



October 2016 Newsletter

5th Circuit Kessler case may complicate some chapter 13 cases

A recent court case may make it more difficult for some people to qualify to receive their discharge in chapter 13 cases. The 5th Circuit court of appeals has ruled that even payments that chapter 13 debtors pay themselves “outside the plan,” are payments “under the plan” for purposes of §1328(a) of the Bankruptcy Code. In re Kessler (5th Cir. 2016).

In the Kessler case, the Kesslers filed chapter 13 in 2009 in north Texas. They agreed to catch up their delinquent mortgage payments through the chapter 13 trustee, but pay the regular payments themselves (this is not allowed here in the Southern District of Texas— our trustees pay the regular payments also, i.e. we are a so-called “conduit” district).

Unfortunately, the Kesslers did not keep their regular “post-petition” mortgage payments current, not by a long shot. When they reached the end of their plan, they were \$41,000 behind. Why the mortgage company did not ask for permission to foreclose, I don’t know. But the Kesslers asked the bankruptcy court to give them a discharge of debts, certifying that they had made all the payments under the plan.

The bankruptcy court denied their motion for discharge, holding that they had not paid all payments required by the plan. The district court affirmed the bankruptcy court, and the debtors appealed to the 5th Circuit Court of Appeals. The 5th Circuit agreed with the other courts, finding that the debtors had not completed all payments under the plan, and therefore could not receive a discharge of their other debts.

What does this mean to you if you are in chapter 13? In order to receive a discharge of debts, at the end of your plan you must certify that you are current on all payments, not just those paid by the

trustee. For example, say your plan provided that you were to pay car payments to XYZ credit union, but you failed to do so and the court allowed XYZ to repo the car, but you did not amend your plan. You could not then certify that you had made all payments required by the plan. You could lose the discharge of all of your debts!

This may also be the case if you fail to pay property taxes, homeowner association fees, or other debts during your plan. So if you are current on your chapter 13 plan payments, but have defaulted on some other debts, call us for a consultation. (See Kessler Page 3)



We don't get much of an autumn here in the Houston area so enjoy it while you can!

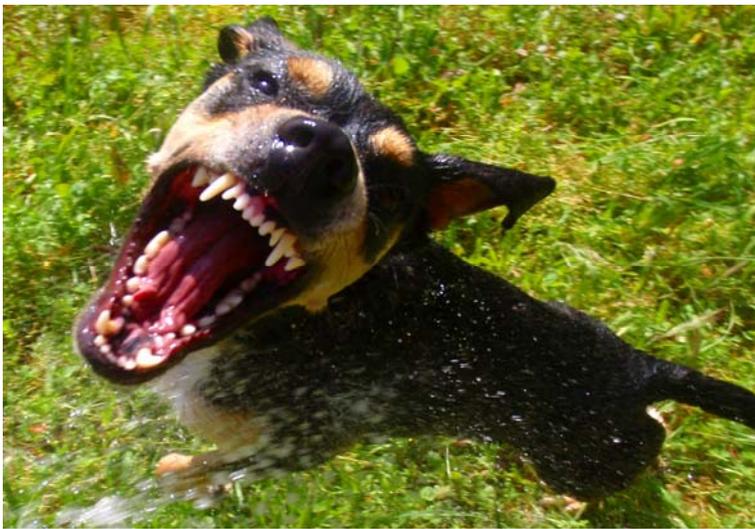
Quotes:

“I would be insane to lose my insanity.” —Gene Wilder

“The big secret in life is that there is no big secret. Whatever your goal, you can get there if you’re willing to work.” —Oprah Winfrey

“Why do dogs always race to the door when the doorbell rings? It’s hardly ever for them.” — Harry Hill

Our law firm is a federally designated Debt Relief Agency under the United States Bankruptcy Laws. We help people find answers to their debt problems, including when necessary, helping them file bankruptcy under the United States Bankruptcy Code.



Dog bite injuries can affect your homeowner's insurance in a big way!

Dogs are “man’s best friend” but not when there is a serious dog bite injury. According to a recent study almost 5,000,000 people are bitten by dogs every year. State Farm® reported paying out a record \$118 Million as a result of 3,100 dog –related injury claims in 2015.

As a result of the increasing costs of dog bite claims, homeowner’s insurance companies are limiting or eliminating their liability for such claims in their insurance policies. At an average cost of \$37,000 to deal with a dog bite injury claim, you can understand why they are doing it. But if your dog seriously injures someone, and your insurance policy does not cover dog bite claims, you could find yourself paying out of your pocket, or even facing bankruptcy!

