The Cramdown

The Newsletter of the Tampa Bay Bankruptcy Bar Association

Editor-in-Chief, Keith Appleby, Esq., Fowler White Boggs P.A. **Summer 2010**

PRESIDENT'S MESSAGE

by Luis Martinez-Monfort, Esq.
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I want to thank our Association for giving me the opportunity to serve as President. It has been a great year for our Association with over 350 active members, CLE lunches, Consumer lunches, and social events exceeding attendance expectations, increased participation in pro bono activities and continued success with the Cramdown and the Membership Directory. Although I would like to say that this year's success was due to my almost uncanny leadership abilities, the reality is that it is a team effort driven, in great part, by the dedicated members of our volunteer Board of Directors who work tirelessly for the benefit of the Association. To them, I offer special thanks for making this year a truly rewarding experience.

One of the things I am most proud of this past year is not any specific activity or accomplishment, but instead a concept: strategic, multi-year planning. Over the past couple of years, officers of the Board of Directors have been refocusing their efforts to set and accomplish multi-year goals meant to improve the Association over time. These multi-year goals include: fundraising and planning our Association's sponsorship position for the National Conference of Bankruptcy Judges being held in Tampa in 2011; creating a pro bono bankruptcy clinic with Stetson University to allow students, working under the supervision of local practitioners, the opportunity to represent pro bono debtors; improving our Association's website and technology capabilities; and increasing membership involvement in all of our social, educational and pro bono programs.

We recently accomplished one of our multi-year goals: honoring our Association's past leaders. On July 22, 2010, we held our first Past President's Cocktail Party. The cocktail party was attended by almost all of our Association's past presidents and chairmen and our Board of Directors. At the cocktail party, we unveiled a plaque honoring our past presidents and chairmen which will be prominently displayed in the Attorney Resource Room on the Tenth Floor of the Courthouse. The cocktail party served a dual purpose: 1) honoring those whose hard work and sacrifice helped build our Association; and 2) tapping into all those years of accumulated institutional wisdom in an effort to improve our Association for the years to come.

With the Association's continued focus on the future, and considerable success in the present, I feel confident that we are an Association that is healthy, strong and moving in the right direction.

Thanks for a great year.

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U.S. Supreme Court Rules in Espinosa - What It Means For Debtors, Creditors And Chapter 13 Plans

by Dennis LeVine, Esq.
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In a unanimous opinion, the U.S. Supreme Court ruled in March that a creditor waited too long to have a Bankruptcy Court declare a confirmation order void because the order contained a provision directly contrary to the Bankruptcy Code. In United Student Aid Funds v. Espinosa, 559 U.S. ___ (2010), the debtor tried to discharge part of a student loan included in a chapter 13 plan. The creditor failed to object after notice of the proposed plan, and the Bankruptcy Court confirmed the plan. The legal issue addressed by the Supreme Court was the finality of a chapter 13 confirmation order – i.e. when is it too late to challenge a confirmation order which contains a provision otherwise forbidden by the Bankruptcy Code.

Francisco Espinosa filed chapter 13 in 1992. His plan proposed to pay only the principal amount of $13,250 (and not the interest) due to his only creditor, United Student Aid Funds (United). The plan did not allege that paying the student loan would be an undue hardship, nor did the plan state that confirmation would have the effect of discharging the accrued interest on the student loan. The debtor did not file an adversary proceeding to determine undue hardship, despite the requirement of the Bankruptcy Code and Bankruptcy Rules to do so.[1] In 1993, the Bankruptcy Court confirmed the plan. The chapter 13 trustee subsequently mailed United a notice that the amount in its proof of claim differed from the amount listed by the debtor for payment in the plan, and requested United to notify the trustee within 30 days it wanted to dispute the treatment of its claim. **Despite notice, United never moved to challenge the confirmation order, and never filed an appeal.**

Espinosa completed his plan payments in 1997, and received a discharge. In 2000, three years after the debtor completed his plan payments, United began attempts to collect the unpaid interest due on the student loan. In 2003, Espinosa moved the bankruptcy court to enforce its discharge order and to direct United to stop collection efforts. United filed a cross-motion under Federal Rule 60(b)(4), and requested the Bankruptcy Court set aside the order confirming the plan as void. United argued that the order confirming the plan was void because (1) United was denied due process since United had not been served with a summons and complaint in an adversary proceeding to determine undue hardship, and (2) the bankruptcy court lacked statutory authority to confirm Espinosa's plan and discharge any part of the student loan without making a finding of undue hardship. The Bankruptcy Court rejected United's arguments and ruled in favor of the debtor. The District Court reversed, finding that United had been denied due process because the debtor did not file an adversary action to determine undue hardship and the dischargeability of a student loan. The Ninth Circuit reversed, and upheld the confirmation order:

> "By confirming Espinosa's plan without first finding undue hardship in an adversary proceeding, the Bankruptcy Court at most committed a legal error that United might have successfully appealed, but that by any such legal error was not the basis for setting aside the confirmation order as void under Rule 60(b)." In addition ..... 559 U.S. at ___

A key fact in this case was that United's objection was asserted 10 years after the Bankruptcy Court confirmed Espinosa's plan.

The Supreme Court examined whether the Bankruptcy Court's order confirming the debtor's plan was void under Federal Rule 60(b)(4). This Rule permits a court to relieve a party from a final order or judgment if that order or judgment is void. Rule 60(b) provides as follows:

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

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1 Under Section 523(a)(8) of the Bankruptcy Code, a student loan is non-dischargeable unless excepting such debt from discharge would impose an undue hardship on the debtor. Under Bankruptcy Rule 7001(6), bankruptcy courts are required to make the undue-hardship determination in an adversary proceeding.

U.S. Supreme Court Rules In Espinosa

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(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

The Supreme Court recognized that the Bankruptcy Court's confirmation of the plan without an undue-hardship finding was legal error:

> "The bankruptcy court's failure to find undue hardship before confirming Espinosa's plan was a legal error ... But the order remains enforceable and binding on United because United had notice of the error and failed to object or timely appeal."

Nevertheless, the Supreme Court held that this legal error did not render the confirmation order void, finding that a judgment is not void simply because it is erroneous. Instead, the Supreme Court narrowly construed Rule 60(b)(4) as applying only when a judgment is premised on "a certain kind of jurisdictional error" or on a "violation of due process that deprives a party of notice or the opportunity to be heard." The Supreme Court held that the confirmation order was enforceable and not void because United had **actual notice** of the Bankruptcy Court's error, but failed to object to the plan or timely appeal the confirmation order.[2] The Supreme Court stated that Rule 60(b)(4) strikes a balance between the need for finality of judgments, and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute. As Justice Thomas stated, Rule 60(b) does not "provide a license for litigants to sleep on their rights."

Many bankruptcy attorneys looked at this case to see whether the Supreme Court would approve the concept of "discharge by declaration"; however, this was not the result. While the Supreme Court did rule in favor of the debtor, the Supreme Court specifically rejected the concept of "discharge by declaration". The Supreme Court emphasized that bankruptcy courts have an obligation to deny confirmation of any plan which does not meet the Code's requirements.

