

BANKRUPTCY CLERK'S NEWSLETTER

District of North Dakota

Volume 2003, Issue I

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Bush Signs Bill Extending Farmers' Bankruptcy Protection

President Bush signed legislation giving farmers who file for bankruptcy an extra six months of special protection so they can keep their land and assets while reorganizing debts. The measure extends Chapter 12 of the U.S. Bankruptcy Code for an additional six months beyond its expiration on January 1.

Chapter 12, the only temporary chapter in the U.S. Bankruptcy Code, allows farmers to reorganize their debts without having to sell their farms and equipment. It was originally enacted in 1986, but has been extended five times. Congressional supporters estimated that about 800 to 1,100 farmers apply for Chapter 12 bankruptcy each year.

Electronic Bankruptcy Noticing Service

The Bankruptcy Noticing Center (BNC) was established by the Administrative Office of the U.S. Courts (AOUSC) to meet the challenge of preparing and serving bankruptcy notices in a timely and cost-effective manner. BAE Systems developed and currently operates the BNC under a contract with the AOUSC. The BNC uses advanced systems technology to provide an efficient centralized process for preparing, producing, and sending (via mail or electronic transmission) bankruptcy notices. At data center facilities in Reston, Virginia, the BNC retrieves case data each day from all the courts through electronic polling and paper. This information is entered into a customized database where all of the notice and case data are formed into images that can be printed and mailed, or electronically transmitted to recipients.

Participation in the free Electronic Bankruptcy Noticing service can offer many benefits. EBN technology is operated by the Bankruptcy Noticing Center (BNC) to provide enhanced service to the bankruptcy community. In lieu of paper notices, Bankruptcy noticing data can be Faxed, or E-Mailed allowing desktop display of the entire notice for easy reading or printing. Electronic bankruptcy notices are delivered days faster than the U.S. Mail if you have a PC with Internet connection or a Fax machine.

Bankruptcy Rule 9036, which authorizes electronic noticing, requires recipients to request electronic noticing services in writing. Creditors wishing to take advantage of electronic noticing must sign a Noticing Agreement to ensure understanding of the EBN process and roles of the parties. The Noticing Agreement is attached and can be found at the internet address stated below.

Please visit the EBN web page at www.EBNuscourts.com for additional information.

JUDGE WILLIAM A. HILL

Bankruptcy Judge William A. Hill is back in the courtroom full time. Our visiting judges, Judge Edmonds and Judge Hoyt, will continue to work on some of the issues that they had pending as of January 1, 2003. Congratulations to Judge Hill and thank you to Judges Edmonds and Hoyt.

BUDGET WOES

By Ellen A. Johanson, Clerk of Court

Most federal agencies, including the federal judiciary, are operating without a fiscal year 2003 budget. We are operating under a continuing resolution, and we are currently limited to a spending plan of 95% of that. Our analysts at our Administrative office believe that once a budget is passed the courts will actually take about a 12% reduction from our current needs. The majority of the funds our bankruptcy court receives are case-driven. Our caseload went down this past calendar year (see statistics in this newsletter) and thus, our "needs" are expressed to the Administrative Office and to Congress as something less than last year's.

In anticipation of this I regrettably have had to lay off one employee as of January 31, 2003. Althea Boom has been with the Clerk's Office for nearly four years, in many capacities, but most recently as an intake clerk. Many of you have worked with Althea over the years as you filed your petitions and obtained first meeting information. I am sure those of you who knew her will miss her as the smart and funny intake clerk. This is the second position we have lost over the last three years. We hope you experience no diminishment in the service you receive. Please call me if you do.

NEWSLETTER PUBLISHED ELECTRONICALLY

The Clerk's Office can no longer support the printing and postage of a printed newsletter. In order to reduce costs we are preparing this newsletter electronically. Please feel free to distribute it to whomever you would like.

UNITED STATES BANKRUPTCY COURT DISTRICT OF NORTH DAKOTA STATISTICS FOR TWELVE MONTH PERIOD JANUARY 1, 2002 THROUGH DECEMBER 31, 2002

	2001	2002	CHANGE
Cases	2210	2057	-07%
Estates	3097	2858	-07%
Joint Cases	887	801	-10%
Business Cases	110	111	1%
Chapter 7 Cases	2137	1953	-09%
Chapter 11 Cases	5	9	80%
Chapter 12 Cases	11	8	-27%
Chapter 13 Cases	57	87	53%
Adversary Proceedings	58	69	19%

United States Trustee Pursues Civil Enforcement Initiative

By Bruce Gering, Assistant United States Trustee

In October of 2001, the United States Trustee Program launched a Bankruptcy Civil Enforcement Initiative designed to improve the overall performance of the bankruptcy system.

