

# CAPITAL REGION BANKRUPTCY BAR ASSOCIATION

## NEWSLETTER

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### CALENDAR OF EVENTS

<b>November 7 December 5</b>	2001 Board Meetings start at 8:00 a.m. and are held at the Office of O'Connor, O'Connor, Mayberger & First, PC, 20 Corporate Woods Boulevard, Albany, New York 12211. All members are welcome.
<b>October 29, 2001 (5:30-6:30 p.m.)</b>	Bankruptcy & Credit Program Clinic @ The Legal Project.
<b>October 30, 2001 (5:30-6:30 p.m.)</b>	Bankruptcy & Credit Program Clinic @ The Legal Project
<b>Nov. 9-10, 2001</b>	CRBBA and CNYBBA Annual Conference, Cooperstown, NY
<b>Nov. 15, 2001 (12:00 p.m.)</b>	Upstate NY Turnaround Management Association and CRBBA Luncheon at Jack's Oyster House Program: "Appraisal Updates - Impact on Changing Economy"



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## PRESIDENT'S MESSAGE

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The autumn colors are a little less bright this year. A month has passed since the tragic events of September 11, 2001, but I, like many, still feel it hard to comprehend such hatred and disregard for human life. Although the vicious attacks occurred many miles to our south, the devastation that ensued touched many lives within the Capital Region. My cousin had breakfast in the World Trade Center that awful morning. A lifelong friend of mine worked on the 104<sup>th</sup> floor of the North Tower. Late on the 11<sup>th</sup>, I confirmed that both my cousin and friend managed to escape by virtue of luck, more than anything else. I send my condolences to all of you who lost someone, or knew someone killed or injured.

About a week after the terrorist attacks, I attended a memorial service for a friend's brother, who was killed at the World Trade Center. Less than twenty-four hours later, I attended a funeral mass for a family friend, a 69 year old man, a Korean War veteran, who took his own life. It is hard to reconcile these two tragic, unexplainable deaths.

While the politicians urge us to return to our routines, to some sort of normalcy, I think we are all aware that things are forever changed. If nothing else, the events of September 11, 2001, have provided us with the opportunity to reassess our priorities and take stock of what really matters in our lives. It is encouraging to see how so many rose to the occasion and volunteered their talents and services, and gave blood, food, clothing and donations. To do its part, CRBBA donated \$500.00 to the New York State Bar Association's Disaster Assistance Program to help those impacted.♦

- Cynthia A. Platt

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## SECOND CIRCUIT FOLLOWS MAJORITY OF CIRCUITS IN IN RE POND

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By: *Paul A. Levine, Esq., Member*  
*Meg O'Leary, Esq., Associate*  
*Lemery MacKrell Greisler LLC*

In a recent opinion, Richard J. Pond and Lorrie A. Pond v. Farm Specialist Realty et. al. (In re Pond) 252 F.3d 122 (2<sup>nd</sup> Cir. 2001), the Second Circuit Court of Appeals adopted the majority view that a creditor's wholly unsecured claim on a debtor's principal residence, is not entitled to the protection of Code Section 1322(b)(2), which permits a Chapter 13 debtor's plan to "modify the rights of holders of secured claims, other than a claim secured by a security interest in real property that is the debtor's

principal residence..." (emphasis added). The decision permits Chapter 13 debtors to strip down liens on residential property if there is insufficient equity in the residence to cover any portion of the creditor's lien. In adopting this view, the Second Circuit has joined the Third, Fifth and Eleventh Circuits, as well as the Bankruptcy Appellate Panels of the First and Ninth Circuits.

The debtors of In re Pond filed for bankruptcy under Chapter 13 of the Bankruptcy Code on January 1, 1996 and subsequently brought an action under Section 1322(b)(2) to avoid the creditor's valid, duly recorded third mortgage lien for \$10,630.58 on their principal residence. At a hearing held on February 3, 1997, Judge Littlefield valued plaintiff's home at \$69,000. Moreover, the Bankruptcy Court found that there were four liens on the property: (1) \$1,505.18 for real property taxes, (2) \$48,995.63 for a mortgage of the Farmers Home Administration; (3) \$20,000 for a mortgage of the New York State Affordable Housing Corporation; and (4) \$10,630.58 for the third mortgage lien debtors wanted to strip down. Given that the first three liens amounted to \$70,500.81, both parties agreed that the value of the residential property underlying the third mortgage lien was insufficient to cover any portion of the lien. As a result, the plaintiffs argued that the lien was wholly unsecured within the meaning of Section 506(a) and therefore the creditor was not the holder "of...a claim secured only by a security interest in...the debtor's principal residence," which could be protected from modification under Section 1322(b)(2).

