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READ ALL ABOUT IT

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

Volume 1, Issue 3
November 1, 2003

A WORD FROM THE U. S. TRUSTEE

September 22, 2003, marked my one-year anniversary as United States Trustee for Region 20. And, what a year it's been!

I was filled with trepidation my first day on the job. Not only was Region 20 a living, breathing, functioning organization, but I was now its boss, with nary a clue as to what to do next. Of course, I didn't let that stop me. I used the "bull in the china shop" approach to management and tried to do those things my instincts told me were right.

Tulsa Workshop

I traveled the Region and got to know its people, its judges, its personality. Although I've learned a lot, I've got a long way to go, so my travels have only just begun.

One thing I did learn, however. Region 20 has been working hard, but was apparently keeping it a secret. That's one of the reasons this Newsletter came into being. Each issue is filled with examples of our efforts at improving the effectiveness and efficiency of the bankruptcy system.

I came on board last year at about the same time each office's Civil Enforcement Plan was due, so my input was mostly grammatical. That changed this year with the Civil Enforcement Workshops I conducted with each office. My input was still minimal – I wanted to hear their ideas, not mine – but a lot more fun. The Workshop gave everyone the opportunity to contribute their thoughts and ideas to the Plan, as well as define the part they will play in implementing it. A look at the Plans produced by each office tells me the Workshops are an idea worth repeating.

During the past year, office space has been improved, trustees brought on board, personnel promoted, communication broadened, successes recognized and rewarded, morale boosted, practical solutions to problems found and processes streamlined. The Office of the United States Trustee is more prominent in Region 20, which, at least so far, appears to be a good thing. A Regional culture is developing – Region 20 and its people have become a resource for all to use and learn from. Our journey has only just begun, but even at this early stage the changes are exciting to see.

A stroll down memory lane would not be complete without mentioning the support and guidance I receive from the folks in the Executive Office. It has been second to none and one of the reasons I count my first year as a darn successful one.

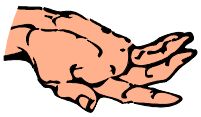
There are only 21 United States Trustees across the country. I am proud to be a member of this elite and eclectic group and delighted to call them my friends. I am even more pleased to know that our hard work makes a difference to everyone touched by the bankruptcy system.

It is a pleasure to serve.

Mary E. May, United States Trustee

Inside this issue:

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



Leonard Martinez-Metzgar, Attorney

In terms of education, I received my B.S. and M.A. degrees in Psychology and Counseling Psychology, respectively, from the University of New Mexico. I received my M.B.A. from the College of Santa Fe and my law degree from University of New Mexico Law School in 1982.

As far as work history, I practiced in a small civil firm for about 18 months out of law school. The first case I worked on was a small no asset chapter 7 case. At that time, I wasn't married and wanted to do more trial work, so I applied for a position at the District Attorney's office, as well as the State Public Defender's Office. The PD was the first to call so I spent the next five years there. During my stay, I got to try everything from a DUI case to a first degree murder case. I never got to try what local New Mexico criminal attorney Gary Mitchell calls the "Super Bowl for attorneys", a death penalty case. To be perfectly honest, that was one Super Bowl I was glad I missed. I joined the United States Trustee's Office in1988. It's been a great job, although I have to admit, I sometimes miss doing jury trials.

On the personal side, I'm married to my best friend. Needless to say, my wife keeps me centered and teaches me daily about "simply enjoying life". Together, we share the responsibility of raising our blended family. We have two girls and two boys. All of my kids, in their own unique way, make my life very special.

Sports has always been a big part of my life. I trained and competed at various levels for a long time. I'm no longer an active member of the "300 lbs bench press" club, but I still like to go to the gym and lift regularly. After reaching the ripe old age of 40, I began spending a lot more time coaching little league football, little league baseball, and youth basketball. For a while, I would tell people I was really a coach disguised as a lawyer. My three older kids are now all in high school doing whatever it is high school kids do, so more recently, I have been spending more time at home with my two year old daughter. This last Sunday at the dinner table, I asked her to demonstrate for the entire family what daddy had taught her the past week. I held out a pillow and she promptly showed everyone the art of making a solo tackle (put the face on the numbers, wrap up, and drive through the man). Hey, I even think that the Raven's Ray Lewis would have been proud.

Jeffrey W. Rockett, Attorney

I'm what my father called a "laplander." I grew up on a farm in northwest Oklahoma, one mile from the Kansas state line. I went to school in Kansas, one mile from the Oklahoma state line. I remember going to Wichita for back-to-school shopping, and people wouldn't take my parent's checks because they had an Oklahoma address, a Kansas telephone number, an Oklahoma Driver's License and the closest town to their home was Hardtner, Kansas. So I'm not sure if I'm an Okie or a Kansan. However, I do need to say Boomer- Sooner Baby. My football loyalty has always been with the crimson and cream.

I graduated from South Barber High School (Kiowa, Kansas) in 1982 and went to Bethany College in Lindsborg, Kansas, on football and choir scholarships. I changed my major from choir to history education, but after one year of working as a football coach at the local high school, I felt it would be best for my sanity to drop education and set my sights on law school. While at Bethany, I married my Jr. High/High School Sweetheart and joined the ranks of poor married students.

After graduating from B.C. in 1986, I attended Washburn University in Topeka to get my J.D. My wife put me through school working as a legal secretary. I asked her why she didn't go to law school, and her response was "she didn't like attorneys that much so why would she want to be one." After graduating from law school in 1989, I got my first attorney job with the law firm of Glenn, Cornish, Hanson and Karns in Topeka. However, more importantly my daughter was born just two weeks after taking the Bar Exam. This, of course, put new pressure on making sure I passed the exam. I remember asking Larry Karns what would happen if I didn't pass? He advised me that "nobody at Glenn Cornish had ever had to take the Bar Exam twice." I did pass and stayed with the firm for two years practicing in commercial litigation, bankruptcy and divorce.

In May of 1991, I accepted a job with the Office of the United States Trustee in Wichita. I started in August, and in keeping with tradition, in September, 1991 my son was born. Since I have only had two jobs, I only have two kids.

Presently, you will find my wife and me being taxi for our 12 year old son and 14 year old daughter. They are very involved in soccer, music theater for young people and school. Thank goodness they take after their mother and are attractive, talented and intelligent. They do keep me going and I love the time we get to spend together. That's Jeff Rockett in a nut shell.