Under the Initiative, all United States Trustee offices were instructed to direct their work toward several national priorities. The priorities are: (1) ensuring that chapter 7 is not abused and that chapter 7 debtors are held accountable; (2) protecting consumer debtors, creditors, and others who are victimized by abusers of the bankruptcy system; (3) ensuring that chapter 11 cases move through the system efficiently; and (4) fighting fraud and abuse by making criminal referrals and assisting the United States Attorneys in criminal prosecutions. In short, the United States Trustees were charged with increased emphasis on enforcing the bankruptcy code.

Although the United States Trustee offices in this region had engaged in civil enforcement litigation in the past, practitioners in North Dakota may have noticed some increase in activity in this area.

In the Dakotas, the United States Trustee has always been aggressive in the area of substantial abuse. All cases are screened for possible substantial abuse. Of cases screened in 2002, the United States Trustee conducted discovery in 528 cases, and filed 86 motion to dismiss for substantial abuse in North and South Dakota. Of those 86 cases, the United States Trustee withdrew his motion in 19 cases after a response was filed by the debtors. Eighteen cases were dismissed from bankruptcy, 38 cases converted to chapter 13, and 11 cases are pending. The United States Trustee also obtained dismissal of 16 other Chapter 7 cases for reasons other than substantial abuse.

The United States Trustee also has obtained orders denying discharge of debtors in 11 cases in the Dakotas. In one of those cases, the Debtor used an internet service to file his case, and had filed his petition without his social security number in an attempt to evade having his case reported to the credit reporting agencies.

The United States Trustee has also pursued actions to examine fees charged by petition preparers and attorneys, and has taken actions to ensure that the chapter 11 cases continue to move through the bankruptcy system. Two cases have been referred to the U.S. Attorney for criminal prosecution for bankruptcy fraud.

United States Bankruptcy Court
Direct BNC Sign-up Agreement
Electronic Bankruptcy Noticing Agreement

(To initiate electronic bankruptcy noticing via fax or Internet e-mail with PDF attachment.)

Company or Law Firm Name of Subscriber: _____

OR Individual Name of Subscriber: _____

District of: _____

The court is requested to transmit bankruptcy notices electronically through the Bankruptcy Noticing Center (BNC) pursuant to Federal Rule of Bankruptcy Procedure 9036.

This Agreement is provided by the U.S. Bankruptcy Court and may not be altered or changed in any manner. If you, or your company, wish to receive bankruptcy notices from this court electronically instead of through the US mail, please complete this Agreement indicating one of the electronic methods offered and mail or fax it to the court's noticing contractor at:

BAE Systems - Attention BNC Dept.
11487 Sunset Hills Road
Reston, VA 20190-5234
Fax: (703) 668-4451

For Additional Information: EBN web page www.EBNuscourts.com and toll free help line 1-877-837-3424

How the Program Works:

Redundant Mode. Entities that complete and return this form to the BNC will have EBN service initiated in approximately two weeks. If you choose the Internet e-mail with a copy of the notice attached in Adobe Portable Document Format (PDF) format method, your e-mail system must return a Delivery Status Notification (DSN) receipt upon notice delivery. For a list of known DSN e-mail providers and a link to download the required free PDF viewer software from Adobe Systems, visit the EBN web page at : <http://www.EBNuscourts.com>. The BNC will initially conduct a test to confirm that your e-mail account will return the required DSN receipt or that the fax number is working. During the first 30 days of EBN service, the BNC will send the notice electronically as well as mail the paper copy to allow you to confirm the process is working properly. Whether fax or e-mail, upon expiration of the 30 day redundant mode (redundant mode begins from the date the BNC sets up your service, not the date of your first EBN notice) all future notices processed by the BNC for this court will only be sent electronically without further notice.

Name Matching. The BNC software will attempt to match the name and address provided on this form to the address included in the court's notice instructions. In most cases, the addresses in the court's computer files are provided by the debtor. The BNC software will attempt to match the name (without punctuation) and address and send the notice electronically. If the recipient name and address in the court's notice instructions do not match the name and address on this form, the BNC will mail the notice. If applicable, submit additional names and addresses that debtors designate for you or your company to the BNC. **You must notify the BNC should your e-mail, fax, or names and addresses used for electronic noticing change.**

In Case of Error. The BNC maintains a record confirming delivery of the electronic notice. If the BNC is unable to confirm receipt of the delivery for any reason, the notice will be printed and mailed the following day. The BNC will not retransmit notices. Should electronic noticing delivery to you be unsuccessful three consecutive times, the service will be terminated without further notice and only mailed copies will be sent. Please contact the BNC to resolve the issue and have electronic noticing service reinstated. Either party may terminate this Agreement without cause by giving the other party written notice.

