy court and to which the Administrator had not previously objected. The bankruptcy court held that this issue need not be addressed because it had found the debt eligible for discharge. The appellate panel, holding that property held in constructive trust would not become property of the estate pursuant to § 541(d) and therefore would not be subject to discharge, remanded to the bankruptcy court for determination of whether or not the law of the State of Kansas imposed a pre-petition constructive trust and if the determination of such a question was properly before the court.

BANKRUPTCY COURT

Morris v. Burghart (In re Burghart, Case No. 03-102912), Adv. No. 03-5146 (Bankr.D.Kan. 2003). (Judge Nugent).

In granting defendant's motion for partial summary judgment the bankruptcy court noted that the "fact that parties are related by blood or marriage does not warrant a conclusion that the transactions were fraudulent as to creditors, but it does subject the transfers to closer scrutiny by the finder of fact." Since this was the only badge of fraud offered into evidence by the trustee, the trustee could not prevail on his fraudulent conveyance claim. Moreover, the record suggested that debtor had made the payment in an effort to reduce the debt on her exempt vehicle – a practice long ago approved by the Kansas Supreme Court in *McConnell v. Wolcott,* 70 Kan. 375, 383, 78 P.848 (1904).

Morris v. Duffy (In re Duffy), 298 B.R. 775 (Bankr.D.Kan. 2003). (Judge Nugent).

The trustee sought to recover as property of the estate debtors' tax refunds. The debtors, however, had not received their refunds, because of a setoff by the IRS pursuant to 26 U.S.C. § 6401(d) and (e), which provides that upon receiving notice from any federal agency to whom the taxpayer is indebted or State to whom the taxpayer owes a tax obligation the IRS must effect the setoff. The bankruptcy court found that setoff in such cases is mandatory, that it is not subject to the automatic stay and that the court has "no jurisdiction to review or restrain the IRS from effectuating the offsets." The IRS was granted summary judgment and dismissed from the trustee's lawsuit.

In re Busetta-Silvia, 300 B.R. 543 (Bankr.D.N.M. 2003). (Judge Starzynski).

Chapter 13 debtor's counsel filed an application for compensation and reimbursement of expenses. The fees and expenses included both pre- and post-petition amounts. The court found that amounts owed the attorney pre-petition were not entitled to administrative priority and did not survive discharge, but were to be treated as any other unsecured, non-priority debt.

Please see **10th Circuit**, Page 6

10th Circuit

From page 5

In re O'Neill, 301 B.R. 898 (Bankr.D.N.M. 2003). (Judge McFeeley).

Debtor was a high school principal who provided support to two adult sons and the youngest son's two children. From December 2001, through late 2002, debtor attempted to repay her debts through a debt consolidation service. Her attempt ultimately failed, and she filed a Chapter 7 bankruptcy. The U.S. Trustee filed a motion to dismiss this case as a "substantial abuse" under Section 707(b), as debtor had disposable income from which she could repay a portion of her debts. Looking at the "totality of the circumstances," the bankruptcy court found that the debtor did not live an extravagant lifestyle, her reported expenses were not excessive, debtor had not been deceptive or dishonest in dealing with creditors, and payout of about 36%, without other evidence of abuse, did not warrant dismissal of the case as a substantial abuse.

In re Marshall, 302 B.R. 711 (Bankr.D.Kan. 2003). (Judge Nugent).

Debtor moved to reopen his bankruptcy case, which was filed on July 8, 1994, to schedule and discharge the unscheduled debt of USF&G. The claim of USF&G arose out of debtor's prepetition agreement to indemnify USF&G under a retailers' sales tax bond. At the time debtor's company ceased doing business, it owed sales tax for June, July and August, 1993, to the State of Kansas. In November of 1997, USF&G honored its surety obligation and paid $15,000 to the State of Kansas. In 2000, USF&G commenced a lawsuit against the debtor for indemnification. In reaching its decision, the bankruptcy court found that, even though USF&G did not pay the claim of USF&G until after debtor's bankruptcy was filed, under the "conduct theory," the claim arose prepetition. The court then sided with the majority of courts and found USF&G's unscheduled claim was discharged as a matter of law, unless otherwise excepted from discharge. However, the court then found that USF&G was subrogated to the taxing authorities' right to assert nondischargeability of the tax debt, and that in this case, the unpaid sales tax was a trust fund tax which could not be discharged. As a result, reopening the case afforded the debtor no relief, and the motion was denied.

