Central District Consumer Bankruptcy Attorney Association

Volume 1, Issue 2, September 2007

Contents:

From the President

By: Brett Curlee

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I hope you all had a great summer. We are kicking off the fall season with a number of important events.

First, I am proud to announce the first season of the Southern California Bankruptcy Inn of Court sponsored by the CDCBAA. The Inn of Court is a time-honored tradition going back to the British Barrister system prior to the American Revolution and we are one of only four bankruptcy Inn's in the United States.

The Inn of the Court will have six dinner meeting starting October 16, 2007 at Taix Restaurant, at 1911 Sunset Boulevard, in Los Angeles. If you have not received your invitation, please call our Inn of Court Coordinator, Cynthia Meza, at (818) 242-1100 for more information and an invitation. Cynthia, thanks for your hard work and dedication in helping the committee get the Inn off the ground!

The Inn will feature interactive programs and an opportunity for bankruptcy judges, bankruptcy attorneys, U.S. Attorneys, and law students interested in practicing bankruptcy law, yes law students, to sit down and engage in the civil art of conversation, team building, and mentoring while enjoying a meal together, as colleagues sharing experiences and insights. All participants are required to check their game faces at the door, and to be ready to enjoy an evening of fine dinning and collegiality. I would especially like to thank the committee that worked so hard on this event, including Judge Robert Kwan, James King, Byron Moldo, David Tilem, and Dennis McGoldrick for their hard work. Byron and Jim, the extra effort that you put in this summer was especially appreciated. I would also like to thank Chief Judge Zurzolo and Bankruptcy Judges, Alan M. Ahart, Samuel Bufford (CDCBAA's Judge of the year for 2005), Thomas Donovan, Meredith Jury, Geraldine Mund, Maureen Tighe, and Kathleen Thompson for their support in getting this Inn off the ground.

Our next CDCBAA meeting, October 20, 2007, will be unique given its importance to all bankruptcy practitioners.

Judge Donovan will be present for a detailed discussion on the Local Bankruptcy Rule revisions, and to take and receive feed back from us regarding proposed changes to the local rules. If you wish to comment on the proposed local rules, e-mail your comments to committee chair, Lou Esbin at esbinlaw@sbcglobal.net. You can also e-mail Lou if you need a copy of the proposed rules. Everyone is invited to attend this meeting, whether they are CDCBAA members or not. Please put your comments in writing and e-mail them to Lou so that they can be compiled and presented in advance to Judge Donovan.

Next, an event with the rock stars of the Ninth Circuit; October 23, 2007 will be "An Evening and Dinner with the Bankruptcy Appellate Panel." The Honorable Judges, Montali, Pappas, and Jury will be presenting and discussing the do's and don'ts of effective advocacy skills before the BAP. We will also have the Clerk of the Court for the Bankruptcy Appellate Panel, Mr. Harold Marenus who will comment on the do's and don'ts of the BAP Clerk's Office. This is a must-see for anyone who will be arguing an appeal before the BAP.

The CDCBAA intends to end this year with a BANG! The Fourth Annual 2007 Calvin Ashland Awards Dinner will take place this year on November 7, 2007 at 6:00 p.m. honoring this year's recipient, U.S. Trustee Peter C. Anderson. The three prior recipients are Chapter 13 Trustee, Ms. Nancy Curry, the Honorable Samuel L. Bufford, and Kenneth Klee. I cannot say enough about how this year's honoree has taken on the role not only as a worthy advocate, but as a trusted and respected leader in the bankruptcy community. This year's recipient of the Calvin Ashland Award continues the tradition of honoring professionals in the bankruptcy community who have dedicated their lives to improving the bankruptcy system. Peter, Nancy, Ken, Judge Bufford, you have made a huge difference. Thank you.

I also want to thank our guest speakers at our last two monthly meetings. On May 12, 2007, Chapter 7 and 13 trustees, Tim Yoo, David Seror, Ross Gonzalez, Helen Frazier, and Jason Rund, presented a great program on "how to get along with your chapter 7 trustee." On September 15, 2007, the Honorable Robert Kwan, Richard Stack, from the U.S. Attorney's Office, Neal Kakuske from the IRS, Steve Mather and A. Lavar Taylor, put on an wonderful program on discharging taxes in bankruptcy. On behalf of the CDCBAA, I thank you ladies and gentlemen for all of the hard work and time.

