EXXTRA! EXXTRA!
READ ALL ABOUT IT

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

Volume 2, Issue 2
May 1, 2004

A WORD FROM THE U. S. TRUSTEE

It's business as usual – sort of – in Region 20.

We continue to spend our time, energy and resources ferreting out fraud and abuse within the bankruptcy system. Those efforts are guided by each Office's Civil Enforcement Plan. Because of the ever-changing terrain of Civil Enforcement, no Plan is carved in stone, but remains a "work in progress." To see what Plan adjustments are needed, Civil Enforcement Workshops are again underway in Region 20. The Workshops give each Office an opportunity to evaluate their Plan and its implementation, and to amend the Plan where needed.

Region 20 Gang

The Tri-Region Standing Chapter 13 Conference, which was only in its planning stages when the last Newsletter was issued, came off without a hitch (or nearly so). Trustees, staff and Program personnel from 10 states – Regions 12, 13 and 20 – got together to discuss old and emerging issues, to exchange ideas and to get to know one another a little better. For the most part, the Conference received rave reviews, with the consensus being that it's an event worth repeating.

Preceding the Conference, the Region 20 Assistant U.S. Trustees and I got together to discuss the state of the Region. Although we visit frequently by telephone, e-mail and video conference, there's no substitute for a face-to-face meeting.

Tulsa's contribution to *News from Around the Region* in this issue touts its new-found expertise in CM/ECF. Kansas may need to look to that expertise, as it is about to join the ranks of the electronic. To learn more about how, when and where, please see *Kansas Bankruptcy Court Announcement*.

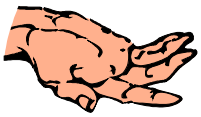
It's business as usual for me, too. My upcoming travels include the normal stops around the Region, as well as a U.S. Trustee Conference in Annapolis, Maryland, and training sessions in Washington, D.C. and the National Advocacy Center in Columbia, South Carolina.

Last but by no means least, congratulations to AUST Herbert Graves, who was inducted into the American College of Bankruptcy on March 19, 2004. The American College of Bankruptcy is a professional and educational society dedicated to the highest standards and character in the bankruptcy field. It's no wonder Herb was selected, as he certainly fits the membership profile. Herb traveled to Washington, D. C., for the induction ceremony that was held at the U. S. Supreme Court. Kudos, Herb!

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

Inside this issue:

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



Edward Walsh, Bankruptcy Analyst, Wichita, KS. I am commonly referred to as a "Numbers Guy" so follow along.

After graduating from Kansas State University in	1982	I worked for a CPA firm in Western Kansas.
I moved to Wichita in	1986	when the economy was hitting bottom in rural Kansas.
I have been punching numbers at the UST Office for the past	16	years.
During that time I have seen a wide range of things in the	177861	bankruptcy cases filed in the District of Kansas.
The K-State football team only won	13	games during the years while I was going to school there.
Therefore I enjoyed K-State beating OU by	28	points in the league championship game last year.
I have been married for	20	years,
and have	2	boys,
ages	9	
and	12.	That sums it up.

Mary Jean Brown, Paralegal, Tulsa, OK. I was born in Portland, Oregon in the year of our Lord - was that B.C. or A.D.? Well anyway, where was I, oh yes, I grew up in Potomac, Maryland and attended parochial schools. When I was 18, I began my government career at Goddard Space Flight Center in Greenbelt, Maryland.

After marriage, my husband, Chuck, and I moved to the City of Brotherly Love – Philadelphia, PA – where he took an upwardly mobile job with United Technologies. It was there that I acquired a job at GSA in telecommunications. After approximately one year, we were transferred to Baltimore, Maryland, and I transferred to the National Institute of Health, Gerontology Research Center (a good experience for learning how I would cope with old age - not well). We were in Baltimore approximately 3 years when again we were transferred to Wilkes Barre, Pennsylvania, and I decided to stay home and give motherhood a try with our two daughters.

After a short eighteen (18) months, again the company decided we shouldn't put down roots. We soon said good-bye to the cold, frigid north and moved south to Richmond, Virginia. It was here that I decided to "spiff" up my resume. I took a short break from the "government way of life" and worked for a hospital as the Administrative Assistant to the Director. However, after a year I decided I missed the government. There, I said it and you have it in print! I then took various jobs with Internal Revenue, Agriculture Department and Small Business Administration (keeping in mind that I was trying to obtain the GS grade that I would lose on every move we made). After approximately 5 years, the company again transferred us, this time to Avon, Connecticut, where I worked for the Office of Hearings and Appeals for Social Security. At this juncture, we thought we would stay put for awhile, but were we wrong. The company moved us to the Midwest - Tulsa, Oklahoma. In Tulsa, I started at the Corps of Engineers and wound up at the U.S. Trustee's Office in 1989. I've been working here ever since, currently as one of the Office's two paralegals. I find the work interesting, challenging and different.

My hobbies are shopping, traveling, shopping, walking, reading, gourmet cooking and enjoying fun stuff with my granddaughter and children.

John McClernon, Bankruptcy Analyst, Oklahoma City, OK. I am a New Yorker by birth, born at St. Vincent's Hospital in Manhattan at the end of 1958. That's my only connection with the Big Apple, as the McClernon family moved to New Jersey a year later. I grew up in the northeast, and started college at Temple University in 1977 as an accounting major. Two years later I decided to move back home and continue college as a commuting student at Rider University, which is down the road from Princeton, NJ. This move was primarily motivated by my decision to save some major bucks, plus mom's cooking was a heck of a lot better than dorm food. In May of 1981, I graduated from Rider University with an accounting degree and immediately started working for a local certified public accounting firm in my hometown, where I primarily audited municipalities and credit unions for a year.

My life's big move was from Pennsylvania to Dallas in 1982, where I continued on with another local CPA firm, doing mostly taxes and financial statement preparation. The goal was to pursue an MBA at the University of Texas in Austin (I had become a CPA in 1982, as well). However, I believe you all would agree with me that "life is what happens to you while you are making your plans," and my life's plan took a big turn when I met my wife-to-be. We married a year later and within a few months after that we were expecting our first child.

