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CONSUMER BANKRUPTCY UPDATE

by Craig D. Robins, Esq.

Significant Changes in 2003.

During the past year, there have been a significant number of changes in the way consumer bankruptcy practitioners practice. This article will highlight some of the changes that have come about over the past year. These include possible bankruptcy reform, the new "initiative" of the Office of the United States Trustee to aggressively audit and investigate cases, the computerization of the bankruptcy court, and new forms and filing fees.

Legislative Status. Congress has vigorously tried to overhaul the Bankruptcy Code for each of the last five years. This reform movement has been fueled by banking and credit card industries who have pumped tens of millions of dollars into lobbying efforts. However, as a result of political squabbles and power shifts, changing administrations, shifting Congressional priorities towards national security issues after September 11th, and bankruptcy law amendments tied to volatile abortion issues, Congress has been most unsuccessful in getting bankruptcy reform signed into law.

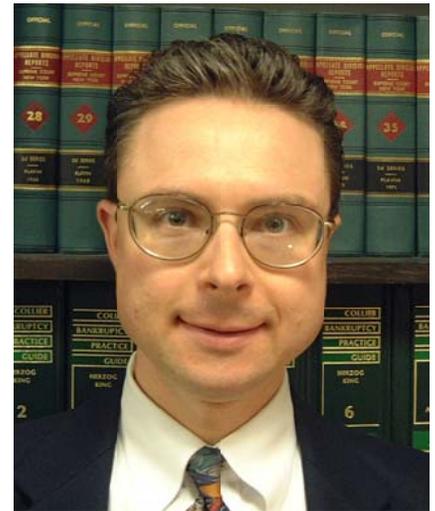
Enactment is still possible this year. In the Spring of 2003, the House quickly passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003. This was the seventh time in recent years that the House passed an omnibus bankruptcy reform measure.

Some Senators have announced their determination to focus on the bill before the end of this year's session, although as of November 25, 2003, the House filed the 2004 Omnibus Appropriations Bill, apparently without the Bankruptcy Reform Act. If Congress adjourns for the end of the year without enacting the new legislation, informed sources expect to see the reform bill come back immediately in 2004.

When and if the Bankruptcy Code is overhauled, it will drastically change consumer bankruptcy law and practice. These changes will be addressed in a future article.

The New, Paperless Bankruptcy Court. Bankruptcy courts around the country have been moving rapidly to implement procedures for electronic filing and computerization of all records. Prior to last year, all bankruptcy attorneys were accustomed to filing their petitions by personally delivering them to the court clerk's office. However, in January 2003, the Court began pushing attorneys to file their petitions electronically through Electronic Case Filing ("E.C.F.") over the internet.

On October 1, 2003, E.C.F. became mandatory. All documents except proofs of claim must now be filed by E.C.F. This involves converting documents to a format called P.D.F.,



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which stands for portable document format. You must obtain special software to do this, such as Adobe Acrobat 5.0 or 6.0. While most computers come with Adobe Acrobat reader (which is free), formatting into a P.D.F. file requires that you purchase a program that writes PDF files. All of the current versions of the bankruptcy software programs automatically do that as well.

To participate in the E.C.F. program, attorneys must first sign up for a course offered by the Court. After completing the course they must register with the Court and obtain a password. By registering, participants agree to receive

notices by e-mail pursuant to Bankruptcy Rule 9036 instead of by normal mail service. Registered users would then receive e-mail notification when additional documents are filed, and can access the system through the Eastern District of New York website. Registered users can file pleadings, pay filing fees, and view dockets, pleadings and exhibits over the internet. You can pay filing fees by credit card. Unregistered users can also access dockets and view documents over the internet, but cannot file pleadings. Signature requirements are satisfied by inclusion in the document of the initials of the filing attorney and the last four digits of the filing attorney's Social Security number.

