

Below is a summary of the cases that I feel were significant from that Tyler docket. A copy of this e-mail will be posted as "9/21/11 Tyler Docket" under the tab entitled "Trustee's Emails" on my website at www.ch13tyler.com.

However, before you look at the case update from the Tyler docket, I did want to comment about an incident involving a member of the debtors' bar. While I expect the attorneys that I deal with to be advocates for their clients, I also expect the attorneys to be truthful (to the best of their knowledge and belief) in their representations to me and the Court. I expect the schedules and other documents filed with the Court to be accurate (to the best of their knowledge and belief) supported by the proper declaration page duly signed by their clients. If the attorney delegates the filing of schedules and other documents to his or her staff, the attorney must provide sufficient training and supervision over that staff member to make sure that the filing is accurate and supported by the proper declaration page duly signed by your clients. For example, someone signing the debtor's signature on the declaration page just to get a case confirmed, if discovered, will result in my reporting the incident to the U.S. Trustee's Office and, if appropriate, to the Court. Don't cut corners and do it right, even if confirmation is delayed. I do not believe that the risk to your reputation with the Court and to me (not to mention possible Court sanctions) is worth it.

If there is any question about the proper use of declaration pages, please review Appendix 5005 to the Court's Local Rules [Section III (B)(3) and Exhibits B-1, B-2, and B-3].

Thanks,
John J. Talton

Confirmation Docket:

The cases on the confirmation docket were relatively routine.

Modification Docket:

10-20176 *Pierce*: Facts: The pending motion to modify was set along with the Debtor's attorney's fee application. The only remaining issue unresolved in the motion to modify was the amount to be paid to the Debtor's attorney pursuant to the pending fee application. The attorney was seeking attorney's fees in the amount of \$13,260.00. The Trustee objected to the fee application for various reasons. At the hearing, the Debtor's attorney did a good job in explaining to the Court the details on why this was a complicated case, pointing out that it was a business case complicated by the ex-wife asserting an interest in the assets of the estate to secure a property division order issued by the state divorce court. This issue had to eventually be referred back to the state court for clarification of the divorce decree. There were a number of contested matters that the attorney did a good job going through each, reminding the Judge what were the issues and the resolution of each.

Ruling: The Court took the matter under advisement. One of the factors that Judge Parker did focus in on was the amount of the projected dividend to the unsecured creditors and the percentage of the unsecured claims that would be paid as a result of this dividend. Judge Parker indicated that this was a factor to be considered when evaluating a fee application.

Update: On 9/26/11, the Court entered an order that reduced the fees to \$12,060.00 (instead of \$13,260.00). The Order states that the Court finds that "a reduction of 6.00 attorney hours is justified for excessive time having been billed for the work described."

Result: The Trustee believes that the Court approved a large fee because there was a substantial amount of legal services performed that made the legal services go well beyond the “normal” case; the Debtor’s attorney did a very good job of outlining these services, reminding the Judge about the various hearings that were required due to the disputes with the ex-wife; and there was a fairly large dividend to the unsecured creditors even after the payment of the attorney’s fees. Contrast this with the fee application that is set forth in the Trustee’s e-mail from the 8/31/11 Lufkin docket where the attorney was seeking fees and costs in the amount of \$15,242.07 in a relatively routine case involving a below median income debtor. Had the fee application in the Lufkin case been granted in full, the case would have been substantially underfunded with no chance of the debtor increasing his plan payments through a modification to make up the underfunding.

Dismissal Docket:

08-20118 *Zur*: Facts: Since this case was filed in July, 2008, the Trustee filed at least six (6) motions to dismiss based upon the Debtor’s failure to make chapter 13 plan payments. The motions to dismiss would either be withdrawn after the Debtor brought his plan payments current or would be given time through a conditional dismissal order during which time the Debtor would bring his plan payments current. The prior motion to dismiss resulted in a conditional dismissal order thereby requiring the Debtor to be current by June, 2011. The Debtor did become current with his plan payments by the June deadline but then failed to make another plan payment thereby causing the Trustee to file this motion to dismiss. Based upon the number of motions to dismiss and the Debtor’s payment history, the Trustee advised the Debtor’s attorney that he would not enter into another conditional dismissal order with this Debtor. On the morning of the hearing, the attorney for the Debtor advised the Trustee that the attorney had received copies of checks that had been allegedly mailed by the Debtor to the Trustee which, if received, would have cut the deficiency to an amount that the Trustee would normally enter into a conditional dismissal order. The Debtor had not actually talked to his attorney nor did he appear in Court the morning of the dismissal hearing. The Trustee declined to agree to enter into a conditional dismissal order and placed the matter on the “call” docket.

