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MAY 2014 BULLETIN

## DEAR FRIENDS AND COLLEAGUES: RECENT COURT RULINGS - CHAPTER 13 DEBTORS MUST AMEND SCHEDULES DURING CASE FOR CHANGES

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### ALWAYS INFORM US OF CHANGES TO JOB, WINDFALLS, ETC.

**W**e lawyers have a saying, “bad facts make bad law.” A couple named Reeves here in the Houston area filed chapter 13 (not with our firm) and let’s say that they could have been represented better. After their plan was confirmed or right at the same time, Mr. Reeves started a business, and didn’t inform the court or the trustee. He took in \$800K in revenue, but the business soon failed owing an additional \$500K in debt. To try to discharge that debt, the Reeves converted their case to chapter 7. Newly acquired debt can generally be discharged when you convert a chapter 13 to a chapter 7 (of course you are not supposed to acquire new consumer debt after filing chapter 13, at least not without permission).

And so long as a debtor is in “good faith,” the property acquired after the filing of the chapter 13 and before conversion to chapter 7, is not considered “property of the estate” that a chapter 7 liquidation trustee can take from the debtors, once the case is converted to chapter 7.

But there were numerous other problems with the case. Several vehicles were purchased without permission. Right before conversion, \$30,000 was used to buy a mysterious cashier’s check; the debtor received a large VA retroactive payment and didn’t disclose it; and the debtors did not cooperate with the chapter 7 trustee in amending the schedules or attending their Sec. 341(a) Meetings of Creditors. Also, the bankruptcy lawyer was rude and flippant to the trustee and even in court pleadings. Oh, yes and the debtors didn’t have any records concerning the business; that’s a bad sign!

Based on the “totality of circumstances” test, the bankruptcy court found that the debtors had converted their case to chapter 7 in bad faith, so all the newly-acquired property was property that the chapter 7 trustee could take. Worse, the court also **denied the discharge of all of their debts** (including the \$500K), and their bankruptcy attorney has been sanctioned.

The main lesson in the case is to disclose acquisitions of property during your chapter 13 case, and also any significant changes in employment and income. The court in Reeves found that the debtors’ acquisitions and transactions were furtive and being intentionally hidden from the Court, the trustee, and the creditors.

We will be sending out update letters to chapter 13 clients on a regular basis to make sure that the court is kept informed of any major changes to chapter 13 cases. If you are in chapter 13, please keep us informed of changes to your situation that the court should know about. ■

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### Meet New Employee Diana Perez!

Diana is our new receptionist. She is bilingual, very experienced in customer service, and she has a great, positive attitude. Welcome Diana!

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### Quotes:

Never let your fear decide your future.

-Anonymous

Fear begins to melt away when you begin to take action on a goal you really want.

-Robert G. Allen

I always tried to turn every disaster into an opportunity.

-John D. Rockefeller

## A LITTLE HUMOR – the “Pick a starting salary” edition

Reaching the end of a job interview, the Human Resources Person asked the young MBA who was straight out of Stanford, “And what starting salary were you looking for?”

The candidate said, “in the neighborhood of \$150,000 per year, depending on the benefits package.”

The HR Person said, “Well, what would you say to a package of 6 weeks of vacation, 14 paid holidays, full medical and dental, matching retirement to 50% of salary, and a new company car leased every 2 years, say, a red Corvette?”

“Wow!! Are you kidding me?”

“The HR Person said, “Sure I’m kidding, but you started it.” ■

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## Ocwen Loan Servicing handing out a lot of loan modifications lately-

*If they are your mortgage servicer, apply for a modification now - here’s why*

Say what you want about mega-mortgage servicer Ocwen (Helping Homeowners is What We Do!™), but we have received several loan modifications for clients from them recently. We’ve received at least three “non-HAMP” or proprietary loan modifications from Ocwen in the past 30 days.

And they are all for **2% interest for the life of the loan**. That could save you a fortune in interest! To us, it looks like they are handing them out like candy. In reality, it is likely that Ocwen is handing out so many favorable loan modifications because of a December 19, 2013 consent order entered into with the Consumer Financial Protection Bureau (CFPB) and state authorities, ordering Ocwen to provide \$2 Billion in relief to homeowners for Ocwen’s past mortgage servicing misdeeds.

According to the CFPB, the consent order addresses Ocwen’s “systemic misconduct at every stage of the mortgage servicing process.” The consent order also requires Ocwen to refund \$125 million to the nearly 185,000 borrowers who have already been foreclosed upon and it must adhere to significant new homeowner protections.

“Deceptions and shortcuts in mortgage servicing will not be tolerated,” said CFPB Director Richard Cordray. “Ocwen took advantage of borrowers at every stage of the process. Today’s action sends a

clear message that we will be vigilant about making sure that consumers are treated with the respect, dignity, and fairness they deserve.”

But in any event, if Ocwen is your mortgage servicer or “mortgage company,” and you have financial hardship, you may want to apply for a loan modification, and **quickly** before the \$2 Billion runs out. The worst they can do is say “no.” You can get started on their website at [www.ocwen.com](http://www.ocwen.com) and click on “mortgage customers.” ■

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### J. Thomas Black speaks in “The Big Apple.”

Mr. Black was a speaker at the 22<sup>nd</sup> Annual Convention of the National Association of Consumer Bankruptcy Attorneys (NACBA) in New York City in April, 2014. Pictured: Times Square. More photos: [www.facebook.com/jthomasblackpc](http://www.facebook.com/jthomasblackpc)

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### **Thank you for your referrals! We accept cases in the following areas-**

Bankruptcy.  
Debt Collection Defense.  
Debt Collector Harassment.  
I.R.S. Collection Defense.  
Stop Foreclosure and Repossession.  
Student Loan Help.

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### **ARE YOU IN CHAPTER 13 NOW?**

Always keep the law office updated with your current address, telephone numbers, and email address. We may need to reach you quickly. You can check on the status of your Trustee payments, how much you still owe on your case, etc., by going to [www.13datacenter.com](http://www.13datacenter.com) to set up your user ID and password.

Lose job or overtime? Expenses increase? Want to give up property to lower payments? Call the office for a Motion to Modify worksheet. Complete it and email it or fax it to the office at 713-772-5058. We’ll review it and contact you if a change to your plan is possible.

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J. Thomas Black was licensed as an attorney in Texas by the Texas Supreme Court in May, 1982. Mr. Black is Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization.

*We are a federally designated Debt Relief Agency under the United States Bankruptcy Laws. We help people find answers to their debt and credit problems, including, when necessary, helping them file bankruptcy under the U.S. Bankruptcy Code.*