Many creditors and trustees also had expressed concern that allowing the confirmation order in Espinosa to stand would encourage unscrupulous debtors and their counsel to abuse the chapter 13 process by including provisions in a plan specifically precluded by the Code. In its brief to the Supreme Court, United warned that a decision in the debtor's favor would "open the floodgates" and allow other debtors to avoid paying debts deemed non-dischargeable under the Bankruptcy Code, including taxes, domestic support obligations, drunk driving personal injury and death liabilities, and criminal fines and restitution. While acknowledging this concern in the opinion, Justice Thomas noted that debtors and their attorneys are subject to a number of potential sanctions and other penalties for engaging in improper conduct in a bankruptcy case.[3] The Supreme Court added that if existing sanctions are not sufficient to discourage bad faith attempts to discharge student loans, Congress should enact additional provisions.

The Supreme Court made two things very clear in Espinosa. First, a debtor cannot obtain the discharge of a student loan by simply including an undue hardship provision in a chapter 13 plan. Second, bankruptcy courts have a duty to not confirm any plan containing provisions attempting to circumvent, get around, or avoid the requirements for confirmation contained in Section 1325(a) and other provisions of the Bankruptcy Code.

Unfortunately, in Espinosa the Supreme Court did not answer the question as to when it is too late to challenge a confirmation order containing a provision otherwise forbidden by the Bankruptcy Code. Pursuant to Rule 60(c), "a motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding". The Supreme Court did not provide clear instruction as to what a "reasonable time" would be to challenge a confirmation order. As United found out, however, waiting ten years was too long.[4]

The important lesson from Espinosa is that creditors should be vigilant and review all chapter 13 plans carefully. Creditors should object to the confirmation of any plan containing provisions not permitted by the Bankruptcy Code.

2 The Supreme Court found that United received notice of Espinosa's intent to discharge his student loan debt twice: when it received a copy of Espinosa's plan after his chapter 13 filing, and when the trustee sent notice after confirmation. United's receipt of these notices satisfied United's due process rights, since due process requires notice reasonably calculated to apprise interested parties of the pending action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 314 (1950)

3 Justice Thomas took the same position in the Taylor vs. Freedman and Kronz case, where the debtor improperly claimed an asset as exempt when there was no legal basis to do so. The Supreme Court allowed the exemption, but warned debtors and their attorneys against undertaking such gamesmanship.

4 Another time frame on this issue is contained in 11 U.S.C. Section 1330, whereby a party in interest has 180 days from the entry of the confirmation order to request the Court to revoke confirmation based on fraud.

On May 11, 2010, the Tampa Bay Bankruptcy Bar Association presented **M. Hannah Baros** the **Alexander L. Paskay Scholarship Award.** Ms. Baros was selected as this year's recipient because of her outstanding aptitude in the areas of bankruptcy law and her desire to specialize in the areas of bankruptcy, insolvency, or creditor's rights. Ms. Baros is a 2010 graduate of Stetson University College of Law and B.S. in Biology from the University of Georgia.

Credit Bids No Longer Sacrosanct In Reorganization Plans

by Suzy Tate
Jennis & Bowen, P.L.

Finding Section 1129(b)(2)(A) unambiguous and that its plain meaning provides debtors with three independent alternatives with which to treat a secured claim in a plan, the Third Circuit recently held that a reorganization plan that provides for the sale of a debtor's assets does not have to allow the secured creditor a right to credit bid. *In re Philadelphia Newspapers, LLC,* 599 F.3d 298 (3rd Cir. 2010).

In *Philadelphia Newspapers*, the debtors proposed a plan that provided for the sale of all of the assets free and clear of liens, with a stalking horse bid to include $37 million in cash and the newspapers' headquarters valued at $29.5 million, which was subject to a two-year rent free lease to the debtors. The debtors moved for approval of bidding procedures, which provided that the secured lenders, who were owed $318 million, could not credit bid at the auction.

The secured lenders objected to the bidding procedures arguing that a sale free and clear of liens must provide for credit bid rights pursuant to Section 1129(b)(2)(A)(ii). The debtors argued that the treatment of the secured claims was not pursuant to subsection (ii), but rather subsection (iii), which provides that a plan is fair and equitable to a secured creditor if the creditor is receiving the "indubitable equivalent." The bankruptcy court agreed with the secured lenders, approving a revised set of bidding procedures, which allowed the secured lenders to credit bid. The district court reversed the bankruptcy court, holding that the Bankruptcy Code does not provide secured creditors with the right to credit bid in an auction sale pursuant to a reorganization plan.

The secured lenders appealed arguing, among other things, that the treatment of the secured claim determines which subsection of Section 1129(b)(2)(A) is triggered. To support this contention, the secured lenders argued that because subsection (ii) provides for the sale of assets under a plan, the court should find that the treatment of their claims was pursuant to that specific provision rather than the broad indubitable equivalent provision.

The Third Circuit disagreed, holding that the specificity of subsection (ii) does not limit the debtors' right to proceed under subsection (iii), finding support from a Supreme Court decision where the Court held that in interpreting a statute, a specific provision only governs a general provision where the more specific provision clearly placed a limitation on the general provision. (citing *Varity Corp. v. Howe,* 516 U.S. 489 (1996)). Because Section 1129(b)(2)(A) is written in the disjunctive, the Third Circuit held that it provided for three "alternative paths to meeting the fair and equitable test" and that subsection (iii) provides debtors with the flexibility to craft an appropriate treatment for secured creditors' claims, which should not be curtailed.

The secured lenders also argued that subsection (iii) was ambiguously broad and therefore, the Third Circuit should look outside of the statute to determine whether a sale that does not provide for a credit bid right would satisfy the definition of indubitable equivalent. The Third Circuit disagreed with this argument, holding that the provision is not rendered ambiguous just because the provision is broad. Because the provision is not ambiguous, the court is limited to the plain language of the statute.

The final argument by the secured lenders is that denying them the right to credit bid is inconsistent with the rights afforded under Section 363(k), which preserves credit bid rights, and Section 1111(b), which allow secured creditors to elect to have their unsecured claim treated as a secured deficiency claim. The Third Circuit held that denying a secured creditor's right to credit bid in a plan sale would not be at odds with (a) Section 363(k) because Section 363(k) allows the bankruptcy court to deny credit bid rights in 363 sales for cause or (b) Section 1111(b) because a creditor would not have a right to elect to have its deficiency claim secured if the assets were transferred under a plan.

While the secured lenders were not allowed to credit bid their claims, the secured creditors ultimately purchased the assets at the auction with cash. *See* William P. Weintraub, Gregory W. Fox, and Kizzy L. Jarashow, *Third Circuit Bids Credit Bidding Adieu,* 19 Norton J.Bankr.L.&Prac. 3 Art. 4 (May 2010).

