Central States
Bankruptcy Workshop

Consumer Track

Bankruptcy Rules You Should Know

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U.S. Bankruptcy Court (E.D. Wis.) | Milwaukee

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CENTRAL STATES BANKRUPTCY WORKSHOP

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Federal Rules of Bankruptcy Procedure

"The Federal Rules of Bankruptcy Procedure govern procedures for bankruptcy proceedings. For many years, such proceedings were governed by the General Orders and Forms in Bankruptcy promulgated by the Supreme Court. By order dated April 24, 1973, effective October 1, 1973, the Supreme Court prescribed, pursuant to 28 U.S.C. § 2075, the Bankruptcy Rules and Official Bankruptcy Forms, which abrogated previous rules and forms. Over the years, the Bankruptcy Rules and Official Forms have been amended many times." Source: https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-bankruptcy-procedure

28 USC 2075: Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

https://www.uscourts.gov/rules-policies is a treasure trove of information regarding the rules, including current rules, proposed rules, the agenda books of the committees, meeting minutes, and the links to make and review public comments. For a deeper dive into the process, review the sections under "About the Rulemaking Process." Generally, it is a 3-year process for rules changes and a 2-year process for forms changes.

Rule 1004.1. Petition for an Infant or Incompetent Person

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

(Added Apr. 29, 2002, eff. Dec. 1, 2002.)

Case Comment

When the petition was signed by the debtor, but the debtor was not competent, Rule 1004.1 gave the court the power to appoint his wife of 63 years as next friend for purpose of the bankruptcy case. In re Myers, 350 B.R. 760 (Bankr N.D. Ohio 2006)

Rule 1016. Death or Incompetency of Debtor

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

Discussion

1. Filing a case for an incompetent – what must you do as debtors counsel to protect yourself?
2. Who signs the petition? How do you get credit counseling waived?
3. Make sure your trustee is aware.
4. If a debtor dies:

EDWI has local rule 4004(d) which provides as follows:

(d) Deceased debtor disclosures.

(1) If a debtor dies after filing a bankruptcy petition but before the court enters a discharge ord er, the attorney for the deceased debtor may file a declaration of death stating, to the extent app licable, that the debtor died before completing the financial management course described by 1 1 U.S.C. § 111, and that either Fed. R. Bankr. P. 1007(b)(8) does not apply to the debtor or the attorney does not know of a basis on which the debtor may be found liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B).

(2) The attorney must serve any statement made under (d)(1) on the trustee and the United States trustee giving notice that any party who wants to be heard on the declaration of death must file a request for a hearing within 14 days of service of the statement. If the debtor has claimed a homestead exemption that exceeds the amount identified in 11 U.S. C. § 522(q)(1), then the attorney must also serve the statement and notice on all creditors.

(3) After the later of the expiration of the time to request a hearing or the commencement of a hearing, the court may enter an order that (A) the debtor is disabled for purposes of 11 U.S.C. § 109(h)(4), and (B) there is no reasonable cause to believe that the debtor will be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A) or liable for a debt of the kind describe d in § 522(q)(1)(B).

(4) If the debtor's attorney files a declaration of death, then the trustee is excused from giving the notices required by 11 U.S.C. §§ 704(c)(1), 1202(c)(1)(C), and 1302(d)(1)(C).

5. Waive required final certifications
6. Consider hardship discharge
7. Who do you represent now – who is your client? How can you proceed? Some cases from Michigan:

   In re McGee, 2020 WL 5778462 (Bankr. W.D. MI 2020) - Attorney's Motion to Substitute as Counsel for Debtor denied where Attorney had been requested by Debtor's daughter to appear, but there was no evidence in the record that Daughter was duly authorized representative of Debtor's estate. Upon death of Debtor, attorney's actual and apparent authority to represent Debtor terminates. Only person authorized to represent interests of estate is personal representative appointed by Probate Court in formal proceeding or by registering in informal proceedings and issued letters of authority.

   In re Smith, 618 B.R. 485 (Bankr. E.D. MI 2020) - When Debtor dies during bankruptcy case, representative must be appointed as personal representative either by Probate Court in formal proceeding or by registering in informal proceedings and must be issued letters of authority pursuant to Michigan Compiled Laws Sections 700.3103, 700.3614, 700.3615 and 700.3703. Fact that will name individual as personal representative without more is not sufficient to make person "personal representative" under Michigan law or to afford individual standing to appear on behalf of Debtor in bankruptcy case.

   In re Marks, 595 B.R. 881, 882 (Bankr. E.D. MI 2019) – "Without a personal representative duly appointed by the probate court under the laws of the State of Michigan to act on behalf of the deceased Debtor in this bankruptcy case, further administration of the bankruptcy estate is not possible." See In re Hamilton, 274 B.R. 266, 267 (Bankr. W.D. Tex. 2001) (citing In re Lucio, 251 B.R. 705, 708-09 (Bankr. W.D. Tex. 2000)) ("[W]hen a debtor dies, the only person who can then appear on the debtor's behalf is the person so named as the official representative of the probate estate of the debtor.") Death of Debtor post-confirmation does not require dismissal if personal representative duly appointed by probate Court substitutes in place of Debtor. Case dismissed where personal representative filed, and later withdrew, motion for substitution.

Rule 3012. Determining the Amount of Secured and Priority Claims

(a) Determination of Amount of Claim. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

(1) the amount of a secured claim under §506(a) of the Code; or

(2) the amount of a claim entitled to priority under §507 of the Code.

(b) Request for Determination; How Made. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

(c) Claims of Governmental Units. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 27, 2017, eff. Dec. 1, 2017.)

Discussion

Proper service of plans – 7004 required because you are valuing property without a separate motion. Government has specific service under 7004 as well.

Government has 180 days from the petition to file claims. Sub c indicates that the government valuation must be made by motion or in a claim objection, but you cannot do either until a proof of claim is filed or the time for the government to file a claim is expired. There is tension between this section and getting chapter 13 plans confirmed quickly. Can a plan that appears unfeasible be confirmed with some kind of contingency?

Priority claims are also subject to this rule and are often forgotten about. How does your district's plan address priority debt? Priority claims must be paid in full in Chapter 12 and 13. (1222 (a)(2) and 1322(a)(2)) As debtors counsel, what tools and resources exist to determine these claims prior to, or very early on in the case?

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 16, 2013, eff. Dec. 1, 2013.)

Discussion

The requirement that the motion must "state with particularity the grounds therefor" can get missed in the hectic day to day practice, especially in consumer practice where form documents a relied on heavily for efficiency. As an example, if you are filing a timely motion to extend a deadline, even if you have an agreement, you need to tell your audience – the court – what the grounds are for extending the deadline and why you need to do it. The motion doesn't need to be long or complex, but you are ignoring this rule at your peril.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by §727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, §1230, or §1330. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 60. Relief from a Judgment or Order

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Discussion

We often turn to Rule 60(b) and "excusable neglect" when a deadline is missed. The rule has limits. Courts have described the rule as an "extraordinary remedy." *In re Design Classic, Inc.,* 788 F.2d 1384, (8th Cir. 1986). In the consumer setting, the 9th Circuit has described excusable neglect as an "elastic concept" *Phillips v. Gilman (In re Gilman*), 887 F3d. 956, 964 (9th Cir. 2018). If you are faced with an issue that forces you to ask for relief under Rule 60(b), be mindful of the limitations placed on the rule by Rule 9024 itself, especially attempts to revoke a discharge or confirmation order.

It is also important to note that Rule 9006(b)(1), covering the enlargement of time, requires that if a deadline has already passed, and a motion is made to enlarge the time, the failure to act must be the result of excusable neglect. The Supreme Court tells us that the determination is equitable in nature and that all the relevant factors must be weighed, see *Pioneer Inv. Serv. Co. V. Brunswick Assocs. Ltd. P'ship,* 507 U.S. 380, 113 S. Ct. 1489 (1993).

Of course, in chapter 13, the Supreme Court has told us that a creditor who does not object the plan cannot later argue that confirmation did not comply with the provisions of chapter 13. Plan confirmation is final and relief from the confirmation order is not available under Rule 60(b)(4) as being void. *United Student Aid Funds, Inc. v. Espinosa,* 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010).

If you are filing a motion under Rule 60(b), it is likely because something has gone wrong. The rule is there to make sure things get set right, and it is a powerful tool, but it should be used sparingly.

Rule 3002.1. Proposed Changes

Rule 3002.1. Reverse Mortgages

FRBP 3002.1 should be amended to clarify that reverse mortgage are subject to the requirements of FRBP 3002.1 except for the payment change notice requirements in FRBP 3002.1(b).

The change would be accomplished by removing the word "installment" from FRBP 3002.1(a). The committee would make clear that the Rule provisions would apply to Reverse Mortgages and Home Equity Conversion Loans.

Rule 3002.1(b). Payment Changes Notices

Federal Rule of Bankruptcy Procedure 3002.1(b) should be amended to:

(A) specify the effective date of any payment change when the creditor fails to timely file the required notice of payment change, and

(B) require that payment change notices for home equity lines of credit (HELOCs) be filed and served annually rather than monthly, provided that the monthly payment amount does not increase or decrease by more than $10 in any single month.

The proposed changes are not particularly controversial, although it is unclear that the Committee has the authority to mandate the HELOC proposed changes and the final version may indicate that this is a non-mandatory option for HELOC loans.

Rule 3002.1(f). Notices of Final Cure

The requirement of a notice of final cure payment under Federal Rule of Bankruptcy Procedure 3002.1(f) should be amended to:

(A) change the current notice process to a motion practice under Federal Rules of Bankruptcy Procedure 9013 and 9014,

(B) require the motions to include a warning that a creditor may be sanctioned for failing to respond, and

(C) add a midcase status review.

These proposed changes are much more controversial and do not have universal support from Creditors or even Trustees. Some have suggested that the motion practice solution is misplaced, will be expensive and add to court dockets, and that the midcase audit will be expensive, unduly burdensome, and inappropriate in non-conduit cases.

Rule 3002.1(g). Response to Notice of Final Cure

Federal Rule of Bankruptcy Procedure 3002.1(g) should be amended to:

(A) indicate clearly that the creditor's statement is mandatory and must include (i) the principal balance owed; (ii) the date when the next installment payment is due; (iii) the amount of the next installment payment, separately identifying the amount due for principal, interest, mortgage insurance and escrow, as applicable; and (iv) the amount, if any, held in a suspense account, unapplied funds account or any similar amount;

(B) add a means for the debtor or trustee to object to the creditor's statement and request a hearing; and

(C) provide that an objection would commence a contested matter.

These proposed changes are not particularly controversial, although they will likely be more expensive for parties and potentially create docket backlogs where none is warranted. Sufficient lead time will be required for documents and systems to align with the new requirements.

Rule 3002.1(h). Determination of Final Cure

Federal Rule of Bankruptcy Procedure 3002.1(h) should be amended to allow the court to enter an order determining the status of the mortgage claim that includes all of the same information as in the proposed amendment to subsection (g).

Rule 3001.1(i). Failure to Notice

Federal Rule of Bankruptcy Procedure 3001.1(i) should be amended to allow the debtor or trustee to file a motion to compel a creditor's statement and for appropriate sanctions. If the motion is granted, the court should be required to order the mortgage creditor to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees, unless the circumstances make such an award unjust. The failure of the mortgage creditor to obey a motion to compel a statement should be treated as contempt of court.

