

Mortgage Payments as Domestic Support Obligations

By Steven Fender



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Applicable Code Provisions and Related Legal Standards

Section 523(a)(5) of the Bankruptcy Code provides that "a domestic support obligation" is not dischargeable in bankruptcy. This is true in either a chapter 7 or a chapter 13 case.² The Bankruptcy Code defines a "domestic support obligation" as "a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—(A) owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative support of the debtor . . . [and] (B) in the nature of alimony, maintenance or support . . . of such spouse, former spouse or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated[.]"³ Based on this statutory provision, whether a domestic support obligation is labeled or designated as "alimony,

maintenance or support" in an underlying marital settlement agreement, court order, or other written instrument is not dispositive. The test of what is considered a domestic support obligation is not how it is termed by the parties, but rather the substance of the obligation itself.

To undertake this inquiry, a court "cannot rely solely on the label used by the parties."⁴ Rather, a court must look beyond the label the parties have given to a particular debt and determine whether the debt is actually in the nature of alimony, maintenance, or support.⁵ Thus, a debt is a domestic support obligation if the parties intended it to function as alimony, maintenance, or support, even if the parties called or labeled it something else.⁶ The proper inquiry "is whether the payment obligation derived from a duty to provide for the well-being of the spouse, former spouse or child."⁷ Courts are directed to consider various factors including: (1) the agreement's language; (2) the parties' financial positions when the agreement

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Legislative Update

By Ivan J. Reich



On August 5, 2011, I, as President Elect of the Commercial Law League of America ("CLLA"), along with fellow Southern District Bar member and CLLA Board Member Jeff Schatzman, among other colleagues, were fortunate enough to meet with the majority and minority staff counsel for both the House and Senate Judiciary Committees in Washington, DC, regarding several prospective and pending bankruptcy issues that are being studied and addressed in Congress.

Among the issues discussed were small business reorganization reform (which we were told may get a hearing, but most likely will not see any real progress this year) and the extension of the waiver of means testing for active military

personnel (which we were told will likely pass without much opposition).

Chapter 11 Bankruptcy Venue Reform Act of 2011

While in DC, the CLLA contingency spent most of its time strongly advocating in favor of proposed legislation that would change bankruptcy venue rules by imposing limitations on where corporations may file for bankruptcy protection. The Chapter 11 Bankruptcy Venue

Reform Act of 2011 (HR 2533), was introduced in July by House Judiciary Committee Chairman Rep. Lamar Smith, R-TX, and the Committee's top Democrat, Rep. John Conyers Jr., D-MI, and would amend the Bankruptcy Venue Statute,¹ by limiting the venue in which a corporate debtor may file bankruptcy to the district in which its principal place of business or principal assets have been located for the year

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MESSAGE FROM THE PRESIDENT

Evolving through Involvement

By Ileana E. Christianson



Dear Readers,

I am delighted to share with you how much the Bankruptcy Bar Association of the Southern District of Florida has evolved through your involvement since my installation in August 2011. Since then we have co-programmed events with the Federal Bar Association, the Asian Pacific American Bar Association, the Dade County Bar Association, and the International Women's Insolvency and Restructuring Confederation. We are presently coordinating with other organizations, as well, including the American Bankruptcy Institute and the International Association of Restructuring, Insolvency & Bankruptcy Professionals.

We have launched our new and improved website and have inaugurated this publication—the *BBA Journal*—to increase communication within and outside our organization. The Bankruptcy Legal Hotline and the Pro Bono Mentor Program, which we recently created, have provided even more ways for our members to give back to the community, in addition to our regular pro se clinics and our members' significant pro bono work.

Through our Young Lawyers division, which we created in August 2011, we have implemented new events and fresh ideas to provide our young members additional opportunities to foster relationships with each other and with other BBA members. The creation of this committee has also led to many of our young lawyers taking on leadership roles within the BBA.

As a result of your involvement, there has been record attendance and sponsorships at our events. Our membership and pro bono volunteer list are the largest they have ever been.

Thank you to all who have contributed to the BBA's success, especially to our federal bankruptcy judges, our board, and our committees.

Very truly yours,

Ileana E. Christianson
President, BBASDFL

The *BBA Journal* is designed to educate the BBA community and enhance its members' professional lives by providing accurate and authoritative information in regard to the subject matter covered. The views expressed herein are those of the authors, and are not necessarily those of the editorial staff, or any director, officer, or member of the Bankruptcy Bar Association of the Southern District of Florida, Inc. The *BBA Journal* is distributed with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the service of a competent person should be sought.



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Chapter 20: A Relic of the Past?

By Julie Hough



Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), an individual debtor, after receiving a Chapter 7 discharge, could immediately file a Chapter 13 bankruptcy to restructure secured debts and receive a Chapter 13 discharge upon completion of the plan. This process is commonly referred to as a “Chapter 20” bankruptcy.

The Bankruptcy Code¹ now limits the filing of successive bankruptcies by prohibiting a debtor from receiving a discharge under Chapter 13 for at least four years from the date of a Chapter 7 bankruptcy filing, a change that was codified in 2005 through the addition of Section 1328(f).

Debtors’ attorneys throughout the district have argued that Section 1328(f) does not restrict a debtor’s ability to file a Chapter 20 and obtain confirmation of a plan which otherwise complies with the code, despite the inability of a debtor to receive a discharge under Chapter 13. The argument is that debtors are not seeking a discharge under Chapter 13, but that the Chapter 13 is being filed for the purpose of stripping a second mortgage or otherwise restructuring secured debt. Although a minority of courts have held to the contrary, several judges in this district have considered the issue, all of which have determined that Chapter 20 is a relic of the past.²

The Southern District of Florida cases were decided based on the relationship between Sections 1325(a)(5) and 506 of the Bankruptcy Code. Section 1325 provides the mechanism for lien stripping in a Chapter 13 case, while Section 506 allows a debtor to value collateral to reduce secured claims either to the value of the collateral

or by completely stripping off the lien.

In *In re Gerardin*, Judges Cristol, Mark, and Isicoff concluded in a consolidated opinion that, post BAPCPA and the addition of Section 1328(f), a Chapter 13 debtor could not strip a second mortgage if that debtor had received a Chapter 7 discharge within the four years prior to filing. *In re Gerardin*, 447 B.R. 342 (Bankr. S.D. Fla. 2011). The *Gerardin* judges found that Section 1325 is not available to a debtor who is ineligible to receive a discharge.