Since the ruling, the decision has been cited three times--once for the contention that a secured creditor can be denied the right to credit bid in a plan sale. *In re Lehigh Coal and Navigation Co.,* 2010 WL 2025211 (Bankr. M.D. Penn.). In *Lehigh*, the debtor's plan provided for a sale with the stalking horse being the secured creditor with credit bid rights. Other creditors objected arguing that the secured creditor should not be allowed to credit bid. However, the argument was not centered on Section 1129, but rather the right of the secured creditor under a noteholder agreement.

"A Family Affair": *The relevancy of Chapter 15 to corporate and individual debtors, and why the bankruptcy community ought to embrace it now*

by Christine Ashley Park
Summer 2010 Intern for U.S. Bankruptcy Court for the Middle District of Florida, J.D. Candidate 2011, Emory University School of Law

Many in the bankruptcy law family remain uncertain about how to treat their newest family member--Chapter 15 of the Bankruptcy Code.[1] While no requirement exists to fully embrace the latest member, which deals with ancillary and cross-border insolvency cases, practitioners should take heed that ignoring Chapter 15 may jeopardize their creditor client. Failure to pay attention might be the difference between receiving payment for an otherwise subordinated creditor by locating lucrative assets, and being denied payment altogether by the estate. Chapter 15 affords protection to every creditor; it stops one creditor from unfairly benefitting over another, preventing the attachment of assets that are unbeknownst to the estate's trustee. The new chapter may also prove more popular with time as many offshore hedge funds seek asset protection "without filing full blown bankruptcy cases."[2] Being unwelcoming disadvantages the bankruptcy community at large. A practitioner's unfamiliarity with Chapter 15 risks losing what can be the greatest available resource in the most complex of cases, especially where every asset adds value to the estate.

Many of today's corporate clients either dabble in or are heavily involved in overseas investments. Whether dealing with Fortune 500 companies or smaller and privately owned ventures, bankruptcy proceedings in the United States prove the increasingly transnational aspects of operating. Particularly when dealing with conglomerates, the existence of foreign subsidiaries often arises in the course of the case and comes as no surprise. In such cases, their international ties can range from partial and minor investments abroad, to large margins of revenue originating from foreign based subsidiaries. With so many Americans having both business and cultural ties elsewhere, one may expect a rising trend to travel and relocate, bringing some or all of their assets along with them. In short, like the debtor, assets themselves move, relocate, and are spread across various accounts and countries. The global nature of companies, people, and movement of assets increases the likelihood that bankruptcy attorneys should expect to encounter issues involving foreign bankruptcy proceedings.

One of the most common Chapter 15 scenarios involves § 1509, where a company becomes a debtor in a bankruptcy proceeding abroad. Investors, partners and any potential creditors in the U.S. scramble to grab whatever assets that might still linger in the U.S. Their logic relies on filing as many actions possible against the debtor in the U.S., attaching whatever assets that remain. Such proceedings attempt to circumvent foreign systems of bankruptcy law, using access to American courts to override any orders abroad. Unless the U.S. court recognizes the foreign proceeding[3]--what many liken to an "entry visa"--the debtor or its trustee is powerless to stay the commencement of actions in the U.S. Without recognition, the filings in the U.S. against the foreign debtor may negatively affect the foreign proceeding at the expense of creditors abroad. Conversely, recognizing the foreign proceeding establishes comity amongst nations.[4] Recognition grants the foreign representative the power to effectuate the distribution of the debtor's U.S. assets, permitting access to the debtor's assets, rights, liabilities, obligations, and affairs within the U.S. It further empowers the foreign representative to transfer, encumber, and dispose of a debtor's estate. Consequently, recognition allows such trustees to utilize U.S. bankruptcy laws and deal with U.S. estate property as if the debtor's foreign proceeding was in the U.S. For example, representatives can use the recognized status to invoke § 362 for an automatic stay, and § 363 for use, sale and lease of the debtor's property.

Under § 1509, recognition greatly depends on the debtor's "center of main interest" (COMI).[5] The Code does not offer an outright definition of COMI. However,

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1 See Bankr. Abuse Prevention and Consumer Act of 2005, Pub.L. 109-8, 119 Stat. 23 (2005) (Chapter 15 was signed into law in by President George W. Bush under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and replaced § 304 to deal with cross-border insolvency).

2 See Lynn Hiestand et al., *Chapter 15 Proves No Safe Haven for Offshore Hedge Funds,* 2008 THE J. OF CORP. RENEWAL (Jan. 2008), available at http://www.turnaround.org/Publications/Articles.aspx?objectID=8595

3 See 11 U.S.C.A. §§ 1502(4)-(5), 1517(a)(1) (West Supp. 2010) (foreign representatives must initiate any proceedings in the U.S. by first filing with the U.S Bankruptcy Court for recognition either as a foreign main or foreign nonmain proceeding where the former denotes a foreign proceeding pending in the country where debtor has "the center of its main interests," and a nonmain refers to one "pending in a country where the debtor has an establishment).

4 See Catherine Peek McEwen, *Chapter 15: A Source of New Business for Commercial Practitioners and Bankruptcy Courts (Or, A New Thing I Learned in Judge School)*, THE CRAMDOWN (Tampa Bay Bankr. Bar Ass'n), Fall 2006, at 23 (explaining the purpose of Chapter 15 is to deal with "cases of cross-border insolvency," and "aims to engender cooperation between countries and provide a fair framework for protecting the rights of all parties affected by foreign insolvency proceedings").

5 11 U.S.C. § 1502(4) (2005).

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Chapter 15 suggests that without contrary evidence, a COMI may include "the debtor's registered office, or habitual residence in the case of an individual."[6]

In Ran, the most recent case from the 5th Circuit, the Court of Appeals refused to recognize a foreign proceeding by finding the individual debtor's COMI to be within the U.S., and not Israel, where the foreign proceeding was being held.[7] Helpful to their conclusion was the debtor's departure from Israel a decade before the filing of the foreign proceeding, lack of any intent to return to Israel and establishment of a permanent residence in Houston, Texas.[8]

For a debtor corporation, interpretation of corporate COMI stems largely in part from the decision in SPhinX.[9] The official COMI was presumed to be either the corporation's registered office or its principal place of business. Without evidence to the contrary, the presumption remains controlling.

A court may, however, combine both individual and corporate factors to establish COMI, even applying factors meant for corporations to an individual.[10] In Loy, the court considered the location of the debtor's primary assets, creditors and jurisdiction that would apply to the majority of disputes.[11]

The Code itself does not dictate strict guidelines for determining COMI. It allows courts a great deal of flexibility and power to weigh all factors on a case-by-case basis. The Code does provide some hints of a "temporal framework,"[12] but as shown in its technical writing each operative verb uses the present tense. Section 1502 strongly suggests that the factors considered in deciding a debtor's COMI must be those relevant at the time of filing for recognition. The implication further rejects any previous ties, and a prior connection or dealing with a country is not dispositive of a debtor's COMI.

