



ON THE DOCKET

US Bankruptcy Court, District of Rhode Island

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Oct., Nov., Dec., 2001

The Inner Workings: News & Advice

By: Susan M. Thurston, Clerk of Court

As we approach the month of December, I would first like to wish everyone a happy and healthy holiday season, and may our country continue to heal and grow, both spiritually and economically. Since the September tragedy, our bankruptcy filings have continued to increase and currently stand at about 10% above last year. This trend reinforces the economic prediction that our

country is in a recession. At the Bankruptcy Court, we continue to strive to serve the public in every way possible, through ac-



cess to court information by electronic means, website training programs and improved courtroom space.

Visitors will notice that our courtroom renovation project has begun and during Thanksgiving week, we installed a raised floor in the interior section to accommodate the new courtroom technology that will be installed in mid December. This technology will include a document camera and monitors throughout the courtroom to allow

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Editor in Chief,
Kristen E. Batty

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Team Coach

By: Lucinda Cory, Courtroom Deputy

Local Rule and Form Amendments, Effective December 1, 2001:

Chapter 13 Procedures and Forms:

1. Plans must be filed in compliance with Rule 3015-1, specifically using RI Bankr. Form W. All plans shall be signed and

dated by debtors, and subsequent amended plans shall also include the date of the clearly-identified amendment. A copy of this form may be obtained from the clerk's office or from our website.

2. Amendments to a plan made prior to con-

firmation which do not adversely affect creditors may be made without leave of Court, by filing a pleading entitled AModification of Plan.@ This document should clearly identify all changes made to the original plan, and must be filed with a certifi-

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for easier dissemination of evidence during hearings and trials. In addition, plasma televisions will be added to enable the audience to also view evidence. Also, the courtroom deputy and recorder's bench is being enlarged to enable courtroom staff to sit together near the judge. In the future, we will be eliminating the jury box and moving additional seating to the right of the courtroom for greater use of this space. A new podium has been built which will house all the necessary automation equipment for the courtroom. We expect most of these changes to be completed by the end of this calendar year. Once the automation equipment is installed, the Court will conduct training classes for interested members of the bar on the use of the technology.

The Clerk's office has just concluded our fourth successful lunchtime training class for attorneys and their staffs on *Accessing the Court's Website*. These sessions focus on a discussion of the various sections of

the website; pointing out the location and types of important court information available; explaining how forms can be produced on-line, and numerous other helpful tips of the trade. If you have not yet participated and would like to, please contact Michelle Torres, Database Administrator, at (401) 528-4477, ext. 49.

Likely by the publication date of this edition of *On the Docket*, our newly amended local rules and forms will be in effect (December 1). Many of the court's rules have been substantially revised, particularly those concerning Chapter 13 practice and Adversary Proceeding procedures. In addition, there are several new mandatory local forms, notably a standard Chapter 13 Plan form and also Chapter 13 confirmation order form. Please take a moment and review these changes. You can pick up copies at the clerk's office or on-line at www.rib.uscourts.gov.

Lastly, I am pleased to announce that Rhode Island

Bankruptcy has been placed in wave 8 implementation for a new case management system, affectionately known as CM/ECF. (case management/electronic case files). This new system will enable practitioners to file cases and pleadings electronically with the court directly from your office PC. We will



**Live on CM/ECF by
December 2002**

start pre-implementation work in April 2002 and hope to be *Alive* by December 2002. We will keep you apprized of our progress in future editions and also of what changes you can expect at the Court once we convert to this new case management system.

Holiday Closings: The Clerk's Office will be **CLOSED** on Christmas and New Year's Day and will **CLOSE** at 2:00 pm on Christmas Eve and New Year's Eve. Filers may use the drop box located directly outside the entrance to the Clerk's Office public area from 2:00 pm to 5:00 pm on the early release days.