NOTE: The BNC does not process all the notices you may receive in a case. Notices generated by trustees, attorneys, debtors, and some court-generated notices or orders will continue to be mailed to the address of record at the court.

CHOOSE ONE METHOD
Internet E-Mail with PDF Attachment

Notices are delivered to addresses based on the court's case records, please enter subscriber name and address EXACTLY as it appears on current notices. The following information will only be used to set up your account for the name and address matching process. You may attach additional names and addresses (spelling variations) for which you receive bankruptcy notices.

Firm/Company -OR- Individual Name		E-Mail Address to Receive Notices: _____
Address Line 1		Email options: (Check one) <input type="checkbox"/> 1 e-mail with 1 attachment containing up to 2 mb, or approximately 25 notices (default) <input type="checkbox"/> 1 e-mail with multiple attachments, up to 25 (1 notice per attachment) <input type="checkbox"/> individual e-mail message and attachment for each notice
Address Line 2		
Address Line 3		
City, State		Voice Phone Number:
Zip (Zip +4 Required)		To find your 9 digit zip, go to: www.usps.com/ncsc/lookups/lookups.htm
<i>(For a company/corporation)</i> Under penalty of perjury, I the undersigned affirm that I am an authorized officer of the above named company or corporation and I am duly authorized to enter into this agreement on behalf of the named company or corporation; and I affirm that bankruptcy notices for the above named entity, and any attached company names (spelling variations) and addresses, should legally be directed to the named company. I understand that no legal relationship is created between the entity receiving bankruptcy notices herein and the BNC by this election or submission of this form and that neither the BNC nor the court bears any liability for errors resulting from the information submitted herein or as future amendments, modifications or substitutions for this information on behalf of this entity. Name: Signature: Date:		<i>(For an individual or trustee)</i> Under penalty of perjury, I affirm that bankruptcy notices for my name and addresses provided above, and any attached spelling variations, should legally be directed to my e-mail address above. I understand that no legal relationship is created between the entity receiving bankruptcy notices herein and the BNC by this election or submission of this form and that neither the BNC nor the court bears any liability for errors resulting from the information submitted herein or as future amendments, modifications or substitutions for this information on behalf of this entity. Signature: Date:
Corporate Officer Title (If applicable)		

CHOOSE ONE METHOD

Facsimile Transmission

Notices are delivered to addresses based on the court's case records, please enter subscriber name and address EXACTLY as it appears on current notices. The following information will only be used to set up your account for the name matching process. You may attach additional names and addresses (spelling variations) for which you receive bankruptcy notices.

Firm/Company		Fax Number to Receive Notices: _____
-OR-		
<i>Individual Name</i>		Fax notices will be grouped up to 30 pages under one cover sheet Voice Phone Number: _____
Address Line 1		
Address Line 2		
Address Line 3		
City, State		
Zip (Zip +4 Required)		To find your 9 digit zip, go to: www.usps.com/ncsc/lookups/lookups.htm
<p><i>(For a company/corporation)</i> Under penalty of perjury, I the undersigned affirm that I am an authorized officer of the above named company or corporation and I am duly authorized to enter into this agreement on behalf of the named company or corporation; and I affirm that bankruptcy notices for the above named entity, and any attached company names (spelling variations) and addresses, should legally be directed to the named company. I understand that no legal relationship is created between the entity to receive bankruptcy notices herein and the BNC by this election or submission of this form and that neither the BNC nor the court bears any liability for errors resulting from the information submitted herein or as amendments, modifications or substitutions for this information on behalf of this entity.</p> <p>Name:</p> <p>Signature:</p> <p>Date:</p>		<p><i>(For an individual or trustee)</i> Under penalty of perjury, I affirm that bankruptcy notices for my name and addresses provided above, and any attached spelling variations, should legally be directed to my fax number above. I understand that no legal relationship is created between the entity to receive bankruptcy notices herein and the BNC by this election or submission of this form and that neither the BNC nor the court bears any liability for errors resulting from the information submitted herein or as amendments, modifications or substitutions for this information on behalf of this entity.</p> <p>Signature:</p> <p>Date:</p>
Corporate Officer Title: (If applicable)		