I never would pursue that MBA, deciding instead to hang my hat as a CPA in the world of corporate accounting/finance. The next 6 years I worked at Bell Helicopter just outside Fort Worth, Texas, in the corporate tax and internal audit departments. I left Bell in 1989, and began work in real estate accounting, eventually becoming an assistant controller for a company that managed a few hundred hotels and apartment complexes. There, I was responsible for financial reporting and other related duties for the partnerships that owned these

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WE'RE FROM THE GOVERNMENT

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properties, all of which were managed by my employer. Some of these partnerships filed for Chapter 11 during the next 3 years, and it is here that I was introduced to the bankruptcy world. I prepared or supervised the preparation of more monthly operating reports than I care to remember. It was that work and those monthly operating reports that resulted in my accepting an offer to work at the Dallas office of the U.S. Trustee Program. That decision proved to be a good one.

When I moved to Oklahoma City in 1995 to begin work in this office, we already had four children. A fifth would be born about a year later, so we do have a real "Okie" in our family. You might imagine that my wife, who as a homemaker works much longer and harder than I am capable of, is quite busy keeping the family functioning. Between work, school, church, and sports functions our lives are pretty booked right now, but we would have it no other way. I will be married 20 years this summer (which is really hard for me to believe!). I really look forward to experiencing our family life as we continue to see our kids grow and mature into young men and women.

I try to stay in shape by running, which I have faithfully done since the early 1980s. However, I would half kill myself trying to keep pace with Ed Walsh and Paul Thomas. Those who know me also realize my passion for Notre Dame football (it's the Irish Catholic in me), but, if the 1990s was the "dark decade" for Charlie Glidewell's OU football, then the 2000s are the dark decade for my team.

Working for the U.S. Trustee program over the last 12 years has proved to be the best decision I could have ever made in my professional career. It has allowed me to enjoy a quality of life that very well suits my priorities as a father, husband, and provider for this family I have been blessed with.

10TH CIRCUIT REVIEW

TENTH CIRCUIT

Educ. Credit Mgt. Corp. v. Polleys, **No. 02-8059 (10th Cir. 2004).**

In deciding whether a debtor's federal student loans constitute an "undue hardship" and thus are dischargeable, the bankruptcy court should apply the *Brunner* test and consider 1) whether the debtor can maintain a minimal standard of living while repaying the loans, 2) whether this state of affairs is likely to persist for a significant portion of the repayment period (some horrific event or condition is not required), and 3) the debtor's good faith i.e., whether the debtor is acting in good faith in seeking the discharge or whether he intentionally created his "hardship." However, "to better advance the Bankruptcy Code's 'fresh start' policy, and to provide judges with the discretion to weigh all the relevant considerations, the terms of the test must be applied such that debtors who truly cannot afford to repay their loans may have their loans discharged."

Panalis v. Moore (In re Moore), **357 F.3d 1125 (10th Cir. 2004).**

Judgment creditors, one of whom had been severely injured in an explosion while working as an independent oilfield contractor engaged by debtor's company, filed a complaint against debtor, seeking determination that the judgment debt of more than $6.5 million was excepted from discharge under 11 U.S.C. § 523(a)(6) on the basis of debtor's alleged fraudulent representation about his insurance coverage. The bankruptcy court concluded that the state-court fraud verdict did not represent a debt for a "willful" injury and entered judgment in favor of debtor. The district court reversed the lower court, and debtor appealed. The Tenth Circuit found that the "word 'willful' in (a)(5) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury not merely a deliberate or intentional act that leads to injury." The case was remanded to the bankruptcy court for entry of judgment in favor of the debtor.

BANKRUPTCY APPELLATE PANEL

Clark v. Deere & Co. (In re Kinderknecht), **— B.R. —, 2004 WL 827591 (B.A.P. 10th Cir. 2004).** (Kansas: Judges Thurman, Bohanon and McNiff).

Debtor, Terrance Joseph Kinderknecht, was informally known as Terry. When Deere took a security interest in two farm implements owned by the debtor, it listed the debtor's name as "Terry J. Kinderknecht" on its financing statement. Once the debtor's bankruptcy was filed, the Chapter 7 trustee sought to avoid Deere's lien as unperfected. The bankruptcy court entered judgment in favor of Deere (300 B.R. 47), finding that the use of the debtor's nickname on the financing statement was sufficient. The BAP reversed, holding that "the secured creditor must list an individual debtor by his or her legal name, not a nickname."

In re Gilchrist, **2004 WL 875522 (B.A.P. 10th Cir. opinion filed April 23, 2004).** (Oklahoma: Judges McNiff, Nugent and Clark) (Unpublished).

Debtor filed a chapter 7 which was subsequently converted to chapter 13 after the chapter 7 trustee discovered that the debtor had deposited retirement funds into a money market account. The chapter 7 trustee incurred expenses in seeking a turnover order, obtaining an injunction against the debtor and resisting the debtor's subsequent amendment of her schedules (to disclose the account) and claiming the funds as exempt. Debtor then moved to dismiss her chapter 13 case, and both the chapter 13 trustee and the chapter 7 trustee objected. The bankruptcy court held that in the best interests of creditors the case should be converted to chapter 7 and denied dismissal. Debtor appealed. The BAP applied an

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"abuse of discretion" standard and concluded the bankruptcy court did not make a clear error of judgment or exceed the bounds of permissible choice in converting rather than dismissing the case. The BAP also concluded the chapter 7 trustee had standing to object to the motion to dismiss the chapter 13 case.

***Aldrete v. Educ. Credit Mgt. Corp. (In re Aldrete)*, — B.R. —, 2004 WL 869375 (B.A.P. 10th Cir. 2004)** (New Mexico: Judges Clark, Michael and Brown).

In deciding whether the debtor was entitled to a hardship discharge, the BAP applied the *Polleys* test. (*See Tenth Circuit* synopsis above.)