Judge Littlefield rejected plaintiffs' argument on the basis that Section 1322(b)(2) excepted the lien from modification because the underlying security interest was the debtors' principal residence, regardless of the fact that the property had insufficient equity to cover any portion of the lien. On appeal, the U.S. District Court for the Northern District of New York reversed, holding that the statutory prohibition against modification contained in Section 1322(b)(2) does not apply to holders of wholly unsecured liens under Section 506(a) because such liens are not "secured" by residential property within the meaning of Section 1322(b)(2). Accordingly, since there was no equity in debtor's property to cover the lien, the District Court found the lien to be wholly "unsecured" under Section 506(a) and therefore not protected under the anti-modification exception of Section 1322(b)(2). As a result, the District Court held that the lien could be avoided. The mortgage holder appealed to the Second Circuit.

In re Pond deals with the interaction of two provisions of the Bankruptcy Code; Section 506(a), which defines the secured and unsecured components of a creditor's claim according to the value of the underlying collateral and Section 1322(b)(2), which permits a Chapter 13 debtor's plan to modify the rights of holders of secured claims except those secured by the debtor's principal residence. Although the Supreme Court determined in Nobleman v. American Savings Bank, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993), that as long as *some portion* of a creditor's lien is secured by the debtor's residence, a creditor is a holder of a claim secured by the debtor's principal residence within the meaning of Section 1322(b)(2) and is therefore protected from

modification; it has not addressed the issue of whether Nobleman extends to a holder of a wholly unsecured homestead lien. However, numerous lower courts and bankruptcy scholars have considered this issue.

A sizeable minority of courts and scholars have interpreted Nobleman to stand for the proposition that the value of the collateral underlying a lien is irrelevant to whether the lien is capable of being modified by a Chapter 13 plan. The minority view holds that as long as the collateral underlying a lien is the debtor's principal residential property, the lien cannot be voided under Section 1322(b)(2) because to do so would modify the "rights of holders of...a claim secured only by a security interest in...the debtor's principal residence."

In contrast, the majority of courts have taken the view that the anti-modification exception contained in Section 1322(b)(2) is triggered only when there is sufficient value in the underlying collateral to cover at least some portion of the creditor's claim. It is this view that the Second Circuit has expressly adopted in In re Pond. The Second Circuit based its decision upon a review of the relevant statutory language and its interpretation of the Supreme Court's decision in Nobleman. The Second Circuit and other courts following the majority view have noted that in Nobleman, the Supreme Court began its analysis of whether the creditor's lien of \$71,335 on the Chapter 13 debtor's residential property could be modified under Section 1322(b)(2) by first determining whether the creditor's claim was "secured" within the meaning of Section 506(a). The Nobleman Court determined that the creditor's lien was at least partially secured because the debtor's home retained a value of \$23,500 as collateral, which the Supreme Court determined was sufficient to invoke the anti-modification exception of Section 1322(b)(2) to protect the creditor's rights in the entire claim. Therefore, the majority view holds that the anti-modification exception of Section 1322(b)(2) applies only when a creditor's claim is at least partially secured under Section 506(a).

In order to determine whether a lien is "secured" under Section 506(a), the Second Circuit cited another Supreme Court case, United States v. Ron Pair Enters, Inc. 489 U.S. 235, 239, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989), in which the Supreme Court explained that a claim is secured within the meaning of Section 506(a) "only to the extent of the value of the property on which the lien is fixed." Accordingly, to determine whether a lien is "secured" under Section 506(a), a court must examine the value of the lien itself. The Second Circuit concluded from the two Supreme Court cases described herein and relevant statutory language, that the anti-modification exception of Section 1322(b)(2) protects a creditor's rights in a mortgage lien only where the debtor's residence retains enough value – after accounting for other encumbrances that have priority over the lien- so that the lien is at least partially secured under Section 506(a). The Second Circuit rejected the lienholder's arguments that even under the majority view its lien should be protected from modification under Section 1322(b)(2) by virtue of the fact that New York law provides lienholders with *in rem* rights that have

value over and above the equity in the property underlying the lien. The Second Circuit's rejection was based on the fact that after accounting for all other encumbrances of greater priority on plaintiffs' residence, there was no equity left in the property to "secure" defendants' lien within the meaning of Section 506(a).

