CONSUMER BANKRUPTCY

The Annual NACBA Convention

By Craig D. Robins

During the last week of April I traveled to San Francisco to attend the annual convention of the National Association of Consumer Bankruptcy Attorneys (NACBA).

It is valuable to interact with fellow bankruptcy practitioners at the convention where there is an opportunity to learn the latest about strategies for protecting consumer bankruptcy debtors as well as tips for running a bankruptcy law office.

Over the course of three days some of the country's leading bankruptcy attorneys, as well as a number of bankruptcy judges, provide valuable insight at daily programs and seminars. There is ample time to trade notes and war stories with other bankruptcy attorneys from across the country and learn about new products and services at the accompanying trade show.

New trend in interpreting the Means Test

In the half-day program addressing the means test, the speakers concluded that both the United States Trustee and our country's bankruptcy judges have become more lenient in interpreting the means test in Chapter 7 cases. There are three reasons for this trend.

Apparently, the current recessionary climate and sentiment against large banking institutions is resulting in the U.S. Trustee bringing fewer 707 motions alleging that the debtor filed an abusive case. In addition, more and more debtors are providing information to the U.S. Trustee's office in cases where there are means test issues. This enables the U.S. Trustee to evaluate the issue of abuse and reach a conclusion that they should not object.

Finally, there seems to be a greater number of experienced bankruptcy attorneys who know what red flags to look out for and consequently refrain from filing abusive cases.

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Widespread concern over bankruptcy judge salaries

Judicial salaries are relatively low. This may be why we are losing a large number of bankruptcy judges. When there is a vacancy on the bench, this causes the bankruptcy court's entire case load to slow down, which means unhappiness and dissatisfaction to litigants and all others involved.

HAMP bankruptcy update

There was ample discussion about President Obama's Home Affordable Modification Program which seems to be rife with problems as an unusually small percentage of homeowners actually get permanent relief.

This is due to: a) a lack of communication on the part of the lender; b) lenders are continuing to threaten homeowners with foreclosure even as the lender is evaluating the homeowner for a modification, and even if the homeowner has been approved for a trial term; c) lenders are arbitrary in granting relief.

On a positive note, however, a new law is going into effect on June 1, 2010 that among other things makes it illegal for a lender to discriminate against a bankruptcy debtor because he or she is in the HAMP program. The new law will also provide certain protections to Chapter 13 debtors as mortgagees will be precluded from objecting to discharge.

Lower prices for credit counseling

When the 2005 Bankruptcy Amendment Act first went into effect in 2005, there were only four approved credit counseling agencies in this jurisdiction, and they all charged the same rate – $50 per credit counseling session.

There must have been about 20 credit counseling companies exhibiting at the trade show and many now charge fees as low as $15 per session.

Emerging technologies for bankruptcy practices

One of the most crowded exhibitor booths belonged to BK Express, a comprehensive practice management system designed for consumer bankruptcy attorneys. This software is a special shell designed to work on top of LexisNexis's Time Matters system.

Problems with MERS mortgages

In a dynamic session, we were told that 50 percent of all residential mortgages in this country are nominally owned by MERS (Mortgage Electronic Registration Systems), a privately held company that operates an electronic registry designed to track servicing rights and ownership of mortgage loans in the United States.

The problem with MERS-recorded mortgages is that MERS really does not own the mortgage, thereby creating an interesting argument that MERS does not have any standing in bankruptcy court.

If your client has a MERS mortgage, consider looking at the pooling and service agreement to make sure that there was a true and valid assignment at every link of the chain, including delivery and acceptance of assignment documents. If there was not, you may have a good objection to a MERS proof of claim or motion to lift the stay.

Few attorneys from New York

It was surprising that very few attorneys attended from our state. Out of about 1,600 bankruptcy attorneys who attended the convention, there must have been fewer than 20 from New York, and only one other member, Allison Shields, from the SCBA. Ms. Shields was one of the speakers who discussed managing a successful bankruptcy practice.

Editor's Note: Craig D. Robins, Esq., a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past 20 years. He has offices in Coram, West Babylon, Patchogue, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobins Law.com. *Please visit his Bankruptcy Website: www.BankruptcyCanHelp.com and his Bankruptcy Blog: www.LongIslandBankruptcyBlog.com.*