

CM/ECF Newsletter

U.S. Bankruptcy Court,
Western District of Pa.

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TRANSCRIPT AVAILABILITY ON CM/ECF

The Judicial Conference of the United States policy now requires that access to transcripts be limited for 90 days following delivery to the court. The Court has issued General Order #2008-6 that establishes guidelines for this policy.

For ninety (90) days after filing, copies of transcripts—in either paper or electronic form—must be purchased through the transcriber. During that initial 90-day period, only the Court, its staff and those who have purchased copies will have access to the electronic transcripts via CM/ECF. However, pursuant to 28 U.S.C. § 753, an electronic copy of each transcript will be available for public inspection (but not copying) at the Clerk's Office during the initial 90-day period.

Each party is responsible for reviewing transcripts for personal identifiers and redacting information as required by Rule 9037 of the Federal Rules of Bankruptcy Procedure. Within seven (7) days of the filing of the transcript, any party intending to redact any portion of the transcript must file a Notice of Intent to Request Redaction (available on the Forms page of the Court's website: <http://www.pawb.uscourts.gov/>), which must be served upon the transcriber and all parties in interest at the time of filing. The party requesting redaction must serve upon the transcriber and all parties in interest a Redaction Request (also available on the Forms page of the Court's website) within twenty-one (21) days after the original transcript was filed. Upon the transcriber's receipt of a Redaction Request, no unredacted copies of the transcript will be sold or otherwise made available. Transcribers shall file a redacted version of the transcript within thirty-one (31) days after the original transcript was filed.

Ninety-one (91) days after the original transcript was filed, the final version of the transcript will be available for viewing, downloading, and/or printing by all users via CM/ECF subject to applicable PACER fees. ■

A NOTE OF THANKS

"Thank you" to Richard Bedford, Chief Counsel to the Chapter 13 Trustee, for submitting an article for publication in the *CM/ECF Newsletter*. Atty. Bedford is the *first* contributor to the *Newsletter* from outside the Clerk's Office.

The article (beginning on page 3 below) provides a detailed explanation of the Chapter 13 Trustee's website that practitioners will find very informative. For example, as Attorney Bedford makes clear in his article, it is important for attorneys to realize that "A website user will not see the posting of the money order until at least the following day, possibly several days later, after archived data from the Trustee's computer has been sent" to the vendor responsible for publishing the data on the Trustee's website. *From Atty. Bedford's comments, it is clear that the postings are not published in "real time" immediately upon receipt of a payment by the trustee as many of us have previously assumed.*

—Judge Thomas P. Agresti ■

REVISION TO CHAPTER 13 CLAIMS PROCEDURES

General Order #2000-2, Proofs of Claim in Chapter 13 Cases, required creditors who filed claims in Chapter 13 cases to file the signed original of the proof of claim and one copy with the Clerk. General Order #2000-2 also required the creditor to serve a copy of the proof of claim upon the debtor's counsel or debtor if not represented by counsel. This general order was entered prior to implementation of an electronic filing system in this district.

The Case Management/Electronic Case Files system (CM/ECF) now automatically sends participating attorneys an electronic copy of any claim that is filed. Attorneys receive one free look at the claim. This has resulted in attorneys and their staffs spending time comparing paper copies of claims received in their offices to the claims received electronically. General Order #2000-2 has been rescinded to reflect the changes brought about by electronic filing. Creditors will no longer be required to send a paper copy of the proof of claim to the debtor's attorney or *pro se* debtors, and a copy of the claim no longer needs to be filed with the original proof of claim.

General Order #2008-5 requires the Clerk to provide a printout of the claims register and all proofs of claim filed in a case to *pro se* debtors after the proof of claims bar date has expired.

As noted above, CM/ECF participants receive an e-mail notification of activity in each of their cases. The e-mail notification contains a link to the "one free copy" as part of the CM/ECF program. You can print the claim and/or save it to view or print at a later time.

The PACER Service Center has drafted instructions for saving the free copy in an electronic format. The following instructions apply from the point where you view the e-mail message containing the attached PDF document.

Caution: To save the PDF document as described below, make sure the Acrobat Reader is opening in your Web browser, not as a separate window.

1. Click on the link to the document found in the e-mail verification notice.
2. The document loads into Adobe Reader.
3. A toolbar with a diskette icon appears at the top of the Adobe Reader screen.
4. Click on the diskette icon.
5. A dialogue box entitled Save As appears over the document.
6. Complete the following data fields:
 - a. Save in: Designate the drive and directory to save the file.
 - b. File name: Name the file. Example: Public, JQstaymotion.pdf.
 - c. Save as type: Leave at Acrobat (*.pdf) default.
7. Click the Save button to store the document in the drive and folder you designated.
8. You can now view or print the document at a later time.