Charles S. Glidewell, Attorney

I was born in Del City, Oklahoma, a suburb, of Oklahoma City. I graduated from Del City High School in 1977. I received my B.B.A. with a major in accounting in 1981 from the University of Oklahoma. Thereafter, I went to work for a national accounting firm as a financial auditor and passed the CPA exam. As a side note, to this day the CPA exam was the most difficult exam I have ever taken. I worked for a couple of years for the accounting firm (during one of the many oil & gas booms) and as a sole practitioner while I was in law school.

I graduated from the University of Oklahoma College of Law in 1986 and headed to the big "D" to start my legal career. I worked for a big Dallas law firm practicing exclusively in the bankruptcy area for two years. This was during one of the bankruptcy booms, which seem to inevitably follow each oil & gas boom. I moved to sunnier Florida at the end of 1988 to

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Government

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open the United States Trustee's office in Tallahassee, Florida. For the next 10 years, I traveled all over Florida, Georgia, Puerto Rico, and the country, doing whatever the U.S. Trustee program needed.

In 1998, after missing OU football and basketball for 10 years (the dark decade), I returned to Oklahoma City and joined the Oklahoma City office of the U.S. Trustee, but more importantly, I got my season football tickets. I think of myself as an avid OU fan, but there are people in the office that consider me a rabid fan. I don't know how they came to that conclusion, but it is true that when my family recently built our home, one of the determining factors in deciding where we would build was the proximity to Owen Field.

Richard A. Wieland, Attorney

I was born in Illinois,
Just a small-town, country boy.
Have a Fadder and a Mudder,
Couple a' sisters and a brudder.
Went to school, but changed my major,
Thought that law might lead to leisure.
Found a job in income tax-
Worked quite hard, did not relax.
Now I'm at the U.S. Trustee's,
Try to serve with expertise.
Like my work, like the casuistry[1],
But most of all, I like (bad) po'try.

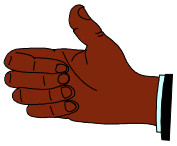
I was raised in a small town in Illinois, just north of St. Louis. I grew up there with my brother and two sisters and, after a bit of soul-searching and pondering of the universe – why am I here, and, more importantly, how am I to make a living - settled upon law as my career path. I received my Bachelor's degree in Business (with an emphasis in Finance) and my MBA from Western Illinois University and then attended law school at the University of Tulsa in Oklahoma. Upon graduation, I once again found myself faced with the question of making a living, a question that was answered in the form of a job offer from an income tax processing company located in Wichita, Kansas. After working there for three years (and acquiring a wife and stepson and going through three corporate acquisitions), I applied for a job at the Office of the U.S. Trustee and, in 1988, was offered a position. In addition to my work here as an attorney, which I find quite interesting and challenging, I also serve as the Ethics Advisor for the region.

In my spare time I enjoy hiking (I've climbed thirty-one of the fifty-four Colorado "Fourteeners", Mt. Whitney in California, and Mt. Rainier in Washington), kayaking, playing bridge, and writing poetry.[2]

[1]a resolving of specific cases of conscience, duty, or conduct through interpretation of ethical principles or religious doctrine.

[2]Editor's note: Apparently "bad" poetry.

BEST OF CIVIL ENFORCEMENT



Discharge Denied for Failure to Disclose Inheritance. On February 17, 2003, *Andrew and Debbie Fresquez* received an inheritance of approximately $23,425. Subsequently, on March 5, 2003, debtors filed their Chapter 7 petition and failed to disclose the inheritance both in their bankruptcy pleading and at the § 341 creditors meeting. Rather than contest the § 727 complaint filed by the Albuquerque office, debtors advised the U.S. Trustee they would not file an answer, thus allowing the entry of default judgment. As a result, $28,861 in unsecured debt was not discharged.

Conversion prevents Discharge of $62,372 in Unsecured Debt. On August 4, 2003, the debtors converted their case to Chapter 13 in *Nguyen*, 03-11432-13C, rather than have the case dismissed under the pending motion to dismiss under § 707(b) filed by the Wichita office. Debtors had about $1,000 of disposable income available to fund a Chapter 13 plan. The proposed plan provides for a monthly payment of $950. The debtors sought to discharge $62,372 of unsecured debt in their Chapter 7 case.

UST Investigation Forces Voluntary Dismissal. On July 1, 2003, the Tulsa office inquired as to the debtors' high 401(k) payments in the case of *Phillip and Elizabeth Riley*, Case No. 03-02382-M, Northern District of Oklahoma. In response to the inquiry, the debtors filed a Motion to Dismiss their case, which was granted on July 8, 2003. Unsecured, non-priority debt in the amount of $16,867.50 was not discharged.

Debtors with $1,500 Disposable Income Agree to Dismissal of Chapter 7. Debtor's schedules in *Goldsberry*, Case No. 02-23990-7, which included income from the non-filing spouse, showed about $400 of disposable income. Additionally, the debtor contributed over $200 per month to a 401(k) plan, and his wife contributed over $800 per month to retirement plans. This gave the couple approximately $1,500 per month of disposable income. The debtor agreed to dismiss the case, and as a result, $59,983 in unsecured debt was not discharged.

Debtors Not Allowed to Reduce Disposable Income by Paying Dischargeable Debt. The Chapter 7 bankruptcy proceeding of *Raymond and Julie Chambers* was dismissed by order entered on July 23, 2003, in response to a § 707 (b) motion filed by the Albuquerque office. The debtors' Schedule J included two preferential monthly payments totaling over $1,050 to two unsecured creditors, while apparently requesting discharge of all other unsecured debt. As a result of the dismissal, $69,418.43 was not discharged.

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Best

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Excessive Retirement Contributions Result in Conversion. The Albuquerque office filed a motion under § 707(b) in the case of *Randy and Amalia Redman*, alleging, in part, that $1,700 in retirement contributions was excessive and could be used to fund a Chapter 13 plan. The debtors also disclosed a $222 monthly boat payment, together with a $45.91 monthly insurance payment. After production of documents and depositions, the debtors agreed to an order of conversion to Chapter 13 which was entered on July 21, 2003. As a result of the U.S. Trustee's motion, $101,622.57 was not discharged.