***Hodes v. Jenkins (In re Hodes)*, — B.R. —, 2004 WL 792751 (B.A.P. 10th Cir. 2004).** (Kansas: Judges Starzynski, Bohanon and Cornish).

An involuntary Chapter 7 bankruptcy petition was filed against Phillip Hodes. Within a year prior to the involuntary filing, the debtor converted a term life policy (which he'd had for more than one year) to whole life. Debtor listed the insurance on his bankruptcy schedules showing a cash value of $28,567 and claimed the cash value as exempt. The bankruptcy court considered the date of conversion to whole life to be the date of issuance. Under K.S.A. 40-414(b), the case value of life insurance issued within a year prior to the date the debtor files bankruptcy does not qualify for the exemption otherwise provided therein. The bankruptcy court then concluded that the date of conversion was the date of issuance, and since the involuntary petition had been filed within one year of the conversion/issuance, the exemption would not be allowed. While the BAP agreed that the policy had been issued within the year prior to the bankruptcy filing, it found that the debtor, i.e., the policyholder, was not the one who filed the petition, and the exception to exemption did not apply. The BAP reversed the bankruptcy court on that issue.

***In re Sadeghy*, 305 B.R 381, 2004 WL 67226 (B.A.P. 10th Cir. 2004).** (Oklahoma: Judges Clark, Brown Thurman) (Unpublished).

In 1978, debtor, his brothers and their spouses owned 176 acres of land valued at $400,000. The debtor and his wife owned an undivided partial interest in this family property. Debtor and wife divorced in 1982. Debtor was ordered to pay child support for his two minor children, which debtor did not pay on a regular basis, resulting in a judgment against him for past-due support. In 1996, debtor and his new wife conveyed their interest in the family property to the son by quit claim deed. Between 1996 and 1998, the debtor and his new wife transferred at least two other properties to the son, and the son transferred back to new wife at least one of the properties. These transfers occurred while debtor was being sued. In January of 2000, debtor filed a chapter 7 case in Georgia which was subsequently transferred to Oklahoma. Complaints of nondischargeability were filed against the debtor, including one filed by the trustee who subsequently filed an avoidance action against the son and others seeking to avoid the debtor's transfer of the family property. The bankruptcy court looked to the eleven "badges of fraud" and avoided the debtor's transfer of his interests in the family property as a fraudulent conveyance pursuant to 11 U.S.C. § 546(b) and state law. On appeal, the son complained that the bankruptcy court committed error when it found that the debtor did not receive a reasonably equivalent value for the transfers. The BAP agreed with the bankruptcy court regarding this issue and further found that even if reasonably equivalent value had been paid, the other six badges of fraud found by the bankruptcy court were sufficient to qualify the transfers as a fraudulent conveyance.

***Joelson v. Cadwell (In re Joelson)*, — B.R. — , 2004 WL 756728 (B.A.P. 10th Cir. 2004).** (Wyoming: Judges Brown, Clark and Michael).

Debtor made multiple misrepresentations to the plaintiff – debtor claimed to own several residences (including a home in Arizona for which she collected rent), a motel and several antique cars (Ownership Representation) and claimed that "Joelene Joelson" and "Jeanne Joelson" were the same person (the debtor) (Identity Representation). Based upon those representations, and the debtor's promise that she would use a loan from her brother to repay plaintiff (Repayment Representation), the plaintiff loaned debtor $50,000. Nothing debtor told plaintiff was true. Plaintiff filed a complaint to except his debt from discharge for "false pretenses, a false representation, or actual fraud" pursuant to 11 U.S.C. § 523(a)(2)(A). That section expressly excludes a written statement respecting the debtor's financial condition. The bankruptcy court found the debt nondischargeable, and debtor appealed. In affirming the lower court, the BAP adopted the approach of the court in *Skull Valley Band of Goshute Indians v. Chivers (In re Chivers)*, 275 B.R. 606, 615 (Bankr.D.Utah) which defined a statement of financial condition to be a "statement of the debtor's net worth, overall financial health, or ability to generate income." The BAP found that the Repayment Representation constituted a representation concerning the debtor's financial condition, but that the Ownership Representation and Identity Representation did not.

***United Phosphorus, Ltd. v. Fox (In re Fox)*, BAP No. KS-03-011 (B.A.P. 10th Cir. March 15, 2004).** (Kansas: Judges Bohanon, Cornish and Starzynski).

United Phosphorus is a creditor in this Chapter 11 case. Prior to his bankruptcy, the debtor transferred valuable real estate to his wife. When the debtor, as debtor-in-possession, refused to sue his wife to avoid the transfer as fraudulent, United brought a suit against her as a derivative action. The wife moved to dismiss the complaint for failure of United to obtain leave of court. The bankruptcy judge granted leave *nunc pro tunc*, but ultimately stayed the lawsuit to allow the debtor to satisfy United's claim through his plan. United sought leave to proceed with the lawsuit. The bankruptcy court concluded that under 11 U.S.C. § 548 only trustees can sue to avoid fraudulent transfers and dismissed the case. The BAP agreed. According to the BAP, while the debtor's refusal to recover a valuable asset might be cause to appoint a trustee or dismiss

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the case, such refusal cannot be used to "create a remedy for creditors [Congress] has not granted to them."

BANKRUPTCY COURT

In re Busetta-Silva, **— B.R. —, 2004 WL 8000024 (Bankr.D.N.M. 2004)** (Judge Stazynski)

In an earlier opinion (300 B.R. 543), the bankruptcy court held that amounts owed a Chapter 13 debtor's attorney for legal services provided prepetition were not entitled to priority treatment as administrative expense, but had to be treated as any other unsecured, non-priority, dischargeable debt. On reconsideration, the bankruptcy court found that the relationship between a Chapter 13 debtor and her counsel constitutes a personal services executory contract which can be assumed post-petition by the debtor with the consent of the attorney. Once assumed, attorney's fees incurred both pre- and post-petition can be paid as an administrative claim under the Chapter 13 Plan. (The contract in the instant case was not assumed, so the court had no basis for changing its ultimate decision, i.e., the attorney here will not get paid.)