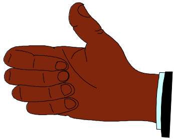
Nave v. Comm. Credit Union, 303 B.R. 223 (Bankr.D. Kan. 2003). (Judge Nugent).

In this adversary proceeding, debtor contended that defendant's failure to include the amount of premiums for credit life and credit disability insurance in the "Amount Financed" constituted a violation of the Truth in Lending Act (TILA) and the Kansas Consumer Protection Act (KCPA). The bankruptcy court found that because the insurance premium was paid prospectively, the premiums were not financed, thus there was no violation of TILA or Regulation Z. The court also concluded that debtor had no viable claim for a per se violation of KCPA, since judgment related to unconscionable practices had previously been denied.

In Re Powers, 301 B.R. 90 (Bankr. W.D.Okla. 2003) (Judge Weaver).

Debtor filed an adversary proceeding in the bankruptcy court pursuant to 11 U.S.C. § 523(a)(8) seeking a hardship discharge of a student loan. The State of Alaska Commission on Post-Secondary Education was the creditor who opposed the discharge of the student-loan debt and pressed a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(1) because the State's 11th Amendment immunity deprived the court of subject matter jurisdiction. The State of Alaska contended that Congress' passage of 11 U.S.C. § 106(a), abrogating the State's sovereign immunity was unconstitutional and, after stipulations, was the only issue before the court. Citing *Seminole Tribe of Florida v. Florida,* 517 U.S. 44 (1996), the bankruptcy court stated that Congress' power to enact bankruptcy laws granted by Article 1 "cannot be used to circumvent the Eleventh Amendment restrictions on judicial power." After holding that Section 106 was not a valid exercise of Congress' Article 1 grant, the court then considered whether Section 106's abrogation was a valid exercise of Congress' power pursuant to § 5 of the Fourteenth Amendment. The bankruptcy courts have been split on this issue. Judge Weaver cites *Mather v. Oklahoma Employment Se. Comm'n (In re Southern Star Foods, Inc.),* 190 B.R. 419 (Bankr. E.D. Okla. 1995) for the proposition that the Bankruptcy Code grants certain "privileges," thereby allowing application of § 5 of the Fourteenth Amendment. Judge Weaver notes that the *Southern Foods* decision cites no authority for its finding and finds that the holding is inapposite of relevant Supreme Court case law, *Saenz v. Roe*, 526 U.S. 489 (1999). In holding that the Supreme Court does not recognize such "privileges" and that Congress' enaction of § 106 was not pursuant to a valid exercise of power and that the State of Alaska's 12(b)(1) motion should be granted because the State's 11th Amendment immunity had not been abrogated. A similar matter was decided by the 10th Circuit Bankruptcy Appellate Panel involving the Cherokee Nation. *In re Mayes*, 245 B.R. 145 (10th Cir. BAP, 2003). The United States Supreme Court should resolve the issue of sovereign immunity and Indian Nations once and for all when it rules on *Hood v. Tennessee Student Assistance Corp. (In re Hood)*, 319 F.3d 755 (6th Cir. 2003), *cert. granted,* 2003 WL 21134036 (Sept. 30, 2003), this session.