Chapter 7 Converted to Chapter 13 as a Result of Motion to Dismiss pursuant to 11 U.S.C. 707(b): This single debtor's schedules (*In re Miller*, Case No. 03-21515-7) showed monthly take-home pay of $3,934 and expenses of $3,829. However, debtor contributed $325 per month to a voluntary 401(k) plan and had a 2002 tax refund that provided another $283.41 each month of disposable income. Additionally, his homestead, for which he had just signed a two year lease, cost him $1,300 in rent per month, significantly above what the IRS Collection Financial Standards would allow. The debtor agreed to a voluntary conversion to Chapter 13. The conversion avoided the discharge of $109,037.87 of unsecured debt.

BPP Agrees to Repay Clients and to Cease Operations in Kansas and Missouri. Joshua Brown had been operating as a bankruptcy petition preparer in the metro Kansas City area for a number of months. The United States Trustees for the District of Kansas and the Western District of Missouri investigated the actions of Brown and filed simultaneous actions in their respective Districts, citing several violations of 11 U.S.C. § 110 and asking the courts to, among other things, disgorge all fees Brown had received from those parties and enjoin him from acting as a bankruptcy petition preparer. Once the actions were filed, Brown retained counsel and negotiated agreed-orders granting the relief requested by both United States Trustees.

Court Finds Substantial Abuse Under the Totality of the Circumstances. After a trial on the merits, on October 15, 2003, the New Mexico bankruptcy court found, in *In re Harris,* Case No. 02-18242, that the expenses of debtors "are not reasonable and can be significantly reduced." The court found, among other things, that the debtors' housing expenses were too high, that adult children can be expected to finance their own education, and that even when taking into account the tax consequences of not repaying debtors' 401(k) loan, the loan should not be repaid. After making those reductions and other adjustments to the debtors' budget, the court concluded that the debtors had disposable income of $2,020 per month. The debtors were given 20 days to convert their case to a Chapter 13 or their case would be dismissed. Regardless of the course of action debtors choose, $99,550 of unsecured debt will not be discharged.

Debtor Agrees to Denial of Discharge Rather Than Appear for Deposition. The Wichita office reports that on October 16, 2003, an agreed order denying the debtor's discharge pursuant to 11 U.S.C. § 727(a)(5) in *Haidar*, Case No. 02-14751-7/ Adversary No. 03-5078 was submitted to the Kansas bankruptcy court. The debtor agreed to denial under this ground rather than appear for his deposition or litigate the remaining grounds (§ 727(3) and (4)) for denial, which were also alleged in the complaint. The debtor sought to discharge $211,278.65 of unsecured debt. The debtor listed 41 credit cards on Schedule F with no secured debt and virtually no real or personal property shown.

Peter Ainsworth with Wichita staff members discussing possible credit card "bust out".

Debtor Denied Discharge and Sentenced to Two Years Probation for Making a False Statement to the Bankruptcy Court. The Oklahoma City office reports that debtor, Elma Ruth Colwell, pled guilty to one count of making a false statement under 18 U.S.C. § 1001 and was sentenced to two years probation with the first six months requiring home confinement. Colwell was also ordered to pay $13,304 in restitution to the defrauded creditors. Colwell incurred $13,304 in credit card debt using her sister's identity and then filed bankruptcy under her sister's identity. The Oklahoma City office successfully objected to Colwell's motion to dismiss the bankruptcy case after the false identity was discovered, and then successfully filed a complaint to bar her discharge. The identity theft was referred for prosecution by the Oklahoma City office, which assisted in the investigation.

Two debtors, each with over $1,000 in Disposable Income, Have Their Cases Dismissed. On October 22, 2003, the Kansas bankruptcy court dismissed *Payne*, Case No. 03-21846-7 and *Dunn*, Case No. 03-22639-7 pursuant to Motions to Dismiss under 11 U.S.C. § 707(b) filed by the Wichita office. The two dismissals prevented the discharge of a combined total of $175,906 of unsecured debt. In *Payne*, the debtors had overwithheld their federal taxes by $388 per month and were repaying a 401(k) loan at the rate of $518.61 each month. They also had borrowed money against their $19,000 certificate of deposit and were repaying that loan at $404 per month. As adjusted, their monthly disposable income exceeded $1,000. The unsecured debt that was not discharged was $81,320.21. In *Dunn*, the debtors had, based on Mr. Dunn's pay stubs, understated their income by about $500 per month, were depositing $433 per month in their Credit Union account and were over withholding $228 each month on their taxes. Once those items were taken into account, they had over $1,000

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of monthly disposable income. The dismissal of their case resulted in $94,586 of unsecured debt not being discharged.

Debtors Convert to Chapter 13 Rather than Respond to Substantial Abuse Motion. The Oklahoma City office reports that debtors *Sammy and Linda Lovelace* converted their case to one under Chapter 13 after the U.S. Trustee filed a motion to dismiss for substantial abuse. The debtors' income on Schedule I did not correlate with the higher income figures from their 2002 Federal tax return. The conversion prevented the discharge of $29,655 in unsecured debt.

Two Motorcycle Payments were Unreasonable and Unnecessary. On July 23, 2003, a stipulated order converting the Chapter 7 case of *Wilbur and Kristin Orem* to a Chapter 13 proceeding was entered. The Albuquerque office had filed a motion pursuant to § 707 (b) alleging that the debtors were making monthly payments of over $720 on two motorcycles, which expense was both unreasonable and unnecessary. As a result of the conversion, $44,819.95 in unsecured debt will not be discharged in Chapter 7.

Debtors' Irregular Income Doesn't Prevent Finding of Substantial Abuse. After trial on the Albuquerque office's motion to dismiss under § 707 (b), the bankruptcy court for the District of New Mexico found that *Heath Rutherford* could repay a significant amount to his creditors in a Chapter 13 proceeding. This was despite the debtor's contention that his irregular income would make repayment impractical. On September 18, 2003, an order was entered granting the U.S. Trustee's motion with leave for the debtor to convert to Chapter 13 within 15 days. As a result, $53,203 in unsecured debt was not discharged.

