



Spring 2020

The Cramdown

*The Newsletter of the Tampa Bay
Bankruptcy Bar Association*

Editor-in-Chief,
Megan W Murray
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PRESIDENT'S MESSAGE

*by Jake Blanchard
Blanchard Law, P.A.*

We are honored to publish the Hon. Judge Paul M. Glenn Memorial Edition. Judge Glenn's legacy speaks for itself through this Cramdown edition, and I'm privileged to have known such a wonderful Judge, husband and father. Judge Glenn would have been the first to say "We are in this together." Be safe and be well TBBBA.

IN MEMORIAM

The Honorable Paul M. Glenn, Jr.
United States Bankruptcy Judge



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IN MEMORIAM

The Honorable Paul M. Glenn, Jr.
United States Bankruptcy Judge

February 25, 1945 – July 7, 2019



By Honorable Caryl E. Delano (republished with permission)

The bench and bar of the Middle District of Florida mourn the passing of Judge Paul M. (“Bill”) Glenn. On July 13, 2019, Judge Glenn’s life was celebrated at a memorial service in Jacksonville, attended by judges, Court staff, practitioners, family, and friends. He is survived by his wife, Karen, his children, Claire, Catherine, Jill, Christopher, and Kevin, and four grandsons.

Judge Glenn received his undergraduate degree *cum laude* from Florida State University, where he was elected to Phi Beta Kappa. Although he had been accepted at Harvard University, Judge Glenn chose to attend FSU in order to play basketball on a basketball scholarship. In his senior year, he was selected as the Most Valuable Player of the varsity basketball team. Judge Glenn’s team was described by Pat Conroy in the bestselling autobiographical novel, *My Losing Season*. Judge Glenn graduated from Duke University School of Law in 1970, where he was president of the Law School’s student body.

During the 1970s Judge Glenn practiced corporate, commercial, banking, and insurance law in Jacksonville and Miami. In the 1980s he served as the chief executive and chief administrative officer of two insurance companies, and in the early 1990s he returned to private practice. In 1993, Judge Glenn was appointed as a United States Bankruptcy Judge for the Middle District of Florida, Tampa Division. In June 2008, Judge Glenn transferred from the Tampa Division to the Jacksonville Division. From March 2003 to September 2011, he served as

Chief Bankruptcy Judge for the Middle District of Florida. Judge Glenn presided over many notable cases including Celotex Corporation, Amelia Island Plantation, and Sawgrass Marriott Golf Resort & Spa. In 2013, Judge Glenn was appointed to the Committee on the Budget of the Judicial Conference of the United States, on which he served until 2017.

Judge Glenn was active in local, state, and national bar and professional activities, including the National Conference of Bankruptcy Judges. He served as the NCBJ’s Director of the Endowment for Education, and as member of the Finance Committee, the Budget Policy Committee, the By-Laws Committee, the Outreach Committee, and the Next Generation Planning Committee.

In March 2005, Judge Glenn was inducted as a Fellow in the American College of Bankruptcy, and in May 2007, he was honored by the Hillsborough County Bar Association with the Robert W. Patton Outstanding Jurist Award.

Judge Glenn was also active in the American Inns of Court. He served as President of the Ferguson-White American Inn of Court in Tampa and of the Chester Bedell American Inn of Court in Jacksonville. In 2010, Judge Glenn was elected to the National Board of Trustees of the American Inns of Court Foundation. In 2014, Judge Glenn received the

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Judge Glenn

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Distinguished Service Award from the Bankruptcy Inn Alliance of the American Inns of Court at the National Conference of Bankruptcy Judges.

Judge Glenn's numerous accomplishments and honors are overshadowed by his contributions to our Court. He set an example for judicial professionalism, scholarship, and integrity that his colleagues strive to emulate.

Upon learning of Judge Glenn's passing, **Chief United States District Judge Steven Merryday** commented that "Bill's friendship was one of the singular rewards I have had during my term of service on the Court." Judge Merryday also noted that "during his 25 years of distinguished service, Judge Glenn brought to the Court kindness, enduring tranquility, and studied intelligence, for which both the Court and the community are grateful."

Chief Judge Michael Williamson described Judge Glenn as a "a kind and gracious person. In the 25 years I knew him, from my days as an attorney appearing before him to my days as a colleague on the bench, I never heard him utter an unkind word about anyone. Not surprisingly, when he became chief in 2003, he led us into a new era of civility and collegiality that has endured. His soft manner belied his ability to make difficult decisions—typically in rulings from the bench immediately following the close of evidence—which he would work up on his legal pad while we all looked on waiting in anticipation for an answer to the issues presented to him. And answer he did—in so many cases ruling immediately from the bench—explaining his rulings in a fashion that, while some may not have achieved their objectives, all understood the well-reasoned analysis that supported his rulings."

Judge Karen Jennemann recalls that she, Judge Glenn, and Judge Jerry Funk were all appointed as bankruptcy judges at the same time. In fact, they shared an investiture ceremony. Judge Jennemann commented that "Judge Glenn's passing truly is the end of an era for me. When we were appointed in 1994, I was a 'kid,' but Bill was our moral compass and 'patriarch.'"

Just a few weeks ago, **Judge Jerry Funk** and Judge Glenn celebrated their combined 50 years on the bench with Jacksonville Court staff. Judge Funk, who worked with Judge Glenn in Jacksonville for the past 11 years, says that Judge Glenn was a wonderful colleague and that his calming influence will be greatly missed.

Judge Glenn's family asked **Judge Catherine McEwen** to speak at his memorial service. Her moving tribute included the following:

A decade ago, I sent Judge Glenn an email telling him that I consider him to be the "Real Renaissance Man" and that that would be the title of my speech about him when he retired.

Bill had considerable, considerable gifts —

the gifts of a keen intellect; curiosity; unparalleled patience; gentleness; generosity of his time, talent, and treasure; perception and focus; a mathematical mind that loved to reconcile statistics and predict trends; the gifts of a responsible work ethic; compassionate leadership; a playful sense of humor; storytelling; the ability to teach and mentor;

the gifts of love of the arts — from classical or even country music to timeless poetry; the ability to play the piano; the ability to take the stage in musical theater; the ability to speak fluent French;

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Judge Glenn

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the gifts of a love of history; a love of books; the ability to recite from memory classic literature, a favorite Scripture, or even show tunes;

the gifts of the ability to fly an airplane well; superb athleticism — and not just confined to the hoops he loved to play in college; and,

maybe his best gift, a magnificent ability to demonstrate other-centeredness as opposed to self-centeredness. In particular, he was quick to compliment and promote his friends.

Judge Caryl Delano fondly recalls Judge Glenn both as a colleague and in her appearances before him as a practicing attorney. She says, “I first appeared as a lawyer before Judge Glenn in 1995. He was the kind of judge before whom lawyers loved to appear. He was always prepared, listened carefully, and treated everyone with respect. Win or lose, everyone who appeared before him, especially the parties themselves, felt that they had had their day in court. He never failed to compliment the attorneys on their work. The attorneys appreciated it, but I think these compliments meant even more to the clients. Once when I left his courtroom, the attorneys remarked that a hearing with Judge Glenn was like a neck massage. Whether you won or lost, you felt good afterwards.”

Cindy Turner, Judge Glenn’s long-time law clerk, reported that “Judge Glenn entered 1,057 written opinions during his judicial career. All of the opinions are focused solely on the law and its application. Judge Glenn would never have written or signed an opinion that contained any personal remarks or views about either the litigants or the lawyers. The opinions cover a range of cases, of course, but he never thought that any issue was unimportant.”

Kristyn Leedekerken also served as Judge Glenn’s law clerk. She shares that “Judge Glenn would most want to be remembered not for the countless accolades he received during his career, but for the personal impact he made upon those he encountered. Remember his wisdom in knowing how one’s actions may deeply affect others and choose to have a positive impact on the lives around you, by celebrating strengths and seeing the good. The best way for those who admired and respected Judge Glenn to honor his memory, is in a moment where you may typically lose your patience or temper, think of him, take a deep breath, and try to handle the situation as you think he may have.”

Barry Clark, who served as Judge Glenn’s courtroom deputy for his entire judicial career, stated that “Judge Glenn handled each case as if it were his first and only case on the docket. He complimented all who appeared before him, never raised his voice, never besmirched anyone, and made sure everyone knew and understood the reason for the ruling he made. Judge Glenn was my boss and my friend.”

Judge Glenn’s other staff members included judicial assistants **Paula Luce** and **Laura Stevenson**, law clerks **Alana Williams** and **Joyce Stephens**, and court reporters **Kim Johnson** and **Leisa Gebhard**. Paula, Laura, Joyce, and Kim were able to attend Judge Glenn’s memorial service, along with Barry, Kristyn, and Cindy.

Judge Glenn’s passing has left a hole in the heart of the Middle District. No doubt, each of the attorneys who appeared before him appreciated his intellectual and kind judicial demeanor. He will be missed.



We are sure it comes as no surprise to you at this point, but the TBBBA has made the difficult decision to cancel its remaining events for the 2019-2020 year and to postpone its TBBBA ANNUAL DINNER – RESCHEDULED TO AUGUST 20, 2020. The decision was not made lightly, and was made with the health and safety of our members and community in mind. We look forward to the Annual Dinner each year, so we share in your disappointment in this change of plans. Thank you all for your understanding and tireless support of the TBBBA, and thank you for everything you are doing in our community during this difficult time. We are excited to see you in August.