CLAIMS ALLOWANCE PROCESS – WHY IT IS (SHOULD BE) IMPERATIVE FOR A CREDITOR TO FILE A PROOF OF CLAIM TO PROTECT ITS INTERESTS IN A CHAPTER 13 CASE

As a general rule, the terms of a confirmed plan control. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) (holding generally that an order of confirmation is a "final judgment" binding a creditor to the terms of the plan, even if a term is in direct conflict with a provision of the Code).

Since the adoption of "uniform" plans, language regarding the necessity of filing a proof of claim can be most authoritative in instructing a creditor to file a proof of claim to receive disbursements from the Trustee:

EDWI – "You must timely file a proof of claim. The trustee will only pay creditors who hold allowed claims provided for by the plan."

WDWI – "You must file a timely proof of claim in order to be paid."

CDIL – "THIS PLAN DOES NOT ALLOW CLAIMS. A creditor must file a timely proof of claim to receive distribution as set forth in this Plan."

SDIL – "THIS PLAN DOES NOT ALLOW CLAIMS. A Creditor must file a timely Proof of Claim to receive distribution as set forth in this Plan."

NDOH – "Creditors must file a proof of claim with the court in order to receive distributions under this plan."

SDOH – Addressed in Local Rule 3001-1 "Any unsecured creditor and any creditor asserting secured status as to property of the debtor or the estate, shall, in order to receive payments under a confirmed plan, file a proof of claim."

WDMI – "…you may need to file a timely proof of claim in order to be paid under any plan." No Local Rule, except a requirement a claim must be filed to receive adequate protection payments.

NDIL – "…you may need to file a timely proof of claim in order to be paid under any plan." No Local Rule.

EDMI – Silent. No local rule, except in reference to adequate protection payments. Jurisdiction relies on the language of Rule 3002 to require a claim to participate in Trustee disbursements.

APPLICABLE STATUTES

11 U.S.C. § 1326(c) - Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

APPLICABLE RULES

Rule 3002 - Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

Rule 3004 - Filing of Claims by Debtor or Trustee

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

Rule 3021 – Distribution Under Plan

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

Rule 9006 – Computing and Extending Time

(b) ENLARGEMENT.

(1) *In General*. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE	)	Bankruptcy No. 15 B 08079
	)	Chapter 13
JEFFERY S. HRUBEC,	)	Judge Donald R. Cassling
	)	
Debtor	)	

MEMORANDUM OPINION

To be assured of receiving payments under a Chapter 13 plan a creditor must hold an "allowed" claim. For the creditor's claim to be allowed, the creditor (or the debtor on its behalf) must file a proof of claim. 11 U.S.C. § 502(a)). Unsecured creditors have a window of ninety days following the first meeting of creditors in which to do this.[1] Fed. R. Bankr. P. 3002(c). By case law in this Circuit, secured creditors must file their proof of claim within that same window. *In re Pajian*, 785 F.3d 1161 (7th Cir. 2015).

But do these rules *prohibit* a Chapter 13 debtor from reaching an agreement with a secured creditor to pay that creditor through a plan even though the secured creditor has not filed a proof of claim? Glenn B. Stearns, the Chapter 13 Standing Trustee (the "Trustee"), has moved to dismiss the case of Jeffery S. Hrubec (the "Debtor") for failure to propose a confirmable plan, arguing that the following sentence from the Seventh Circuit's decision in *Pajian* prohibits confirmation of the Debtor's existing plan, because it proposes to pay a secured creditor who

[1] After a plan is confirmed, distributions must be made on "allowed claims." Fed. R. Bankr. P. 3021. Section 502(a) of the U.S.C. § 502(a) states a claim is deemed allowed "unless a proof of claim is filed under § 501." Moreover, a Chapter 13 plan can only be confirmed if it provides for treatment of each allowed secured claim. 11 U.S.C. § 1325(a)(5). Taken together, these provisions mean that a creditor wishes to remain in the picture post-confirmation of a Chapter 13 plan, then it must file a proof of claim.

[2] Debtors have an additional thirty days after that period in which to file a claim on a creditor's behalf. Fed. R. Bankr. P. 3004.

does not have a proof of claim on file. "A creditor must file a proof of claim in order to participate in Chapter 13 plan distributions." *Payan*, 765 F.3d at 1163.

The Debtor argues that the cited quotation is dictum and that, under the actual holding of *Payan*, considered in conjunction with the applicable statutes and rules, an agreement between a debtor and a secured creditor to pay that creditor in the plan is permissible.

For the reasons that follow, the Court agrees with the Debtor.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter concerns the confirmation of a plan under Chapter 13 and is therefore a core proceeding under 28 U.S.C. § 157(b)(2)(L). The issue "stems from the bankruptcy itself" and may constitutionally be decided by a bankruptcy court. *Stern v. Marshall*, 131 S.Ct. 2594, 2618 (2011).

II. BACKGROUND

The Debtor filed his Chapter 13 bankruptcy petition on March 6, 2015. In his Schedules, he listed a debt of $25,692 owed to First Bank & Trust. This debt is secured by a lien on the Debtor's 2013 Chevrolet Silverado. The claims bar date of June 30, 2015, passed without First Bank & Trust filing a proof of claim. The Debtor's plan, however, includes payments to First Bank & Trust on account of its secured debt.

Because First Bank & Trust never filed a proof of claim, the Trustee refused to recommend confirmation of the plan and is now moving to dismiss the Debtor's case, alleging unreasonable delay in proposing a confirmable plan. The Trustee bases his position upon the language in *Payan* first quoted above: "A creditor must file a proof of claim in order to

participate in Chapter 13 plan distributions." 785 F.3d at 1365.

III. DISCUSSION

The actual holding of *Payan* addresses a narrow issue involving claims, not plans: "whether Rule 3002(c)'s deadline [for filing timely proofs of claim] applies to *all* creditors or merely unsecured ones." 785 F.3d at 1365, (emphasis in original). The court held that the deadline set forth in Rule 3002(c) applies to secured and unsecured creditors alike. As discussed below, nothing in *Payan*, the Bankruptcy Code, or the Rules prevents a debtor from proposing treatment of a secured creditor's debt, whether or not that creditor has filed a proof of claim. Once the debtor has proposed a particular treatment of a secured creditor through the plan and given notice of that proposed treatment to the creditor, the burden then falls upon that creditor to object. If it fails to object, it will be bound by the plan's provisions under 11 U.S.C. § 1327.

The particular statement from *Payan* quoted by the Trustee in his motion to dismiss -- "[a] creditor must file a proof of claim in order to participate in Chapter 13 plan distributions" - was dictum. Its only significance to the *Payan* decision was to emphasize that a secured creditor has a choice between payment under a plan and reliance on enforcement of its lien rights outside of bankruptcy.

> A creditor must file a proof of claim in order to participate in Chapter 13 plan distributions. But while all creditors – secured and unsecured – must file a proof of claim in order to receive distributions, a secured creditor who fails to do so can still enforce its lien through a foreclosure action, even after the debtor receives a discharge. *See In re Penrod*, 50 F.3d 459, 461-62 (7th Cir. 1995). *In other words, a secured creditor's lien is largely unaffected by the bankruptcy discharge, regardless of whether the creditor filed a proof of claim.*

Id. (internal citations omitted) (emphasis added).

Further proof that the cited quotation was dictum becomes apparent when one considers the policy considerations underlying the Court's decision. In *Payan*, unlike the situation in this case, the debtor had objected to including the secured creditor's late-filed claim in his plan,

arguing that it was barred from excluding in his Chapter 13 plan because the [secured creditor] had missed the deadline imposed by Rule 3002(c)." *Id.* at 1362. As the *Payan* court recognized, forcing an objecting debtor to include payments for disallowed claims in his plan would be grossly unfair and inefficient.

> Principles of sound judicial administration support this result. Requiring all creditors to file claims by the same date allows the debtor to craft and finalize a Chapter 13 plan without the concern that other creditors might swoop in at the last minute and upend a carefully constructed repayment schedule. If we held otherwise, secured creditors could wreak havoc on the ability of the debtor and the bankruptcy court to assemble and approve an effective plan. Each tardy filing from a secured creditor would likely require the debtor to file a modified plan, which would have to be served on all interested parties and considered by the court. All this would often lead to disruptive delays in plan confirmation hearings and would ultimately hinder the bankruptcy court's ability to manage its docket.

Id. at 1364.

By contrast, when, as here, the Debtor and First Bank & Trust agree in advance that the secured creditor's debt will be treated in the plan, notwithstanding the lack of a filed proof of claim, there is no risk that a tardy filing will compromise the timely confirmation of a viable plan or impede the efficient operation of the bankruptcy court. Nor will third parties or, in this case, the Trustee, be able to claim lack of notice because First Bank & Trust's secured debt was listed on the Debtor's schedules. This distinction was implicitly recognized by the *Payan* court when it cited with approval[7] two bankruptcy decisions from outside this Circuit for the proposition that Bankruptcy Rule 3002(c) applies to secured creditors and unsecured creditors alike: *In re Dennis*, 492 B.R. 140 (Bankr. S.D.N.Y. 2013) and *In re Dennis*, 230 B.R. 244 (Bankr. D.N.J. 1999). Significantly for purposes of this case, both *Dennis* and *Dennis* nonetheless concluded that secured creditors are entitled to be paid through a confirmed plan, as proposed by a debtor, even when they have failed to file timely proofs of claim. In reaching that result, both decisions

[7] *Payan*, 951 F.3d at 1365.

relied heavily upon the language in 11 U.S.C. § 1327(a): "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." *Dumont*, 492 B.R. at 148-49; *Dennis*, 230 B.R. at 253.

The court in *Dennis* conducted a well-reasoned and thorough examination of several issues, including whether secured creditors are bound by the timing deadline set forth in Rule 3002(c), and held that they are. This same issue was decided by *Payton*, which cited *Dennis* and its analysis with approval. But another issue analyzed by *Dennis* was the one that is the subject of the issue in this case: Is a debtor allowed to propose, confirm, and perform a plan that provides for payments to a secured creditor which has failed to timely file a proof of claim? This Court cannot improve upon the relevant analysis provided by the *Dennis* court and therefore sets it out with approval in full below:[1]

> Reading [11 U.S.C. §§ 101(5) and 502] and Rule 3002 together leads to the following conclusions. If a chapter 13 plan does not propose to modify a secured claim, then by virtue of Rule 3002(a) the secured creditor is not required to file a proof of claim and the lien will pass through bankruptcy unaffected. If, however, a plan does propose to modify a secured claim, by paying the secured creditor less than the creditor believes is due, the secured creditor who objects to such treatment must file a timely proof of claim and objection to confirmation or it will be bound by the plan under Code section 1327(a).
>
> Similarly, since Code section 1327(a) also binds the debtor, a debtor's proposal in a plan to pay a "cram down" amount to a secured creditor *is an admission by the debtor* that such creditor has an allowed secured claim to the extent provided by the plan. Confirmation of the plan allows the secured claim to

[1] The court in *Dumont* was in full accord with the analysis and held as to the above discussion, summarizing it as follows:

> The [court] concluded that confirmation of a plan does allow the secured claim to the extent provided in the plan. Section 1327(a) makes the plan binding on all parties. A secured creditor need not file a proof of claim to receive distributions under a plan in the event the plan provides for the creditor, it must only timely file a proof of claim to be entitled to distributions after entry of the order.