POINTS OF INTEREST

Gilcrease Museum, Tulsa, Oklahoma. The story of the personal collection of Thomas Gilcrease, a member of the Creek tribe, begins in the early history of Oklahoma when Mr. Gilcrease received his 160 acre allotment of tribal lands that became part of the major oil field south of Tulsa. Mr. Gilcrease became a successful businessman who traveled throughout Europe. The more he traveled, the more he became convinced that America needed to showcase its own art treasures. He began collecting large groups of art representing his own American Indian heritage and the American West, displaying it publicly for the first time on his Tulsa estate in 1949. By the 1950s, oil prices had begun to decline. Faced with seemingly insurmountable debt, Gilcrease offered to sell his entire collection in order to keep it intact. In 1954, fearing that the Gilcrease Museum would leave Tulsa, a small group of citizens organized a bond election, which Tulsans approved by a 3-to-1 margin, using the bond monies to pay Gilcrease's outstanding debts.

Sacred Rain Arrow by Allan Houser bronze, 1988. Courtesy of Gilcrease Museum, Tulsa Oklahoma

Overlooking the vast Osage Hills, the Gilcrease Museum hosts the largest and most comprehensive collection of art of the American West in the country. In addition, the Gilcrease Museum has collections of extensive archival and anthropology, spanning cultures through the 20th century.

FROM AROUND THE REGION

WICHITA: On October 29, 2003 the United States Trustee's Office hosted meetings with the Kansas Bankruptcy Fraud Working Group and with Trustees throughout the state to discuss bankruptcy related fraud and abuse cases. Peter Ainsworth, Chief of the EOUST Criminal Enforcement Unit, was guest speaker at both meetings. Peter joined the United States Trustee Program in July, to head the new Criminal Enforcement Unit. The Unit is charged with managing a national program to increase the detection and prosecution of bankruptcy related crimes. He brings a wealth of experience to this important aspect of the Program's work. Members of the Bankruptcy Fraud Working Group include representatives from the United States Attorney, the Internal Revenue Service Criminal Investigation Division and Special Procedures Branch, the Social Security Administration, Office of the Inspector General and local Social Security Administration office, the Federal Bureau of Investigation, the Department of Treasury, Inspector General for Tax Administration and the Inspector, U.S. Postal Service. Topics at the Working Group meeting focused on specific cases we are currently working on, as well as ways in which our agencies can work together to combat bankruptcy fraud and abuse. The afternoon meeting with the trustees focused upon ways in which the trustees can help detect and document suspected criminal activity, so that good referrals can be made and successfully prosecuted.

Wichita AUST introducing Peter Ainsworth

Wichita staff members have been very fortunate recently to attend several different and exciting courses at the National Advocacy Center (NAC). For those of you not with the UST Program, the NAC is located on the campus of the University of South Carolina in Columbia.

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REGION

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The NAC serves as a training center for employees from all components of the Department of Justice, as well as for certain state law enforcement agencies. Ed Walsh and Bill Schantz recently attended the NAC's Advanced Civil Enforcement Training, which is open to AUSTs, trial attorneys, bankruptcy analysts, and paralegals. The course explores the expanding role of Program personnel in civil enforcement, focusing primarily on dismissals under §707 and discharge litigation under §727. Stacy Kingsland will be attending the same course in December. Mary Kutz attended Support Staff Training, featuring an in-depth look at the Program's efforts in the area of civil enforcement and sessions on communications, inter-office conflict, and active listening skills. Joyce Owen attended Finance Fundamentals, a course that explores accounting and financial issues and the numerous financial documents related to business cases. The NAC is a great resource for our staff, which we are taking full advantage of.

Therese Buthod, Bankruptcy Clerk, taking a break from CM/ECF with an alligator found in an Okmulgee yard.

TULSA: What's new in our two bankruptcy courts is Electronic Case Filing ("ECF"). The "Go Live" dates are coming up for the Eastern and Northern Districts. While ECF will not initially be mandatory, it will, nonetheless, dramatically change the way we do business. The upcoming Oklahoma Bar Association Bankruptcy Section Annual Meeting (Nov. 13, 2003, 2:00 p.m.- 4:30 p.m.) will include electronic filing presentations from Therese Buthod, Clerk of the USBC/EDO and Michael Williams, Clerk of the USBC/NDO, as well as Paul Thomas, UST Trial Attorney, who will give the perspective from the practitioner's point of view.

As for Civil Enforcement, new information and guidelines on credit card bust-outs have resulted in the identification of several cases for further investigation. The focus of Civil Enforcement continues to be on debtor fraud and consumer protection issues. There is plenty of work to go around and everyone in the office shares in the national effort to combat fraud and abuse within the bankruptcy system. As an update to our *"ziinet"* internet service case, pending entry of default judgment against this bankruptcy petition preparer, the company refunded the debtor's payment for services of $199. In *Commercial Financial Services, Inc.*, there are many pending issues, including the criminal trial of founder Bill Bartman, and the trial court's ruling on fees for Houlihan Lokey, which was recently affirmed by the BAP (*See* 10th Circuit Review), and is now on appeal to the Tenth Circuit. Further training opportunities will be presented by Paul Thomas, along with Peter Ainsworth, the new Chief, Criminal Enforcement Unit, at an upcoming Fraud Seminar presented by the Tulsa County Bar.

ALBUQUERQUE: In Albuquerque, change abounds. Over the Labor Day weekend, the bankruptcy court moved from the courthouse in which the U.S. Trustee offices are (still) located to a newly renovated courthouse across the street. Going to court is no longer a simple dash up the stairs. Also in connection with the court, the Honorable Mark B. McFeeley, our Chief Judge, was recently sworn in as president of the National Conference of Bankruptcy Judges. Since Judge McFeeley is also Chief Judge of the Tenth Circuit Bankruptcy Appellate Panel, the next year will be an extremely busy one for him, to say the least.

With regard to our office, Christmas has arrived early. Kathryn McCown was recently promoted to paralegal leaving a legal clerk's position to be filled. At the same time we look for Kathryn's replacement, we will also be interviewing candidates for a new staff attorney slot. Both positions have been advertised and the application periods have recently closed. We are looking forward to filling these positions and to expanding our civil enforcement efforts.

Finally, major renovations for our offices are about to begin. While there will be a few inconveniences during the construction phase, we are ready to say goodbye to our 1980s decor and the desk drawers that only open on whim. We hope to have construction completed by the end of the year.

OKLAHOMA CITY. The Office recently announced the successful prosecution of its first identity theft case. In addition to not receiving her bankruptcy discharge, Elma Ruth Colwell pled guilty to one count of making a false statement under 18 U.S.C. § 1001 (*See* Best of Civil Enforcement).