Judge Lori V. Vaughan Sworn in as Middle District of Florida Bankruptcy Judge Orlando, FL



On February 25, 2020, the Honorable Lori V. Vaughan was sworn in as the newest bankruptcy judge of the United States Bankruptcy Court for the Middle District of Florida. Prior to her appointment, Judge Vaughan was a partner at Trenam Law in Tampa, Florida. Judge Vaughan will preside in the Orlando Division and conduct hearings in Courtroom 6C of the George C. Young United States Courthouse.



PRO BONO SERVICE AWARD

Feher Law is proud to share that the 2020 Florida Bar President's Pro Bono Service Award honoree for the Sixth Judicial Circuit (Pinellas and Pasco Counties) is Kristina Feher. The Florida Bar recognizes Kristina Feher and other attorneys for their tireless commitment to providing legal services to those less fortunate. Kristina will accept her award on Thursday, January 30th at the Florida Supreme Court.

Kristina Feher, a bankruptcy and family law attorney, is the managing member of Feher Law, P.L.L.C. in St. Petersburg, Florida.

Each year, the Florida Supreme Court and The Florida Bar give special recognition to lawyers, groups, and members of the judiciary who have freely given their time and expertise in ensuring access to justice for those who otherwise could not afford it. The award is given to one recipient in each of the 20 Florida Circuits. Ms. Feher received her nomination in recognition of her pro bono work with Community Law Program, a legal aid society in St. Petersburg, Florida. The Florida Bar President, John Stewart, selected Kristina Feher for this award based on the nominations from various organizations and individuals from the Sixth Judicial Circuit.

Raised in St. Petersburg, Kristina believes it to be her responsibility to give back to the community she grew up and now lives in with her family. Her parents, Bela and Ilona Feher, raised her to think of others and do good in the community.

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Judge Glenn's Notable Cases

Amelia Island Plantation Company, Case No. 09-9601 (and related adversary proceeding).

Amelia Island Company was the developer and operator of Amelia Island Plantation, a 1,350-acre AAA Four Diamond Resort located on Amelia Island. The properties and operations of the Debtors were varied and complex. There is the Amelia Inn & Beach Club, villas, meeting facilities, spa, shopping (44,000 sq. ft. of boutiques and gourmet food), nine restaurants, tennis facilities, and golf courses. There were several secured creditors, substantial unsecured creditors, and interested residents and homeowners. The case presented many complexities. There were varied properties, interrelated uses in the properties, separate creditors that are secured by separate interrelated properties, and some cross collateralization with the estate properties. The Amelia Island Club and its membership also presented complexities due in large part to issues surrounding a non-disturbance agreement and future refunds of membership fees. Since the filing of the case there was substantial litigation, which eventually gave way to significant progress. With an initial offer of \$47.4 million, an auction was held in the courtroom that resulted in the property being sold to Omni Hotels for \$67.1 million (the owner of Omni was present in the courtroom for the auction), and an agreement was reached with the Amelia Island Club that resulted in the formation of a new equity club. Interestingly, after Omni purchased Amelia Island Plantation Company, it spent approximately \$80 million to renovate the hotel.

RQB – The Sawgrass Marriott Golf Resort and Spa, Case No. 10-1596.

The Debtors, RQB Resort & RQB Development, owned the Sawgrass Marriott Golf Resort & Spa in Ponte Vedra Beach, FL. The resort has approximately 350 rooms, plus villas with an additional 160 rooms, three restaurants, about 60,000 sq. ft of conference space, a spa, cabana club, pools, a golf shop, access to the TPC golf courses, and developable land. Since 2005 significant renovations have occurred at the Property. These renovations include: 16,000 sq ft. in additional meeting space, a 21,000 sq.

ft spa, an entire renovation of the lobby and all rooms. Goldman Sachs Mortgage Company was an under-secured creditor with a security interest in essentially all the property of the Debtors. In 2006, Goldman Sachs loaned the Debtors \$220.5 million, and as of the filing date of the petition the debt owed to Goldman Sachs was approximately \$195 million. There was ongoing litigation in the case since the petition was filed. The most significant hearing held was a two-day trial to value the property of the Debtors. Goldman Sachs sought to have the property valued at \$132 million, and the debtors sought to have the property valued at \$88.9 million. After considering the evidence, with special attention given to the appraisals of experts, the value was determined to be \$132 million. Unfortunately, the Debtors ultimately were not successful in finding another investor and had to turn the property over to Goldman Sachs. The Debtors' management was good, however, the case occurred during the height of the recession, and hotels, especially those dependent on large groups that accounted for approximately 60% of the revenue, suffered.

The Celotex Corporation, et al., Case Nos. 90-10016 and 10017 (and related adversary proceedings).

The Celotex Corporation (Celotex) was engaged in the business of manufacturing, marketing, and distributing building materials. Carey Canada Inc. (Carey Canada) was engaged in the business of asbestos mining until it ceased operations in 1986. Celotex and Carey Canada filed petitions under Chapter 11 of the Bankruptcy Code on October 12, 1990. At the time the petitions were filed, Celotex and Carey Canada had been named as defendants in thousands of lawsuits filed by asbestos personal injury claimants, and in hundreds of lawsuits filed by asbestos property damage claimants. In 1996, the Court confirmed the Modified Joint Plan of Reorganization for Celotex and Carey Canada. A principal feature of the confirmed Plan is the creation of an Asbestos Settlement Trust. "The Plan establishes a Trust to address, liquidate, resolve, and disallow or allow and pay Asbestos Claims, which will operate in accordance with the Asbestos Claims Resolution Procedures." The purpose of the Trust is to "assume the liabilities of the Debtors, their successors in interest and their affiliates, arising from or

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Notable Cases

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relating to Asbestos Claims and to use the Trust's assets and income to pay holders of Allowed Asbestos Claims in accordance with the Trust Agreement" Judge Baynes handled the case until 2001, when Judge Glenn took the case over.

There has been substantial and time-consuming litigation. Initially there was substantial litigation over insurance coverage. Since the early 2000s there has been substantial litigation over payments to physical damage claimants. Asbestos had been used in office buildings, apartments, college buildings and dormitories, school buildings, and residences. Examples of the parties involved in payment dispute litigation include: the City of New York, the Commonwealth of Pennsylvania, the State of Illinois, the State of Utah, Michigan State University, Clemson University, Rochester Institute of Technology, University of Cincinnati, Fairfield University, Claremont McKenna College, Prince George's Community College, the Dekalb County Board of Education, Maine Township High School District, Township High School District

211, Prince George Center, Inc. on behalf of itself and members of the certified class of federal lessors, 52 disputed claims with Anderson Memorial Hospital, and at this time Southern Wesleyan University has sought to file a class action on behalf of 37 colleges or universities.

While the largest amount of litigation involved physical damage claimants, there were also some issues involving personal injury claimants, for example: a motion by several claimants for payments, and a request by the trustees for instructions as to the appropriate manner to handle certain personal injury claims.

The trust filed an annual report that must be reviewed and approved yearly. The trust had over \$1 billion in assets in 2001.

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Memories & Reflections of Judge Glenn

by Kristyn Leedekerken

Upon first meeting Judge Glenn, you saw a very dignified, soft-spoken, gracious gentleman who thought before he spoke and chose his words carefully. Once knowing him you found all those things to be true but also learned of his passion not only for sports but also his vast knowledge and love for classical music – two of his favorites being the Pilgrims Chorus and the Russian Easter Overture. (In a memorandum written to his family and friends he called the overture something “worth becoming familiar with,” stating that it “begins softly, as does the day and finishes in a full and rich finale.”)

You also learned his very funny and sometimes irreverent sense of humor as highlighted by the country music lyrics in his beloved Cross Country Trail Guide. One of his favorites was *What Was I Thinkin*:

Becky was a beauty from South Alabama,
Her Daddy had a heart like nine pound hammer,
Think he even spent a little time in the slammer,
What was I thinkin?

He also enjoyed reminiscing about how he once became so good at handicapping horses with his mentor and close friend Jack Chambers that he “could have made a living at it, but it was much harder than practicing law.”

You learned he was a collegiate athlete, who earned the distinction of being the MVP during his senior year on FSU’s basketball team. But more interestingly, you discovered that the life lessons of teamwork, sportsmanship, hard work and perseverance that he learned through sports guided principles he lived by. During his tenure as Chief Judge, the qualities that made him an exceptional team leader shined. While recognizing the uniqueness of each Judge and the need for autonomy, he also fostered a strong sense of collegiality and unity in the District.

With respect to being a judge, he often said that he considered being a bankruptcy judge the “best of the judging jobs” because he did not have to put anyone in jail or handle divorces and child custody disputes. He was reorganizing businesses and giving debtors a fresh start. He also liked to recall, with humor, one of the few criminal cases he ever handled. It was early in his career, and he was handling the matter pro bono. Upon requesting that the judge release his client on his own recognizance, the judge replied “Mr. Glenn, you seem like a fine young man and are from a very good firm, however, I have to deny your request... are you familiar with a rap sheet?”

On the bench, Judge Glenn was wise, measured, and known to give much thought and consideration to his rulings. He also recognized that having empathy for the debtors who appeared before him was a crucial part of his job. His courtroom exuded a warm and welcoming atmosphere due to his presence, demeanor, and willingness to listen.

Judge Glenn’s favorite court story was when he auctioned off Amelia Island Plantation in his courtroom to the owner of Omni Hotels, who was present in the back of the courtroom. However, it was not only Judge Glenn’s ability to handle his complex cases with wisdom and “studied intelligence” but also his innate nature of truly caring how his decisions would affect people’s lives. A perfect example is how he handled a situation that arose in a chapter 11 case, in which the debtor was a small church, struggling to make payments to the creditor. The case arose during the height of the recession, and Judge Glenn recognized it was a unique situation. The creditor had no use for the property and would likely be unable to sell it anytime soon, and the church, which was doing good things for its congregation and the community, would have its doors shuttered. Instead of summarily ruling for the creditor, Judge Glenn went off the record, asked both sides to sit at one of the counsel tables, came down from the bench, and proceeded to help mediate a mutually acceptable agreement. This case occurred when Judge Glenn had been on the bench for almost twenty years. It showcases the fact that even after

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Memories & Reflections

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handling tens of thousands of cases, he always remained cognizant of and empathetic to how his decisions would affect the parties before him.

