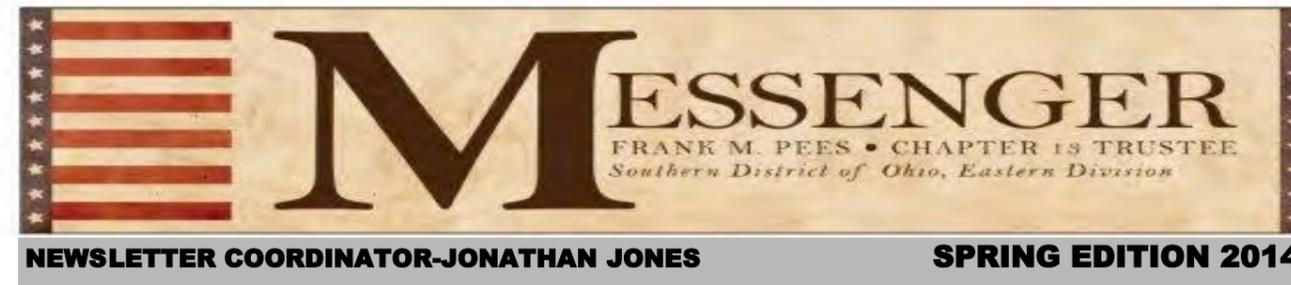


**FRANK M PEES  
CHAPTER 13 TRUSTEE  
130 E WILSON BRIDGE RD.  
SUITE 200  
WORTHINGTON, OH 43085**



### CASE LAW UPDATE-MAY 2014

**United States Supreme Court  
Law v. Siegel, 134 S. Ct. 1188  
– Decided March 4, 2014**

In 2004, Debtor filed a Chapter 7 bankruptcy in which the lone substantial asset was Debtor's residence. Debtor valued the property at \$363,348 and disclosed two voluntary liens: a first note and deed of trust in favor of Washington Mutual Bank in the amount of \$147,156.52; and, a second note and deed of trust in favor of "Lin's Mortgage & Associates" in the amount of \$156,929.04. Debtor also claimed the California homestead exemption of \$75,000. No objection was made to Debtor's claim of the homestead exemption.

After five years of litigation, the Bankruptcy Court ultimately determined that the lien to "Lin's Mortgage & Associates" was fraudulent and that "the loan was a fiction, meant to preserve [Debtor's] equity in his residence beyond what he was entitled to exempt." By the time of the Bankruptcy Court's ruling, the Chapter 7 Trustee had incurred more than \$500,000 in attorney's fees. As a result, the Court granted the Trustee's Motion to Surcharge the entirety of Debtor's claimed exemption. The decision to allow the surcharge of the exemption was affirmed by

the Ninth Circuit Court of Appeals.

The Supreme Court reversed the decision holding that allowing the surcharge of Debtor's homestead exemption would have contravened the express language of 11 U.S.C. §522(k) that the exemption was not liable for the payment of attorney fees as an administrative expense. Further, the Supreme Court held that since the Trustee failed to timely object to the Debtor's claimed exemption, it became final before the surcharge was imposed and could not be challenged or negated through the surcharge.

#### **Appellate Decisions**

**Simon v. FIA Card Services, et. al., 732 F.3d 259 (3<sup>rd</sup> Cir. 2014)  
– Decision filed October 7, 2013**

Creditor, through counsel, sent a letter to Chapter 7 Debtors, through their bankruptcy counsel. The letter advised that Creditor was considering an adversary proceeding to challenge dischargeability and scheduled a 2004 Examination. The letter also included an offer to forego the adversary proceeding in exchange for either a stipulation that the subject debt was non-dischargeable or a reduced settlement of the debt.



