



Office of the Chapter 13 Trustee—Akron Ohio
Keith L. Rucinski—Trustee

Chapter 13 Quarterly Newsletter June 2012

1. Special Chapter 13 341 Meeting of Creditors Date: Monday July 9, 2012

Please note that the Chapter 13 office will hold a special 341 Meeting of Creditors date on July 9, 2012. Should counsel and their client receive notice please note that this is not an error and there will be Chapter 13 341 meetings this day.

The reason for the change from the normal Thursday date is to allow everyone to spend time with their families during the July 4th holiday week. Should a Chapter 13 341 meeting date conflict with a Chapter 7 hearing date already scheduled for counsel for July 9, please advise the Chapter 13 office and we will adjust the time of our meeting. Please note that the Chapter 13 meeting will go forward on July 9 but we can be flexible and work around any conflicts with any Chapter 7 hearing meeting set for the same day.

2. Chapter 13 Summer Hours

Please note that during the summer months the Chapter 13 office will maintain its regularly scheduled hours and be open to the public from 8 AM – 4:30 PM Monday thru Friday.

We ask that you also note the following dates and times when the Chapter 13 office will be closed due to holidays:

- Wednesday July 4, 2012, the Chapter 13 office will be closed the entire day in observance of the Independence Day holiday.
- Monday September 3, 2012, the Chapter 13 office will be closed the entire day in observance of the Labor Day holiday.

3. Personal Financial Management Instructional Course Monday, September 10, 2012

The Chapter 13 office will hold its next Personal Financial Management Instructional Course on Monday, September 10, 2012, from 5:30 PM to 8:00 PM at the main library in downtown Akron. As counsel are aware, if debtors fail to take the course, they will not be eligible for a Chapter 13 discharge. Without the discharge, creditors can reinstitute penalties and interest from the date of filing, keep all money paid through the

Chapter 13 plan and initiate new garnishments against the debtors' income for the unpaid balances of claims.

At any given point in time, there are nearly 1,000 active Chapter 13 cases filed in Akron where there is no Personal Financial Management Instructional Course certificate on file. The Trustee would ask all counsel to continue to review their files and work with their clients to get them to take a course, either through the Chapter 13 program or through a program of counsels' choosing, which will allow the debtors to fulfill this important requirement for discharge. Since the Chapter 13 office has been conducting these classes since 2008, there has been a steady increase in the number of debtors who have earned a discharge. While there are many factors, it does appear that educating the debtors about the process early in the program will increase their chances of ultimately being successful and earning the discharge.

The Chapter 13 office will continue the tradition of filing all certificates with the Court for debtors who take the Personal Financial Management Instructional Course through the Chapter 13 office.

In an effort to accommodate debtors who may not know their particular work schedule until the last minute, the Trustee has begun allowing unregistered debtors to participate in the course provided that they are at the library timely and have proper photo identification. It does take a little longer to complete the paperwork for debtors who do not register early but the Chapter 13 office understands that many debtors do not know their work schedules until the last minute.

A copy of the flyer for the September 10, 2012, class is attached to this newsletter for counsel to share with their clients.

4. Creditors Should File their Change of Address with the US Bankruptcy Court in Cases in which they have Filed a Claim

In the past, the Chapter 13 office has tried to accommodate creditors who send letters asking that their address be changed regarding payments of claim. However, in this age of rapid technological advances and identity theft issues, the Chapter 13 office discontinued this practice several months ago.

In order for the Chapter 13 office to honor a change of address for a creditor, said creditor must either file an amended proof of claim with the new address and serve said claim on the Chapter 13 office or file a notice of the change of address on the Court docket in which the creditor has a claim and submit a copy of the notice to the Chapter 13 office.

While this may seem burdensome, it is the position of the Chapter 13 office that having the creditor, who originally filed a claim, file an amended claim or notice with the

new address will mitigate identity theft issues and ensure that the proper creditors are paid.

Some governmental agencies have raised concerns about filing amended proofs of claim and notices due to limited resources and the multitude of claims said governmental agencies file. Should a government agency require a change in address, they should talk to the Chapter 13 office and we will work with them to properly address any change of address issues.

5. Wage Bonus Agreed Entry

In the current economy, an increasing number of employers are not providing cost of living increases to employees. The trend is to provide a base salary and an unknown bonus based on profitability in any given year.

Most debtors, at the time the Chapter 13 plan is filed, may or may not receive wage bonuses in the future and will have no idea whether or not wage bonuses will be received during the course of the Chapter 13 plan. Wage bonuses are based on profitability of the employer and are at the sole discretion of the employer.

Some counsel attempt to factor in a wage bonus onto Petition Schedule I. It is the view of the Chapter 13 Trustee in Akron that this is not accurate and will set up the debtor to fail in the Chapter 13 plan. Since wage bonuses are not guaranteed, to factor bonuses into Schedule I will greatly hinder the debtor's cash flow to meet living expenses throughout the Chapter 13 plan. The proper course of action would be to base the Chapter 13 payment excluding any possible wage bonus. At the time of the 341 meeting, counsel can, with the approval of their client, sign an agreed entry with the Chapter 13 Trustee which states that one-half of any future net wage bonuses the debtor receives during the course of the Chapter 13 plan will be paid over to the Chapter 13 plan to increase the unsecured dividend. A copy of the standard agreed entry is attached to this newsletter for reference. The agreed entry is served on the employer.

Please note that the Trustee is aware that some counsel are advising their clients to simply say they do not get a wage bonus. The Chapter 13 office has a growing internal list of employers who routinely get wage bonuses and the Trustee may require a signed agreed entry regarding wage bonuses even if the debtor indicates that no wage bonuses are expected.

6. New District Court Rule Citing Bankruptcy Court Jurisdiction

On April 4, 2012, the US District Court for the Northern District of Ohio issued General Order 2012-7 Caption "Referral of Title 11 Matters in the US Bankruptcy Court for the Northern District of Ohio".

A copy of this order is attached to this newsletter for reference. The order supersedes prior general order 84 citing the jurisdiction of the Bankruptcy Court when

counsel references jurisdiction of the Bankruptcy Court. Many counsel cite the required jurisdiction in adversary proceedings and other pleadings filed with the Bankruptcy Court. Please note that everyone's templates should be adjusted to reflect the new General Order reference number 2012-7.

7. Improper Sheriff Foreclosure Fees in Mortgage Proofs of Claim

Some creditors and their counsel often file mortgage proofs of claim which include as part of the arrearage an escrow shortage cost for county sheriff foreclosure sales. These costs can range from \$2,000-\$5,000 based on the amounts listed on the proofs of claim and asserted by the creditor. The Chapter 13 office attempts to review all mortgage proofs of claim and especially the escrow amounts being charged for escrow shortages and sheriff sales.

