



**CHAPTER 13 QUARTERLY NEWSLETTER  
SEPTEMBER 2023**

**1. CHAPTER 13 SEMINAR**

On Friday October 27, 2023, the Akron and Canton Chapter 13 Trusteeships will jointly hold a practice seminar. The seminar will be held at Guy's Party Center on Waterloo Road in Akron and run from 8 AM to 1230 PM. Breakfast will be provided.

The seminar is free to attorneys and one paralegal/legal assistant from their firm. Although the seminar is free, please be advised that space is limited.

Attached to this newsletter is a flyer from the seminar with instructions on how to register.

The program has recently been approved for four hours of CLE.

**2. CHAPTER 13 341 MEETINGS BY ZOOM VIDEO**

Please be advised that effective October 18, 2023, the Akron Trusteeship will begin conducting all 341 meetings by Zoom video.

The link for the Zoom video will appear on the notice sent by the Court with notice of the Chapter 13 filing.

The debtors and their counsel are required to appear on video. However, debtors and their counsel do not have to be at the same location as long as all parties are able to log onto Zoom.

341 meeting by Zoom video is part of a nationwide program pursuant to guidelines established by the United States Trustee Program.

**3. 341 MEETINGS TO BE HELD ON WEDNESDAYS, EFFECTIVE  
OCTOBER 1, 2023**

Please note that in transitioning to the Zoom video that effective October 1, 2023, the 341 meetings for Akron will be on Wednesdays.

The Akron trusteeship will continue its tradition of working with counsel should the Akron 341 meeting conflict with other meetings and court hearings. If counsel has a conflict, please advise the Akron trusteeship and all efforts will made to adjust the meeting time to a different time the same day.

Please send all requests to adjust the time of the meeting to: [aroyer@ch13akron.com](mailto:aroyer@ch13akron.com).

#### **4. PICTURE IDENTIFICATION AND SOCIAL SECURITY CONFIRMATION REQUIRED PRIOR TO 341 MEETING**

As the 341 meetings will be conducted by Zoom, it is imperative that counsel supply the Chapter 13 Trusteeship information regarding the debtor's identification, including picture identification and proof of social security number.

This identification information must be provided to the Chapter 13 Trustee by using the portal system as it provides enhanced security and encryption. Any such information provided by email will be deleted and not read.

If identification information is not provided prior to the 341 meeting, the parties will be required to have their 341 meeting rescheduled. Therefore, parties cannot be supplying information the day of the 341 meeting.

*Practice Tip- Many counsel supply the Trustee the 341 information within five business days of the case filing (to allow time for case to be set up in the portal system). Therefore, as a way of best practice, counsel should consider uploading the picture identification and social security information to the portal system five business days after the case is filed.*

#### **5. PLEASE ALLOW TWO HOUR WINDOW FOR 341 MEETINGS**

Please note that just because the 341 meeting is to be held by Zoom video that it is not able to be any faster than meetings were in person. When the meetings were in person, debtors could be expected to spend at least 2 hours at the Court for the 341 meeting.

Therefore, the Trustee respectfully asks counsel to advise their clients to expect a 2 hour window for when their Zoom meeting will be held. For example, if the Zoom meeting is scheduled for 10 AM, the meeting can be held anywhere between 10 AM and noon.

This time frame allows respect for all parties that may need additional time with their hearing.

#### **6. PERSONAL FINANCIAL MANAGEMENT COURSE**

The Chapter 13 office will continue to sponsor an online Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at [www.chapter13info.com](http://www.chapter13info.com). There is no charge to take the course online for Chapter 13 debtors who have filed in Akron, Ohio.

Please note: in a joint case, each debtor must take the online course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter, a flyer for the online course that counsel may share with their clients in Chapter 13 cases.

## **7. PLEASE CHECK EXEMPTIONS**

The Chapter 13 office has noticed that in some orders, especially orders to sell property, that debtors have been taking an outdated homestead exemption. Therefore, counsel may want to check with their software providers to make sure they are using the most updated exemption.