Ruling: Judge Parker dismissed the case, advising the attorney for the Debtor that the Court supported the Trustee’s position of not giving a debtor additional time to become current if there appears to a pattern of possible bad faith (or at least failure to meet his obligations imposed upon under the terms of the debtor’s own confirmed plan). The Court also focused on the fact that the Debtor was not present in the Court room.

Result: Normally, the Trustee will enter agree to give a debtor additional time up to 60 days to become current on the debtor’s plan payments through the entry of a conditional dismissal order where the debtors bring their plan payments within two plan payments of being current along with a reasonable chance of becoming current prior to the dismissal deadline. However, the Trustee will consider the debtor’s history of the number of motions to dismiss filed in the case as well as the debtor’s history of making plan payments. If the debtor has a long history of motions to dismiss as well as a history of bringing the plan payments current just to prevent the dismissal of the case with a prompt default of making plan payments thereby necessitating the filing of a new motion to dismiss, the Trustee is less willing to give the debtor additional time to become current. In that type of fact pattern, the debtor should make plans to appear in Court to make the request directly to the Court for additional time.

10-61189 *Bartz*: Background: As you are aware, value of collateral securing claims being paid through the plan that is subject to “cram down” is not set at confirmation, thereby requiring an agreement, objection to claim, motion to set value, or other mechanism to establish such value. When the value of such collateral as set forth in the confirmed plan is different from the secured value as set forth in the

creditor's proof of claim and where the value of the underlying collateral has not been set by agreement or Court order, the Trustee will note in his Trustee's Recommendation Concerning Claims (TRCC) that he will pay the value as set forth in the confirmed plan but also note that the plan is now infeasible due to the debtor's failure to meet the secured value as set forth in the proof of claim. In the event that the debtor fails to fix this issue after the TRCC, the Trustee generates his motion to dismiss for infeasibility.

Facts: The facts of this case follow the above pattern. However, in this case, the Debtors estimated the value of the collateral that was subject to cram down in the Chapter 13 plan at \$8,000.00. The creditor filed its proof of claim in the secured amount of \$8,009.86. The Trustee correctly noted in his TRCC that he would be paying the value as set forth in the confirmed plan (\$8,000.00) and correctly noted that the plan was infeasible due to the failure of the Debtors to fully provide for the secured amount as set forth in the creditor's proof of claim (\$8,009.86). The Trustee suggested to the attorney for the Debtors that the case be placed on the "call" docket to point out to the Court the problem where the cram down value as set forth in the plan is slightly different from the secured value as set forth in the proof of claim. The Trustee and the Debtors' attorney reached an agreement that the Trustee would not actually ask for the dismissal of the case but that the purpose of the hearing was simply to look to the Court for guidance in this type of fact situation.

Ruling: At the hearing, the Court, the Trustee, and the Debtors' attorney struggled with coming up with a method of reconciling a small difference between the cram down value between the plan and the secured value in the proof of claim. Upon not reaching an acceptable resolution at the hearing, the Court agreed that the case should not be dismissed but took the matter under advisement. In so doing, the Court acknowledged that it was practical to notice the matrix for a motion to modify for a \$9.86 difference.

Result: This is an important case to the members of the debtors' bar in that the debtors' attorneys will have cases where the value set forth in the plan will be close to the secured value as set forth in the proof of claim, thereby making it uneconomical for the debtors' attorneys to file a full motion to modify. The Trustee urges each of them to monitor this case for an eventual ruling by the Court. If any members of the debtors' bar have any suggestions on the solution to this problem, please respond by separate e-mail and the Trustee will be happy to forward any such suggestions to the Court and the Debtors' attorney in this case. However, value of collateral being set at confirmation is not a viable option.

Trustee's Miscellaneous Docket:

10-61287 *Meadows*: Facts: The proposed Chapter 13 plan was confirmed without objection by the any party which provided that the Trustee would pay a particular creditor the cram down value of the collateral as set forth in the plan. The confirmation order contained the usual provision that value was not set at confirmation. The Trustee correctly noted that he would pay the creditor in question the cram down amount as set forth in the plan but noted that the case was infeasible due to its failure to fully provide for the creditor's secured value as set forth in the creditor's proof of claim. The creditor objected to the TRCC based upon the Trustee's failure to provide for the payment of the full secured value. The matter was placed on the "call" docket and the attorney for the creditor failed to appear. The Debtors had also objected to the TRCC which was resolved by an agreement between the Trustee and the Debtors.

Ruling: The Court approved the agreement of the Trustee and the Debtors and specifically overruled the objection by the creditor as an invalid objection.

Result: The Court again confirmed that value is not set at confirmation; that the Trustee is pay the creditor the cram-down value as set forth under the terms of the confirmed plan; and that the plan becomes infeasible when the cram-down value in the plan is different from the secured value of the proof of claim.