



NEWS FOR CONSUMER BANKRUPTCY PROFESSIONALS

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CONSUMER BANKRUPTCY NEWS

ABI STUDY REVEALS BAPCPA REFORMS ARE A FAILURE

Congressional "reform" made the system more complex, study finds

12/16/2011 | James R. Hood | ConsumerAffairs.com

"A new study finds the bankruptcy system is more cumbersome and expensive than ever, thanks to the 2005 Congressional "reform" of bankruptcy laws.

"The study found that since the new law took effect, debtors' attorneys' fees plus filing fees and the debtor education fee have increased the total direct access costs for both consumer chapter 7 and 13 cases.

"The study was funded by the American Bankruptcy Institute Anthony H.N. Schnelling Endowment Fund and National Conference of Bankruptcy Judges Endowment for Education. It found that the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) made the bankruptcy system cumbersome and costlier to use for both debtors and bankruptcy professionals.

"According to the study, additional debtor paperwork requirements have added time and monetary burdens throughout the consumer bankruptcy system. The new law also imposed new duties and obligations on attorneys, trustees and court personnel."

Among the study's findings were the unintended consequences of the Act and the irony that after all



the *sturm und drang* about reform, payments to unsecured creditors have not increased:

"Many of BAPCPA's unintended effects have turned the concept of relief for "poor but unfortunate debtors" on its head. It was consistently observed that BAPCPA's dictates resulted in "the poorest debtors [having] highest plan payments because their apparent disposable income cannot be taken out of the mix by high mortgage and car payments"

"As numerous scholars have observed, "consumer bankruptcy suffer[s] from the irony that those who need it the most are often too poor to take advantage of its relief."

"Moreover, "additional administrative costs in increased attorney fees [result in] reduced dividends to non-priority unsecured creditors." As we found in our analysis of the quantitative data, overall distributions to unsecured creditors were uncharged [sic]—an irony that cannot be lost on the financial services industry lobbyists."

[CLICK HERE FOR MORE STORY](#)

[CLICK HERE FOR FULL TEXT OF ABI STUDY](#)

EQUAL JUSTICE UNDER THE LAW

An Essay by O. Max Gardner III

As consumer lawyers, we are trained to believe that our legal system should be fair - equal justice under the law - yes, the same law and the same order for all of us. But, for those of us in the trenches doing mortgage defense litigation or representing consumers in bankruptcy cases, we all know that there has been one set of rules for us and another set of rules for the banks and the law licenses they rent.

What is a "technical" violation for the banksters has been a legal disbarment case for us. What is a "ta-da" note indorsement for the rent-a-lawyers, has been a sanction imposed on us for discovery abuses or for failure to timely disclose "relevant" evidence. What has been a massive fraud on the courts at unprecedented and truly historical levels by the so-called holders of the mortgage notes has been just another debtor wanting a free house for us. I could go on and on but redundancy is boring.

The truth of the matter is that we have been playing on a field that has been tilted about 90 degrees in favor of the financial institutions for decades. But, the truly astounding fact is that we are still playing. We are still in the game.

And, somehow, somehow, we score a few touchdowns now and then, hit a few field goals once in a while and sack the quarterback once in a while. In fact, we have scored more points in the last year than in the last five years combined.

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BANKRUPTCY FILINGS DROP 8% IN 2011

Bankruptcy cases filed in federal courts for fiscal year 2011, the 12-month period ending September 30, 2011, totaled 1,467,221, down 8 percent over the FY 2010 bankruptcy filings of 1,596,355, according to statistics released today by the Administrative Office of the U.S. Courts. Filings dropped during the fourth quarter of the Judiciary's fiscal year, with 15 percent fewer filings than in the same three-month period in 2010.

Additional statistics released today include business and non-business bankruptcy filings for the 12-month period ending September 30, 2011 (Table F-2, 12-month); a comparison of September 2010 and 2011 filings (Table F), 4th quarter filings (Table F-2, 3-month); and monthly filings for the 12-month period ending September 30, 2011 (Table F-2, Monthly).

Chapter 7 filings in FY 2011 totaled 1,036,950, down 10 percent from the 1,146,511 chapter 7 filings in FY 2010.

Chapter 13 filings fell 4 percent, from 434,839 in FY 2010 to 417,503 in FY 2011.

Chapter 11 filings fell to 11,979, down 16 percent from the 14,191 Chapter 11 filings reported in FY 2010.

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KING'S TAX DISCHARGE COURSE APROVED FOR MCLE BY CAL BAR THROUGH 2012

King Bankruptcy Academy is approved for 14.25

MCLE hours for its 2 1/2-day course, Discharging Taxes in Bankruptcy, by the Cal State Bar. The next course will be in Las Vegas in 2012. The Academy also has a 6.5 hr video course on the same topic. For info visit DischargeTaxes.com.