Given the volume of mortgage claims, the Trustee is asking both counsel for creditors and counsel for the debtors to review said proofs of claim carefully. When counsel for creditors sign said proof of claim they are asserting that they have reviewed the proof of claim and underlying documentation. Please be advised that when a bankruptcy case is filed the sheriff sale does not go forward and there is no cost that should be asserted in the proof of claim as the counties do not charge for a sheriff sale which does not go forward. The Trustee is asking debtors' counsel to assist the Chapter 13 office in reviewing these escrow shortages and bring appropriate objections accordingly.

8. Motions to Deem the Mortgage Current

Some counsel have begun to ask the Chapter 13 office for a sample pleading to deem the mortgage current. Questions have also been raised on the appropriate time to file the motion to deem the mortgage current.

In Akron, plans are not required to have conduit mortgage payments through the Chapter 13 plan. The vast majority of cases have the debtor pay the mortgage arrearages through the Chapter 13 plan and the ongoing mortgage payments which become due after the date of filing directly to the mortgage holder. As these plans do not pay the current mortgage conduit through the Chapter 13 plan, the Chapter 13 Trustee is not in a position to file a motion to deem the mortgage current as the Trustee does not have the records to know whether or not the debtor has made post-petition payments directly to the creditor as required.

The Trustee does file a pleading at the conclusion of the case titled "Request for Discharge". A copy of this pleading is attached to this newsletter for reference.

The Request for Discharge allows all parties 30 days to review their records to ensure that they have been paid their proper amounts under the Chapter 13 plan. If no responsive pleading is filed in response to the Request for Discharge, after 30 days, the US Bankruptcy Court Clerk's Office continues the administrative process of closing the

Chapter 13 case. If any party believes there is an additional matter to be heard before the closing of the case, they have 30 days from the date that the request for discharge is filed with the Court to file their pleadings, including a motion to deem the mortgage current.

Once the request for discharge is filed with the Court, counsel should exercise their independent legal judgment on whether or not it is appropriate to file a motion to deem the mortgage current.

A sample motion and order to deem the mortgage current is attached to this newsletter as reference. Counsel should adjust this motion and order as they deem appropriate in their independent legal judgment.

9. The National Mortgage Settlement

Attached to this newsletter is a copy of the national mortgage settlement's frequently asked questions for borrows in bankruptcy and case trustees. This information has been provided by the United States Trustee program and is available on the website at <http://www.justice.gov/ust/>.

The frequently asked questions are good reference materials for counsel attempting to review the rights of their clients under the national mortgage settlement. In the near future, information regarding the national mortgage settlement will also be made available to debtors during the 341 Meeting of Creditors.

10. Updated Means Test Effective May 1, 2012

The means test numbers have been updated effective May 1, 2012. Copies of relevant numbers are attached to this newsletter.

Although counsel often rely on their computer programs to update, said updates are not always automatic and counsel should make sure their respective program is using the most updated information.

11. Case Law

[In re Kraft, 2010 Bankr. LEXIS 5121 \(Bankr. D. Wyo. Aug. 13, 2010\)](#)

Debtor Kraft originally filed a Chapter 13 petition on October 19, 2009. The Chapter 13 Trustee objected to confirmation and when the objection was sustained by the bankruptcy court, the debtor then converted his case to a Chapter 7. The Debtor then filed a Chapter 7 Statement of Current Monthly Income and Means Test. The United States Trustee ("UST") filed its "Statement of Presumed Abuse" on March 29, 2010. On April 21, 2010, the UST filed its motion to dismiss under 11 USC Section 707(b)(1) and (2) and, alternatively, 707(b)(3). Subsequently, the Debtor filed a motion to dismiss the UST

motion to dismiss, asserting that 707(b) is not applicable to a debtor that originally file a Chapter 13 case and converted to a Chapter 7.

The Bankruptcy Court for the District of Wyoming, noted that the case law was divided on this issue of whether a motion to dismiss filed under Section 707(b) applied to a debtor who files a Chapter 13 bankruptcy and then converts to a Chapter 7. The Court held that Section 707(b) was applicable to a debtor converting from chapter 13 to chapter 7, as the majority of courts across the country have ruled this way and this approach was better reasoned. The Court pointed out Section 707 under the Bankruptcy Abuse Prevention and Consumer Protection Act was modified to rectify the perceived inequity that many people who were filing for chapter 7 bankruptcy protection were doing so in bad faith without first considering creditor repayment by creating the "means test," which was accomplished by debtors completing Form 22A. The means test, wrote the opinion, was to measure the ability of chapter 7 debtors to repay debt and then, if they had sufficient debt-paying ability, to make them repay at least some of their debt as through a chapter 13, in order to receive a bankruptcy discharge. To determine the debtor's eligibility to be a debtor upon converting from chapter 13 to chapter 7, Section 707(b) was held to be applicable in such circumstances.

WEB SITE UPDATE

****Coming this September 2012, the Chapter 13 office will release its updated webpage in an effort to be more user friendly to all parties. The webpage will focus on educational material for debtors to help them through the Chapter 13 process and attempt to provide routine template pleadings that counsel may find useful in their practice****

Personal Financial Management Instructional Course
Monday, September 10, 2012

Phone: (330) 762-6335
Fax: (330) 762-7072
Web: www.chapter13info.com

Office Of
The Chapter 13 Trustee
Keith L. Rucinski, Trustee

One Cascade Plaza
Suite 2020
Akron, Ohio 44308

June 12, 2012

Personal Financial Management Instructional Course

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, all people filing for bankruptcy after October 17, 2005, must take a Personal Financial Management Instructional Course in order to earn a discharge of their case. A discharge means a successful completion of the plan and creditors paid through the plan may not seek further payment from you. This course is in addition to the Credit Counseling Course that you took to file your Chapter 13 case. If you have already taken both courses you may disregard this notice.