In comparison, a Northern District of Georgia Bankruptcy Judge determined that “if the plan is filed in good faith, a Chapter 20 debtor may strip off such a lien in a Chapter 13 plan [even if ineligible for discharge].” *In re Jennings*, 2011 WL 2909888 (Bankr. N.D. Ga. July 11, 2011).

In a recent Southern District of Florida opinion on this issue, Judge Olson disagreed with the *Jennings* court and followed the same rationale as the *Gerardin* court by finding that a Chapter 13 debtor may not strip a lien if the debtor is ineligible for discharge. *In Re Quiros*, Case No. 10-48463 (Bankr. S.D. Fla. Sept. 19, 2011). Judge Olson reasoned that wholly unsecured junior lien holders in Chapter 20 cases cannot be stripped because the release of the lien occurs upon the entry of the Chapter 13 discharge, a discharge for which Chapter 20 debtors are ineligible.

Although the Eleventh Circuit Court of Appeals may be faced with the divide on the Chapter 20 issue, a Chapter 20 debtor, at least in the Southern District of Florida, likely will not have any luck attempting to strip off a junior creditor’s mortgage lien. ■

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NOTES

¹ 11 U.S.C. § 101 *et seq.*

² Note that a Chapter 20 could still be filed to cure a mortgage default even without the benefit of a discharge.

MESSAGE FROM THE CHIEF JUDGE

Pro Bono Volunteers

By The Honorable Paul G. Hyman

As you probably know, the Bankruptcy Court for the Southern District of Florida is one of the busiest in the country. In 2011, we ranked eighth among all districts for the largest number of cases filed. With 13.4% of our cases filed pro se during the year ending June 30, 2011, we rank fifth in the country for the highest percentage of pro se filings. Many people are suffering severe economic hardship during this unusually prolonged and tough economic time. Most of these unrepresented individuals are honest litigants who have fallen on hard times and simply cannot afford legal counsel.

I would like to take this opportunity to thank the Pro Bono Committee of the Bankruptcy Bar Association and all of you who have volunteered to undertake pro bono representation of clients. Recently, the Court began sending blast e-mails on behalf of the Bankruptcy Bar Association seeking volunteers to represent individuals in pro bono chapter 7 and 11 cases, and in adversary proceedings. The response to the first blast e-mail was fantastic. Enough volunteers stepped forward to represent pro bono clients in all fourteen referred cases within thirty minutes. In addition, since we began posting volunteers' names outside each judge's courtroom, the number of pro bono volunteers has tripled. I commend everyone who has participated.

In addition to the benefit to the unrepresented individual, who might otherwise suffer prejudice due to a lack of legal knowledge concerning the bankruptcy process, pro bono service improves the efficiency and judicial administration of all cases by freeing up the very large portion of judicial resources consumed by pro se filings. For the volunteer providing pro bono service, the small amount of time involved is well rewarded by the personal fulfillment experienced, the recognition of your efforts

ABOUT THE AUTHOR

The Honorable Paul G. Hyman is Chief Judge of the United States Bankruptcy Court for the Southern District of Florida.

by the legal community, and the good will generated for doing the right thing. On a personal note, I can tell you that when I practiced law, my representation of pro bono clients was one of the most satisfying things I experienced as an attorney. You not only have hands-on experience dealing with everyday problems, but you also have the wholehearted and genuine thanks of someone in real need. I salute those of you who have volunteered for pro bono

“When I practiced law, my representation of pro bono clients was one of the most satisfying things I experienced as an attorney.”

service and encourage you to continue volunteering. For those of you who have not yet volunteered for pro bono service, I strongly encourage you to give your time and efforts to this worthy cause. You need not be a member of the Bankruptcy Bar Association in order to volunteer.

I also wish to recognize the bankruptcy assistance clinics run by our local law schools — UM, FIU, St. Thomas, and Nova — for their efforts to provide additional resources for pro se filers. These programs provide legal assistance by law students to pro se filers. The clinics benefit all involved. The pro se filers receive much needed assistance and the students, who are mentored by attorneys, get practical hands-on experience with the

nuts and bolts of the bankruptcy process. Additional volunteer mentors are needed in order for the clinics to be able to continue their good work providing representation to low income individuals.

Finally, I would be remiss if I did not call your attention to the laudable effort and outstanding job done by the members of the Pro Bono Committee in coordinating pro se client referrals with pro bono attorney volunteers. Recognizing yet another unfulfilled need, the Pro Bono Committee is currently endeavoring to provide reduced cost services to filers who cannot afford representation and who do not qualify under the very low income guidelines for pro bono referral. The Committee has formulated a new “Modest Means Referral Program” to provide referrals for individuals whose income falls between 150-200% of the Federal Poverty Guidelines to attorneys agreeing to accept a reduced fee for their services. In order to qualify for the program, the modest means filer will be seeking to file a no-asset chapter 7 case, and will be required to have specified documents prepared in advance of their initial attorney consultation. In addition, the modest means filer will be required to have funds available to pay court filing costs and reduced attorney fees. I applaud the Committee for this new undertaking.

The need to provide pro bono representation for low income individuals and to provide reduced cost representation for moderate means filers is great. There are many ways in which you can help. I again thank and commend all of you who are putting something back by volunteering to meet this need. ■

Employment Opportunities and Considerations in a Post-Myers Environment

By Kaleb Bell



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How fresh is a fresh start after a consumer bankruptcy? It is crucial that any consumer bankruptcy practitioner advise clients of the potential ramifications of filing for bankruptcy, even when the effects may not be felt for a long time. Most individuals are primarily concerned with the impact a bankruptcy may have on their credit score, but a recent decision by the Eleventh Circuit Court of Appeals shows that they should be equally worried about the impact that filing may have on future job opportunities.¹

The Bankruptcy Code² provides certain protections from discriminatory treatment against those who have filed for bankruptcy protection in Section 525. In *Myers v. TooJay's Management Corp.*, the Eleventh Circuit considered whether Section 525(b) prohibits private employers from refusing to hire an employment candidate solely on the grounds that the candidate had filed for bankruptcy protection.³

The Court begins its analysis by looking at Section 525(a), which provides that a “governmental unit may not . . . deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title....”⁴ The Court contrasts this language with that of Section 525(b), which provides that “[n]o private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title.”⁵ The absence of the phrase “deny employment to” in

Section 525(b) guides the Court’s decision in this case.⁶ It is well established that Congress expresses its intent to differentiate between two sections of the same statute by using specific language in one section and omitting or including such language in another section.⁷ “Had Congress wanted to cover a private employer’s hiring policies

and practices in § 525(b), it could have done so the same way it covered a governmental unit’s hiring policies and practices in § 525(a).”⁸