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MADOFF SON MUST FACE \$198 MILLION SUIT IN BANKRUPTCY COURT

Linda Sandler and Bob Van Voris, ©2011 Bloomberg News
Thursday, December 29, 2011

Dec. 28 (Bloomberg) -- Bernard Madoff's son Andrew must submit to a bankruptcy judge's decision to permit a \$198 million lawsuit to go forward because he sought that court's protection when he filed a claim against his father's estate, a federal judge said.

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IRS TO USE NEW TECHNOLOGY TO TRACK DELINQUENT TAXPAYERS IN 2012

IRS Uses Analytics To Help Collect Delinquent Taxes
Agency has awarded SAS Institute \$6.25 million to use its analytics software in its new Return Review Program.

By Elizabeth Montalbano
InformationWeek
December 08, 2011

The IRS has awarded SAS Institute a \$6.25 million contract to use its data analytics technology to help recover unpaid taxes, detect tax fraud schemes, and reduce the number of fraudulent refunds the agency pays out.

The agency is using SAS Analytics software for its new electronic Return Review Program (RRP) system, which the IRS hopes will reduce the \$345 million tax gap, according to the company. The gap represents what taxpayers owe and what they pay voluntarily and on time.

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THE MORGAN KING BANKRUPTCY CATALOG: BOOKS

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ROY JACKSON DENT
of the Illinois Bar

Our distinguished author, Roy Dent, is an attorney at the law firm of Brankey & Smith, P.C., in Charleston, Illinois, where he specializes in bankruptcy litigation and consumer protection.

Mr. Dent received his B.A. and M.A. degrees in history from California State University, Fullerton, and his J.D. degree from the Illinois Institute of Technology, Chicago-Kent College of Law.

He is a member of the Illinois bar and admitted to practice in the Central District of Illinois, Southern District of Illinois, and the United States Court of Appeals for the Seventh Circuit.

He is certified by the American Board of Certification in Business Bankruptcy and Consumer Bankruptcy. In addition, he frequently writes and lectures on the topic

of bankruptcy law, consumer protection laws, and debt collection.

Roy previously authored Dent's Marital Debts & Property Issues in Consumer Bankruptcy Cases, in the King Bankruptcy Practice Series.

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RICHARD E. WEST is Board Certified in Consumer Bankruptcy Law, and is admitted to the United States Supreme Court, U.S. Tax Court, Court of Appeals for the Federal Circuit, United States Court of Federal Claims, Court of Appeals for the Sixth Circuit, United States District Court for the Southern District of Ohio, and the Ohio Supreme Court.

He is a member of the American Bankruptcy Law Forum, the National Association of Consumer Bankruptcy Attorneys, Ohio State Bar Association, and the Dayton Bar Association.

Richard is a frequent lecturer on bankruptcy topics and has delivered lectures for all three of the major seminar companies, as well as for the Ohio State Bar Association.

He graduated from Franklin High School and served in the United States Navy. After military service, he was employed by NCR as a computer engineer. He completed his undergraduate degree at St. Joseph's University in Philadelphia, and he earned his law degree from Temple University in 1986.

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DENT'S GUIDE TO MARITAL DEBT AND PROPERTY ISSUES IN CONSUMER BANKRUPTCY CASES

A LAWYER'S RESOURCE FOR HANDLING MARITAL PROPERTY, DEBT, AND DIVORCE ISSUES IN CONSUMER BANKRUPTCY CASES

Release 2010 # 1

Illinois attorney Roy Dent's book, "Dent's Guide to Marital Issues in Consumer Bankruptcy Cases," has just been released with the King Bankruptcy Practice Series.

The book addresses the dischargeability of marital obligations in connection with domestic support orders, marital property settlement agreements and judgments and related debts; dealing with family or community property as property of the estate, and related issues in connection with the trustee's efforts to take family property on behalf of the estate. It also looks at conflict-of-interest issues in representing divorced, or divorcing, couples.

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[The title of this book was formerly King's Legal Guide to Handling Offers in Compromise.]

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NEW: AUTOMATIC CALCULATION OF TAX-DISCHARGE TOLLING PERIODS

LARRY HEINKEL'S *TAX DISCHARGE DETERMINATOR*

AUTOMATICALLY CALCULATES THE CALENDAR MATH TO SATISFY THE 3 TIME RULES FOR DISCHARGE OF TAXES, INCLUDING THE TOLLING EFFECTS OF PRIOR BANKRUPTCY, OFFER-IN-COMPROMISE, AND COLLECTION DUE PROCESS EVENTS

This powerful new tool for analyzing the dischargeability of taxes was premiered at the recently concluded King Bankruptcy Academy course in San Francisco.

The web calculator offers an inexpensive, easy-to-use, on-line software program to determine whether your clients' tax debts would be dischargeable if you filed their bankruptcy today and, if not, how soon they would be dischargeable in a bankruptcy filing.

This Program will ask you a series of questions; simply type in the answer to each question when prompted. After all the questions are answered, the Program will immediately send you an official email informing you the earliest date that the particular tax debt can be discharged through bankruptcy. That's it!!