Being a Judge was entwined with the very fabric of his being and it extended well beyond the courtroom. In 2013, Judge Glenn was honored with the distinction of being appointed to the Committee on the Budget of the Judicial Conference of the United States. During his time on the Committee, he made regular trips to D.C. to meet with U.S. Representatives and advocate for funding for the Court. He also hosted annual Congressional Relations Luncheons. True to Judge Glenn's style of doing business, the luncheons were not large, hand-shaking events but small, intimate gatherings that consisted primarily of several members of the U.S. House of Representatives and the Federal Judges based in Jacksonville. The result was that real conversations took place and relationships were forged, which benefited the Court.

Judge Glenn was also very involved in the American Inns of Court at both the national and local level, serving on the Board of Trustees, and serving terms as President of his local inn chapters in Tampa and Jacksonville. He took pride in and respected the fact that the Inns of Court focused not only on principles of professionalism, but also recognized the importance of mentoring young lawyers and taking part in civic outreach initiatives.

Judge Glenn lived a full life, with many impressive achievements. I believe he would most want to be remembered not for the countless accolades he received during his career, but for the personal impact he made upon those he encountered. Remember his wisdom in knowing how one's words and actions may deeply affect others and choose to have a positive impact on the lives around you, by celebrating strengths and seeing the good. A way for those who admired and respected Judge Glenn to honor his memory is when a situation arises that requires patience and a measured approach, think of him, take a deep breath, and try to handle the situation as you think he may have. I believe you will walk away feeling good and hopefully in your mind you will see his smile and hear his laugh.





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By David Jennis & Daniel Etlinger
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Introduction. Since 2005 a chapter 11 debtor that meets the definition of a “small business” faces significant hurdles not imposed on other debtors attempting to utilize the benefits of chapter 11.¹ One of these hurdles involves the somewhat subtle interplay between Sections 1121(e) and 1129(e) of the Bankruptcy Code which can create statutory obstacles to the confirmation of a chapter 11 plan that otherwise complies with the requirements of Sections 1129(a) and (b). Being ensnared in this “trap” could, in some jurisdictions, result in the dismissal of a chapter 11 case and sink an otherwise confirmable plan that would, under the requirement of Section 1129(a)(7), be “in the best interests of creditors.” This article

will look at that tension as well as identify some of the nuances to successfully navigate the waters.

The Trap. Section 101(51D) of the Bankruptcy Code defines a small business debtor as a debtor (and any debtor affiliates) having aggregate noncontingent liquidated secured and unsecured debts as of the petition date of less than \$2,725,625 (subject to additional criteria and exclusions identified therein).² In a small business case, the debtor has the exclusive right to file a plan for 180 days from the petition date³ and must file a plan within 300 days.⁴ Once a plan is filed the plan must be confirmed within the 45 day deadline imposed under Section 1129(e) and the 300 day deadline imposed under Section 1121(e) which can only be extended if one makes a timely request. In order to extend that 300 day deadline and satisfy the requirements of Section 1121(e), the court must make specific factual findings as to whether a plan could be confirmed prior to the expiration of the statutory time frame.⁵

The trap comes from reading these two requirements in conjunction. They require an attorney to calculate these deadlines in advance and work backwards to ensure there is enough time to confirm a plan or timely seek an extension with the appropriate factual predicate.

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¹ Bankruptcy Judge John Olsen has described some of these hurdles as “a number of traps for the unwary.” In re Caring Heart Home Health Corp., 380 B.R. 908, n. 1 (Bankr. S.D. Fla. 2008). While the amendments to the Small Business Reorganization Act (“SBRA”) have certainly lessened the effects of the trap, they have not completely obviated them. This is particularly relevant in light of the current COVID-19 environment where these deadlines may not be on the forefront of a debtor’s mind.

² 11 U.S.C. § 101(51D) although the recent CARES Act has temporarily raised that threshold to \$7,500,000.

³ Id. at § 1121(e)(1).

⁴ Id. at § 1121(e)(2).

⁵ Id. at § 1121(e)(3); 380 B.R. at 910 (“I am aware of no other provision of the Bankruptcy Code in which a critical deadline is determined by when the court signs an order, rather than when that order is entered on the court’s docket. This is yet another example of the curious drafting contained in BAPCPA.”).



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Simply filing a plan and having a confirmation hearing scheduled within the applicable time frames may not be enough. In order to extend the 300 day confirmation deadline mandated under Section 1121(e), the court must find that whatever plan may be proposed has, "by the preponderance of the evidence", be more likely than not confirmable. A plan filed without sufficient time to provide required notice for solicitation, voting and objections, or that would otherwise be unconfirmable on its face (i.e. likely filed with the anticipation of further negotiations) may not provide a bankruptcy judge with a sufficient record to make the necessary findings under Section 1121(e)(3).

One court has commented on the trap that: "[i]t is little wonder that small business debtors view this new provision as one evincing Congress' hostility toward small business enterprises' use of chapter 11 to reorganize . . . Nonetheless, even bad law is the law of the land until it is rectified by later enactments or later developments."⁶ Being aware of the trap is only the beginning. Practitioners should be cognizant of the procedural hurdles required to avoid being caught. Specifically, extending the time period to file a plan and confirm as well as exclusivity, failure to obtain that extension and applicability to non-debtor proponents.

Extension. The time periods described above may be extended but only if (A) the debtor, after providing notice to interested parties, demonstrates by a preponderance of the evidence that it is more likely than not to confirm a plan within a reasonable time period; (B) a specific new deadline is imposed and (C) the extension order is signed before the existing deadline has expired.⁷ The first burden of preponderance of the evidence can be a heavy one. Even if the debtor timely seeks an extension, it may still need to file a plan to demonstrate to the court the likelihood of success. In addition, the debtor will need to propose a definitive extension deadline, bearing in mind any remaining negotiations and work such that further extensions should be mitigated. The last point was examined in detail in *In re Caring Heart Home Health Corp, Inc.* when the court held it has no authority to grant an extension for excusable neglect or inadvertence once lapsed.⁸ Simply put, the extension must be granted and signed before the deadline passes or it is lost.

Extension of the 45 deadline imposed under Section 1129(e) is technically a separate requirement from the extension of the filing and confirmation deadlines related to exclusivity under 1121(e), even though the latter is a precondition to the court granting any relief under Section 1129(e). Therefore, any motion for an extension of the 1129(e) 45 day confirmation deadline must specifically include a request to extend exclusivity under Section 1121(e) as

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⁶ *In re J & J Fritz Media, Ltd.*, 2010 WL 4882601, *2 (Bankr. W.D. Tx. 2010) (internal citations omitted).

⁷ 11 U.S.C. § 1121(e)(3).

⁸ 380 B.R. at 910.



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well.^{9,10} Understandably, if the court cannot extend the confirmation deadline once lapsed, so too a court cannot extend or reinstate exclusivity once lapsed.¹¹ One court has identified the factors in evaluating an extension of exclusivity as:

- (1) The large size of the debtor and the consequent difficulty in formulating a plan or reorganization for a huge debtor with a complex financial structure;
- (2) The need of the creditors' committee to negotiate with the debtor and the ability to prepare adequate information;
- (3) The existence of good faith progress towards reorganization;
- (4) The existence of an unresolved contingency;
- (5) The fact that the debtor is paying bills as they become due;
- (6) The length of previous extensions of exclusivity;
- (7) Breakdowns in plan negotiations, such that the continuation of the debtor's exclusivity period would result in the debtor having an unfair bargaining position over creditors;
- (8) The debtor's failure to resolve fundamental reorganizational matters essential to its survival; and,
- (9) The gross mismanagement of the debtor.¹²

Failure to Obtain an Extension. It is well settled that failure to file a plan before the 300 day mark without an extension constitutes cause for dismissal.¹³ But what about failure to meet the 45 day confirmation deadline? Debtors' attorneys will readily agree that an initial plan will often be met with consensual negotiations as well as objections that necessitate amendments and sometimes multiple iterations until it can be presented to the Court for final approval. Confirmation within 45 days of the filing of a plan may present an uphill battle if not insurmountable. As a threshold matter most

courts hold that the 45 day window begins when the original plan is filed and subsequent amended plans relate back.¹⁴ Per the plain language of the Bankruptcy Code a court may not confirm a plan after 45 days without an extension of both the 1129(e) deadline and the small business exclusivity deadline of 1121(e).¹⁵ However, courts are split if failure to obtain confirmation constitutes cause requiring a mandatory dismissal or not.