For more information on the one free look, please see the accompanying article on that subject. Many users are unaware that name searches are not subject to the 30-page billing cap and, therefore, receive substantial charges when many names appear in the search results. ■

THE CHAPTER 13 TRUSTEE'S WEBSITE

Submitted by Richard J. Bedford, Chief Counsel to the Chapter 13 Trustee

The website maintained by Chapter 13 Trustee Ronda J. (<http://www.13network.com/trustees/pit/pithome.asp>) provides authorized users with online access to information concerning chapter 13 cases in the Western District of Pennsylvania. Instructions for becoming an authorized user may be found on the website, along with the User Access Agreement detailing the terms and conditions of access to the website. All persons accessing the site are bound by those terms and conditions.

The website is hosted by a third-party vendor, Bankruptcy Software Specialists (BSS), in Memphis, Tennessee. Website users are not viewing data on the Trustee's computer, nor are they accessing the Trustee's internal network. Data displayed on the website has been transferred from the Trustee's computer to BSS, for publication by BSS on the website it maintains for the Trustee, subject to the terms, conditions and restrictions set forth in the User Access Agreement.

As explained in part 10 of the access agreement, the information on the website has been transferred to the BSS site one to four business days from the close of business on any given business day, and does not, therefore, represent the most timely or complete information available to the Trustee. The information does not necessarily reflect all work in process by the Trustee's staff with respect to any particular case, and may not reflect the most current information that has been received by the Trustee or filed with the Bankruptcy Court. The data and information available in the Trustee's records is as current as possible, depending on work flow, holidays, weekends, restraints on the Trustee, and any elements or factors outside of the Trustee's control. Part 10.B. of the access agreement disclaims any representations or assurances concerning the accuracy, completeness or substantive nature of any data contained on the website, while part 10.D. explains that the Trustee makes no representations that the information on the website will be admissible as evidence in any judicial or administrative proceeding.

Despite the User Access Agreement's cautions, the website remains a valuable tool for monitoring chapter 13 cases. The Trustee recognizes that website users are concerned about the timing, accuracy and content of the data viewed on the website.

Timing: Every day, dozens of employees of the Trustee access the Trustee's live computer system, entering new or revised data based on debtors' schedules, creditor claims, payment receipts, plan revisions, court actions, etc. Each night, the Trustee's data

is automatically backed up, for safe storage by the Trustee. The data which is eventually displayed on the website is copied from the Trustee's live computer on a daily basis, and transmitted in archived form to BSS. Ideally, BSS extrapolates that data each day and publishes it on the Trustee's website, replacing the most recently displayed data with more current data. The Trustee has no control over the timing of BSS's publication of the newer data, and technical issues on the Pittsburgh or Memphis ends may delay the display of the newest data. Both the Trustee and BSS endeavor to get the data displayed as quickly as possible, in order to render the data as up to date as possible. The date for which the data is "current" is displayed near the top of the Case Information Screen.

A money order received by the Trustee should appear on the website within several days after it is received by the Trustee's bank in Memphis. The bank's personnel retrieve the money order from the Post Office box and process it as a deposit to the Trustee's account. A photocopy of the money order is sent overnight to the Trustee. Assuming that the bank has retrieved and deposited the money order on the same date as it arrived at the Post Office (which is the Trustee's expectation under this banking arrangement), the Trustee will have a copy of the money order the following day. Receipt of the money order will be noted on the Trustee's live computer system (posted) as a payment by the debtor. The date listed for the payment will be the date the copy of the money order is received by the Trustee (special rules affect the posting date for payments received during the end-of-the-month distribution procedures, generally delaying the posting date to the beginning of the following month). A website user will not see the posting of the money order until at least the following day, possibly several days later, after archived data from the Trustee's computer has been sent to BSS and published by BSS on the website.

Example: Cashier's check is received by Trustee's bank on May 5th, deposited same day into Trustee's account. Photocopy of check is delivered to Trustee on May 6th, and posted on Trustee's live computer system (but does not yet appear on the Trustee's website). Within several days after the posting of the payment, e.g. May 8th or 9th, website users will see the payment on the website, showing the May 6th posting date. An important additional factor affecting the timing of a payment receipt is the time passing between the issuance of the cashier's check and its receipt at the Trustee's bank, while the check is being handled by the debtor and the Postal Service.

Accuracy: The primary issue with regard to accuracy of the data on the website is a function of the timing of the publication of the data. Data on the website can only be "current" if no new or revised data has been entered on the Trustee's live computer since its transmission to BSS. Otherwise, the potential for inaccuracies in displayed data is slight, consisting of the remote possibility that the archived data could become corrupted during the compression or decompression stages. In all likelihood, the effects of such data corruption would be readily apparent.