As our practices pick up in the coming months I hope many of you will find the time to give something back to the bankruptcy community. In the past few months Bankruptcy Judges, Trustees, the U.S. Trustee's Office, the U.S. Attorneys Office, and even the staff at the Internal Revenue Service have supported the CDCBAA by giving their time to putting on great programs! It is with that generosity in mind that I ask each of you to give something back. Judge Vincent Zurzolo recently asked the CDCBAA to assist the Public Counsel Debtor Assistance Project ("DAP") by donating our time to help consumer debtors unable to pay for our services. I was surprised to learn that no more than 250 pro bono bankruptcies per year have ever been filed.

Jon Hayes and Keith Higgenbotham have taken on the task of improving procedures and access of our membership to doing pro bono chapter 7 projects and to work with Judge Zurzolo to simplify the process for attorneys to represent indigent clients coordinated through the offices of Public Counsel. When I asked Peter C. Anderson to lend a hand in this worthwhile project, all he wanted to know was the committee's first meeting date. Jon will be working with Marisa Hawkins at Public Counsel, and fellow CDCBAA

Self Help Desk to Begin in Woodland Hills

The United States Bankruptcy Court, San Fernando Division, is now ready to begin its Self Help Desk to assist in pro per filers with their Bankruptcy Matters. Beginning September 17, 2007 the Self Help Desk will be staffed by Angelica Carrillo on Monday's (except Court Holidays) from 1:00 to 3:00 P.M. The program will provide free information and materials on filing a bankruptcy, finding an attorney to represent filers that want or need one and will provide free monthly seminars to filers. The first seminar will be conducted on Tuesday, October 2, 2007 at the Courthouse. The programs are being staffed by attorneys from the CDCBAA initially. There will also be a seminar for creditors that are in pro per as well. The Self Help Desk will be located at the Clerks Office at 21041 Burbank Boulevard, Woodland Hills, California.

members Keith Higginbotham and Dennis E. McGoldrick. Once the committee completes its work, I am going to challenge each of our 127 members to donate their time by each taking on at least one pro bono case a year. Thanks to Judge Zurzolo, Peter Anderson, Jon, Keith, Dennis, and Marissa for making this happen!

On behalf of myself and the Board of Directors, I want to thank our membership for all of their support for the CDCBAA this year. We are honored to serve the most sophisticated, dedicated chapter 7 and 13 bar in the country. It is an honor serving you.

What is a Claim and When Should an Objection Be Filed?

By Louis J. Esbin, Esq.
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Preparing a case for and making claims objections requires an understanding of what is a debt, a claim, and what is required for a prima facie claim and objecting to claims is essential. A proof of claim is deemed allowed unless a party in interest objects under 11 U.S.C. § 502(a) and constitutes "prima facie evidence of the validity and amount of the claim" pursuant to Bankruptcy Rule 3001(f). The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. An objection will be overruled if the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." In re Holm, 931 F.2d 620, 623 (9th Cir. 1991). See, In re Heath, 314 B.R. 424 (9th BAP 2005).

In its Campbell decision immediately following Heath, the Ninth Circuit BAP correctly noted that "Rules cannot expand the statute; they are not law; and as we stated in Heath, noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance. In re Campbell, 336 B.R. 430, 436 (9th BAP 2005).

So, where does the Court look to determine whether there is a basis upon which to object to claims? Section 502(b) enumerates nine grounds, of which the first is "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." But, the Code is silent with regards to what "applicable law" would govern to invalidate a claim.

Whether a "claim" exists is determined, in the absence of overriding federal law, by reference to state law. See, Grogan v. Garner, 498 U.S. 279, 283-84 (1991), where the Court stated that "At the outset, there must be a distinction between the standard of proof that a creditor must satisfy in order to establish a valid claim against a bankrupt estate and the standard that a creditor who has established a valid claim must still satisfy in order to avoid dischargeability. The validity of a creditor's claim is determined by rules of state law." The Supreme Court in Butner v. U.S., 440 U.S. 48 (1979), held that Congress has left the determination of property rights to state law, unless some federal interest requires a different result.