Some courts hold that not only is the 45 day window a bar to confirmation but the court must dismiss under Section 1112b: *In re CCT Commc'ns., Inc.*, 420 B.R. 160, 168 (Bankr. S.D.N.Y. 2009) (finding the court must dismiss pursuant to Section 1112(b)(4)(J)); *In re Roots Rents, Inc.*, 420 B.R. 28, 37 (Bankr. D. Idaho 2009) ("The various constructions of the Code urged by Debtor to circumvent its failure to timely seek and obtain an extension to confirm the Plan would require the Court to ignore the plain language of the Code and interpret it in a way that renders meaningless the express deadlines imposed.").¹⁶

Other courts, however, hold that the deadline does not necessarily mandate dismissal. For instance, the *In re Simaki, Ltd.* court analyzed the issue by posing an interesting hypothetical.¹⁷ Should a small business debtor file its plan in conjunction with its voluntary petition it would have 45 days to confirm. Should it withdraw that plan on the last day it would still have a full 255 days to file a new plan. But if the court were mandated to dismiss for failure to have met that 45 day benchmark it would deprive the debtor of the opportunity to try. This was very similar to the actual case in *In re Crossroads Ford, Inc.*¹⁸ That court noted in contrast to Section 362(e)(1) which has an automatic mechanism, Sections 1121 and 1129 do not.¹⁹ Therefore, when the debtor filed a plan but then withdrew it the court found "[t]here is no prohibition on filing more than one plan, and no

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9 *In re Fernandez*, 97 B.R. 262 (Bankr. E.D. N.C. 1989).

10 In one recent California case, the debtor moved for a 6-month extension of the exclusivity period. This was met with opposition by the creditor's committee as being excessive and essentially holding the creditors hostage. Of note, the creditor's committee also argued that once the committee was formed the debtor was no longer a small business debtor as defined by the Bankruptcy Code. *In re: O'Linn Security Incorporated*, 6:19-bk-17085-SC, Doc. Nos. 145, 152, 159 (Bankr. Cent. Cal. 2020).

11 *In re Congoleum Corp.*, 362 B.R. 198, 204-05 (Bankr. N.J. 2007).

12 *In re Hoffinger Indus., Inc.*, 292 B.R. 639, 643-44 (B.A.P. 8th Cir. 2003).

13 11 U.S.C. § 1112(b)(4)(J); *In re Burgos*, 510 B.R. 460, 462 (Bankr. P.R. 2010) ("Congress had intended to provide an exception to the 300-day period's calculation, it could have easily done so. Likewise, Congress could have delineated tolling events for that 300-day period. However, the fact that no such language was included allows this Court to conclude none were intended."); *In re Sanchez*, 429 B.R. 393, 398 (Bankr. P.R. 2010) ("There are no provisions in BAPCPA that define the consequences if neither the debtor nor any other party meets these filing deadlines. However, it has been established that 'cause' would exist for conversion or dismissal of the case under 11 U.S.C. § 1112(b)(4)(J) on the ground of failure to file or confirm a plan within any time fixed statute or by the court.").

14 *In re Star Ambulance Service, LLC*, 540 B.R. 251, 258-59 (Bankr. S.D. Tex. 2015) (analogizing the situation to that of an amended complaint).

15 *Id.*

16 See also *In re Caring Heart Home Health Corp., Inc.*, 380 B.R. at 910; *In re J & J Fritz Media, Ltd.*, 2010 WL at *3; *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 393 B.R. 452, 456 (Bankr. W.D. Tex. 2008).

17 522 B.R. 917, 923-24 (Bankr. S.D. Tex. 2014).

18 453 B.R. 764, 769-70 (Bankr. D. Neb. 2011).

19 *Id.*

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specific language in § 1121 or § 1129 mandating dismissal of the case if the first plan is withdrawn or fails to comply with Title 11.”²⁰ Thus, at least two courts have found that the 45 day window does not mandate dismissal, but, it should be noted that both of those debtors were well within the 300 day window to file subsequent plans.

Non Debtor Proponents. Finally, in cases where exclusivity has terminated do the same 45 and 300 day considerations apply to non-debtor plan proponents? Again, courts are split although the majority contends the same Section 1121 and 1129 constraints do not apply to third parties. For instance, in *In re Fla. Coastal Airlines, Inc.*, the court analyzed the issue by looking at the plain language of the statute which uses “the plan” (as opposed to “a plan”, “any plan” or “all plans”) and ultimately concluded that to read it otherwise would render Section 1121(e)(3)(A) absurd.²¹ See also *In re Riviera Drilling & Exploration Co.*, 502 B.R. 863, 873-74 (B.A.P. 10th Cir. 2013) (analyzing the issue once a Chapter 11 trustee had been appointed); *In re Simbaki, Ltd.*, 522 B.R. 917, 920-24 (Bankr. S.D. Tex. 2014) (evaluating the revised language in BAPCPA). But, there is at least one court which imposed the 300 day standard on a non-debtor plan proposed by the debtor’s sole shareholder.²²

Conclusion. Now that the small business designation is no longer an election but a mandate a potential small business debtor should

be aware of and evaluate these matters before filing. In terms of practical guidance an attorney handling a small business case should immediately calendar the critical benchmarks – including the 180 and 300 day benchmarks - with appropriate reminders well in advance. A motion under Sections 1121 and 1129 to extend confirmation and exclusivity deadlines should be prepped and ready to file if necessary. Likewise, a motion under Section 1125(f)(1) to determine a disclosure statement is not necessary or alternatively under Section 1125(f)(3) to conditionally approve the disclosure statement should be prepped and ready to file unless local rules obviate the need for such a motion.

While the implementation of SBRA effective February 19, 2020 may mitigate the “trap” for most small business debtors that file chapter 11 cases after that date, the peril still remains at the forefront for those small business cases filed before that date and for those who do not elect to proceed under subchapter v. Given the delays and uncertainty related by the current COVID-19 pandemic, both courts and practitioners could overlook this hidden landmine. Based on the caselaw identified herein, even the most sympathetic judge might not be able to provide relief if not effectively and timely sought. Therefore, practitioners should heed these warnings and beware the trap...

²⁰ Id. at 770-71.

²¹ 361 B.R. 286, 290-92 (Bankr. S.D. Fla. 2007).

²² *In re Randi's, Inc.*, 474 B.R. 783, 785-88 (Bankr. S.D. Ga. 2012) (reasoning that to hold otherwise would obliterate the small business debtor’s expedited tract established by Congress).

Memories of Judge Glenn from the TBBBA

Barbara A. Hart:

Judge Glenn kept a few personal memories or reminders on post it notes placed in a prominent location on his bench. One of them struck me as a perfect example of Judge Glenn’s judicial temperament—it read, “An impatient judge does no justice.”

Kathleen S McLeroy

When Judge Glenn was appointed to the Tampa bench, I was the Treasurer of the Tampa Bay Bankruptcy Bar Association. To commemorate Judge Glenn’s investiture, the TBBBA purchased a robe for Judge Glenn. As the Treasurer, I was tasked with ordering and paying for his robe. So, I made arrangements for him to be measured for a robe and received paperwork to process payment for it. You may recall that Judge Glenn was a rather large man when he first took the bench in Tampa. The paperwork sent to me had all of the necessary measurements for his robe and contained a note that referenced his size to make sure that the robe was “roomy” enough for him. After Judge Glenn

arrived in Tampa, he took me to lunch to thank me for my assistance in ordering his robe. I remember in particular that he chuckled and said that he was particularly grateful that I did not publish his measurements in the Association newsletter. I found his self-deprecating humor refreshing. Appearing before him, I was always amazed at his pleasant and endearing demeanor, whether on the bench or outside of the courtroom.

Bill Maloney

It was the TBBBA golf tournament. Susan Sharp was the ringer that year so, of course, the Judges recruited her to their team. I was playing with the Trenam team and observed Susan using an electronic range finder on her second shots. I later complained to Judge Glenn, told him I observed Susan cheating and asked him to intervene in the name of justice and disqualify her. He said what Susan did was not illegal and the only illegal thing in golf is swinging straight!

Judge Glenn's Cross-Florida Trail Guide or "Have More Fun on 301"

To: Thomas E. Baynes, Jr. (or whomever else it may concern)

From: Paul M. Glenn (with a little help from my friends—please contribute if you see things worth noting along the way)

Date: February, 2002 (updated from time to time)

General Information

Distance: 200 miles

Travel time: 3 hrs 30 minutes (for good citizens).

Three legs:

Tampa to Ocala, via I-75 approx. 100 miles

Ocala to I-10, via U.S. 301 approx. 80 miles

I-10 into Jax. approx. 20 miles

The civilized world can be found on:

WUSF on 89.7, from Tampa to Exit 61

WUFT on 90.1, from Exit 61 to Ocala (see Endnote #1)

WUFT on 89.1, from Ocala to Starke

WJXT on 89.9, from Starke to Jax.

Signs along the road indicate that the Highway Patrol can be contacted by dialing *FHP on a cell phone. I have never tried this, however, since I have always been able to attract the FHP without using the code.

Both I-75 and U.S. 301 are Hurricane Evacuation Routes, if you need to evacuate a hurricane.

First leg--Tampa to Ocala.

Travel time is almost two hours.

Summary:

Take I-275 north from downtown Tampa.

A few miles north of Tampa I-275 merges into I-75.

Continue on I-75 north to exit 358 (old exit 71), just north of Ocala.

No real need to stop anywhere (not even at the Stuckey's at Exit 63).

Details:

Take **I-275 North** from downtown Tampa

I-275 merges into I-75 about 10 miles north of Bearss Ave.

Exit 279 (old exit 58)--**Wesley Chapel** exit--pretty crowded, and too early to stop, but there's a **Cracker Barrel** here if you need tapes

Exit 285 (old exit 59)--**San Antonio** exit--**St. Leo's College** is here. Also, there's an ok truck stop, but it's still too early to stop

Exit 293 (old exit 60)--**Dade City** exit--nothing here

El Diablo Billboard--between exits 60 and 61 (actually, 5.5 miles north of exit 60) on the west side of I-75 is (was) a billboard for a new golf course in Ocala that states:

"It takes balls to play El Diablo."

Unfortunately, this billboard was taken down in late 2004.