Please note it is imperative for the debtors to not only take the correct exemptions in orders but also to take all applicable exemptions on petition schedule C. In some cases, the debtors have forgotten to take the homestead exemptions on petition schedule C which is causing delays when they have sought to sell property during the Chapter 13 plan. The debtors cannot take exemptions that they have not properly taken on their schedules.

## **8. CHAPTER 13 DEBT LIMIT**

Please be advised that the current Chapter 13 debt limit is 2.75 million in total debt without the need for secured and unsecured debt limits.

This debt limit is set to expire in June 2024 unless extended. Therefore, if counsel have clients that may benefit from this increased debt limit, please be advised that the time limit to do so is starting to expire.

## **9. ABI CONSUMER PRACTICE EXTRAVAGANZA 2023**

Please be advised that the American Bankruptcy Institute will hold their annual consumer practice extravaganza seminar. Said seminar is virtual and will run from October 30 through November 10 with various programs offered each day. Attached to this newsletter is a flyer with information regarding the seminar for counsel to review.

## **10. CASE LAW**

Bonam v. Huon Le (In re Bonam), 2023 U.S. Dist. LEXIS 123683

Debtor Bonam filed for Chapter 13 bankruptcy on May 19, 2022. That same day, Bonam filed her schedules listing her assets, exclusions, and exemptions. She listed a motor vehicle (a 2022 Mitsubishi Outlander) on Schedule A/B and as an exempt asset on Schedule C pursuant to Georgia exemptions allowed pursuant to state law. On a subsequent amendment to Schedule C, Bonam listed the vehicle as an exempt asset also under 42 U.S.C. § 407(a).

The Chapter 13 Trustee objected to Bonam's claimed exemption on grounds that the vehicle was not exempt by either state or federal statutory allowances for exemptions. The Bankruptcy Court sustained the objection and ruled in a terse opinion that although the vehicle was purchased prepetition using the debtor's social security benefits the vehicle was not entirely an exempt asset under both Georgia and federal exemption allowances. *In re Bonam*, No. 22-10340, 2022 Bankr. LEXIS 3149, 2022 WL 16749080, at pg. 1 (Bankr. S.D. Ga. Nov. 7, 2022). Bonam then appealed the Bankruptcy Court's Order to the U.S. District Court only as relating to debtor's claim of a federal exemption for the vehicle pursuant to 42 U.S.C. §407(a).

The District Court concluded that the Trustee met her initial burden of showing that the exemption was not properly claimed. He said that Section 407(a) "only refers to 'future payment' or 'moneys paid or payable,' not personal property purchased with social security benefits."

"Moreover," the Court's opinion stated, "read in its entirety, Section 407 does not include any language relating to the traceability of social security benefits."

Next, the Court reviewed at whether the debtor had shouldered the burden that had been shifted to her. The Court reasoned that the authority cited by the debtor actually demonstrated "Congress' intent to exempt social security payments regardless of whether the right to receive those payments was prepetition or postpetition, not what is purchased with the payments."

The Court stated it was following a decision from a bankruptcy court in Chicago, which said that "[t]he protection of § 407 does not extend to tangible property purchased with social security proceeds, even if the property is traceable to the proceeds." *In re Franklin*, 506 B.R. 765, 776, n.8 (Bankr. C.D. Ill. 2014).

The District Court affirmed the bankruptcy court's order and held that Section 407(a) did not exempt the vehicle.

## Chapter 13 Seminar



You are cordially invited to attend:

## Chapter 13: A Decoding of the Plan

Date: Friday, October 27, 2023

Time: 8:00 a.m. – 12:30 p.m.

Location: Guy's Party Center  
500 E. Waterloo Road  
Akron, OH 44319

Please join Chapter 13 Trustees Keith Rucinski (Akron) and Dynele Schinker-Kuharich (Canton) for a riveting **analysis of Official Form 113: the Chapter 13 Plan**. The Trustees will discuss each Part contained within the Plan form, and provide guidance on what to consider and how to appropriately complete the form.

In addition, the Trustees will discuss other areas of interest when putting together a Chapter 13 plan, such as **the §341 process, documentary requests, business cases, and means testing**.