Privacy and the Internet: What Your Client Should Know

By: Gail Kelleher, Chief Deputy Clerk

At the request of the Judicial Conference, a committee was formed in 1999 to examine privacy and security concerns regarding public electronic access to case file information. A recent report by the subcommittee on Privacy and Public Access to Electronic Case Files (The Committee) made several recommendations for a judiciary-wide privacy and access policy. The report stated that to a great extent, these recommendations rely upon counsel and litigants to act to protect the interests of their clients and themselves.

Our court has provided access to all bankruptcy case documents via the internet since January 1998. Anyone with a pacer login and password may access this information, and it may be used for any purpose including purposes unrelated to a bankruptcy case. Shortly after we began imaging, a notice regarding this issue of public

access to bankruptcy documents was handed to attorneys as they filed petitions and also posted in the public area. We will continue this practice, but we encourage you to share this information with your client *before* filing their bankruptcy petition so that your client is not unknowingly exposed to any risks - for example, from a former spouse. Prospective debtors must know that all the information they provide will be made public in order for them to make an informed decision before personal information is posted on the internet.

The Committee made several recommendations that would require an amendment to the Bankruptcy Code and Rules, but they also offered suggestions that courts could implement locally. One suggestion is to instruct the case trustees to ask debtors if they have been made aware of the possible dissemination of the information contained in the

bankruptcy cases at their Section 341 Meeting. Our court will pursue this idea with the Office of the US Trustee.

Finally, a copy of the court's notice regarding privacy issues and the internet is included on the last page of this month's *On the Docket*. Please photocopy this notice and include it as part of your preliminary meeting with a bankruptcy client and use it to educate them about public access to their personal information.



Privacy and Public Access to Electronic Case Files



Intake Input

By: Jody Venuti, Intake Clerk

Please remember to sign up for **The Brown Bag Lunch Series Accessing the Court Website** offered by the Court to help familiarize attorneys and their staff with our website and the wealth of information that can be obtained from it. This training was suggested to us by the Attorney Advisory Committee and has proved to be very popular. If you have any suggestions on any other types of training we could offer please let us know. You can sign up through our website (www.rib.uscourts.gov), by calling the **Clerks Office (401-528-4477)** or just by stopping in.

We appreciate the efforts made with filing the matrices on disk. Please remember to pick up a blank disk if you're leaving one with us. We also have an abundance of labels in the Clerks Office, that can be used for re-labeling your disks. Feel free to ask for some when you're here.

Please make debtors aware of the U.S. Trustee's Office address.

Please note that the directions to the Office of the United States Trustee have been posted to our website. More often than not, debtors come here for their meeting of creditors. It

would be helpful to your client (as well as the staff here) if you would download and copy these directions for your client.

If you haven't signed up already, you can sign up for Electronic Bankruptcy Noticing via the website or by obtaining the form in the public area. This will allow you to receive court notices by fax or email instead of by regular mail. In the event your fax or email is down, the noticing center realizes this and will follow up with regular mail.

Recent Court Decisions

By: Jonathan C. Calianos, Esq., Law Clerk

Here is a short digest of some noteworthy opinions from the Court. As always, the full text of Court opinions are available at our web site www.rib.uscourts.gov.

The Common Law Presumption that Property Conveyed to a Husband and Wife is Held by Tenancy by the Entirety is no Longer Recognized in Rhode Island.

In re Homonoff, 261 B.

R. 551 (Bankr. D.R.I. 2001). The Debtor filed a Chapter 7 bankruptcy petition and sought to avoid a \$206,976 judicial lien on his residence, claiming that the lien impaired his exemption under R.I. Gen. Laws 9-26-4.1. The Debtor also sought to exempt \$7,500 worth of household goods and furnishings, claiming they were owned as tenants by the entirety. The Court avoided the judicial lien in its entirety

following its recent decision *In re Strandberg*, 253 B.R. 584 (Bankr. D.R.I. 2000). The Court also found with regards to the household goods and furnishings that the Married women's act eliminated the common law presumption that if property is bought by a husband and wife, it is owned as tenants by the entirety. It found that the creation of such a tenancy requires proof of intent to

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U.S. Bankruptcy Court Hosts: Website Luncheon Series

The Bankruptcy Court will host an hour-long FREE training session designed to assist attorneys and/or their staff on navigating and finding information easily on the Court Website. Attorneys and/or staff will learn where the information is located and who to contact if help is needed. Court employees will be on hand to train participants and answer questions. This is a brown bag lunch training session, so bring your lunch!! The Court will provide soda and coffee. To register for this training please call 528-4477 x 49. Additional training sessions will be scheduled based on demand.