When the client first comes into your office you may justifiably prepare your client's case well before the filing date (if time permits) by sending out correspondence to collection agencies, attorneys representing creditors and creditors demanding that they provide a validation and verification of the amount of the debt. Insist that you receive a payment history. Give them thirty days. If you do not receive an adequate response, you may in good faith dispute the debt in the bankruptcy schedules. State in the schedule why the debt is disputed: "The creditor failed to respond to inquiry." "Creditor did not provide a payment history." "Creditor did not provide a validation or verification of the amount of the debt." "Debtor is unable to determine the means or manner by which the debt is calculated." "Debtor disputes the amount of the debt and liability for it as claimed by creditor."

Remember if you are going to object to the claim, your argument must take into account the Heath and Campbell admonition that failure in good faith to dispute the debt may give rise to judicial estoppel and an admission of liability for the debt, even if the creditor does not respond to oppose the objection to claim.

Before you file the case, therefore, insist that the client provide you with any and all documents and documentation regarding secured personal property or real property loans. For auto finance deficiencies, insist that the client provide all documents received from the finance company after the car was repossessed. For credit card debt get card member agreements, the last six month's statements, and any notices of rate changes, in addition to lawsuits and judgments.

Especially in chapter 13 cases where valuation of property may dictate the percentage paid to creditors, or a chapter 7 case may give rise to a surplus estate, failure to counsel the client on these matters could fall below the standard of practice expected.

Meet Your Trustee: Liz Rojas

By M. Jonathan Hayes
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Elizabeth Rojas has been the chapter 13 trustee for cases filed in the San Fernando Valley and Santa Barbara since October 1, 1999. She spent three months before that working with Edwina Dowell, learning the ropes so to speak, getting "up to speed." She opened her first office on the Westside but soon moved to the valley because the U.S. Trustee's Office preferred that she locate in her area. She now operates from a modern suite adjacent to the Galleria in Sherman Oaks.

Liz, a Loyola Marymount University graduate (as am I), was working for the Metropolitan Water District when she was recommended for the chapter 13 job by one of the district's outside attorneys. She started the office from scratch. "I didn't even know how to spell bankruptcy," she laughed when we met recently. "But they liked my background and experience in management, budgeting, and coming in building a startup program."

Liz has nine full time employees now including attorney Rene Sawyer. "Rene is one of my best hires," Liz told me. "She has a strength and passion for bankruptcy. She is pretty much in charge of the legal part of the office, the motions and orders, objecting to confirmation and exemptions when necessary. She is the point person on plan confirmations." Sometimes, Rene does the 341(a) meetings as well when Liz is not able or there is a conflict in her schedule.

Liz estimates that she has currently about 1,400 active cases and the pace is picking up. That is down considerably from the peak in 1999 of about 4,000 cases. Her office disburses between $1 million and $2 million each month to creditors; 1,500 to 3,000 checks – every month. Some distributions are made in bulk, for example payments to the IRS.

She is audited every year by an outside firm which spends time making sure her office has sufficient internal control, checks and balances in her systems and procedures, given the amount of funds which clear her office every month. The U.S. Trustee's Office has significant requirements and procedures as well. "My biggest priority is the custody of the assets." In fact, she has a full time professional systems person on her staff who is constantly checking the office computer system firewall, the internal control, the procedures. "New laws, new rules, new technology bring new systems and procedures, new kinks to work out. But its fun."

I asked Liz what drives her crazy about her job. "Obviously it is files with incomplete paperwork. I can't say if it's the attorneys or their clients but most of the files have something missing and that can be frustrating." She said, "With the new amendments, I am getting a little bit overwhelmed. There are many more forms and considerably more detail required, but we have to work through it."

She added, "We are all partners in making this work. I am expected to be there on time with the right files, prepared to examine the debtor, prepared to comment to the court as necessary, and help with confirmation of the plan. I expect the same from the attorneys. And the better the work from the attorneys, the faster the confirmation, and the faster the payments to the creditors including the attorneys."

Of course also, pro pers are a big problem which seems to be growing. They often file cases seeking only the automatic stay to give them a little more time before a foreclosure. They rarely file the remainder of the schedules and almost never get a plan confirmed. "I used to submit a recommendation of dismissal to the court more quickly but because of new more drastic results of a dismissal followed by a re-filing, I am more careful to insure that the debtor has been given every possible chance to succeed."

I asked Liz what would surprise us to know about her. She said, "I'm a soccer mom and I love to cook." Her

daughter Vanessa is on the Costa Rica National Soccer team. She has travelled the world playing soccer including a recent trip to Egypt. She, of course, showed me pictures like the proud mom she is.