In adopting the majority view and holding that a Chapter 13 plan may void a creditor's lien on a debtor's principal residence if there is insufficient equity in the property to cover any portion of that lien, the Second Circuit has increased the number of tools available when developing a plan for Chapter 13 debtors. However, In re Pond will also likely have the effect of deterring lenders from providing loans to borrowers for which they plan to use their residences as collateral where there is not already sufficient equity present in the property to at least partially secure the mortgage lien in the event that a Chapter 13 bankruptcy plan is instituted. While this decision increases the protections available to Chapter 13 debtors, it may also increase the number of debtors who file for bankruptcy who would otherwise have been able to obtain additional loans to pay off their debts by using their residences as collateral [Editor's note: Should it not also, from the social perspective, discourage secondary lenders from over-encumbering debtors who have already used up all the equity in their residence, to satisfy otherwise unsecured debt?]  
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## BANKRUPTCY & CREDIT PROGRAM

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By: Paula M. Barbaruolo, Esq.

The fourth Bankruptcy and Credit Program co-sponsored by the Capital Region Bankruptcy Bar Association and the Legal Project took place in June 2001. The format of the clinic was changed from Saturday afternoon to two weekday evenings. It was the most successful clinic thus far.

The majority of the clients attending the clinic are from low-income brackets and cannot afford an attorney. Most of the debts are outstanding medical bills due to lack of health insurance coverage. Almost half are totally disabled. We were able to provide legal services to 94.4% of the clients who attended the seminar. The seminar was so well-attended that clients were placed on "stand-by" due to the fact that all the time slots had been filled. Happily we were able to provide consultations to all stand-bys.

I would like to share a few of the comments we received on our survey sheets from clients. "HOPE!" was the response to the why a client found her consultation helpful. Another couple with a family of four and a household income of less than \$20,000 annually stated that it was "good to understand the process and not feel like just a case number." Another client, who was a victim of domestic abuse, raved that her attorney "calmed me down, made

me feel comfortable and guided me through one of the worst times of my life.”

It is truly uplifting to be able to assist people in need. I would like to thank all the attorneys who donated their time and representation: Tony Arcodia, Bonnie Baker, Robert Cohen, Shannon DeMaranville, James Doern, Chris Dribusch, Marc Ehrlich, Fred Goodman, Martin Goodman, Gayle Hartz, Leigh Hoffman, Matthew Jackson, Leona Jochnowitz, Lisa Mills, Michael O’Connor, Tubosan Osafisan, Steve Reilly, Matt Sgambettera, Bryan Simmerman, Karen Simons, Joann Sternheimer, Roy Stock, Richard Weiskopf and Richard Weisz.

Special thanks also to volunteers Cindy Kovacs and Jonathan Jochnowitz for their assistance at the clinics. Thanks also to Diane Metz and the staff of the Legal Project for their role in making the clinic a success.◆

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## OTESAGA UPDATE

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Reservations for the 2001 Otesaga Conference to be held at the Otesaga in Cooperstown, New York on November 9<sup>th</sup> and 10<sup>th</sup> are on pace with last year’s reservations. It is expected that the conference will be fully subscribed. For those of you that have not placed your reservations yet, please feel free to contact Conference Chairman Matt Jackson, Deily, Dautel & Mooney at 434-0366 who will answer any questions. We are looking forward to an instructive and enjoyable conference and for seeing a large portion of the CRBBA membership on November 9<sup>th</sup>.◆

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## PROFESSOR PATRICK CONNORS CAPTIVATES AUDIENCE AT OCTOBER LUNCHEON

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Approximately 35 people attended CRBBA’s October luncheon at Jack’s to hear Patrick Connors speak on ethics and bankruptcy practice. Patrick Connors is a professor at Albany Law School where he teaches New York Practice, Legal Ethics, a seminar on Professional Responsibility and Introduction to Civil Procedure. Professor Connors is also a reporter for the Committee on New York Pattern Jury Instructions, an author for the McKinney’s Practice Commentaries for the New York Lawyers Code of Professional Responsibility and a member of the New York State Bar Association’s Committee on Professional Ethics. After presenting an overview of ethics in New York’s Federal Courts and Bankruptcy Court, Professor Connors presented the audience with a hypothetical involving the settlement of a personal injury case in the context of a Chapter 7 bankruptcy case and the potential conflicts between the Chapter