Content: Prior to the introduction of the Trustee's website, a summary of case information was available on printed reports, organized in the following major parts: general case information, payment receipts, Trustee distributions to creditors and claim summaries. Printed reports had to be mailed from, or picked up at, the Trustee's office, and contained only the data in place on the date of its printing. The website contains all of the information available in those reports, and more, and can be accessed whenever more current information is sought.

Here are some important Case Information data fields to be aware of in using the website:

Graphical Representation of Payments Received by the Trustee: Note that the top of the graph shows the largest payment received, not necessarily the plan payment amount. A debtor who has never made a full plan payment may appear to have made full payments each month if the partial payments have been consistent in amount.

Plan Current-Total Paid Into Plan: If the former is higher than the latter, the difference between these is the plan arrears. Note, however, that the plan current figure includes the payment due for the current month. At the end of the month, after the Trustee's distribution has occurred, that amount will include the following month's payment, and thus the accuracy of that figure as a measure of arrears increases as the date of the Trustee's next monthly distribution approaches.

Bar Check Status: "N" in this field means that the Trustee's final review of the claims filed with the Court has not yet been completed. As a result, the creditor information on the website (especially as to unsecured claims) will be comprised of information from the creditor schedules, the plan, and any proofs of claims that have been entered on the Trustee's computer system. Therefore, some creditors who have not filed claims will still be listed, while other creditors who have filed claims might not yet be listed. "Y" in this field signifies that the claims review is complete,

and only those creditors having filed claim will have "claim amounts" shown for them.

Employer: The employers named on the website represent the best information known to the Trustee. Debtors or their attorneys should inform the Trustee if they note that the employer information is outdated (additionally, the use of incomplete names and addresses for employers on Schedule I impairs the accuracy of the information which will appear on the website in this area).

Permanent Hold/Temporary Hold: As implied by their names, holds placed on funds prevent the distribution of those funds. Permanent Hold status will not change until the Trustee or her staff manually removes it. It is used to prevent lump sums from being disbursed if the source or reason for the lump sum has not been identified, or to freeze all distributions on the case as to some or all of the balance on hand. The amount may be specific as to a certain receipt requiring such attention, or it might be far greater than the balance on hand (e.g. \$444,442) in order to include all funds held, from any source. Temporary Hold is also known as a "30 day hold." Funds on Temporary Hold are automatically released after the Trustee's monthly distribution, since the next distribution will occur approximately 30 days later. Temporary Hold is used to provide assurance of the validity or negotiability of payments. It is always used for money orders, due to the high volume of counterfeit money orders in commerce of late, third party checks (e.g. lawyers' IOLTA checks), and ACH payments (due to banking rules that allow the possibility of the depositor's revocation of agreement for the payment, as well as the occasional "NSF" ACH draw). Other payments might be placed on Temporary Hold for other reasons, such as an especially large, albeit identified, payment. Debtors or their attorneys who spot funds on Permanent Hold that were intended to be applied to general plan funding are encouraged to contact the Trustee to provide information as to the source and intent of any lump sums included in the hold.

Disbursement Flag Status: "Y" means that a confirmation order has been entered on the Trustee's computer system, and therefore distributions are expected to occur based on the terms of the plan. "N" means the opposite. If no confirmation order has been entered by the Court, the Trustee may not disburse the funds on hand. If a confirmation order was recently entered, the "N" will soon be replaced by a "Y", following a reasonable period of time for the confirmation order to be docketed by the Court and processed by the Trustee's staff. ■



CREDIT CARD STATEMENT FROM FIFTH THIRD BANK

As of August 25, 2008, Fifth Third Bank of Cincinnati Ohio has replaced Bank of America as the federal government's credit and debit service provider for the court. All of the courts have been required to change the service provider. This will change the way information for bankruptcy court charges appear on attorneys' credit card statements. Attorneys will no longer be able to compare the transaction number (or reference number) to their credit card statement, because the transaction number no longer appears next to the charged amount; instead, it will indicate a charge issued to USBC-WDPA.

Government representatives are in discussions with Fifth Third Bank to modify the statement information. Meanwhile, attorneys can monitor Internet fees and payments in CM/ECF using Internet Payments Due and Internet Payment History options on the Utilities Menu (in the "Your Account" section). We regret any inconvenience caused by this change in service provider. ■

THE NOTICE OF ELECTRONIC FILING AND THE FREE COPY

Each attorney of record in a case will receive an email message containing a hyperlink to a document that has been filed. One free copy is available to each attorney of record and any secondary addresses listed under the email information screen. Attorneys are able to list multiple e-mail addresses for their filer login (under "Utilities") so that interested parties can be notified of filings as well. The hyperlink to access the document will expire after the earlier of these two events: the first use or 15 days. Any time that same hyperlink is accessed after it has expired, the user will be asked for a PACER login and will be charged to view the document. All users are advised to print or save the document during the initial viewing period in order to avoid future charges.