Ultimately, only the court maintains discretion as to what it finds as appropriate relief. Indeed, recognition alone does not equate relief. As "gatekeepers,"[13] the court reserves final call to grant specific relief and recognition of a foreign proceeding. More importantly, bankruptcy courts possess exclusive jurisdiction over issues under Chapter 15.[14] Though it may entrust the debtor's assets within the U.S. jurisdiction to the debtor's foreign representative, the court may simultaneously require all assets to remain within the territories of the U.S. until the court orders otherwise.[15] Courts may also selectively choose which assets meet the compliance requirements, affecting various custodians, depositories and financial intermediaries differently.[16]

As additional Chapter 15 cases emerge, case law will further illuminate all the avenues available for a client dealing overseas. Until then, getting comfortable with Chapter 15 will be helpful to the attorney whose clients either deal abroad personally or in business. A practitioner's competence in Chapter 15 may also prove crucial in gaining access to the U.S. federal court system altogether.[17] Embrace Chapter 15, because as long as people continue to live and work globally, it remains a permanent member of the bankruptcy family. Reach out. Get to know it now.

6 Id. at §1516(c).
7 See *In re Ran*, No. 09-20288, 2010 WL 2106638 (5th Cir. May 27, 2010).
8 *Id.* at *7.
9 *In re SPhinX, Ltd.*, 351 B.R. 103 (Bankr. S.D.N.Y. 2006) (Drain, J.), *aff'd, Krys v Official Comm. Of Unsecured Creditors of Refco Inc. (In re SPhinX, Ltd.),* 371 B.R. 10 (S.D.N.Y. 2007).
10 *In re Ran*, No. 09-20288, 2010 WL 2106638, at *5.
11 *In re Loy*, 380 B.R. 154, 162 (Bankr. E.D.Va. 2007).
12 *In re Ran*, No. 09-20288, 2010 WL 2106638, at *7.
13 McEwen, *supra* note 4, at 23.
14 28 U.S.C. § 1334 (2005).
15 Order Granting Relief under 11 U.S.C. § 1521 at 4, *In re* British-American Ins. Co. Ltd., No. 77 (S.D.F.L. May 20, 2010).
16 See *id.*
17 See McEwen, *supra* note 4, at 23 (discussing in detail how Bankruptcy Courts are the first stop for foreign insolvency proceedings that wish to enter any federal court in the U.S.).

Hamilton v. Lanning: Looking Forward Prevails

by Brook Baker
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The new decision of the Supreme Court in *Hamilton v. Lanning*[1] is already old news to the Florida Middle District Bankruptcy judges, who have been ruling in accordance with the decision for some time.[2]

At issue in *Hamilton* was the proper determination of "projected disposable income" for the purposes of § 1325(b)(1) of the Code.[3] The Code does not define projected disposable income, but post-BAPCPA, does define "disposable income".[4] Disposable income is defined as "'current monthly income received by the debtor' less 'amounts reasonably necessary to be expended' for the debtor's maintenance and support, for qualifying charitable contributions, and for business expenditures."[5] Current monthly income is calculated by averaging the debtor's income during the "look-back" period, the 6 months prior to filing the petition.[6]

Courts have previously taken two competing approaches toward determining the projected disposable income: the so-called "mechanical approach" and the "forward-looking approach".[7] Under the mechanical approach, courts simply multiplied the average disposable income by the number of months in the plan.[8] The forward looking approach begins with the same number as used in the mechanical approach, but allows the bankruptcy court discretion to make appropriate adjustments in "exceptional cases, where significant changes in a debtor's financial circumstances are known or virtually certain".[9]

Respondent Lanning received a one-time buyout from an employer during the 6 month "look-back" period prior to filing, and this inflated Respondent's current monthly income to a point that there was "no dispute

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1. *Hamilton v. Lanning*, 560 U.S. ____ (2010); 2010 WL 2243704
2. See, for non-exhaustive examples, Judge Williamson's opinion in *In re* Arsenault, 370 B.R. 845 (Bankr.M.D.Fla. 2007) and Judge Funk's opinion in *In re* Raulerson, 395 B.R. 157 (Bankr.M.D.Fla. 2008).
3. *Hamilton*, 2010 WL 2243704 at 4.
4. *Id.*
5. *Id.* (quoting in part 11 U.S.C. § 1325(b)(2)(A)(i) and (ii)).
6. *Id.*
7. *Id.*
8. *Id.* at 5.
9. *Id.*

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that respondent's actual income was insufficient" to make the payments that a plan calculated under the mechanical test would require.10 The Court held that the proper calculation was the "forward-looking approach".[11]

The Court first looked to the ordinary meaning of the word projected, and stated that in ordinary usage, projections are not made solely based on assumptions that the past will repeat itself.[12] Next, the Court noted that the term projected appears throughout federal statutes and rarely means simple multiplication; however when Congress does intend to mandate multiplication, it usually does so by using the term "multiplied".[13]

The Court next stated that pre-BAPCPA case law supported the general rule that courts had discretion to account for known or virtually certain changes in the debtor's finances when determining projected disposable income, and that no new definition of projected disposable income was included post-BAPCPA.14 The Court found this particularly telling because it "'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure'".[15]

The Court also made reference to the language of the Code, namely that the language of § 1325(b)(1)(B) describes income "to be received in the applicable commitment period" suggesting that the Code anticipates that projected monthly income includes only the amount of income which could actually be received from the debtor.[16] Similarly, the Court noted that § 1325(b)(1) deals with income "as of the effective date of the plan" and that if the mechanical approach was intended, Congress may have mandated that the value be determined as of the filing date.[17]

Several arguments in favor of the mechanical approach were found unpersuasive. For example, petitioner argued that the defined term "disposable income" would be left without purpose under the forward-looking approach, but the Court dismissed that argument by describing a role for disposable income: courts should begin by calculating disposable income, and "only in unusual cases" may a court "go further and take into account other known or virtually certain information about the debtor's future income or expenses."[18]

Though Justice Scalia wrote a lengthy dissent, the eight to one decision solidifies what judges in the Middle District of Florida and the majority of judges throughout the country have been readily deciding. A little foresight sometimes goes a long way.

10. *Id.*
11. *Id.* at 4.
12. *Id.* at 6.
13. *Id.* at 6-7
14. *Id.* at 7.
15. *Id.* (quoting Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co., 549 U.S. 443, 445 (2007)).
16. *Id.* at 8.
17. *Id.*
18. *Id.*

Tick, Tock, Tick, Tock – Will My Paper Beat the Clock?

On June 29, over 50 attorneys attended a brown bag session presented as part of the Bankruptcy Judges' junior lawyer mentoring program. Panelists Dennis Levine, Katie Brinson Hinton, and Lara Fernandez discussed topics such as computation of deadlines and equitable tolling. Judge McEwen served as moderator. Also in attendance was special guest Judge Randall L. Dunn, District of Oregon and 9th Circuit Bankruptcy Appellate Panel and President-Elect of the NCBJ.

