



Dennis LeVine & Associates
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BANKRUPTCY REFORM IS BACK!

Like a monster that refuses to die, bankruptcy reform legislation is again making its way through Congress. **For the first time in several years, though, many experts predict the legislation will become law this year.**

Since the House leadership was reluctant to take up the Bankruptcy Bill unless it first passed in the Senate, the Bankruptcy Bill was introduced in the Senate on February 2, 2005 by Senator Grassley (R-Iowa). Designated as S. 256, the bill is substantially similar to last year's bill, but does not include Sen. Schumer's (D-NY) "abortion language" (this provision was seen as the primary reason the bankruptcy overhaul bill did not pass last year).

The Senate Judiciary Committee approved S. 256 on Feb. 17, 2005, and sent it to the Senate floor for debate. The Senate began debate on the bill during the week of March 1, 2005. Democrats and other opponents of the bill offered numerous amendments on

the Senate floor. Among these were measures to prevent venue shopping by corporations, provide an opt out of the means test for debtors with significant medical expenses, and increase the home equity exemption for the elderly seeking protection. Almost all attempts to add amendments to the bill failed.

As this article goes to press, the Senate has passed S. 256 without any major amendments. The House likely will pass the same bill in April. Should this happen, the Bankruptcy Bill could become law by May, although the new provisions of the Bankruptcy Code in the bill would not become **effective** for six months after passage. We will keep you updated, but you can follow developments at these excellent websites:

- <http://abiworld.net/bankbill>
- <http://bankruptcymedia.com/bkfinder/bankruptcyreformnews.html>

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**STATUS OF ELECTRONIC FILING
IN FLORIDA
BANKRUPTCY COURTS**

The Southern District is the only Florida District which does not utilize the CM/ECF electronic filing system. The Southern District has delayed the implementation of CM/ECF until at least June, 2005.

The Orlando and Jacksonville Divisions in the Middle District have required mandatory electronic filing since October, 2004. The Tampa/Fort Myers Division, which now only requires electronic filing on a voluntary basis, will go mandatory on May 1, 2005.

Many creditors are interested in filing proofs of claim electronically. In most Courts, a creditor can become a "Claims E-filer". A password is required for each Court. Instructions on how to obtain a password are available on Bankruptcy Court websites (e.g. the Middle District of Florida - www.flmb.uscourts.gov). Creditors who do not file claims electronically can continue to mail in a hard copy of a proof of claim. At this point, the Clerk's Office will scan it in and register it. The Clerk in the Middle District has advised us that the Court may no longer return a "filed" stamped copy of the proof of claim after May 1, 2005, but this issue has not been formally decided.



**INTEREST RATE ON FLORIDA
JUDGMENT SENTENCED IN 3005**

All final judgments entered by state courts in Florida are entitled to accrue interest. Pursuant to Florida Statute 55.03, the State of Florida annually adjusts the interest rate applied to final judgments entered during the year. The interest rate for final judgments entered in 2005 has been set at seven percent (7%).



**TOTAL BANKRUPTCY FILINGS
DIP SLIGHTLY IN 2004**

Bankruptcy filings declined in 2004 for the first time in four years, according to data released today by the Administrative Office of the U. S. Courts. There were 1,618,987 bankruptcies filed in the 12-month period ending September 30, 2004, down 2.6% from the same period in 2003. Business bankruptcy cases during the same period totaled 34,817, down 3.8% from 2003.

According to data from the Federal Reserve analyzed by the American Bankruptcy Institute (ABI), bankruptcy filings correlate to credit card charge-off rates, credit card default rates, and financial obligations ratio. This data suggests that personal bankruptcy filings will trend upwards slightly in 2005.

**BUSINESS AND NON-BUSINESS FILINGS
(Years Ended March 31, 1999-2003)**

Year	Total	Non-Business	Business
2003	1,611,268	1,573,720	37,548
2002	1,504,806	1,464,961	39,845
2001	1,307,857	1,271,865	35,992
2000	1,301,205	1,263,096	38,109
1999	1,419,199	1,378,071	41,128



**VALUE OF COLLATERAL SHOULD
BE DETERMINED AS OF THE
PETITION DATE**

A common occurrence in Chapter 13 cases is the Debtor's valuation of a secured creditor's claim. This "cram down" usually involves an automobile loan where the value of the automobile is less than the amount owed. The Debtor typically files a Motion to Value Collateral during the course of the case. In the event the valuation issue is not resolved, the matter is scheduled for an evidentiary hearing.