Check out Liz' website at www.ch13wla.com. All the forms are there plus instructions, news and answers to questions.

Filing Bankruptcy For Debtors Living/Working Outside the United States

By Mark J. Markus
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This article addresses the confusion and issues involved in representing debtors who on the petition filing date live or work outside of the United States and have done so for more than 90 days prior to the petition date. This arises more frequently than one might imagine, with military, people caring for sick relatives abroad, or even people who simply moved outside the United States, leaving behind lots of debt incurred here.

The questions/issues revolve around two main concepts: Subject Matter Jurisdiction and Venue. These are two separate and distinct concepts. The former tells you IF a debtor may file a bankruptcy case (or, more accurately, whether the bankruptcy court has jurisdiction over that particular debtor). The latter tells you WHERE the bankruptcy case may be commenced. You can't get to the venue question unless Subject Matter Jurisdiction is met. Ok, so much for the review of the first week of your law school Civil Procedure class.

SUBJECT MATTER JURISDICTION

11 U.S.C. §109(a) provides that "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." Thus, in order to file a bankruptcy in the United States, a debtor must meet at least one of the above disjunctive requirements. This discussion will be limited to non-municipalities.

In determining domicile, physical presence is not required, but rather a subjective intent to make a place their domicile. See for example, In re Donald, 328 B.R. 192 (9th Cir. BAP 2005). When a person's domicile is in doubt, the difficult question is usually whether the individual had the requisite subjective intent. "This enquiry is „essentially factual' in a sense that it requires consideration of all the circumstances. Lew v. Moss, 797 F.2d 747, 750 (9th Cir. 1986).

"One's own declarations regarding intent are pertinent but ordinarily will be substantially discounted by the court when inconsistent with objective facts." Coury, 85 F.3d at 251; The Supreme Court has noted that a declaration regarding intent for purposes of domicile "is, of course, to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts. " Dist. of Columbia v. Murphy, 314 U.S. 441, 456 (1941) (tax domicile).

If the debtor has no domicile, residence, or place of business in the USA, then *any* property should suffice to establish jurisdiction. Most (but definitely not all) courts allow even a simple bank account within the United States to establish jurisdiction. See for example, In re Iglesias 226 B.R. 721 (1998, BC SD Fla). See also In re Global Ocean Carriers, Ltd. 251 B.R. 31 (2000, BC DC Del). [bank accounts and attorney retainers held in escrow by counsel for debtor constituted sufficient property for eligibility under 11 USCS § 109].

Thus, it's possible that merely depositing retainer funds in your Trust account is sufficient to establish jurisdiction, and possibly even venue (although I'd personally feel much more comfortable with more connections than that).

VENUE

Once you have established that a debtor is eligible to file in the United States, the next question becomes, "where?" The answer to this is provided in 28 U.S.C. §1408 which

From the Clerk's Office - Filings are Up

These are actual filings in the Central District of California only.

	Jan-Jul 2007	Jan-Jul 2006	% difference
Chap 7	13,397	7,096	+89%
Chap 11	171	154	+11%
Chap 13	4,102	1,518	+170%

provides that a case may be commenced in the district in which "the domicile, residence, principal place of business **in the United States**, or principal assets **in the United States**, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than. . . of such person were located in any other district." (emphasis added)

So what do you do when the debtor has been living outside the United States for more than the past 180 days? If they can prove domiciliary intent in a particular jurisdiction (in our case, hopefully in California), then that will suffice. If they own real property here, that will certainly suffice. Even a sole bank account, as with the Subject Matter Jurisdiction determination, will suffice in most instances although there are issues as to whether the situs of the bank controls in these matters. See for example, In re Farmer, 288 B.R. 31 (Bankr. N.D. NY 2002). The majority of courts have said that it does, but it would be best if the debtor has some other assets here. I've posited situations where the debtor owns a vehicle and parks it in someone's garage in the district where he/she wants to file. If that's their principal asset in the United States, I would argue that venue is appropriate where the car is parked even if it is potentially forum-shopping.

When relying solely on bank accounts, as mentioned, things can get dicey. For example, is it where the bank account was opened? Wells Fargo is based out of Portland, Oregon. If a debtor has an account with them, must they file in Oregon? Or, if they opened an account in Hollywood 25 years ago, is that sufficient to establish venue in Los Angeles?