As an added bonus, Judge Alan Koschik (Akron) has agreed to moderate a panel, and Judge John Gustafson (Canton and Toledo) has agreed to provide information on the **most recent updates in Chapter 13 caselaw**.

Whether you currently practice Chapter 13 or are interested in expanding your bankruptcy knowledge and practice to Chapter 13, this is a seminar that you won't want to miss!

- To register, please email [info@Chapter13Canton.com](mailto:info@Chapter13Canton.com). Space is limited, so register early. One bankruptcy support staff member is welcome to accompany you, provided that you also register for that person.
- There is no fee for the seminar, and breakfast will be provided.
- An application for 4.0 hours of CLE is pending.



# Chapter 13: A Decoding of the Plan

Friday, October 27, 2023

8:00 a.m. – 12:30 p.m.

Guy's Party Center, 500 E. Waterloo Road, Akron, OH 44319

## Chapter 13 Bankruptcy Seminar Agenda

8:00 a.m. – 9:00 a.m.

The 341: A discussion of documents required to be provided prior to the Meeting of Creditors, and subsequent documentary requests, including an explanation of:

- How the Trustee prepares for the Meeting of Creditors;
- Why certain documents are requested;
- Why the Meeting of Creditors cannot proceed without certain documents; and
- The Zoom rollout and appropriate protocol.

Presented by Keith Rucinski and Dynele Schinker-Kuharich

9:00 a.m. – 9:15 a.m.

Break

9:15 a.m. – 9:45 a.m.

The Business Case and §1302(c): An explanation of the inevitable expanded documentary request.

Presented by Keith Rucinski and Dynele Schinker-Kuharich

9:45 a.m. – 10:45 a.m.

Official Form 113: an in-depth analysis of Parts 1 through 8 of the Chapter 13 Plan form.

Moderated by Hon. Alan Koschik

Presented by Keith Rucinski and Dynele Schinker-Kuharich

10:45 a.m. – 11:00 a.m.

Break

11:00 a.m. – 11:45 a.m.

Means Testing: It really does matter. A discussion regarding how to appropriately complete Official Forms 122C-1 and 122C-2, including a discussion of the effect that Line 45 has on the Plan.

Presented by Keith Rucinski and Dynele Schinker-Kuharich

11:45 a.m. – 12:30 p.m.

Updates in recent Chapter 13 Caselaw

Presented by Hon. John P. Gustafson

# Personal Financial Management Course



# **THIS COURSE IS REQUIRED TO EARN YOUR DISCHARGE !**

## **Online Chapter 13 Bankruptcy Course Finally Financial Freedom!**

**\*\*** The Trustees' Education Network (TEN) – an affiliate of the National Association of Chapter 13 Trustees – has created an online financial management course for the benefit and financial education of Chapter 13 debtors. This course is approved by the United States Trustee Program. **\*\***

# **THIS COURSE IS FREE!**

**\*\*THIS COURSE IS ABLE TO BE COMPLETED PRIOR TO YOUR 341 HEARING WITH THE TRUSTEE\*\***

**SIGN UP ONLINE AT [WWW.13CLASS.COM](http://WWW.13CLASS.COM)**

### **WHAT YOU WILL NEED TO SIGN UP**

- Unique Trustee Identifier Number
  - **TEN13010**
- Bankruptcy Case Number
- Your full Name “exactly” as shown on bankruptcy petition
- A valid email address (each debtor will need a separate email address)
- Your bankruptcy Schedules A/B, D, and E/F for Lesson 1 and Schedules I and J for Lesson 3.



You must complete the entire course (all lessons and quizzes) to receive a Certificate of Completion from the Trustees' Education Network. Once you complete all coursework, the Trustees' Education Network will send a Certificate of Completion to you and to your Bankruptcy Court.