Exit 301 (old exit 61)--**Ridge Manor** and **Weeki Wachee Springs**--a good truck stop, but doesn't take Am. Ex. Also, there's a Cracker Barrel here and **Millie's Mexican Cantina**.

There is a **rest area** between exits 301 and 309

Exit 309 (old exit 62)--**Webster** exit. **The Florida National Cemetery** is at this exit--don't stop here for long.

There was a billboard that was put up in the summer of 2002 just north of exit 309 (old exit 62). It was on the right side of the road, nine-tenths (.9) of a mile past the underpass at exit 309. It was a full size billboard, with yellow background and black lettering. It was taken down in the fall of 2003, but I have to continue to mention it here, because it is simply worth mentioning. I will quote it, because I certainly wouldn't write this on my own:

WONDER WHAT THE DUMBASS OFFICIALS AT THE DOT ARE UP TO NOW? HAGEN, HOLSCHUH, STRICKLAND, BURDICK, WAAS.

Log on at www.dumbassdot.com

That's what it said. Really.

Exit 314 (old exit 63)--**Bushnell** exit (also the exit for **Okahumpka** and the Dade Battlefield)--the **Stuckey's** is here, but it's pretty rough.

Note: The only place along I-75 that I have seen (or encountered) Highway Patrolmen with any regularity is between exit 63 and exit 66. Of course, this is no warranty that you will not encounter Highway Patrolmen elsewhere, but stay alert along this stretch.

Exit 321 (old exit 64)--the **Coleman Federal Correctional Facility** (don't stop here for long) and **Lake Panasoffkee**

Old Exit 65--there was no **old exit 65**; at least, there was no exit 65

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for northbound traffic. Exit 65 was for southbound traffic only, and was the exit to the Florida Turnpike. The Florida Turnpike merges into I-75 just before exit 66. I don't know how you get onto the Florida Turnpike if you're northbound on I-75.

Exit 329 (old exit 66)--just after the Florida Turnpike merges into I-75. **Much stuff here**

Between exits 329 and 341, at about mile 334, facing southbound traffic (and you can't see it if you're northbound) is a billboard advertising a secluded location where "**Happiness is No Tan Lines.**" (Alas, this billboard is gone now, too, so not only are there no tan lines, there is no billboard.) But a new billboard came up in the Fall of 2007 that advertises the Southern Hills golf course as a "**Hill of a Course.**"

Exit 341 (old exit 67)--10 miles or so before Ocala. There's much stuff here, too, including **Big Daddy Don Garlits' Museum of Drag Racing**. David Oliveria advises that the jet on display by the museum is a Navy A-7, with a squadron logo for the "Boomerangs" of VA 127.

Exits 350, 352, and 354 (old exits 68, 69, and 70). **Ocala.** Exit 352 advertises an Art Museum. The former **Mark III Industries** is on the west between exits 354 and 358. This was a Chapter 7 debtor with \$400 million in claims and no unsecured assets.

Exit 358 (old exit 71)--take this exit. This is also the exit for the **Florida State Fire College**. This exit is also home to the **Florida Citrus Center**, which advertises that it has Georgia peaches and Georgia Pecans (hence the name Florida Citrus Center). The Florida Citrus Center also has gator heads for sale. The Flea Market at exit 71 is open only on Saturdays and Sundays. I stop regularly at the Pilot truck stop on the south side of the road.

End of leg 1--take exit 358 (old exit 71)--turn right (east) onto U.S. 326--there are two truck stops on the right--either is ok--one has a McDonalds and the other has an Arby's--stop here for a rest stop.

Leg 2--Ocala to I-10.

A much more interesting leg--travel time is about one and one-half hours.

Summary:

Take U.S. 326 east for about 2 miles to U.S. 301, and turn left (north) on U.S. 301. A little over 5 miles north, after a traffic light, 301 forks to the right and 441 continues straight--fork to the right on 301. Take 301 north to I-10.

Details:

Take U.S. 326 (the Mike Stavola Highway) east for about 2 miles to U.S. 301. Toward the beginning of U.S. 326, note the **Ten Four CB Center** in the mobile home on the left side of the road. This center will provide updates on local road conditions and law enforcement advisories. There are also three truck stops, one with a Wendy's, one with a McDonald's, and one with an Arby's. Take your choice.

When you get to U.S. 301, turn left (north).

This is **Ocala horse country**. It's really pretty nice, and this is a scenic little strip. It begins, however, with the **Marion County Sheriff's Office** on the right. Obey the law. Next is the **M. J. Stavola Farm** on the right, and then the **Ocala Stud Farm** on the left. Soon after that, on the right, is **Almost Heaven**. After some more horse country, on the left is the **Pet Hotel**, and on the right is **Steve's World Famous Peanuts**.

Ocala horse country is really beautiful. In the late afternoons when the rolling green fields and white fences that are still in the sunlight are bright, but the sun is low and the shadows are long and the colors of the fields and trees in the shadows are deep and rich, and the horses are grazing, and the dogs are running in the fields, there is little that can match it.

You're now about 5 miles north of U.S. 326, and approaching a traffic light. After the light, U.S. 301 forks to the right and U.S. 441 continues straight--**fork to the right on U.S. 301.**

The first landmark is **Northfork**, on the right, a ranch that is for sale. Across the road from Northfork there is an advertisement for a "**Barn for Rent.**"

In season, there is much hay for sale along here.

Next, on the west side of the road, is the **Southern Home Baptist Church**, that bills itself as an "**Old Regular Baptist Church.**"

Then is the turn off for **Reddick**, to the left. Don't take this. Further, on the right, is the **Phoenix House**, former residence of **Darryl Strawberry**. Just after that is the Heart of Florida Youth Ranch.

You will proceed on the **L.B. "Skeet" Thrasher Highway**, pass **AmVets Post #25** (which has recently named one entrance "Coyotes Club," and more recently un-named it), and on into **Citra**.

Citra is next, and it is a remarkable town--perhaps the highlight of the trip.

The first thing to notice on the right as you enter town is the **Orange Blossom Motel**.

Next is Citra's **landmark building: The Vikal Building**. It houses **Gina's Nails** on the north side, and Box Office Video on the south. Box Office Video closed in December, 2003—I guess there

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aren't many television sets in Citra. **Joel's Gym** took its place, but in May, 2006, Joel's Gym closed—I guess there aren't many people in Citra who want or need to go to a gym. Finally in September 2006 Joel's replacement opened—it is "**SASSY'S Thrift and Gifts**" that features "Pre-Loved Clothing," "Horse Tack—New and Used," and "Houseware." It seems as though this one is aimed more at the market that may be characteristic of Citra, so it may stay around longer. Well, in September, 2007, the anchor tenant, Gina's Nails, moved out of the Vikal Building and into a new location just north of the main downtown intersection. It looks like Gina's will be replaced with **North Marion Feed**. Also, Sassy's moved as well, and the south side is now Capital Motors. We'll have to see how this develops. Well, by the summer of 2009, Capital Motors had closed and is being replaced by the Anchor Baptist Church.

Proceed through Citra, always obeying the law (45 mph).

Soon on the right you will see the **Citra Professional Center**, a well marked building that appears to be a portable storage shed and used car lot. To confirm what constitutes professionalism in Citra, in the summer of 2009 the sign for the Citra Professional Center was replaced with the sign for **Go Gators Auto**.

Next you will pass the **Top of the Hill Liquors** on the right.

Just after that is (was) a "don't miss" sign for **Carlton Stevens, Chain Saw Artist and Sculptor**. (Another sad sign of the passage of time—this sign has weathered and fallen, and can no longer be seen).

Next, on the left, is the **First Baptist Church**, an interesting and ornate building.

Then you come to **Citra's traffic light**. Citra has one traffic light.

It is just north of this intersection that you will see the new **Gina's Nails** on the right, in a new row of shops. So I stopped and talked with Gina, and she's a knockout—not what you would expect in Citra. She got tired of paying rent at the Vikal Building, so she built her own strip shopping center.

As you leave Citra on U.S. 301, you will see **The Orange Shop**, where you can get orange wine.

Next on the right is the **Global Recycling Co. of Florida**—no small thinkers here—that buys and sells pallets. As of July, 2005, sadly, the world must not have been big enough, because this business has apparently folded and has been replaced by **Trailco of Fla., Inc.**, a trailer repair business. And in 2008 Trailco went out of business and now there are "**Trucks For Sale**."

Then on the west side of the road is **Jean's Trailer Park**, which is now (December 2003) **Gail's Palms Resort**, for campers.

And finally, just outside Citra on the east side of the road, are "**Pigs for Sale**." Citra is a remarkable town.

In approx. 3 more miles is **Island Grove**, and the turn off to **Cross Creek**. As you would expect, the **Marjorie Kinnan Rawlings State Historic Site** is at Cross Creek. Also just north of this intersection, facing north for southbound traffic, is a billboard for The Yearling Restaurant, advertising "Florida Cracker Cuisine." Of course, I have

visited the Marjorie Kinnan Rawlings State Historic Site.

Pretty soon you'll see **Thelma's Fresh Produce** along the east side of the road.

In a little while you will come to **Lochloosa**. **Lochloosa** is barely a sign along the road, but it is home to one marvelous business. The notable building, and only building, houses the town's major business--**Stick City**. This business is so well known that its sign can be seen only by southbound travelers. Northbound travelers see only the sign for Lochloosa Marine. Well, sadly, in the summer of 2008 Lochloosa Marine closed, and the sign for Stick City was removed. Interestingly, Stick City is (was) located at the intersection of S.E. 167th Ave. with Highway 301. Why on earth is Lochloosa's only street named S.E. 167th Ave.