### **ATTENTION**

Attorneys, Debtors, Creditors & Employers

PLEASE NOTE THE FOLLOWING

**LOCKBOX ADDRESS CHANGE**

**EFFECTIVE JULY 1, 2014**

**FRANK M. PEES, CHAPTER 13 TRUSTEE (ONLY)**

**WILL BE CHANGING HIS LOCKBOX ADDRESS TO THE FOLLOWING**

**Frank M. Pees, Chapter 13 Columbus**

**Dept. 781158**

**P.O. Box 78000**

**Detroit, MI 48278-1158**

**EFFECTIVE JULY 1, 2014**

**For overnight payments please send to:**

**J.P. Morgan Chase**

**Attn: Frank M. Pees, Chapter 13 Trustee – Dept. 781158**

**9000 Haggerty Road**

**Belleville, MI 48111**

**DO NOT SEND PAYMENTS PRIOR TO THE EFFECTIVE DATE OF JULY 1, 2014 TO THE ABOVE ADDRESS**

**THIS IS ONLY FOR DEBTORS ASSIGNED TO :**

**FRANK M. PEES, CHAPTER 13 TRUSTEE**

**PLEASE BE AWARE OF THIS CHANGE AND PROCEED ACCORDINGLY**

**THANK YOU FOR YOUR ASSISTANCE WITH THIS CHANGE**

**IF YOU HAVE ANY QUESTIONS PLEASE DO NOT HESITATE TO CONTACT OUR OFFICE**

**614-436-6700**

**1-800-282-1001**

Debtors filed an action against Creditor alleging violations of the Fair Debt Collection Practices Act ("FDCPA"). Creditor sought dismissal of the case arguing, among other issues, that the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure preclude a claim brought pursuant to the FDCPA. Acknowledging a split of authority on the preclusion issue, the Third Circuit Court of Appeals followed the approach taken by the Seventh Circuit Court of Appeals in **Randolph v. IMBS, Inc., 368 F.3d 726** and held that when "FDCPA claims arise from communications a debt collector sends a bankruptcy Debtor in a pending bankruptcy proceeding, and the communications are alleged to violate the Bankruptcy Code or Rules, there is no categorical preclusion of the FDCPA claims." Rather, "[t]he proper inquiry for both circumstances is whether the FDCPA claim raises a direct conflict between the Code or Rules and the FDCPA, or whether both can be enforced.

**Weyandt v. Federal Home Loan Mortgage Corporation, 544 Fed. Appx. 107 (3<sup>rd</sup> Cir. 2013) – Decision filed November 18, 2013**

After the foreclosure and sale of her residential real estate, Debtor filed a Chapter 13 bankruptcy. Debtor then filed an action purporting to exercise the Trustee's avoidance powers to overturn the sheriff's sale as a preference or fraudulent transfer under 11 U.S.C. §§ 544, 547, or 548. The Chapter 13 Trustee intervened in the action and, citing a lack of benefit to the estate, stated that she would not exercise her avoidance powers with respect to the foreclosed property. The Bankruptcy Court, finding that Debtor lacked standing, dismissed the action. Debtor appealed to the Third Circuit Court of Appeals asserting that the Bankruptcy Court erred in finding that Debtor lacked derivative standing to bring the action. The Third Circuit, while refusing to take a position on whether

derivative standing would ever be appropriate in a Chapter 13 Proceeding, affirmed the Bankruptcy Court's decision and denied to grant derivative standing when there would be no benefit to the estate if the Debtor were permitted to proceed.

**Alvarez v. HSBC Bank USA, N.A., 733 F.3d 136 (4<sup>th</sup> Cir. 2013) – Decision filed October 23, 2013**

Chapter 13 Debtor and his non-filing spouse attempted to strip off a second lien held by HSBC Bank USA, N.A. The subject property was owned by Debtor and his non-filing spouse as tenants by the entirety. Acknowledging a split of authority among the Bankruptcy Courts, the Fourth Circuit Court of Appeals affirmed the decision of the Bankruptcy Court. Specifically, the appellate court held that as only the debtor's individual interest as a tenant by the entirety became property of the estate, the bankruptcy court did not have authority to modify a lienholder's rights with respect to a non-debtor's interest in a property held in a tenancy by the entirety.

**Bullard v. Hyde Park Savings Bank, 494 B.R. 92 (1<sup>st</sup> Cir. B.A.P. 2013) – Decided May 24, 2013**

Debtor filed a Chapter 13 Plan seeking to bifurcate the claim of the mortgage holder of his primary residence. Further, Debtor, by combining the language of 11 U.S.C. §§1322(b)(2) and (b)(5), sought to pay the unsecured portion of the claim a dividend over the sixty month life of the plan with the lowered secured portion being paid the contractual monthly payments for a time period that would exceed the sixty month life of the plan. As Debtor's residential real estate included a unit separate from his residence, the mortgagee's claim was subject to modification pursuant to 11 U.S.C. §1322. However, the Court held that allowing the modified secured claim to be paid over a time period exceeding the length of the plan would violate 11

U.S.C. §1325(a)(5)(B)(i)(I). Thus, Debtor's proposed plan was deemed not confirmable.

**Bankruptcy Court Decisions**

**Bodrick v. Chase Home Finance, 498 B.R. 793 (Bky. N.D. Ohio 2013) – Decided October 8, 2013**

Debtor's Chapter 13 bankruptcy was filed on September 25, 2007. With respect to Debtor's note and mortgage on her residence, the confirmed plan provided that (a) the Chapter 13 Trustee would pay the pre-petition arrearage to Washington Mutual; and (b) the Debtor would pay the ongoing Mortgage payments directly to Washington Mutual.

Following confirmation, the claim of Washington Mutual was assigned to Chase Bank. Upon completion of Debtor's plan, the Chapter 13 Trustee filed Notices of Final Cure Payment stating that the pre-petition arrearage claims had been paid as filed. Deutsche Bank, apparently on behalf of Chase, filed a Response to the Trustee's Notice of Final Cure agreeing that the pre-petition arrearage had been paid and disagreeing that the post-petition mortgage payments had been made. Specifically, Chase asserted a delinquency of \$10,715.48. Neither the Trustee nor the Debtor filed a Motion for Determination regarding the Response to Notice of Final Cure.

Debtor moved to reopen the case and filed an adversary proceeding alleging violations of the automatic stay through misapplication of payments, overcharging of the Debtor, erroneous notices of default of a previous Agreed Order, and filing of duplicative claims. Chase moved to dismiss citing waiver and *res judicata* as a result of Debtor's failure to file a Motion under Federal Bankruptcy Rule 3002.1(h).