The Chapter 13 Office in Akron, Ohio will be offering the Personal Financial Management Instruction Course on **Monday, September 10th, 2012**, at the Akron-Summit County Public Library, 60 S. High Street, Akron, Ohio 44308. Pickup of course materials and seating for the class begins at 5:30 p.m. The course runs from 6:00 p.m. to 8:00 p.m. A parking deck is located next to the library and parking is free. **You must register for the course and may do so by calling 330-475-7500, or by email to edclass@ch13akron.com. PLEASE MAKE SURE TO LEAVE YOUR NAME AND CASE NUMBER WHEN CALLING TO MAKE YOUR RESERVATION. Space is limited so please make your reservation as soon as possible. The deadline to register for the class is September 7th, 2012.** A photo I.D. will be necessary in order to take the course. If you require a Sign Language interpreter send your request to edclass@ch13akron.com. The instructor will be Keith Rucinski. Mr. Rucinski is a CPA and Attorney and serves as Trustee for the Chapter 13 Office. For the past decade he has taught college courses and has been a frequent speaker at local and national seminars.

This free course will not be offered again until November 2012 (Date to be announced at a later date)

This course is only being offered to individuals who have filed Chapter 13 with the U.S. Bankruptcy Court in Akron, Ohio. The course is being offered without regard to an individual's ability to pay. There is no cost to individuals for taking the course sponsored by the Chapter 13 Office.

You are not required to take this course through the Chapter 13 Office, but you must take a course which has been certified by the U.S. Department of Justice – U.S. Trustee Program. The other course providers may charge you a fee. The Chapter 13 Office in Akron does not pay or receive fees or other consideration for the referral of debtor students to or by the provider.

Upon completion of the course the Chapter 13 Office in Akron will provide participants a certificate of course completion. This certificate must be filed with the U.S. Bankruptcy Court in Akron, Ohio in order to earn a discharge in your case.

Sample Wage Bonus Agreed Entry

**THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

In Re:)
)
) CHAPTER 13
«debtor») CASE NO: «print_casenum»
)
«joint»)
) MARILYN SHEA-STONUM
) BANKRUPTCY JUDGE
)
DEBTOR(S))
) AGREED ENTRY FOR TURNOVER OF
) FUTURE WAGE BONUSES DURING
) PENDENCY OF CHAPTER 13 PLAN

Now comes Keith L. Rucinski, the Chapter 13 Trustee, by and through undersigned counsel, and the debtors in this case, by and through undersigned counsel, and jointly agree to the following:

1. This Chapter 13 case was filed on or about «petition_date», proposing approximately a «unsecured_pay_percent» percent unsecured dividend.
2. In the past, the debtor(s) received substantial wage bonuses from an employer. The wage bonuses are not guaranteed to be paid in the future.
3. Future wage bonuses are property of the Chapter 13 estate pursuant to 11 USC § 1306.
4. The debtor(s) agree to turnover one-half of the net of all wage bonuses (after tax) received during the pendency of this Chapter 13 Plan to the Chapter 13 estate for the benefit of creditors.
5. The debtor(s) agree to supply the Trustee annual federal and state tax returns

CHAPTER 13

Keith L Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308

(330) 762-6335
Fax
(330) 762-7072
Email
krucinski@chl3akron.com

**US District Court Northern District of Ohio
General Order No. 2012-7**

2012 APR -4 PM 3: 26

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GENERAL ORDER NO. 2012-7

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

REFERRAL OF TITLE 11 MATTERS)	ORDER NO. 2012-7
IN THE U.S. BANKRUPTCY COURT)	
FOR THE NORTHERN DISTRICT OF OHIO)	
)	

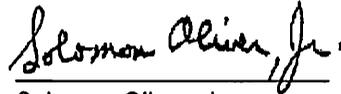
Pursuant to 28 U.S.C. § 157(a), any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.

If a bankruptcy judge or district judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this order and determined to be a core matter, the bankruptcy judge shall, unless otherwise ordered by the district court, hear the proceeding and submit proposed findings of fact and conclusions of law to the district court. The district court may treat any order, opinion, or memorandum of decision of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

This General Order supersedes General Order No. 84.

IT IS SO ORDERED.

For the Court



Solomon Oliver, Jr.
Chief Judge
United States District Court

Sample Trustee's Request for Discharge

**THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE:)	CHAPTER 13
)	CASE NO: «print_casenum»
)	
«debtor»)	MARILYN SHEA-STONUM
«joint»)	BANKRUPTCY JUDGE
Debtor(s))	
)	TRUSTEE'S REQUEST FOR
)	THE COURT TO ISSUE A
)	DISCHARGE IN CHAPTER 13
)	CASE

Now comes Keith L. Rucinski, Chapter 13 Trustee, and represents to the Court that the Debtor(s) in the above Chapter 13 case has/have submitted funds to complete payment to creditors under the Chapter 13 plan confirmed in this case on «dkt_desc». Accordingly, the Trustee hereby requests that if no objection is timely filed, the Clerk of Court be authorized and directed to enter a discharge of Debtor(s) in this case.

In accordance with 11 USC Section 102, unless a party in interest objects to the Trustee's Request for the Court to Issue a Discharge in this Chapter 13 case and files a written request for hearing before the Court within 30 days from the date in the below certificate of service, the Trustee's request shall be granted and the Court will issue an order of discharge. Objections must be served on all parties in the below certificate of service. Objections must be filed with the United States Bankruptcy Court at:

**United States Bankruptcy Court
2 South Main Street
455 John F. Seiberling Federal Building
Akron, OH 44308**

CHAPTER 13
Keith L. Rucinski
Trustee
1 Cascade Plaza
Suite 2020
Akron, Oh 44308

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(330) 762-7072
Email
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Respectfully submitted,

/s/ Keith L. Rucinski

Keith L. Rucinski, Chapter 13 Trustee

Ohio Reg. No. 0063137

One Cascade Plaza, Suite 2020

Akron, OH 44308

Phone: 330.762.6335

Fax: 330.762.7072

Email: krucinski@ch13akron.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to:

«debtor»	«joint»
«dbtr_addr1»	«jdbr_addr1»
«dbtr_addr2»	«jdbr_addr2»
«dbtr_addr3»	«jdbr_addr3»
(Via Regular Mail)	

«attorney» (via ECF)

Keith L. Rucinski, Chapter 13 Trustee (via ECF)

Office of the US Trustee (via ECF)

All creditors per attached list (via Regular Mail)

Date of Service: <<date>>

By: «user_name»
Office of the Chapter 13 Trustee

CHAPTER 13

Keith L. Rucinski
Trustee

1 Cascade Plaza

Suite 2020

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Fax

(330) 762-7072

Email

krucinski@ch13akron.com

**Sample Motion and Order to
Deem the Mortgage Current**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CASE NO.
CHAPTER 13

JUDGE: Marilyn Shea-Stonum

DEBTOR(S) :

**DEBTOR'S MOTION TO
DEEM MORTGAGE
CURRENT**

FOR (ADDRESS OF PROPERTY)
AS OF (DATE)

MOTION

Comes now the Debtor, by and through undersigned counsel, and asks the Court to issue an order determining that the mortgage claim of (name of mortgage holder) its successors, assignees, transferees or transferors has been paid current through (DATE).