Attorneys who do not have E.C.F. authorization can still file documents electronically by converting their papers to P.D.F format, placing the P.D.F. files on a 3.5 inch diskette, and delivering them to the clerk's office. The Court does not currently accept submissions on any other media including CD-roms.

There are tremendous benefits to registering for E.C.F. An attorney can set up the account so that the Court sends the attorney an immediate e-mail every time a paper is filed on a case that the attorney is involved with. Each e-mail comes with an attachment of the actual document or docket entry. The contents of virtually all E.C.F. court files are now available 24 hours a day. Viewing filed documents and information on the web site costs seven cents per electronic page of information.

Court Information on the Web. In addition to the Court's web site for filing papers and reviewing court documents, the Court maintains an additional web site that contains a great deal of helpful information (<http://www.nyeb.uscourts.gov/index.html>). You will find chambers directories and chambers rules, court calendars, forms, general information, links, court rules, urgent bulletins, and a monthly E.C.F. newsletter. The Bankruptcy Court also maintains a special E.C.F. help desk, which is also available by phone (631-712-6200).

New Privacy Laws and New Bankruptcy Forms.

The Judicial Conference, the official board that has the ability to propose changes to bankruptcy forms and fees, has adopted a revised set of bankruptcy petition forms designed to protect the privacy of sensitive information. The privacy amendments became effective on December 1, 2003. The most significant change is that only the last four digits of the debtor's Social Security number will be displayed publicly on any documents including the docket. Thus, petitions from now on may only contain the last four digits of the Social Security number.

In addition, when referring to minor children, only their initials should be used. With regard to bank account numbers, only the last four digits should be used. Full dates of birth should no longer be provided; rather, just the year.

Filing Fee Increase.

The Judicial Conference raised a number of the filing fees effective November 1, 2003. The Chapter 7 filing fee increased from the nice, even, totally-rounded amount of \$200 to the ridiculously inconvenient sum of \$209. Since the clerk's office requires exact cash, you cannot give them \$210 and expect a dollar bill as change. The clerk's office has expressed extreme displeasure over this odd amount. Chapter 13 fees have increased from \$185 to \$194. The fee to amend schedules of creditors increased from \$20 to \$26.

The U.S. Trustee Initiative Program.

The United States Trustee Program recently launched a nationwide campaign, the "Civil Enforcement Initiative," aimed at advancing and protecting the integrity of the bankruptcy system. The initiative was developed when, after years of proposed legislation to stop alleged bankruptcy abuse, none of the proposed bankruptcy reforms became law. You can therefore expect to see a heightened amount of activity out of our district U.S. Trustee's office investigating cases to see if debtors have truly filed in "good faith."

Individuals with higher incomes of about \$75,000 per year seem to be the targets. If a debtor has a high income, and appears capable of making

some payment toward his or her debts, the U.S. Trustee's office may file a motion to dismiss the Chapter 7 case under Code section 707(b). Debtors at that point have the option of either disputing the U.S. Trustee's position (which could result in extensive litigation and additional counsel fees for the debtor) or converting his or her case to one under Chapter 13. If the debtor converts the case to one under Chapter 13, the U.S. Trustee's office will not pursue its inquiry of the debtor's finances since the Chapter 13 Trustee's office is capable of performing that function. The U.S. Trustee's office also seems to be red-flagging all cases in which the scheduled unsecured debts add up to over \$100,000. In either of these situations, your friendly U.S. Trustee Attorney will seek to audit and investigate the case before commencing any motions practice and will send out a highly-itemized document demand request. Practical ways of representing your client in light of the initiative will be the subject of a future article.

Filing Statistics. Records were broken when filings totaled 1,650,279 for the one-year period ending June 30, 2003, of which 1,613,097 were filed by consumers. Chapter 7, which has always been the most popular form of bankruptcy relief, also showed the greatest increase. With such record numbers, it appears that filings for calendar year 2003 may surpass 1.7 million.

Editor's Note (revised 2008): Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.