The next available date is January 24, 2002 12:30 pm- 1:45 pm

Computer Based Training Tutorials

By: Steve Moore, Texas Training & Support Center

Bankruptcy attorneys, trustees and other interested parties can now access the CM/ECF computer based training (CBT) tutorials from the internet. The CBTs are available on the PACER Service Center web site at <http://www.pacer.psc.uscourts.gov/ecfcbt/>. Each module covers a specific topic in the CM/ECF application and is written specifically for attorney and/or trustee participants.

Each section of the tutorial is designed to be taken at the attorney's own convenience and will generally take 10 to 15 minutes to complete.

The lessons include:

1. An introductory overview,
2. Logging in to CM/ECF,
3. Bankruptcy petition filing,

4. Converting and uploading creditor matrices,
5. Converting a file to PDF,
6. Submitting motions,
7. Submitting objections or responses to motions,
8. Filing adversary complaints,
9. Filing answers to complaints,
10. Setting up e-mail notification,
11. Filing proofs of claim,
12. Queries, and
13. Reports for attorney and trustee use.

These CBTs can be used as an introduction to CM/ECF before training takes place within the court.

No downloading of files or supplemental programs are necessary. A Java-enabled browser such as Microsoft Inter-

net Explorer 4.01 or higher is required. At this time, users will have better success using Internet Explorer rather than Netscape. The CBTs will not work with Netscape 6.0.



Computer Based Training via
PACER Service Center



(Team Coach Cont. from page 1)

cate of service to interested parties. If no objections are received within 10 days after service or at the hearing on confirmation, whichever occurs sooner, the Court may confirm the amended plan. *See* Rule 3015-2 (a).

3. If an amended plan *does* adversely affect creditors, a Motion to Amend must be filed with the Amended Plan and Certificate of Service. The Amended Plan must clearly identify changes from the original plan. If no objections are filed to the Motion to Amend, it may be granted without hearing. Should the confirmation hearing be scheduled prior to the expiration date for objections, the confirmation hearing will be continued to the next available date. *See* Rule 3015-2 (b)

4. Amendments to the Plan after confirmation must be made by motion, with the Amended Plan attached. The Amended Plan shall summarize any changes and include a statement of the reason for the amendment(s), and a certificate of service. Updated Schedules I and J are required if plan payments are to change. *See* Rule 3015-2(c).

5. A new form has been developed for all Chapter 13 Confirmation Orders. RI Bankr. Form

X will serve as the standard order of confirmation, and will be submitted by the Chapter 13 Trustee as a proposed order in accordance with RI LBR 9072 (b)-1.

6. Any sale of property of the estate outside the ordinary course of business in Chapter 13 must be approved by the Court after notice and a hearing. This shall include, but not be limited to, the Debtor's principal residence, real property, or other property being sold for \$2,000 or more. *See* Rule 6004(d)-1.

Adversary Proceedings:

7. Pretrial conferences in newly-filed Adversary Proceedings will no longer be automatically scheduled at the time of filing. However, a conference may be held on request of the parties. A scheduling order will be issued by the Court within 45 days after the appearance of the defendant, based upon the discovery plan filed by the parties, establishing critical case deadlines. *See* Rule 7016-1. Within 21 days before the scheduling order is due, the parties shall meet and confer pursuant to Federal Rule of Bankruptcy Procedure 7026(f).