And in the late afternoon I have driven the short distance to the shore of Lake Lochloosa, and watched the sun set over the lake and felt the cool breeze and, as in Ocala, enjoyed the deep blues and greens of the colors of the water and the trees in this peaceful setting.

Along 301 on the west side of the road is **Yankee Landing**, a respectable looking fish camp. A little later on the east side of the road, at the Admiral Motel, is **Tony's Artistic Taxidermy** and the **Taxidermy Museum**, where they advertise that you can see "mounted animals."

Next is **Hawthorne**, home of **Hawthorne Bingo**. Hawthorne Bingo has recently moved from the major downtown intersection, where 301 goes under the overpass for S.R.20. Just before that intersection is the **Burger Barn**, a small barn-like drive-through that offers country-style burgers. Still at the intersection is **Brown's Browse About and Small Engine Repair**, a place you will surely want to miss. Hawthorne Bingo is now just north of town. Also just north of town is **Cracker Boys' Country Café** (which looks a lot like a Cracker Barrel Restaurant). (Well, perhaps this was too much like a Cracker Barrel Restaurant, because in October, 2005, the sign was covered with a sheet, and on the sheet was painted "**Cason's Southern Grill**." And without the old name, sadly, in 2009 Cason's closed.)

Shortly after Hawthorne you will hit a **7.2 mile straightaway** into **Orange Heights**. A business named **Bob's Boots** stands at the foot of this straightaway. The **Eden Baptist Church** also rests near the start of the straightaway. Along the straightaway are **Rex Hill** and **Campville**. Near Campville is where I once received a personal traffic advisory: "Now Judge Glenn, you know better than that." The straightaway ends at the **Xroads Groc** in Orange Heights.

Orange Heights is literally a crossroads, with a traffic light, two convenience stores, and the **Xroads Groc**. In the summer of 2003, another business, **Adult Video**, opened here. Libby Jenkins tells me that I must add **Mrs. Brown's Produce Stand** to this memo. She

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says that it is about one mile east of the Orange Heights intersection, on State Road 26. It is on the north side of the road and may not be marked, but has collard greens, beans, white acre peas, tomatoes, cucumbers, okra, citrus potatoes, strawberries in season, and both shelled and unshelled pecans. Libby brought me a delicious "Chinese Honey Orange" from Mrs. Brown's. Well, the Xroads Groc was forced out of business in 2006 or so by the two convenience stores, and now (May of 2008) is up for auction. The Xroads Groc must not have sold, because in 2009 it is vacant, and is "For Sale." Interestingly, in a vacant lot to the North of the old Xroads Groc, there is a sign that states that the lot is the future home of a new bar that will be opening in 2008. In mid-2009, the lot is still vacant, but the sign is still there: "**Sports Bar, Coming Soon, Spring 2008.**"

Shortly after Orange Heights is the **Kickin' Bass Farm** on the west side of the road, but this is hard to see if you're going north. On the east side, however, is the **Wild Animal Retirement Village** which appears to have closed a few years ago.

Then there's a 2.5 mile straightaway, a bend in the road to the left, and another 2.5 mile straightaway into Waldo. Just after the first straightaway and bend in the road, on the right, is the **Wild Animal Trader**. This trading post features "Exotic Skin Products" and "Alligator at its Best." It also advertises "We Buy Rattlesnakes--carry to back." Well, exotic skin doesn't do so well in rural Florida, and it went out of business in 2005 or so, and is now (2008) for sale. At the end of the second straightaway is **Arbogast Piano**. One might ask: "What kind of a name is Arbogast?" and, here in Waldo, "To whom do they sell pianos?" Just to the north of Arbogast Pianos is (was) a pet grooming business to note, **Clippity Do Dawg**. (Well, Clippity Do Dog didn't last too long. It folded in early 2005, and has been replaced by **Crime Ink**, a tattoo and body piercing business.)

Welcome to Waldo. Obey the law. (45 mph). After the overpass, where S.R. 24 merges into 301 from the right, is a convenience store that is a convenient and friendly rest stop. There they will probably remind you to obey the law. Across the highway from this convenience store is **Bargain Barry's Discount Grocery**. (Well, in the summer of 2006, Barry gave up on his bargain discount grocery, and the business is now **T.J.'s Bargain Bin**.) Along this stretch is (was) **Tom's Cypress Village**, where you can find cypress furniture and other fine carvings. In the middle of Waldo is a section of the road where the speed limit **increases to 55**. The speed limit **goes back to 45 after a half mile or so. Obey the law.** At the end of the 55 mph zone is the once-popular-but-now-closed **Bobby's Hideaway**. (John Macdonald tells me that he and other Florida law students used to stop at Bobby's Hideaway in the 1970's in their travels around Gainesville when they were in Law School.) Just after Bobby's Hideaway, on the right, is a Lori-come-lately business, **Lori's Lights**. This garish outdoor lights business is actually brand-x, a copy cat business of the original Linda's Yard Arts which you will see just north of Lawtey. Next, on both sides of the road, is the **Waldo Flea**

Market, the business that must have the second largest revenues in Waldo (after speeding tickets, which must generate the largest revenues). Where else but the Waldo Flea Market will you find "Gazeebos to Go." Finally in Waldo is **Lee's Produce**, that features, in addition to its produce, "All kinds of Nuts."

Well, the summer of 2006 was an eventful summer for Waldo, and it may now rival Citra as the highlight of the trip—at least for awhile. Bobby's Hideaway had been vacant for a year or so. Then in the spring, the building was painted all white. A little later, in the early summer, the name of the new business was painted on half of the building in large red letters: **Café Risqué**. But the business did not open, and after awhile a large sheet was hung over the half of the building and covered the name. Apparently, Café Risqué was not uniformly popular in Citra, and the building had been vandalized. Then after a few weeks, in August or so, the following message was painted in large letters on the sheet that hung over half of the building (this is an exact quote):

Bill Cervone Why haven't you Arrested
Thomas Mayari yet For Terrorizing My
Building ! Get off your Lazy Ass,
Do Your Job and Arrest him !

And then, a couple of weeks later, two large billboards went up on highway 301, one south of Waldo (just north of Orange Heights) and one north of Waldo (at about Hampton Lake). These billboards had yellow backgrounds and large red letters, and said the following (and this is also an exact quote):

Are You Tired Of Being Screwed
By The Govt. And The County?
www.AlachuaCoJusticeSucks.com

The counter girl at the BP convenience store in the middle of Waldo tells me that Bill Cervone is the State Attorney for Alachua County.

Also, apparently incidentally, the owner of the Café Risqué died of a heart attack in his sleep one Saturday night in October. John Macdonald told me this, either because it made the news in Jax., or because John was following this saga as closely as I was, and the counter girl at the BP confirmed it.

I'll give updates on this as it develops, and to get one side of the story, you can go to www.AlachuaCoJusticeSucks.com.

(Meanwhile, the war in Iraq is still raging, and major elections are set for November 7, 2006.)

Now back to the Guide.

Between Waldo and Starke are several notable locations:

1. The first is hard to see because it's a little overgrown, but just after Waldo, on the right, is "**Shongaloo**." Shongaloo appears to be a fish and goat farm. (The Oasis Lounge is on the left at the first bend in

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the road after Waldo, and Shongaloo is the second driveway on the right after that bend.) The Shongaloo sign has fallen as of early 2005, but I hope they put it back up.

2. Then on the left is the **Hampton Lake Bed & Breakfast**. Why would there be a bed & breakfast here. I took a side jaunt to view the Hampton Lake Bed & Breakfast, and it was not worth the time.

3. Shortly after Shongaloo on the right hand side of the road, facing south so it can be seen by northbound traffic, is a billboard, and again I will quote this, because I would not write it myself:

Lawtey
Speed Trap
14 Miles Ahead

Of course, facing north so that it can be seen by southbound traffic, is another billboard:

Waldo
Speed Trap
7 Miles Ahead

4. About three miles farther north, on the left side of the road, is the **Red Dog Saloon**. This is a real saloon looking saloon.

5. On the north side of the parking lot of the Red Dog Saloon is a billboard facing northbound traffic. For years, this billboard directed travelers to "**Have More Fun on Highway 301**." The message on the billboard has recently (Fall of 2003) been changed, however.

6. About a mile north of this is the **Five Winds Lodge**. Five, that's five, winds; not four. Perhaps the fifth wind also comes from the south. This lodge is now (December 2003) overgrown and in disrepair. The old lodge can barely be seen now.

7. Across Highway 301 from the Five Winds Lodge is the home office of **Davis Express**, apparently a sizeable trucking business. Their employment ad is on their sign: "**Join Our Team--Get Paid**." The sign was there for years, but was removed in the summer of 2009. I guess their drivers are no longer "gettin' paid."

And before you get to Starke you must go through **Hampton**. This is another metro where you must obey the law. And Hampton has now made National News. Yes, on March 10, 2014, The New York Times featured Hampton in an article:

A Dot on the Map, After Scandal, Could Be Wiped Off

It's easy for motorists driving down busy Route 301 to miss this speck of a city in rural north-central Florida: Fiddle with the car radio, unwrap a pack of gum, gaze out the window at the sunset and,

whoosh, it's gone.

And so it fell to the police to force hurried travelers to stop and savor the 1,260-foot ribbon of roadway belonging to this city. Hidden by trash bins or concealed in a stretch of woods, the officers—a word loosely applied here—pointed their radar devices. Between 2011 and 2012, Hampton's officers issued 12,698 speeding tickets to motorists . . .

If you make it through Hampton, next is **Starke**, the County seat of Bradford County. Lots of junk here. One of the first businesses you will see when entering Starke is **Radiator Shack**. Some similarities with another name, but no other similarities, and no real need for an injunction, I guess. The Florida State Prison is just west of here. This is the home of **Old Sparkey**, I think. Don't stop. **Terry's Huntin & Fishin** opened in 2007 in north-downtown Starke, but it closed in 2008.

