

TBBA

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President: Cindra M. Dowd — Newsletter Chair: Robert B. Van Arsdale

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President's Corner

In the wake of this country's recent catastrophic events, I, as well as the other members of the Board of Directors, hope this newsletter finds everyone and their families safe and in good health.

As most of you are keenly aware, this is generally the time of year when everyone anxiously waits to see what Congress will do with the pending bankruptcy reform bills. Both the Senate and the House passed bankruptcy reform bills, but like years past, the two versions of the bills differ in many significant ways.

This Association has had portions of several seminars devoted to the bankruptcy reform legislation. We have been told by those speakers as well as learned through our own reading of the bills, that should a bankruptcy reform bill be passed, the bankruptcy system as we know it will dramatically change.

Supporters of the bankruptcy reform legislation believe a bill is necessary to stop a perceived abuse of the bankruptcy system by those who have the ability to pay their debts. As reported in The New York Times article of March 14, 2001, entitled, Bill on Bankruptcy to Make It Harder to Wipe Out Debts, Senator Orrin G. Hatch, the Utah Republican who is chairman of the Judiciary Committee, is of the opinion that "[A]ll of us end up paying for the unscrupulous who abuse our system . . . People with high incomes can run up massive debts, and then use bankruptcy to get out of honoring them."

Opponents of the bill believe that the system would penalize those people who are forced to file for bankruptcy protection due to bills incurred as a result of unforeseen circumstances such as layoffs and medical care. Also reported in The New York Times article, "Economic researchers say that nearly two-thirds of the people who file for bankruptcy report significant periods of unemployment before their filings. According to a 1999 study by federal bankruptcy judges, the median income for Americans filing for bankruptcy the year before was \$22,000 a year."

On July 16, 2001, the Senate named 13 conferees, seven Democrats and six Republicans, to serve on the committee to meet with the designees from the House. On July 31, 2001, the House named 10 conferees, six Republicans and four Democrats, to serve as primary conferees on the committee with the Senate. The committee was scheduled to meet formally for the first time soon after the members returned from recess on September 4, 2001. However, the meeting of the conferees was postponed and they plan to reschedule the meeting at a later date.

Sam Gerdano, Executive Director of the American Bankruptcy Institute, advises that unlike years past, there is time for a formal conference, however, he doesn't foresee any actions by the committee anytime soon. He believes that it will be

2002, before anything of significance happens with the bankruptcy reform legislation.

For now, as we have done so in the past, we can only wait and see.

We look forward to seeing everyone at this year's TBBA seminar on December 7th.

Reminder from the Court...

When requesting a hearing from the Court, ECF registered users will receive e-mail notification of the hearing date as contained in the Clerk's entry of "Confirmation of Request for Hearing; Proponent to file notice of hearing with court." This is your notification of the hearing date, time, and location assigned by the Clerk. It is your responsibility to follow up with the proper notice of hearing in order for it to be placed on the Court's calendar. There will not be any service by mail for ECF registered users. The only exception to this is when a summons is issued for an adversary proceeding or an involuntary case.

Please familiarize yourself and your staff with the Court's Standing Order 01-5 and its exhibit, Administrative Procedures in the Electronic Case Filing System.

Also from the Court...

Please be advised that on August 29, 2001 the Court issued the following notice:

NOTICE

Due to conflicting operating procedures required by the utilization of two separate case management systems (NIBS and ECF), the clerk's office will no longer review the status of cases when documents are presented for filing. IT IS THE RESPONSIBILITY OF THE FILING PARTY TO REVIEW THE STATUS OF A CASE PRIOR TO SUBMITTING DOCUMENTS FOR FILING.

Effective September 17, 2001, all documents filed in discharged, dismissed and closed cases will be processed in the normal course of business regardless of whether statutory fees are or are not required (motions for relief from stay are particularly applicable). Filing fees will not be returned or refunded except upon written motion and approval by the court.

Judge David H. Adams

Judge Stephen C. St. John

From the Offices of the Chapter 13 Trustees

Several of you have asked about how to treat the tax rebates that debtors have or will be receiving. Please be advised that after due consideration and consultation, the Chapter 13 Trustees have agreed that they will not claim the funds received in 2001 by a debtor as a tax rebate. These rebates were not generated by taxpayer overpayment of taxes due, but were the result of a retroactive reduction in tax rates. As it is highly unlikely that rebates will be recurring, they do not need to be included as income in a debtor's budget.

From the Office of the U.S. Trustee

On August 10, 2001, Judge St. John ruled on objections to exemptions in the cases of Keith & Kerry Messner, Case No. 01-50577-S, and Gina M. Lovenberg, Case No. 01-50789-S. In his rulings from the bench, Judge St. John discussed the cases of *In re Latham*, 182 B.R. 479 (Bankr.W.D.Va 1995), and *In re Hanes*, 162 B.R. 733 (Bankr. E.D.Va.1994), and interpreted the phrase "household furnishings" found in Virginia Code Section 34-26(4a) to include television sets, computers, stereos, and VCR's, but to exclude cameras and camcorders.

From David Greer - Re: the ABA and the Bankruptcy Legislation

The ABA passed a resolution objecting to the enhanced attorney liability provisions in the pending Bankruptcy Reform Act (H.R. 333). Attached is the letter to the Chairman of the Committee on the Judiciary; the letter describes the intent of the resolution and the particular provisions of the Act that should be revised. Specific

amendments to accomplish this are attached.

Essentially, the resolution objects to (1) expanding the scope and sanctions under Rule 9011 to be applied to debtors' attorneys, (2) requiring attorneys to certify their clients' ability to pay reaffirmed debt in some instances, and (3) defining attorneys as "Debt Relief Agencies" and thus subjecting them to statutes requiring statements in advertising.

This resolution was sponsored or supported by the General Practice, Solo and Small Firm section, the Section of Business Law, Family Law Section, Young Lawyers Division, Tort and Insurance Practice Section and Committee on Lawyer's Professional Liability, as well as the Missouri State Bar. I understand other state bar associations and similar organizations are considering it as well.

I am chair of the Consumer Bankruptcy Committee of the Business Law Section, and have helped in the process of getting this resolution to Congress, working with our Section's leaders and members, other sections, and the ABA's Governmental Affairs Office.

We have meetings scheduled next week (9/20-21) with the members of Congress or their staff concerning these items; I plan to attend in an unofficial capacity to assist with some of the technical aspects of the legislation and amendments.

Please publish this letter in your next newsletter as you see fit; I will keep you posted of developments.

I am also sending this to the editor of the VSB's Bankruptcy News and to Virginia Lawyer's Weekly.

David A. Greer
Hofheimer Nusbaum, P.C.

From our Members

Barry Spear became the proud father of Nicholas Ryan Spear on August 9, 2001 at 3:38 p.m. Nicholas weighed in at 8 lbs. 8 ozs and measured 22 inches. Congratulations to Barry and his wife, Nan, and a big welcome to Nicholas.

The TBBA Fall Membership Luncheon

will be held on Friday October 5, 2001 commencing promptly at 12:15 p.m. The location will be the Chamberlin Hotel on Fort Monroe, and the speaker will be the Honorable Stephen C. St. John.

An attendance form is included in this newsletter. Please fill it out and return it to Alex Pincus as soon as you are able.

Please come and bring a friend!