Dumont, 492 B.R. at 146 (internal citations omitted).

> such extent because all parties are bound by the confirmation under Code section 1327(a). The trustee then pays the secured creditor as provided by the plan pursuant to Code section 1326(a)(2) and Rule 3021.
>
> *To the extent that . . . other courts have held that a secured creditor must file a proof of claim even to receive the amount which a debtor's plan proposes to pay it, this court disagrees, because such holdings overlook the fact that confirmation binds the debtor under Code section 1327(a).* Moreover, in light of Rule 3003(c)'s omission of an explicit requirement that secured creditors must file proofs of claim, and the fact that the notice of the bar date states that proofs of claim must be filed to share in payment from the estate "except as otherwise provided by law," a serious due process issue would exist if secured creditors who choose not to file a proof of claim in reliance on a plan's terms could then be told after confirmation that they shall not receive the payment proposed in the plan. If debtors want that result, the plan and notice must explicitly state that the lien is to be cancelled, or words to that effect, and that the secured creditor shall receive no payment.

Downs, 230 B.R. at 253-54 (internal citations omitted) (emphasis added).

Under the *Downs* analysis, therefore, confirmation of the plan in this case was in the Debtor's hands. He proposed a plan that included payment of the secured debt he owed to First Bank & Trust, even though First Bank & Trust never filed a proof of claim. Because First Bank & Trust apparently has no objection to its treatment under the proposed plan, its filing of a proof of claim was unnecessary and the filing deadline is therefore irrelevant. Both First Bank & Trust and the Debtor would be bound by the terms of the plan, once confirmed.

In summary, *Pelzer* holds that secured creditors are bound by the deadline in Rule 3002(c). Therefore, if a secured creditor wants to ensure participation in a debtor's plan rather than rely on enforcement of its lien outside of bankruptcy, it must file a proof of claim in a timely manner. However, when a debtor voluntarily proposes a plan that includes payments to a secured creditor, and that creditor has no objection to its treatment under the proposed plan, there is no need for the creditor to file a proof of claim and the plan is not unconfirmable.

IV. CONCLUSION

For the above reasons, nothing in the *Payne* decision prevents confirmation of the Debtor's plan. Therefore, the Trustee's motion to dismiss is denied.

ENTERED:

DATE: January 27, 2014

Donald R. Cassling
United States Bankruptcy Judge

Case 16-70536 Doc 132 Filed 02/16/17 Entered 02/16/17 15:14:11 Desc Main
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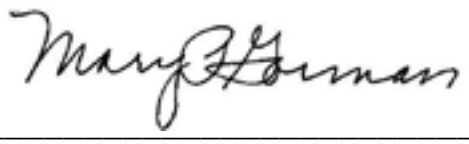
SIGNED THIS: February 16, 2017



Mary P. Gorman
United States Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF ILLINOIS

In Re	)	
	)	Case No. 16-70536
PAUL B. HEFT,	)	
	)	Chapter 12
Debtor.	)	

O P I N I O N

Before the Court is the Debtor's Motion for Authority to Pay Secured Creditors Bank of Chestnut and Illinois National Bank. The motion asks that the Debtor be authorized to pay the two creditors directly and in contravention of the express terms of the Debtor's pending, but not yet confirmed, Second Amended Chapter 12 Plan. Because the motion is procedurally and substantively deficient, it will be denied.

I. Factual and Procedural Background

Paul B. Heft ("Debtor") filed his voluntary petition under Chapter 12 on March 31, 2016. In his statement of financial affairs, the Debtor disclosed that, after harvesting and selling his 2015 crop, he had ceased farming. He stated that he intended to liquidate his remaining farm equipment and use the proceeds to pay creditors. On his Schedule A/B: Property, he listed a number of items of farm equipment valued in the aggregate at $73,850. On his Schedule D: Creditors Who Have Claims Secured by Property, he stated that the Bank of Chestnut had a lien on the farm equipment in the amount of $18,370, and that Illinois National Bank had a lien on the equipment and on other collateral to secure a debt of $30,000.

The Debtor timely filed his Chapter 12 Plan ("Plan"), which proposed that the Chapter 12 Trustee ("Trustee") would pay the Bank of Chestnut and Illinois National Bank from the proceeds of the sale of the Debtor's equipment. No projected amount of the proposed payments nor any interest rate to be used in the calculation of the payments was suggested; no details of how or when the equipment would be sold were disclosed. The Plan also proposed that the Trustee would distribute any surplus proceeds from the sale to unsecured creditors along with the Debtor's disposable income for a period of three years. No information was included in the Plan, however, about how disposable income would be calculated or when either that income or the sale proceeds would be paid to the Trustee for distribution to creditors.

At a confirmation hearing on the Plan held in July 2016, the Debtor's attorney reported that no objections to the Plan had been filed and that he believed the Plan should be confirmed. The Court questioned what appeared to be

inconsistencies in the Plan regarding the payment of income taxes related to the equipment sale, and the Debtor's attorney conceded that the potential tax consequences of the sale had not been fully considered and that a provision for the payment of those taxes was needed. He acknowledged that providing for such taxes to be paid from the sale proceeds would benefit the Debtor and should have been included in the Plan.

The Court also questioned how the Plan could be implemented when it contained virtually no details regarding the Debtor's obligations under it. The Court asked how anyone—the Trustee, creditors, or the Court—could ever determine whether the Debtor was in default under the Plan when it contained no dates by which the Debtor was required to do anything, no ongoing obligation on the part of the Debtor to account to the Trustee or creditors, and no formula by which disposable income was to be calculated. After discussing these issues at length, the Debtor's attorney acknowledged, albeit reluctantly, that providing significantly more details of the what, when, and how of the Debtor's proposed Plan would be beneficial. At the conclusion of the hearing, confirmation of the Plan was denied and the Debtor was given time to file an amended plan.

The Debtor's First Amended Plan was filed September 22, 2016. The First Amended Plan provided a deadline for the equipment sale and required the Debtor to file a report of sale within 30 days of the sale. The report of sale was required to contain information about the tax consequences of the sale and a proposed amount to be held by the Debtor from the sale proceeds to pay such taxes. In the First Amended Plan, the Debtor proposed to turnover to the Trustee all net sale proceeds after the payment of sale expenses and the deduction of the tax holdback

within 14 days after sending the report of sale to all creditors.

The First Amended Plan also provided for a minimum disposable income payment to the Trustee of $200 per month for 36 months and for an ongoing obligation of the Debtor to provide tax and financial information to the Trustee annually. Procedures were established in the First Amended Plan for questions or objections to be raised by the Trustee or creditors to the Debtor's annual disclosures.

The treatment of the Bank of Chestnut and Illinois National Bank under the First Amended Plan remained similar to that under the original Plan. Both were proposed to be paid by the Trustee from the equipment sale proceeds. No principal amount due nor rate of interest related to the Debtor's obligation to either creditor was stated in the First Amended Plan.

At the confirmation hearing on the First Amended Plan, the Debtor's attorney reported that the Debtor had recently, and unexpectedly, received $31,000 in government dividend checks related to prior crop years. He stated that he had discussed how the funds should be distributed with the Trustee and believed that another amended plan would be needed to address the disposition of the funds. Accordingly, confirmation of the First Amended Plan was denied and the Debtor was given two weeks to file another amended plan.

The Debtor filed a Second Amended Plan that provided that the recently received funds would be used to pay the income taxes incurred for the 2016 sales, thereby reducing the amount to be held back from the equipment sale proceeds for the payment of such taxes. The Second Amended Plan also provided more detail regarding the standards by which the Debtor's disposable income would be

calculated. The treatment of the Bank of Chestnut and Illinois National Bank was unchanged from prior plans, but the Second Amended Plan did change the deadline for filing the report of sale of the equipment from 30 to 45 days.

While the Debtor was working through the changes in his several plans, he was also proceeding with the equipment sale. He obtained authority to hire Martin Auction Services and he filed both a motion to sell the equipment free and clear of liens and a notice of intent to sell the equipment at public auction. The motion to sell free and clear recited that the Debtor believed that both the Bank of Chestnut and Illinois National Bank had liens on the equipment, but it did not identify the amounts of any such liens and it specifically requested that any such liens attach to the sale proceeds with the validity and priority of the liens to be determined at a later date. All creditors and parties in interest received notice of their opportunity to object to the motion to sell free and clear and the proposed auction. In the absence of any objection, the Debtor was authorized to conduct an auction on November 19, 2016, and to sell the equipment free and clear of any liens of the Bank of Chestnut or Illinois National Bank.

A confirmation hearing on the Second Amended Plan was held November 29, 2016. The Debtor's attorney reported that the auction of the Debtor's equipment had been successfully completed. He stated that he had received no objections to the Second Amended Plan and that it should be confirmed. The Trustee, represented by counsel at the hearing, agreed that the Second Amended Plan should be confirmed. The Court agreed that the Second Amended Plan could be confirmed but questioned whether it could be fully implemented as proposed because the Bank of Chestnut had not filed a claim and the deadline to file claims

had long since passed. The Court suggested that the issue of the unfiled claim be mentioned in the confirmation order to memorialize the fact that the Debtor and the Trustee were aware of the problem before confirmation and to clarify that confirmation of the Second Amended Plan did not serve to authorize payment to the Bank of Chestnut when no claim had been filed. The Trustee's attorney agreed that the debt to the Bank of Chestnut could not be paid absent the filing of a claim.

The Debtor and his attorney expressed surprise about the unfiled claim and concern about the prospect of the Bank of Chestnut not getting paid. The Debtor's attorney initially suggested that he would just pay the Bank of Chestnut from the funds he was holding from the equipment sale before turning the balance over to the Trustee. The Court questioned whether the Debtor could unilaterally decide to divert proceeds from the sale to a creditor when neither the pending Second Amended Plan nor the sale order contemplated or authorized such a payment. After further discussion of the issue, the Debtor's attorney agreed that he would not take any action on behalf of the Bank of Chestnut but requested that the confirmation hearing be continued so that he could notify the Bank's president directly about the problem. The confirmation hearing was continued to January 10, 2017.

Approximately two weeks after the hearing, the Debtor filed his report of sale regarding the auction of his equipment. The report of sale disclosed gross proceeds received of $70,150 and auctioneer fees and expenses incurred of $4689.50. The report did not suggest that any amount be held back by the Debtor for income taxes, but the report was sent to all creditors and parties in interest.

In a footnote, the report of sale said that the liens of the Bank of Chestnut and Illinois National Bank had attached to the sale proceeds and that a motion to pay those liens would be filed.

