

PRESENTED AT

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Current Topics in Chapter 13 and Consumer Bankruptcy

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Exploring current topics in Chapter 13 cases and consumer bankruptcy.

1. Beginning with “How’s Business” and are payments to debtor’s attorney’s declining in Chapter 13 cases with the declining national case load?

[Judge Norman] In May of 2016, nationwide bankruptcy filings continued their year to date decline. Compared to 2015, 2016 filings are down by 6%. This continues a slide that began in 2010. For example, in May 2010 there were 133,648 total bankruptcy filings in the United States; however, in May 2016 there were only 66,094 total filings.

As of April 2016 in the Western District of Louisiana (WDLA) there were 23,818 cases pending of which 21,816 were Chapter 13 cases. Total filings, which hit a high of 30,858 cases in 2013, have now declined 22%. Total case load in the WDLA is declining by an average rate of 200 cases per month. In the Shreveport Division of the WDLA, the Chapter 13 Trustee is closing an average of 100 more cases than she is opening. If there is good news, it is that filings did uptick in May and file closings and openings almost matched.

Debtor’s attorneys in the Shreveport Division of the WDLA were paid \$4,555,277 by the Chapter 13 Trustee disbursements in fiscal year 2014 - 2015 (Oct – Sept), compared to \$7,537,747 in fiscal year 2013 – 2014, and \$7,480,383 in 2012 – 2013. This represents a yearly decline from 2014 to 2015 of \$2,925,106, or 39%--a very large sum.

[Trustee Ebert] In the last three years, cases have declined in the Plano Division 28% from 2013 through 2015. However, our case filings are averaging the same from last fiscal year to this year. However, despite the same average case load, the disbursements from 2014 to 2015 dropped approximately 10%. The "no-look" fee was increased in June of 2015 from \$3500 to \$4000 (if stay litigation was involved).

[Trustee Heitkamp] There has been a five year decline in new Chapter 13 case filings in the Southern District since the peak fiscal year 2011. In fiscal year 2015, 33% fewer new chapter 13 cases were filed than in fiscal year 2011. The trustees distributed 13% less money to debtor attorneys during fiscal 2015 than was distributed during 2011. The per case standard "no look" fee for chapter 13 cases increased from \$3085.00 to \$3,825.00 during this period. New case filings had increased for the three fiscal years ending September 30, 2011. Funds distributed to *all* creditors however increased for every year during the 5 year period ending September 30, 2015 for the Houston trustees. There was a 2% decrease in distributions to all creditors reported in the Corpus Christi office for 2015 compared to 2014.

[Tara Tankersley] The Dallas office has also seen a steady decline in Chapter 13 filings. We are down about 7% from this time last year. We currently have 8,093 active cases. (As opposed to 10,330 cases in 2013). The Debtor Attorney disbursements have also seen a similar decrease despite the increase in the "no-look" fee.

[Trustee Viegelahn] Calendar year 2013 saw a decrease of 7.1% in Chapter 13 filings; 2014 saw a decrease of 8.6%; and 2015 saw a decrease of 1%. However, the percentage of chapter 13 filings as compared to total filings in the W.D. Texas, San Antonio Division remains at approximately 55%. I currently have 4,535 active cases from 7,866 as of October 1, 2013. In 2013 gross receipts

were \$53,831,732 and disbursements were \$52,455,236. In 2014 gross receipts were \$49,233,013 and disbursements were \$49,740,056. In 2015 gross receipts were \$42,072,212 and disbursements were \$43,519,171.

2. Continuing with attorney fees, the aftermath of *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015), and how to get paid.

[Judge Norman]: In *Harris*, the Supreme Court held that plan payments held by the Chapter 13 Trustee must be returned to the debtor upon conversion. The Court principally relied on 11 U.S.C. §§ 348(e) and 348(f)(1). Section 348(e) provides that conversion of a Chapter 13 case terminates the service of the pre-conversion trustee. Section 348(f)(1) provides that, absent bad faith, the Chapter 7 estate of a converted Chapter 13 does not include post-petition wages; rather, it only includes property of the estate as of the date of the filing of the petition that remains in the debtor's possession or control on the conversion date. The Supreme Court inferred from these two provisions that Chapter 13 trustees cannot pay creditors from accumulated plan payments after conversion because that would contravene the provision in § 348(e) terminating the trustee's services, and would lead to a distribution of property to creditors that is not part of the estate in the converted case.

I have written on this subject in *In re Marshall*, 2016 Bankr. LEXIS 274 (Bankr. W.D. La. 2016): "While this Court is faced with an unappealing result of not having the ability to compensate debtor's counsel, it is bound by the Supreme Court's *Harris* decision. This Court acknowledges that *Harris* has called into question the validity of many bankruptcy courts' local rules regarding pre-confirmation conversion. Many jurisdictions had local rules providing that the Chapter 13 Trustee must pay the debtor's attorney out of the accumulated plan payments in the event a case is converted prior to confirmation. The movant believes he can avoid the application of *Harris* by simply filing and obtaining a ruling on a fee application prior to conversion. This Court disagrees."

[Trustee Ebert] The Eastern District Local Rules 2016 (h)(6) allows the attorney prior to the case conversion to file a fee application with 21 day negative notice and served upon the Debtor. Otherwise, the fees are returned to the Debtor pursuant to *Harris*.

[Trustee Heitkamp] *Harris* did not conflict with any existing Local Rule or form plan provision in the Southern District of Texas. Undistributed funds are refunded to the debtor upon conversion.

[Tara Tankersley] The Dallas Chapter 13 office files a Notice of Funds on Hand at Conversion and sets out the amount that is to be returned to the Debtor. Trustee Viegelahn will be happy to know that we even cite her case on the Notice. These usually do not generate a response or objection from any party.

[Trustee Viegelahn] *Harris* applies to all cases converted, whether pre confirmation or post confirmation. The Standing Order on payment of a portion of attorney fees pre confirmation is no longer applicable.

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