In re Lewis, **No. 03-12393-13 (Bankr.D.Kan. March 24, 2004).** (Judge Nugent).

Charles and Betty Woods entered into an installment real estate contract with the debtor in 1995. Debtor was unable to make the called-for balloon payment, but the Woods continued to accept monthly payments until March 2003, when they declared the debtor in default and commenced a foreclosure action. In response, the debtor filed a Chapter 13 petition. Under her 60-month plan, debtor proposed to pay the balloon payment, plus interest at 5% per annum. The Woods objected claiming that the plan improperly modified their contract in violation of 11 U.S.C. § 1322(b)(2), which prohibits the modification of claims secured by a debtor's principal residence. The bankruptcy court found that when a debtor's mortgage obligation's last scheduled payment is due before her last plan payment, the plain language of 11 U.S.C. § 1322(c)(2), permits the remaining amount due to be paid out over the life of the plan.

In re Trujillo, **No. 7-03-10875 SA (Bankr.D.N.M. March 11, 2004).** (Judge Starzynski).

The bankruptcy court applied the "totality of the circumstances" standard determining that the Chapter 7 case filed by these debtors was a substantial abuse. First, the court found that the debtors' budget contained luxury expenses – $10,000 in private school tuition, $2,400 for summer camp, $3,000 per month for housing (which "seems high for the Albuquerque area for a family of three"), overstated recreation, over-withholding, excessive life insurance, contributions to or repayment of retirement while paying nothing to creditors, keeping three vehicles when only two were needed – monies that could easily be used to repay some debt. The court also found that debtors' income "seems stable," that they qualify for Chapter 13 relief, that the debtors' cash advances and consumer purchases far exceeded their ability to pay at a time when they "were living an extravagant lifestyle."

In re Git-N-Go, **No. 04-10509-R (Bankr.N.D.Okla. February 18, 2004).** (Judge Rasure).

The firm seeking to be employed as debtor's counsel had also represented and continued to represent Hale-Halsell, the debtor's parent company. The firm had acted as counsel to both companies in connection with a $3.2 million loan with F&M Bank, the debtor's largest secured creditor. The firm also represented Citgo, debtor's largest unsecured creditor, as well as three of debtor's other unsecured creditors. Citgo continued to withhold and set off the debtor's case receipts post-petition, notwithstanding the automatic stay. Although the firm obtained conflict waivers from its many clients, the bankruptcy court found that both actual and potential conflicts existed which could not be waived by the debtor without bankruptcy court approval. The conflicts created many instances, such as the Citgo set offs, which required the employment of special counsel. The court found it inappropriate for counsel to seek to be generally retained by a client when counsel is aware at the start of its representation that it cannot fully represent that client. As Mr. Thomas, attorney for the U. S. Trustee, stated in his closing argument, "while the adversity between the Debtor and Hale-Halsell may not have fully ripened, the landscape resembles a minefield and the inevitable filing of bankruptcy by Hale-Halsell will create dueling fiduciaries and estates, in which counsel's advice to one fiduciary will necessarily be at the expense of the other." Although the court appreciated the firm's forthright disclosures, its willingness to accommodate the concerns of the court, the U. S. Trustee and parties in interest, and the firm's wealth of knowledge concerning the debtor, its financial condition, business and recent history and never doubted the experience and competence of counsel or its good faith and desire to assist the debtor, the court concluded that the firm's representation of interests adverse and potentially adverse to the estate precluded its employment as counsel for the debtor.

First Nat'l. Bank of Spearville, Kansas v. Klenke (In re Klenke, No. 01-13051), Adv. 02-5016 (Bankr.D.Kan. February 3, 2004). (Judge Nugent).

First National Bank of Spearville, which held a security interest in all of debtor's existing and future "payments, accounts, general intangibles, or other benefits (including, but not limited to, payments in kind, deficiency payments . . . emergency assistance payments, diversion payments, and conservation reserve payments)" claimed a security interest in post-petition Market Loss Assistance Program payments of $25,074. The MLAP was enacted after the debtor filed his bankruptcy petition. The bankruptcy court, applying the analysis of the Ninth Circuit in *Sliney v. Battley (In re Schmitz)*, 270 F.3d 1254 (9th Cir. 2001), found that the MLAP legislation was nothing more than a "nebulous possibility" which did not "rise to the level of a legal or equitable interest in property" to which the Bank's security interest could have attached prepetition, and its after-acquired interest was cut-off by 11 U.S.C. § 522(a). Neither were the MLAP payments "proceeds" because they "are not moneys received on account of and bear no relationship to any prepetition crop."

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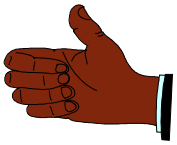
BEST OF CIVIL ENFORCEMENT



Debtor Sentenced to Two Years Supervised Probation for Bankruptcy Fraud. The Oklahoma City field office reports the sentencing of Permelia "Pam" Larsen, a principal of Bill's Sweeping, Inc., a chapter 11 case which was later converted to chapter 7. Ms. Larsen previously pled guilty on October 29, 2003, to one count of bankruptcy fraud under 18 U.S.C. § 152(1). Larsen was indicted in March 1998, for concealing property of the estate by diverting accounts receivable valued at $17,490 from the Chapter 7 trustee. She was sentenced on March 8, 2004, to serve two years of supervised probation. The investigation of Larsen was begun at the recommendation of the case trustee and upon the submission of a criminal referral by the U.S. Trustee's office.

Failure to Account for Assets Results in Denial of Discharge. On March 11, 2004, a default judgment was entered denying debtors a discharge pursuant to 11 U.S.C. § 727(a)(2), (3), (4), and (5) in *Sathngam*, Case No. 03-14706-7/Adversary No. 03-5399. The debtor sought to discharge $77,600 of unsecured debt. The debtor listed 12 credit cards on Schedule F with only $1,175 of personal assets. The debtor testified that he had used the items purchased on his credit cards to pay other creditors. The Chapter 7 trustee discovered that within the year prior to filing, the debtor had purchased $8,950 of gold chains from a jewelry store, which the debtor could not now account for. The existence and transfer of these assets was not disclosed on his Statement of Financial Affairs. The debtor also failed to provide an accounting of his credit card charges per the request of the Chapter 7 trustee.