Presenters: (l-r) Katie Brinson Hinton, Judge Dunn, Dennis Levine, Lara Fernandez

Schwab Probably Lightens Trustee's Load

by Sean Williamson
Summer 2010 Intern for U.S. Bankruptcy Court for the Middle District of Florida, J.D. Candidate 2011, University of Florida, Levin College of Law

On June 17, 2010, the U.S. Supreme Court decided *Schwab v. Reilly*, 2010 U.S. Lexis 4974, a case dealing with objections to exemptions under Fed. R. Bankr. Proc. 4003(b). The decision settles a disagreement among the lower courts and abrogates a prior opinion of the Eleventh Circuit Court of Appeals. In *Schwab*, the Court considered whether a Trustee who failed to timely object to a debtor's claim of exemption for certain business equipment could later sell the equipment and retain, on behalf of the estate, the difference between the dollar amount received at auction and the amount indentified in Schedule C as the value of the claimed exemption, where the stated value of the claimed exemption was within the applicable exemption limits of the Bankruptcy Code and also matched exactly the stated current value of the equipment.

The specific facts underlying the *Schwab* decision are as follows. The debtor, Nadejda Reilly, filed for Chapter 7 relief after her catering business failed. On Schedule B of her petition she listed as assets cooking and other kitchen equipment ("business equipment"), which she listed as having a current market value of $10,718. On schedule C of her petition, Reilly claimed a "tools of the trade" exemption of $1,850 and a miscellaneous or "wildcard" exemption of $8,868. Both amounts claimed as exempt were within the permissible limits of the Code. The two exemptions for the business equipment totaled $10,718, which equaled the value she listed as the property's current market value. The Trustee was aware of an appraisal that indicated the business equipment could be worth as much as $17,200, but because the amounts claimed as exempt were within the permissible limits of the Code, he did not object. After the time for filing objections to exemptions under Rule 4003 had passed, the Trustee moved the court for permission to sell the business equipment in order to recover, for the estate, the value in excess of the claimed exemption. Reilly claimed that by listing the same value for the claimed exemption and the current market value, she established her intention to exempt the full value of the equipment and put interested parties on notice of such intention. She stated that because the Trustee

continued on p. 13

Schwab

continued from p. 12

failed to timely object, she was entitled to the full value of the business equipment, even if it was an amount greater than what the Code permitted or what she had listed.

The Court held that "[b]ecause Reilly gave 'the value of [her] claimed exemption[s]' on Schedule C dollar amounts within the range the Code allows for what it defines as the 'property claimed as exempt,' the Trustee was not required to object to the exemptions in order to preserve the estate's right to retain any value in the equipment beyond the value of the exempt interest."[1] Therefore, the Trustee was permitted to sell the business equipment, giving Reilly the amounts claimed as exempt and retaining for the estate any excess. The Court agreed with the Trustee that under §522(l) "the Code specifically defines the 'property claimed as exempt' as an interest, the value of which may not exceed a certain dollar amount, in a particular asset, not as the asset itself[;]" and therefore, "the value of the property claimed exempt, i.e., the value of the debtor's exempt interest in the asset, should be judged on the value the debtor assigns the interest, not on the value the debtor assigns the asset."[2]

Therefore, unless the value claimed as exempt clearly exceeds the limits set forth in the Code, the value is listed as "unknown," or the debtor has made it clear he intends to fully exempt the asset itself by listing it as "full fair market value (FMV)" or "100% of FMV," there is no need for the Trustee to object to the claimed exemption.[3] The majority opinion in *Schwab* noted that allowing such uncertain exemption claims to become fully exempt for failure to object "threatens to convert a fresh start into a free pass." The dissent, on the other hand, asserts that this decision "imped[es] the 'fresh start' exemptions are designed to foster."4 Also in the dissent, Justice Ginsburg wrote that "[t] he Court's decision drastically reduces Rule 4003's governance, for challenges to valuation have been, until today, the most common type of objection leveled against exemption claims."[5]

Schwab abrogates the Eleventh Circuit's prior opinion *In re Green*, in which a Chapter 7 debtor, Green, listed a pending personal injury lawsuit as having a current market value of $1 and also listed the same value for the lawsuit on her claim of exemptions.6 The Trustee did not dispute the fact that the claim was contingent and that $1 did not reflect the true value of the claim, but he failed to object to the exemption. The lawsuit eventually settled for $15,000. The Court stated that "a debtor who exempts the entire reported value of an asset is claiming the 'full amount,' whatever it turns out to be.[7] Relying on this premise, the court stated that Green had fully exempted her lawsuit and that because the Trustee failed to timely object to the exemption, Green was entitled to the full amount of the settlement.

The Middle District of Florida also touched on this topic in its decision *In re Zupansic*, which it distinguished from *Green*.[8] The *Zupansic* court stated "that a Trustee is [time] barred from challenging the value of property claimed as exempt only when the listed exemption equals the stated value of property, which would effectively render the entire asset exempt."[9] In that case, since the value claimed as exempt was different from the stated market value, the court found that the Trustee's failure to object to the exemption value did not "waive the estate's right to recover sums in excess of the claimed exemption."[10]

The meaning of *Schwab* to Chapter 7 trustees within the Eleventh Circuit is that they can avoid filing objections to exemptions in many cases. Pre-*Schwab*, Chapter 7 trustees in the Tampa Division of the Middle District of Florida customarily filed objections in almost every case to avoid the problem in *Green*. Now, trustees will have one less paper to file on a routine basis because they no longer need to file objections for the sole purpose of preserving the right to demand turnover of property when the true market value of the property exceeds the amount scheduled by the debtor.

1. *Schwab v. Reilly*, 2010 U.S. Lexis 4974, *3
2. *Id.* at *19-20
3. *Id.* at *43
4. *Id.* at *41, 50
5. *Id.* at *49
6. See *In re Green*, 31 F. 3d 1098 (11th Cir. 1994).
7. *Id.* at 1100 (stating that this was an "unstated premise" of the Supreme Court's holding in *Taylor v. Freeland & Kronz*, 503 U.S. 638).
8. *In re Zupansic*, 259 B.R. 388 (M.D. Fla. 2001) (The debtors claimed a $2,000 exemption for an automobile and listed it as having a market value of $ 2,525, therefore, not exempting the entire value of the vehicle. The trustee did not timely object to the exemption, but, after an appraisal determined that the vehicle's market value was $ 5,500, the Trustee sought to sell the vehicle and retain as estate property the proceeds that exceeded debtors' exemption).
9. *Id.* at 390
10. *Id.*

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Reaffirming Debt: It's Not As Easy As 1, 2, 3

by Kathleen L. DiSanto, Esq.
Jennis & Bowen

Even if a chapter 7 debtor remains current with payments to a secured creditor, the creditor may still be entitled to repossess the collateral if the debtor fails to redeem or reaffirm the collateral. While it is well-settled that debtors may not "ride through" chapter 7 without surrendering, redeeming, or reaffirming collateral securing debt,[1] determining when a debtor must file a reaffirmation agreement to avoid repossession, when a reaffirmation agreement is effective, or whether a hearing is necessary to approve the reaffirmation agreement has become more challenging because of the inconsistencies in the Bankruptcy Code and the new official reaffirmation agreement forms released in December 2009.