The Court denied Chase's Motion to Dismiss on the grounds that Debtor's (and the Trustee's) right to file a Motion under Rule 3002.1(h) is permissive, not mandatory. As Debtor was not required

# POST-CONFIRMATION NEWS

**24-Month Auditor-** We are very excited to announce that our office now has a 24-Month Auditor. Our very own Meg Murphy has filled the position! Meg will be reviewing cases 24 months from confirmation as to accounting and administration of cases.

**Loan Modifications-** Our office continues to see many mortgage loan modifications. Generally, trial loan payments, typically for 3 months, are required prior to the permanent loan modification being offered by the mortgage company. The Trustee is happy to assist in any way possible in making sure the trial loan modification payments are issued accordingly. Please keep in mind that once the trial loan modifications have been made, our office is obligated to continue to make payments to the mortgage company and therefore, we ask that appropriate paperwork for permanent loan modifications be filed as soon as possible. Without a motion/order for a permanent loan modification, it may be necessary for us to continue mortgage payments at the original amount. Again, we are happy to assist in making the process as smooth as possible and are happy to work with you to do so.

**Wage Orders-** As a reminder, we ask that Debtor Counsel file the initial wage order in applicable cases. Trustee Pees will continue to file any post-confirmation amended wage orders resulting from modifications or plan payment increases/decreases. If you prefer to file your own amended wage orders, we ask that you not submit the amended wage order until there is an order from the court on a modification or the step payment in the confirmed plan takes effect. Also, in the event of a short-term payment change (1-2 months) it is not necessary to amend the wage order for a payment decrease. The Trustee will refund accordingly.

**HSBC-** Please be aware that HSBC has been filing many of their mortgage Proofs of Claim as wholly unsecured, even when the schedules indicate that there is equity to support a secured status. Please note that the Trustee, unless otherwise ordered, will pay such claims as unsecured. Please continue to review the Trustee's Notices of Intention to Pay Claims. As always, please do not hesitate to contact our office if we can be of any assistance or if you should have any questions or concerns.

**Post Confirmation Staff:**

Staff Attorney/Supervisor - Don Mains - ext. 146

Notice of Intents & Trustee's Motion to Modify - Stacie Roberts - ext. 122

Motions to Modify & Applications to Incur Debt, etc. -Susan Cockerill - ext. 137

24-Month Audit - Meg Murphy - ext. 124

Supervisor - Shelley Haydock - ext. 132

Case Administration for cases ending in "1, 2 & 3" - Jill Frey - ext. 153

Case Administration for cases ending in "4, 5 & 6" - Bobbie Schilling - ext. 120

Case Administration for cases ending in "7, 8 & 9" - Lucy Thomas - ext. 142

Arrearage & Case Administration for cases ending in "0" - Betsy Weber - ext. 155

Closing Auditor for cases ending in "1, 2, 3, 4 & 5" - Cathy Matthews - ext. 117

Closing Auditor for cases ending in "6, 7, 8, 9 & 0" - Andrea Speelman - ext. 159

**ARTWORK BY FRANK M. PEES**



## HOW WELL DO YOU KNOW YOUR COLLEAGUES?

Match the correct dog breed with their owner: [ANSWERS ON PAGE 8]

- A) FRANK PEES
- B) BOB BERGMAN
- C) MARY BENDYCKI
- D) CHRIS SPIROFF
- E) LLOYD COHEN
- F) SEAN CYDRUS
- G) MARK JUMP
- H) MARSHALL COHEN



AUSTRALIAN CATTLE DOG (1)



GOLDENDOODLE (2)



SCHIPPERKE (3)



BEAGLE (4)



YELLOW LAB RETRIEVER/ HOUND MIX (5)



ENGLISH BULLDOG (6)



HAVANESE (7)



PORTUGUESE WATER DOG/ STANDARD POODLE MIX (8)

## HELLO FROM THE ACCOUNTING DEPARTMENT

Sandra Hootman, Pamela Harper, Marla Schmidt and Pansy Stephenson

### ADDED PAYMENT OPTION

IF YOU HAVE A COURT ORDERED DIRECT PAYMENT OR ARE A RETIRED DEBTOR YOUR PAYMENTS CAN NOW BE MADE ON-LINE:

[www.tfsbillpay.com](http://www.tfsbillpay.com)

AN AUTOMATED & ONLINE SOLUTION FOR CHAPTER 13 BANKRUPTCY PAYMENTS

to file a Motion for Determination, Debtor's failure to do so could not constitute a waiver of her rights. Also, as the amount of post-petition delinquency had never been decided by a Court of competent jurisdiction, *res judicata* would not apply.

### Kellner v. Fifth Third Bank, 493 B.R. 506 (Bky S.D. Ohio 2013) – Decided April 26, 2013

Prior to Debtors filing their Chapter 13 Bankruptcy, Fifth Third Bank had filed an "affidavit on Facts as to Lost Mortgage" and a foreclosure action. A decree of foreclosure was filed by the State Court prior to the filing of Debtors' petition. During the bankruptcy proceeding, the Chapter 13 Trustee filed an adversary seeking to avoid the mortgage of Fifth Third Bank as a hypothetical judgment lien creditor under 11 U.S.C. §544(a)(1).