Large 401(k) Contribution Leads to Stipulated Dismissal On April 14, 2004, an order was entered dismissing the Chapter 7 proceeding of Dennis L. Massegee as a result of a § 707(b) motion filed by the Albuquerque office of the U.S. Trustee. The U.S. Trustee alleged that the debtor was making a monthly 401(k) contribution in excess of $1200, which constituted disposable income. After submitting briefs to the bankruptcy court on the issue, the debtors stipulated to a dismissal before a decision was rendered by the court. As a result of the dismissal, $50,847 was not discharged.

Serial Filer Denied Discharge. The tenth bankruptcy case filed by serial *pro se* filer, Reta Hudspeth, was dismissed on February 23, 2004 , on motion of the U.S. Trustee's Wichita office. The debtor had received a chapter 7 discharge in 2001, which prevented the entry of another Chapter 7 discharge in 2004. In addition, in the intervening years, Ms. Hudspeth filed several Chapter 7 petitions. On the request of the U.S. Trustee, the court barred debtor from refiling for 180 days, and pursuant to 11 U.S.C. § 349, forever prohibited the debtor from discharging those debts the debtor had attempted to discharge in the current bankruptcy.

Gamblin' Man Has Discharge Denied. On April 16, 2004 the bankruptcy court for the Northern District of Oklahoma entered an Order Denying the Discharge of Hoa Tang, 03-04761-R, who admitted using his credit cards to support his gambling habit. As a result, $62,691 of unsecured debt was not discharged in the debtor's Chapter 7 case.

Excessive Expenses Lead to Dismissal. On April 15, 2004, the Bankruptcy Court for the District of New Mexico entered an order dismissing the Chapter 7 proceeding of Shawn and Ida Guy resolving the U.S. Trustee's § 707(b) motion. The motion alleged that the debtors had significant disposable income as a result of their surrender of two vehicles with high monthly payments. As a result of the dismissal, $70,987 in unsecured debt was not discharged.

Debtor's Inability to Account for Assets and Produce Records Results in Denial of Discharge. On April 16, 2004, the Bankruptcy Court for the Northern District of Oklahoma entered judgment on the U.S. Trustee's complaint seeking to deny the discharge of Al West, case no. 03-05393-R, under 11 U.S.C. § 727. The complaint was based on the debtor's failure to explain the disposition of assets, and his failure to provide any books and records. The order prevents the Chapter 7 discharge of priority unsecured claims of $3,659 and unsecured claims of $373,045.

Court Strikes Indemnity and Fee Enhancement Provisions in Employment Agreement. Based in part on the comments filed by the U.S. Trustee, the bankruptcy court for the Northern District of Oklahoma authorized the employment of Alvarez & Marsals (as the Chapter 11 Debtor's chief restructuring officer), but significantly modified the "engagement letter" under which they sought to be retained. The U.S. Trustee argued that the proposed indemnity agreement far exceeded the protections that should reasonably be provided under the circumstances of the case. The Court required that the expansive indemnity agreement (which was an exhibit to the engagement letter) be removed completely. The Court also struck a provision that would have awarded a "success fee" of $300,000 in the event a substantial portion of the estate's assets are sold. In its February 13, 2004, Order the court indicated that the Bankruptcy Code provides procedures whereby professionals who achieve exceptional results may request "fee enhancements."

Bankruptcy Petition Preparer Disgorges Excessive Fees In Response to U.S. Trustee Inquiry. The Wichita office reports that on February 24, 2004, the U.S. Trustee verified that $600 in excessive fees were returned to the debtors in *Whiters*, Case No. 03-16957. The BPP was a recent graduate of a non-accredited law school. The petition was signed by both the BPP and an attorney. Although the BPP was not employed by the signing attorney, the attorney did "mentor" the BPP, thereby likely assisting the BPP in engaging in the unauthorized practice of law. Under §110, BPPs cannot give legal advice and may provide only typing services. In Kansas, the fees for that typing service are limited to $150.

Debtor Who Fails To Turnover Tax Returns and Tax Refund Has Discharge Denied. On April 19, 2004, an order was entered revoking the discharge of Max David Meyer for failure to abide by a court order to turnover tax returns and tax refunds to the Chapter 7 trustee. A judgment for the trustee in the amount of the tax refunds was also entered. With no other assets in the case, the U. S. Trustee, rather than the case trustee pursued the objection to discharge. As a result $12,288 in unsecured debt was not discharged

FROM AROUND THE REGION

TULSA. CM/ECF. We are now experienced electronic case filers in both the Northern and Eastern Districts, having successfully managed to file pleadings, reports, complaints and miscellaneous other things. We still struggle with the daily volume of e-mails, but thanks to our able IT specialist, Kathy Wieland, we are beginning to manage paper in an electronic format. Not unlike driving a standard transmission car, there are still a few bumpy starts, but generally we are doing pretty well! Our recycling bin isn't filling up so quickly, and more trees are saved!

New Chapter 7 Trustees. We are pleased to introduce our two new trustees, Carol Wood English and Chuck Greenough, who were appointed in April. They are both Tulsa attorneys, practicing primarily in areas of commercial law and bankruptcy. They are currently handling a few cases in the Northern District, to become familiar with the general systems, and then will begin their regular case assignments in the Eastern District beginning in July '04. If you see a new face conducting a 341 meeting, take the opportunity to introduce yourself.

Assistance From Wichita. We are looking forward to bringing a new attorney on board, and in the meantime, have appreciated the additional help from Dick Wieland out of the Wichita office (but a University of Tulsa Law School grad). Dick has helped with 341 meetings, 2004 examinations, lawsuits and petition review. His reward was a private ECF lesson, which will be helpful when Kansas converts in the near future!