Interestingly, just north of Starke on the west side of the road, is the Smith Brothers' Body Shop that has an old **Pure Oil** sign in the yard. A little later, on the east side of the road, is (was) **Textile Town**, which advertised "**Ugly Florida Beach Towels**." A friendly place, their sign says: "**If you can't stop, wave**." Well, too many people waved and did not stop, so Textile Town is (early 2005) out of business. It has been replaced by **Celebration Fireworks**. Next is **Norman's Produce**, that features a plywood photo front with a painted muscle man and bathing beauty with the heads cut out so you can place your head through to get a photograph. Finally, along this stretch on the right, there are "**Butterflies for Sale**."

Then is **Lawtey**, home of the **Lawtey State Correctional Institution**. This may be the home of Old Sparkey, I don't know, but obey the law in Lawtey (45 mph), just in case.

Just after Lawtey, on the right, is **Linda's Yard Arts**--this is a don't miss place. It is about 1.2 miles after the first 55mph sign on the north end of Lawtey.

And just after that on the west side of the road is **Revin' Kevin's Truck, Trailer, and Tire Repair**.

About a mile north of Linda's, on the west side of the road, is the **Bradford Mud Bogg**. Here they have mud races on Sunday afternoons.

Somewhere in here is a sign for the **Pit Stop Café**, "**Home of the Fried Tater Sandwich**" but I haven't seen it yet.

Next you enter **Clay County**

Soon there is a cross road with **Camp Blanding** on the left.

Well, Lawtey comes to its own defense. After the Camp Blanding crossroad, and after Whitley Steel, on the west side of the road

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and facing southbound traffic so you can't see it very well if you're northbound, is a new (spring, 2005) billboard that declares:

Lawtey
Not a Speed Trap
Safety Is Our Concern

The **City Limit for Jacksonville** is next, but don't let it fool you into thinking that you're in Jax yet--Jax and Duval County have the same boundaries.

Maxville, a convenience store and a restaurant, is next. On the west side of the road, just after the Maxville gas station, is the turn off for **Frenchy's Catfish Heaven**. At Maxville, there is also a turn off for Jax. Don't take this. Also at Maxville is (was) a billboard (for southbound traffic, so it's hard to see if you're heading north) that again states: "**Have More Fun on Highway 301.**"

A few miles later you get to I-10. You can't miss it because there's a lot of stuff here, including the TA (not T&A) Travel Center. This is the end of leg 2.

Leg 3--I-10 into Jax.

Leg three is a breeze--20 minutes.

Summary:

Take I-10 into Jax.

Take the left lanes at the end of I-10 to go north on I-95 to Savannah.

Details:

Just before you get to I-10, turn **left onto the entrance ramp**. Don't be fooled. The entrance ramp swings around to the right and heads you east. This is simply to remind you that you've been having more fun on Highway 301.

There is (was) a **rest stop** in a few miles on the right. This is (was) the last good place to rest.

Take I-10 until it dead ends into I-95.

Take the left lanes at the end of I-10 to go north on I-95 for the downtown exits to Jax, or on to Savannah.

Take the right lanes at the end of I-10 to go south on I-95 to Daytona Beach and west on I-4 through Orlando and back to Tampa (220 miles, 4 hours).

ADDENDUM

Well, of course we have more fun on highway 301, with the

landmark Vikal Building, the chain saw artist, the Kickin' Bass Farm, Shongaloo, Frenchy's Catfish Heaven, the Five Winds, Linda's Yard Arts, and other attractions, but highway 301 may not have a corner on names.

In the Summer of 2002, I drove to Charleston, South Carolina. Between I-95 and Charleston, there are some remarkable names.

I began to notice names when I crossed the **Coosawatchie**, the **Coosaw**, and the **Combahee Rivers** (the Combahee River appears to be formed by the combination of the **Salkehatchie** and the **Little Salkehatchie Rivers**). I next crossed the **Ashepoo River**, and entered (and quickly passed through) the town of **Ashepoo**. On along the road I crossed the **Edisto** and the **Stono Rivers**. (While most of the names seem to have Native American origins, perhaps the Stono River was named in the 1960's). The exit from I-95 was near the towns of **Pocotalige**, **Yemassee**, and **Early Branch**. A little further down the road is the turn off for the town of Round O. (Yes, the town of Round O.)

As you know, islands are sometimes called keys, and the first key as you enter South Carolina is named **Dufuskie** (which, I am told, believe it or not, is Gullah for "the first key.") A little further north is **Dataw Island**, and further still is **Wadmalaw Island**. I stayed at **Kiawah Island**, which is really pretty nice. Last in line before Charleston is **Folly Island** and **Folly Beach**. 'Nuff said.

All this is tucked into the southeast corner of South Carolina.

In the northwest corner of the state are the towns of **Rocky Bottom**, **Tigerville**, **Fingerville**, and even **Townville**, and the towns of **Long Creek**, **Six Mile**, and **Nine Times**. The best place to stop looks like the town of **Hickory Tavern**.

The rest of the state also seems to have some notable names, with a lot of **wyns** and **wahs**, a couple of **Pee Dees**, and even a **Broad** here and there.

For a good time, come see me and I'll show you my map.

ADDENDUM NO. 2

In the fall of 2002, I received a Good Citizenship commendation in Waldo.

I regularly stop at the new Hess convenience store in Waldo where the Gainesville Road merges into Highway 301 (just north of Hardee's and across 301 from Barry's Bargain Discount Store). I've gotten to know the Friday afternoon clerk pretty well. Often there is a Police Car in front of the store, keeping law and order. In the fall of 2002, Sergeant Meehan was in the store. I did not know him, so I

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introduced myself and we talked for awhile. I described some of the highlights along 301, and how we have more fun on Highway 301. I also recounted some of my experiences along the way, and assured him of my impeccable recent record in Waldo. He was so impressed that he gave me a Good Citizenship commendation on the spot. I don't have a plaque, but this is certainly a memorable event.

Addendum to Addendum No. 2. As of July, 2005, I have a "Get Out Of Jail Free" card for Waldo. This is a card that I have to show you in person.

The Cross-Florida Trail Guide or Have More Fun on 301

Endnote #1

Sometime in 2002, while traveling through Ocala, I needed a break from the PBS station and from the tape that I was listening to (I think the tape was one in a series on the Foundations of Philosophical and Religious Thought in Western Culture), so I tuned into a Country Music Station (fm 90.1). I heard a sad, sad song, about a fellow who found out that his girlfriend was going out with someone else. He found out because one night he drove by her house, and noticed:

That ain't my truck in her driveway,
Looks like this night just ain't my day.

That ain't my shadow on her wall,
Lord, this don't look good at all.

She's my girl; she's my whole worl';
But it ain't my truck.

I was so moved by this song that periodically I listen to the station while driving through Ocala. Recently I heard another song worth noting:

The drinkin' bone's connected to the party bone;
The party bone's connected to the staying out all night long;
And she won't think it's funny, and I'll wind up all alone,
And the lonely bone's connected to the drinkin' bone.

And now (April, 2004) I have to add a third, which is a real show-stopper. On April 21, 2004, the Third Annual Flame Worthy Awards

Ceremony was held in Nashville. To remind you, in case you need reminding, the Flame Worthy Awards are the fans' choices of favorite videos by country stars. These were MC'd by the "flamboyant-and-proud-of-it" Dolly Parton, who boasted that "it takes a lot to look this cheap." Well, the winner of the "Breakthrough Video" Award was "What Was I Thinking." This should be added to the list of great vocal music—Nessun Dorma, Vesti La Giubba, and What Was I Thinking. I'm not sure of all the words, but it starts like this:

Becky was a girl from South Alabamer,
Her Daddy had a fist like a nine pound hammer,
Think he even spent a little time in the slammer,
What was I thinkin'?

She snuck out one night and met me at the front gate,
Her Daddy came out waiving that twelve gauge,
We tore out of the drive and he peppered my tailgate.
What was I thinkin'?

Well I knew there'd be Hell to pay,
But that crossed my mind a little too late,
'Cause I was thinking 'bout that little white tank top
sitting right there in the middle by me.
Well, I know what I was feeling—but what was I thinkin'?

And in March 2005, I caught a refrain from another worth noting:

Papa loved mama, mama loved men.
Mama's in the graveyard, and Papa's in the penn.

Well, in September, 2005, I heard some others that I've got to add here:

1. Billy's Got His Beer Goggles On

2. You and me and the lights down low,
With nothin' on but the radio.

and 3. Tequila Makes Her Clothes Fall Off

In March 2006, I didn't hear this one, but Judge McEwen told me that there is a song entitled:

The More I Know About Women, the More I Love My Truck.

In April 2006, I heard these lyrics:

There ought to be a law, get the sheriff on the phone,
Oh my Lordy how'd she ever get them britches on.

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And these:

Weekend's here. Good God O'Mighty,
Let's get drunk and be somebody.