**\*\*Course satisfies legal requirements for debtors' Certificate of Completion and to gain a discharge of their bankruptcy case.**

**\*Other course providers may charge you a fee for this course.**

## ABI Consumer Practice Extravaganza Seminar 2023



AMERICAN  
BANKRUPTCY  
INSTITUTE

OCT 30 -  
NOV 10, 2023

# CONSUMER PRACTICE **EXTRAVAGANZA**

# CP EX

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*“This program was great and hit the mark perfectly for me. Would love more programs like this!”*

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[cpex23.com](https://cpex23.com)

Bonam v. Huon Le (In re Bonam),  
2023 U.S. Dist. LEXIS 123683

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

IN RE:	*	
	*	
TAMMY BONAM,	*	
	*	
Debtor.	*	
_____	*	1:22-cv-150
	*	
TAMMY BONAM,	*	
	*	Bankruptcy Case
Appellant,	*	
	*	No. 22-10340
	*	
v.	*	
	*	
HUON LE, Chapter 13 Trustee,	*	
	*	
Appellee.	*	
	*	

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O R D E R  
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Before the Court is Appellant-Debtor Tammy Bonam's appeal of the United States Bankruptcy Court for the Southern District of Georgia's November 7, 2022 Order sustaining Appellee-Trustee Huon Le's objection to Bonam's claim of exemptions on a 2022 Mitsubishi Outlander (the "Vehicle"). (Doc. 5.) This appeal raises the question of whether 42 U.S.C. § 407(a) allows a debtor to exempt a motor vehicle purchased using prepetition social security benefits from the bankruptcy estate. (Id. at 2-3.) Because the Court finds the Vehicle falls outside the protection of 42 U.S.C. § 407, the Court **AFFIRMS** the Bankruptcy Court's ruling.

## I. BACKGROUND

Bonam filed for Chapter 13 bankruptcy on May 19, 2022. (Record on Appeal, Doc. 4-1, at 1.) That same day, Bonam filed her schedules listing her assets, exclusions, and exemptions. (Id. at 18-19.) She listed the Vehicle on Schedule A/B and as an exempt asset on Schedule C pursuant to O.C.G.A. § 44-13-100(a)(2)(A). (Id. at 12, 18.) On a subsequent amendment to Schedule C, Bonam listed the Vehicle as an exempt asset also under 42 U.S.C. § 407(a). (Id. at 62.)

Le objected to Bonam's claimed exemption on grounds that the Vehicle was not exempt by either O.C.G.A. § 44-13-100(a)(2)(A) or 42 U.S.C. § 407(a). (Id. at 104.) The Bankruptcy Court sustained Le's objection and ruled that the Vehicle purchased prepetition using her social security benefits was not an exempt asset under O.C.G.A. § 44-13-100(a)(2)(A) or 42 U.S.C. § 407(a). In re Bonam, No. 22-10340, 2022 WL 16749080, at \*1 (Bankr. S.D. Ga. Nov. 7, 2022). Bonam now appeals the Bankruptcy Court's November 7, 2022 Order only as it relates to 42 U.S.C. § 407(a). (Doc. 1; Doc. 5, at 3.)

## II. LEGAL STANDARD

On appeal of a bankruptcy court judgment, the district court functions like an appellate court. In re JLJ, Inc., 988 F.2d 1112, 1116 (11th Cir. 1993). Accordingly, the Court reviews the bankruptcy court's factual findings for clear error, and its legal

conclusions *de novo*. In re Globe Mfg. Corp., 567 F.3d 1291, 1296 (11th Cir. 2009) (citation omitted).

### III. DISCUSSION

"Under federal law, when a debtor files for bankruptcy [her] property becomes part of the bankruptcy estate and is thereby exposed to creditors." In re McFarland, 790 F.3d 1182, 1185 (11th Cir. 2015) (citation omitted). However, certain types of property may be exempt from the bankruptcy estate, and, in Georgia, a debtor may use exemptions under both Georgia law and federal non-bankruptcy law, such as 42 U.S.C. § 407. In re McFarland, 481 B.R. 242, 247 (Bankr. S.D. Ga. 2012). Section 407 provides, in relevant part:

(a) In General

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of Section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

42 U.S.C. § 407(a)-(b). The objecting party, here Le, bears the initial burden to establish the exemption is not properly claimed. See FED. R. BANKR. P. 4003(c). Once Le has met the initial burden,

the burden shifts to debtor, here Bonam, to prove the exemption is valid. In re McFarland, 481 B.R. at 248.