Myers argued that the phrase “discriminate with respect to employment” includes a prohibition against denial of employment.⁹ However, the phrase “discriminate with respect to employment” is found in both Sections 525(a) and 525(b), and accordingly must mean something other than denial of employment.¹⁰

Myers also argued that the Court should take a broader view of the language in Section 525(b) to effectuate the overarching policy that the bankruptcy system is in place to give honest debtors a fresh start.¹¹ This argument was rejected by the Court as an attempt to look beyond the plain and clear language of a statute to obtain a result that is inconsistent with Congressional intent.¹²

The most important lesson consumer bankruptcy practitioners should take from the Myers decision is to make absolutely sure that clients understand private employers are within their rights to withhold an offer of employment solely due to a bankruptcy filing. Additionally, clients should understand that government employers are held to a different standard and are unable to deny them employment if they have filed, or may file, for bankruptcy protection. ■

“The most important lesson consumer bankruptcy practitioners should take from the *Myers* decision is to make absolutely sure that clients understand that private employers are within their rights to withhold an offer of employment solely due to a bankruptcy filing.”

NOTES

¹ See *Myers v. TooJay's Management Corp.*, 640 F.3d 1278 (11th Cir. 2011).

² 11 U.S.C. § 101 *et seq.*

³ *Id.* at 1280.

⁴ *Id.* at 1283.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1284.

⁸ *Id.* at 1285; see also *Russello v. United States*, 464 U.S. 16, 23 (1983).

⁹ *Myers*, 640 F.3d at 1285.

¹⁰ *Id.*

¹¹ *Id.* at 1286.

¹² *Id.*

MESSAGE FROM THE CLERK

By Katherine Gould Feldman

BUDGET

In 2011, the focus of all federal entities, including the Judiciary, continued to be cost containment. The Judicial Conference formed an “Executive Committee” to explore short and long-term cost-containment initiatives. Short-term “quick hits” included budget cuts and a freeze on promotions and salary progression increases. Long-term, the committee is looking at (1) how national contracts can reduce costs (e.g., the Bankruptcy Noticing Center (BNC) is an excellent example of a national contract that has saved the judiciary millions of dollars); (2) encouraging courts to share administrative services; (3) elimination of rental costs for unused and underused space; and (4) updating staffing formulas. In 2011, bankruptcy courts were required to participate in a detailed work measurement study. The district and appellate courts will follow in 2012 and 2013. The purpose of the work measurement study is to develop new staffing formulas for the federal judiciary that will incorporate best practices, shared services, benchmarks and efficiency incentives and to adjust court staffing. The good news is that preliminary numbers indicate that our court operates at one of the highest efficiency levels in the country.

On February 1, 2012, the Executive Committee approved final fiscal year 2012 financial plans for the judiciary that provided approximately 4 percent more funding to the courts than was anticipated under the interim plan, but still 5% less than FY 2011 levels. The Executive Committee also lifted the freeze on promotions and salary step increases.

FILING STATISTICS

Bankruptcy filings in the federal courts fell 11.5% in calendar year 2011, according to data published by the Administrative Office of the U.S. Courts. In 2011, our caseload declined 9.8%, but the Southern District

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of Florida ranked 8th in the nation for bankruptcy filings with a total of 35,751 for the year.

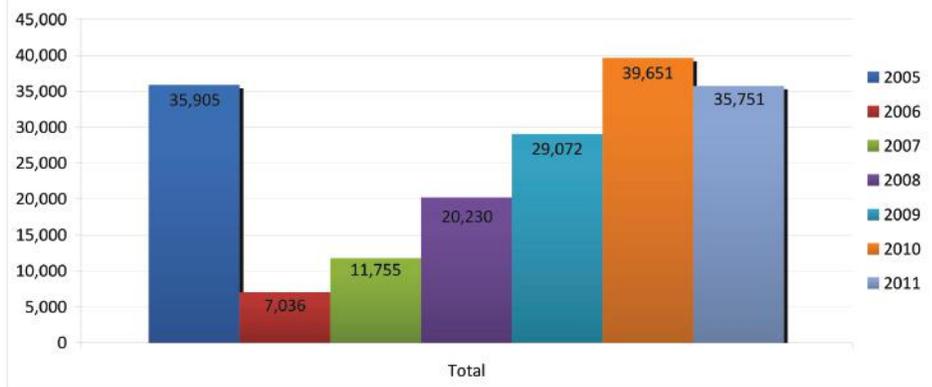
Pro se bankruptcy filings in the Southern District of Florida continue to be among the highest in the country. For the twelve-month period ending December 31, 2011, our court ranked 7th in the number of pro se bankruptcy filings and 7th in percentage of petitions that were filed pro se (12.2%). The Administrative Office reports that pro se filings have grown 187% over the last five years as compared with non-pro se petitions, which increased 98% over the same time frame. Of concern to the judiciary is the non-payment of filing fees by pro se filers, many of whom request to pay the filing fee in installments. Of the cases closed during the twelve-month period ending June 30, 2011,

30% of the fees for those cases were not paid in full. This is of particular concern to the judiciary, since a decline in bankruptcy fees will affect future revenue resources that are needed to mitigate budget shortfalls and address an increased workload.

SPACE UPDATE

The Ft. Lauderdale clerk’s office is scheduled for renovations this fiscal year. The proposed renovation project would provide for the relocation of our case administration and operations staff to a common area. This will be built utilizing the existing file-room space. The public area and intake counter will also be renovated with new work surfaces and systems furniture. The district and bankruptcy courts are collaborating on the redesign of the space, which will also

United States Bankruptcy Court Southern District of Florida Bankruptcy Filing Statistics

Bankruptcy Case Filings

	2005	2006	2007	2008	2009	2010	2011
Total	35,905	7,036	11,755	20,230	29,072	39,651	35,751
Percent	36%	-80%	67%	72%	44%	36%	-9.8%

MESSAGE FROM THE CLERK

include a new joint computer-based training center and video conferencing center. We are hopeful that this project will be completed by the end of this fiscal year.

WHAT'S NEW

The court is collaborating with the Pro Bono Committee of the Bankruptcy Bar Association to send email blasts to ECF users advising of pro bono opportunities to represent individuals in chapter 7 and 13 cases or adversary proceedings. The first email was a huge success! It generated volunteers for all of the pending cases.

