

Lou Jones Breakfast with the Judges – June 26, 2018

Judge Susan Kelley, Judge G. Michael Halfenger, Judge Beth E. Hanan, Judge Brett Ludwig

1. Rejected Orders
2. New Certificate of Service Form (Attached – see applicable Bankruptcy Rules below)
3. Form 2831 Certifications (Form Attached – see discussion below concerning § 522(q))
4. Encouraging settlements using the new Settlement Event
5. Questions from the Audience (yes, please)

Rule 3012. Determining the Amount of Secured and Priority Claims

(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

- (1) the amount of a secured claim under § 506(a) of the Code; or
- (2) the amount of a claim entitled to priority under § 507 of the Code.

(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. **When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004.** A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

Rule 4003. Exemptions

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(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY.

A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied

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(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, **the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the**

holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

Rule 7004. Process; Service of Summons, Complaint

(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(h) **SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION.**

Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made **by certified mail addressed to an officer of the institution** unless—

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

§ 522 Certifications

BAPCPA created three new requirements for ordinary discharge in Chapter 13. First, the debtor must complete an instructional course concerning personal financial management prior to discharge. Second, a debtor who is required by a statute or judicial or administrative order to pay a domestic support obligation must certify that such obligations have been paid. **Third, the court must make a determination that there is no reasonable cause to believe that § 522(q) may be applicable in the debtor's case.** Section 522(q) limits the state homestead exemption to \$160,375 if the debtor has been convicted of certain felonies or owes debts arising out of certain fraudulent, criminal, or willful or reckless misconduct, causing serious physical injury or death of another. It does not appear to be a discharge exception, but does limit the exemption if the grounds are met. Official forms exist for the debtor to make the required certifications.

Under § 522(p), there is a \$160,375 cap on any homestead exemption for property acquired during the 1,215-day period prior to filing. This provision was intended to close the "mansion loophole" under which wealthy individuals, prior to declaring bankruptcy, shielded money from creditors by converting assets into expensive homesteads in states with substantial or unlimited exemptions. The effect of § 522(p) is that the value of the homestead derived from any money in excess of \$160,375 that is put into a relatively recently acquired homestead will not be exempt in the debtor's bankruptcy. The only exception to the cap is for money derived and rolled over from the sale of a prior homestead within the same state. Thus, homestead value acquired by the debtor from money derived from the sale of even exempt assets, other than a prior homestead, is not exempt. **Courts have held that debtors in joint cases can stack or double the \$160,375 limitation.**

**U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re:

Case No.

Debtor.

Chapter 13

CERTIFICATE OF SERVICE

On _____, ____ [insert date], I, _____ [insert name], served a copy of the _____ [insert: plan or amended plan] on the following persons in the following manner:

1. Deposited for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, to the parties:

_____ (A) listed on the most current mailing matrix, a copy of which is attached to this certificate as Attachment A.

_____ (B) listed on Attachment B. [If you choose this option, you must insert the name of each person/entity served, position of person (if applicable) and full mailing address].

2. By certified mail addressed to the entities listed on Attachment C. [If you choose this option, you must include the name of the officer of each entity served, full name of the entity, and full mailing address].
3. Other service method: [insert relevant details of service].

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: _____

Signature

Name

Attorney/Firm name

Address

Address

* If making a request for the court to determine the amount of a secured claim (11 U.S.C. §506) or avoid the fixing of a lien on exempt property (11 U.S.C. §522(f)) in a chapter 13 plan, the plan

must be served in the manner provided for by Fed. R. Bankr. P. 7004. *See* Fed. R. Bankr. P. 3012(b), 4003(d), 7004(b)(3) (service upon a domestic or foreign corporation, partnership, or other unincorporated association), 7004(h) (service by certified mail on an insured depository institution).

** It is not necessary to certify that participants in the Court's Electronic Noticing System were served electronically with the documents by the ECF/PACER system.

UNITED STATES BANKRUPTCY COURT

Eastern District Of Wisconsin

In re _____
Debtor

Case No. _____

CHAPTER 13 DEBTOR'S CERTIFICATIONS REGARDING (1) DOMESTIC SUPPORT OBLIGATIONS, (2) SECTION 522(q), AND (3) COMPLETION OF CHAPTER 13 PLAN PAYMENTS

Part I.A. Certification Regarding Domestic Support Obligations (check no more than one)

Pursuant to 11 U.S.C. Section 1328(a), I certify that:

- I owed no domestic support obligation when I filed my bankruptcy petition, and I have not been required to pay any such obligation since then.

- I am or have been required to pay a domestic support obligation. I have paid all such amounts that my chapter 13 plan required me to pay. I have also paid all such amounts that became due between the filing of my bankruptcy petition and today.

Part I.B. If you checked the second box in Part I.A., you must provide the information below.

My current
address:

My current employer and my employer's
address:

Part II. Certification Regarding Section 522(q) (check no more than one)

Pursuant to 11 U.S.C. Section 1328(h), I certify that:

I have not claimed an exemption pursuant to § 522(b)(3) and state or local law (1) in property that I or a dependent of mine uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds \$160,375¹ in value in the aggregate.

I have claimed an exemption in property pursuant to § 522(b)(3) and state or local law (1) that I or a dependent of mine uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds \$160,375¹ in value in the aggregate.

Part III. Certification Regarding Debtor's Completion of All Payments Under the Plan

Pursuant to 11 U.S.C. Section 1328(a), I certify that I completed all payments to the trustee required by my chapter 13 plan.

Check one of the following:

My chapter 13 plan did not require me to make any payments other than payments to the trustee.

My chapter 13 plan required me to make payments to one or more entities other than the trustee. I have paid all such amounts that my chapter 13 plan required me to pay.

Part IV. Debtor's Signature

I certify under penalty of perjury that the information provided in these certifications is true and correct to the best of my knowledge and belief.

Executed on _____
Date

Debtor

¹ Amounts are subject to adjustment on 4/01/19, and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.