8. A Discovery Plan will be required, which shall comply with

RI Bankr Form O.2, and should contain all applicable proposed deadlines such as (1) joinder of parties; (2) dispositive and pre-trial motions, (3) discovery close date, (4) Joint Pretrial Order and (5) whether or not the parties believe referral to mediation would be helpful. *See* Rule 7026-1

Be sure to check out the new amendments to the Local Rules effective December 1, 2001.

9. If either party fails to participate in the filing of the Discovery Plan when due, an Affidavit of

Noncompliance should be filed by the aggrieved party. Upon consideration of the Affidavit, the Court may order that the adversary proceeding now proceed as a defaulted matter. *See* Rule 7026-1(d).

Matrix on Disk:

10. The Court *automatically* adds the State of RI, Division of Taxation as a party to every bankruptcy case filed with the Court. Therefore, it is no longer necessary to include this party on the disk matrix filed by the debtor.



State of RI, Division of Taxation
Automatically added to the matrix.



(Recent Court Decisions Cont. from page 4)

hold the property of tenants by the entirety. In this case, the Debtor presented no such proof.

The Claim of an Exemption Under the Rhode Island Homestead Act, R.I. Gen. Laws ' 9-26-4.1 does not Require an Affirmative Act by the Debtor Such as Recording a Declaration of Homestead.

In re Manuel Furtado, Jr., BK No. 00-13949 (Bankr. D.R.I. May 10, 2001). The Environmental Protection Agency (EPA) objected to the debtor's homestead exemption in the amount of \$100,000 claimed under R.I. Gen. Laws ' 9-26-4.1, arguing that the debtor needed to do an affirmative act to acquire a homestead exemption under the statute. It argued that the statutory language implied such a requirement because the statute states that an estate in homestead may be acquired. The Court rejected the EPA's argument finding that statute had no such requirement.

A Chapter 13 Debtor Who Proposes to Pay Unsecured Student Loan Obligation Outside the Plan must Meet the Requirement of Section 1322 (b)(1) by Showing That Such Payments Do Not Unfairly Discriminate Against Other Unsecured Creditors.

In re Edwards, 263 B.R. 690 (Bankr. D.R.I. 2001). The debtor filed a Chapter 13 bankruptcy petition, and in her plan proposed to pay \$330 per month for 60 months, paying all priority debt in full, as well as the mortgage arrearage on her home. Unsecured creditors would receive nothing under the plan. On Schedule J, the debtor listed an ongoing student loan obligation of \$140 per month. The Chapter 13 Trustee argued that if the debtor were required to put the student loan payment into the plan, unsecured creditors would receive a dividend of 25% and the student loan debt would be reduced from \$18,000 to \$13,000 over the life of the plan. The Court found that while it was permissible under Section 1322(b)(5) for the debtor to maintain payments on the unsecured student loan debt during the Chapter 13 plan, that section had to be reconciled with Section 1322(b)(1) which prohibits unfair discrimination. Maintaining the student loan payments outside of the plan was akin to separately classifying the student loan debt, and the debtor had the obligation to demonstrate that such a classification did not unfairly discriminate against other unsecured creditors. The Court set the matter for hearing on that issue.

The Court Finds That a Fee of \$150 for Document Preparation

in a Routine Individual or Joint Consumer Case Is Presumptively Reasonable and Any Petitioner Seeking in Excess of That Amount must File a Fee Application with the Court.

In re Edwards, 264 B.R. 57 (Bankr. D.R.I. 2001). The Chapter 7 Trustee and United States Trustee filed objections to a bankruptcy petition pre-



parer's fee application seeking \$175 in fees and \$26 in costs for preparing a routine, individual consumer Chapter 7 bankruptcy petition. The Court found that in a routine individual or joint consumer case, a petitioner should be able to complete his or her services in five hours or less. The Court also found that the rate of \$30 per hour is a reasonable hourly rate and said rate includes all overhead of the preparer such as copying, electricity, and telephone.

Furs and Jewelry Are Not Exempt under R.I. Gen. Laws ' 9-26-4(1) which Covers the Necessary Wearing Apparel of a Debtor.