MEMORANDUM

This motion pertains to any real estate mortgage arrearage, interest, costs, expenses and mortgage principal claims set forth in the original or amended proofs of claim by the mortgage holder for the above address.

Pursuant to the Trustee's Request for Discharge in this case, all arrearages, both pre and post petition, have been paid through the Chapter 13 plan.

The debtor stipulates by this motion that all payments that debtor was required to pay the mortgage holder directly (outside the Chapter 13 plan) and also through the Chapter 13 plan have been made.

Any objection to this motion should contain the following:

Exhibit A - file-stamped copies of the original and amended proofs of claim;

Exhibit B - a true, accurate, and legible copy of records setting forth the balance due at the time the case was filed;

Exhibit C - a true, accurate, and legible copy of records setting for the dates and amounts of all payments received from the Trustee and the total balance presently claimed to be due.

Exhibit D - a true, accurate, and legible copy of records setting for the dates and amounts of all payments received from the debtor and the total balance presently claimed to be due.

The debtor requests that the Court grant this motion to determine that the mortgage claim of (name of mortgage holder) will be current as of (date).

Respectfully submitted,

Debtor(s) Counsel.

NOTICE

If the relief sought in this Motion is opposed a written response to the Motion must be filed within thirty (30) days of the date of service as set forth in the certificate of service. The Court is authorized to grant the relief requested without further notice should a timely response not be filed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served on the parties listed below by ordinary U.S. Mail or served electronically through the Court's ECF System at the e-mail address registered with the Court on this day of , 2012.

Debtor(s) Counsel

Debtor(s)

Mortgage Creditor

Creditor's Counsel

Chapter 13 Trustee

U.S. Trustee
Howard M. Metzenbaum US Courthouse
201 Superior Ave., East
Suite 441
Cleveland, OH 44114

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:

CASE NO.
CHAPTER 13

DEBTORS

JUDGE:

: NOTICE OF MOTION TO
DEEM MORTGAGE
CURRENT

The debtors, through counsel, has filed papers with the Court regarding the mortgage claim in this case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the Motion, or if you want the court to consider your views on the Motion, then on or before thirty (30) days from date on the certificate of service on the motion you or your attorney must:

File with the court a written request for a hearing, and a written response explaining your position at:

U.S. Bankruptcy Court
2 S. Main St.
455 John F. Seiberling Federal Building
Akron, OH 44308-1810

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Chapter 13 Trustee
1 Cascade Plaza

Suite 2020
Akron, OH 44308

Debtor(s) Counsel

Debtor(s)

U.S. Trustee
Howard M. Metzenbaum US Courthouse
201 Superior Ave., East
Suite 441
Cleveland, OH 44114

The Court will send you a separate notice if it sets a hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the application and may enter an order granting that relief.

Date: 2012

Debtor(s) Counsel

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CASE NO.
CHAPTER 13

JUDGE: Marilyn Shea-Stonum

DEBTOR(S)

**ORDER GRANTING MOTION TO
DEEM CURRENT MORTGAGE
CLAIM**

**FOR (ADDRESS OF PROPERTY)
AS OF (DATE)**

This matter is before the Court pursuant to the Motion (Doc.) of the debtor. Seeking an Order finding that, the Mortgage claim of _____ has been paid up to date through the month of _____.

IT IS SO ORDERED that _____ its successors, assignees, and any transferees, or transferors shall, upon the filing order, show upon their books and records that the debtor(s) have paid all arrearages, interest, costs, expenses and claims set forth in the original and any amended proof of claim in this case and that the debtor(s) real estate mortgage has been paid in full through the month of _____.

Debtor(s) shall continue the regular mortgage payment beginning with the mortgage payment due in _____, 2012.

IT IS SO ORDERED.

###

Approved:

(Debtor's Counsel)

COPIES TO:

Debtor(s)

Mortgage Creditor

Mortgage Creditor's counsel

Chapter 13 Trustee

U.S. Trustee
Howard M. Metzenbaum, US Courthouse
201 Superior Ave., East
Suite 441
Cleveland, OH 44114

**The National Mortgage Settlement
Frequently Asked Questions for Borrowers
in Bankruptcy and Case Trustees**



The National Mortgage Settlement Frequently Asked Questions (FAQs) for Borrowers in Bankruptcy and Case Trustees

The National Mortgage Settlement (the “Settlement”) is an agreement among the federal government, 49 states, and the five largest mortgage servicers and their affiliates (the “Banks”).

The Banks are:

Ally Financial, Inc.
(formerly GMAC)

Bank of America
Corporation

Citigroup, Inc.

J.P. Morgan Chase & Co.

Wells Fargo & Company

The Settlement provides benefits to borrowers, **including borrowers in bankruptcy**, whose residential mortgage loans are serviced by the Banks.

Information concerning the Settlement and its impact on borrowers in bankruptcy can be found at a dedicated page on the United States Trustee Program’s website at www.justice.gov/ust/eo/public_affairs/consumer_info/nms

In addition, the website www.nationalmortgagesettlement.com provides resources about the Settlement, including a copy of the Settlement, an executive summary of the Settlement, a fact sheet, and FAQs. The FAQs on that website discuss general issues, including:

- What Bank conduct is covered by the Settlement?

- What loans are covered by the Settlement?
- What are the financial provisions of the Settlement?
- How will the Settlement be enforced?

Finally, the Settlement requires the appointment of an independent monitor to oversee the Banks' compliance with the Settlement. The website for the monitor is: www.mortgageoversight.com.

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Question 2: What bankruptcy issues did the Settlement address?

Question 3: Will the Settlement impact borrowers in bankruptcy?

Question 4: How will borrowers in bankruptcy know if they are eligible for financial assistance under the Settlement?

Question 5: What if a borrower in bankruptcy already has a claim against a Bank?

Question 6: Can borrowers in bankruptcy participate in the Settlement and receive financial assistance from other sources?

Question 7: Is there someone at the Banks whom borrowers in bankruptcy can contact with questions concerning their mortgage?

Question 8: How does the Settlement address the Banks' filings in bankruptcy courts going forward?

Question 9: What kind of information must the Banks provide concerning a mortgage when a borrower files for bankruptcy?

Question 10: How does the Settlement affect how the Banks apply mortgage payments made by borrowers in bankruptcy or a trustee?

