Thoughts and Observations about the Chapter 13 Summit

By
The Honorable Jim D. Pappas
Chief United States Bankruptcy Judge
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I would like to start this review of the recent Chapter 13 Summit with thanks, on behalf of Chief Judge Pappas and myself, to the office of the United States Trustee. Jeff Howe and Gary McClendon labored long and hard to bring off a successful conference, and we appreciate all their leadership and effort in this endeavor. The level of the commitment of the U.S. Trustee to the cause of effective chapter 13 processes in the District was reflected by the fact that Jan Ostrovsky, U.S. Trustee for Region 18, came over from Seattle and participated in the day long program. Our thanks to Mr. Ostrovsky as well.

We also want to especially thank all the bankruptcy practitioners and the chapter 13 trustees, who gave so generously of their time, experience and expertise. This occurred not only on November 9 but also in the months leading up to the Summit, as comments, questions, perspectives and other input was made. This reflected a sincere commitment and desire – by the debtors' bar, creditors' bar, and trustees -- that the chapter 13 process work as efficiently, effectively and professionally as possible in Idaho.

The genesis of the Summit was the result of several things. The Judges, trustees and practitioners all perceived areas where improvements might be made to the chapter 13 process. The time seemed ripe for a comprehensive review, as we had several years of experience under the District's accelerated confirmation process. Additionally, growth in chapter 13 practice in the Boise area had created logistic problems which needed to be addressed. The Judges each saw a heavy Boise confirmation calendar monthly, which of course meant the trustees and lawyers were coping with two such calendars, as well as the related first meetings and the other burdens of volume.

This motivation for the Summit was thus essentially collaborative. This in turn ensured that the agenda was open. The challenge presented was how to ensure that the chapter 13 process works equally well from the viewpoints of the debtors, creditors, lawyers, trustees, and the Court. The hope was that, through the collective efforts of those involved, a good system might be made better. That different constituencies were represented was critical to this evaluative process, and the legitimacy of any outcome.

Through the meetings with the trustees and court staff in the morning on administrative issues, and the afternoon's plenary session, several excellent ideas for improvement were generated at the Summit. I'd like to summarize many of those which are already in the process of being implemented.

The form plan

The Local Bankruptcy Rules Advisory Committee, under the chairmanship of Larry Prince, is working on several changes to the LBR's. They are also considering changes to the model chapter 13 plan, an effort

spearheaded by Jeff Howe and Bart Davis. A "red-line" version was distributed at the Summit, and several comments regarding the proposed changes were made, along with suggestions for additional modifications. This input was valuable, and the opportunity for input remains open. The next meeting of the Advisory Committee is scheduled for December 6. Comments should be directed to Jeff or Bart.

The tax and plan payment orders

Many comments had been made by lawyers and trustees that chapter 13 debtors had difficulty in understanding their obligations under the "tax turnover order" and the order requiring their plan payments to commence. While debtors may still on occasion have questions and the need to speak with their counsel, or possibly the trustee, both orders are being revised by the Court in order to make clearer the duties and obligations of debtors, and to reduce the frequency of such inquiries.

Provision of findings and recommendations

In an attempt to alert debtors to plan deficiencies at the earliest time, and provide their counsel an opportunity to correct those problems and utilize the accelerated confirmation process, the chapter 13 trustees have agreed to provide copies of their findings and recommendations (TR Form 40) to counsel shortly after the bar date for objections to the plan (5 days after first meeting) has passed. This form will also be imaged by the clerk's office.

Additionally, in the event some of those issues have not been resolved, the trustees will also provide to counsel, in the last several days before the scheduled confirmation hearing, the "confirmation findings and recommendations" regarding compliance with § 1325(a) and (b) which the trustees file with the Court.

The "uncontested" confirmation hearing

In order to ensure that the maximum amount of time at confirmation hearings can be used for cases where factual matters must be presented or contested legal issues resolved, the cases in which no issues remain should be removed. To accomplish this, the Court will announce, at the start of the confirmation hearings, those scheduled cases which the trustee has indicated are ready for confirmation. They will be removed from the calendar, and those debtors and their counsel need not appear or stay.

The trustee is the "gatekeeper" and, in order for him to agree to this treatment, all outstanding issues must have been resolved, a proposed confirmation order must have been delivered to the trustee, and any objections to confirmation of record must have been withdrawn or the objecting party or its counsel must have endorsed the proposed order. "Last minute" solutions or proffered orders may not enable the trustee to agree to removing a case from the calendar, and will require debtors and counsel to remain for the case to be called.