A day later, the Debtor filed his motion seeking authority to pay the Bank of Chestnut and Illinois National Bank. In the motion, the Debtor stated that the Bank of Chestnut is owed $12,936.31 plus $2.12 in interest for every day after December 2, 2016, and that Illinois National Bank is owed $29,640.87 plus $4.47 in interest for each day after December 2, 2016. The Debtor also filed a memorandum of law with his motion. In the memorandum, the Debtor asserted that the Court's reliance on *In re Pajian*, 785 F.3d 1161 (7th Cir. 2015), for the proposition that the Trustee cannot pay the Bank of Chestnut in the absence of a timely filed claim, was misplaced. Rather, the Debtor argued that this Court should follow *In re Hrubec*, 544 B.R. 397 (Bankr. N.D. Ill. 2016), and find that secured creditors are not required to file a claim in order to receive distributions under a plan so long as the debtor does not object to the payment being made.

Hearing on the Debtor's motion seeking authority to make the payments was set with the confirmation hearing previously scheduled for January 10th. Prior to that date, nothing was filed by the Bank of Chestnut. No one from or on behalf of the Bank of Chestnut appeared at the hearing. The Debtor's attorney reported that he had notified the president of the Bank of Chestnut about the problem with the unfiled claim. He had also spoken about the issues with an attorney representing the Bank. He said that he did not know why no one from the Bank of Chestnut was present but assumed it was because he had told the Bank's attorney that he was going to file the motion seeking authority to make the

payments and, perhaps, the Bank's attorney was expecting the Debtor's attorney to solve the Bank's problem.

In support of the motion, the Debtor's attorney first argued that the previously granted sale motion and the Debtor's successive plans had all contemplated that the Debtor would pay the Bank of Chestnut and Illinois National Bank directly from the equipment sale proceeds. After the attorney for the Trustee pointed out the express provisions in the Second Amended Plan directing the Trustee to make the payments, and the Court stated that none of the previously filed documents had ever called for direct payments, the Debtor's attorney argued that he could have proposed in the sale motion and the several plans that the secured creditors were to be paid directly and not by the Trustee. He also asserted that he could seek to file yet another amended plan to provide for direct payment, although he volunteered that he expected that such a request would raise questions of the Debtor's good faith. He also stated that the Debtor might voluntarily dismiss his case if his motion were denied.

Finally, the Debtor's attorney argued, as he had in his memorandum of law, that the reliance by the Court and the Trustee on *Pajian*, for the proposition that a proof of claim needed to be filed in order for the Bank of Chestnut to receive the payment proposed in the Second Amended Plan, was misplaced. He argued, relying on *Hrubec*, that a proof of claim was not required to be filed in order for the Bank of Chestnut to be paid. The Trustee's attorney countered that *Pajian* controls the outcome here and that following *Hrubec* would make the administration of Chapter 12 and, more importantly, Chapter 13 cases difficult.

The issues have been fully briefed and argued. The matter is ready for

decision.

II. Jurisdiction

This Court has jurisdiction over the issues before it pursuant to 28 U.S.C. §1334. All bankruptcy cases and proceedings filed in the Central District of Illinois have been referred to the bankruptcy judges. CDIL-Bankr. LR 4.1; *see* 28 U.S.C. §157(a). Issues relating to the administration of the estate, the allowance and disallowance of claims, the confirmation of plans, and the adjustment of the debtor-creditor relationship are all core proceedings. 28 U.S.C. §157(b)(2)(A), (B), (L), and (O). The issues here arise directly from the Debtor's bankruptcy and from the provisions of the Bankruptcy Code, and may therefore be constitutionally decided by a bankruptcy judge. *See Stern v. Marshall*, 564 U.S. 462, 499 (2011).

III. Legal Analysis

A. The Debtor's motion seeking authority to pay the Bank of Chestnut and Illinois National Bank is procedurally deficient.

The Debtor's motion seeking authority to pay the Bank of Chestnut and Illinois National Bank is not based on any provision of the Bankruptcy Code or Rules and the Debtor has cited no statute or case law in support of his request for this Court to authorize the payments he wants to make. His request comes essentially "out of the blue" and is in contravention of the framework for paying creditors that he has advanced consistently throughout the case. The Debtor asks for the relief because he hit a stumbling block in the expected implementation of his proposed Second Amended Plan and he wants the impediment removed so

that he can get on with what he wants to do, regardless of the constraints of controlling law.

The Debtor's successive plans have all provided for the equipment sale proceeds to be turned over to the Trustee and for the Trustee to make the payments to the Bank of Chestnut and Illinois National Bank. The Second Amended Plan was ready for confirmation at the hearing in November 2016 and it remains confirmable. If the Debtor's motion were granted, however, the Debtor would disburse the sale proceeds directly to the creditors, thereby rendering the provisions of the Second Amended Plan that address the payment of those creditors by the Trustee meaningless. If the direct payments were authorized and paid, the Second Amended Plan would no longer be confirmable and the Court would have to either grant the Debtor an opportunity to file another amended plan or dismiss the case.

Chapter 12 debtors must file a plan within 90 days of the case filing and that deadline should only be extended "if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." 11 U.S.C. §1221. Chapter 12 confirmation hearings are to be expedited and should be concluded within 45 days. 11 U.S.C. §1224. Here, although it was timely filed, the Debtor's original Plan was not confirmable. The Plan was severely lacking in detail and provided no deadlines for the Debtor to complete his obligations. These failings were wholly attributable to the Debtor. Nevertheless, the Debtor was granted time to file an amended plan. The Debtor's First Amended Plan was a significant improvement over the original Plan but needed to be further amended when the Debtor received some unexpected funds. The Debtor's Second Amended

Plan has been ready for confirmation since November 2016, but the Debtor has put off confirmation twice, solely for the purpose of trying to fix the problems caused by the Bank of Chestnut's failure to file a claim.

The Debtor's attorney candidly suggested at the January 10th hearing that a request by the Debtor for leave to file yet another amended plan might raise issues of good faith. Such a request would also be tested by whether the circumstances necessitating the requested extension of time were attributable to the Debtor. The Debtor's decision to change course and pay creditors directly, after filing three successive plans providing for the Trustee to pay those creditors, would clearly be attributable to the Debtor. As the Debtor's attorney has acknowledged, a direct request by the Debtor for leave to file another amended plan would not likely be granted under the circumstances presented here. An indirect request made by seeking relief contrary to plan terms, which if granted would necessitate an amended plan, should not be granted either.

Interestingly, at the January 10th hearing, the Debtor's attorney also complained that Illinois National Bank was being unfairly delayed in receiving the monies due to it. But the delay is attributable to the Debtor's requests that the confirmation hearing be twice continued and his insistence that a remedy be crafted for the Bank of Chestnut, despite the Bank's failure to file a claim or take any action on its own behalf. Illinois National Bank timely filed its claim and, if the Second Amended Plan is confirmed and the Debtor turns over the sale proceeds as proposed, Illinois National Bank will be paid promptly. The motion to pay was not needed in order to get Illinois National Bank paid, and the unfortunate delay experienced by Illinois National Bank in getting paid does not

justify granting the motion.

After the Trustee's attorney pointed out that the Second Amended Plan provided for the Trustee—and not the Debtor—to pay the Bank of Chestnut and Illinois National Bank, the Debtor's attorney argued that the motion should still be granted because the Debtor could have filed a plan providing for the direct payment of these creditors. Further, he asserted that the Debtor also could have provided in his sale motion for direct payments at the time of the sale to the creditors.[1] But it is equally true that the Bank of Chestnut could have filed a timely claim or the Debtor could have filed a claim on the Bank's behalf when it failed to file its own claim. 11 U.S.C. §501; Fed. R. Bank. P. 3004. What could have happened but did not happen, however, does not control what happens now. The Debtor and his attorney made choices about how to proceed throughout the case and those choices control the result here. The fact that different choices might have led to a different result is irrelevant.

The Debtor's attorney also said at the January 10th hearing that the Debtor may dismiss his case if his motion is denied. He says that if the Debtor dismisses, he will then have full control of the sale proceeds and can make the payments he wants to make. That may well be true, and, if it is in the best interest of the

[1] In making this argument, the Debtor's attorney assumes that, had a different motion been filed and a different plan been proposed, the motion would have been granted and the plan confirmed without objection or question. But that is not necessarily the case. Had the Debtor sought in his sale motion to pay the creditors directly from the sales proceeds, the Trustee might well have asked for pay-off information and supporting documentation of the creditors' liens—the exact information required to be included in a proof of claim. Because the Bank of Chestnut has never provided any of that information, this Court cannot just assume that no issues would have arisen if different documents had been filed by the Debtor.

Debtor to dismiss, so be it. But the threat of dismissal adds nothing to the analysis of whether the motion is supported by legal authority and should be granted.

The Debtor has never provided authority for the Court to consider the motion seeking to pay creditors in contravention of the express terms of the pending Second Amended Plan. As the Court noted at the hearing, the motion here is not the typical request for authority to make a payment that is frequently presented. For example, requests to pay professional compensation or administrative expenses, which are supported by specific statutory authority, are routine matters. *See* 11 U.S.C. §§330(a)(1), 503. But here, no provision of the Code is implicated in seeking the authority to make the requested payments and the obvious intent of the motion is to undercut the express terms of the pending Second Amended Plan. For these reasons, the motion must be denied.

B. The Bank of Chestnut cannot be paid by the Trustee through the Second Amended Plan due to its failure to file a claim.

The Debtor's motion seeks authority to pay the Bank of Chestnut directly, but it is doubtful that the Debtor really cares whether the Bank of Chestnut is paid directly or by the Trustee through the Second Amended Plan. The Debtor just wants the Bank of Chestnut to get paid. The Bank's failure to file a claim, however, is an impediment to payment by the Trustee and it is for that reason that the motion was brought. As explained above, the Debtor's motion is procedurally deficient, but it did serve to bring before the Court the substantive issue of whether the lack of a timely filed claim means that the Bank of Chestnut cannot

be paid by the Trustee.

In suggesting at the November 2016 confirmation hearing that the Bank of Chestnut's failure to file a claim was problematic, this Court was relying on the Seventh Circuit's decision in *Pajian*, which held that "[a] creditor must file a proof of claim in order to participate in Chapter 13 plan distributions." *Pajian*, 785 F.3d at 1163. Because *Pajian* relied on rules that apply in both Chapter 12 and Chapter 13 cases, the Bank of Chestnut was clearly subject to *Pajian*'s further holding that all creditors must timely file claims because "all creditors—unsecured and secured alike—are bound by the Rule 3002(c) deadline." *Id.* at 1164; *see* Fed. R. Bankr. P. 3002(a), (c), 3021. *Pajian* unequivocally requires that if a secured creditor is to participate in Chapter 13 plan distributions, a proof of claim must be filed. *Pajian*, 785 F.3d at 1165. Because the same rules apply, the same holds true in this Chapter 12 case.

Notwithstanding *Pajian*, the Debtor argues that secured creditors are not required to file claims in order to participate in plan distributions. The Debtor relies on *Hrubec*, a bankruptcy court decision, which held that "when a debtor voluntarily proposes a plan that includes payments to a secured creditor, and that creditor has no objection to its treatment under the proposed plan, there is no need for the creditor to file a proof of claim[.]" *Hrubec*, 544 B.R. at 401. *Hrubec* makes the finding that no claim is required if a debtor does not object, even though it also says, relying on *Pajian*, that "if a secured creditor wants to ensure participation in a debtor's plan . . . it must file a proof of claim in a timely manner." *Id. Hrubec* essentially says that whether a claim is paid through a plan is up to the debtor; if a debtor says a debt is to paid, then the trustee must pay

it regardless of compliance with the rules and case law that would otherwise make the timely filing of a claim a prerequisite to receiving plan payments.