Not to worry, folks. The reality is that venue is as it has always been. How many of you have seen venue objections before? They just don't happen very often. If a debtor is eligible under 11 U.S.C. 109, then he MUST BE ABLE TO FILE SOMEWHERE in the United States. If there isn't any overwhelming evidence pointing to one place over another (I can picture using Johnny Depp's compass in "Pirates of the Caribbean" to figure this out) then I submit that venue can be anywhere the debtor chooses. Worst case scenario is that the case gets moved to a different venue.

Median Income Increasing on October 15, 2007

Dennis McGoldrick - demcg@demcg.com

The median income figures are increasing effective October 15, 2007. The new California numbers are:

#persons	1	2	3	4
Income	$45,518	$60,032	$64,766	$74,801

Pay Attention to the Details in Your Chapter 13 Plan: Secured Creditors are Not Your Friend

By David Tilem
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Over the last few years, NACBA has reported alarming rates of abuse by home mortgage servicers. Some believe that such abuse exists in EVERY Chapter 13 case where the debtor has a mortgage. To this point in time, our local bar has not reported these problems. There are three possible explanations. First, such abuse is grossly over-reported or over-stated (perhaps some are given to hyperbole). Second, the mortgage servicers have been more careful with respect to cases filed in our District (to placate the tooth fairy). Third, our practitioners are not sensitive to the problem and have not been recognizing it. Thanks to Erik Clark of Borowitz, Lozano & Clark, LLP, our local practitioners are getting a wake-up call. Erik deserves a huge vote of thanks not only from the practitioners, but also from our clients.

So what are these abuses? They include the assessment of miscellaneous fees for everything and anything which the lenders or servicers can dream up. They include the mis-allocation of payments received in Chapter 13 cases. They include filing relief from stay motions when such motions are clearly not warranted and then assessing legal fees. They include failing to give notice when such fees are assessed and then declaring defaults immediately after the conclusion of a Chapter 13 case - just when the client thinks they have solved their financial problems. They include failing to advise debtors and their counsel when adjustments occur on adjustable loans. They include failing to advise debtors and their counsel when tax and insurance escrow accounts are out of balance.

What can we do about these problems?

I suggest that counsel consider the following:

* Notice The biggest problem seems to be notice. To evaluate the propriety of such fees, Debtors and their counsel have to know about them. One answer is for Debtors and their counsel to conduct Rule 2004 examinations of lenders, perhaps twice or four times per year, but this is obviously impractical for everyone. Rather than having Debtors guess about such fees, it makes sense to require lenders to give notice when such fees are assessed. This does not appear to be an unreasonable burden since lenders are supposed to provide monthly statements in any event.

* Relief From Stay Motions The Opposition forms and Proposed Order forms should be modified to ask the Court to issue an affirmative decision on lender attorney fees. It means adding one more line which says: "Lender is awarded attorney fees in the sum of $_____." In fact, since attorney fee clauses under California law are reciprocal, perhaps the line should say "_____ is awarded attorney fees in the sum of $_____" just in case the Court believes that the Debtor was the prevailing party and should be entitled to recover his/her attorney fees. Giving a few attorney fee awards to Debtors as the prevailing party should be a pretty good deterent against baseless motions.

* Misallocation of Payments This problem gets resolved by adding language to every Chapter 13 Plan which generally provides that the Debtor is deemed to be current when plan payments are completed unless the lender brings a motion. Both Erik and I (along with a group of CDCBAA members) have drafted proposed language and the Court's own Chapter 13 Committee (Judges Jury, Kwan and Kaufman) is considering whether to include a new provision along these lines in the Court's Form Chapter 13 Plan.

* Failure to Provide Statements This problem seems to be growing. Perhaps it can be solved with a miscellaneous Plan provision or perhaps it will take a Local Rule. Either way, it seems curious that lenders can now assess charges, make loan adjustments and otherwise affect what is owed, all without any notice to their customer (the Debtor) or the Debtor's counsel. That should change.

The truth is that nothing will change and these problems will not be resolved unless we do something about it. The Court needs to know that these problems exist and that instead of being rehabilitated, Debtors are completing their cases only to learn that they are still in default.

All members of CDCBAA and the Debtor's bar in general are urged to consider these problems and to include something in their Plans to address them.

I include the following language in every chapter 13 plan:

1. The Court shall retain jurisdiction to hear and resolve any objections to claims which may arise during the pendency of the case.