The Court first determined that the Rooker-Feldman doctrine did not preclude the Court from hearing the Trustee's claim. The Court then determined that: (1) the Trustee's powers as a hypothetical judicial lien holder only arise upon the filing of the bankruptcy case; and are no greater than those of an actual judicial lien creditor; and, (2) an actual judicial lien creditor in Ohio received constructive notice of a mortgage through an intervening mortgage foreclosure action under the *lis pendens* doctrine. As the state court foreclosure action was filed prior to the commencement of the bankruptcy case, and the Trustee did not dispute that the elements of *lis pendens* were met through the foreclosure action, the Trustee received constructive notice of Fifth Third's mortgage. Therefore, the Trustee was unable to avoid the mortgage as a hypothetical judicial lien creditor.

## CEC TRIVIA QUIZ

Many of you bankruptcy practitioners in central Ohio have heard of CEC (Credit Education Coalition), but do you actually know anything about the history of the organization?

For your edification and (hopefully) enjoyment, here are just a few trivia questions to pique your interest in CEC. The answers are posted on CEC's website: [www.credited.org](http://www.credited.org)

1. In what year did CEC hold its first Annual Meeting and elect its first Officers and Board of Trustees?
  - a. 1991
  - b. 1992
  - c. 1993
  - d. 1994
2. Who was the first President of CEC?
  - a. Don Mains
  - b. Sam Calig
  - c. John Cannizzaro
  - d. Steve Santangelo
3. Who is CEC's only 3-time President? (No, it is not Archie Griffin.)
  - a. John Cannizzaro
  - b. Matt Thompson
  - c. Steve Santangelo
  - d. Don Mains
4. In 2008, in honor of Frank M. Pees' 30 years as a Chapter 13 Trustee, CEC gave Frank what gift?
  - a. An engraved silver punch bowl
  - b. A Zildjian 20" K Light Flat Ride cymbal
  - c. A leather jacket with the Zildjian logo
  - d. An engraved Waterford crystal bowl
5. In 1991, a newspaper article entitled "Bankruptcy Need Not Be The Final Chapter On Credit" gave credit to Chapter 13 Trustee Frank M. Pees and to our local (Southeastern District of Ohio) creditors for their efforts in assisting debtors to re-establish credit after successful completion of their plans. In which newspaper did that article appear?
  - a. The New York Times
  - b. The Washington Post
  - c. The Wall Street Journal
  - d. The Columbus Dispatch

[NOTE: The above information was garnered from a presentation entitled "CEC—Through the Years," which was given to Chapter 13 Trustee Frank M. Pees in 2013.]

*Intelligence is the ability to adapt to change. Stephen Hawking*



# BRIEF HISTORY OF CHAPTER 12

In 1986, in response to an extensive financial crisis that was affecting farmers throughout the country, Congress enacted the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, otherwise, and more prominently, known as Chapter 12.

Farmers, like all individuals, always had access to the prior versions of the United States Bankruptcy Code. However, any previous provisions of the bankruptcy laws that applied specifically to farmers, including Section 75 of the Bankruptcy Act of 1933 and the Frazier-Lemke Act of 1934, were limited in scope and generally required the voluntary cooperation of creditors. Effective November 26, 1986, Chapter 12 provided a system of bankruptcy protection for family farmers and was designed to make it "easier for a family farmer to confirm a Plan of Reorganization." **H.R. Rep. No. 958, 99<sup>th</sup> Congress, 2<sup>nd</sup> Session at 48 (1986).** At the time of its passage, the public purpose of Chapter 12 was stated as follows:

*Under prior codes, family farmers requiring financial rehabilitation could have proceeded under Chapters 11 or 13 of the Bankruptcy Code. Most farmers, however, were judged to have too much debt to qualify under Chapter 13. Furthermore, many family farmers had found Chapter 11 to be complicated, time-consuming, expensive, or otherwise unsuitable. Chapter 12, therefore, was specifically designed for farmers to provide for them a fighting chance to reorganize their debts and keep their land.*

**Joint Explanatory Statement of the Committee of Conference, H.R. Conference Rep. No. 958, 99<sup>th</sup> Cong., 2<sup>nd</sup> Session, 45, 48 – reprinted in the 1986 U.S. Code, Cong. Admin. News 5227, 5246, 5249.**

Chapter 12 was originally enacted as a temporary provision of the United States Bankruptcy Code with an original expiration date of October 1, 1993. After numerous extensions, Chapter 12 was made a permanent part of the Bankruptcy Code with the enactment of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). In addition to making Chapter 12 a permanent provision of the

Bankruptcy Code, BAPCPA also expanded Chapter 12 to provide for the eligibility for relief of family fishermen. **11 U.S.C. §101 (19A).**

Despite the now permanent nature of Chapter 12 and the expanded eligibility to include family fishermen, the number of Chapter 12 filings is declining. In 2013, only 395 of the 1,071,932 bankruptcies filed in the United States were Chapter 12 cases.

