



Dennis LeVine & Associates
Secured Creditor & Bankruptcy News

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**BANKRUPTCY FILINGS
SET RECORD IN 2005**

A record number of bankruptcy cases were filed in 2005. Total bankruptcy petitions for 2005 exceeded 2 million, surpassing the previous record of 1.66 million filed in 2003. In 2004, just under 1.6 million petitions were filed.

Financially troubled consumers rushed to file before Oct. 17th because the new law was expected to force more debtors into Chapter 13 rather than Chapter 7. Bankruptcy filings peaked at a record of more than 315,000 during the week before the law took effect, but have since fallen to a weekly rate of about 3,500, according to Lundquist Consulting Inc. Most experts do not expect filings to remain so low. "We have not changed either the laws of economics or basic human nature," said John Penn, the president of the American Bankruptcy Institute.

*Middle District of Florida
Bankruptcy Filing Statistics for 2005.*

2005	Mo. Total
Jan	3436
Feb	3765
March	5323
April	5798
May	4674
June	4650
July	4005
Aug	5035
Sep	7342
Oct	18,800
Nov	362
Dec	588
Total	63,778



**ARE CRAMDOWNS STILL
POSSIBLE IN A CHAPTER 13
CASE WHERE CONTRACT
ENTERED INTO WITHIN 910
DAYS OF FILING**

Under the 2005 amendments to the Bankruptcy Code which became effective on October 17, 2005, a debtor in Chapter 13 cannot cram down a secured claim on a vehicle loan which the debtor entered into less than 910 days prior to filing. Nevertheless, we have seen debtors continue to propose cramdowns in cases filed after October 17th.

At the ABI Winter Conference in California in December, I discussed this issue with a prominent Midwestern Bankruptcy Judge. I suggested it should be sanctionable for a debtor to include such a cramdown provision in a Chapter 13 Plan, since it now was contrary to the amended Code. The Judge saw another possible view. He pointed to Section 1325(a)(5), which describes the options a debtor has to treat secured claims in order to obtain confirmation. Under Section 1325(a)(5)(A), a plan will be confirmed when "the holder of such claim has accepted the plan". The Judge noted a line of cases supporting the argument that a creditor's failure to object to a plan provision can bind the creditor after confirmation (i.e. silence is deemed to be consent). Therefore, a secured creditor's failure to object to a Plan's apparent impermissible cramdown treatment could be construed as the secured creditor "accepting" the plan.

Our local Chapter 13 Trustees have advised they would not make an unfavorable recommendation of a Plan

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which included such a seemingly improper cram down provision. The Chapter 13 Trustees believe it is permissible for the debtor to "make an offer" for a cramdown in the Plan (even when the debtor entered into the contract within 910 days), and it is up to the creditor to accept the "offer" or object. If the creditor objects, according to the Trustees, the debtor can surrender the vehicle to the secured creditor, or the debtor can amend the Plan. While this issue has not yet come before any Court, creditors must remain vigilant, and object to Plans which improperly treat their claims.

CAN A DEBTOR LOVE HIS MOTORCYCLE MORE THAN HIS GIRLFRIEND

We recently handled a case involving a boyfriend, girlfriend, and a Harley Davidson motorcycle. The boyfriend's credit was insufficient to finance the motorcycle, so his credit worthy girlfriend stepped in and became a co-obligor. After the borrowers defaulted, we filed a lawsuit and obtained a Writ of replevin; however, we had difficulty serving the boyfriend with the Writ. We were able to locate his girlfriend, and the Sheriff served the girlfriend with the Writ. She advised the Sheriff that her boyfriend had possession of the motorcycle, and she had no idea where he was.

We filed a Motion for Order Requiring Expedited Location and Discovery of Collateral. The girlfriend appeared in Court and gave the same story she told the Sheriff. The Judge, convinced the girlfriend was lying, sentenced her to 30 days in jail, but gave her 48 hours to locate the motorcycle or else begin to serve her jail sentence. We received a phone call from the girlfriend more than a day later, with the location of the motorcycle. Apparently, it took her boyfriend almost 24 hours before he would divulge the whereabouts of the motorcycle – even though he was aware his girlfriend would be going to jail for 30 days!



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 21 years.

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CAR REPOSSESSED AFTER DISMISSAL NOT PROPERTY OF THE ESTATE, AND DID NOT HAVE TO BE RETURNED WHEN CASE REINSTATED

After a Chapter 13 case is dismissed, debtors often file a Motion to reinstate the case. A common issue is whether in Florida a secured creditor which repossesses a vehicle after dismissal – but prior to the case being reinstated – must return the vehicle to the debtor.