PACER ACCESS RESTRICTIONS

On September 14, 2010, the Judicial Conference amended its policy on privacy and public access to ECF by restricting public access through PACER to documents

“In 2011, our caseload declined 9.8%, but the Southern District of Florida ranked 8th in the nation for bankruptcy filings with a total of 35,751 for the year.”

in bankruptcy cases filed before December 1, 2003, that have been closed for more than one year. This took effect when courts implemented CM/ECF 4.1. The following conditions apply: 1) the docket information will remain available to the general public via PACER; 2) any party that has filed a notice of appearance in a case will have CM/ECF access to all filings in that case; (3) all documents in such cases will remain accessible at the clerks' offices except those under seal; and (4) access to documents in bankruptcy case appeals filed in the district courts, bankruptcy appellate panels, or

courts of appeals for bankruptcy cases filed in the bankruptcy court prior to December 1, 2003, will be similarly restricted. If the clerk's office receives a request for a document in a case filed before December 1, 2003, a printed copy will be provided via mail, at the intake counter, or from a public access terminal at the court. Copies will not be provided via email. A link has been provided on the court's PACER login screen to instructions on the court's website for requesting copies of documents that are not available via PACER.

U.S. DISTRICT COURT ATTORNEY ADMISSIONS RENEWAL FEE

Bankruptcy Court practitioners who do not have a District Court CM/ECF login account, can now login to the District Court CM/ECF system with their Bankruptcy Court CM/ECF login to pay the required District Court renewal fee. Any practitioner accessing the District Court's CM/ECF system with his or her Bankruptcy Court CM/ECF login will *only* be able pay the renewal fee and not file documents or take any other case related action. Practitioners who currently have a CM/ECF login with the District Court should use that login to pay the renewal fee. For additional information and instructions for practitioners to pay the renewal fee, visit the district court's web page at http://www.flsd.uscourts.gov/?page_id=5712.

CM/ECF PASSWORD RESET LINKS

To reset your District Court CM/ECF user account password, visit <https://ecf.flsd.uscourts.gov/cgi-bin/lostPassword.pl>. To reset your Bankruptcy Court CM/ECF user account password, visit https://ecf.flsb.uscourts.gov/cgi-bin/lostPassword_mdb.pl.

I am proud of what our clerk's office has accomplished in 2011, and we are grateful for your continued support. As always, I welcome your comments and suggestions on how we can better serve you.



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CM/ECF Update

By Joe Falzone



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In an effort to reduce the number of logins and passwords attorneys must juggle to access CM/ECF systems throughout the state of Florida, it is now possible to have a universal login and password. Although this functionality may be included in the next generation of CM/ECF, the bankruptcy courts for the Southern, Middle, and Northern Districts of Florida have collaborated in the meantime to develop a new, easy to remember, and voluntary login structure that will allow users to have the same login and password for all three courts.

To facilitate this new option, each bankruptcy court in Florida has posted a link on its website to a form entitled “Universal Login Request.” The Clerk of the Court asks that the attorney submit his or her form to the court in which he or she files most frequently.

After obtaining a universal login, attorneys should log into the individual courts’ CM/ECF system and simply change each password by clicking on the “utilities” menu. More specific instructions will be provided at the time the universal login is assigned.

Because the CM/ECF systems in each court are not linked, is still necessary to log into each district separately to perform any filing function in the individual districts. In addition, because this universal login applies only to Florida’s bankruptcy courts, the generation of a universal login will not change any logins or passwords to the Florida’s federal district courts, nor will it change any logins or passwords for any bankruptcy court outside the state of Florida. ■

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CARE and Dress for Success Join Forces

By Ileana E. Christianson

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The Bankruptcy Bar Association's financial literacy program, Credit Abuse Resistance Education ("CARE"), has joined forces with Dress for Success Miami ("DFS"). DFS is the women's program of Suited For Success, which provides training and clothing to economically disadvantaged individuals, ex-offenders, transitional housing clients, victims of domestic abuse, low-income high school students, youth in the foster care system, and other individuals who are struggling to secure and retain

employment. Since July 2011, CARE has been incorporated into DFS's job skills training program. "The CARE program provides invaluable information for our clients that they would otherwise not have access to, including how to repair and establish good credit, avoid credit card scams, and create a proper budget," said Sonia Jacobson, founder and executive director of DFS. The first two CARE presentations were led by the Honorable Robert A. Mark, Monique Hayes, Esq. of Genovese, Joblove and Battista, P.A.,

and Ido Alexander, Esq. of Markowitz, Ringel, Trust + Hartog, P.A. Mr. Alexander commented that "it was wonderful to see how we can provide a greater understanding of the everyday life basics to the people who need it most."

For more information or to volunteer for CARE, visit www.bbасdfла.org or www.dfsmiami.org. For more information about CARE, visit www.care4yourfuture.org.



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Real Estate Appraisals: The Basics

By Manuel Mendoza-Cardenal

WHAT IS AN APPRAISAL OF REAL PROPERTY?

An appraisal is an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate.¹ In this usage an appraisal's scope may include valuation, consulting, and review of real estate. In common usage an appraisal is an estimate of the value of a particular piece of property and how that value is affected by market activity and trends, the availability of similar properties, the condition of the property, location, and the quality of current market data as of a particular date.

WHY MIGHT A CLIENT NEED A QUALIFIED APPRAISER?

A tax assessment, broker's price opinion ("BPO") or online resource such as Zillow.com are popular, though limited, substitutes for true appraisals. Tax assessments do not necessarily reflect market values because they are often outdated. The estimates of a broker is often superficial, as it is typical for a broker to conduct a visual inspection of only the outside of a property. The algorithms that power online value estimators can be based in significant part on mass appraisals — not case by case evaluations — and in any event an online tool cannot appear in court to testify in support of a client's position.

A qualified appraiser, on the other hand, can thoroughly inspect the premises and review comparable sales, take into account the condition, quality, appeal, features, and location of a property, and thereby derive a meaningful comparison with similarly situated properties. Qualified appraiser also signs their reports, and can testify and defend their valuations in court.

HOW DO COMPARABLES WORK?

Apple-to-apple comparisons are critical to residential real estate appraising. The comparable sales process starts with a thorough inspection of the property and the property's neighborhood. Then, the appraiser selects appropriate indicators and supporters of market value. The property's age, condition, the quality of its

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construction, its lot size, its unique features such as a swimming pool, recent renovations, and location (i.e., water frontage, busy street frontage, proximity to adverse conditions such as landfills) often play key roles in a property's value. The timing of other sales within a neighborhood can be an important determinant of value, as well. In today's rapidly changing market, sales within ninety days, in conjunctions with other factors such as those mentioned above, are often considered reasonable approximations of a given property's value.