BEST OF CIVIL ENFORCEMENT



Court denies discharge of $81,222 in unsecured debt based upon substantial abuse. The Oklahoma City office reports that on January 21, 2004, the Bankruptcy Court for the Western District of Oklahoma issued an opinion dismissing the case of Michael J. and Terri G. Farmer, Case No. 03-17169, for substantial abuse unless the debtors convert to Chapter 13. In the decision, the Court adopted the reasoning of *In re Cohen*, 246 B.R. 658 (Bankr. Colo. 2000), finding that the U. S. Trustee has met her initial burden of proof by establishing that "the schedules indicate a debtor's ability to make a very substantial payment on unsecured indebtedness." Thereafter, the burden shifted to the debtors to produce evidence that there is no ability to pay or that, under the "totality of the circumstances", dismissal is not warranted. The debtor failed to met that burden. In reaching its decision, the bankruptcy court also adopted much of the testimony of the Chapter 13 trustee who testified regarding the level of reasonable expenses and disposable income.

Debtor Who Used Credit Card Cash Advances to Buy House Denied Discharge. On January 26, 2004, the Bankruptcy Court for the Northern District of Oklahoma granted the Tulsa office's Objection to Discharge under 11 U.S.C. § 727 (a)(2)(A) in the case of Constance Natalie Doyle, Case No. 03-04873-R. Debtor incurred approximately $72,075.00 in charges for credit card cash advances and used the cash proceeds to purchase residential real property which she claimed as her exempt homestead, attempting to place the property beyond the reach of creditors. Debtor and debtor's counsel agreed to a Journal Entry of Judgment and Order Denying Discharge.

Motorcycle Payments Lead to Dismissal: On November 19, 2003, a stipulated order was entered dismissing the Chapter 7 proceeding of Eagle and Leticia Herrod. The dismissal was in response to a Section 707(b) motion filed by the Albuquerque office of the U.S. Trustee. Among other things, the motion alleged that $383 in monthly payments for the purchase of motorcycles could be used to fund a Chapter 13 plan. As a result of the dismissal, $34,502 in unsecured debt was not discharged.

Attorney Surrenders License. An attorney in Topeka, Kansas, agreed to voluntarily surrender his license on December 31, 2003. The agreement reached with the Disciplinary Administrator avoided the need for the hearing scheduled for December 11, 2003, concerning the complaints against the attorney. The U. S. Trustee had submitted a complaint and an attorney from her office was scheduled to testify at the disciplinary hearing. Previously, on September 12, 2003, the U.S. Trustee was successful in having the attorney agree to cease any practice in the bankruptcy court for the District of Kansas.

Financial Advisor Agrees to Fee Reduction of $800,000. McDonald Investments, Inc. (formerly Resilience Capital Advisors) agreed to an $800,000 reduction of fees requested in its final compensation application. McDonald served as financial advisor to the debtors *Homeland Holding Corp.*, 01-17869, and *Homeland Stores, Inc.*, 01-17870. McDonald filed its application seeking final compensation on October 7, 2002. The Oklahoma City office of the U.S. Trustee objected to the final request on the grounds that a "sale fee" requested was not earned and that granting the compensation requested would award compensation beyond what is reasonable in comparison to the benefit received by the estates from McDonald's services. The U.S. Trustee's objection was also joined by the Official Unsecured Creditors' Committee and Associated Wholesale Grocers. McDonald did not pursue a hearing on the matter. The parties submitted an agreed order.

Inconsistencies with Prior Schedules Result in Denial of Discharge. The Albuquerque office reports that on October 28, 2003, default judgment denying the Chapter 7 discharge of John Michael Fernandez was entered. Mr. Fernandez had filed a Chapter 13 proceeding six months prior to instituting his Chapter 7 case. A comparison of the schedules and statements filed in the two proceedings resulted in numerous inconsistencies in disclosed assets and income. Additionally, only months before filing, Mr. Fernandez had submitted a personal financial statement to a bank showing a net worth of $710,000. At the time of the filing of the petition, Mr. Fernandez' disclosures showed a negative net worth of $202,803. As a result of the denial of discharge, $193,653.67 in unsecured debt was not discharged.