To reach its conclusion that secured creditors do not have to file claims in order to share in plan distributions, *Hrubec* distinguishes *Pajian* by saying that the statement in *Pajian* that claims must be filed for creditors to receive plan distributions was dictum and that the *Pajian* decision was about claims and not plans. *Hrubec*, 544 B.R. at 398-99. Neither assertion is persuasive in considering whether to disregard the clear language of *Pajian*.

Dictum has been defined as "any statement made by a court for use in argument, illustration, analogy, or suggestion . . . concerning some rule of law or legal proposition that is not necessarily essential to the decision and lacks the authority of adjudication." *United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988) (citation omitted). Generally, courts are free to reject dicta found in otherwise precedential opinions because passages in opinions that are dicta have not been "refined by the fires of adversary presentation." *Id.* at 293. By calling key language in *Pajian* dictum, the *Hrubec* court freed itself from being bound by that language. But an analysis of *Pajian* reveals that the key language was not dictum.

In *Pajian*, a secured creditor filed a claim after the deadline imposed by Rule 3002(c). *Pajian*, 785 F.3d at 1162; Fed. R. Bankr. P. 3002(c). The Chapter 13 debtor objected to the claim as tardily filed, asserting that the claim was "barred from inclusion" in his Chapter 13 plan because it was late-filed. *Pajian*, 785 F.3d at 1162. In reaching its decision, the Seventh Circuit closely analyzed the Chapter 13 process and specifically found that distributions in Chapter 13 cases are to be made only to creditors "whose claims have been allowed." *Id.* at 1163; Fed. R.

Bankr. P. 3021. Claims, in turn, are "deemed allowed" when a proof of claim is filed. *Pajian,* 785 F.3d at 1163; 11 U.S.C. §§501, 502(a). Because only allowed claims are paid through Chapter 13 plans, *Pajian* held that the deadline for filing claims must apply to all creditors who want to be paid through a plan. *Pajian*, 785 F.3d at 1164.

Thus the conclusion in *Pajian* that the secured creditor had to timely file a claim in order to be paid was key to the decision and cannot be ignored as dictum. But it is also important to note that *Paijian* was not the first case in which the Seventh Circuit addressed the interplay between claims and plans. *See Matter of Greenig*, 152 F.3d 631, 636 (7th Cir. 1998). In *Greenig*, the argument relied on by *Hrubec*, that confirmation of a plan binds all parties and therefore obligates the trustee to pay creditors provided for in the plan regardless of whether a claim has been filed, was flatly rejected. *Id.* at 635. *Greenig* makes clear that amounts proposed to be paid to creditors through a plan may be estimates and are finalized only through the claims process. *Id.* In other words, the terms of a plan cannot be used to obviate the requirement that a proof of claim must be filed in order for creditors to be paid. *Id.* at 636.

Although *Greenig* involved an unsecured creditor, its holding is equally applicable to secured creditors. Analyzing *Greenig* in just such terms, a bankruptcy court held pre-*Pajian* that secured creditors must timely file a proof of claim in order to receive distributions under a confirmed plan, noting that, although the consequences of failing to file a proof of claim may be different for secured and unsecured creditors, the binding nature of a confirmation order is the same for all creditors. *In re Baldridge*, 232 B.R. 394, 395-96 (Bankr. N.D. Ind.

1999) ("if a specific provision in a debtor's confirmed plan, giving a particular creditor an allowed claim, to be paid a stated sum upon a particular schedule, is not sufficient to permit an unsecured creditor to receive that distribution, unless it also has an allowed proof of claim, there is no reason that a similar provision addressing a secured creditor should suffice, unless it too filed a proof of claim").[2]

Hrubec's finding that *Pajian* does not compel the timely filing of claims by secured creditors who want to receive plan distributions does not hold up under scrutiny. *Pajian* addresses the relationship between the filing of claims and the distribution of plan payments. Thus, the language regarding the requirement that a claim be filed in order for a creditor to be paid through a Chapter 13 plan was essential to the decision, was the direct focus of the dispute, and was the actual matter adjudicated. The language from *Pajian* that *Hrubec* says may be disregarded as dictum was not dictum.

Even if the *Hrubec* analysis were more persuasive, there are several practical reasons for not following its holding and for not allowing debtors to direct trustees to pay creditors in the absence of a filed claim. The rules involved in the *Hrubec* and *Pajian* decisions apply to both Chapter 12 and Chapter 13 cases. Although the matter to be decided here arises in a Chapter 12 case, any holding would also

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[2] To reach its contrary conclusion, *Hrubec* relies on the reasoning of two bankruptcy court decisions from outside this Circuit that it states were "cited with approval" in *Pajian*. *Hrubec*, 544 B.R. at 399-400 (discussing *In re Dumain*, 492 B.R. 140 (Bankr. S.D.N.Y. 2013), and *In re Dennis*, 230 B.R. 244 (Bankr. D.N.J. 1999)). But *Pajian*'s reference to *Dennis* and *Dumain* is neither favorable nor unfavorable; the cases were merely cited to illustrate the conflict among courts as to whether the Rule 3002(c) deadline applies to all creditors. *Pajian*, 785 F.3d at 1163-64. More importantly, however, neither *Dennis* nor *Dumain* discussed *Greenig* or considered the full impact of Rule 3021 on the issue.

impact Chapter 13 practice before this Court. As the Trustee's attorney asserted, administering Chapter 13 cases under *Hrubec*'s holding would be highly problematic.

Both Chapter 12 and Chapter 13 trustees have a duty "to examine proofs of claims and object to the allowance of any claim that is improper" if a purpose would be served by doing so. 11 U.S.C. §§704(a)(5), 1202(b)(1), 1302(b)(1). But if creditors can get paid by agreement with a debtor and without filing a claim, trustees will no longer be able to perform that duty.

It is not unusual, at least in this Court's anecdotal experience, that a debtor will propose to pay a creditor as secured only to find out by examining documents attached to a proof of claim that the creditor failed to record its mortgage, properly process its lien on a vehicle, or otherwise perfect its lien. Frequently, it is only through the claim process that such defects are discovered. Relieving some creditors of the obligation to file a claim and cutting the trustees out of the important claims review process would be damaging to the integrity of the bankruptcy system and would serve no good purpose.[3] *See In re Brown*, 559 B.R. 704, 710 (Bankr. N.D. Ind. 2016); *In re Schaffer*, 173 B.R. 393, 398 (Bankr. N.D.

[3] *Hrubec* says that its holding applies when the "creditor has no objection to its treatment under the proposed plan[.]" *Hrubec*, 544 B.R. at 401. But is silence the equivalent of no objection? And what if, as is the case here, the plan itself is silent about the principal amount, interest rate, and other terms of the proposed payment of the creditor? Under *Hrubec*, may a trustee ask the creditor for an affirmative statement of its lack of objection? In other words, may the trustee ask for a written statement of what is due to the creditor that is similar to a proof of claim? Or must the trustee just pay whatever creditors a debtor directs regardless of any questions or concerns the trustee may have? The practical problems for trustees administering plans under *Hrubec* are numerous and *Hrubec* provides no guidance on how those problems might be addressed.

Ill. 1994).

Likewise, in Chapter 13 cases, holders of claims secured by debtors' principal places of residence are subject to special requirements. Fed. R. Bankr. P. 3002.1. Chapter 13 trustees are required, upon the completion of a debtor's payments under a plan, to issue a notice to a mortgage holder that a debtor has cured any default on the mortgage claim. Fed. R. Bankr. P. 3002.1(f). But if the holder of a mortgage arrearage claim is not required to actually file a claim confirming the amount due to cure a default, how could the trustee competently prepare a notice that the arrearage has been cured? The procedures set forth in Rule 3002.1 serve the purpose of making sure that when a plan is completed, a debtor knows that his mortgage default has been cured. Removing the incentive for creditors to be part of the process by eliminating the requirement of filing a claim in order to get paid, makes little sense and, again, serves no good purpose. And, of course, as set forth above, it is contrary to the holding of *Pajian*.

Another bankruptcy court has followed *Hrubec*, recently holding that when both the creditor and debtor fail to file a claim for the creditor, the trustee must nevertheless pay to the creditor the amounts provided to be paid on its secured debt in a confirmed Chapter 13 plan. *See In re Kitzerow*, 2017 WL 499886, at *4 (Bankr. W.D. Wis. Feb. 7, 2017). *Kitzerow* relies on §1326(a)(2), which provides that, upon confirmation, "the trustee shall distribute" payments received from a debtor "in accordance with the plan[.]" *Id.* at *2; 11 U.S.C. §1326(a)(2). *Kitzerow* suggests that the provision "commands" the trustee to make payments according to a confirmed plan without regard to whether claims have been filed. *Kitzerow*, 2017 WL 499886, at *3. But §1326(a)(2) is a provision that controls the timing of

when a trustee may make plan disbursements; read as a whole, the provision requires a trustee to retain funds before confirmation and then disburse the funds, either to creditors or back to the debtor, upon confirmation or dismissal. 11 U.S.C. §1326(a)(2); *see generally* Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4th Edition, §402.1, Sec. Rev. July 3, 2007, www.Ch13online.com. Section 1326(a)(2) has nothing to do with whether a creditor must file a claim in order to be paid through a plan.

Kitzerow also attempts to distinguish *Pajian* by saying that it only dealt with the problems caused by late-filed claims and did not address "the potentially disruptive effect" that the failure to file a secured claim might have on plan administration or the "potential for abuse that refusing to file such a claim could have." *Kitzerow,* 2017 WL 499886, at *4. But *Kitzerow* fails to explain how the "disruptive effect" that the failure to file a claim might have on plan administration is remedied by allowing the creditor to be paid despite not having a claim on file. And *Kitzerow* fails to explain how the refusal to file a claim could be considered abuse when creditors have no duty to file claims and debtors have the absolute right to file claims for creditors. 11 U.S.C. §501; Fed. R. Bankr. P. 3004.

Both *Hrubec* and *Kitzerow* provide remedies for problems that should not have occurred. When the creditors that the *Hrubec* and *Kitzerow* debtors wanted to pay failed to timely file claims, the debtors could have filed claims for those creditors. *Id.* But both debtors missed their deadlines. There is no potential for abuse by a creditor who refuses to file a claim because, contrary to the suggestion in *Kitzerow*, a debtor may always file a claim for a creditor. *Id.* Debtors and their attorneys should be reviewing claims when bar dates run and filing claims as they

deem appropriate to facilitate the payment of the creditors they want to pay. When they fail to do so, they may—and should—bear the consequences. *See Baldridge*, 232 B.R. at 396 ("[n]o one is ever required to file a proof of claim in any bankruptcy proceeding; it is just that not doing so has consequences"). Debtors have a remedy when creditors fail to file a claim; creating the troublesome remedy set forth in *Hrubec* and *Kitzerow* was unnecessary.

The Debtor acknowledges that he could have filed a claim for the Bank of Chestnut but did not do so. Both the Bank and the Debtor missed clearly set deadlines. This Court will not follow *Hrubec* and fashion a remedy that would, most certainly, negatively impact both Chapter 12 and Chapter 13 practice in this District.