Question 11: How does the Settlement affect what the Banks charge after a borrower files for bankruptcy?

Question 12: Should a trustee administering the case of a borrower in bankruptcy seek to recover funds received by the borrower under the Settlement?

Question 13: How does the Settlement affect the trustees' review of the Banks' proofs of claim?

Question 1: What do these FAQs cover?

The United States Trustee Program, the component of the Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees, has prepared these FAQs primarily for borrowers in bankruptcy or borrowers who are considering filing bankruptcy, including those who have lost their homes in foreclosure. These FAQs also address questions that trustees who administer bankruptcy cases may have.

These FAQs are provided as a basic resource and should not be considered legal advice. **The United States Trustee Program is prohibited from providing legal advice. If you have any questions, you should consult an attorney.**

Question 2: What bankruptcy issues did the Settlement address?

The Settlement addresses misconduct by the Banks in bankruptcy cases, including:

- Inflated or inaccurate claims.

Some of the Banks filed inflated or inaccurate documents in bankruptcy courts. When a borrower files for bankruptcy relief, the Bank may file a proof of claim or motion for relief from the automatic stay. These documents tell a bankruptcy court how much the Bank claims the borrower owes the Bank. The proof of claim also governs what a borrower in bankruptcy must pay through a chapter 13 repayment plan, and the motion for relief can determine whether the Bank may seek to commence to foreclose upon a home even if the borrower is in bankruptcy.

The accuracy of these documents is crucial. A number of parties, including the borrower in bankruptcy, the bankruptcy court, the trustee administering the case, the United States Trustee, and other creditors, rely on these documents.

When a Bank inflates or misstates what a borrower in bankruptcy owes in these documents, the consequences can be severe. For example, the Bank may be paid too much and other creditors may not receive amounts they are owed. At worst, the borrower in bankruptcy is unable to propose a repayment plan that can be approved and the bankruptcy case is dismissed, or the Bank improperly obtains relief from the automatic stay and is permitted to foreclose on the borrower's home. As a result, the borrower in bankruptcy loses the ability to keep the home and obtain a fresh start in bankruptcy.

- Improper accounting of mortgage payments made by borrowers in bankruptcy.

Some of the Banks misapplied payments made by borrowers in bankruptcy. When a Bank does this, it appears on the Bank's books as if the borrower has failed to make regular monthly payments and the Bank can file a motion seeking relief from the automatic stay to foreclose upon the borrower's home. This misapplication of payments also results in the Bank improperly asserting that the borrower is behind on mortgage payments and can lead to the Bank imposing loan default fees and other charges.

- Adding improper fees and charges to the mortgage accounts of borrowers in bankruptcy.

Some of the Banks charged borrowers in bankruptcy for services not warranted, or in amounts not allowed. For example, some of the Banks sought to recover escrow payments twice, and conducted unnecessary or excessive property inspections and appraisals.

- Charging "hidden fees" to the mortgage accounts of borrowers in bankruptcy.

Some of the Banks also imposed "hidden fees" – fees that are assessed during the bankruptcy case but are not disclosed until after a borrower in bankruptcy receives a discharge. This can result in borrowers believing they are

current on their mortgages, only to have a Bank claim the borrowers owe additional amounts. This deprives borrowers in bankruptcy of the “fresh start” promised by the bankruptcy discharge. These hidden fees also often violate bankruptcy court orders finding that borrowers are current on their mortgages.

- Seeking relief from stay to foreclose while borrowers in bankruptcy have pending applications for loan modifications.

Some of the Banks separated their bankruptcy operations from other aspects of their mortgage servicing business, so they did not have a clear picture of the status of a borrower in bankruptcy’s mortgage.

For example, the Banks sometimes provided borrowers in bankruptcy the opportunity to modify the terms of their home loans. Modification has benefits for both the Bank, which continues to receive payments, and the borrower, who receives a more manageable monthly payment.

However, while applications for loan modifications were being processed by one group of the Bank, its bankruptcy operations might move forward with requests for relief from the automatic stay so the Bank could commence foreclosure.

Question 3: Will the Settlement impact borrowers in bankruptcy?

Yes. The Settlement requires the Banks to collectively dedicate approximately \$20 billion toward various forms of financial relief for borrowers including principal reduction, forbearance of principal for unemployed borrowers, short sales and transitional assistance, and specific benefits for service members.

The Banks must also make payments to state and federal authorities exceeding \$5 billion. Of this amount, \$1.5 billion will be allocated to provide payments to eligible borrowers, including borrowers in bankruptcy, who lost their homes to foreclosure.

Much of this relief will be available to borrowers in bankruptcy. A borrower should contact the appropriate Bank (see question 4) to determine eligibility for relief.

Additionally, the Banks must implement extensive new mortgage servicing standards, **including provisions specific to borrowers in bankruptcy.** These

standards address what occurs when borrowers fall behind on their mortgage payments, including when borrowers file for bankruptcy relief. As explained in these FAQs (see questions 7 through 11), the servicing standards require, among other things:

- A single point of contact at each Bank for borrowers in bankruptcy, who want information or assistance when they fall behind on their mortgage payments;
- New processes to ensure that the Banks provide accurate information about the amount that borrowers in bankruptcy owe on their mortgages;
- Better dispute resolution processes;
- Clear itemization of the principal, interest, fees, expenses and other charges incurred prior to bankruptcy that the Banks claim in bankruptcy cases;
- Prompt posting of payments and proper designation of pre-and post-petition payments and charges;
- Timely disclosure of fees, expenses, and charges incurred after a borrower files for chapter 13 bankruptcy.

Question 4: How will borrowers in bankruptcy know if they are eligible for financial assistance under the Settlement?

The Banks may directly contact borrowers, **including borrowers in bankruptcy**. **However, borrowers should not wait to be contacted.** To determine eligibility, a borrower or their attorney should contact the appropriate Bank:

Ally/GMAC: 800-766-4622

Bank of America: 877-488-7814

(Available Monday – Friday, 7am to 9pm CT, and Saturdays, 8am CT to 5pm CT)

Citi: 866-272-4749

J.P. Morgan Chase: 866-372-6901

Wells Fargo: 800-288-3212

(Available Monday – Friday, 7am to 7pm CT)

Question 5: What if a borrower in bankruptcy already has a claim against a Bank?

The Settlement includes a release of liability by the federal government and the participating states for certain conduct by the Banks that occurred prior to the Settlement. **The Settlement does not release claims a borrower, including a borrower in bankruptcy, may have under state or federal law, and a borrower does not need to choose between accepting relief under the Settlement and pursuing those claims.**

Question 6: Can borrowers in bankruptcy participate in the Settlement and receive financial assistance from other sources?