In her appeal, Bonam "challenges the Bankruptcy Court's decision regarding [her] right to exempt/exclude the [Vehicle] from the bankruptcy estate pursuant to 42 U.S.C. § 407." (Doc. 5, at 3.) First, Bonam argues the Bankruptcy Court erred when it found that Le met her initial burden to establish the exemption of the Vehicle under 42 U.S.C. § 407(a) was improper. (Id. at 4-8.) Specifically, Bonam argues Section 407 "has no provision declaring that Social Security benefits need to be directly traceable to a purchase as it is clear that Congress intended for the benefits to be out of the reach of any bankruptcy trustee." (Id. at 4.) In response, Le argues she "overcame [the] initial burden by pointing out . . . that [Bonam] was attempting to exempt [the Vehicle] by use of exemptions that specifically reference and identify a debtor's right to receive money or money equivalent." (Doc. 6, at 9.) According to Le, Section 407 does not "provide[] for the exemption of any proceeds of [social security] funds or the traceability of those funds into other non-protected types of assets." (Id.) The Court finds Le met her initial burden to establish the exemption under Section 407(a) was not properly claimed for the Vehicle because the language of Section 407(a) only refers to "future payment" or "moneys paid or payable," not personal property purchased with social security benefits. See 42 U.S.C. § 407(a). Moreover, read in its entirety, Section 407 does



not include any language relating to the traceability of social security benefits. See id. Therefore, the Bankruptcy Court did not err when it found Le met her initial burden to establish the exemption under Section 407(a) was not properly claimed and shifted the burden to Bonam to try and establish the exemption as valid.<sup>1</sup>

Next, Bonam argues "once the burden of supporting the exemption under [Section] 407(a) was shifted to [her], the Bankruptcy Court erred by ruling that [Section] 407(a) did not protect assets traceable to social security proceeds." (Doc. 5, at 3.) She argues Section 407(b) "restricted Congress' power to limit or modify the prohibition in subsection (a)," and because Section 407(b) is not "'subject to the provisions of the Bankruptcy Code, Congress manifested its intent to exempt social security payments under Section 407(a) . . . .'" (Id. at 9 (quoting In re Markley, 1:05-bk-03492, Doc. 29 (Bankr. M.D. Pa. June 8, 2016)) (alterations adopted).) Further, Bonam contends she met her burden in establishing the Section 407 exemption was valid by relying on Mostoller v. Garrett and requests the Court to adopt the reasoning from that case to find that the Vehicle "is not property of the bankruptcy estate." (Id. at 10-12 (citing Mostoller v. Garrett (In re Garrett), Adv. Proc. No. 3:21-ap-3037, Doc. 20 (Bankr. E.D.

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<sup>1</sup> Bonam also challenges each case cited in the Bankruptcy Court's November 7, 2022 Order as being irrelevant to the issues at hand. (Doc. 5, at 5-8.) However, because legal conclusions are reviewed *de novo*, the cases relied on by the Bankruptcy Court have no impact on the analysis of this Court, and thus, the Court does not address these arguments herein. In re Globe Mfg. Corp., 567 F.3d at 1296.

Tenn. Apr. 6, 2022))<sup>2</sup>.) According to Bonam, the Bankruptcy Court in Garrett concluded Social Security funds that were no longer in the debtor's bank account were still protected because "Congress made it clear that any Social Security benefits that have been paid are protected regardless [of] if the debtor in Garrett or [Bonam] here used the funds to either pay a family member back or buy a car." (Id. at 11.) In response, Le argues the cases relied on by Bonam "address the ability to exempt social security funds deposited into a bank account, whether commingled or not," and the Court agrees. (Doc. 6, at 12.) The very language Bonam quotes from Markley addresses Congress' intent to exempt social security payments regardless of whether the right to receive those payments was prepetition or postpetition, not what is purchased with the payments, and the Bankruptcy Court in Garrett found Section 407 protected a portion of a fraudulent transfer that was attributable to the debtor's social security benefits, not whether the protections of Section 407 applied to personal property purchased with social security benefits. See In re Markley, 1:05-bk-03492, Doc. 29, at 4; see Garrett, Adv. Proc. No. 3:21-ap-3037, Doc. 20, at 19. Compare those cases with In re Franklin where a bankruptcy court found "[t]he protection of § 407 does not extend to tangible