IV. Conclusion

Both the Bank of Chestnut and the Debtor missed their respective deadlines to file a claim to ensure that the Bank could be paid through the Debtor's Second Amended Plan. Under *Pajian*, the lack of a timely filed claim means that the Trustee will not pay the Bank of Chestnut, even if the Second Amended Plan, which provides for payment to the Bank, is confirmed. The Bank has not come forward to seek any relief from this result, despite apparently having been expressly apprised of the problem by the Debtor's attorney.

As the Court stated at the January 10th hearing, the Bank of Chestnut may actually not yet be "out of the money" here, but it is up to the Bank to make that case. The Debtor must move on and stop delaying confirmation of his Second Amended Plan if he wants to get any plan confirmed in this case. For the reasons

set forth above, the Debtor's motion will be denied and the Second Amended Plan will be set for one final confirmation hearing, at which time the Debtor will be required to proceed to confirmation or risk dismissal of his case. *See* 11 U.S.C. §1208(c)(1).

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANA A. WEYER and LORI A. WEYER,

Appellants,

v.

VALLEY COMMUNITIES CREDIT UNION and CHAPTER 13 TRUSTEE,

Appellees.

OPINION AND ORDER

19-cv-926-wmc

Appellants debtors Dana A. Weyer and Lori A. Weyer filed a voluntary petition for Chapter 13 bankruptcy in October 2018. The debtors filed a proposed repayment plan that was approved by the bankruptcy court in January 2019. Appellee Valley Communities Credit Union ("VCCU"), a secured creditor, failed to file a proof of claim, meaning that it could not receive any repayment of debt owed it by the debtor, at least under the plan. However, VCCU then filed a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(1), which the bankruptcy court granted on grounds of a lack of adequate protection under the plan for VCCU's interest in vehicles still in the Weyers' possession. *In re Weyer*, 612 B.R. 1992 (2020). The debtors now appeal that ruling. Agreeing with the bankruptcy court's application of § 362(d)(1), this court will affirm the bankruptcy court's decision.

BACKGROUND

A. Bankruptcy Proceedings

Debtors Dana A. and Lori A. Weyer filed a voluntary petition for Chapter 13 bankruptcy on October 31, 2018. Along with the petition, the Weyers filed schedules and

a proposed repayment plan. The Weyers' initial filing listed VCCU as a creditor with two claims, each secured by one of the Weyers' two vehicles, a 2013 Buick sedan and 2008 Chevy truck. The plan proposed having the trustee make payments of $81.55 and $159.64 to VCCU each month to cover the two claims secured by the Weyers' vehicles. On January 7, 2019, the Weyers amended the plan, with the proposed treatment of VCCU's claims remaining the same.

From the beginning, the Weyers' proposed Chapter 13 plan included language from the Western District of Wisconsin's form plan, which alerts creditors that they "must file a timely proof of claim in order to be paid." The Weyers' amended plan was confirmed on January 29, 2019. Despite receiving these notices, however, VCCU did not do so until March 18, 2019 -- more than two months after the claims bar date. The Weyers also failed to act timely by not filing a proof of claim on VCCU's behalf, since the Bankruptcy Rules allow debtors to file proofs of claim on behalf of creditors in order to include them in the repayment plan. Fed. R. Bankr. P. 3004.

As a result, after the plan was confirmed, the trustee refused to make payments to VCCU because they did not timely file a proof of claim. However, the Weyers also failed to make payments to VCCU outside of the plan. On September 19, 2019, VCCU filed a motion for relief from stay on grounds of lack of adequate protection. The bankruptcy court held hearings on this issue on October 3 and October 17, 2019, before ultimately granting VCCU's motion for relief from stay.

B. Bankruptcy Court's Decision

Specifically, in his now published opinion, *In re Weyer*, 612 B.R. 192 (Bankr. W.D.

Wis. 2020), then Bankruptcy Judge Brett H. Ludwig granted VCCU's motion on grounds of lack of adequate protection.[1] First, the judge held that VCCU's secured claim is not being adequately protected (that is, the two vehicles in the Weyers' possession and serving as collateral as VCCU's debt was continuing to depreciate in value), reasoning that

> no payments have been made to the creditor since the court confirmed the Weyers' amended plan on January 29, 2019. Thus, nearly a year has passed since VCCU received a payment. During that same time period, VCCU's collateral has been depreciating in value. The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay.

Id. at 195 (citing *In re Leonard*, 505 B.R. 835, 837 (Bankr. N.D. Ill. 2014) ("Since Debtor lacks equity and the aging auto is depreciating in value, Debtor must adequately protect the security interest of the Creditor. . . . This must be done by monthly payments that can be no less than the amount of depreciation.").

Second, Judge Ludwig held that VCCU's failure to file a timely proof of claim did not entitle the Weyers to continue using secured collateral without providing adequate protection under 11 U.S.C. § 362(d), which "instructs that the court 'shall' grant relief from stay for 'cause' and expressly includes the lack of adequate protection as cause." *Id.* The judge rested this holding on the United States Supreme Court's decision in *Law v. Siegel*, 571 U.S. 415 (2014), which concluded that bankruptcy courts have no inherent or equitable power to create remedies that contradict the plain terms of the Bankruptcy Code.

[1] Before assuming his position as a United States District Judge for the Eastern District of Wisconsin on September 20, 2020, Judge Ludwig regularly served with distinction as a United States Bankruptcy Judge in both that district and the Western District of Wisconsin, as in this case, from 2017 to 2020.

Id. at 421.

Third, and finally, Judge Ludwig held that while "*[B]oth* parties failed to act timely under the Rules . . . the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment." *Id.* at 196 (emphasis in original). In sum, the bankruptcy court found that "[i]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion." *Weyer*, 612 B.R. at 197.

In its opinion, as well as at the two hearings hold by Judge Ludwig, he also cited several cases with similar facts as the case before him. For example, in *In re Kitzerow*, 573 B.R. 766 (Bankr. W.D. Wis. 2017), a debtor had filed a Chapter 13 plan that provided for payments to be made to a secured creditor, even though that creditor did not file a timely proof of claim. The trustee in *Kitzerow* refused to make payments to the secured creditor under a debtor's Chapter 13 plan because a creditor must hold an "allowed" claim under 11 U.S.C. § 502(a) and Bankruptcy Rule 3021, both of which contemplate the filing of a proof of claim and no objections. *Id*. at 768. However, the bankruptcy court reasoned that "[n]othing . . . prevents a debtor from proposing treatment of a secured claim through a plan and giving notice of that proposal to the creditor. The creditor then has a right to object to the proposed treatment. If the creditor fails to object, it will be bound by the provisions of the plan." *Id.* (citing 11 U.S.C. § 1327). Thus, Judge Furay held in *Kitzerow* that:

> [w]hile the better practice would have been for [the creditor] (or the Debtor or Trustee on its behalf) to file a claim, it did not do so. The Plan included an amount for the secured claim and payment terms for the claim. No objections were filed and the Plan was confirmed, thus binding [the creditor] and the

> Debtor to an established payment to satisfy the [secured] claim.

Id. at 770. Accordingly, the court directed the trustee to disburse payments to the creditor under the terms of the plan. *Id.*[2]; *see also In re Wulff*, 598 B.R. 459 (Bankr. E.D. Wis. 2019) (trustee directed to disburse payments to secured creditor under terms of confirmed Chapter 13 plan, even though creditor failed to file timely proof of claim).

OPINION

While a bankruptcy court's factual findings are reviewed for clear error, its conclusions of law are reviewed *de novo*. *In re DeLong*, 323 B.R. 239, 245 (W.D. Wis. 2005). Here, appellants principally challenge the bankruptcy court's application of 11 U.S.C. § 362(d). As such, the court reviews that application *de novo* except where a factual dispute may arise. Specifically, the appellants-debtors argue as a legal matter that lack of adequate protection does not entitle VCCU to relief from the automatic stay if caused by its own failure to file a proof of claim timely.

The debtors begin their argument with the uncontroversial proposition that VCCU must establish the following elements to prevail on a claim of lack of adequate protection:

1. A debt is owed from the debtor to the creditor;
2. A security interest is held by the creditor that secures the debt at issue; and
3. A decline in the value of the collateral securing the debt along with the debtor's failure to provide adequate protection of the creditor's interest.

[2] Judge Furay looked to 11 U.S.C. § 1327(a), which states that confirmation of a Chapter 13 plan "bind[s] the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." Further, section 1326(a)(2) provides that "[i]f a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable."

(Appellants' Opening Br. (dots. #4) 6 (citing *In re Bivens*, 317 B.R. 755, 770 (Bankr. N.D. Ill. 2004)).) Debtors then argue that VCCU's motion fails to meet the final element by noting that the debtors *provided* for adequate protection through contemplated payments to be made to VCCU under the approved plan, and any failure in the plan to continue VCCU's security interest in the Weyers' vehicles is wholly due to VCCU's own failure to file a proof of claim, citing in support a bankruptcy decision *In the Matter of Jones*, 555 B.R. 869 (Bankr. N.D. Ind. 2016). However, as Judge Ludwig pointed out, the debtors acknowledge at the same time that VCCU's property interests in their vehicles was not adequately protected by the plan, whoever was more to blame.

The facts in *Jones* are almost identical to the facts here: debtors' Chapter 13 plan provided for monthly payments to be made to a secured creditor whose debt had been secured by a vehicle. After failing to file a proof of claim, the second creditor later sought relief from the automatic stay, arguing a lack of adequate protection. The bankruptcy court in *Jones* held that "no distribution can be made to a creditor who does not have an allowed claim and to have an allowed claim one must first file a proof of claim." *Id.* at 870 (citing *In re Pajian*, 785 F.3d 1161, 1163 (7th Cir. 2015)). Further, the court distinguished cases provided by the creditor, holding that the proposed payments in the debtors' plan had provided adequate protection to the creditor. *Id.* at 871 n.2.

Here, however, the bankruptcy court considered and refused to follow *Jones* because "[n]owhere in the decision does the court explain how the creditor's failure to file a proof of claim overrides the express language in section 362(d) requiring the court to grant relief from stay for cause, which specifically includes the lack of 'adequate protection.'" *Weyer*, 612 B.R. at 196. Regardless of the *proposed* plan in *Jones* or in this case, there is no dispute

that the Weyers *failed* to make any payment to VCCU during the roughly one-year period from the date their Plan was confirmed until the bankruptcy court granted relief under § 362(d), a period during which the confirmed plan denied VCCU recourse to seize its otherwise secured collateral in response. As such, the bankruptcy court did not err in concluding as a matter of fact that VCCU lacked adequate protection.

Judge Ludwig persuasively identifies the flaw in the *Jones* decision, which effectively empowers bankruptcy courts to create remedies in contradiction to the plain terms of the code, something the Supreme Court barred in *Law v. Siegel*. 571 U.S. at 421 ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." (quotation marks omitted)). In combination with the plain language of § 362(d), permitting relief from the automatic stay for a secured creditor whose interest the debtor failed to adequately protect, VCCU has met its burden of demonstrating entitlement to relief under that provision. While the court in *Jones* opted to consider the creditor's failure to take advantage of the plan, for the reasons described above the *Jones* court created an equitable remedy not permitted by the code or by the Supreme Court's prohibition of such considerations.

