40 Years

Working Together for Children

1976 - 2016

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Indiana Child Support Conference

Advanced Bankruptcy

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Declaring Bankruptcy

Some Brief Notes on Chapter 7

- **Do**:
  - Collect current and arrears by IWO & Tax Intercept
  - Seek to suspend professional and driving licenses

- **Do Not**:
  - Contact NCP about payment on arrears
  - Release property liens that were filed pre-petition
  - File a Show Cause motion
  - File a Proof of Claim in No Asset case
  - Reinstate a license if NCP not paying

Chapter 13 Starting Points

- Confirm Chapter and Court
- Is There Pre-Petition Child Support Debt?
- Review NCP's Payments
- Review Filed Plan
- Touch Base with Debtor's Attorney

Reviewing The Chapter 13 Plan

- Review DSO Treatment
  - Creditors may contest interest rate
  - form & time of payments
- Plan has three components
  - Assets & liabilities
  - Treatment of claims
  - Optional matters

Chapter 13 Crossroads

- For the IV-D Agency:
  - Whether to file a Proof of Claim
  - Whether to seek payments outside of Plan
  - Whether to object to confirmation of Plan
  - Whether to seek relief from stay
  - Whether to seek dismissal
- For the NCP/Debtor:
  - Whether to contest claim amounts
  - Treatment of the DSO

Seeking Relief From Automatic Stay

- Situations to Consider Seeking Relief
  - Seeking to file Show Cause Motion for Non Payment
  - Objection to Claim: Arrears Dispute
  - UIFSA Registration for Enforcement

- Alternative Arrangements
  - Termination of Stay
  - Annulment
  - Modification
  - Conditional Stay
  - Consent

The Issue of Driving License Suspension

- Driving License Suspended Prior to Bankruptcy Filed
- Can't Coerce But DLS Is Allowed During Bankruptcy
- NCP making IWO payments outside of Plan-- Reinstate.
- If NCP Complying With Terms of Bankruptcy Plan & Making Payments Through Plan, DLR, Have PP Noted

Life After Filing A Proof of Claim

- Check Post-Petition Payments
- Review All Amended Plan(s)
- If Payments Going Through Plan, Amend IWO
- Review to Check if Plan Has Been Confirmed
- If NCP Not Paying– Dismiss? Motion For Relief?
- How Interested Is Your Trustee If NCP Not Paying?

What To Do If Debtor Objects to Your Claim

- If Arr. Dispute Can't Be Resolved, File Response & Motion for Relief from Stay
- File PTDA in IV-D Court & Set for Hearing in IV-D Court When BK Grants Relief.
- Once IV-D Court Decides Arrearage File Amended POC
- Amended POC Resolves Pending Matter, BK Court Should Vacate

Paying Outside Plan: A Win/Win?

- For IV-D Agency--
  - No interruption of IWO
  - No delay in receiving payment
  - More consistent payments
- For Debtor/NCP
  - Plan is more feasible
  - May assist in keeping Chapter 13 from dismissal
  - Allows for timely discharge

Plan Confirmation Criteria

- Must Comply With Chapter 13
- All Fees Must Be Paid
- Proposed In Good Faith
- Distribution Must Be Equal To Chapter 7
- Collateral To Be Surrendered To Claimant
- Must Be Feasible
- Binds all Parties– Creditors & Debtor

Common Objections to Confirmation

- Basic Objections
  - Debtor proposes less than full payment of assigned DSO
  - Debtor proposes plan provisions not authorized by law
  - Plan doesn't address treatment of DSO
  - Plan is not feasible
  - Plan prioritizes debt ahead of DSO
  - Current support ordered to be paid thru Plan

What Is The Confirmation End Game?

- IWO Outside of Plan, Uninterrupted Payments
- Try Reach Agreement With Debtor's Attorney Prior to Confirmation
- If Unable to Get Agreement Outside Plan, Attempt to Get Feasible Monthly Repayment Plan Through Plan
- If NCP Paying by IWO , Prepare CP For Reality Check.
- Don't Get Stuck With A Bad Plan

Does Confirmation Order Trump DSO BAPCPA Exceptions?

- The Emergence of 11 U.S.C. § 1327 As A Second Stay
  - The pro-DSO creditor view
  - The pro-plan view
- The controversy comes to a head: *In Re Gellington*
  - Bankruptcy plan filed 7 months after BAPCPA
  - Debtor proposed plan that did not include child support
  - Texas received wrong plan & IWO beyond plan amount
  - Texas agreed to 10 day turnover order of collected funds

What the *Gellington* Court Said

- Court: § 1327 binds DSO creditors to plan terms
- There was no violation of 11 U.S.C . § 362(b)(2)(c)
- Confirmation order provides finality
- Res Judicata
- Court: No sanctions against State as IWO promptly rescinded

What is the Intent of 11 U.S.C. § 1327?

- Statutory Constructionist View: Two Canons
  - Canon One: the *in pari materia* view
  - Canon Two: specific triumphs over the general
- Congressional Intent of §§ 362 and 1327
  - For Chapter 13 cases, was it *really* to allow certain enforcement actions for the limited window between filing date and confirmation?
- Congress or US Supreme Court Needs to Clarify
  - Can driving license suspension and medical support enforcement be seen as part of the estate?

Is This What Congress Intended?

- See S.R. No.989, 95th Cong. 2d Sess. 1978 U.S.C.C.A.N. 5787,5837
- Congress intended burden be placed on trustees to enjoin non-stayed creditors if actions interfered with estate
- Why should a DSO creditor have to ask a Bankruptcy Judge to do what Congress has already allowed it to do?

Two Possible Solutions

- Change through amending the Bankruptcy Code
  - Simply amend § 1327(a)
- Adopt Chapter 13 Uniform Plan Model
  - Avoids recurring *Espinosa* issues
  - Standard language for plan terms
  - No longer "discharge by ambush"

Chapter 13 Payment Options

- Three Options
  - Option 1: Pay everything outside plan
  - Option 2: Only pay **pre-petition** arrearage through plan
  - Option 3: Hybrid

Seeking Modification of the Plan

- Made at debtor, Trustee, or unsecured creditor request
  - *Increase* or decrease payments on claims of a class
  - Extend *or reduce* the time for payments
  - Change the amount to be distributed to a creditor
- A substantial change in debtor's ability to pay warrants modification

Seeking Dismissal

- Informally:
  - Contacting Trustee—Advise Trustee That NCP Not Paying CSUP and Pre-Petition Debt.
- Formally:
  - File a petition with bankruptcy court
    - Not Making Current Support Payments -- 11 U.S.C. §§1208(c)(10), 1307(c)(11)

Discharge

- Bad Faith Remedies
  - Dismissal
- Is There Ever A Time to Object to Discharge?

Preventative Actions– Do's & Don'ts

- **Do not** release liens that precede BK DOF.
- **Do not** file new lien post-filing.
- **Do not** violate confirmation order
- **Do not** violate automatic stay

- **Do** communicate with the debtor's attorney..
- When in doubt, **Do** request relief from stay.
- **Do** act quickly to correct a mistake.

Adversary Proceeding

- Determine the Nature of the Violation
- Contact CSB Legal Counsel
- Determine if you or the office has filed appearance
- Quickly contact Debtor's attorney to mitigate damages
- Draft appropriate response or take appropriate action

What Did We Learn Today?

Claims

Plan Confirmation

Relief From Stay

Plan Modification

Dismissal & Discharge