The new reaffirmation form consists of five sections:
(I) Reaffirmation Agreement: requires amount reaffirmed, annual percentage rate, terms of repayment, description of the collateral, and changes to most recent credit terms
(II) Debtor's Statement in Support of Reaffirmation Agreement: requires debtor to indicate whether debtor was represented by an attorney, state monthly income and expenses, and indicate that the reaffirmation agreement will not impose an undue hardship
(III) Certification by Debtor(s) and Signatures of Parties
(IV) Certification by Debtor's Attorney
(V) Disclosure Statement and Instructions to Debtor(s)

Paragraph 4 of Section V is inconsistent with sections 521(a)(2)(B) and 521(a)(6) of the Bankruptcy Code. Paragraph 4 states that that the signed reaffirmation agreement must be filed within 60 days of the first date set for the section 341 meeting of creditors. However, section 521(a)(6) of the Bankruptcy Code states that chapter 7 debtors have 45 days after the first section 341 meeting of creditors to redeem or reaffirm secured debt. But pursuant to Section 521(a)(2)(B), the debtor must perform in accordance with the statement of intention within 30 days after the date first set for the section 341 meeting. At least one court has recently acknowledged the 45 day period provided by section 521(a)(6).[2]

Determining whether the 30, 45, or 60 day deadline applies is important to debtors' counsel because of the interplay of other sections of the Bankruptcy Code. Pursuant to section 362(h), the automatic stay terminates if the debtor fails to timely file or perform in accordance with the statement of intention within the time limits proscribed by section 521(a)(2), which is 30 days. In light of section 362(h), debtors' counsel may be wise to calendar the 30 day deadline in an abundance of caution.

Subsection (a)(i) of Paragraph 6, Section V is also does not track the applicable provisions of section 524 of the Bankruptcy Code. Subsection (a)(i) states that if a creditor is not a credit union, the reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship, in which case the agreement becomes effective after court approval. However, pursuant to section 524(m) of the Bankruptcy Code, a reaffirmation agreement is presumed to be an undue hardship for sixty (60) days after the agreement is filed with the court if the debtor's monthly expenses plus the payment on the reaffirmed debt exceed the debtor's income, unless the creditor is a credit union. If the creditor is a credit union, section 524(m)(2) provides that the presumption does not arise.

Moreover, it is unclear whether a court must conduct a hearing if a reaffirmation agreement is presumed to be an undue hardship. Section 524(c) provides that a reaffirmation agreement should be accompanied by an affidavit or declaration signed by the attorney that states, among other things, that the reaffirmed obligation does not impose an undue hardship on the debtor. However, section 524(k)(5)(B) states that the declaration should also include a certification that if a presumption of undue hardship arises, the debtor is able to make the payment. If the presumption of undue hardship is established, but the debtor's attorney states that the debtor is able to make the payments, it is uncertain whether the court must conduct a hearing to approve the reaffirmation agreement, although one bankruptcy court in a published decision has determined a hearing is necessary.[3]

continued on p. 17

1 See Taylor v. AGE Fed. Credit Union (In re Taylor), 3 F.3d 1512 (11th Cir. 1993); In re Waters, 248 B.R. 916 (Bankr. M.D. Fla. 2000).

2 DaimlerChrysler Fin. Servs. Americas, LLC v. Jones (In re Jones), 591 F.3d 308, 309 (4th Cir. 2010).

3 In re Minardi, 399 B.R. 841, 855 n. 56 (Bankr. N.D. Okla. 2009).

Reaffirming Debt

continued from p. 16

While it is important for practitioners to be aware of the inconsistencies in the Code itself and between the Code and new reaffirmation agreement forms, the impact of these inconsistencies on debtors and creditors remains speculative at best and will likely never lead to protracted litigation as the parties generally resolve these type of issues without court intervention. But until courts have had the opportunity to resolve the apparent contradictions within the Code itself and between the Code and the new forms, awareness of the discrepancies among practitioners is essential.

People on the Move

• In May of 2010, Kathleen DiSanto joined the law firm of Jennis & Bowen, P.L.

• In May of 2010, Andrew Layden began his clerkship with Honorable Caryl E. Delano. Andrew graduated in May 2010 from the University of Florida College of Law.

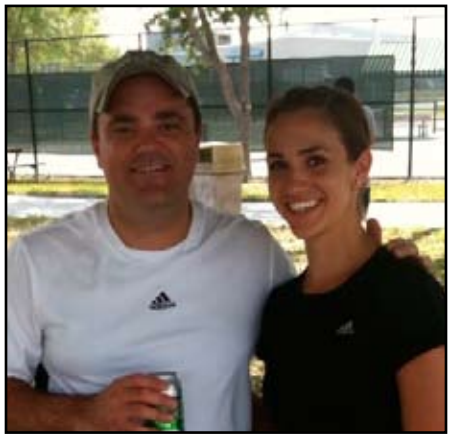
• Patricia Levy, formerly of Akerman, Senterfitt & Eidson, P.A., has received a promotion within the Administrative Office of the United States Courts. After 10 years with the AO's Bankruptcy Judges Division, she has accepted a position as Assistant General Counsel with the AO's Office of General Counsel. As Assistant General Counsel, she will still have the opportunity to use her bankruptcy experience in service of the Judiciary.

To have your firm's announcements included in the next issue of The Cramdown, please email Stephanie Lieb with Trenam Kemker at slieb@trenam.com.

2010 TBBBA Tennis Tournament

The TBBBA held its Annual Tennis Tournament May 21, 2010, at Hillsborough County Community College's Tennis Complex across from Raymond James Stadium. Bob Wahl and his team of volunteers organized another fun and exciting tournament. Judge Glenn's summer intern John Matthews took first place honors. Second place went to Mark "Mr. Consistency" Wolfson. Third place to the tower of power and former champion Edward Peterson, and fourth place went to the svelte and sylphlike Bob Wahl.

This year's tournament had a multitude of wonderful prize's for the participants and nearly everyone was a winner. Luis Martinez-Monfort won the "not so" coveted Broken Bench Racket Award and has challenged the next tournament field for redemption.

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The C.A.R.E. Program in the Time of the Great Recession

by Elena Paras Ketchum, Esq.
Stichter Riedel Blain & Prosser P.A.