2. If the Debtor(s) perform(s) all obligations under this Plan, then each and every Class 2 and Class 3 claim shall be deemed current and the Debtor(s) not in default as of the date on which all Plan payments are completed. Any creditor holding a Class 2 or Class 3 claim which contends otherwise must file a noticed motion which sets forth the amount of, and basis for any alleged default, together with a full copy of the operative loan documents, an accounting (either from the date of the inception of the account or from the most recent date on which the creditor acknowledges that nothing was owed on the account) of all charges assessed on the account, and all funds received on the account. The motion must be filed no later than 30 days after the Chapter 13 Trustee serves her Notice of Intent to File Final Report and set for hearing on not less than 24 days notice to the Debtor, Debtor's counsel and the Chapter 13 Trustee.

At the Ninth Circuit Court of Appeals: "How Do You Compute Chapter 13 Plan Payments and Does Five Years Really Mean Five Years?"

By James T. King
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So Jon Hayes and I went to San Francisco to watch the Ninth Circuit and listen to oral argument in two Chapter 13 cases. The issue in both cases was "What in the world does Section 1325 mean now that Congress has improved it?"

Since our ride on the Bart was 12 minutes from the hotel in Oakland to the 9th Circuit Court of Appeals building on 7th & Howard in San Francisco, we took a leisurely walk past the San Francisco Main Library, the Asian Art Museum, the United Nations Plaza, City Hall and the Civic Center. Yeah, we were 15 minutes late. Luckily, there were two cases before ours.

What a great building! The open-air elevator surrounded by an ornate brass cage was reminiscent of the elevator in the Bradbury Building in Los Angeles. The brass wall sconces on the walls of the hallway were almost two feet tall looking like Olympic torches with large globes on top. The floors are covered in small half inch tile mostly white in a pattern attempting to duplicate an oriental rug; the stark white arched ceiling with owls, filigree, and dental patterns; the repeating marble columns supporting the ceiling; the long hall running the length of the building; the courtroom with a small plaque indicating it was Courtroom 3, no calendar, no notice on the outside indicating who was presiding, and only a small paper telling us to turn off the cell phones and pagers I thought wouldn't be allowed at all.

The three Ninth Circuit Judges were elevated four to five feet above the rest of the room with a small and surprisingly low podium in the middle of the courtroom. The podium had a clock that ran backwards with a green, yellow and red light next to it and a matching device in the center of the Court's bench; 20 minutes per side, no more no less. We felt the solemnity and seriousness of the events unfolding before us; the quiet in the room even though there were twenty or so people in different stages of waiting and participating in their particular case. The courtroom was more ornate and formal than the hallway we had just passed through. It befitted the events taking place that morning.

The two cases presented before ours were issues involving parole for a second degree murderer and an anti-trust issue that put the state attorney general in a posture of being scolded by the justices and being lectured on proper procedures for his office.

The first of the two bankruptcy cases was an Arizona case where a Chapter 13 plan was confirmed even though the debtor's plan proposed to pay less that the I and J difference but significantly more than the Means Test calculations. That court agreed that based on a strict application of the computation contained in the B22C form, payments of more than unsecured creditors would receive otherwise was sufficient even if the plan was only 36 months. The secondcase, a Central District case ably represented by Peter Lively, had a similar pattern. There the plan payment was roughly $500, the exact amount of the I and J difference, but again significantly more than the B22C calculation. The court refused to confirm that plan saying the code required payments for 60 months. Both cases were "over median" income debtors.

The judges made it clear at the outset that they knew this was a case of first impression in any of the circuits. I moved forward on my bench and shifted a bit to the left so I could both see and hear all that was to go on. I was ready for the battle. The pal was palpable. After less than two minutes of argument from counsel, including a quick reprimand to counsel to "enunciate slowly and clearly," it was over. BANG. It hit me like a brick. Judge Carlos T. Bea, 73 years young and a 1952 Olympic basketball player from Stanford; born in Spain, tall and imposing (and based on his comments in the anti-trust case, accustomed to getting an answer to *his* questions), began. "Counsel, we have an above-median income case – right?" Heads nod. "The computations for determining net disposable income are the debtor's CMI and the expenses from the formula derived from 707(b) and utilizing the form B22C derived for that purpose – right?" Heads nod. "That's what Congress wrote – right?" Heads nod. "The result is zero dollars for unsecured creditors - what is the problem?" The crowd roars (silently of course). "This debtor is proposing to pay $1000 for 36 months. She doesn't have to pay anything, does she? So why does the plan have to be five years? What's the point!" They got it! Plain meaning would rule the day. No further inquiry was required. The statute is clear. They seemed to have no problem with that.