Standing Trustees from Regions 12, 13 and 20

Goodbye Citgo, Hello IGA. While Tulsa may be losing its "Oil Capitol" status with the recent announcement from CITGO Petroleum Corporations that it will move its corporate headquarters to Houston, the bankruptcy courts are more recently becoming the "grocery capital", with several new chapter 11 cases involving all levels of the grocery retail and distribution business. The joy of bankruptcy is all about learning new things.

New Addition. And speaking of new, we welcome the newest member of our extended family, a first child for one of our staff. Congratulations! We are sure the newest member of the U.S. Trustee Cheer Squad will be cheering for the Wichita State Shockers!

ALBUQUERQUE. Renovation and Technology. Things are definitely moving forward in Albuquerque. Phase 1 of our office renovation has been completed. Phase 2, which will renovate our conference and filing rooms, is scheduled to begin shortly. When completed, Phase 2 will provide a professional setting for our library and the video conference equipment we received last year. With regard to the latter, we have conducted depositions by video conference, which gives us more flexibility in conducting discovery and saves significant travel costs. We are definitely moving into the 21st Century.

New Attorney On-Board Soon. In addition to the above, the interviews for our new attorney position have been completed, and we expect to have the successful candidate on-board at about the same time our renovation is completed. This will be none too soon, since our Civil Enforcement efforts continue to expand.

In a time of tight budgets and increasing workloads, we are certainly grateful for these additional resources.

OKLAHOMA CITY. Panel Trustee News. David Bryant, who formerly heard chapter 7 cases only in Oklahoma City, has recently added Guthrie and Enid to his list of locations where he conducts meeting of creditors. Ginger Goddard, Robert Brown, John Mashburn and Kevin Coffey, newly selected trustees, have now officially received their one year appointments and have begun to hear cases in Oklahoma City on Wednesday mornings at 8:00 a.m. If you are in need of a phone number or address of a trustee either in Oklahoma City or across the nation they can be found at www.usdoj.gov/ust/. All panel trustees will attend trustee training on May 6th conducted by the Oklahoma City office on such diverse topics as an orientation by the IRS Criminal Investigation Division to use of interpreters at meetings of creditors.

Where Will My Meeting of Creditors Be Held. Because the Western District of Oklahoma covers the western half of Oklahoma, remote locations to conduct meetings of creditors were established years ago...before the existence of the U. S. Trustee program. The program inherited the current meeting of creditors location system from the bankruptcy court clerk and the bankruptcy court. These remote locations include Lawton, Enid and Guthrie. While it is clear in most instances where a debtor's case will be heard (which is based on the county of the debtor's residence) it is not in others. The meeting of creditor location can be identified by using a color coded map available in the Oklahoma City field office or on the internet. To obtain a color coded map please call 405-231-5952 and ask for either Ida Potts or Lendie Heilaman. Or you can view/print the map from the Region 20 website: http://www.usdoj.gov/ust/r20/ocroom.htm.

Please see **Region**, Page **8**

Region

From page 7

Staff Training News: The Executive Office for United States Trustees recently established a new training program entitled Criminal Bankruptcy Fraud Training. The initial course of instruction was held at the National Bankruptcy Training Institute in Columbia, South Carolina in April and was attended by Oklahoma City's Assistant U. S. Trustee.

Interpreters Available: Frequent requests are received for an interpreter to assist in the translation for hearing impaired debtors. If you have a client who needs assistance, please make the request as soon as the case is filed by contacting Sandra Stacy, Paralegal, in the Oklahoma City Field office at 405-231-5953. Likewise, if you are aware of a continuance of the meeting of creditors and have already made arrangements for an interpreter please advise Ms. Stacy as soon as possible to avoid an unnecessary expense involving the interpreter's appearance. Interpreters are available at no cost to the debtor. Foreign language interpreters are also available. It is the local practice to not allow either family members or members of the debtor's attorney's staff to provide this service in order to ensure accuracy and veracity of the debtor's testimony.

Wichita. National Bankruptcy Training Institute (NBTI). Carl Davis and Linda Parks, both Chapter 7 panel trustees in Wichita, have been invited to attend the NBTI in Columbia, South Carolina, in May, to participate in the Chapter 7 Panel Trustee Seminar for new trustees. Carl and Linda have both just completed their first year on the panel. The seminar will provide an opportunity to discuss and analyze issues relating to the operation of their trusteeships. Several experienced panel trustees and key representatives of the U.S. Trustee Program have also been invited to make presentations. U. S. Trustee, Mary May will be on the faculty for the program. Assistant U. S. Trustee, Joyce Owen, will also attend the conference. The program will provide the most recently appointed Chapter 7 trustees throughout the nation with an opportunity to convene, learn and socialize in a relaxed environment. Some of the topics to be covered include case administration, office administration, ethics, and civil and criminal enforcement.

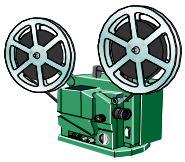
On The Go. Richard Wieland, Trial Attorney in Wichita, continues to travel throughout the country to assist other offices where needed. So far this year he has spent time in Peoria, Illinois, and Tulsa, Oklahoma. Soon, Dick is headed to Savannah, Georgia, for two weeks. It is his first time in that part of the country. As always, Dick is looking forward to this new opportunity to assist the Program, meet new people and make new friends.

New Chapter 7 Trustee Appointed. Patricia E. Hamilton is the newly appointed Chapter 7 panel trustee in Topeka. She will begin taking her first new cases in the near future. Patricia is a native of Kansas, born in Concordia. She received both her undergraduate degree and law degree from Washburn University. She is the former law clerk to the Honorable John T. Flannagan, United States Bankruptcy Judge, District of Kansas. She is currently President of the Bankruptcy & Insolvency Section of the Kansas Bar Association and Secretary of the Kansas Women Attorneys Association. She has served the Bar in many other capacities, including Chair of the Program Committee for the Kansas Women Attorneys Association Annual Conference in Lindsborg, Kansas, the KWAA Regional Representative for Johnson County, and as past President of the Kansas City Bankruptcy Bar Association. Patricia's varied legal background and experience should serve her well in her new position. When you have an opportunity, please join those of us in the U. S. Trustee's office in welcoming Patricia as our newest panel trustee.