### Who is eligible to be a Chapter 12 Debtor?

To be eligible for a Chapter 12 Bankruptcy, an individual farmer or fisherman must meet each of the following requirements:

**(1)** The Debtor must be engaged in a farming or commercial fishing operation. "The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching production or raising of crops, poultry, or livestock, and production of poultry or livestock in an unmanufactured state." **11 U.S.C. §101(21).** "The term "commercial fishing operation" means – (A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or product of such species; or (B)... aquaculture activities consisting of raising for market any species or product described in subparagraph (A). **11 U.S.C. §101(7A).** When determining whether a debtor is engaged in a "farming operation," most Courts review a totality of the circumstances surrounding the business, with specific inquiry into whether the Debtor incurs the same risks as do other agricultural businesses. (See In re: **Buchanan, 2006 U.S. Dist. LEXIS 50968, citing In re: Burke, 81 B.R. 971, 976 (Bankr. S.D. Iowa 1987),** Debtor's breeding, raising and actual sale of horses constitute farming operations and In re: **Maike, 77 B.R. 832 (Bky. Kan. 1987),** using a totality of the circumstances test, a business devoted to breeding and raising pheasants that were either hunted on the game farm or resold and AKC registered dogs was "engaging in farming" and eligible for Chapter 12). However, Courts have held that the Debtor's activities may not be related to the farming operations of others. (See In re: **McNeal, 848 F.2d 170 (S.D. Ga. 1988),** Debtor's income obtained from cleaning chicken houses and selling the

collected chicken manure did not constitute a farming operation).

**(2)** The Debtor's total debts may not exceed \$4,031,575 for a farmer and \$1,868,200 for a family fisherman. **11 U.S.C. §101(18(B)) and (19A).** Similar to the debt limits for Chapter 13 cases, these debt limits are subject to increase every three years with the Consumer Price Index. **11 U.S.C. §104(b).**

**(3)** For farmers, at least fifty percent (50%) of the Debtor's aggregate noncontingent, liquidated debts must arise out of a farming operation. **11 U.S.C. §101(18(A)).** For fishermen, at least eighty percent (80%) of the Debtor's aggregate noncontingent unliquidated debt must arise out of a fishing operation. **11 U.S.C. §101(19A).** In calculating the percentage of debts arising from the farming/fishing operation, the Debtor may exclude the debt for his or her principal residence. **11 U.S.C. §101(18(A)) and (19A).**

**(4)** At least fifty percent (50%) of the Debtor's gross income for either (a) the preceding taxable year or (b) each of the second and third preceding taxable years must come from the farming or fishing operation. **11 U.S.C. §101(18(B)) and (19A).** In calculating the percentage of income that comes from the farming or fishing operation, it is important to review all sources of income. (See In re: **Fuentes, 2011 U.S. Dist. LEXIS 145178 (C.D. Cal. 2011),** Chapter 12 case was dismissed because Social Security benefits and non-excludable military benefits constitute gross income for Chapter 12 eligibility purposes).

A corporation or partnership that engages in farming or fishing operations may also be eligible as a Chapter 12 Debtor if, subject to the requirements above:

**(1)** More than fifty percent (50%) of the outstanding stock or equity is held by one family.

**(2)** This family or members of said family conduct the farming/commercial farming operations.

**(3)** More than eighty percent (80%) of the value of the corporation/partnership's assets are assets related to the farming/commercial fishing operation.



### Reminders:

- ◆ The Trustee will only accept original documents as proof of social security numbers at the §341 meeting. Original documents other than SS card are: medical insurance card; pay stub; W-2 form; IRS form 1099; Social Security administration forms.
- ◆ A plan amendment may result in a payment deficiency if the amendment provides for an increase in plan payments. Plan amendments are retroactive and therefore effective as of the petition date. You may want to consider step payments if amending a plan.
- ◆ If a pre-confirmation case extends beyond the 90 day and/or 180 day bar date, it will be rerun based on claims as filed.
- ◆ If you know that your case will not be in posture for confirmation by the confirmation date, please email your case administrator at least 10 days prior to the confirmation hearing date. Please include the Judge and the original confirmation date on your subject line. In the body of the email, please include the case number, Debtor's name, your name, reason for continuance and if any pending creditor objections, the fact that the creditor attorney agreed to the continuance. Also, let him/her know an approximation of the date you need in order to get the case ready to confirm; one case per email.
- ◆ A pre-petition personal injury (PI) claim is property of the estate which, typically, vests in the Debtor upon confirmation of the plan. The claim should be disclosed on Schedule B, even if the value of the claim is still undetermined. If the Debtor wants to retain separate PI counsel to handle the claim, the Debtor, not the Trustee, files an application to employ special counsel with the court. To settle the case, the Debtor files a motion to approve compromise under Bankruptcy Rule 9019. At the time of the proposed settlement, when the non-exempt value of the claim is determined, the Plan may have to be modified to meet the "best interest of creditors" test.
- ◆ For PI claims that arise post-confirmation, the claims should be disclosed to the court and the Trustee, and the special counsel and settlement procedures are the same as above. In addition to PI claims, the Mandatory Form Plan requires Debtor(s) to fully and timely disclose any financial recovery which Debtor(s) becomes entitled to for any reason, including without limitation, employment claims, workers' comp claims, unemployment claims, inheritance, and life insurance benefits. Lottery proceeds and property settlements are also in the Plan.