The remainder of what was to be said by counsel for the Arizona trustee was falling on respectful but deaf ears. I lost track of how many times the Justices' said: "Zero is zero!" First by the eldest of the three, Justice Harry Pregerson (UCLA & Boalt Hall alum; 84 year old Muni court judge from Van Nuys) and then each took a turn repeating the phrase.

The bench gave Peter Lively more than two minutes before the first question came from Justice Eugene E. Siler (71 yr. old , Vanderbilt cum laude, Kentucky boy). "What makes your case distinguishable from the case from Arizona?" Well, we all knew it wasn't. And, here is where Aki Koyama asked the question that needed to asked. Is the commitment period of 60 months 5 years long or not? Plain meaning was having trouble with this one. Modification issues were discussed. It was not clear what the Justices were thinking. I think it had been a long morning and it would not be so obvious what would be in the final written opinion. A difficult determination when it is clear that zero is zero.

Announcements

- David Tilem welcomes his new associate, Justin Harelik.
- Aram Ordubegian welcomes a new daughter Sabrina Ani, born July 3, 2007.
- Simon Resnik welcomes their new associate, Peggi Gross.
- Jim King announces the opening of his new office in Pasadena.
- Hank Toles has been appointed Treasurer of the Beverly Hills Bar Foundation for another term beginning Oct 1, 2007.
- Lysa Simon has a position open for an associate attorney. She prefers someone with at least a few years experience although that is not mandatory. Her office is in Northridge. Call her at 818 366 3346
- Ray Aver has cleaned his desk (this has not yet been independently confirmed).

Calendar of Events	
10/2	***Self Help Clinic Seminar*** presented by Hank Toles at the Woodland Hills Courthouse at noon
10/16	***Inaugural Inns of the Court Dinner*** at Taix Restaurant (rvsp by October 1, 2007)
10/17	***LACBA Program*** – Review of 9th Circuit Case Published Decisions for 2006 – 2007 presented by Judge Samuel Bufford, M. Jonathan Hayes and James T. King
10/20	***MCLE Program*** with Judge Thomas Donovan on the Local Rules
10/23	***Dinner with the Bankruptcy Appellate Panel*** at Taix Restaurant *(RSVP by October 1, 2007)*
11/7	***Annual Calvin Ashland Awards Dinner*** Honoring this year's Trustee of the Year, Peter C. Anderson

cdcbaa

Central District of California Bankruptcy Attorneys' Assiciation

Newsletter Volume 1, Issue 2, September 2007

Newsletter Editor

M. Jonathan Hayes

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ANNUAL AWARDS DINNER & SPECIAL EVENTS PLANNING
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Hale Antico

CENTRAL DISTRICT CONSUMER BANKRUPTCY ATTORNEYS ASSOCIATION

Advancing the interests of Consumer Bankruptcy Practice in the Central District of California

I hereby apply for membership in the ***CENTRAL DISTRICT CONSUMER BANKRUPTCY ATTORNEYS ASSOCIATION*** **(*cdcbaa*)**, a nonprofit association. I understand the basic goals of the organization are to address issues and concerns which affect consumer bankruptcy attorneys and their clients in the Central District of California and to provide educational and networking opportunities for attorneys who primarily represent consumer bankruptcy debtors. As a condition of membership, I declare as follows:

1. I am a duly-licensed attorney presently authorized to practice law in the Central District of California;
2. I am interested in consumer debtor practice; and
3. I support the basic goals of the ***cdcbaa*** as outlined above.

I understand the ***cdcbaa*** intends to incorporate as a 501(c)(6) nonprofit organization and that a portion of my dues will not be deductible as a business expense because ***cdcbaa*** advocates within California for legislation on behalf of consumer debtors.

Signature: _____

Name: _____

Firm: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

Foreign language spoken by attorney: _____

One year membership fee: ~~**$100.00**~~ -
*Renewal or New Membership For 2007

Half year membership fee: **$50.00**
(*for remainder of 2007*)

Make check payable to: ***cdcbaa***

Mail completed application and fee to:

cdcbaa
c/o Paul L. Winkler
315 W. Arden Ave., #28
Glendale, CA 91203