Debtors Numerous Purchases prior to Filing Bankruptcy Are Substantial Abuse. After trial on the Albuquerque office's Section 707(b) motion, the bankruptcy court entered an order dismissing the Chapter 7 proceeding of Dennis and Vangie Kon on October 30, 2003. The Court found that the debtors had purchased (1) a new home (2) furnishings for the home, and (3) expensive new vehicles, all within one year of filing the petition. Additionally, the bankruptcy court found that the debtors were voluntarily supporting their adult children with funds which could be used to repay creditors. As a result of the dismissal, $122,281.43 in unsecured debt was not discharged.

Tenth Bankruptcy Case Dismissed with Prejudice. On December 22, 2003, the tenth bankruptcy case filed by Donna Kay and Richard Dewayne Long was dismissed pursuant to 11 U.S.C. § 707(a). The debtors previously received a Chapter 7 discharge in 2002. Accordingly, the United States Trustee filed a motion to dismiss the case because the debtors were not eligible to receive another discharge, and because the objective of the debtors appeared to be to improperly delay or thwart creditors. The bankruptcy court entered an order of dismissal with prejudice to refiling pursuant to 11 U.S.C. § 109(g) and subject to the condition that any future bankruptcy petition filing, prior to the expiration of six years from the filing date of the 2002 case granting the debtors a discharge, will be allowed only upon application and order of the bankruptcy court.

Debtor Pleads Guilty to Bankruptcy Fraud. The Oklahoma City office reports that, Permelia "Pam" Larsen, a principal of the debtor, Bill's Sweeping, Inc., agreed to plead guilty to one count of bankruptcy fraud under 18 U.S.C. § 152(1). The particular count to which Larsen plead involves $17,490 in

Please see **Best of**, Page 8

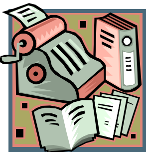
Best of

From Page 7

accounts receivable diverted from the case trustee. She faces a maximum penalty of five years imprisonment, a fine of up to $25,000, supervised release of three years and a restitution judgment. She has not yet been sentenced. The activities of Larsen were brought to the attention of the Oklahoma City office by the Chapter 7 trustee. The Oklahoma City office submitted the criminal referral to the United States Attorney for the Western District of Oklahoma and assisted in the preparation of the case.

Permanent Injunction Entered Against Ziinet.com. The Bankruptcy Court for the Northern District of Oklahoma granted the Tulsa office's Second Motion for Default Judgment, requesting sanctions, fines and a permanent injunction against Internet bankruptcy petition preparer Ziinet.com, a/k/a 700law.com. The preparer was fined $3,500 for violating 11 U.S.C. § 110 and was permanently enjoined from acting as a bankruptcy petition preparer for any debtor or prospective debtor in the Northern District of Oklahoma.

ANALYZE THIS



By Janneane Cruse, Bankruptcy Analyst, Wichita, Kansas.

Over Eighty-three Million Dollars Paid in Chapter 13. The Chapter 13 trustees in Region 20 were busy during fiscal year 2003. (The fiscal year for a Chapter 13 standing trustee operation runs from October 1 through September 30.)

Filings

As Table 1 shows, the total number of case filings (all chapters) in Region 20 in fiscal year 2003 was 52,396. From the total number of cases filed, cases filed as chapter 13 are broken out and shown in the column labeled "Chapter 13". The total number of cases filed under chapter 13 was 6,777, or 13% of the total cases filed. It is interesting to note that the percentages vary widely by geographical region. For example, the number of cases filed as chapter 13 in the Kansas City and Topeka courts ranges from 25% to 33% of the total number of case filings (all chapters), respectively. Whereas, in Okmulgee and Tulsa, that percentage slips to around 8%.