In the chapter 11 case of Martin Drilling, the court awarded the debtor's attorneys 38% of his requested fees and expenses. The debtor's attorney had requested fees of $40,023.50 and expenses of $5,898, but awarded only $15,000 and $2,500, respectively. The United States Trustee's office and creditors had objected to the requested fees and expenses. The basis of the objections, among other things, was lack of benefit to the estate.

The Office has lots of smiles on the faces of its paralegals. Remodeling was recently completed which added three new offices allowing each of the paralegals to have an individual office. Each office is arranged to include an outside window. Doors have been added for additional privacy. The office modular furniture has been reconfigured and added to, facilitating a more functional working environment in the new work space.

While the bankruptcy court in the Western District of Oklahoma has not yet been included in the list of new courts assimilating to electronic filing, it is anticipated that may occur within the next twenty-four months.

10TH CIRCUIT REVIEW

10TH CIRCUIT

Midkiff v. Stewart (In re Midkiff), 341 F.3d 1194 (10th Cir. 2003).

The debtors' Chapter 13 plan expressly provided that their tax refunds for the first 36 months of the plan were "disposable income." The debtors prepaid their plan payments and received their discharge. Subsequently, the debtors received a tax refund. Opting for "accuracy" over "finality" and following the 9th Circuit's lead in *In re Cisneros,* 994 F.2d 1462 (9th Cir. 1993), the Tenth Circuit held that a revocation of discharge, which pursuant to Section 1328(e) is permitted only if the debtor's discharge was obtained by fraud, is not the same as vacating the order of discharge pursuant to Fed.R.Bankr.P. 9024 so that the court can "provide appropriate relief under the circumstances." Even though in this case the mistake sprang from the trustee's failure to learn all the facts, the bankruptcy court's discharge order would not have been entered had it known all the facts, and the court noted, the debtors were in the best position to know about their tax refunds and had the burden of providing that information to the trustee.

Watson v. Parker (In re Parker), 313 F.3d 1267 (10th Cir. 2002).

In this opinion, the Tenth Circuit wrote only to make its position on two issues clear:

(1) The Tenth Circuit has adopted the "mechanical approach" with respect to whether a case should be reopened, i.e., debtor's intent in failing to schedule a debt is irrelevant to the bankruptcy court's decision to reopen the case; and (2) For purposes of classifying a claim as either pre- or post-petition, the Tenth Circuit has adopted the "conduct theory" as being more in tune with the plain language and policy underlying the Bankruptcy Code. Pursuant to the "conduct theory" a claim arises on the date the conduct giving rise to the claim occurs. The court left to another day the decision of whether it would embrace the "basic" as opposed to "narrow" conduct theory. (This case effectively overrules Judge Flannagan's decision in *In re Smith,* 293 B.R. 786 (Bankr.D.Kan. 2003); however, not in time for the Chapter 7 trustee to succeed on his attempts to recover a Fen-Phen settlement.)

BANKRUPTCY APPELLATE PANEL

Houlihan Lokey Howard & Zukin Capital v. Unsecured Creditors' Liquidating Trust (In re Commercial Finan. Serv., Inc.), 298 B.R. 733 (B.A.P. 10th Cir. 2003) (Oklahoma).

The judges of the BAP agreed with the lower court and the position of the UST and the Unsecured Creditors Liquidating Trust that the fees requested by Houlihan Lokey were unreasonable in light of the time spent on its engagement for the ABS Committee. In affirming the bankruptcy court, the panel found Section 330 governed the case, and that the court correctly applied the factors for determination of allowed compensation. The court stated that the fact that a monthly fee is used in the marketplace, while relevant to a reasonableness inquiry, does not dictate how the court determines reasonableness under Section 330(a). The court also concluded that Houlihan Lokey was not treated unfairly in the proceedings, finding that all of the parties, including the UST, made it clear that the fees would be reviewed for reasonableness based up criteria clearly spelled-out by the bankruptcy court.

In re Mayes, 245 B.R. 145 (B.A.P. 10th Cir. 2003) (Oklahoma).

The Cherokee Nation held a pre-bankruptcy judgment against the debtor. Upon filing bankruptcy, the debtor attempted to avoid the lien created by the pre-bankruptcy judgment. Pursuant to 11 U.S.C. § 522(f)(1)(A) a debtor can avoid a judicial lien that impairs an exemption granted under state law. The bankruptcy court and the appellate court both held that the motion to avoid lien was a suit, and "in the absence of an 'unequivocal waiver' of immunity, an Indian nation is immune from suit under common law tribal immunity."

Bank One v. Kallstrom (In re Kallstrom), 298 B.R.753 (B.A.P. 10th Cir. 2003). (Oklahoma)

Bank One timely filed a complaint against the debtors seeking denial of discharge under 11 U.S.C. § 727(a)(3), (4) and (5). The Bank alluded to, but made no actual claims against debtors under Section 523. On the day of trial, the parties appeared and announced that they had settled the matter. The settlement included a non-dischargeable judgment against the debtors in favor of the Bank, and an agreement by the Bank to dismiss its complaint. Before deciding whether to allow the dismissal of the adversary proceeding, the court required that notice of the settlement be sent to all parties in interest. No response or objections were filed, and no creditor asked to be substituted as plaintiff in the Bank's action. Nevertheless, the bankruptcy court held that while "settlement of a § 727(a) action may be appropriate when it is in the best interest of the estate, and any consideration is paid to the estate for the benefit of creditors," because payment went exclusively to the Bank, it appeared that the debtors "were buying their discharge." In holding that the bankruptcy court's refusal to approve the settlement agreement was not an abuse of discretion, the BAP found that there was a policy of preventing the "trafficking of discharges," and that the legitimacy and integrity of the system required that the Section 727 bankruptcy discharge "not be treated as a commodity." Finally, the BAP noted that the bankruptcy court's failure to approve the settlement was not a mandate that the case be tried.

In re Solomon, 299 B.R. 626 (B.A.P. 10th Cir. 2003) (Oklahoma).

The Bank brought suit against the chapter 7 trustee to enforce pre-bankruptcy mortgages on real estate. The mortgages secured commercial property and were given by the debtors to secure their existing guaranty of the debt of a third party, in this case a corporation. The trustee counterclaimed, asserting the mortgages were avoidable as fraudulent transfers pursuant to 11 U.S.C. § § 544(b) and 548(a)(1)(B). The bankruptcy court found that the debtors were insolvent at the time of the transfers and that debtors did not receive reasonably equivalent value in exchange for the mortgages. The bankruptcy appellate court affirmed the bankruptcy court's ruling.