Yes. Borrowers, **including borrowers in bankruptcy**, may participate in the programs offered under the Settlement and other programs. For example, borrowers may be eligible for a separate restitution process administered by the federal banking regulators, including the Office of the Comptroller of the Currency (the “OCC”). For more information about the federal banking regulator claims process, please visit www.independentforeclosurereview.com or call 1-888-952-9105.

Question 7: Is there someone at the Banks whom borrowers in bankruptcy can contact with questions concerning their mortgage?

Yes. Each Bank must have a single point of contact for borrowers (a “SPOC”), **including borrowers in bankruptcy**, who want information or assistance when they fall behind on their mortgage payments. The SPOCs for borrowers in bankruptcy must be knowledgeable about bankruptcy issues. Also, the Banks must have adequate staff to handle the calls. Further information concerning the SPOCs for each Bank will be provided as the Banks establish them.

Question 8: How does the Settlement address the Banks' filings in bankruptcy courts going forward?

The Settlement imposes new standards on the Banks to ensure the accuracy of information they provide to bankruptcy courts. These standards are designed to ensure that the Banks provide accurate information about the amount that borrowers in bankruptcy owe on their mortgages.

Moreover, under the new servicing standards, the Banks must implement better dispute resolution processes. If a Bank files inaccurate or misleading documents in a bankruptcy case, a borrower can use these new procedures and make a complaint with the Bank.

In addition, with respect to proofs of claim and certain affidavits attached to documents filed in bankruptcy courts, the Banks must correct any significant inaccuracies promptly and also provide notice of the correction to the affected borrower or counsel to the borrower.

Question 9: What kind of information must the Banks provide concerning a mortgage when a borrower files for bankruptcy?

For a borrower in a chapter 13 (repayment) case, if a Bank files a proof of claim, the Bank must include an accurate and clear statement of exactly what the Bank claims the borrower owes. That statement must itemize the principal, interest, fees, expenses, and other charges that the Bank claims is owed as of the filing of the bankruptcy case.

Question 10: How does the Settlement affect how the Banks apply mortgage payments made by borrowers in bankruptcy or a trustee?

The Banks must promptly post payments received from a borrower or trustee while a borrower is in bankruptcy and accurately designate payments between any arrearage owed before the bankruptcy filing and what is owed for regular mortgage payments after the filing. The Banks must also reconcile accounts, including funds held in suspense accounts, at the end of each bankruptcy case and update their records so they are consistent with the account reconciliation.

Question 11: How does the Settlement affect what the Banks charge after a borrower files for bankruptcy?

The Banks must timely disclose fees, expenses, and charges incurred after a borrower files a chapter 13 bankruptcy case. A Bank waives fees, expenses, and charges of which the Bank has not given timely notice to the Borrower. The Banks must also timely give notice to a borrower of any changes in payments the borrower will have to make due to, for example, interest rate adjustments or changes in the escrow amount.

Question 12: Should a trustee administering the case of a borrower in bankruptcy seek to recover funds received by the borrower under the Settlement?

Eligible borrowers in bankruptcy may receive payments from the Banks as a part of the Settlement. A trustee should consider all relevant circumstances when deciding whether to seek turnover of the payments in a particular case. Factors to consider include:

- The payment amount and any interest of a non-debtor spouse or other person in the payment;
- The cost of recovering and administering the payment, including litigation with a borrower in bankruptcy who may seek a judicial determination regarding whether the funds are subject to administration;
- The extent to which recovering the payment will enable creditors to receive a meaningful distribution; and
- The applicability of state and federal exemptions.

The United States Trustee Program will not seek to compel a trustee to recover payments that the trustee, in the exercise of discretion, decides not to recover.

Question 13: How does the Settlement affect the trustees' review of the Banks' proofs of claim?

Generally, the Settlement will not alter a trustee's review of claims filed by the Banks. Importantly, however, the United States Trustees Program insisted that each Bank create a toll-free hotline, staffed by employees with special training in bankruptcy, that chapter 13 trustees can use to resolve issues related to the Banks' claims. More information on these hotlines will be provided as the Banks establish them.

If a trustee concludes, based on a review of a Bank's bankruptcy filings, that a Bank violated the Settlement, the trustee should contact the United States Trustee's office in the jurisdiction in which the case was filed.

Updated Means Test Numbers Effective May 1, 2012

MEDIAN INCOME FOR OHIO FOR CASES FILED ON OR AFTER 5/1/12

1 Person	2 People	3 People	4 People
\$41,748	\$51,839	\$60,219	\$72,827

****Add \$7,500 for each individual in excess of 4 people on cases filed on or after 4/1/10**

NATIONAL STANDARD FOR FOOD, CLOTHING & OTHER ITEMS

Expense	One Person	Two People	Three People	Four People
Food	\$301	\$537	\$639	\$765
Housekeeping Supplies	\$30	\$66	\$65	\$74
Apparel & Services	\$86	\$162	\$209	\$244
Personal care products & services	\$32	\$55	\$63	\$67
Miscellaneous	\$116	\$209	\$251	\$300
TOTAL	\$565	\$1029	\$1227	\$1450

More than four persons	Additional Amount Per Person
For each additional person, add to four-person total allowance:	\$281

Expense	One Person	Two People	Three People	Four People
Food & Clothing (Apparel & Services)	\$386	\$699	\$848	\$1001
5% of Food and Clothing	\$19	\$35	\$42	\$50

More than four persons	Additional Amount Per Person
Food & Clothing (Apparel & Services)	\$190
5% of Food and Clothing	\$10

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (NON-MORTGAGE EXPENSE)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	\$449	\$527	\$555	\$619	\$629
PORTAGE COUNTY	\$440	\$517	\$545	\$607	\$617
MEDINA COUNTY	\$435	\$511	\$539	\$601	\$610

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (MORTGAGE/RENT EXPENSES)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	\$863	\$1014	\$1069	\$1192	\$1211
PORTAGE COUNTY	\$940	\$1104	\$1163	\$1297	\$1318
MEDINA COUNTY	\$1071	\$1258	\$1325	\$1477	\$1501

IRS NATIONAL STANDARDS FOR OUT-OF-POCKET HEALTH CARE

Out of Pocket Costs	
Under 65	\$60
65 and Older	\$144

LOCAL TRANSPORTATION EXPENSE STANDARDS

No Car	One Car	Two Cars
\$182	\$226	\$452

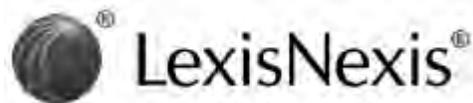
OWNERSHIP COSTS

One Car	Second Car
\$517	\$517

****Lease vehicles only get the IRS ownership cost.**

Example: If your lease payment is \$350 per month, you claim \$517 on the means test with no other deductions. If your lease payment is \$650 per month, you only claim \$517 on the means test with no other deductions.