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<sup>2</sup> The Bankruptcy Court in Garrett noted that the Debtor's last name was misspelled as "Garett" in his bankruptcy petition but no amended petition was filed to correct the misspelling. (Garrett, Adv. Proc. No. 3:21-ap-3037, Doc. 20, at 2 n.1.) Accordingly, the Court will use "Garrett" when referring to this case.

property purchased with social security proceeds, even if the property is traceable to the proceeds." In re Franklin, 506 B.R. 765, 776 n.8 (Bankr. C.D. Ill. 2014). Therefore, Bonam fails to meet her burden to show the exemption under Section 407 is valid for a vehicle purchased with prepetition social security funds.<sup>3</sup> Accordingly, the Bankruptcy Court did not err when it found Section 407(a) is not a valid exemption for the Vehicle.

Lastly, Bonam argues the Bankruptcy Court erred when it partially based its ruling on Georgia law. (Doc. 5, at 3-4, 12-13.) Bonam contends the Bankruptcy Court "pre-empted federal law with Georgia bankruptcy exemptions" when it rejected Section 407 as a basis to exclude or exempt the Vehicle from the bankruptcy estate and required her to "amend her exemptions to take Georgia exemptions." (Id. at 12.) In response, Le states that because Section 407 does not extend to the Vehicle, if Bonam "want[ed] to exempt any portions of her ownership interest in [the Vehicle]," the Bankruptcy Court ordered she "must use her motor vehicle exemption found at O.C.G.A. § 44-13-100(a)(3) and limited to only \$5,000 of value to exempt the [V]ehicle." (Id. at 16.) As discussed above, Section 407 does not extend to assets traceable

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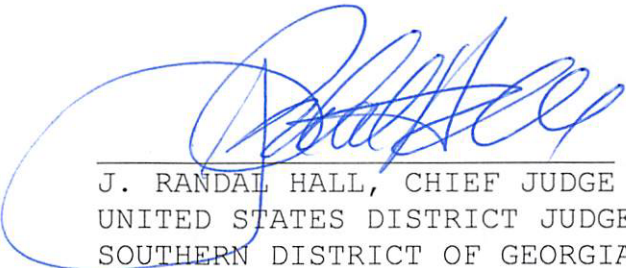
<sup>3</sup> Bonam also argues the Bankruptcy Court erred by "adding a requirement that shows traceability in violation of [Section 407(b)]." (Doc. 5, at 2.) The Court does not find the Bankruptcy Court added any traceability requirement. In fact, to the extent Bonam argues the Bankruptcy Court cannot amend Section 407, the Court agrees, as does Le. (See Doc. 6, at 13-15.) The argument that courts cannot amend Section 407 to include a traceability provision only further supports Le's assertion that Section 407 does not exempt property that is traceable to social security benefits.

to social security proceeds, and therefore, the Court agrees with the Bankruptcy Court that Bonam could only use O.C.G.A. § 44-13-100(a)(3) to exempt any portion of her ownership interest in the Vehicle. Thus, the Bankruptcy Court did not err when it found Section 407(a) did not supersede the exemption under Georgia law.

#### IV. CONCLUSION

For the foregoing reasons, the Court **AFFIRMS** the Bankruptcy Court's November 7, 2022 Order sustaining the Appellee-Trustee Huon Le's objection. The Clerk shall terminate all deadlines and motions and **CLOSE** this case.

**ORDER ENTERED** at Augusta, Georgia, this 18<sup>th</sup> day of July, 2023.



J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF GEORGIA