7 Trustee, special counsel to the Trustee and the debtor. The hypothetical and variations provided material for a lively dialogue between Professor Connors, the Court and the audience.◆

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## MEMBERS RECEIVE RECOGNITION AT THE LEGAL PROJECT’S ANNUAL PRO BONO RECEPTION

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*By: Cynthia A. Platt, Esq.*

On October 4, 2001, The Legal Project held its annual pro bono reception to honor those who have provided significant service through their involvement in its pro bono programs. The CRBBA in conjunction with the Capital District Women’s Bar Association’s Legal Project joined forces in 2000 to bring legal services to people who are struggling with debt and looking for legal help. The clinics were designed to serve the “working poor” (those who do not qualify for pro bono representation under poverty level guidelines, yet cannot afford to obtain full-fee representation) either on a pro bono or reduced fee basis.

CRBBA member Gayle Hartz, Esq., an associate with the law firm of Tobin and Dempf, was presented with the Kurt Clobridge Memorial Award for Pro Bono Service. This award is presented annually to an attorney who embodies the spirit of pro bono volunteerism that Kurt Clobridge, an active participant in The Legal Project’s programs, exemplified during his life. Ms. Hartz actively participates in the Bankruptcy and Credit Program clinics. Ms. Hartz also provides legal information to people in need and the general public through The Legal Project’s Helpline aired on the Channel 10 morning news and volunteers through the Legal Aid Society’s panel of volunteer lawyers.

The law firm of Deily, Dautel & Mooney, LLP was the recipient of the Law Firm Leadership Award, which is presented each year to law firms that have made a real difference in The Legal Project’s programs through the work of its partners and associates. Deily, Dautel & Mooney became involved with The Legal Project through its affiliation with the CRBBA’s Bankruptcy and Credit Program clinics. The firm’s attorneys are regular participants at our clinics. In addition, attorneys who have not been able to attend clinics have taken referrals from the clinics and have also volunteered to mentor other lawyers taking pro bono cases. Still other members of the firm are on the pro bono panel of attorneys at the Legal Aid Society and serve on boards and committees of not-for-profit agencies. Although pro bono work is not mandated by Deily, Dautel & Mooney, it is highly encouraged as the product of each lawyer’s social conscience.

The CRBBA extends its congratulations to Ms. Hartz and Deily, Dautel & Mooney for providing valuable services to the Capital District and setting an example for the legal community by generously offering their time and energies to assist the less fortunate.◆

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## BANKRUPTCY SCHOLARSHIP WINNERS ANNOUNCED

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The Justin J. Mahoney Memorial Scholarship awarded each year to an academically deserving Albany Law School bankruptcy student has been awarded to two separate prize winners this year. They are Michael J. Dutkowsky and Jason P. Malette. This scholarship, awarded annually, is funded by our Bankruptcy Bar Association to honor the memory of our respected late bankruptcy Judge. The gift is awarded each year as part of the commencement exercises at the school. ♦

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## THE MYSTERY IS SOLVED

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*By: Richard H. Weiskopf, Esq.*

Whether you only receive one or several hundred, bankruptcy practitioners rue the day when they receive their semi-annual reports from the Chapter 13 Trustee's Office. After reviewing the claims, the income that has been received and the disbursements that have been paid, the practitioner then has to attempt to decipher the Trustee's abbreviations. Some of them are relatively easy to analyze (we all have been questioning "POOB" for the last many years) and others are equally difficult to interpret. Well, why is it that everybody shouldn't know what the Trustee is talking about concerning how they are treating the claim? What follows is the result of breaking into the Trustee's safe to secure the only known copy of the entire abbreviation list. This is one of those items that needs to be "*clipped and saved*". In all seriousness, my thanks goes out to the Chapter 13 Trustee's office for compiling this list for the members of the Bar. ♦