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CIRCUIT

From page 7

BANKRUPTCY COURT

In re Mason, 2003 WL 22387146 — B.R. — (Bankr.D.Kan. 2003) (Judge Nugent).

Debtors' Chapter 13 plan proposed to pay their student loan ahead of other unsecured creditors. Under the plan, the student loan claims would be paid roughly 17% of the claim amount, and the other general unsecured creditors would receive nothing. The trustee objected to the plan, contending that the treatment unfairly discriminated against the other unsecured creditors contrary to 11 U.S.C. § 1322(b). The court first applied the "four step test" and then the "balancing test." The plan failed both tests. In reaching its decision, however, the court relied upon the "baseline test" which requires a court to determine (1) whether the preferred debt is accorded statutory priority (student loans are not); (2) whether unsecured creditors would receive at least as much as they would receive without the debt being preferred (unsecured creditors would receive nothing, as opposed to a 7% dividend); (3) whether unsecured creditors would receive a pro rata share of the debtor's mandatory contribution of disposable income (unsecured creditors would receive nothing) and (4) whether the preferential treatment of one creditor discriminated unfairly against other creditors (it did). The debtors justified their favorable treatment of the student loan by claiming the right to a "fresh start." However, the fresh start in Chapter 13 is not without limit and debtors' effort to "mitigate the consequences of nondischargeable student loan debt outside the statutory scheme of Chapter 13 is unfair discrimination." The plan was not confirmed.

In re White, 297 B.R. 626 (Bankr.D.Kan. 2003) (Judge Nugent).

The debtor was injured prepetition in an automobile accident and made recovery against his insurance company, Farm Bureau, prior to the date his Chapter 7 bankruptcy case was filed. Subsequent to the filing, the trustee reached a settlement with the tortfeasor and her insurer. Farm Bureau asserted a PIP lien and a right to repayment of the PIP benefits from the settlement proceeds. The court notes that this case presents a factual scenario virtually identical to *Nazar v. Allstate Ins. Co., (In re Veazey),* 266 B.R. 486 (Bankr.D.Kan. 2002), in which the court held that the attachment of a PIP lien violates the automatic stay where the insured-debtor obtains a postpetition recovery from the tortfeasor. According to the court, nothing in the Kansas PIP statutes affords the insurer any interest prepetition in any future recovery obtained by the debtor, because the PIP lien does not relate back to the date PIP benefits were paid by the insurer. In addition, nothing in the Farm Bureau policy created a prepetition right of payment either, since it, too, contemplated payment before any lien or right of subrogation attached, i.e., the insurer's subrogation rights were conditioned upon a recovery. The court further concluded that Farm Bureau held no equitable interest in the debtor's cause of action, and as a result, Farm Bureau could not lay claim to the settlement proceeds by virtue of 11 U.S.C. § 541(d). Because there was no allegation of fraud or wrongdoing on the part of the debtor, the constructive trust theory did not hold sway with the court either. Finally, because constructive trust is a remedy, and Farm Bureau's rights and remedies are defined within the scope of the PIP statute, the constructive trust theory failed again in an admittedly "harsh" result for PIP insurers.

Bilal v. Household Finan. Corp. III (In re Bilal), 296 B.R. 828 (Bankr.D.Kan. Kan. 2003) (Judge Flannagan)

The debtors' Chapter 13 Plan included a provision declaring that they were rescinding their transaction with Household Finance and declaring the non-purchase money second mortgage void. Household Finance did not timely object to the Plan, and it was subsequently confirmed. When Household Finance failed to release their mortgage on the property, the debtors filed an adversary complaint wherein the court concluded that under the doctrine of *res judicata* the rescission was effective and the mortgage void; however, no other consequences of the rescission were fixed by the confirmation.

First Nat'l. Bank v. Davison (In re Davison), 296 B.R. 841 (Bankr.D.Kan. 2003) (Judge Flannagan).

Bank brought adversary complaint to deny debtors' discharge in their Chapter 7 bankruptcy. On Bank's motion for summary judgment, the bankruptcy court held that: (1) genuine issues of material fact, as to whether Chapter 7 debtors acted with requisite fraudulent intent in gratuitously transferring oil and gas interest to debtor-wife's mother less than three months before their bankruptcy filing, and in selling other property to wife's sisters during this same time frame, precluded entry of summary judgment with respect to such prepetition transfers; but (2) debtors' failure to disclose the royalty and real property transfers in their bankruptcy pleadings constituted a "false oath" that was "material." The court further concluded that the number of known omissions – here two – supported a finding of fraudulent intent. Moreover, debtors did not reveal the transfers until specifically questioned about them and offered no explanation for their failure to disclose the transfers. Creditor was granted summary judgment on this count, and debtors' discharge was denied.

In re Gonzales, 297 B.R. 143 (Bankr.D.N.M. 2003) (Judge Starzynski).

Creditor and Chapter 13 trustee objected to confirmation of debtors' Chapter 13 plan, which provided for payment of a total of roughly $1,600 to the objecting creditor (with $36,000 claim) over 60 months, claiming the plan had not been proposed in "good faith," and that particular budgeted items were too high to be reasonably necessary for the maintenance and support of the debtors and debtors' dependents. Allowing as how the "more subjective the decision, the less predictable the result," Judge Starzynski, based on his own opinion of reasonableness and his desire to "protect" the "genuine family unit," found that $700 per month for food for the debtors, their adult, rarely-employed son, and their nearly 18-year-old granddaughter was not unreasonable. The court then applied the *Flygare* (709 F.2d 1344 10th Cir. 1983) factors to the case and found that debtors' plan had been proposed in good faith and should be confirmed.

Please see **Circuit**, Page **9**

Circuit

From Page 8

In re Simmering, Case No. 021-2116 (Bankr.D.Kan. 2003) (Judge Nugent) (unpublished).

The debtor and his father operated a farming partnership known as Simmering Farms. The assets of Simmering Farms included farm equipment, vehicles and land. Security State Bank held a properly perfected security interest in the partnership property, including crops. The debtor filed a Chapter 13 bankruptcy, which was ultimately converted to a Chapter 7. After the filing, the debtor planted a milo crop. The crop was planted on Simmering Farms land, using Simmering Farms equipment. Net proceeds from the crop totaled $51,095. The debtor claimed the proceeds as his; however, the bankruptcy court disagreed. Because the affairs of the partnership had not been completely wound up, the milo was a partnership asset subject to the Bank's security interest.