In this time of unprecedented financial crisis, which began in 2007 (some have termed the "Great Recession"), judges, debtor's attorneys, creditor's attorneys, the Clerk's Office, the U.S. Trustee's Office, and every staff member in the offices of these various constituencies find themselves on the forefront of this economic crisis. It is well-known that members of the Tampa Bay Bankruptcy Bar Association are spending countless hours these days dealing with the various issues generated by these economic times, which are arising at lightning speed. What is perhaps not as well known is that members of our Association are also donating hours upon hours to local high school and college students teaching them about credit and credit card debt and empowering these students with the knowledge of fiscal responsibility. **The credit lessons could not come at a better time for these future generations!**

At the same time the financial bubble was beginning to burst, the C.A.R.E. program was introduced to the Tampa Bay Bankruptcy Bar Association. With the assistance of Judge K. Rodney May and the other Bankruptcy Judges, a volunteer group was formed in June 2007 to spearhead bringing the program to students in our community. Sub-committees were formed to formulate a powerpoint presentation to be used during the presentation, to choose give-aways for the students, to investigate avenues for bringing the program to area schools, to research funding opportunities for the program and to recruit a troupe of volunteer presenters. Each subcommittee performed its task wonderfully and the program was up and running with the first presentation being given in the matter of months at Brandon High School in September of 2007. Since then, the C.A.R.E. program has soared!

The success of the C.A.R.E. program is due solely to the outstanding efforts of our volunteers. Every Bankruptcy Judge for the Middle District of Florida has volunteered his or her valuable time to this program and all have presented to students in our community. In addition, approximately 60 attorneys are volunteers for the program. **A huge "Thank You" to each member of our judiciary for participating from the ground level and continuing to volunteer their time to this project.**

Since 2007, C.A.R.E. has been presented to 20 high schools, career centers and vocational schools throughout Hillsborough County. In addition, since 2007, the University of Tampa has invited C.A.R.E. to present each semester to its incoming freshman class. **It is estimated that C.A.R.E. volunteers have reached over 5,000 students over the past three years.** Volunteers have also presented the program during the Great American Teach-In and Law Week. We have been fortunate to have been able to coordinate with the Hillsborough County School System and S.E.R.V.E., the official volunteer arm of Hillsborough County Schools, which places volunteers throughout the public schools in Hillsborough County. In addition, C.A.R.E. was presented to participants of the Connect by 25 Youth Summit sponsored by the Junior League of Tampa Bay. Connect by 25 is a non-profit organization that assists children in the foster care system to learn life skills that will help them succeed when they exit the foster care system.

C.A.R.E. volunteers have received rave reviews from both students and faculty at the various schools throughout Hillsborough County. In addition, the volunteers have enjoyed reaching out to the students in our community to present this worthwhile program. All the C.A.R.E. volunteers deserve an incredible amount of praise for their commitment to the program and volunteering, particularly in these busy times for our practice. **While we all are seeing the effects of this financial crisis in our daily practice, it is inspiring to see our fellow colleagues reaching out to students in the community to pass along knowledge and lessons which will help those students make wise financial choices in the future.**

If you are interested in volunteering for C.A.R.E., please contact Elena Paras Ketchum (Chair of the C.A.R.E. program) of Stichter Riedel Blain & Prosser at (813) 229-0144. The program also welcomes new opportunities to present, so please keep us in mind if you know of any schools or other organizations which would benefit from the C.A.R.E. program.

How To Expedite Order Entry

by Lisa Pease
Law Clerk for Judge Catherine Peek McEwen, with Special Thanks to Mary Maddox, Judicial Assistant for Judge Michael G. Williamson

When submitting proposed orders, please follow the tips set forth below and comply with all applicable rules and procedures. This will enable judges and their chamber staff to review, approve and docket orders as quickly and efficiently as possible.

1. Include the full case number, e.g., 8:10-bk-00123-CPM. See Rule 9072-1.

2. Include the docket number of the underlying motion, application, objection, etc.

3. When uploading an order, be sure to pick a judge. Do not leave this field blank.

4. Make sure the name on the judge's signature block matches the name of the judge who heard the matter. Spell the judge's name correctly. Do not include "Honorable" before the judge's name.

5. Recite the event(s) leading to entry of the order, e.g., "after a hearing on [date]," or "after due notice and no response having been filed." See Local Rule 9072-1.

6. Do not use the term "ex parte" if you mean "without a hearing."

7. If the judge requests an order after hearing that states, "For the reasons stated orally and recorded in open court, the Court finds that the Motion should be granted." or similar language, do NOT submit an order that contains specific findings by the court.

8. The DONE and ORDERED line and/or the judge's signature block cannot be the only text on a page. See Local Rule 9072-1.

9. Stipulations and other documents that require the signature of more than one party cannot be signed electronically. These should be submitted with scanned signatures. See Local Rule 9011-4(f).

10. For Agreed Orders, include this sentence: "By submission of this order for entry, the submitting party represents that the opposing party consents to its entry."

11. Include actual interest rate, e.g., "5.25%." Do not submit an order for interest at the "Till rate."

12. Orders granting relief from stay must describe collateral at issue, e.g., legal description of real property (not just an address), make/model/VIN of a vehicle, etc., and must grant in rem not in personam relief.

13. Orders granting a continuance should leave a blank space for the clerk to enter the date for the continued hearing and must be supported by a motion that complies with Local Rule 5071-1.

14. Orders granting lien avoidance must be supported by a verified motion or motion accompanied by an affidavit and must specifically describe the nature of the lien, recording information (if applicable), and the property affected by the lien by legal description or itemization as appropriate. See Local Rule 4003-2.

15. Review Local Rule 7055-2 regarding the specific requirements for default judgments, including but not limited to, filing an affidavit of non-military service and motion for entry of default that states, among other things, that service was effectuated in compliance with applicable rules and the defendant failed to seek or obtain an extension of time.

16. If form orders are used and the Court repeatedly makes the same interlineations to correct those form orders, please update them.

17. See Electronic Order Submission Procedures at: www.flmb.uscourts.gov/proposedorders/documents/orderstpaftm.pdf

18. Review the Style Guide available at: www.flmb.uscourts.gov/procedures/documents/styleguide-tpa.pdf

19. Do not submit duplicate proposed orders.

20. PROOFREAD, PROOFREAD, PROOFREAD!

NOTE: Consider appearing at hearings with a proposed order in hand whenever feasible. In the event your client prevails, this may be a means of getting the order signed and entered right way. Check with each judge's chamber staff to find out which judges encourage such practice and which might not.

Meet The Law Clerks

The Law Clerk Handbook, published by the Federal Judicial Center, explains that a law clerk's role is to assist a judge with as many administrative, clerical, and legal tasks as possible. The Handbook also indicates that judges expect their law clerks to be helpful to attorneys who appear before them, but to avoid any situations that will compromise the judicial process. Within these guidelines, of course, law clerks may provide a necessary means of communication between judges and members of the Bar. With these preliminary thoughts, therefore, I introduce the Bankruptcy Law Clerks for the Tampa Division of the Middle District of Florida.

Terri Bryson has served as Judge Williamson's law clerk since 2009. Terri received a degree in Human Biology from Stanford University, and is a graduate of Stetson University College of Law. She previously served as a law clerk to the Honorable Douglas A. Wallace in Florida's Second District Court of Appeal.