"A real estate appraiser can provide an objective estimate of market value on a client's property, can strengthen a client's case, and can help take the guesswork out of the type of real estate litigations that arise in bankruptcy."

WHAT QUALITIES SHOULD A CLIENT LOOK FOR IN AN APPRAISER?

An experienced and knowledgeable real estate appraiser should have geographic knowledge of the area in which the property at issue is located, and should have conducted previous appraisals in that market. He or she should hold a "state certified" or "general" designation with the State of Florida, as well. Because appraisers in Florida were historically required to hold real estate broker licenses, and many kept up both practices, many experienced appraisers now wear two hats. An appraiser's broker license can be useful to a client needing

appraisal services, as brokers often have access to data sources such as the Multiple Listing Service (MLS), which can provide very recent and detailed, and thus very useful, information about similar properties.

CONCLUSION

A real estate appraiser can provide an objective estimate of market value on a client's property, can strengthen a client's case, and can help take the guesswork out of the type of real estate litigations that arise in bankruptcy. ■

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¹ Appraisal Institute, *Dictionary of Real Estate Appraisal* (Chicago: Appraisal Institute, 1993).

Local Rules Update

By Jesse Stellato



Multiple amendments to the Local Rules became effective on August 1, 2011. The previous version of the Local Rules had been in force since December 1, 2009, and the following is a short, non-exhaustive summary of the changes made thereto.

WAIVER OF LOCAL RULES. Before, the court was empowered to suspend the Local Rules in “exceptional” circumstances. Now, the standard for suspension has been changed to “appropriate” circumstances. Thus, while both standards are open to interpretation, it would appear that the court now has even greater discretion to suspend the Local Rules. *See* Local Rule 1001-1(E).

DIVISIONAL VENUE. Before, a debtor requesting to be venued in a particular division would accompany its petition with the local form “Declaration of Divisional Venue.” Because this local form has been abrogated, a debtor requesting divisional venue must now file a motion to effect a divisional change. *See* Local Rule 1073-1(A).

CERTIFICATES OF SERVICE. The Local Rules now clarify that it is unnecessary to list the names of parties required to be served electronically; a simple incorporation by reference of the “Notice of Electronic Filing” (NEF) will suffice. This is true even if the NEF includes parties who were served electronically but were not required to be served — over-inclusion is not prohibited. The Local Rules also reiterate that papers already filed with the court that are the subject of the certificate of service must be referenced only and not attached. Finally, the Local Rules provide that a certificate of service may be incorporated into the paper being filed with the court; a separate docket entry for a certificate of service is unnecessary. *See* Local Rule 2002-1(F).

PRO HAC VICE. Before, it was the attorney seeking to appear pro hac vice who was responsible for filing the local form motion and proposed order. The Local Rules now provide that it is the local attorney, not the attorney seeking to appear pro hac vice, who must file the local form motion and proposed order. *See* Local Rule 2090-1(B)(2).

PROPOSED ORDERS. The new Local Rules reduce the time from 14 to 7 days to submit orders after hearing. *See* Local Rule 5005-1(G)(1)(c).

PROOFS OF CLAIM. Creditors are now encouraged to utilize the feature available on the court’s website for electronic submission of a proof of claim form. It is not necessary to be a lawyer, or a non-lawyer “registered user,” in order to utilize the online proof of claim form. *See* Local Rule 5005-4(B)(3).

DOCUMENT REQUESTS. The new Local Rules shorten the time period for responding to document production requests in contested matters to 14 days after service. *See* Local Rule 9014-1(B). ■

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Mortgage Payments as Domestic Support Obligations from page 1

was made; (3) the amount of the division; (4) whether the obligation ends upon death or remarriage of the beneficiary; (5) the frequency and number of payments; (6) whether the agreement waives other support rights; (7) whether the obligation can be modified or enforced in state court, and finally (8) how the obligation is treated for tax purposes.⁸ The Eleventh Circuit has endorsed these factors as driving the inquiry.⁹ These factors may direct a court in determining what is truly a domestic support obligation as opposed to a property settlement arrangement.

Whether an obligation is a domestic support obligation is an issue of federal, not state, law.¹⁰ A bankruptcy court's inquiry presents a question of fact that typically requires an evidentiary hearing where the court considers not only any marital settlement agreement, but also the testimony of the parties, and other documentary evidence relating to the factors set forth above.

As for the inquiry on appeal, district courts function as appellate courts in reviewing bankruptcy courts' decisions.¹¹ A district court conducts a *de novo* review of the bankruptcy court's legal conclusions.¹² By contrast, district courts apply a deferential "clearly erroneous" standard of review to bankruptcy courts' findings of fact.¹³ A finding of fact is not clearly erroneous unless the court is "left with 'the definite and firm conviction' that the [bankruptcy] court erred."¹⁴

These holdings may suggest that a bankruptcy court's necessarily fact-based ruling on whether a debt constitutes a domestic support obligation would be reviewed under the "clearly erroneous" standard. However, the Eleventh Circuit has held that whether a pre-petition debt is a domestic support obligation is a legal conclusion that is

reviewed by it or by a district court under the *de novo* standard.¹⁵ This holding includes, however, reviewing the underlying findings of fact *de novo* as well.¹⁶

Previous Inquiries and Application

The obligation to make mortgage payments on a residence owned and/or occupied for a former spouse is common in marital settlement agreements. These obligations do not expressly fall within the ambit of "alimony, maintenance or support."¹⁷ Rather, bankruptcy courts must determine whether the obligation in question is in "the nature of alimony, maintenance or support" based on the pertinent factors of each case.¹⁸ Most courts have found that a former spouse's duty to make mortgage payments on behalf of the other former spouse constitutes "a domestic support obligation," and is therefore not dischargeable in bankruptcy. Each case presents its own facts.