Some PACER reports are not subject to the 30-page cap on fees. Name searches are not subject to the 30-page limit on PACER charges. Many users are unaware that name searches are not subject to the 30-page billing cap and therefore receive substantial charges when many names appear in the search results. Please be as specific as possible when searching names using the Query report.

The Case report is another report not subject to the 30-page limit on PACER charges so you should also use caution when running the report.

For further information about the Free Look, view the PACER website and review the FAQs under the heading of "Technical - One Free Copy" at <http://pacer.psc.uscourts.gov/cmecf/ecffaq.html#FL>. This is an excellent source of information on the Free Look. ■

INCREASE IN CHAPTER 13 COUNSEL FEE

General Order #2008-1 raised the maximum fee a debtor's attorney may charge a client without submission of a fee petition in a Chapter 13 case from \$2,500 to \$3,100 effective January 1, 2008. The General Order can be viewed on the Court's website at <http://www.pawb.uscourts.gov/genorders.htm>. ■



PERSONAL DATA IDENTIFIERS

Please remember to delete personal identifiers on documents such as employee income records. Federal Rule of Bankruptcy Procedure 9037 requires that certain personal data identifiers be redacted from documents filed with the Court. The rule also explains how the redaction should be made. ■

NOTICE FOR PROPOSED MODIFICATIONS TO FINALLY CONFIRMED CHAPTER 13 PLANS

A new procedure is in effect for cases in which an amended Chapter 13 Plan is filed after final confirmation of the existing plan. Debtor(s) must file with the Court a NOTICE OF PROPOSED MODIFICATION TO CONFIRMED PLAN and the AMENDED CHAPTER [12/13] PLAN, together as a single PDF document, with the Notice being the first page. The notice form as well as the instructions for electronically docketing and filing the notice and plan can be viewed on the Announcements page of the Court's website at <http://www.pawb.uscourts.gov/announcements.htm>. ■

TRANSCRIPT REQUESTS IN THE ERIE DIVISION

In addition to filing a notice with the Court that a transcript has been ordered by using the Transcript Order form which can be found in the Forms section on the Court's website at <http://www.pawb.uscourts.gov/forms.htm>, you must still make arrangements with the court reporter, Carol Holdnack (814-452-4556), to have the transcript prepared for cases in the Erie Division. ■

FINANCIAL MANAGEMENT COURSE CERTIFICATE

In Chapter 7 cases, a Financial Management Course must be taken after the bankruptcy petition has been filed, and the certificate of completion must be filed any time after the petition is filed but no later than 45 days from the first date set for the 341 meeting. There have been cases in which parties incorrectly assumed that the course could be taken within 45 days of a rescheduled meeting date. ■

STATEMENT OF CURRENT MONTHLY INCOME

E-filers who need to amend the Statement of Current Monthly Income should not use the entry Amended Document. Due to statistical requirements brought about by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 with which the Clerk must comply, the use of the proper event will enable the e-filer to input the required values. Statement of Currently Monthly Income FR 22A, Statement of Current Monthly Income FR 22B, or Statement of Current Monthly Income and Disposable Income FR 22C must be used based on the chapter of the case. ■



DISMISSED CASES

Most cases are now closed ten days after the date of dismissal. In the past, cases had been closed immediately upon entry of the dismissal order on the docket. Dismissed Chapter 13 cases are closed after the Chapter 13 Trustee's final paperwork is filed, or the appeal period has expired, whichever is later. ■

OPENING ADVERSARY PROCEEDINGS

The demand should be rounded to the nearest thousandths when opening an adversary proceeding. ■

AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE

Pursuant to the Order of the Supreme Court of the United States dated April 23, 2008, the following amendments to the Federal Rules of Bankruptcy Procedure have been approved pursuant to Section 2075 of Title 28 of the United States Code. The amendments will go into effect December 1, 2008.

Amendments to Bankruptcy Rules 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 7012, 7022, 7023.1, 8001, 8003, 9006, 9009, and 9024, and new Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, and 6011.

Copies of the proposed new rules and amendments to the Federal Rules of Bankruptcy Procedure are available on the website www.uscourts.gov/rules/supct0408.html. ■

NEED ASSISTANCE?

Please direct technical problems such as logins/passwords, missing menu items, unexpected error messages, etc., to the Court's Helpdesk at PAWBHelpdesk@pawb.uscourts.gov

For other assistance, please call
412.644.2700 (Pittsburgh cases)
814.464.9740 (Erie cases)