And in July 2006, there was a song entitled:

There's Too Much Blood in my Alcohol Level

In early December, 2006, I hit the jackpot on satellite radio. I was running through channels when I hit a "drinking hour" on a country music station, and heard the following songs:

Bar-light, Bar-bright, First Bar I See Tonight

Think I'll Just Sit Here and Drink

I Hear a Beer and It's Calling My Name

Bubba Shot the Juke Box Last Night

In early 2012, Lovely Laura, one of the world's best J.A.s, told me that a "friend" of hers who was driving from Tallahassee to Tampa heard a song that has to make the best ever list:

There Ain't Been No Trash in My Trailer Since I
Threw You Out

All of these remind me of a couple of songs that I heard in North Carolina when I was in law school a few decades ago:

I've got the hungries for your love, and I'm waiting
in your welfare line.

and the song by a fellow who finds out that his girlfriend doesn't read his letters, but just throws them away:

So I'm going to write her one last time, and I'll
begin this way:

Dear Waste Basket, Care of Mary Lou . . .

and the song by a fellow who finds out that his girlfriend doesn't wear their engagement ring when she goes out with others:

Does my ring hurt your finger when you go out at night?

When I bought it for you, darlin' it seemed to fit just right.
Should I take it to the jeweler so it don't fit so tight?
Does my ring hurt your finger when you go out at night?

People Magazine, September 23, 2013, had this to say about Sheryl Crow:

"The Missouri-born pop-rocker has ventured only occasionally into country music since her '93 debut album. Now Sheryl Crow meets Nashville head-on with an album that proves she has country cred to spare. The nine-time Grammy winner is at her best on "Waterproof Mascara," a tear-stained tale of a single mom reassuring herself that she and her son will be okay."

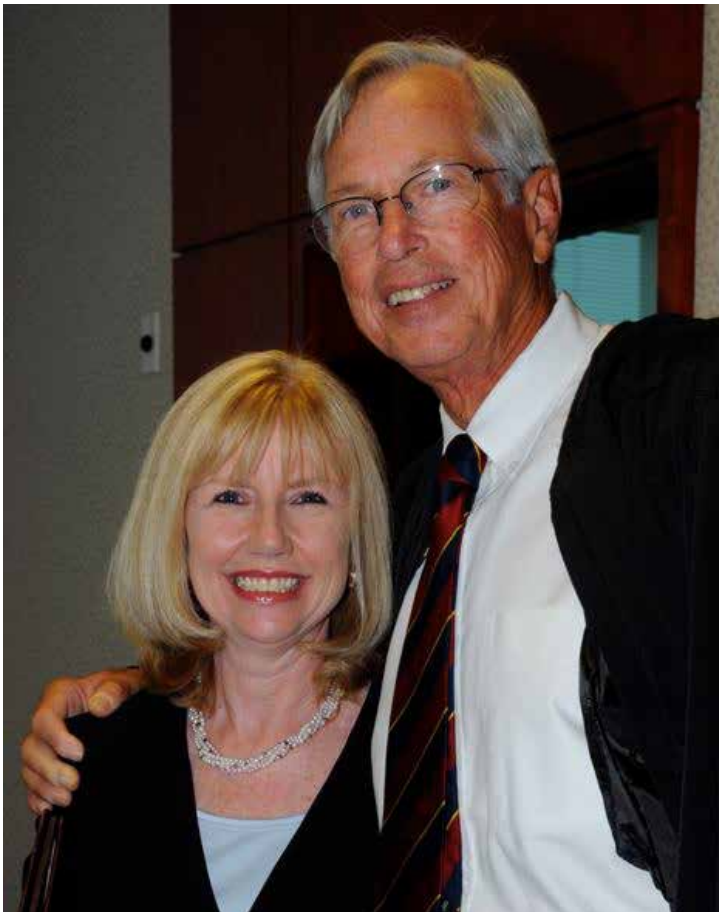
There's things you shouldn't see when you're a kid
Thank God they make waterproof mascara
"Cause it won't run like his daddy did.

And I always have to end with this one. In the summer of 2007 I heard:

If your phone don't ring
It's me, not calling.

Barry Clark was Judge Glenn's Courtroom Deputy from his very first day on the bench to his very last. He had only five law clerks: Joyce Stephens, Vicki Critchlow, Alana Williams, Kristyn, and Cindy Turner. He had two JAs: Paula Turner Luce and Laura Stevenson





Judge Glenn and Judge Delano



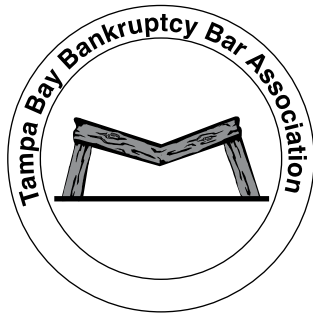
Judge Glenn and Kristyn Leedekerken



Judge Glenn, Stephanie Lieb and Lara Fernandez



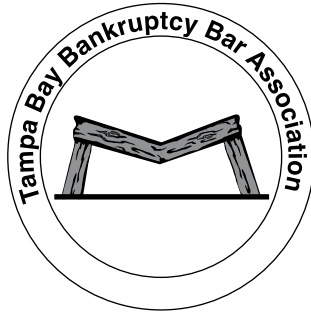
Judge Glenn and daughter Catherine Glenn



Judge Glenn and his colleagues



Judge Glenn and U.S. Bankruptcy Judge Jerry Funk



Judge Glenn and his colleagues

Student Loan Sidebar

by: Christie Arkovich
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Eleventh Circuit issues FCRA opinion in *Marchisio v. Carrington Mortgage Services, LLC*

In a recent case where a mortgage servicer still claimed a balloon payment and force-placed insurance reimbursement was due years following what should have been a cut-and-dried deed in lieu settlement, the Eleventh Circuit came down hard on the servicer and clarified several points that should interest bankruptcy and non-bankruptcy practitioners alike:

- Willful violations of consumer protection statutes—such as the Fair Credit Reporting Act (“FCRA”)—include reckless conduct and do not require a finding of intentional or purposeful conduct.
- A loan servicer’s obvious willful violations of the FCRA warranted possible emotional distress and punitive damages.
- Loan servicers must have a system in place to update their credit reporting databases with information to reflect the terms of settlement agreements and litigation results.
- A simple data conformity review—after receiving notice of a credit reporting dispute—is inadequate as a matter of law.
- Mere articulation and adoption of a policy to prevent debt collection violations is insufficient to establish a bona-fide error defense.
- Documentation showing a regular and orderly process for enforcing a servicer’s stated policy, as well as how the policy is communicated or implemented, is also required to allow a jury to decide whether a defendant has procedures reasonably adapted to enforce that policy.

In *Marchisio v. Carrington Mortgage Services, LLC*, 919 F.3d 1288 (11th Cir. 2019), the Eleventh Circuit ended Carrington Mortgage Services’ reign of repeated recklessness by a servicer or lender in failing to update its credit reporting databases to include results of litigation and settlements.

In *Marchisio*, the borrowers defaulted on their home loans in 2008 like many underwater homeowners in Florida. In 2009, the parties settled a foreclosure action with a deed in lieu of foreclosure, which extinguished the first and second loans, and required the loan servicer to report to the credit reporting agencies (“CRAs”) that the loans had zero (\$0) balances. Instead, Carrington failed to include the settlement in its database and credit reported the debt as still due and owing. Moreover, it continued in its attempts to collect the debt, including force-placed insurance amounts, even after the home was sold at auction. In 2012, the borrowers filed their first FCRA lawsuit. The parties settled, and the lender agreed to correct the credit reporting.

Notwithstanding, the lender failed to timely comply with this credit-reporting correction requirement within 90 days and instead thrice reported false information that the second loan was in arrears. In response, the borrowers submitted a second credit-reporting dispute, and Carrington “investigated” the dispute and falsely verified the amount remained due. As noted above, the lender/servicer also charged

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Student Loan Program

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the borrowers for lender-placed insurance on property that the borrowers no longer owned. Subsequently, the borrowers filed another lawsuit for FCRA violations, as well as state debt-collection violations under the Florida Consumer Collection Practices Act (“FCCPA”). Finally, the loan servicer correctly updated its database to reflect the prior settlements.

In the lawsuit, the borrowers alleged they suffered higher interest on loans to purchase used vehicles and experienced emotional distress due to Carrington’s debt collection violations, as well as the lender/servicer’s multiple reporting errors and failures to correct the false credit reporting.

At the district court level, the Court granted the borrowers’ motion for summary judgment on the underlying FCRA claim; however, the court denied the borrowers’ request for emotional distress and punitive damages, and also granted summary judgment to Carrington on its bona-fide error defense under the FCCPA. In a landmark decision, the Eleventh Circuit reversed on the damages and bona-fide-error defense grounds and found that the furnisher’s (i.e., Carrington) data conformity review was non-compliant with the FCRA’s required reasonable investigation. 15 U.S.C. § 1681s-2(b)(1)(A) imposes a reasonable investigation standard, requiring the furnisher to perform as careful an inquiry as is necessary to resolve the merits of a consumer’s credit-reporting dispute. A simple “data conformity” review fails to fulfill this investigatory requirement, and instead simply checks the furnisher’s own database that generated the challenged and false information to confirm that the database information is being correctly reported to the consumer reporting

agency. Rather than employing an actual reasonable investigation, Carrington’s data-conformity review simply verified its own false information back to the CRAs which created an unreasonable risk that a dispute investigator would merely parrot back to the CRA the same inaccurate information. *Marchisio* stands for the proposition that furnishers like mortgage servicers must engage in a much more careful and reasonable inquiry, and failure to do so can result in willful and punitive damages. Further, the Eleventh Circuit also reasoned that creditors must employ robust and reasonable procedures to avoid debt collection errors.

For consumer law and bankruptcy practitioners, *Marchisio* highlights protections that both the FCCPA and FCRA provide to consumer clients, and the Eleventh Circuit makes clear that creditors and furnishers who unlawfully collect and falsely credit report debts open themselves up to emotional distress and punitive damages. Therefore, a careful review of bankruptcy and mortgage files provides better service to consumer clients and can add tremendous value in terms of damages and attorneys’ fees.

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The Cramdown

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