### CLAIM DEFINITIONS

#### Abbreviations Found in Field 13:

**CF:** Claim. This is followed by the date the claim was filed with the Court.

**MAD:** Mortgage arrears claim filed by the debtor for the creditor.

**CAD:** Car arrears claim filed by the debtor for the creditor.

**PAD:** Personal property arrears claim filed by the debtor for the creditor.

**TAD:** Trailer arrears claim filed by the debtor for the creditor.

**MACF:** Mortgage arrears claim filed by the creditor this is followed by the date the claim was actually filed.

**CACF:** Car arrears claim filed by the creditor, followed by the date the claim was actually filed.

**PACF:** Personal property arrears claim filed by the creditor, followed by the date the claim was actually filed.

**TACF:** Trailer arrears claim filed by the creditor, followed by the date the claim was actually filed.

**AM:** Means amended, this abbreviation can be combined with any of the above. For example: AM MACF - amended mortgage arrears claim filed 10/01/98. This should be used whenever entering an amended claim with the date the claim was actually filed with the Court.

**LAU:** Listed as unsecured by the debtor. Creditor attached proper perfection and the claim is secured. This followed by the type of perfection. Example: PMSI, UCC-1, MV901, etc.

**NOL:** Not originally listed in the debtor(s) schedules.

**PAYOFF:** The claim is to be paid in full through the plan.

**VALUE:** Valuation motion was done or will be done.

**PWP:** Pay without a Proof of Claim being filed per the debtor.

**POOB:** Pay only on the basis of the Proof of Claim being filed.

**FILED D:** Claim filed by the debtor on behalf of the creditor.

**OUT:** The debtor(s) listed the claim without arrears and the principle is to be paid OUTSIDE the plan directly by the debtor.

**AM ADD:** Schedules D, E & F are amended to add a creditor to the debtor(s) original petition. This is followed by the date the amended schedules were filed with the Court. Note, the added creditor(s) have 90 days from the date the claim was added to the petition to file a claim.

#### Claim Motion Abbreviations:

**EXP:** Claim to be expunged. Please indicate the type of expunge motion. Example: late, dup. admin. This should be followed by the date the claim was filed.

**RECLASS:** Claim to be reclassified as unsecured. This should be followed with S-U, P-U to indicate if the claim is reclassified from secured - unsecured or priority-unsecured.

**DEEM W/D:** Claim to be deemed withdrawn.

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## ASK THE CHAPTER 13 TRUSTEE

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The following is a list of commonly asked questions about Chapter 13 plan administration with answers from Andrea Celli, Chapter 13 Trustee:

**Question:** My most recent Periodic Report indicated that claims were "not filed". Does that mean my case is complete?

**Answer:** No. The Chapter 13 Trustee is required to issue Periodic Reports to debtors in every open Chapter 13 case. In Albany, we issue Periodic

Reports twice each year. If our office has not yet served the debtor and debtor's counsel with the Notice of Claims Filed (NOCF), the Periodic Report will indicate that any claims not considered filed by the debtor, are "not filed" because the claims have not been entered on the Trustee's computer. If, however, you have received the NOCF, the Periodic Report will reflect the claims as filed with the Court and any indication that a claim is "not filed" means just that.

**Question:** I know I have 90 days to review the NOCF once I receive it from the Trustee but what can I do if I have no objections to the claims listed and want the Trustee to begin disbursements immediately?

**Answer:** Although the Local Rules require the Trustee to allow the debtor 90 days to object to claims before disbursing, the debtor can waive that 90 day waiting period and request that the Trustee begin disbursements on those claims immediately. If a debtor wishes to waive this waiting period, he or she may do so by sending a letter to that effect to the Trustee.

**Question:** Can I calculate the payoff of my Chapter 13 plan based upon the claims information in the Trustee's Periodic Report?

**Answer:** Generally, no. Although the Periodic Report does list the claims filed and balances owed (provided that the NOCF has been administered), it does not provide sufficient information to calculate the amount of accrued interest on secured and priority claims and therefore, the payoff amount for the Chapter 13 plan.

**Question:** How do I get the payoff amount for my plan?

**Answer:** Any requests for a plan payoff must be made in writing by debtor's counsel, unless the debtor is pro se. The request must specify (1) the date by which the payoff is needed, (2) the expected source of funds to pay off the plan and (3) the expected date of the payoff. We request that you provide this additional information to our office before we calculate a payoff as calculating the payoff requires a complete audit of our file and the Court's records to verify claims and a calculation of all of the outstanding and accrued interest. Further, if the debtor has not made the minimum 36 monthly payments into the plan, it is most helpful for the debtor to have consulted with their attorney before seeking to pay off their plan.