When faced with this issue, the court in *In re Coverdale*, 65 B.R. 126 (Bankr. M.D. Fla. 1986), stated that if the obligation in question "relates to the preservation of an asset necessary to preserve the lifestyle of a spouse, particularly to keep a roof over her head, that would clearly be in the nature of support unless there are other factors presented to indicate that the spouse will receive the reward of the financial means without difficulty to meet those obligations." The court in this case found that the duty to make monthly payments on a second mortgage for the ex-wife's benefit was a domestic support obligation and therefore not dischargeable.¹⁹ The obligation to make the payments on the second mortgage was termed "lump sum alimony" by the state court's divorce judgment, the obligation did not terminate upon remarriage of the ex-wife, the

house was deeded to the ex-wife as part of the divorce, the ex-wife had limited education and earning potential, and the ex-husband earned twice what the ex-wife earned.²⁰ Faced with similar facts, at least one court in Florida has agreed with this reasoning.²¹

In a second case, *In re Montgomery*, 169 B.R. 442 (Bankr. M.D. Fla. 1994), the court held that the debtor's obligation to make monthly mortgage payments on his ex-spouse's house was in the nature of alimony, support or maintenance because these payments were critical to the support of the ex-spouse. In this case, the ex-spouses had split all of their personal property, including the value of the ex-husband's business, at the time of the divorce. The ex-wife was awarded separate alimony, both lump-sum and periodic, as well as child support. In addition, the ex-husband was required to make the mortgage payments on the marital home.²² While the court held that the periodic alimony payments were not true alimony or maintenance, the court did find that the obligation to make the monthly mortgage payments were domestic support obligations.²³ The court relied primarily on the limited education and earning potential of the ex-wife, who made \$633.00 per month to the ex-husband's \$4,170.49 per month as of the date of the divorce.²⁴

In a third case, *In re Tatge*, 212 B.R. 604, 608 (8th Cir. BAP 1997), the spouses' marital settlement agreement provided that the ex-husband would forfeit any right he had in the marital home and make the monthly mortgage payments for the benefit of his ex-wife and her mother. The bankruptcy court ruled that the obligation to make these monthly mortgage payments was in the nature of alimony and was thus not dischargeable.²⁵ There, the

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¹ 11 U.S.C. § 101 *et seq.*

² See 11 U.S.C. § 1328(a)(2).

³ 11 U.S.C. § 101(14A).

⁴ *Cummings v. Cummings*, 244 F.3d 1263 (11th Cir. 2001).

⁵ *Id.* at 1265.

⁶ *Id.*

⁷ 4 *Collier on Bankruptcy* ¶ 523.11[5] (16th ed. 2011).

⁸ *In re McCollum*, 415 B.R. 625, 631 (Bankr. M.D. Ga. 2009).

⁹ *Benson v. Benson (In re Benson)*, No. 11-12284, 2011 WL 4435560, at *1 (11th Cir. Sept. 26, 2011).

¹⁰ *In re Strickland*, 90 F.3d 444, 446 (11th Cir. 1996).

¹¹ *In re Williams*, 216 F.3d 1295, 1296 (11th Cir. 2000).

¹² *In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1038 n. 2 (11th Cir. 2008).

¹³ See *id.*; see also Fed. R. Bankr. P. 8013 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of witnesses.")

¹⁴ *In re Walker*, 515 F.3d 1204, 1212 (11th Cir. 2008) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)).

¹⁵ *In re Strickland*, 90 F.3d at 446.

marital settlement agreement provided that the spouses would split all personal property equally, the ex-wife would have custody of the two minor children and receive child support, the ex-husband would pay the health insurance premiums for the minor children, and the ex-wife waived "maintenance." However, the marital settlement agreement also required the ex-husband to make mortgage payments on the marital home, which had originally been in the name of the ex-wife's mother only. The ex-wife's mother had deeded an interest in her house to both spouses who then mortgaged it for the ex-husband to acquire his business. The marital settlement agreement expressly provided that the ex-husband's obligation to make these mortgage payments was dischargeable in a bankruptcy, but that the ex-wife could pursue alimony in the state court action for a period of four years should the ex-husband file bankruptcy.²⁶

On appeal, the Eight Circuit BAP affirmed the bankruptcy court's ruling.²⁷ Upon review for clear error, the BAP assessed the evidence relied upon by the bankruptcy court in making its finding and pointed to various factors that a bankruptcy court should consider in making its ruling. Those factors are: intent of the parties, the relative financial condition of the parties at the time of the divorce, the respective employment histories and prospects for financial support, the fact that one party or another receives marital property, the periodic nature of any payments, and whether it would be difficult for the former spouse and children to subsist without the payments. These factors are similar to those endorsed by the Eleventh Circuit in *In re Benson*. The BAP relied upon the income disparity of the parties at the time of the divorce at which time the ex-husband owned a successful business and the ex-wife had not worked outside the home for years. The BAP also relied upon the respective skill-set of each spouse, how the personal property had been split during the

divorce, and the nature of the payment of the mortgage, which was monthly. Finally, noting that such provisions are disfavored, the BAP ruled that the discharge provision in the marital settlement agreement was no more than a label that would be disregarded based on the other factors present in the case.²⁸

This issue was recently considered in the Southern District of Florida, and the matter appealed to the Eleventh Circuit. In *In re Benson*, 2011 WL 4435560, at *1, the parties' marital settlement agreement provided that the ex-husband would title the jointly-owned marital home to the ex-wife and make the monthly mortgage payments until the mortgage was satisfied. The ex-wife expressly waived alimony and child support. After a default several years later, the ex-husband filed Chapter 13 bankruptcy and sought to discharge the obligation to the ex-wife. The ex-wife objected to the discharge, and the bankruptcy court held an evidentiary hearing.²⁹

After hearing testimony and considering the terms of the marital settlement agreement, the bankruptcy court found that the duty to make the monthly mortgage payments was "in the nature of alimony, maintenance or support." While the ex-wife had waived alimony and child support in the marital settlement agreement, the bankruptcy court found that she had done so in consideration for receiving the monthly mortgage payments. The bankruptcy court's finding was based in part on a clause providing that "in further consideration for the property settlement agreements herein" the ex-wife would have her mortgage paid monthly. The bankruptcy court also relied upon provisions of the marital settlement agreement that the ex-husband would receive the annual tax deduction for the minor children so long as the mortgage payments were current, and that he would maintain life insurance for a sum equal to the outstanding mortgage balance with the ex-wife as a beneficiary in a section of the agreement

referring to the guarantee of payment of "alimony and child support." Based on these provisions, the bankruptcy court found that the duty to make the monthly mortgage payments was a "stand-in" for both alimony and child support and therefore was not dischargeable.³⁰

On the first appeal, the district court affirmed based on a "clearly erroneous" standard, though it found any other conclusion based on the record could not be supported.³¹ The district court also found that additional factors adduced at the hearing supported the finding such as the presence of income disparity between the spouses at the time of the divorce. Both the bankruptcy court and the district court also noted that the ex-husband had been held in contempt in the state court case for his failure to make the monthly mortgage payments for the ex-wife.³²

On appeal to the Eleventh Circuit, the matter was affirmed.³³ The court considered the same factors as those considered by both the bankruptcy court and the district court and came to the same conclusion. Notably, however, the Eleventh Circuit reviewed the entire matter *de novo*, including the bankruptcy court's findings of fact.³⁴ The Eleventh Circuit noted the income disparity at the time of the divorce, the periodic nature of the payments, and the contempt finding by the state court.