In Re Kraft, 2010 Bankr. LEXIS 5121
(Bankr. D. Wyo. Aug. 13, 2010)



In re DUANE ROBERT KRAFT, Debtor.

Case No. 09-21052, Chapter 7

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF WYOMING

2010 Bankr. LEXIS 5121

August 13, 2010, Decided

COUNSEL: [*1] For Duane Robert Kraft, Debtor: Stephen R. Winship, Winship & Winship, PC, Casper, WY.

For Randy L. Royal, Trustee: Randy L. Royal, Greybull, WY.

For US Trustee, U.S. Trustee: Leo Michael Weiss, U.S. Trustee's Office, Denver, CO.

JUDGES: HONORABLE PETER J. MCNIFF, United States Bankruptcy Judge.

OPINION BY: PETER J. MCNIFF

OPINION

ORDER DENYING DEBTOR'S MOTION TO DISMISS THE UNITED STATES TRUSTEE'S MOTION TO DISMISS

On August 5, 2010, this matter came before the Court on the Debtor's Motion to Dismiss the United States Trustee's Motion to Dismiss and the United States Trustee's Response. The parties were represented as stated on the record. The Court having reviewed the file and the arguments of the parties, and for the reasons stated below, denies the Debtor's motion.

The United States Trustee ("UST") filed a motion to dismiss Debtor's chapter 7 bankruptcy case under *11 U.S.C. § 707(b)(1)* and (2) ¹; or alternately *§ 707(b)(1)* and (3). The Debtor asserts that *§707(b)* is not applicable to a debtor that initially filed a chapter 13 bankruptcy and subsequently converted to a chapter 7.

1 Unless otherwise indicated, all Code, Chapter, Section and Rule references are to the Bankruptcy Code, *11 U.S.C. §§ 101 et seq.* And to [*2] the *Federal Rules of Bankruptcy Procedure, Rules 1001 et seq.*

Facts

The Debtor filed for chapter 13 bankruptcy protection on October 19, 2009 and filed a plan. The chapter 13 standing trustee objected to confirmation. After a hearing, the Court denied confirmation of the plan on January 5, 2010. The Debtor filed a motion to convert his case to a chapter 7 on February 9, 2010. The Court entered its order converting the case on February 10, 2010. The Debtor filed his Chapter 7 Statement of Current Monthly Income and Means Test Calculation ("Form 22A"), after the Deficiency Notice was served on the Debtor by the Clerk of Court. The Deficiency Notice notified the Debtor that Form 22A was due by February 24, 2010. The UST filed its "Statement of Presumed Abuse" on March 29, 2010. On April 21, 2010, the UST filed its motion to dismiss. Subsequently, the Debtor filed this motion.

Discussion

This is an issue of first impression in this Court. Indeed, the matter does not appear to have been decided by any Bankruptcy Court in the Tenth Circuit. The Bankruptcy Code states, "The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time." ² A debtor has an absolute [*3] right to convert to a liquidation case so long as the individual meets the eligibility requirements of the converted chapter. ³ *Section 348* describes the effects of the conversion of a chapter 13 to a chapter 7 bankruptcy case. ⁴ The date of the filing of the petition, the commencement of the case

or the order for relief are unaffected by conversion, with certain exceptions. *Rule 1019* includes a new filing period for motions under §707(b) when a case is converted to chapter 7.⁵

² 11 U.S.C. § 1307(a).

³ *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).

⁴ 11 U.S.C. § 348.

⁵ *Fed. R. Bankr. P. 1019(2)*. The Advisory Committee Notes for this section includes the statement, "The establishment of a deadline for filing such motions is not intended to express a position as to whether such motions are permitted under the Code."

Generally, §707(b) allows a bankruptcy court to dismiss or convert a chapter 7 case because the individual debtor has sufficient disposable income to fund a plan either as a chapter 11 or chapter 13. *Section 707(b)(1)* and (2) provides the court may dismiss a case as the presumption of abuse has arisen upon analysis of the debtor's Form 22A, also known as the "means [*4] test." *Section 707(b)(1)* and (3) provides that the court may dismiss a case if the presumption does not arise or is rebutted by considering whether the debtor filed the petition in bad faith or the totality of the circumstances of the debtor's financial situation demonstrates abuse. For the presumption of abuse to arise or be rebutted, the chapter 7 debtor completes Form 22A. Courts are divided as to whether the court can dismiss a Debtor's petition under 707(b) when a debtor converts a case from a chapter 13 to a chapter 7.

The arguments regarding the applicability of §707(b) have arisen, under the Bankruptcy Code section that states,

"the court, on its own motion or a motion by the United States trustee..., may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that granting of relief would be an abuse of the provision of this chapter."⁶

⁶ 11 U.S.C. §707(b)(1). Emphasis added.

Cases holding that § 707(b) applies to debtors who initially filed a chapter 13 bankruptcy case then convert-

ed to a chapter 7, and considered the "majority [*5] view", include:

In re Perfetto.⁷ The court held that reading §707(b) sensibly required the court to also include §348(a), which provided that conversion of a case from a case under one chapter to a case under another chapter constituted an order for relief under the chapter to which the case was converted. It appeared that upon conversion, debtors were deemed to have "filed under" the converted chapter, as of the date of the original petition was filed. The Court held that the term "filed under" in § 707(b) should not be read as narrowly as the debtor suggested. The section should be read in its entirety regarding means testing upon conversion to chapter 7 and the debtor required to complete and file Form B22A. Not requiring the debtors to file the Form B22A upon conversion would have led to an absurd result.

⁷ *In re Perfetto*, 361 B.R. 27 (Bankr. R.I. 2007).