AND, CURRENTLY PENDING BEFORE THE UNITED STATES SUPREME COURT:

In re Lamie, No. 02-693. The courts of appeals are divided on the question of whether Section 330(a)(1) allows the use of bankruptcy estate funds to pay for the attorney fees of chapter 7 debtors and of chapter 11 debtors out-of-possession. After a divided panel of the Fourth Circuit agreed with the Program that Section 330(a)(1) prohibits such compensation, *U.S. Trustee v. Equipment Services, Inc. (In re Equipment Services, Inc.)*, 290 F.3d 739 (4th Cir. 2002), the U.S. Supreme Court granted certiorari. Oral argument is scheduled for November 10, 2003.

In re Kontrick, No. 02-819. The courts of appeals are divided on the question of whether the requirement in Fed. R. Bankr. P. 4004(a) that a complaint objecting to a bankruptcy discharge "shall be filed no later than 60 days" after the meeting of creditors is jurisdictional. In the United States' view, bankruptcy rules are non-jurisdictional. *In re Kontrick*, 295 F.3d 724 (7th Cir. 2002), *cert. granted sub nom. Kontrick v. Ryan*, __ U.S. __, 123 S. Ct. 1899, 155 L. Ed. 2d 824 (2003). Oral argument is scheduled for November 3, 2003.

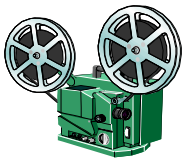
In re Yates, No. 02-458. In this case, the Sixth Circuit held that a retirement plan's spendthrift clause (anti-alienation provision) was not enforceable by the debtor under either the Employee Retirement Income Security Act (ERISA) or Tennessee law, and therefore a loan repayment to the plan was recoverable by a trustee as a preference. The Supreme Court has held that proceeds of ERISA-qualified plans do not constitute assets of the bankruptcy estate under 11 U.S.C. § 541. However, courts have struggled with the issue of whether anti-alienation clauses bring plans under the protection of ERISA. *Hendon v. Yates (In re Yates)*, 287 F.3d 521 (6th Cir. 2002), *cert. granted*, __ U.S. __, 123 S. Ct. 2637, 156 L. Ed. 2d 654 (2003). The United States has participated as amicus in support of the petitioner's position that an employer such as Dr. Yates is a protected participant in an ERISA-qualified plan. Oral argument has not yet been scheduled.

In re Galletti, No. 02-1389. The issue is whether the failure of the IRS to assess tax deficiencies against individual debtors bars the IRS from collecting the unpaid tax debts of the partnership directly from debtors. *United States v. Galletti (In re Galletti)*, 314 F.3d 336 (9th Cir. 2002), *cert. granted*, __ U.S. __, 123 S. Ct. 2606, 156 L. Ed. 2d 626 (2003). The United States is the petitioner in this case. Oral argument has not yet been scheduled.

In re Till, No. 02-1016. This case addresses the cram down rate of interest for confirmation of a chapter 13 plan over a secured creditor's objection, and it will hold implications for similar chapter 11 and chapter 12 cases. The Seventh Circuit held that in calculating the interest rate in a cram down, the bankruptcy court should treat it as a "coerced loan" and, in the absence of a stipulation regarding a creditor's current rate for a loan of similar character, amount, and duration, employ the contract rate of interest as the presumptive measure of the appropriate interest rate. *In re Till*, 301 F.3d 583 (7th Cir. 2002), *cert. granted sub nom., Till v. SCS Credit Corp.*, ___ U.S. ___, 123 S. Ct. 2572, 156 L. Ed. 2d 601 (2003). The United States has participated as amicus in support of the petitioner's position that courts should determine the appropriate discount rate by adjusting low-risk interest rates, such as the prime rate, to account for plan-specific risks of nonpayment, rather than using the contract rate. Oral argument has been scheduled for December 2, 2003.

In re Hood, No. 02-1606. In a case where a student brought an adversary proceeding for a hardship discharge of a student loan, the state moved to dismiss on the grounds of sovereign immunity. This case will determine the extent to which the Bankruptcy Code's limits on state sovereign immunity are constitutional. *Hood v. Tennessee Student Assistance Corp. (In re Hood)*, 319 F.3d 755 (6th Cir. 2003), *cert. granted,* 2003 WL 21134036 (Sept. 30, 2003).

FEATURE



Incorrect Social Security Numbers Continue to be a Problem.

In January of 2002, the Office of the United States Trustee (OUST) began requiring all case trustees at the 341Creditors' Meeting to compare debtors' Social Security numbers to the numbers on their bankruptcy petitions. To our surprise, during 2002, we found a number of cases where there was either no Social Security number or an incorrect Social Security number listed:

Kansas	132
Oklahoma	168
New Mexico	34

An incorrect Social Security number on a bankruptcy petition can wreak havoc with the true owner's credit, since each of the three major credit reporting agencies include bankruptcy filings on an individual's credit report.

When an improper or omitted Social Security number is discovered, the OUST requires the debtor to amend the petition to reflect the proper number, as well as notify the three credit reporting agencies detailing the correction. This correction process causes considerable work for the OUST, the Bankruptcy Clerk's Office, creditors, debtors and counsel. The effort is needed however, in order to help the innocent, true owner of the Social Security number avoid spending considerable time and incurring large phone bills to expunge from his credit record the bankruptcy he did not file.

The OUST was certain that with the added emphasis on this issue and the extra work involved by the numerous parties (particularly debtors' counsel), debtors' attorneys would be extra careful to make sure that Social Security numbers were listed correctly. But much to our chagrin, during the first ten months of 2003, there has been an increase in the number of Social Security problems discovered in the Region in 2003:

Kansas	112
Oklahoma	247
New Mexico	82

PRACTICE TIP #1: The OUST has seen a number of petitions where the debtors initial their Social Security numbers when they sign their schedules, thus providing a final check to insure that the proper number has been listed correctly on the petition. Note that the schedules should be filled out **before** the debtors sign them.

PRACTICE TIP #2: If, as debtors' attorney, an improper Social Security number still gets by you, the OUST suggests that you include the three major credit reporting agencies on the matrix and notice the amendment to the entire matrix. This will alleviate the need to send separate letters to the credit agencies.

