

Below is a summary of the cases that I feel were significant from that Lufkin docket. A copy of this e-mail will be posted as "8/31/11 Lufkin Docket" under the tab entitled "Trustee's Emails" on my website at www.ch13tyler.com.

Confirmation Docket:

The cases on the confirmation docket were relatively routine.

Modification Docket:

10-10422 *Williams*: Facts: This motion to modify was filed due to an underfunding problem after the TRCC that was apparently caused due to the IRS priority claim being filed in an amount in excess of the estimated amount included in the confirmed plan. The pertinent dates are as follows:

3/16/11: TRCC was filed noting the underfunding problem.

3/22/11: Debtor filed her objection to the IRS claim.

4/12/11: IRS filed its response to the claim objection. Court set the hearing for the claim objection for 7/7/11.

5/13/11: The Trustee filed his Motion to Dismiss for infeasibility based upon the underfunding, thereby requesting the hearing be set for 6/8/11.

7/7/11: Trustee's Motion to Dismiss was continued to 7/7/11 presumably so that it would be on the same docket as the objection to the IRS claim.

7/7/11: Debtor filed her Motion to Modify the terms of the confirmed plan to cure the underfunding problem. Hearings were continued on the pending claims objection to 7/27/11 and on the Trustee's Motion to Dismiss to 8/31/11.

7/27/11: The hearing on the pending claims objection was continued to 8/31/11.

8/1/11: Trustee filed his objection to the pending Motion to Modify, objecting in part that the Debtor failed to fully provide for the IRS priority claim in the Motion to Modify. Court set the Motion to Modify for hearing on 8/31/11.

8/31/11: Debtor, through her attorney, requested a continuance of the hearings on all three matters (objection to claim, motion to modify, and motion to dismiss) to the next docket in order to allow the IRS to review the information that the Debtor had provided the IRS to justify the Debtor's claim as head of household.

Ruling: The Court did continue the matters but to the December docket. Judge Parker did express his concern/displeasure that information may not have been provided by Debtor to the IRS in a timely manner thereby causing the claim objection to be pending since March. The Judge did not want to continue the matters to the September docket to find that such needs to be continued yet another time.

Result: Although the Court did continue the matter, Trustee believes that this case showed frustration by the Judge based upon his apparent impression that things were not being done on a timely basis by the Debtor and/or the IRS. If you want a continuance, the Trustee would recommend that you give a detailed reason on why a continuance is necessary and ask for sufficient time that would allow the issues to be resolved. The IRS does not move quickly. Debtors do not move quickly in getting information to their attorneys. Judge Parker may not grant multiple continuances in the future which may result in the dismissal of a case that could have been otherwise saved.

Dismissal Docket:

11-90261 *Ashworth*: Facts: The Debtor filed this case "pro se" for the purpose of stopping her home from being foreclosed upon. The Debtor filed her Petition without her schedules, statement of financial

affairs, Chapter 13 plan, and other documents. Upon her failure to file these documents, the Trustee filed his Motion to Dismiss with Prejudice for 120 days. The Debtor appeared at the hearing and advised the Trustee and his Staff Attorney that she had been in contact with an “internet” law firm (Sanders Law, P.A. from Gulfport, Florida) who suggested that she needed to file bankruptcy to stop the foreclosure and a loan modification of her mortgage. The Debtor allegedly paid Sanders Law a total of \$3,100.00 (an amount that would have brought her mortgage payments current...but was advised that since she also needed a loan modification, that she should send Sanders Law the money) at which time she received a bankruptcy petition to be filed “pro se”. The Trustee requested that she provide to him copies of all documents and correspondences that she has received from Sanders Law, P.A. and to advise the Court what happened to her.

Ruling: Judge Parker was clearly upset about the story that the Debtor told him. The Judge did dismiss her case (but without prejudice from her refile) and, through the Dismissal Order, retained jurisdiction “to review and determine the amount of appropriate compensation that should be paid to any attorney providing services in contemplation of the filing of the petition in this case.” Judge Parker also requested the Trustee to forward to him any documentation that the Debtor provides to the Trustee for a possible “Show Cause” order.

Result: With the increase reliance on the internet, the Trustee suspects that more and more “virtual” law firms, loan modification “specialists”, and other such entities will surface to prey on those that have financial problems. If the Debtors’ bar meet with a potential client who has had a similar experience as Ms. Ashworth, please advise the Trustee and/or the U.S. Trustee asap.

Trustee’s Miscellaneous Docket:

10-10666 *Warren*: Facts: The plan for these below-median income Debtors were confirmed thereby providing for the Trustee to escrow \$6,000 until such time as the Debtors’ law firm could file a fee application. The law firm eventually did file its fee application wherein it was seeking Court approval of its attorney’s fees and costs of \$15,242.07. Trustee objected to the fee as excessive. In the interim, the Debtors stopped making their plan payments and the Trustee filed his Motion to Dismiss. A secured creditor also objected to the TRCC thereby contending that the TRCC did not accurately reflect the terms of an agreement that the creditor had reached with the Debtors’ law firm on its treatment under the plan, thereby alleging further that the law firm had neglected to attach the agreement to the confirmation order. The Trustee’s motion to dismiss, the law firm’s fee application, and the TRCC were all set for hearing for 8/31/11.