**ARTWORK BY FRANK M. PEES**



# PRE-CONFIRMATION NEWS

## Updates:

### Changes:

The Judicial Conference of the United States approved the following increases effective June 1, 2014: the Administrative Fee increased from \$46.00 to \$75.00 (raising the total cost of filing petitions under Chapter 7 to \$335.00 and for filing under Chapter 13 to \$310.00); a new fee of \$75.00 was implemented to divide a joint case under Chapter 7 or Chapter 13; the filing fee for an adversary proceeding increased from \$293.00 to \$350.00.

The Means test figures changed again for petitions filed on or after May 1, 2014. The new figures can be accessed at <http://www.justice.gov/ust/eo/bapcpa/20140501/meanstesting.htm>

Per UST guidelines, “When the Debtor cannot personally appear before the Standing Trustee, arrangements should be made for an independent third party authorized to administer oaths to be present at the alternate location to administer the oath and verify the Debtor’s identity and social security number. A DECLARATION REGARDING ADMINISTRATION OF OATH AND CONFIRMATION OF IDENTITY AND SOCIAL SECURITY NUMBER needs to be completed by the individual performing this function.” When contacting our office to set a telephonic hearing (after an Order Granting the 341 to be Held Telephonically has been entered), you will be sent the required document. Once the document is completed by the person administering the oath, please mail the document to Meg Murphy, 130 E. Wilson Bridge Rd. Suite 200; Worthington, OH 43085. Our office will put a copy in the Debtor file and mail the original to the UST.

### Revised Schedules I and J:

If a Debtor is self-employed, make sure that you complete and “attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income” as requested on Schedule I, line 8 (a).

The revised Schedule J, line 8, provides a budget line for “Childcare and children’s education costs”. Please specify separate amounts for each of these items.

### Safe Harbor Amounts:

The Trustee’s office does not object to particular budget items if the total budget\*\* falls within the safe harbor amounts denoted below:

HOUSEHOLD SIZE	SAFE HARBOR AMOUNT
1 PERSON	\$2,250.00
2 PEOPLE	\$2,450.00
3 PEOPLE	\$2,750.00
4 PEOPLE	\$3,050.00
5 PEOPLE	\$3,350.00

For each additional person, add \$200.00 to the Safe Harbor Amount

\*\*The total budget does not include mortgage/rent, child support on Schedule J, daycare, and insurance. If the Debtor is self-employed, the budget also excludes business expenses.

(4) The debts of the corporation or partnership do not exceed those listed in 11 U.S.C. §101(18(B)) and (19A), respectively.

(5) For farmers, at least fifty percent (50%) of the corporation or partnership’s aggregate noncontingent, liquidated debts must arise out of a farming operation. **11 U.S.C. §101 (18(A)).** For fishermen, at least eighty percent (80%) of the corporation or partnership’s aggregate noncontingent unliquidated debt must arise out of a fishing operation. **11 U.S.C. §101(19A).** In calculating the percentage of debts arising from the farming/fishing operation, the Debtor may exclude the debt for his or her principal residence. **11 U.S.C. §101(18(A) and (19A).**

(6) If such corporation issues stock, such stock may not be publicly traded.

### How does a Chapter 12 work?

Like all voluntary bankruptcy proceedings, a Chapter 12 begins with the Debtor filing a voluntary petition with the Court. Similarly, pursuant to 11 U.S.C. §521, the Debtor must also file a list of creditors; a schedule of assets and liabilities; and, a statement of financial affairs. Unless otherwise ordered by the Court, the Debtor shall remain in possession of the assets of the farming/commercial fishing operation and all actions against the Debtor and any co-debtors are automatically stayed. **11 U.S.C. §§362 and 1201.** Following the filing of the Debtor’s petition, a Chapter 12 Trustee will be appointed and a §341 Meeting of Creditors will be held.

Within ninety (90) days of the filing of the petition, Debtor will be required to file a Chapter 12 Plan. **11 U.S.C. §1221.** Because Chapter 12 was modeled after Chapter 13, the Chapter 12 Plan is very similar to a Chapter 13 Plan. The plan shall: provide for the submission of all disposable income to the Chapter 12 Trustee as is necessary for the execution of the plan for a period of three to five years; provide for full payment of all priority claims as provided in 11 U.S.C. §507;

and, provide that unsecured creditors will be paid no less than they would receive through a Chapter 7 liquidation. **11 U.S.C. §1222.** The Chapter 12 Plan, similar to a Chapter 13 Plan, may also provide for the modification of the rights of secured and unsecured creditors; provide for the curing or waiving of any default; provide for the curing of any default within a reasonable period of time and maintenance of payments while the case is pending; and, provide for the sale of property of the estate. **Id.**

After notice, the Court will hold a confirmation hearing no later than 45 days after the filing of the Plan. Any party in interest, the Chapter 12 Trustee, or the United States Trustee may object to the confirmation of the plan. However, the plan may be confirmed over objection by any of these parties.

### What are the advantages of Chapter 12?

As stated above, Chapter 12 was modeled after the Chapter 13 remedy. However, there are some differences between the remedies that make Chapter 12 very advantageous to those who are eligible.

The first advantage to a Chapter 12 bankruptcy is the higher debt limits. As stated above, the aggregate debt limit is \$4,031,575 for Chapter 12 farmer and \$1,868,200 for a Chapter 12 commercial fisherman, both higher than the current limits of \$1,149,525 (secured) and \$383,175 (unsecured) for a Chapter 13 Debtor.