Lisa Pease is Judge McEwen's law clerk. She received a degree in Business Management from the University of South Florida, and graduated from Florida State University College of Law. Lisa has worked as Assistant Ethics Counsel at The Florida Bar, as Senior Appellate Attorney for the Florida Department of Health, and as a Staff Attorney for the Southwest Florida Water Management District in Brooksville. She accepted the position as Judge McEwen's law clerk in 2009, and is the contact person for the Bankruptcy Judges' Mentoring Program and other educational programs organized by Judge McEwen.

Cissy Skipper is from the Tampa area, and has served as Judge Paskay's law clerk since 2004. She graduated from the University of South Florida with a degree in accounting and finance, and from Barry University School of Law in Orlando. Cissy is an accountant and former vice-president/branch manager of a bank, and is also a certified circuit and family mediator. As Judge Paskay's law clerk, Cissy's duties involve cases filed in the Fort Myers Division, and she typically travels to Fort Myers twice a month to assist with the Court's hearing calendar in that Division.

Kim Koleos is originally from Fort Lauderdale, Florida. She accepted a golf scholarship to attend Daytona Beach Community College, and transferred to the University of Virginia after two years at DBCC. Following her graduation from UVA with a degree in World History (concentrating in World War II and the Cold War), Kim worked for three years in Washington DC as a legislative aide in the House of Representatives. She graduated from the University of Florida College of Law in 2008, and has served as Judge May's law clerk since April of 2009. During her tenure, Kim has provided ongoing assistance to Judge May in his efforts on the Local Rules Committee.

Andrew Layden recently graduated from the University of Florida College of Law, and began serving as Judge Delano's law clerk in May of 2010. He is presently undergoing "double duty," since he is studying for the Bar Examination in addition to assuming his responsibilities as law clerk. Andrew is from central Florida, and majored in finance at Florida State University. While in law school, he worked as a summer intern at Baker Hostetler in Orlando. Equally as significant, Andrew was a member of the All–Campus Basketball Championship squad during his years at the University of Florida.

Finally, **Cindy Turner** has been a career law clerk for Judge Glenn since 1995. Although Judge Glenn transferred to Jacksonville in 2008, Cindy works in Tampa on the fifth floor of the Courthouse. She is originally from Florida, and graduated from Stetson University in DeLand as an English/Social Science major. After graduating from Mercer University Law School in 1983, she worked at Stichter & Riedel for approximately eleven years. Judge Glenn also has a law clerk in Jacksonville, **Kristyn Leedekerken**, who assists him with his casework and many administrative matters associated with his duties as chief judge.

On behalf of all of the law clerks, we understand our obligation to maintain public confidence in the judicial system, and hope to fulfill our roles with courtesy, impartiality, and professionalism.

Increase for Presumptively Reasonable (a/k/a "No-Look") Attorney's Fees in Chapter 13 Cases

by Chelsea Silverstein
Summer 2010 Intern for U.S. Bankruptcy Court for the Middle District of Florida, J.D. Candidate 2012, New York Law School

The Tampa Division Judges' Order Establishing Presumptively Reasonable Debtor's Attorney's Fees in Chapter 13 Cases (Case no. 8:07-mp-00002) calls for an adjustment to the amounts allowed in the order "utilizing the methodology set forth in section 104(b) [of the Bankruptcy Code] for cases filed on or after the effective date of the adjustment under section 104(b)." See decretal paragraph 9. The adjustment prescribed by § 104(b) goes into effect at each three-year interval ending on April 1, beginning in 1998. The adjustment reflects the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent three-year period (using calendar years).

Therefore, the adjustments to the amounts allowed in the order – sometimes called the "no-look order" – for cases filed after April 1, 2010, are as follows:

Affected Sections of the Order	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
1. a. For plans of a duration of 36 months or less:	$3,300	$3,525
b. For plans of a duration of 60 months:	$3,600	$3,850
c. For plans of a duration between 36 and 60 months:	The prorata portion of $300($3,600-$3,300) based on the months in excess of 36 divided by 24, plus $3,300.	The prorata portion of $325 ($3,850-$3,525) based on the months in excess of 36 divided by 24, plus $3,525.
2. For the limited list of "a la carte" matters for which an attorney may receive additional compensation:	For No Hearing: $250 For Hearing: $350	For No Hearing: $275 For Hearing: $375
3. The additional fee if non-Florida exemptions apply:	$250	$275
7. (e) The maximum plan allocation of fees for Trust Funds purposes.	$500	$525

For those interested in the actual equation leading to the adjusted dollar amounts, refer to the Consumer Price Index (CPI) for All Urban Consumers, for all items, reflecting December to December percent changes for 2007-2009 (Table 2) published by the Department of Labor. Those percentage changes are: 2007—4.1%, 2008—0.1%, 2009—2.7%

To calculate the percent change for the three-year period ending December 31, 2009, the following formula must be applied:

1. (Original Fee Amount * 1.041) = X

2. (X * 1.001) = Y

3. (Y * 1.027) = Z (adjusted price reflecting percent changes for 2007, 2008, and 2009)

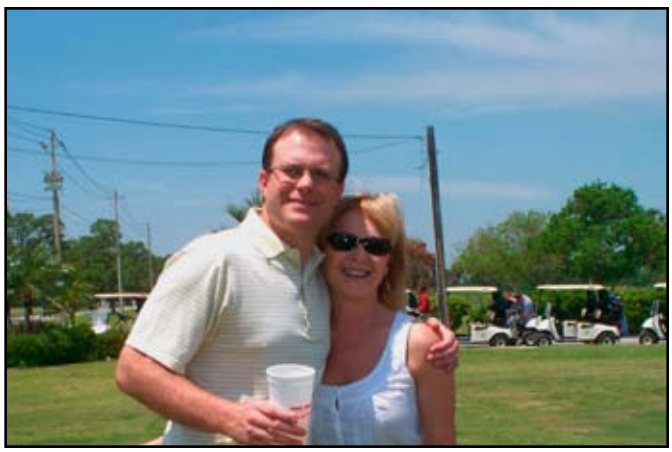
4. Round Z to the nearest $25 amount that represents such change.

The four-step formula can be entered into an excel spread sheet for future adjustments; simply change the percentage change for each year in the three-year range.

For an excel document reflecting this year's formula, please contact the author at chelsea.silverstein@law.nyls.edu.

2010 TBBBA Golf Tournament

The TBBBA held its 12th Annual Golf Tournament on April 23, 2010, at the Bay Pines Golf Course at MacDill Air Force Base. Well over 100 golfers participated in this year's event. As always, a special thanks goes out to Mike Markham and his team of volunteers for another successful and fun tournament.



Scenes from the April 2010
CLE Luncheon

2010 Annual Dinner

On June 10, 2010, the TBBBA held its annual dinner at Palma Ceia Golf and Country Club. Guests enjoyed a social hour and delicious surf and turf dinner. The highlight of the evening was the installation of new Officers and incoming President Elena Paras Ketchum. The attendees also celebrated with Judge and Rose Paskay, as the evening marked the Paskay's 60th wedding anniversary.

May 2010 CLE Luncheon with special guest Pam Bondi

The Cramdown
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