KANSAS BANKRUPTCY COURT ANNOUNCEMENT: FINAL TEST OF THE CM/ECF SYSTEM

Final testing of the CM/ECF system in Kansas will begin the first week of May. Shortly thereafter, in early May, attorneys will be allowed to "test" out of classroom training to obtain a login and password to the system. Later in May, the court will begin scheduling classroom training for those attorneys and firms who wish to participate. Visit the Kansas court's website (www.ksb.uscourts.gov) for the latest information.

FULL, COMPLETE AND ACCURATE DISCLOSURE: A BANKRUPTCY DISCHARGE PREREQUISITE



The bankruptcy process was designed to help "honest but unfortunate debtors"[1]. The protection of the automatic stay and the discharge is not free, and one of the costs is the debtor's cooperation, including the accurate and full completion of the petition, schedules and statement of financial affairs. In describing the nature and extent of the disclosure obligations of debtors in Chapter 7, the judicial pronouncements in the cases are quite firm: A debtor's complete and truthful disclosure is essential to the proper administration of the bankruptcy estate and the integrity of the bankruptcy process[2].

Because the bankruptcy process is foreign to many debtors, they are well-advised to seek the advice of competent counsel. However, one of the principal, and perhaps most neglected duties of attorneys who represent debtors, is to assist them with the reasonable inquiries required of them before they advise or instruct debtors to sign their petition, statements and schedules.

Once retained, it is the attorney's duty to make reasonable inquiry into the accuracy of the debtor's petition, to explain the requirement of full, complete, accurate, and honest disclosure of all information required of debtor, to ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of debtor, to check the debtor's responses in the petition and schedules to assure they are internally and externally consistent, to demand of the debtor full, complete, accurate, and honest disclosure of all information required before the attorney signs and files the petition, and to seek relief from court of client representation in the event the attorney learns that he has been misled by the client. Attorneys who fail to provide this necessary counsel may well be faced with a motion to disgorge fees, a disciplinary complaint and/or a malpractice suit.

However, liability for the debtor's failure to make full, complete and accurate disclosure does not lie exclusively with counsel, nor will counsel's shortcomings necessarily absolve the debtor from that failure. A debtor signs his petition, statements and schedules under penalty of perjury. He is required to know what is in those documents and to verify their accuracy. Disclosure must be full, complete, candid and truthful. If it is not, then the debtor should not sign the documents.

A case in point[3]. Theodore Martin was a well-educated physician. The operation of his own medical practice required him to appreciate the need for accurate accounting of assets and expenditures. Although he swore that the information contained in his bankruptcy pleadings was true and correct, it failed to include three bank accounts and other transfers. He admitted at trial that he had failed to read his bankruptcy pleadings before signing them. The court found that Dr. Martin "either fully realized the seriousness of the Financial Statements or was reckless in failing to comprehend their import, when he completed and signed them 'under penalty of perjury.'" Dr. Martin did not receive his Chapter 7 bankruptcy discharge.

A debtor cannot, merely by playing ostrich and burying his head deeply enough in the sand, disclaim all responsibility for statements which he has made under oath. Such passivity and disregard for the gravity of the vow taken by affixing one's signature to the documents can constitute reckless indifference to the truth and therefore fraudulent intent.

Full, complete and accurate disclosure does not end with the bankruptcy petition, schedules, and statement of financial affairs. It also includes the debtor's testimony at the 341 Creditors' Meeting. At the Meeting, each debtor is placed under oath and then asked a series of questions, including the following:

- Did you sign the petition, schedules, statements and related documents you filed with the court?
- Did you read the petition, schedules, statements and related documents before you signed them and is the signature your own?
- Are you personally familiar with the information contained in the petition, schedules, statements and related documents?
- To the best of your knowledge, is the information, contained in the petition, schedules, statements and related documents true and correct?
- Are all of your assets identified on the schedules?
- Have you listed all of your creditors on the schedules?

Each of the above questions is designed to give the debtor an opportunity to correct any errors or omissions that may appear in his bankruptcy pleadings. When a debtor answers "yes" to these questions, he has again confirmed, under penalty of perjury, the accuracy of the disclosures contained in his bankruptcy pleadings. The debtor who fails to recognize the import of his sworn testimony proceeds at his own peril, if his testimony, like his bankruptcy pleadings, proves to be less than "full, complete and accurate."

Simply put, a debtor has an affirmative duty to identify all assets, liabilities and to answer all questions fully and with the utmost candor. Creditors and those charged with the administration of the bankruptcy estate are entitled to a truthful statement of the debtor's financial condition. Such complete disclosure is essential to the proper administration of the bankruptcy case and is a prerequisite to the debtor's ability to obtain a discharge.

REMEMBER:

NEITHER THE TRUSTEE NOR THE CREDITORS SHOULD BE REQUIRED TO ENGAGE IN A LABORIOUS TUG-OF-WAR TO DRAG THE SIMPLE TRUTH INTO THE GLARE OF DAYLIGHT.

PLEASE SEE **FEATURE**, PAGE **11**

ANALYZE THIS

The Chapter 7 case filings in Region 20 increased by 9% from 2002 to 2003. In 2003 there were 2,089 Trustee's Final Reports processed that included $22.9 million in total receipts. Unsecured creditors received $9.9 million which was 43.4% of the total receipts.