In re Kerr.⁸ The Court, in two proceedings, held that § 707(b) applies in cases converted from chapter 13 to chapter 7 and ordered the debtors to file Form B22A after their cases had been voluntarily converted from chapter 13 to chapter 7. Prior to the enactment of BAPCA⁹ § 707(b) was applied without question in cases converted [*6] from chapter 13 to chapter 7. The Court reads that the clear intent of §348 was to retain the original filing date as the date of "filing of the petition," "commencement of the case" or "order for relief" except in the circumstance provided in 348(b) and (c). Where §707(b) is not mentioned in § 348(b) or (c) as an exception, it follows that the original filing date is retained upon conversion, but the case is otherwise treated as if the debtor had originally filed under the converted chapter. *Section 521(a)(1)(B)(ii)* requires all debtors to file a schedule of current income and current expenditures unless the court orders otherwise. *Fed. R. Bankr. P. 1007(b)(4)* states that unless §707(b)(2)(D) applies, a debtor in a chapter 7 case with primarily consumer debts shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form. Because the appropriate Official Form for a chapter 7 is Form B22A, the debtors were required to file it upon conversion.

⁸ *In re Kerr and In re Kallberg*, Case No. 06-12302, 2007 Bankr. LEXIS 2474, (Bankr. W.D. Wash., July 18, 2007).

⁹ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

In re Kellett.¹⁰ The Court [*7] waived the requirement that the debtors be required to file Form B22A in their converted case based upon the stipulation from the

United States Trustee that grounds for abuse did not exist;

10 *In re Kellett*, 379 B.R. 332 (Bankr. D. Ore., 2007).

In re Willis.¹¹ The Court held that under §348(a) and (b) and §1328, that a case converted to chapter 7 should be treated as having been filed under chapter 7 and thus the means test applied. The Court was persuaded that for the purposes of §1328(f), the phrase "filing under chapter 7" encompasses case converted from chapter 13 to chapter 7. The phrase in 707(b), "filed by an individual debtor under this chapter (chapter 7) is not identical to the language in 1328(f), but is sufficiently similar to warrant application of this statutory canon. The Court believed this interpretation of 1328(f) was a more accurate reading of §348 (a) and (b). The Court took direction from the Eighth Circuit Court of Appeals that held "under §348(a), when there is a conversion, the debtors are deemed to have filed a chapter 7 case at the time the chapter 13 case was filed."¹² This holding was made in a different context. But the Court found no basis to distinguish [*8] the case.

11 *In re Willis*, 408 B.R. 803 (Bankr. W.D. Mo. 2009).

12 *In re Resendez*, 691 F.2d 397 (8th Cir. 1982).

Cases that hold a means test is not required by a debtor converting from a chapter 13 bankruptcy to a chapter 7 include:

*In re Dudley*¹³ The Court noted that there was no language in §707(b)(1) that explicitly states that §707(b) is applicable to cases converted by an individual debtor to chapter 7. The Court held that the phrase "filed by an individual debtor under this chapter," refers to the individual's initial filing of a chapter 7 petition and does not include conversion to chapter 7 from another chapter of the Bankruptcy Code. The Court also determined that the literal application of the statute did not result in an absurd result as this interpreting leads to fewer conflicts with the Bankruptcy Code as a whole. Lastly the Court determined that its application was not contrary to the Congressional intent in enacting BAPCPA, finding that cases converted to chapter 7 in bad faith may be dismissed without having to apply §707(b).

13 *In re Dudley*, 405 B.R. 790 (Bankr. W.D. Va. 2009).

In re Guarin.¹⁴ The Court, persuaded by *In re Fox*,¹⁵ found Form 22A does not apply to converted [*9] debtors.

14 *In re Guarin*, Case No. 09-42294, 2009 Bankr. LEXIS 3871 (Bankr. D. Mass., December 3, 2009).

15 *In re Fox*, 370 B.R. 639 (D. N.J. 2007).

In re Fox.¹⁶ The Court held that the language of §707(b)(1) is explicit in that the authority of the courts to dismiss or convert extends to debtors who "file" cases under "this chapter," plainly means chapter 7. There is no ambiguity in such clear and explicit language and nothing in the language that indicates that the section was meant to apply to debtors who convert a case.

16 *Supra* at 644.

In re Ryder.¹⁷ The court held that the debtor was not required to file a new means test form following the conversion of her chapter 13 case to chapter 7 because the debtor had not "filed" a petition under chapter 7 but rather under chapter 13. The Court held that the potential for abuse by debtors who filed for chapter 13 and converted to chapter 7 in order to avoid the chapter 7 means testing did not justify a departure from the statutory language.

17 *In re Ryder*, Case No. 07-40192, 2008 Bankr. LEXIS 2220 (Bankr. N.D. Cal., August 18, 2008).

In re Chapman.¹⁸ The Court determined that the word "filed" used in the preface to § 707(b) unequivocally signified [*10] the act of initiating a bankruptcy "under" a particular chapter. The Court held that the case went forward under that chapter via an "order for relief" deemed to have been issued upon commencement, that it remained pending under that chapter, i.e. substantively governed and funneled through its own system of remedies, until administration was completed or until it was converted to a case under another chapter. If converted to a case under another chapter, the new order directing a new track of remedies was deemed to have been issued at the moment of conversion and did not effect a change in the filing of the petition, the commencement of the case, or the order for relief under §348(a).

18 *In re Chapman*, BKY 08-35303, 434 B.R. 800, 2010 Bankr. LEXIS 2749 (Bankr. D. Minn., June 10, 2010).

This Court finds that the majority view is better reasoned and holds that § 707(b) is applicable to a debtor converting from chapter 13 to chapter 7. Section 707 under BAPCPA, was modified to rectify the perceived inequity that many people who were filing for chapter 7 bankruptcy protection were doing so in bad faith without first considering creditor repayment by creating the "means test" which is accomplished by debtors [*11]

completing Form 22A. The means test is to "measure the ability of chapter 7 debtors to repay debt and then, if they have sufficient debt-paying ability, to make them repay at least some of their debt as through a chapter 13, in order to receive a bankruptcy discharge."¹⁹ To determine the debtor's eligibility to be a debtor upon converting from chapter 13 to chapter 7, § 707(b) must be applicable.

19 Kathleen Murphy and Justin H. Dion, *"Means Test" or "Just a Mean Test": an examination of the Requirement that converted Chapter 7 Bankruptcy Debtors Comply with Amended Section 707(b)*, 16 *Am. Bankr. Inst. L. Rev.* 413. (Winter 2008) quoting Eugene R. Whatif, *Means*

Testing in the New § 707(b), 79 *AM. BANKR. L.J.* 231, (2005).

THEREFORE IT IS ORDERED that the Debtor's Motion to Dismiss the United States Trustee's Motion to Dismiss is denied.

DATED this 13 day of August, 2010.

By the Court

/s/ Peter J. McNiff

HONORABLE PETER J. MCNIFF

United States Bankruptcy Judge