**Question:** How should a Chapter 13 plan payment Payroll Deduction Order be administered?

**Answer:** Payroll Deduction Orders may be prepared by debtor's counsel (two-hole punched and with a backer) and presented to the Court Clerk, Richard Zeh, for signature. Thereafter, counsel should serve the Order on the debtor's employer with a copy to the Trustee. If the debtor's employment changes, a second Payroll Deduction Order (clearly marked "Amended") may be submitted to the Clerk for entry and thereafter served upon the new employer. Whenever one or more Payroll Deduction Orders have been entered in a case, the Clerk must be provided with an Order Ceasing those Payroll Deduction Order before the Clerk can close the Chapter 13 case. Any more specific questions about Payroll Deduction Orders, as well as a copy of the Trustee's form Order, may be obtained from the Chapter 13 Trustee's Office.

**Question:** How can counsel be certain that he or she is serving a creditor properly such that an Order will be entered if there is no response to the motion?

**Answer:** Counsel should refer to Bankruptcy Rule 7004 which will assist in determining how an entity must be served. In addition, under the most recently enacted Federal Bankruptcy Rules, the U.S. Bankruptcy Court Clerk must and does maintain a *registry* whereby creditors may register their address for service. Of course, if a proof of claim has been filed and the creditor is an individual or a corporation (not a financial institution), the information listed under "name and address to which notices should be sent" is the proper address for service under the Court's 2-N Entertainment decision. If the party being served is a financial institution, 7004(h) requires certified mail service on an officer unless an attorney has appeared on behalf of the institution (in which case the attorney or firm may be served) or the financial institution has waived its right to certified mail service and designated an individual for service. These rules apply in all contested matters (motions) as well as adversary proceedings.

**Question:** How can I assist the Trustee in properly paying outstanding real property taxes when the debtor owns more than one parcel of real property?

**Answer:** Since the Trustee administers the taxes on each parcel and for each tax year separately, it is best to list the taxing authority and itemize the taxes owed identifying (1) the parcel (by tax map

number) and (2) taxes owed with the tax year, on the schedules. In this way, the Trustee's Office can set up a separate claim for each tax year and the debtor will most easily be able to monitor the taxes which are being paid down during the plan (This is especially true if the taxing authority does not file a Proof of Claim and the Trustee is paying based upon the debtor's information).

**Question:** Why does the Trustee's commission fluctuate and how do I calculate payments for a Chapter 13 plan knowing that the percentage will fluctuate during the term of the plan?

**Answer:** The Trustee's commission is set pursuant to 11 U.S.C. §586(e) by the Department of Justice based upon the budgetary needs of the operation and the expected disbursements over the Fiscal Year. In Albany, the Trustee's commission has historically been set between 3-6%. Counsel will generally be safe calculating a 5% Trustee commission into the plan payments, barring any substantial change in local Chapter 13 practice and therefore, the Trustee's responsibilities (and expenses) within the term of the plan. The Trustee is unable to forego the Trustee commission absent a Court Order. Disbursements without fee are generally ordered only in the context of pre-confirmation adequate protection payments.

**Question:** Why does it take 4 to 6 weeks to close a Chapter 13 case after the last payment has been received by the Trustee?

**Answer:** Prior to closing a Chapter 13 case, the Trustee's Office must audit its own file as well as the Court's records to be certain that all filed claims have been entered and paid by the Trustee in accordance with the plan. In addition, the Trustee's Office often is required to obtain copies of Court Orders not previously received (i.e. Orders Striking Claims, etc.) and at times, must make motions to resolve outstanding claim issues. In addition, when properties have been surrendered or repossessed during the course of the Chapter 13 plan, the Trustee sends any creditor with a potential deficiency claim a final notice indicating that the case will be closed and any claim discharged unless a response is sent within 15 days. Finally, the Trustee cannot issue a Final Report until all checks from the final disbursement have cleared the Trustee's accounts. If a creditor holds a check, it cannot be stale dated until 90 days has elapsed. If a check is stale-dated, it may be re-issued and the subsequent check must clear. This includes

checks payable to the Court Clerk which are being paid into the Court registry because the creditors will not accept payment.