Table 1. Bankruptcy Cases Filed in Region 20 in the Twelve-Month Period Beginning October 1, 2002 and Ending September 30, 2003

District/Division/State	All Chapters	Chapter 13	% 13/All
Albuquerque	9,903	897	9 %
New Mexico	**9,903**	**897**	**9 %**
Oklahoma City	13,929	1,664	12 %
Okmulgee	5,090	389	8 %
Tulsa	7,475	629	8 %
Oklahoma	**26,494**	**2,682**	**10 %**
Kansas City	5,392	1,367	25 %
Topeka	3,670	1,226	33 %
Wichita	6,937	605	9 %
Kansas	**15,999**	**3,198**	**20 %**
REGION 20 TOTALS	**52,396**	**6,777**	**13 %**

Please see Analyze, Page 9

Analyze

From Page 8

Disbursements

In Table 2, total disbursements to the three major creditor types and percentage of the total are shown in Table 2. The "Other" category comprises a number of items, including payments to debtors attorneys and costs of the chapter 13 operations which are funded by fees on disbursements.

Table 2. Disbursements by Chapter 13 Standing Trustees in Region 20 by Major Creditor Types and Other

	$ FY2003	% FY2003
Secured*	**$49,728,995**	**60%**
Priority	**$ 7,170,173**	**8%**
Unsecured	**$14,914,839**	**18%**
Other	**$ 11,331,933**	**14%**
Total Disbursements	**$83,145,940**	**100%**

* The figures shown for disbursements to secured creditors in Table 2 include ongoing mortgage payments in the districts where that practice is followed.

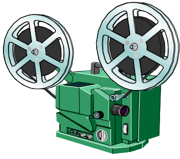
End Note:

Financial data is from the Statement of Trust Transactions and Balances section of the audited Annual Reports of Chapter 13 Standing Trustees for the Years Ended September 30, 2003 and 2002.

POINT OF INTEREST

The Tallgrass Prairie National Preserve is the only unit of the National Park System dedicated to the tallgrass prairie ecosystem. Of the 400,000 square miles of tallgrass prairie that once covered North America, less than 1 percent remains. Most of that is in the Flint Hills of Kansas, including an 11,000 acre remnant once known as the Z Bar Ranch/Spring Hill Ranch. The land was purchased by the National Park Trust in 1994, with the Preserve being established two years later. At exit 92 on the Kansas Turnpike, take the Cassoday exit, where a sign proclaims "Flint Hills Scenic Byway." The 45 mile drive between Cassoday and Council Grove on Highway 77 takes you through the towns of Matfield Green, Cottonwood Falls and Strong City, and makes a great day trip. For a complete listing of shopping, dining and lodging options in the area visit the Chase County Conventions and Tourism Committee www.chasecountyks.org or call 800-431-6344. At the Tall Grass Prairie National Preserve there are a variety of self-guided and ranger led activities, including a bus tour where the ranger explains the prairie's ecosystem, the geology that formed the Flint Hills and the legacy of ranching. The Preserve is home for more than 400 species of plants, 150 kinds of birds, 39 types of reptiles and amphibians, and 31 species of mammals. Bison are also being reintroduced into the prairie. The best time to see wildlife such as coyotes, collard lizards and prairie chickens is in early spring, and the best place to view taller grass and wildflowers is on the hiking trails where cattle don't graze.

FEATURE



BANKRUPTCY FRAUD: THE CREDIT CARD BUST-OUT SCHEME by Nancy J. Gargula, United States Trustee, Region 10

Long before I knew it as a "Bust-Out", my service as in-house counsel at Bank One exposed me to abusive practices which credit cardholders engaged in primarily to the detriment of the credit card issuers. From the vantage point of United States Trustee, I now see these same abusive practices as part of some very elaborate schemes that are being undertaken by some very well organized enterprises.

The Scheme

So how does the scheme work? The objective of a credit card bust-out scheme is to generate as much cash as possible for the scheme participants while providing the recruits a way out of their obligations through the filing of a bankruptcy petition. Here are two possible scenarios for the credit card bust-out: the Individual Recruiter Scheme and the Collusive Merchant Scheme.