In a recent case, the debtor's Chapter 13 case was dismissed, but reinstated after the repossession. The debtor filed a Motion for Turnover. The Bankruptcy Court denied the Motion for Turnover and held that the vehicle was not property of the estate. In re Johnson, 328 B.R. 234 (Bankr. M.D. Fla. 2005). The Court recognized that the vehicle was property of estate at the debtor's original filing of the case. Upon dismissal, however, the stay terminated and the vehicle was no longer property of the estate. Even though the automatic stay was simultaneously imposed when the case was reinstated, at that point the debtor's vehicle had been repossessed, and was no longer property of the estate. Citing and following the Eleventh Circuit's ruling in In re Kalter, 292 F.3d 1350 (11th Cir. 2002), the Court held that ownership of the vehicle passed to the creditor upon repossession and "[t]he debtor's remaining right to redeem the vehicle is insufficient to render the vehicle property of the estate pursuant to 11 U.S.C. § 541."

The Bankruptcy Court in Johnson did not address the issue of whether the automatic stay in a reinstated case applies retroactively. The case law on this issue is clear that the automatic stay is not reimposed retroactively in a reinstated case. The Court in Johnson focused on the debtor's right to redeem collateral under Fla. Stat. § 679.623, and stated: "the debtor's right to redeem may be exercised at any time before the secured party disposes of, or enters into a contract for its disposition. Upon repossession, the debtor has the right to redeem the repossessed vehicle and, if the creditor violates that right, the debtor may recover damages. In order to redeem, the debtor must 'tender fulfillment of all obligations secured by the collateral.'" The Bankruptcy Court held that "[p]ayment over time in a Chapter 13 plan does not equal a tender of the entire balance."



FLORIDA ATTORNEY GENERAL SUES FLORIDA COLLECTION AGENCY

Florida's Attorney General filed suit against a Jacksonville collection agency, charging that it threatened customers, posed as police, and imposed illegal fees. The company and its owner were charged with multiple violations of the Federal Fair Debt Collection Practices Act and Florida's Consumer Collections Practices Act.

The Attorney General's Office began an investigation after receiving numerous complaints from the Better Business Bureau, including that company workers were posing as law enforcement officers or attorneys, threatening arrest by military police, and even posing as members of the Attorney General's office. "Few words could adequately describe the appalling nature of the tactics used against these citizens," said the Attorney General. One victim was contacted by the company and told that police were on their way to her home to arrest her husband for cashing a bad check.



Dennis and Francine enjoy the festivities at Tampa's annual Gasparilla pirate invasion and celebration on January 28th.

Dennis LeVine & Associates Celebrates 10th Anniversary

*On March 15th, Dennis LeVine & Associates
celebrates the 10th anniversary
of the Firm's founding.*

*Thank you to all of our clients and friends for
your help and support. You have been a
big part of the Firm's success.*

DEBTOR GETS 18 MONTHS IN JAIL FOR BANKRUPTCY FRAUD

In a recent criminal prosecution, a 37 year old resident of St. Petersburg, Florida pled guilty to one count of bankruptcy fraud and one count of making a false declaration in a bankruptcy proceeding. She was sentenced to 18 months in prison.

The Debtor admitted to a scheme to thwart IMC Mortgage Company's efforts to foreclose a mortgage on residential property where the Debtor lived with her father. Between October, 1999 and March, 2003, the Debtor and her father filed ten bankruptcy petitions.

Each filing invoked the "automatic stay," which prevented IMC from taking any further foreclosure action. The Bankruptcy Court dismissed each of the ten cases for failure to pay the filing fees or failure to comply with the requirements of the Bankruptcy Code.

In 2003, IMC successfully foreclosed its mortgage and sought the Debtor's eviction from the property. Between September, 2003 and May, 2004, the Debtor and her father filed three more bankruptcy petitions. All three cases were dismissed by the Bankruptcy Court. In the second of these cases, Bankruptcy Judge Thomas E. Baynes, Jr., entered an Order stating that any further bankruptcy cases filed by the Debtor "will be deemed in bad faith and the Court shall grant relief from stay to [IMC] on an ex parte basis." On June 28, 2004, after the entry of Judge Baynes' Order, the Debtor filed a bankruptcy petition in the name of her deceased mother, and forged her mother's name on the petition. The case ultimately was dismissed after the fraudulent petition was discovered by IMC and the Bankruptcy Court.

In sentencing the Debtor to a term of imprisonment longer than suggested by the United States Sentencing Guidelines, United States District Judge James D. Whittemore found that the Debtor's conduct constituted a serious abuse of the bankruptcy process. While prosecutions of bankruptcy crimes by the U.S. Attorney are infrequent, creditors hope that such cases will deter similar actions by other debtors.





Things to Make You Think

- For every action, there is an equal and opposite criticism.
- The time of day with the slowest traffic is called rush hour.
- The sooner you fall behind, the more time you'll have to catch up.
- A fool and his money are soon partying.
- It was recently discovered that research causes cancer in rats.
- What if the hokey pokey is really what it's all about?



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