Conclusion

Courts have generally found that regardless of how the obligation is labeled, the duty by an ex-spouse to make monthly mortgage payments for the other ex-spouse is a non-dischargeable domestic support obligation under Section 523(a)(5). However, the ultimate determination of this issue relies upon the facts of each case and the nature of the obligation in that context. The cases set forth the factors that should inform the courts. ■

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¹⁶ *In re Benson*, 2011 WL 4435560, at *1 n. 2.

¹⁷ *Cummings*, 244 F.3d at 1265.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 128-29.

²¹ See *In re Brackett*, 259 B.R. 768 (Bankr. M.D. Fla. 2001).

²² *Id.*

²³ *Id.* at 443.

²⁴ *Id.*

²⁵ *Id.* at 605.

²⁶ *Id.*

²⁷ *Id.* at 604.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *In re Benson*, 2011 WL 4435560, at *1.

³² *Id.* at *2.

³³ *Id.*

³⁴ *Id.* at n. 2.

Legislative Update *from page 1*

immediately preceding the filing, or if there is a pending bankruptcy case concerning an affiliate of such corporation, if the affiliate in such pending case directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities of such corporation.

The bill was filed in response to the perceived trend of “forum shopping” by parent corporations of corporate bankruptcy debtors, and the bill’s sponsors and proponents advocate that a corporate parent should not be permitted to file for bankruptcy in a jurisdiction where it has no ties. The venue bill and subsequent hearing came in the wake of a statement by Judiciary Chairman Smith, in which he asked how Enron had been able to file its bankruptcy case in Manhattan considering that Enron was based in, and had substantially all of its assets and operations in, Texas.

Under the present venue rules, corporations are permitted to file for Chapter 11 in one of three places: the judicial district where the entity is incorporated; the judicial district where its principal assets are located; or the judicial district in which the corporate headquarters are located. An ancillary provision permits a corporate parent that would otherwise be required to file elsewhere to file its case in the same district where an affiliate’s case is already pending. A tactic used by many large corporations is to cause a qualifying corporate affiliate of the larger parent company to file for bankruptcy in one jurisdiction — usually New York or Delaware — to satisfy the venue requirements. Shortly (or immediately) after the first company files for bankruptcy, the parent company follows suit, thereby “bootstrapping” its own venue. The proposed bill would curtail this practice by requiring corporate debtors to file bankruptcy only where they operate or have their principal assets. While the bill still permits filing in jurisdictions where affiliated cases are pending, it only allows corporate parents to “follow” if the affiliate directly or indirectly owns, controls, or holds more than fifty percent of the voting securities of the parent company.

Our meetings with congressional staff led to the CLLA being asked to testify on September 8, 2011 through our Legislative Committee and Bankruptcy Section Chair Peter Califano before the House Judiciary Subcommittee on Courts, Commercial and Administrative Law. Peter spoke on behalf of the CLLA about the benefits of the

proposed legislation, and was joined in support of the bill by University of North Carolina Law School Professor Melissa Jacoby and United States Bankruptcy Judge Frank Bailey of the District of Massachusetts. According to remarks made by Professor Jacoby, approximately seventy percent of approximately two hundred large public companies that have filed for Chapter 11 bankruptcy since 2005 filed their petitions in either Delaware or New York City. Each of the speakers in favor of the legislation cited examples of cases filed in New York or Delaware in which major stakeholders were disenfranchised or had their rights impaired by either not having their voices heard or the increased economic burden in doing so by having a case decided in a jurisdiction far from where the business operates. The speakers discussed cases filed in other districts that demonstrated that the bench and bar in those jurisdictions are equally as competent to handle major cases, and also cited to the difficulty in having venue changed from the court where the case was initially filed. Proponents of the bill argued that requiring companies to file for bankruptcy in the jurisdiction in which the company operates or has its principal assets allows the major stakeholders — the company’s employees and vendors — to participate more meaningfully in the restructuring process. They also argued that the proposed bill would prevent litigants from shopping for a venue with case-favorable judicial precedent, often to the detriment of their stakeholders.

On the other side, University of Pennsylvania Law School Professor David Skeel spoke about the pitfalls of the bill, primarily citing the heightened expertise and abilities that have been developed by the bankruptcy benches in New York and Delaware Judiciaries and enhanced by the creation of special rules, and the certainty of results that allows for the efficient administration of large Chapter 11 cases. He and other opponents of the bill (such as the New York City Bankruptcy Bar Association) argue that forum shopping should be permitted because the judiciary and practitioners in jurisdictions like New York and Delaware are far more experienced in restructuring matters and are better able to serve their clients. They also argue that administrative expenses would increase as a result. Others argue that the proposed change is unnecessary because present venue rules contain a provision allowing courts to transfer a case to a different venue in the interests of

justice or the convenience of the parties.

The Chapter 11 Bankruptcy Venue Reform Act of 2011 is still in the early stages of consideration by Congress. If the bill survives the committee reporting process, which it is expected to do, the next step will be consideration by the entire House of Representatives. Having been introduced and referred to committee for hearing, this bill is in the second stage of the legislative process. HR 2533 is a rare example of bipartisanship in a congress whose intense partisanship has resulted in very few major pieces of legislation becoming law. In addition to Chairman Smith and Rep. Conyers, both the Chairman and top Democrat on the Subcommittee with jurisdiction over bankruptcy, Rep. Howard Coble, R-NC and Rep. Steve Cohen, D-TN, respectively, have cosponsored the bill. Generally, when the “big four” on a congressional committee lend their support to a bill, it means that most, if not all, of the differences between the parties that may otherwise delay or scuttle legislation have been resolved and the bill’s chances of passing one or both chambers of Congress have improved dramatically. Given that the changes included in HR 2533 have united the leadership of the Judiciary Committee, it is likely to pass the Committee fairly easily before being considered by the full House of Representatives. This does not mean, however, that it is guaranteed to pass Congress easily. The House voting schedule is controlled by Speaker Boehner and his leadership team, who will have to review the legislation and weigh in with their views before scheduling a vote. Based upon the bill’s bipartisan support, House Committee staff was confident that the bill would ultimately pass the House.