Identity Theft

Once a thief knows your Social Security number, he can, with little effort, become you—incurring large amounts of debt and even filing bankruptcy—with you none the wiser. William Schantz, Wichita Trial Attorney, recently spoke at the local chapter of the Association of Information Technology Professionals on the topic of identity theft. With the many advances in technology and the ready availability of information on the internet, identity theft is one of the fastest growing crimes in the nation. The presentation included a video on identity theft, provided by the U.S. Attorney's office in Los Angeles, which focused on ways in which the fraud may be perpetrated, ways to protect yourself against possible identity theft, and steps that can be taken if you become an unfortunate victim of this crime. Copies of the Identity Theft Video were distributed to the State of Kansas, which is already using it in most of its departments. Katherine Wieland, IT Specialist in Wichita, can provide you with a copy of the video presentation on CD ROM if you are interested in viewing it or showing it to a group.

ANALYZE THIS

REGION 20—Exemptions

Property	Kansas	Oklahoma[1]	New Mexico	Federal[2]
Homestead	Unlimited	Unlimited	$30,000[3]	$17,425[4]
Household Goods (HHG)	Unlimited	Unlimited	$ 500 + Unlimited Furniture	$450/$9,300[5]
Wearing Apparel	Unlimited	$4,000	$ 1,500	Incl. in HHG
Motor Vehicle	$20,000	$3,000	$ 4,000	$ 2,775
Jewelry	$ 1,000	None	$ 2,500	$ 1,150
Tools of the Trade	$ 7,500	$5,000	$ 1,500	$ 1,750
R_x Health Aids	Unlimited	Unlimited	Unlimited	Unlimited
Alimony	Unlimited	Reasonable and Necessary (RN)[6]	None	RN
Child Support	Unlimited	RN	Unlimited	RN
Workers Comp.	Unlimited	$50,000	Unlimited	RN
Wrongful Death	None	Incl. in WC	None	RN
Personal Injury	None	Incl. in WC	None	$17,425
Fed. Earned Income	None	Unlimited	None	None
IRA, Retirement	Unlimited	Unlimited	Unlimited	Unlimited
Exemption in Lieu of Homestead	None	None	$ 2,000	$925/$8,725[7]

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[1] In addition to the exemptions listed below, Oklahoma also allows exemptions for: (i) implements of husbandry necessary to farm the homestead (not to exceed $5,000); (ii) five milk cows and their calves under six months old, so long as they are held primarily for personal, family or household use; (iii) one hundred chickens, so long as they are held primarily for personal, family or household use; (iv) two horses and two bridles and saddles, so long as they are held primarily for personal, family or household use; (v) one gun, so long as it is held primarily for personal, family or household use; (vi) ten hogs, so long as they are held primarily for personal, family or household use; (vii) twenty head of sheep, so long as they are held primarily for personal, family or household use; and (viii) all provisions and forage on hand, or growing for home consumption, and for the use of exempt stock for one year.

[2] In accordance with 11 U.S.C. § 104, certain of the Federal exemptions will be adjusted effective April 1, 2004.

[3] Per debtor.

[4] Per debtor.

[5] Per debtor. Exemption is $450 per item, not to exceed $9,300 in the aggregate.

[6] Exemption is limited to an amount "reasonably necessary for the support of the debtor and any dependent of the debtor."

[7] Per debtor. The additional exemption can be claimed only to the extent the homestead exemption is unused, not to exceed $8,725 per debtor.

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Analyze

From Page 11

Region 20 Exemptions. Both Kansas and Oklahoma are "opt out" states, so the Federal exemptions are not available to their debtors. Kansas ranks high for consumer protection and, as the chart shows, has very liberal exemptions. Oklahoma has many of the same exemptions as Kansas, as well as many other unique exemptions. (See fn. 1) One exemption in particular—the Federal Earned Income Credit—does impact Oklahoma's "small asset" case load; however, Oklahoma's volume of asset cases is substantial and per office, not markedly different from that of Kansas.

Debtors in New Mexico, on the other hand, can select either the New Mexico or the Federal exemptions, and joint debtors need not select the same exemption scheme. Unlike Kansas and Oklahoma, most of the exemptions available to New Mexico debtors have a dollar limitation. In spite of these limitations, New Mexico historically has had fewer asset cases.

Chapter 7 trustees in both Kansas and Oklahoma administer a substantial number of cases where the debtors' tax refund is the only asset of the estate. Chapter 7 trustees in New Mexico, however, must contend with the "exemption in lieu of homestead," more commonly referred to as the "wildcard" exemption, which can allow debtors to keep not only their tax refunds, but boats, motorcycles and other property Kansas and Oklahoma debtors must relinquish.

LET'S EAT

Here is my favorite soup recipe. The recipe says it is stew, but I think it is more like soup. I will warn you, it does take some time to prepare, but, oh, it is so worth it.

This recipe says it freezes and reheats well...I have never frozen any of it because it gets eaten the day I make it. Enjoy!!

CHICKEN STEW WITH TOMATOES AND WHITE BEANS

4 bacon slices, chopped
6 chicken thighs with skin and bones (about 2 1/2 pounds)
All purpose flour
1 large onion, chopped (about 2 cups)

5 garlic cloves, minced
2 14 1/2-ounce cans stewed tomatoes
1 14 1/2-ounce can low-salt chicken broth
3/4 cup dry red wine
1/2 cup chopped fresh basil
1 tablespoon dried oregano
2 15-ounce cans cannellini (white kidney beans), drained

Cook chopped bacon in heavy large pot over medium-high heat until crisp. Using slotted spoon, transfer bacon to paper towel. Sprinkle chicken thighs with salt and pepper. Dredge chicken in flour, shaking off excess. Add to drippings in pot and sauté until brown, about 3 minutes per side. Using slotted spoon, transfer chicken to large bowl. Pour off all but 2 tablespoons drippings from pot. Add chopped onion and minced garlic to pot; sauté 4 minutes. Add bacon, stewed tomatoes, chicken broth, red wine, basil and oregano. Bring to boil, scraping up browned bits. Return chicken and any accumulated juices to pot. Cover and simmer until chicken is cooked through, about 20 minutes. Add cannellini; simmer 10 minutes longer. Season to taste with salt and pepper.

Makes 4 to 6 servings

Bon Appetit

December 1999

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

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

EXXTRA! EXXTRA! Read all about it