The writer of this program, Larry Heinkel, has consulted regularly with Morgan King over the last 12 months working on hypothetical situations and solutions. King is the author of the standard text on the subject, *Discharging Taxes In Consumer Bankruptcy Cases*. This program serves the same function as Jim Gold's former *Tax Discharge*



Chronometer, sold with King's book until BAPCPA rendered its formulae obsolete. Lawyers have been waiting for years for a viable replacement. This is it!

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CONSUMER BANKRUPTCY LAWYERS JUST CAN'T STAY STILL

CALIFORNIA BANKRUPTCY ATTORNEY FEDERICK E. CLEMENT APPOINTED TO BENCH

Chief Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit announced today the appointment of attorney Fredrick E. Clement '87 to serve as a judge of the U.S. Bankruptcy Court for the Eastern District of California.

Mr. Clement, 51, will fill a judgeship to be vacated by Bankruptcy Judge Whitney Rimel, who plans to retire on March 15, 2012. He will officially take office on March 16, 2012 and plans to maintain chambers in Fresno.

"We welcome Mr. Clement to the bankruptcy bench. He is a knowledgeable and experienced practitioner who will be an asset to the Ninth Circuit," Judge Kozinski said in announcing the appointment.

A solo practitioner in Redding, California since 1993, Mr. Clement is a certified specialist in all areas of bankruptcy law. He previously litigated in state courts, handling business and real estate disputes and was involved in a large number of bench trials and two multi-week jury trials.

A native of San Luis Obispo, California, Mr. Clement received his B.A. from Westmont College in 1982 and graduated cum laude from U.C. Hastings.

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MANHATTAN BANKRUPTCY JUDGE ARTHUR GONZALEZ SET TO RETIRE

Arthur J. Gonzalez, chief judge of the federal bankruptcy court in lower Manhattan, has overseen some of the biggest bankruptcy cases of recent years.

Many judges are lucky to handle just one era-defining case during their tenures on the bench. In his 16



years as a federal bankruptcy judge, Arthur J. Gonzalez has handled three.

The first, Enron, came up in late 2001. Eight months later, WorldCom followed, forcing the judge to handle both cases simultaneously. And the last, Chrysler, arrived in 2009.

Now, Judge Gonzalez, 64, is set to retire in March as the chief of the federal bankruptcy court in Manhattan. His career has been a vivid illustration of the important role that the court, located in a Beaux-Arts courthouse at the southern end of Manhattan, has played in helping reshape corporate America.

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EDITOR'S CHOICE THIS WEEK

THE BUSINESS DEBT LOOPHOLE TO THE BANKRUPTCY MEANS TEST

By Craig Robbins, Esq.
Long Island Bankruptcy Blog

Some Debtors Who Have Primarily Business Debts Can Avoid Having to Do the Bankruptcy Means Test

The means test, which turned six-years old last month, was intended by Congress to create an objective standard for permitting only those consumers who are not “abusing” the privileges of bankruptcy to get Chapter 7 relief.

In general terms, if a consumer debtor has an income that is relatively high in relation to his or her expenses, the consumer will not pass the means test and will not be eligible to file Chapter 7 bankruptcy.

The Business Debt Exception to the Means Test

The means test only applies to individuals whose debts are “primarily” “consumer debts,” as opposed to business debts, as set forth in Bankruptcy Code §707(b).



A debtor can check a box on the first page of the means test to declare that his or her debts are primarily non-consumer debts, and then avoid the rest of the means test, also known as Form B22A. [Click here to take a look at the actual Means Test form.](#)

Congress could have told us what exactly “primarily” means, but they didn’t bother to, so we have to analyze this word. Webster’s Dictionary defines “primarily” as “for the most part.” Most courts have focused on this definition to mean “more than half.”

Thus, if more than 50% of the debtor’s debts are non-consumer debts, the debtor is automatically eligible for filing a Chapter 7 case without having to bother with the means test. There is no presumption of abuse for such cases.

Determining What “Consumer Debts” Are in Bankruptcy Cases

So what exactly is a consumer debt? The Bankruptcy Code defines “consumer debt” as “debt incurred by an individual primarily for a personal, family, or household purpose.”

In analyzing whether a debt is a consumer debt or not, bankruptcy courts have developed a “profit motive” test: if the debt was incurred with an eye towards making a profit, then the debt should be classified as a business debt.

Thus, the mortgage on an individual’s home would clearly be a consumer debt, and the mortgage on a vacation home would also be a consumer debt. However, if that vacation home was also purchased as an investment and rented out, then the mortgage would qualify as a business debt.

One bankruptcy court permitted a debtor to deem one of the three mortgages on his home to be a non-consumer debt because the proceeds were used to fund a business venture.

Most credit card debts are obviously consumer debts. However, if an individual used a credit card for business purposes, then it could be reasonably argued that the resulting liability is a business debt.

Other examples of business debts include personal guaranties on business obligations, investment losses, and motor vehicle accident liabilities. Domestic support obligations such as child support and

maintenance are generally considered consumer debts.

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