1/1/02 to 12/31/02	NM	OK	KS	Region 20
# of 7's Filed	8,383	21,706	12,093	42,182
# of TFR's	26	686	1,110	1,822
Total Receipts	$1,309,777	$7,883,031	$7,611,689	$16,804,497
Average Receipts Per Case	$50,376	$11,491	$6,857	$9,223
Funds to Unsecured Creditors	$230,532	$3,331,227	$2,898,500	$6,460,259
% to Unsecured Creditors	17.6%	42.3%	38.1%	38.4%

1/1/03 to 12/31/03	NM	OK	KS	Region 20
# of 7's Filed	8,853	24,213	12,984	46,050
# of TFR's	63	656	1,370	2,089
Total Receipts	$4,143,644	$8,756,405	$10,056,015	$22,956,064
Average Receipts Per Case	$65,772	$13,348	$7,340	$10,989
Funds to Unsecured Creditors	$1,261,648	$4,649,322	$4,060,644	$9,971,614
% to Unsecured Creditors	30.4%	53.1%	40.4%	43.4%

POINTS OF INTEREST

CHACO CANYON NATIONAL HISTORIC PARK. Nageezi, New Mexico

Chaco Culture National Historical Park preserves one of America's most significant and fascinating cultural and historic areas.

Chaco Canyon was a major center of ancestral Puebloan culture between AD 850 and 1250. It was a hub of ceremony, trade, and administration for the prehistoric Four Corners area - unlike anything before or since.

Chaco is remarkable for its monumental public and ceremonial buildings, and its distinctive architecture. To construct the buildings, along with the associated Chacoan roads, ramps, dams, and mounds, required a great deal of well organized and skillful planning, designing, resource gathering, and construction. The Chacoan people combined pre-planned architectural designs, astronomical alignments, geometry, landscaping, and engineering to create an ancient urban center of spectacular public architecture - one that still amazes and inspires us a thousand years later.

The Chacoan cultural sites are fragile and irreplaceable and represent a significant part of America's cultural heritage. The sites are part of the sacred homeland of Pueblo Indian peoples of New Mexico, the Hopi Indians of Arizona, and the Navajo Indians of the Southwest, all of whom continue to respect and honor them.

Chaco Culture National Historical Park is a very special place. Remote and isolated, it offers few amenities, so come prepared. You will find that the rewards are unlimited.

Website: http://www.nps.gov/chcu/index.htm

LET'S EAT

This recipe was clipped from a Dillon's Grocery Store ad. The recipe calls for torn spinach, but is just as tasty with any type of greens. It makes a beautiful presentation!

Strawberry-Spinach Salad

This salad is rich in Vitamins A & C, potassium, fiber and low in calories.

8 cups torn spinach

2 TBLS strawberry jam

3 kiwifruit, peeled, sliced & divided

2 TBLS strawberry, raspberry or cider vinegar

1 cup fresh strawberries halved & divided

1/3 cup vegetable oil

3/4 cup coarsely chopped macadamia nuts or pecans divided

1 cup of sliced mushrooms

Combine spinach, half of kiwifruit slices, half of strawberries, and half of chopped nuts and mushrooms in a large bowl; set aside. Place jam and vinegar in processor and process until combined. With machine running slowly, add oil. Pour dressing over spinach and toss gently. Divide among 8 salad plates and top with remaining half of kiwi, strawberries and nuts.

10th Circuit

From Page 5

***In re Johnson,* No. 02-15275-13 (Bankr.D.Kan. February –, 2004).** (Judge Nugent).

The bankruptcy court applied the *In re Young,* 237 F.3d 1168 (10th Cir. 1001) factors, i.e., the *Flygare* factors, in evaluating the debtor's Chapter 13 plan. First, the court found that if this debtor's evidence was to be believed, his income would generate a substantial surplus for unsecured creditors, thereby making the proposed plan payment inadequate. However, debtor's financial information was questionable, making it impossible to determine the true state of his financial affairs. The debtor had also sought bankruptcy relief before. While these three factors alone weighed against, they did not support, a finding of lack of good faith, debtor's "motivation and sincerity" (he had materially misled creditors concerning this retirement account, made materially false financial statements to one creditor and a false credit application to another) dictated another conclusion. The questionable financial information made feasibility and best efforts questionable, as well. Confirmation was denied.

***In re Boyer,* 305 B.R. 42 (Bankr.D.Kan. 2004).** (Judge Karlin).

Student loan creditor brought actions in four separate Chapter 13 cases to obtain relief from the order confirming plans which improperly provided for discharge, or partial discharge, of debtors' student loan debts. In all four cases, the bankruptcy court, held that – (1) fact that debtors' confirmed plans, in providing that debtors would be discharged, or partially discharged, of their student loan debts upon completion of plan payments, failed to recite magic language to effect that a refusal to discharge these student loan debts would impose "undue hardship" on debtors did not permit court to ignore strong policy favoring finality of confirmation; (2) notice that student loan creditor received of proposed plans providing that debtors would be discharged, or partially discharged, of student loan debt was sufficient to satisfy due process; (3) contrary language in form discharge order could not serve to revive debtors' already discharged student loan debts; and (4) student loan debt was discharged only to extent provided in confirmed plan.

Feature

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[1] *Grogan v. Garner*, 498 U.S. 279, 287, 111 S.Ct. 654, 659, 112 L.Ed.2d 755 (1991).

[2] *See, e.g., In re Robinson,* 292 B.R. 599, 611 (Bankr.S.D.Ohio 2003); *Van Roy v. Watkins (in re Watkins),* 84 B.R. 246, 250 (Bankr.S.D.Fla. 1988), *citing Chalik v. Moorefield (In re Chalik),* 748 F.2d 616, 618 (11th Cir. 1984); *In re Hyde*, 222 B.R. 214, 218 (Bankr.S.D.N.Y. 1998); *In re Famisaran,* 224 B.R. 886, 891 (Bankr.N.D.Ill. 1998); *Case v. Kasal (In re Kasal)*, 217 B.R. 727. 734 (Bankr.E.D. 1998), *aff'd.,* 223 B.R. 879 (E.D.Pa. 1998); *In re Colvin,* 288 B.R. 477, 481 (Bankr.E.D. 2003).

[3] See Camacho v. Martin (In re Martin), 88 B.R. 319, 325 (D.Colo. 1988).

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

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EXXTRA! EXXTRA! Read all about it

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