

**VBA BANKRUPTCY LAW SECTION**  
**Bench-Bar Brown Bag Lunch Meeting**  
*with Colleen A. Brown, U.S. Bankruptcy Judge*

**Tuesday, April 7, 2009 ~ 12:00 pm – 1:00 pm**  
**United States Bankruptcy Court, Burlington**  
*~ Participation may be in person or by telephone*

1. Courtroom use study (J. Brown)  
Vermont Bankruptcy Court was the randomly picked small court to be part of national study of courtroom use, ordered by the Judicial Conference of the United States; will be in January 2010.
  
2. Notice required for Amended Chapter 13 Plans  
*(i.e., plans filed before entry of confirmation order; changes to plan post-confirmation are effectuated via Motion to Modify Plan and Amend Confirmation Order)* (J. Brown)
  - (i) notice must be given to all creditors whose claims are getting diminished treatment;
  - (ii) notice must be 25 days [per Rule 2002(b)(2)] unless parties entitled to notice stipulate to the amended plan or the Court enters an Order authorizing shortened notice;
  - (iii) motion may be made using the default procedure, provided the objection deadline is at least 3 business days prior to the confirmation hearing, or is the date set by Court at the confirmation hearing or in a scheduling order
  
3. Procedure for continuing the initial chapter 13 confirmation hearing: (J. Brown)  
Per Vt Local Rule 3015-2(f)(1), there must be 2 weeks notice to all creditors, Court will waive this requirement only upon a showing of cause (i.e., extraordinary circumstances); burden is on the movant to establish and explain the circumstances that constitute cause to continue the hearing, and to set forth cause for the timing of the request; failure to file two returns does not constitute cause.

**(F) REQUESTS TO POSTPONE CONFIRMATION HEARING.**

- (1) **Request to Postpone the Initial Confirmation Hearing.** Any motion (or stipulation) to postpone an initial confirmation hearing must be filed at least 14 days prior to the initial confirmation hearing date. The motion must set forth good cause for the continuance and must be supported by the consent of the Chapter 13 trustee. The motion must be served on all creditors. The initial confirmation hearing will proceed *and the debtor's attorney must appear at the hearing* unless the Court finds the movant has set forth good cause for the continuance, the granting of the continuance will not prejudice creditors (recognizing that with greater notice there is less likelihood of prejudice), and the Court enters an order granting the continuance and canceling the initial confirmation hearing.
  
- (2) **Request to Postpone a Continued Confirmation Hearing.** Any motion (or stipulation) to postpone a continued confirmation hearing must be filed at least three (3) business days prior to the continued confirmation hearing date. The motion must set forth good cause for the subsequent continuance and must be supported by the consents of (A) the Chapter 13 trustee, (B) each party in interest who appeared at a prior confirmation hearing, and (C) each party who filed an objection or response to the debtor's Chapter 13 plan. All required consents must be filed within two (2) business days of the motion being filed and, in any event, no later than noon of the day before the continued confirmation hearing. See Vt.

LBR 9011- 4(f), (g); Vt. LBR 9013-1(f). The motion must be served on the Chapter 13 trustee, each party in interest who appeared at a prior confirmation hearing, and each party who filed an objection or response to the debtor's Chapter 13 plan. The continued confirmation hearing will proceed unless the Court finds

- (A) the movant has set forth good cause for the continuance,
- (B) where the movant is the debtor, the debtor has rebutted the presumption of unreasonable delay, see subparagraph (4), below,
- (C) the motion and the required consents were timely filed, and
- (D) the granting of the continuance will not prejudice creditors; and the Court enters an order granting the continuance and canceling the previously scheduled confirmation hearing

4. UST Audits for Material Misstatements in Debtors' Schedules (K. Lefebvre)  
What the UST looks for in their audits; how material misstatements are investigated; what debtors' attorneys can do to minimize the likelihood of an audit finding in one of their cases; the limited pool of cases reviewed for compilation of statistics in the national report the EOUST prepared for Congress.  
- *see pertinent excerpt from EOUST Report attached to this agenda*
5. Credit Card Record Updates: (K. Ford)  
Attorneys need to remember (a) to notify the Clerk's Office when the credit cards they have on file here expire, and (b) to give the Clerk's Office the new expiration date (and new credit card number, if any).
6. Professionalism CLE (T. Hart & M. Kainen)  
Bankruptcy Court will offer a professionalism CLE aimed specifically at the issues that arise in the context of bankruptcy cases. Timing and content TBD.
7. New Business ?
8. Next meeting date: The next Bench Bar Meeting will be held on June 23, 2009 in Rutland, and attorneys may appear from VIT sites located in Williston, Bennington, Lyndonville, Waterbury & White River Junction.

***These Bench-Bar Lunches are coordinated by the Bankruptcy Court Chambers and Clerk's Office.  
Questions? Call Thomas J. Hart at 802-776-2002***

No fee, no pre-registration required. Soft drinks and bottled water will be provided.



**United States Department of Justice**  
**Executive Office for United States Trustees**

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**Public Report:**

**Debtor Audits by the  
United States Trustee Program  
Fiscal Year 2008**

*(As required by Section 603(a)(2)(D) of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8)*

**March 2009**

<b>Table 2: Outcomes by Judicial District for Fiscal Year 2008</b>				
<b>District</b>	<b>Reports of No Audit</b>	<b>Reports of Audit</b>	<b>At Least One Material Misstatement</b>	
			<b># of Cases</b>	<b>% of Reports of Audit</b>
Tennessee Middle	2	13	1	8
Tennessee Western	7	15	4	27
Texas Eastern	1	8	2	25
Texas Northern	7	20	2	10
Texas Southern	2	10	2	20
Texas Western	0	16	2	13
Utah	0	10	3	30
Vermont	0	3	2	67
Virgin Islands	0	1	0	0
Virginia Eastern	0	22	5	23
Virginia Western	0	8	1	13
Washington Eastern	1	2	1	50
Washington Western	2	16	1	6
West Virginia Northern	0	2	0	0
West Virginia Southern	1	3	0	0
Wisconsin Eastern	1	20	4	20
Wisconsin Western	0	13	3	23
Wyoming	0	1	0	0
<b>TOTAL</b>	<b>109</b>	<b>1276</b>	<b>265</b>	<b>21</b>

## **CONCLUSION**

In Fiscal Year 2008, the United States Trustee Program continued to successfully administer the statutorily required audits of individual chapter 7 and chapter 13 bankruptcy cases. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the USTP in identifying cases of fraud, abuse, and error; and to enhance deterrence. It is important to note, however, that the debtor audit program is relatively new, and the USTP continues to perfect the exception audit and material misstatement thresholds. It is, therefore, premature to use this report to draw firm conclusions regarding the magnitude of fraud, abuse, and error in the bankruptcy system. More reliable estimates may become available as the debtor audit program matures.