One issue which must be decided by the Court is the date on which to determine the value of the collateral. There are several possible dates which Bankruptcy Courts have used, including the petition date, the date the Motion to Value is filed, the date of the evidentiary hearing on Motion to Value, or the date of confirmation. This issue can make a significant difference in the value in Districts where confirmation occurs months after the case is filed.

The Fifth Circuit addressed this issue in December in In re Stenbridge, 2004 W.L. 2931125 (5th Cir. 2004). In Stenbridge, the Fifth Circuit determined that the value of collateral should be determined **as of the date the petition is filed**. The Fifth Circuit also found that since the Court should use the date of the petition to determine the value of the collateral, any post-petition adequate protection payments should be deducted from this amount.

**DEBTOR ENTITLED TO EMOTIONAL
DISTRESS DAMAGES FOR VIOLATION
OF AUTOMATIC STAY**

When a creditor violates the automatic stay following the filing of a bankruptcy petition, the debtor has the right to recover actual damages for willful violation of automatic stay. One issue being discussed in recent cases is whether actual damages may include damages for emotional distress under 11 U.S.C. §362(h).

In a recent case, Dawson v. Washington Mutual Bank, F.A., 367 F.3d 1174 (9th Cir.), withdrawn, 385 F.2d 1194 (9th Cir. 2004), the Ninth Circuit answered the question no. Upon reconsideration, however, the Ninth Circuit changed its mind and now answers yes. In the latest decision, the Court stated: "In so holding, we join an emerging consensus recognizing the availability of damages for emotional distress that results specifically from a willful violation of the automatic stay."

The Ninth Circuit in Dawson stated that not every willful violation merits compensation for emotional distress. The Court wanted to limit frivolous claims. The Court held that to be entitled to damages for emotional distress under §362(h) an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process). The Court noted that fleeting or trivial anxiety or distress does not suffice to support an award; instead, an individual must suffer significant emotional harm.

Dennis J. LeVine is Board Certified in both business and consumer bankruptcy law by the American Board of Certification. Mr. LeVine was admitted to the Florida Bar in 1983, and practices in the federal courts of all three Florida districts. He has concentrated his practice in bankruptcy and collection law for 20 years.

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Timeless Wisdom of Yogi Berra

- I Ain't in a Slump. I'm Just Not Hitting.
- When You Come to a Fork in the Road, Take it.
- You've got to Be Careful If You Don't Know Where You're Going, because You Might Not Get There.
- Ninety Percent of this game is Half-Mental.
- I Really Didn't Say Everything I Said.

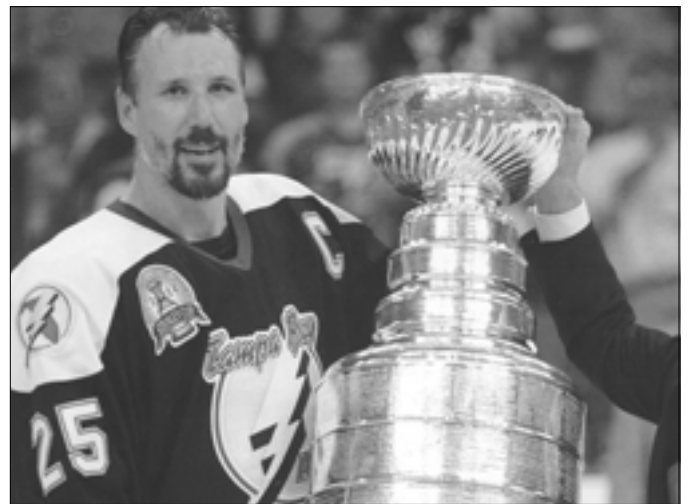


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Dave Andreychuk, Captain of the Tampa Bay Lightning, holds the Stanley Cup, hockey's championship trophy, won in June 2004.