Alternatively, the debtors argue that equitable principles dictate that VCCU's motion for relief from the automatic stay be denied. While acknowledging their own failure to file a proof of claim on behalf of their secured debtor as called for in Bankruptcy Rule 3004, the debtors here nonetheless argue that the creditor is ultimately responsible for filing a proof of its own claim, or, at the least, debtors should not be punished for failing to do so. More specifically, the debtors argue that allowing the creditor relief from the stay here will create a dangerous precedent:

> secured creditors will practically have no incentive to incur legal fees and to inconvenience themselves by having to participate in the bankruptcy proceedings. Instead, the secured creditors will be incentivized to sit idly and wait for the debtors to file proofs of claim on their behalf. When the unfortunate debtor fails to do so, the secured creditors will seek relief from stay for lack of adequate protection and will always prevail.

(Appellants' Opening Br. (dkt. #4) 15.)

In support, debtors cite *In re Schaffer*, 173 B.R. 393 (Bankr. N.D. Ill. 1994), where a secured creditor failed to file timely its proof of claim in another Chapter 13 proceeding, then following plan confirmation, the same creditor filed a motion to allow a late-filed claim. First, the *Schaffer* court held that a creditor "may ignore the bankruptcy proceeding and look to the lien for the satisfaction of the debt." *Id.* at 395 (citing *In re King*, 165 B.R. 296, 299 (Bankr. M.D. Fla. 1994)); *see also* Bankr. Rule 3002(a) ("A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim."). Second, the *Schaffer* court held that § 502 and Bankruptcy Rule 3002(c) acted as a bar to late-filed claims: "If [the creditor] is to participate in distributions under the plan, it must adhere to the proper filing requirements . . . 'the plain language of the Code Provisions and Rules of Bankruptcy Procedure as well as the Seventh Circuit case law requires this Court to not allow untimely or tardily filed claims in a chapter 13 context.'" *Schaffer*, 173 B.R. at 397–98 (citing *In re Johnson,* 156 B.R. 557, 562 (Bankr. N.D. Ill. 1993)). Accordingly, the *Schaffer* court concluded that the creditor's late filed claim was barred, thus disallowing for the purpose of distribution to that creditor by the trustee.

Here, too, the court finds Judge Ludwig's reading of this statutory framework the more persuasive because it is: (1) premised on the plain language of § 362(d) and its

interplay with Rule 3002(a); (2) allows for *but does not* require a secured creditor to participate in the plan; and (3) provides the debtor with the opportunity to require a secured creditor to participate in the plan under Rule 3004 even if that creditor fails to file a proof of claim. To the extent the *Schafer* opinion concluded that the creditor could not participate in the plan, that court ignored the requirements of § 362(d), and, specifically, the requirement that the creditor be allowed to seek relief from the automatic stay where its interest is not adequately protected. Moreover, Rule 3004 provides an adequate avenue for a debtor to protect itself from any inequities associated with a creditor not participating in the plan and receiving payment outside of it. Here, the Weyers simply failed to take advantage of that form of relief. Finally, again as Judge Ludwig noted, the equities do *not* warrant allowing the debtors to continue to use VCCU's collateral without payment; it would instead unfairly penalize VCCU and "generate an undeserved windfall to the Weyers." *In re Weyers*, 612 B.R. at 197.

ORDER

IT IS ORDERED that the ruling of the bankruptcy court is AFFIRMED.

Entered this 18th day of May, 2022.

BY THE COURT:

/s/

_____
WILLIAM M. CONLEY
District Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
JAMES RICHARD JONES, II	)	CASE NO. 15-11460
AMY JOE JONES	)	
	)	
Debtors	)	

DECISION ON MOTION FOR RELIEF FROM STAY

On August 5, 2016

Nearly twenty years ago this court said: "No one is ever required to file a proof of claim in any bankruptcy proceeding; it is just that not doing so has consequences." In re Baldridge, 232 B.R. 394, 396 (Bankr. N.D. Ind. 1999). See also, In re Matteson, 535 B.R. 156, 163 (6th Cir. BAP 2015). That statement is as true today as it was then. By not filing a proof of claim, the Grant County State Bank is discovering what those consequences are. In a chapter 13 case such as this, if a secured creditor does not file a proof of claim it will not receive any payment on its claim and, once the plan has been successfully completed, the claim will be discharged; meanwhile, the debtors may retain the collateral and the creditor must wait until the case is over before it can pursue its lien rights, in rem.

Debtors filed a petition for relief under chapter 13 and the court eventually confirmed a plan. The plan proposed to pay the bank $8,000, plus interest, in monthly installments of $202.78, on account of its lien against their motor vehicle. Although it received appropriate notice of the bankruptcy and the various deadlines in the case, the bank did not object to confirmation and it did not file a proof of claim. After the plan was confirmed, it contacted the trustee and asked when it would begin receiving the payments called for by the plan, but was told it had not filed claim and

the deadline for doing so had passed. Three months later, still with no claim on file, the trustee filed a motion for post confirmation modification to take the funds the plan had allocated to the bank's secured claim and distribute them to unsecured creditors, paying the bank nothing.[1] Once again, the bank did not object and the modification was approved. Instead, the bank filed a motion for relief from stay or adequate protection. The basis for the motion is that it is not receiving any payments. But, given that no distribution can be made to a creditor who does not have an allowed claim and to have an allowed claim one must first file a proof of claim, In re Pajian, 785 F.3d 1161, 1163 (7th Cir. 2015); In re Boucek, 280 B.R. 533, 538 (Bankr. D. Kan. 2002); In re Baldridge, 232 B.R. 394, 396 (Bankr. N.D. Ind. 1999), it should come as no surprise that the bank is not receiving anything. Both the trustee and the debtors have objected to the motion and the issues it presents have been submitted on stipulations of fact and briefs of counsel.

The bank is complaining about a self-inflicted wound. See, In re Humphrey, 309 B.R. 777, 781 (Bankr. W.D. Mo. 2004) ("The reason Movant is not adequately protected is that it is not receiving payments. The reason Movant is not receiving payments is that it failed to file a timely claim.").

> [A] secured creditor cannot simply absent itself from the bankruptcy process in chapter 13, then hope to obtain easy relief from the automatic stay after confirmation. Such a creditor could hardly maintain that cause existed for relief from stay where the debtor had made provision for the creditor in the plan and only the creditor's refusal to file a claim prevented it from receiving the adequate protection that had been offered. In re Macias, 195 B.R. 659, 662 n.5 (Bankr. W.D. Texas 1996).

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[1] "In order to receive a distribution under a confirmed Chapter 13 plan, even secured creditors must first file a proof of claim or have one filed on their behalf." Baldridge, 232 B.R. at 396. So, in the absence of a proof of claim, the trustee would not be able to distribute the money earmarked for payment of the bank's secured claim, and it would just sit there. Accordingly, a post confirmation modification was required in order to do something with those funds.

"Granting post confirmation relief from the stay based upon a creditor's choice to forgo distributions under a plan is a dangerous distortion of the Code." Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th ed., § 242.1 at ¶ 18, Sec. Rev. June 30, 2004, www.Ch13online.com.

The debtors provided for the bank in their plan. All it had to do to receive what had been allocated to it was to file a claim. But, for whatever reason, it sat back and did nothing. While the bank has every right not to participate in the bankruptcy, it should not be permitted to ignore the debtors' ready, willing and able proposal to pay it, and then come in demanding its collateral. See, Humphrey, 309 B.R. at 782. Although the Bank argues that if it is not paid or allowed to proceed against the collateral, it will suffer a penalty equal to the "complete loss of the value of its lien," Brief in Support of Motion, pg. 8, it has no one but itself to blame for being in that position. See, In re Outboard Marine Corp., 386 F.3d 824, 828 (7th Cir. 2004). There is no cause to relieve the bank of the automatic stay.[2] Accord, Humphrey, 309 B.R. at 781-82; In re Clark, 38 B.R. 683 (Bankr. E.D. Pa. 1984). See also, Macias, 195 B.R. 662 n.5; In re Schaffer, 173 B.R. 393, 395 (Bankr. N.D. Ill. 1994) (cause for relief from stay would not likely flow from an omission by the party seeking relief).

The failure to file a claim does not destroy or eliminate a creditor's interest in property of the estate. Long v. Bullard, 117 U.S. 617, 6 S.Ct. 917 (1886). Liens pass through bankruptcy unaffected, unless specifically acted upon by the bankruptcy court, and may be enforced in rem after the debtor has been discharged. See, Matter of Penrod, 50 F.3d 459, 461 (7th Cir. 1995); In re

[2]The cases the bank cites for a seemingly contrary position, Matter of Thomas, 91 B.R. 117 (N.D. Ala. 1988); In re Lee, 182 B.R. 354 (Bankr. S.D. Ga. 1995); In re Thompson, 2014 WL 1330110 (Bankr. S.D. Ga. 2014), all involve plans that did not provide for the creditor's secured claim.

Tarnow, 749 F.2d 464 (7th Cir. 1984); In re Simmons, 765 F.2d 547 (5th Cir. 1985). See also, In re Pajian, 785 F.3d 1161, 1163 (7th Cir. 2015) (a secured creditor who fails to file a claim can still enforce its lien even after the debtor receives a discharge). Whether that remedy will have any value to the bank is something else entirely; but that is the price it must pay for failing to file a proof of claim. It is not appropriate to punish the debtors for the bank's failure to protect its interest. Humphrey, 309 B.R. at 781.

Grant County State Bank's motion for adequate protection or alternatively for relief from the automatic stay and abandonment will be DENIED. An order doing so will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In Re:	)	In Proceedings
	)	Under Chapter 13
Dana M. Robinson,	)	
	)	Bk. No. 21-60008
Debtor.	)	

OPINION

The matters before the Court are the Chapter 13 Trustee's Objection to Untimely Filed Claim and the Chapter 13 Trustee's Objection to the Debtor's Motion for Leave to File Time-Barred Claim. The Chapter 13 Trustee (Trustee) asks the Court to disallow the proof of claim filed by the Internal Revenue Service of the United States (IRS) because the claim was filed after the claims bar date, and to deny the Debtor's request to file a proof of claim on behalf of the IRS.

The facts, while possibly incomplete, are not in dispute. The Debtor filed her Chapter 13 case on January 26, 2021. The claims bar date for governmental units was set for July 26, 2021. When the Debtor filed her Chapter 13 case, she did not know whether she owed the IRS for 2020 income taxes and did not list the IRS in her schedules. Therefore, the IRS did not receive notice at the time the Debtor filed her bankruptcy. The Debtor did subsequently learn of her 2020 tax liability. According to the Trustee's First Amended Objection to the Debtor's First Amended Plan, the Debtor testified at her 341 meeting on June 3, 2021 that she owed a tax liability to the IRS. The Trustee asserted in his Objection that the Debtor must file an Amended Schedule E/F and an Amended Plan to address that liability. The Court sustained the Trustee's Objection on July 14, 2021 and ordered the Debtor to file an Amended Chapter 13 Plan and an Amended Schedule E/F within thirty days.