The Individual Recruiter

The Individual Recruiter Scheme involves the recruitment of individuals to participate in the fraud by turning over control of existing credit card accounts and applying for as many additional credit card accounts as they can obtain. These individuals are also told by the Recruiter to obtain as many convenience checks for the accounts as they can. In exchange for their participation, these individuals are promised a kickback of some sort - usually cash - which could be as much as $2,000 per account opened or transferred. The individuals are told not to worry about their personal liability on the accounts opened and transferred, because they can simply file bankruptcy and be discharged from paying the outstanding balances following the bust-out period.

Once control of the credit card accounts is turned over to the Recruiter, the accounts are used to make purchases up to their maximum credit limits. The convenience checks obtained at the time the accounts were opened are then issued to pay the balances owed on the various credit card accounts. Of course, there is no money to back the convenience checks but the issuing financial institutions won't know that for awhile. These payments work similar to a kite on a bank account where convenience checks from one credit card account are issued to pay the balance on another credit card account and the circle continues until every account has been "paid in full."

Banking regulations, aimed at protecting consumers, require the issuing financial institutions to credit the accounts in the full amount of the checks at the time they receive the payments in the form of the convenience checks, even before they know whether or not the checks will clear. These checks, of course, will not. Immediately after the accounts are "paid in full", additional charges are made on the accounts for as much as two to three times the credit limits. The credit cards are used to obtain cash advances and to buy any goods that are readily sold for cash, such as jewelry, gift certificates, computers, audio and video equipment and airline tickets.

The Collusive Merchant

This credit card bust-out scheme works the same, but with one additional player when a Collusive Merchant is involved. Typically, the Collusive Merchant has a relationship with the Recruiter. The Collusive Merchant is usually a legitimate, cash business, such as dollar stores and convenience stores. In the bust-out scheme, the Collusive Merchant may: (1) swipe the credit cards turned over to the control of the Recruiter for bogus purchases and then wait to receive cash from their merchant; or (2) the Collusive Merchant will take the cash received from its legitimate customers, give the cash to the Recruiter and charge those same purchases to one of the credit card accounts. This latter practice frees up cash for the bust-out scheme.

The Credit Cardholder

The credit cardholder frequently has a cultural or ethnic link to the Recruiter. The individual recruited may already have multiple credit cards that can be transferred to the recruiter so the age of the credit card account will not necessarily be an indicator of a bust-out scheme. Of course, additional credit card accounts will also be opened by the individual recruited. The credit cardholder provides all of his or her personal information and credit card statements to the Recruiter and may even travel with the Recruiter to merchants and ATMs to obtain goods and cash. Once the bust-out scheme has run its course by maxing out the credit and purchasing limits on all cards issued in the cardholder's name, the cardholder files a bankruptcy petition to eliminate all of the credit card debt. The cardholder may claim that the bankruptcy was due to a gambling problem, stock market or investment losses, allowing a third party to use the debtor's credit cards or mismanagement of personal finances to cover up the bust-out scheme.

The Credit Card Issuers

The credit card companies or issuers receive the applications for the credit card accounts with exaggerated annual income and issue the cards with elevated credit limits. When convenience checks (or personal or business checks) are received, the issuers will show the accounts paid to the extent of the payment (usually payment in full) which restores all or a portion of the credit limit allowing new charges to be made on the accounts. By the time checks are returned for insufficient funds, new credit card charges have been made.

Red Flags

So how do we in the United States Trustee Program identify credit card bust-out schemes? There are several red flags that we look for in the documents filed by the debtor.

The bankruptcy petition typically shows few or no assets. The petition shows significant credit card debt, for example, between $75,000 and $800,000.

Please see Feature, Page 11

Feature

Page 10

- The debtor is usually unemployed or under-employed during the two to three year period before the bankruptcy petition is filed.
- The debtor lists a number of new credit card accounts opened within a short period of time before the bust-out period.
- The debtor owns no real estate and claims to own only wearing apparel and a very limited amount of household furnishings.
- If the debtor owns an automobile, it's old with little or no value.
- The debtors lists no bank accounts.
- When examined, the applications for the credit card accounts opened shortly before the bust-out period contain false employment and inflated salary information.