The law firm, with its office in Houston, filed a motion to allow the attorney to appear telephonically for these three matters. Upon the denial of the motion to allow the attorney to appear telephonically, the Trustee and the law firm were able to reach an agreement that it would be paid the funds that had been escrowed by the Trustee pursuant to the terms of the confirmed plan which was approximately \$3,700.00 (less Trustee fees) bringing the total fees paid or to be paid to the law firm to approximately \$4,200.00. The remaining fees as set forth in the Fee Application would be denied. The law firm had managed to confirm the plan and defend against motions to lift stay filed by three different creditors.

The Debtors, pro se, filed their own notice of conversion to Chapter 7 without the knowledge or consultation with their attorneys and will, presumably, be proceeding through a Chapter 7 either without legal representation or with a new attorney.

Ruling: The Court approved the settlement of the fee application without further comment. Since the matter was settled, there was no Court ruling on the Trustee’s objections to the pending fee application

and such remain only as Trustee allegations. The Court noted that, since the case had been converted, the pending TRCC and Trustee's Motion to Dismiss were moot.

Result: The Trustee has three observations about this case. First, the Trustee has no objection to debtors' attorneys getting paid their reasonable attorney's fees. The so-called "no-look" fee as set forth in the Court's Local Rules does not set a minimum or a maximum for attorney's fees but is actually in place as an administrative convenience for the attorneys and the Court where the \$3,000.00 (plus \$500 if certified as a business case plus \$500 upon certification of lift stay work) is presumed to be a reasonable fee without the necessity of the attorney preparing and filing a fee application. If the attorney is asking for additional fees, the attorney must file a fee application. The Trustee recommends that these fee applications with a detailed explanation on why the attorney should be paid a fee in excess of the "no-look" fee. The Trustee will review these fee applications and object if the fees appear to be excessive. Since his affiliation with the Chapter 13 Trustee's office, the Trustee has never, in his opinion, seen legal work performed in a Chapter 13 case that would support a \$15,000.00 fee request.

Second, the Trustee believed that the attorney's fees in this case were excessive including but not limited to the following reasons: (a) the attorney, being from Houston, was not familiar with the procedures in the Eastern District of Texas. A lot of time was spent by the attorney/staff educating the attorney/staff on these procedures. The Trustee does not believe the attorney should be charging the Debtors or their bankruptcy estate for this education; (b) the attorney spent a lot of time fixing mistakes he or his staff made in the prosecution of the case, thereby charging not only for the time he spent making the mistakes but also the time he spent on fixing the mistakes. For example, the original Chapter 13 plan as filed in this case was stricken by the Court for improper service. The fee application included not only time for preparing and filing the original Chapter 13 plan but also time for preparing and filing the new Chapter 13 plan as well as responding to the Trustee's resulting motion to dismiss (based upon the original plan being stricken). All of the time for preparing and filing the new Chapter 13 plan and the time spent in filing a formal response to the Trustee's Motion to Dismiss would not have been necessary had the attorney properly noticed the original Chapter 13 plan. (c) the attorney and his staff appeared to include questionable time entries in the fee application that were repetitive and ambiguous. For example, there were time entries for "file management" or "file review" or "communication regarding ..." with no indication to whom the communication was with. (d) the fee application misrepresented to the Court the amount of dividend to the unsecured creditors as an apparent justification for a fee in excess of \$15,000.00. In particular, the law firm represented that there was an estimated general unsecured dividend in excess of \$91,000.00 when in reality the projected dividend to the unsecured creditors was approximately \$2,600.00. In fact, the total plan base was only \$56,580.00 which made a dividend to the unsecured creditors in the amount of \$91,000.00 impossible. Further, if the total fee application of \$15,000.00 had been granted, the case would have been hopelessly underfunded with the Debtors, with their current income level, could never have modified the plan to pay such an excessive fee. Charging fees in an amount that causes the plan to become infeasible is, in the opinion of the Trustee, excessive.

The Trustee, through his Amended Objection to the Fee Application, goes through in great detail these and other objections to this Fee Application.

Third, the Court made some interesting observations when it denied the law firm's motion to appear telephonically. In so denying the motion, the Court made the following observations:

“Telephonic hearings are difficult for the Court to coordinate and administer within the context of multiple hearings on a Chapter 13 docket day. Counsel has elected to accept cases filed in this district. The fact that he now finds it inconvenient or improvident to travel to designated court locations within the district for hearings may constitute grounds for the reassessment of his policy of accepting clients, and perhaps his concerns can be alleviated by the upload of agreed orders or the announcement of agreements by the Chapter 13 Trustee at the scheduled hearings, but it does not constitute cause to disrupt the Court’s docket day in an attempt to accommodate his request.”

If you have any comments concerning these cases (or others from this docket) that you would like to have posted and if I feel that the comments are appropriate, please forward such comments to Comments@ch13tyler.com .

John J. Talton
Chapter 13 Trustee