Chapter 12 also allows for a more flexible payment schedule than Chapter 13. In Chapter 13, Debtors are required to make monthly payments to the Chapter 13 Trustee. However, in Chapter 12, Debtors can schedule their plan payments around their farm production cycles, often resulting in semi-annual or annual payments to the Chapter 12 Trustee.

Perhaps the biggest advantages to filing a Chapter 12 bankruptcy are the options in which a Debtor may treat secured claims. Unlike the Chapter 13 bankruptcy, Chapter

12 has unrestricted authority to cram down secured debts. This means that a Chapter 12 Debtor has the ability to cram down the secured debt of not only cars and farm equipment, but also mortgages on the farm and residential real estate. **Compare 11 U.S.C. §1222 and 11 U.S.C. §1322.** Further, a Chapter 12 Debtor, when cramming down the value of a secured claim and/or the interest rate on said claim, may provide for payment of the secured claim over a period exceeding the maximum five-year plan period applicable to Chapter 13 cases. **(See In re: Tognini, 2011 Bankr. LEXIS 2629 (Bky. E.D. Va. 2011),** a Chapter 12 reorganization plan may provide for payments that extend beyond the plan period provided that the creditor retains its lien and receives payments that have a present value not less than the amount of its secured claim pursuant to 11 U.S.C. §1225(a)(5)). Essentially, the Debtor may re-write a mortgage providing for the market value of the real estate and continuing to pay well after the completion of the Chapter 12 Plan.

### Conclusion

In 2013, only 395 Chapter 12 bankruptcies were filed nationwide. While there are obvious limitations as to who is eligible for Chapter 12, there are great advantages to those who qualify for the remedy. The next time a debtor that may be involved in either a farming or a commercial fishing operation comes in for a consultation, it could be worth an extra review to see if Chapter 12 is an option.

**ARTWORK BY FRANK M. PEES**



# 2014

## FREE Seminars

Office of Chapter 13 Trustee Frank M. Pees  
130 E. Wilson Bridge Road Suite, 100  
Worthington, OH, 43085

# FINANCIAL MANAGEMENT

## Worthington

### May

Sat May 3 9:00-11:15 AM  
Tues May 6 9:00-11:15 AM  
Thurs May 8 6:30-8:45 PM

### September

Tues Sept 9 9:00-11:15 AM  
Sat Sept 13 9:00-11:15 AM  
Thurs Sept 25 6:30-8:45 PM

### June

Tues Jun 3 9:00-11:15 AM  
Sat Jun 7 9:00-11:15 AM  
Thurs Jun 26 6:30-8:45 PM

### October

Thurs Oct 9 6:30-8:45 PM  
Sat Oct 25 9:00-11:15 AM  
Tues Oct 28 9:00-11:15

### July

Thurs Jul 24 6:30-8:45 PM  
Sat Jul 26 9:00-11:15 AM  
Tues Jul 29 9:00-11:15 AM

### November

Thurs Nov 6 6:30-8:45 PM  
Sat Nov 8 9:00-11:15 AM  
Tues Nov 18 9:00-11:15

### August

Sat Aug 16 9:00-11:15 AM  
Tues Aug 26 9:00-11:15 AM  
Thurs Aug 28 6:30-8:45 PM

### December

Thurs Dec 4 6:30-8:45 PM  
Sat Dec 13 9:00-11:15 AM  
Tues Dec 16 9:00-11:15

## Zanesville 1:30-3:45 pm

May 15                  Sept 18  
Jun 19                  Oct 16  
Jul 17                   Nov 20  
Aug 21                  Dec 18

### Zanesville

Knights of Columbus  
275 Sunrise Center Drive  
Zanesville, Ohio 43701

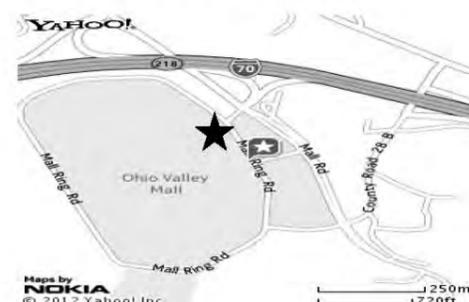


## St. Clairsville 1:30-3:45 pm

Jun 20  
Aug 29  
Oct 17  
Dec 19

### St. Clairsville

Ohio Valley Mall  
Community Room  
St. Clairsville, Ohio 43950



# 2014

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# MACER SEMINARS



## Building A Spending Plan

Learn the basics of cash flow and tracking your spending. We provide pencils, calculators and quiet time; bring a list of your monthly expenses and pay stubs or income statements.

Saturday, June 7th 12:30-2:30PM

Thursday, June 12th 6:30-8:30PM

Thursday, October 2nd 6:30-8:30PM

Saturday, October 25th 12:30-2:30PM



## Buyer Beware

Guest speakers from the Ohio Attorney General's Office and the Better Business Bureau, will present information about Ohio consumer laws, current scams, work-at-home opportunities, filing complaints, researching companies before hiring them, and more.