In order to facilitate this process, the Boise trustees have agreed to be available in the conference rooms outside the Boise courtrooms for the half-hour immediately preceding the 1:30 p.m. confirmation

calendars. However, the hope and goal is to encourage resolution of issues and submission of proposed confirmation orders before the afternoon of hearing. This saves time and money for debtors' counsel and others involved, who no longer need to make the trip to court. It also frees up the limited court time for contested cases, and allows the lawyers and trustee the opportunity to focus on those matters.

Increased uniformity

The trustees recognized, in their morning session, something which practitioners most likely already knew: there were real differences in how the trustees approached certain issues. For example, when debtors defaulted in their plan payments, some trustees would generate inquiries, and motions to dismiss, far earlier than others. As a result of the meeting, you should expect to see a little more similarity of approach, and questions raised about defaults in payments at an earlier stage. On a related issue, there appears to be greater inclination of the trustees to seek "employer pay orders" upon the first payment default by debtors, something already included in the model plan.

The trustees and the U.S. Trustee have also agreed to review the forms used by trustees District-wide, with a goal toward standardization. While absolute uniformity is unnecessary as well as unrealistic, and each case must be addressed by the trustee on its own merits, some increased similarities in approach throughout the District can be anticipated.

Attorneys' fees

A great deal of discussion occurred on the subject of attorneys' fees in chapter 13 cases. The Judges found the dialogue healthy and informative, and we hope that feeling is shared by counsel. The fact that both bench and bar were willing to discuss these questions at length is encouraging.

No final resolution of any particular fee issue was reached on November 9. Since fee issues are inherently case-specific, it is probably unreasonable to expect that any broad articulation or generalized approach would suffice, either at the Summit or in this report. But this review would not be complete without some additional comment, even though this is not a subject capable of easy summary. Speaking here from my personal perspective, I think the November 9 discussion reaffirmed some fundamental precepts.

The Court appreciates and agrees that lawyers should be reasonably paid for their labors in chapter 13 cases. Debtors must be well represented in order for the system to work. Adequate compensation for their chosen counsel is certainly a factor (though maybe not the only one) in reaching this goal.

When compensation is requested, myriad aspects of the Code, rules and case law are implicated. Applicants for compensation cannot turn a blind eye to any of these requirements, particularly since the Court is obligated to follow that law. In fee cases where such requirements are not acknowledged or followed by counsel, the decisions rendered by the Court are not going to be favorable. But they have been and will be based solely on the law, and not on any desire or intent to restrict compensation.

The same focus on and adherence to the rule of law is applied when compensation requests seek to blaze new ground. The Court has no problem with considering new theories and approaches to these issues, but the advocate must ensure that the desired approach meets the applicable requirements of the Code and precedent. Simply by way of example (one in fact discussed at the Summit), a request for additional post-confirmation compensation in cases where the plan payments are neither extended nor increased must be noticed to creditors because due process is implicated.

Practitioners should also recall that the Court sees the gamut of debtor representation, from truly excellent to something on the other end of the spectrum. These less than stellar performances are, by and large, the situations that lead to fee decisions. We appreciate that the debtors' bar has concern whenever such decisions are issued, but it might help to recognize that, for every fee application addressed in an oral or written disposition, 99 requests were approved without objection, dispute or adjustment.

The Judges have a tremendous respect for the lawyers appearing before them in this District. Idaho rivals any part of the nation in the quality of its bankruptcy bar. Lawyers should have a rewarding and profitable practice, in economic as well as professional terms. As they request approval of their compensation and the Court engages in its mandated review, the Code and precedent will continue to provide the guideposts. But the Court has no hesitancy in hearing the reasoned and considered arguments of counsel. It is in this way, case by case, that development and changes are most likely to occur.

Conclusion

Reiterating something I said at the end of the evening November 9, the Chapter 13 Summit is just a part of a larger process, not an end unto itself. Hopefully the type of communication and dialogue we saw at the Summit will continue. The Court will continue to solicit and encourage suggestions for improvement of the bankruptcy system in the District, whether in regard to chapter 13 or otherwise. We want to continue this very healthy and helpful exchange of ideas and information, not just through such meetings but by any and all of the varied methods available to us.

Thanks again to all participants for your help with, and commitment of time and energy to, this endeavor.