**Question:** Can you provide me with a list of personnel to whom specific questions should be directed?

**Answer:** Yes. Please see the listing on the next page..

**STAFF OF THE CHAPTER 13 TRUSTEE AS OF  
AUGUST, 2001**

<u>Issue:</u>	<u>Staff Member:</u>
§341 Meetings/Court hearings (Including confirmations) . . . . .	Kim Waxman
Case Closing Issues . . . . .	Victoria Jaycox or Kimberly Spath
Tax Refund Matters . . . . .	Kimberly Spath
Trustee Monthly Disbursements . . . . .	Linda Dugan
Pre-Confirmation Creditor Payments Including Adequate Protection . . . . .	Kim Waxman
Post-Confirmation Plan Modifications . . . . .	Sandra Spring
Loan Approvals . . . . .	Susan Eberth
Plan Payments/Motions to Dismiss (Non-Payment Only) . . . . .	Sharon McGuire or Debi Wasielewski
Motions to Dismiss (Infeasibility) . . . . .	Cheryl Corning
Motions to Dismiss With Prejudice/Convert . . . . .	Andrea Celli or Diane Davis
Claims Processing . . . . .	Cheryl Corning
Plan Payoffs . . . . .	Cheryl Corning

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## NOTICE

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Motion dates for Judge Gerling are set forth below.

**PLEASE NOTE: THE FIRST SYRACUSE DAY EACH MONTH WILL BE FOR CHAPTER 7 AND 11 MOTIONS ONLY. THE SECOND SYRACUSE DAY EACH MONTH WILL BE RESERVED FOR CHAPTER 13 MOTIONS AT 10:00 A.M. AND CHAPTER 13 CONFIRMATION HEARINGS AT 2:00 P.M. ALSO, PLEASE NOTE THE TIME CHANGES FOR BINGHAMTON AND UTICA.**

**Syracuse cases:**

October 2, October 30, December 4  
10:00 a.m. Motions in Chapters 7 & 11  
2:00 p.m. Pre-trials/Chapter 11 status conferences \*

October 16, November 20, December 18  
10:00 a.m. Motions in Chapter 12 & 13  
2:00 p.m. Chapter 13 confirmations

**Binghamton cases:**

October 9, November 13, December 11  
10:00 a.m. Motions in all chapters  
1:00 p.m. Chapter 13 confirmation hearings  
2:00 p.m. Pre-trials/Chapter 11 status conferences \*

**Utica cases:**

October 23, November 27, December 20  
10:00 a.m. Motions in all chapters  
12:00 p.m. Chapter 13 confirmation hearings  
1:00 p.m. Pre-trials/Chapter 11 status conferences \*

**Bennett/Aloha (Utica Court):**

October 11, November 15, December 13  
11:00 a.m. All motions  
2:00 p.m. Pre-trial conferences \*

\* Scheduled by Court

*Articles for publication in the newsletter are welcome and should be submitted to: Richard H. Weiskopf, Esq., Pasquariello & Weiskopf, One Marcus Boulevard, Albany, New York 12205.*

*Please send address change information to: Karen Simons, Esq., 817 Madison Avenue, Albany, New York 12208.*

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## NOTICE

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Albany return dates for Judge Littlefield are set forth below:

- (A) Motions in a Chapter 7 shall be scheduled at 9:00 a.m.
- (B) Motions in a Chapter 11 shall be scheduled at 10:30 a.m.
- (C) Motions in a Chapter 13 shall be scheduled at 1:00 p.m.
- (D) Motions in a Chapter 12 shall be scheduled at 11:00 a.m.
- (E) Submit original Motions with an Affidavit of Service and Proposed Order when applicable.

The following are Judge Littlefield's 2001/2002 motion dates:

October 4, 11, 18, 25  
November 1, 15, 29  
December 6, 13, 20  
January 4, 17, 24, 31  
February 7, 14, 28  
March 7, 14, 21, 28

All requests for pre-trials, trials, hearings on Chapter 11 disclosure statements and confirmations, as well as matters related to confirmation, should still be sent to the Court for scheduling.

Due to Judge Littlefield's conflicts, any motion in a Chapter 12 or 13 with a case commenced prior to May 1, 1995 should still be forwarded to the Court for scheduling. (The last conflict case filing was on April 28, 1995, Case No. 95-11613, Blanchard.)

**Judge Littlefield's motion calendar schedule will be posted at the courtroom and the Clerk's office. You are responsible for checking this schedule prior to serving your motions.**

<b>2001 OFFICERS AND BOARD OF DIRECTORS</b>
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President	Cynthia A. Platt
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