When bankruptcy petitions with these red flags are identified by our Program employees, further investigation is undertaken. When we believe a credit card bust-out has taken place, the United States Trustee will take all appropriate and available actions to remedy this type of abuse, including objecting to the discharge of the debtor who was recruited and participated in the credit card bust-out scheme. If you identify a case where you believe a bust-out may have occurred, please contact your local field office for further follow-up.

FROM AROUND THE REGION

TULSA: CM/ECF. Since our last news flash, the Northern District of Oklahoma went live with CM/ECF, Chapter 7 trustee Pat Malloy successfully avoided two bank liens on vehicles with Indian license tags, and our Civil Enforcement efforts are well underway.

On the CM/ECF side, the Court asked that the system be mandatory for all filings from the UST office and the panel trustees. What next ensued was a visit to the very new, exciting and strange world of drafting documents, converting them to PDF files, and navigating the Court's ECF system to get things filed. While we thought we were well trained, things like how to attach the appearance list from a chapter 11 341 meeting needed a fix. Then on to finding the right category for our new Stipulation for extending the 707/727 deadlines and agreements for document production and 2004 exams, which formerly had an Order incorporated into the document, but now need a separate order e-mailed to the Judge for signature. The Clerk's office has been great and provided lifeline phone numbers, as well as a little humor to smooth things over. Before too long, the rough waters and high winds were not as bad. The first electronic final, with six attachments, was a challenge, but with patience and collective wisdom, that too is being mastered. We are now sailing right along.

So we are now ready for the Eastern District to go live in February. We feel wise and a little more confident. But if you do call late in the day, please speak slowly, because we are e-mail weary from reading, deleting, printing and trying to remember where we are in the filing process! If our questions at the 341 get a little slow, we may be trying to sort out the answers in our Civil Enforcement investigations that lately seem so familiar-"I got into trouble playing Bingo, and before too long, I was over my head, and no, there are no assets, and I have no disposable income!"

Educational Efforts. Paul Thomas will be helping Herb Graves at the 20th "Basic Bankruptcy Seminar" this spring, on ethics. We are working on the "Top Ten List of Complaints from the UST Office" for the *Oklahoma Bar Journal*, which we hope proves helpful to everyone.

OKLAHOMA CITY: Director Makes Second Visit to OKC. Director Larry Friedman was the keynote speaker at the Oklahoma Bar Association's Annual Advance Bankruptcy Course conducted in Oklahoma City on November 13-14, 2003. Mary May, our U. S. Trustee, had the pleasure of introducing Director Friedman to the packed house.

Staff Take Advantage of Training Opportunities. John McClernon, analyst, and Eunice Chambers, paralegal, recently completed Advanced Civil Enforcement Training at the Department of Justice's National Advocacy Center in Columbia, South Carolina.

Four New Chapter 7 Trustees Appointed. The office has recently announced the selection of Ginger Goddard, John Mashburn, Kevin Coffey and Robert Brown as new members of the chapter 7 panel of trustee with initial appointments of one (1) year.

WICHITA: Dick Wieland Appointed SAUSA. Richard Wieland, Trial Attorney in Wichita, has recently been appointed Special Assistant United States Attorney. This means that in addition to continuing his duties with the United States Trustee Program, Dick will be able to provide hands-on assistance to the United States Attorney in the prosecution of bankruptcy crimes.

Office Gets A Facelift. The Wichita office is currently undergoing a renovation project, with the walls all being freshly painted and new carpet installed. It sounded like a great idea to everyone in the conception stage. Then reality set in when we realized that everything in every office and common area had to be packed up and moved out so that the carpet could be installed. We are doing this in zones, with a few people at a time being temporarily moved into conference rooms or other available space while the renovation in their area occurs.

Please see Region, Page 12

Region

From Page 11

We are only partway through the project at the time of this writing , but the first zone has been completed and looks great! The end result is well worth the trouble of packing, and even putting up with the paint fumes on painting days. We are very fortunate to be able to update and brighten our surroundings at this time and will truly appreciate the enhanced working environment. As Mary May's grandmother always said, "You have to suffer to be beautiful."