On August 12, 2021, the Debtor filed the Amended Schedule E/F and a Third Amended

Chapter 13 Plan to add the IRS as a creditor. Apparently, the IRS first learned of the Chapter 13 case when it received notice of the Amended Schedule E/F and the Third Amended Chapter 13 Plan. The IRS then filed a proof of claim for the 2020 tax liability on August 24, 2021, after the claims deadline had passed. On August 26, 2021, the Trustee filed his Objection to Untimely Filed Claim. The IRS did not respond to the Trustee's Objection.

The Debtor filed her Motion for Leave to File Time-Barred Claim on September 14, 2021 asking the Court for leave to file a proof of claim on behalf of the IRS. The Trustee filed his Objection to the Debtor's Motion arguing that the Debtor had not shown "excusable neglect" as required for leave to file a late claim for a creditor under Bankruptcy Rule 3004 (Fed. R. Bankr. P. 3004).

The Court held a hearing on both of the Trustee's Objections on October 15, 2021, and the Trustee and counsel for the Debtor presented their arguments. The IRS did not appear at the hearing. The Court took the matters under advisement.

With respect to claims of governmental units, Bankruptcy Rule 3002(c)(1) provides:

> A proof of claim filed by a governmental unit, other than a claim resulting from a tax return filed under §1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

Fed. R. Bankr. P. 3002(c)(1).

In this case, the deadline for governmental units to file a proof of claim was July 26, 2021. Because the IRS did not receive notice of the Debtor's bankruptcy until August 12, 2021, when the Debtor filed her Amended Schedule E/F and Amended Plan, the IRS did not file a

proof of claim until August 24, 2021, almost a month after the claims bar deadline had passed.[1]

The Bankruptcy Rules provide some relief to creditors who are unable to file a timely claim. Prior to its amendment in 2017, the language of Bankruptcy Rule 3002(c) did not allow creditors additional time to file a proof of claim based upon inadequate notice. See eg. *In re Sykes*, 451 B. R. 852 (Bankr. S.D. Ill. 2011) (finding that the plain language of Rule 3002 prevented the Court from granting additional time for a creditor to file a claim after the deadline had expired). In 2017, Bankruptcy Rule 3002(c) was amended to add a new subsection (c)(6) which provides:

> On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:
>
> > (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)…

Fed. R. Bankr. P. 3002(c)(6).

The Advisory Notes to Rule 3002(c)(6) state that subdivision (c)(6) was amended "to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim." Fed. R. Bankr. P. 3002, advisory committee's note to 2017

1. The proof of claim filed by the IRS identifies the tax obligation as income tax for period ending "12/31/2020" as assessed on "07/05/2021". Although the IRS assessed the taxes on July 5, 2021, nothing in the record suggests that the Debtor filed her tax return within the sixty days prior to August 24, 2021 as would make the IRS claim timely under the second sentence of Rule 3002(c)(1). In fact, the Debtor and the Trustee entered into an Agreed Order on April 27, 2021 which required the Debtor to provide her *2020 state tax return* to the Trustee within 21 days, indicating that the Debtor had already provided the Trustee her 2020 federal tax return. The Trustee then conducted the Meeting of Creditors on June 3, 2021, indicating that the Debtor had complied with her obligation to provide the Trustee with all prepetition tax returns. Additionally, the Trustee stated in his Objection to the Debtor's First Amended Plan that the Debtor testified at her Meeting of Creditors that she had a federal tax obligation for the 2020 tax year.

amendment. In reliance on the amendment, some courts have enlarged the time for a creditor to file a proof of claim when the debtor failed to include the creditor on the list of creditors. *In re Fitzgerald*, 2020 WL 5745973 (Bankr. M.D. Fla. 2020) (noting that relief under Rule 3002(c)(6) is permissive and the facts supported granting the creditor's motion for leave to file late claim); *In re Vanderpol*, 606 B.R. 425 (Bankr. D. Colo. 2019) (relying on the Advisory Notes to discern the drafters' intent); *In re Mazik,* 592 B.R. 812 (Bankr. E.D. Penn. 2018). Other courts, however, have refused to allow a late filed claim for a creditor not listed in the debtor's original list of creditors using a strict reading of the language "debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)." *In re Fryman*, 2019 WL 2612763 (Bankr. E.D. Ky. 2019); *In re Somerville*, 605 B.R. 700 (Bankr. D. Md. 2019) (refusing to consider the Advisory Notes because the court did not find "the language of the rule itself confusing or ambiguous").

In the case before this Court, the Debtor did not include the IRS on her list of creditors until August 12, 2021, which was after the July 26, 2021 claims bar date for governmental units. Although the IRS did then file a proof of claim on August 24, 2021, it did not file a motion seeking to extend the time for filing a claim as required by Bankruptcy Rule 3002(c)(6). Therefore, the Court need not address whether the IRS should be granted relief under Bankruptcy Rule 3002(c)(6) based upon the Debtor's failure to include the IRS on her original list of creditors. Moreover, the IRS did not respond to the Trustee's Objection to its claim and did not appear at the hearing on that Objection. Therefore, the Trustee's Objection to Untimely Filed Claim is Sustained.

The Court next directs its attention to the Trustee's Objection to the Debtor's Motion for Leave to File Time-Barred Claim. Bankruptcy Rule 3004 provides:

> If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable.

Fed. R. Bankr. P. 3004.

Here, the Debtor did not file a proof of claim on behalf of the IRS within the requisite thirty days following the July 26, 2021 deadline for governmental claims. Rather, on September 14, 2021, the Debtor filed a Motion for Leave to File Time-Barred Claim seeking leave to file a claim for the IRS. Bankruptcy Rule 9006(b) governs enlargement of time deadlines. That rule states:

> (1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

Neither of the exceptions referenced in Bankruptcy Rule 9006(b)(1) is applicable. The exception provided in paragraph (2) sets forth certain time limits that cannot be extended by the court. The thirty-day limit in Bankruptcy Rule 3004 is not among those. The exception provided in paragraph (3) states that the court may enlarge the time periods set forth in Bankruptcy Rule 3002(c), and other specified rules, "only to the extent and under the conditions stated in those rules". Fed. R. Bankr. P. 9006(b)(3). Relying on that language in Bankruptcy Rule 9006(b)(3), the Court in *Sykes* contrasted the earlier version of Bankruptcy Rule 3002(c), which did not

allow enlargement of the claims deadline, with Bankruptcy Rule 3004. The Court noted that "[u]nlike Rule 3002(c), the time for filing claims under Rule 3004 is subject to enlargement." *Sykes*, 451 B.R. at 862.

In this case, the Debtor filed her Motion for Leave after the expiration of the thirty-day time period set forth in Bankruptcy Rule 3004. Therefore, the issue before this Court is whether the Debtor can obtain an extension pursuant to Bankruptcy Rule 9006(b)(1) because her "failure to act was the result of excusable neglect." The U.S. Supreme Court in *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 388 (1993) held that the "excusable neglect" standard under Bankruptcy Rule 9006(b)(1) gives a bankruptcy court permission to accept late filings caused by "inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond a party's control." The Court explained that the determination of whether a missed deadline is excusable is an equitable decision, requiring an examination of the totality of the circumstances which includes the danger of prejudice to the debtor, the length of the delay and its impact on the judicial proceedings, the reason for the delay and whether the debtor acted in good faith. *Id.* at 395.

Applying *Pioneer,* this Court finds excusable neglect exists and that the Debtor may file a late proof of claim for the IRS. There is potential prejudice for the Debtor. If the IRS is not paid through the Chapter 13 case, the possibility exists that the IRS could take action that would adversely affect the Debtor's ability to perform under the Chapter 13 plan. Furthermore, the Chapter 13 case is in its infancy, and the Debtor acted shortly after she discovered she owed the 2020 taxes. There was no evidence to indicate the Debtor acted in bad faith. Likewise, the IRS filed its proof of claim within 28 days after the filing deadline under Bankruptcy Rule 3002.

There was no evidence that allowing a late filed proof of claim would adversely affect the administration of the Chapter 13 case.

For the reasons set forth herein, the Trustee's Objection to Untimely Filed Claim is Sustained and the claim filed by the IRS is Disallowed. The Trustee's Objection to the Debtor's Motion for Leave to File Time-Barred Claim is Denied, and the Debtor is granted leave to file a proof of claim on behalf of the IRS.

A separate Order shall enter.

ENTERED: December 1, 2021

/s/ William V. Altenberger
UNITED STATES BANKRUPTCY JUDGE

Faculty

Marcy J. Ford is a managing partner with Trott Law, P.C. in Farmington Hills, Mich. She is a member of the State Bar of Michigan, the Federal Bar Association, the Oakland County Bar Association, ABI and the National Association of Chapter 13 Trustees, and she is a member and former board representative of the Consumer Bankruptcy Association of the Eastern District of Michigan. She also is active with the USFN, a trade association for mortgage banking attorneys, and served on the USFN board for 11 years and was president from 2012-14. Ms. Ford was honored on *Crain's Detroit Business* "Women to Watch" list, has been recognized as a *dbusiness* magazine "Top Lawyer," and was named as one of *HousingWire*'s "Influential Women in Housing." She is a frequent speaker on mortgage issues in consumer bankruptcy. Ms. Ford received her J.D. in 1993 from Wayne State University.

Rebecca R. Garcia is the standing chapter 12 and 13 trustee in Oshkosh, Wis. She was appointed on Dec. 1, 2014, as the standing chapter 13 trustee and April 1, 2016, as the standing chapter 12 trustee. Prior to her appointment, Ms. Garcia was a staff attorney for Mary B. Grossman, the chapter 13 trustee in Milwaukee from 2002-14. She has been practicing in the area of consumer bankruptcy since 1996. Prior to 2002, she represented debtors in consumer cases. Ms. Garcia is a past member of the board of the Bankruptcy, Insolvency and Creditors Rights Section of the State Bar of Wisconsin and a member of the National Association of Chapter 13 Trustees and of the Association of Chapter 12 Trustees, for which she currently serves as president. She received her B.A. from the University of Wisconsin Platteville in 1992 and her J.D. from Marquette University in 1996.

Hon. G. Michael Halfenger is Chief U.S. Bankruptcy Judge for the Eastern District of Wisconsin in Milwaukee, initially appointed on Jan. 11, 2013, and named Chief Judge on Jan. 1, 2019. Previously, he was a partner with Foley & Lardner LLP, practicing commercial litigation out of its Milwaukee office. Judge Halfenger received his B.A. *summa cum laude* from Lawrence University and his J.D. with honors from the University of Chicago Law School. Following law school, he clerked for Hon. Frank H. Easterbrook of the U.S. Court of Appeals for the Seventh Circuit.

Thomas H. Hooper is a chapter 13 standing trustee for the Northern District of Illinois in Chicago, appointed on Oct. 1, 2021. He began his bankruptcy career in North Carolina, where he represented debtors in chapter 7 and 13 cases. Following his experience as debtors' counsel, Mr. Hooper served as a staff attorney to both Russell Simon, chapter 13 standing trustee for the Southern District of Illinois, and Joseph Bledsoe, chapter 13 standing trustee for the Eastern District of North Carolina. He has been a frequent speaker on issues affecting chapter 13 administration at bankruptcy seminars and workshops. Mr. Hooper received his B.B.A. from Ohio University and his J.D. from Ohio Northern University.