(Recent Court Decisions Cont. from page 7)

In re Newton, BK No. 00-14336 (Bankr. D.R.I. September 26, 2001). The Debtor filed a Chapter 7 bankruptcy petition, electing the exemptions afforded under state law. The Debtor claimed that a watch, a gold necklace and a gold bracelet worth \$750 were wearing apparel and exempt under R.I. Gen. Law. § 9-26-4(1), which exempts the necessary wearing apparel of a debtor... The Court found that necessary wearing apparel does not include jewelry. The Court also noted that the Rhode Island legislature amended the exemption scheme on July 13, 2001, to specifically include jewelry. However, because the bankruptcy case was pending before the amendment took effect, the Court did not apply the newly crafted amendment to the debtor's exemptions.

Violations of the Discharge Injunction, 11 U.S.C. § 524(a)(2),

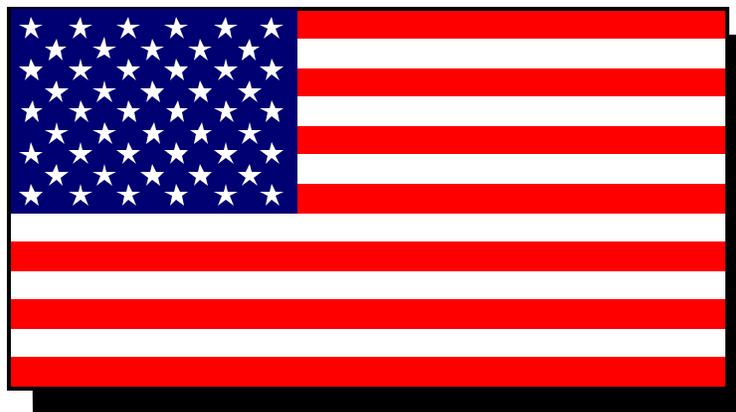
are Enforceable under a Bankruptcy Court's Equitable Powers Conferred under Section 105(a).

Singleton v. Wells Fargo Bank, N.A. (In re Singleton), BK No. 95-11298, A.P. No. 00-1026, 2001 WL 1415883 (Bankr. D.R.I. Nov. 13, 2001). In May 1995, the debtor filed a voluntary petition under Chapter 7 listing Wells Fargo Bank as a creditor. Shortly thereafter, the debtor executed a reaffirmation agreement at the bank's request. However, the agreement was never signed by Wells Fargo nor filed with this Court. In September 1995, the debtor received her discharge and the case closed. In September 1999, the debtor filed a class action complaint in the United States District Court for the Northern District of California, seeking *inter alia* monetary damages for violation of the discharge injunction. Wells Fargo sought to move the action to this Court, which was granted, and pending before the Court

was the Bank's motion to dismiss the complaint. The Court, denying the Bank's motion in part, found *inter alia* that a private right of action is not a prerequisite to the enforcement of a § 524(a)(2) violation. The Court, following *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439 (1st Cir. 2000), stated that it could utilize its equitable powers under Section 105(a) to enforce



the Section 524(a) discharge injunction. The Court also held that a contempt proceeding under Fed. R. Bankr. P. 9020 was not necessary.



“HAPPY NEW YEAR”

Notice Regarding Public Access To Bankruptcy Case Information

All documents filed with the court in bankruptcy cases are public records. These records may be seen and copied by any person, unless otherwise ordered by the court. These public records may be available in paper or in electronic format, **including over the Internet**. All dockets and filed documents are available for public access at the courthouse and on the Internet through PACER (a system for public access to electronic court records) at <http://pacer.rib.uscourts.gov/>. Document Images for bankruptcy cases filed in 1998 to present are available on this court's website at www.rib.uscourts.gov.

INFORMATION OBTAINED FROM PAPER OR ELECTRONIC FILES MAY BE USED FOR ANY PURPOSE, INCLUDING PURPOSES UNRELATED TO BANKRUPTCY CASES.

Please advise your clients accordingly!

11 USC Section 107 Public access to papers.

(a) Except as provided in subsection (b) of this section, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may-

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