Even if passed by the House, the bill will also have to be considered by the Senate, which does not have a similar bill of its own and generally operates at a slower pace than the House. While no corresponding legislation has yet been proposed in the Senate, it is expected that Senator John Cornyn, R-TX will sponsor such legislation as he has done in the past. Yet, given the major changes to existing law contained in the bill, the Senate Judiciary Committee will likely want to hold its own hearings after the House completes its work and give members a chance to share their views. The Senate’s rules for considering legislation also allow one member to block a bill from advancing to a vote unless the bill’s proponents have secured

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¹ 28 U.S.C. § 1408.

sixty votes to overcome this type of challenge. Since HR 2533 has not yet passed the House Judiciary Committee or the full House, it is hard to know at the present moment how substantial its support will be in the Senate or whether opponents of the bill, most likely senators from Delaware and New York, and possibly New Jersey and Maryland, will be able to block it.

At the same time, the bill contains changes that appeal to Democrats, who still control the Senate, especially the elimination of some types of “forum shopping,” which may provide more opportunities for workers impacted by a corporate bankruptcy to play a role in subsequent judicial proceedings. Moreover, Chairman Smith is a well-respected policymaker and has the distinction of shepherding through Congress one of the only major pieces of legislation to become law this year, the America Invents Act, which was also a bipartisan effort. Smith and Senate Judiciary Committee Chairman Patrick Leahy, D-VT, worked closely on this legislation and would also have to work together on HR 2533 assuming it reaches that point in the legislative process.

As applied to our district, an analysis of companies with headquarters in Florida whose respective bankruptcies were nonetheless filed in New York and Delaware over the past ten years reveals that six large cases representing 26,561 employees and \$14,274,000,000 in asset value (i.e., American Media Operations, Inc., NationsRent, Inc., ANC Rental Corp., Neff Corp., Kellstrom Industries, Inc., and ION Media Networks, Inc.) would likely have been filed in our district under the proposed legislation. See Table 1. An additional seven large cases would likely have been filed in the Middle District during the same amount of time. See *id.* These cases represent significant work that could and should have stayed in their respective districts and would have provided work for a great number of our members. Therefore, I ask our

bar association to issue a statement along with the CLLA in support of this important legislation, and ask our members to individually reach out to our senators and representatives asking for their support of this bill.

Temporary Bankruptcy Judgeships Extension Act of 2011

The CLLA is working with the National Conference of Bankruptcy Judges to draft a position paper in support of HR 1021, the Temporary Bankruptcy Judgeships Extension Act of 2011, which is intended to prevent the termination of temporary bankruptcy judges in certain judicial districts, including ours, and to extend the authority to appoint judges to thirty temporary bankruptcy judgeships. Under the proposed bill, temporary judgeships could remain filled for five years or until another vacancy occurs, whichever is later. Under current law, those judgeships cannot be filled if any vacancies occur, so that some vacancies in judicial districts, regardless of when the judge was appointed or when the judgeship was established, would remain vacant. Enacting this bill would allow those positions to be filled.

The Congressional Budget Office estimates that enacting HR 1021 would increase direct spending by about \$2 million over the 2012-2016 period and by about \$5 million over the 2012-2021 period. According to a Congressional Budget Office report, that estimate is based upon the salaries and benefits for bankruptcy judges of about \$190,000 per judge per year, projected against a mortality expectation that four vacancies out of an affected population of more

than one hundred judges are likely to occur during the five years following the enactment of the bill. In addition, the CBO estimates that implementing the legislation would increase spending subject to appropriation by \$4 million over the 2012-2016 period for the salaries and benefits of support personnel, court operations and maintenance, and other administrative costs associated with the additional judges that would be appointed under the bill. I have been told that the federal bankruptcy judiciary is trying to absorb the impact of this bill into its budgets so that it will be cost neutral to the federal deficit, which is obviously a big issue in Congress right now.

With our district currently operating under two temporary judgeships, the burden on the administration of bankruptcy cases in our district would be enormous if one or two of our judges were to retire, pass away, or otherwise resign due to illness. Therefore, it is critical that our bar association also support this proposed legislation, and that our members contact Senators Nelson and Rubio, as well as their local congressional representatives in support of this bill.

If you would like additional information on the Commercial Law League of America and our legislative efforts, you can contact me at ivan.reich@gray-robinson.com or at (954) 761-7508, or you may visit www.clla.org, where you can find more information about becoming a CLLA member, attending our meetings, writing and speaking on bankruptcy topics, and helping to develop and promote our legislative and amicus advocacy agenda. ■

Shortly before the publication of the BBA Journal, the CLLA issued a formal position paper in support of the Temporary Bankruptcy Judgeships Extension Act of 2011. In addition, as of the first week of December 2011 the Florida Bar's Business Law Section, through its Bankruptcy/UCC Committee, has voted to support both Chapter 11 Bankruptcy Venue Reform Act of 2011 and the the Temporary Bankruptcy Judgeships Extension Act of 2011.

Table 1. Major bankruptcies filed by companies headquartered in Florida, 2001-2011

Debtor's Name	Employees before bankruptcy filing	Assets in millions, current dollars	Headquarters city at time of bankruptcy	Headquarters state at time of bankruptcy	City where bankruptcy was filed	Date of bankruptcy filing
Budget Group Inc.	11,400	5,608	Daytona Beach	FL	Wilmington	7/29/2002
NationsRent, Inc.	3,000	2,200	Fort Lauderdale	FL	Wilmington	12/17/2001
ANC Rental Corp	20,000	8,328	Fort Lauderdale	FL	Wilmington	11/13/2001
Winn-Dixie Stores, Inc.	89,000	3,086	Jacksonville	FL	New York	2/21/2005
Recoton Corp.	3,354	563	Lake Mary	FL	New York	4/8/2003
Neff Corp.	1,128	929	Miami	FL	New York	5/16/2010
Kellstrom Industries, Inc.	591	728	Miramar	FL	Wilmington	2/20/2002
Pinnacle Holdings, Inc.	202	1,299	Sarasota	FL	New York	5/21/2002
Lazy Days R.V. Center, Inc.	680	356	Seffner	FL	Wilmington	11/5/2009
ION Media Networks, Inc.	453	1,117	West Palm Beach	FL	New York	5/19/2009

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