Thursday, July 10th 6:30-8:30PM

Saturday, July 26th 12:30-2:30PM

Saturday, November 8th 12:30-2:30PM

Thursday, November 13th 6:30-8:30PM



## Credit Reports & Re-Establishing Credit

Learn how to obtain, read, and dispute credit reports. Guest speakers from the credit lending community will share information about lending practices and what to expect now and after bankruptcy.

Thursday, August 14th 6:30-8:30PM

Saturday, August 16th 12:30-2:30PM

Thursday, December 11th 6:30-8:30PM

Saturday, December 13th 12:30-2:30PM

To register email [debtored@ch13.org](mailto:debtored@ch13.org) / call 614.436.6700 ext. 112.  
Provide name, case number, seminar date, last name of attorney and Trustee.

# CEC MEMBERSHIP DUES

Reasons for joining CEC?? So many answers, so little time...

- ⇒ members meet a lot of great folks at CEC seminars and social events
- ⇒ members receive a discounted registration fee for the Fall Seminar
- ⇒ members gain access to CEC's listserve
- ⇒ members meet a lot of terrific people
- ⇒ members have the opportunity to become a CEC Board member
- ⇒ members gain access to the CEC-provided Wi-Fi at Bankruptcy Court
- ⇒ and did we mention that you'll meet a lot of *really fantastic people?!?!?*

For those of you who have yet to become CEC members, and for those of you who want to renew your membership in 2014 but you keep forgetting to do so, here is all that you need to know about how-to-become-a-member. If you have questions, email Meg Murphy, CEC Coordinator, at [meg@ch13.org](mailto:meg@ch13.org).

**\*THE MEMBERSHIP FEE:**

Individual Membership \$ 50.00

Corporate Membership \$ 500.00

Sustaining Membership \$1,000.00

*\*Includes membership through December 31, 2014.*



Please complete your contact information below and mail, along with your remittance (*made payable to C.E.C.*) to:

Credit Education Coalition ("C.E.C.")  
 P.O. Box 694  
 Worthington, OH 43085-6300

FEI # 31-1308426

Name \_\_\_\_\_

Name of Firm/Company \_\_\_\_\_

Address \_\_\_\_\_

Telephone # \_\_\_\_\_

FAX # \_\_\_\_\_

E-mail \_\_\_\_\_

Amount Remitted \$ \_\_\_\_\_

ANSWERS FROM PAGE 12: A)8; B)7; C)4; D)1; E)3; F)6; G)2; H)1

# CREDIT EDUCATION COALITION

On March 7, 2014, the Credit Education Coalition (CEC) held its Annual Membership Meeting in conjunction with the Winter Seminar. The election of Officers and Board members was simple this year, and the candidates were elected by acclamation. A special welcome goes out to the two new members of the Board, Christian Donovan and Mina Khorrami!

**CEC's 2014 Officers and Board of Trustees are as follows:**

**PRESIDENT:** *Michael A. Cox*  
 Guerrieri Cox and Associates

**PRESIDENT-ELECT:** *David Powell*  
 Office of Chapter 13 Trustee Frank M. Pees

**SECRETARY:** *Laura Nesbitt*  
 The Nesbitt Law Firm

**TREASURER:** *Nannette Dean*  
 Dean Law Co.



**TRUSTEES**

**Robert Bergman**, Bergman & Yiangou

**Katherine B. Brewer**, Jump Legal Group

**Marshall D. Cohen**, Marshall D. Cohen Co.

**Courtney A. Cousino**, Fesenmyer Law Offices

**Christian Donovan**, Luper Neidenthal & Logan

**Robert Ellis**, Ellis & Ellis

**Athena Inemboldis**, Athena Legal

**Mark Jump**, Jump Legal Group

**John W. Kennedy**, Office of Chapter 13 Trustee  
 Jeffrey P. Norman

**Mina Khorrami**, Mina Nami Khorrami LLC

**Amy M. Levine**, Amy M. Levine & Associates

**Kathleen Mills**, Office of Chapter 13 Trustee  
 Frank M. Pees

**Eden R. Sarver**, Attorney at Law

**Christopher Spiroff**, Spiroff Law Office

**Matthew J. Thompson**, Nobile & Thompson Co.

**Shannon M. Treynor**, Attorney at Law

**Crystal Zellar**, Zellar & Barclay Attorneys at Law Inc.

**CEC Trustee Emeritus: Frank Pees**, Chapter 13 Trustee

**Honorary CEC Trustee: Don Mains**, Office of Chapter 13 Trustee Frank M. Pees

**(PSSSSST!! The CEC Fall Seminar date was recently changed!)**

**PLEASE UPDATE YOUR CALENDARS!!**

**SEPTEMBER 19, 2014 – CEC FALL SEMINAR**

Location: Quest Business Centers  
 8405 Pulsar Place, Columbus OH 43240

At the Winter Seminar, CEC announced the date—but subsequently decided to change it! This is absolutely the final/true/verified/actual date for the Fall Seminar—**September 19, 2014**. The CEC Board Members are still in the planning stages for the Fall Consumer Bankruptcy Seminar. If you have any suggestions for topics and/or presenters, please contact any Board Member, or email Meg Murphy, CEC Coordinator, at [meg@ch13.org](mailto:meg@ch13.org).