ECF Update. On December 1, 2003 the Bankruptcy Court for the District of Kansas implemented the case management portion of CM/ECF. The transition is going well. The public sees a slightly different looking version of PACER at this time, but it still works basically the same way. The Court's goal is to continue its internal implementation of CM/ECF until sometime later this spring, when electronic case filing can start as well. For online training opportunities, suggested hardware and software options, and updates about the project please visit the Bankruptcy Court's website at https://ecf.ksb.uscourts.gov.

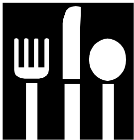
ALBUQUERQUE: Renovation Complete. In Albuquerque, the dust is just settling from our major renovation. While the construction caused no end of disruption, the final product is well worth the inconveniences. Even though we are still in the process of putting our offices back together, the dinginess is gone and the New Year has literally brought a brighter outlook.

Attorney Interviews. The new and improved Albuquerque office is also adding personnel. Interviews for a new staff attorney position were recently held. While getting this new person on-board may still take a few months, we look forward to acquiring this additional set of hands to expand our Civil Enforcement efforts.

Director's Visit. The new and improved Albuquerque office was recently on display for Director Larry Friedman. This was his first official visit to the office. Although we kept him plenty busy "meeting and greeting," he still had time for a brown bag lunch with staff. His interest and enthusiasm were an inspiration to us all.

The year 2004 has indeed begun auspiciously for Albuquerque, and we look forward to the challenges ahead.

LET'S EAT



Here is a great salmon recipe. With all the spices and other ingredients this recipe calls for, the fishy taste salmon can sometimes have, is really tamed down. Serve this with a nice salad, wild rice, fresh green beans and a bottle of white wine and you are set! Enjoy!!!

Recipe from: *Women of Great Taste A Salute to Women and Their Zest For Food*. The Junior League of Wichita, Kansas.

Spinach stuffed Salmon (Servings 6)

1 tablespoon butter

1 tablespoon all-purpose flour

6 tablespoons warm milk

1/2 teaspoon dried basil

1/4 teaspoon dried oregano

1/8 teaspoon dried thyme

1/4 teaspoon salt

Pinch of white pepper

1/4 cup freshly grated Parmesan cheese

1 tablespoon dry sherry

1/2 pound fresh spinach, stems removed

1/4 cup butter

1/4 pound fresh mushrooms, diced

3 ounces shallots, minced

2 1/2 to 3 pound salmon fillet, center cut

1 cup white wine

1 lemon

1/2 cup buttered bread crumbs

Heat butter in a saucepan over medium heat. Whisk in flour and cook for 3 minutes. Add warm milk and stir until smooth and thick. Stir in herbs, salt and pepper. Remove from heat, add cheese and sherry and stir until smooth. Microwave spinach until wilted, 3 minutes. Cool and squeeze dry. Melt butter and sauté mushrooms and shallots for 10 minutes over medium heat. Add spinach and cook until warm. Stir in cheese sauce. Cover and chill until filling has cooled completely, about 1 hour. With kitchen tweezers, remove all bones from salmon. Carefully cut a slit lengthwise in side of salmon to form a pocket. Place in a 13x9-inch baking dish and fill pocket with stuffing. (Salmon may be prepared and chilled up to 4 hours before cooking.)

Preheat oven to 425 degrees. Pour wine around salmon, squeeze lemon over top and sprinkle with bread crumbs. Bake until center of salmon is opaque and flakes easily, 20 to 30 minutes.

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

301 North Main, Ste. 500
Wichita, KS 67202

Phone: 316-269-6637
Fax: 316-269-6182

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

EXXTRA! EXXTRA! Read all about it

Editor's Note: Correction. The prior issue of "Analyze This" contained an error. The article should have stated that "Joint debtors in New Mexico must select the *same* exemption scheme."