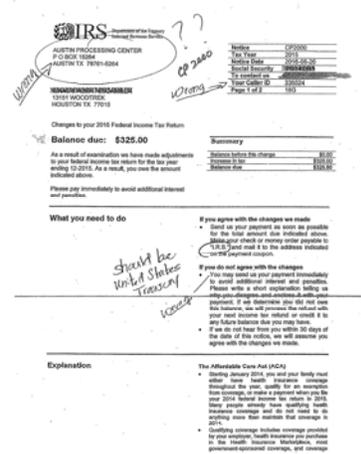
I had a client one time that could not find homeowner’s insurance because his aggressive dog had bitten someone in the past. He was facing losing his house because his mortgage company required him to have homeowner’s insurance, but he would not consider giving up his dog! As I recall he finally found an insurance company that would insure him but excluded coverage for any dog bite claims.

The easiest way to prevent becoming liable for a dog bite claim is to practice responsible dog ownership. Recom-

mendations from the American Veterinary Medical Foundation: (1) choose your pet wisely, because some breeds have a propensity to bite and owning one can make you ineligible for homeowner’s insurance; (2) make sure your pet is socialized as a young puppy so it feels at ease among people and other animals; (3) don’t put the dog in a position where it feels threatened or teased; (4) train your dog with some basic commands; (5) walk and exercise your dog regularly for health; (6) avoid highly excitable games like tug-of-war or wrestling; (7) use a leash in public; (8) keep your dog healthy, have it vaccinated against rabies and other diseases; (8) neuter or spay your dog; (9) if you have a fenced yard, make sure the gates and fence are secure; (10) educate your children about how– or if– they should approach a dog. For more information, go to www.avma.org. ■

New I.R.S. Scam Notice Looks Like REAL THING

As we wrote about last month, the scammers are getting more sophisticated. A new I.R.S. scam has the scammers sending in the mail what look like real I.R.S. collection notices, claiming that the victim owes money to the I.R.S. It has the I.R.S. logo on it and everything. At first glance it could have fooled me and I look at them all the time!



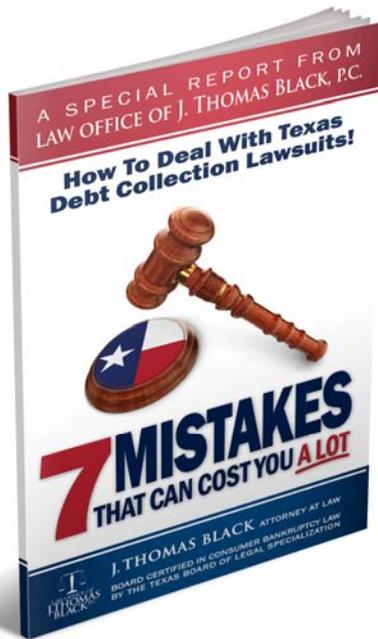
To know if the notice is real, you have to know what to look for. The return address is wrong on the fake notices, and the fake notices say to make your payment to “I.R.S.” instead of “U.S. Treasury.” If you send money to the I.R.S. you should

always make your check payable to “U.S. Treasury” or just pay the Internal Revenue Service online at their secure payment page at irs.gov/payments/direct-pay. ■

A Defective Tire May Be The Cause of a Single-Vehicle Accident

Tire failures resulting from “detread” or a blowout can cause a vehicle to be uncontrollable, often with disastrous and tragic results. An automobile suffering tire failure may leave the roadway, roll over, or cross into other lanes of traffic causing serious injury or even death to vehicle occupants and other motorists.

Annually, more than 11,000 injuries and 400 deaths are linked to tire failure. If you or a loved one has suffered serious injury as a result of a defective tire, contact Mr. Black at the office. ■



Threatened with or served with a debt collection lawsuit? Request our free Special Report, “How to Deal With Texas Debt Collection Lawsuits! 7 Mistakes That Can Cost You a Lot” You can download it instantly at jthomasblack.com or pick one up at the office.

Kessler, from page 1.

If you have defaulted on other debts during your chapter 13 case, we don’t want you to reach the end of your case, and there be no time to file a motion to modify your plan to fix it. It would be very discouraging for you to pay into a chapter 13 plan for five years, only to reach the end and not be able to receive your discharge of debts. All the creditors could start collection again for any money that they were still owed.

And you cannot file a false certification, that you have paid all the payments under the plan when you haven’t. That would be perjury and possibly lead to criminal sanctions. So if you are in chapter 13 and in default of “direct” payments, call us for a consultation before it is too late. ■

Congratulations to us!

Our law firm moved into our current location in October 2006, ten years ago this month! The firm previously was located in southwest Houston for 20 years prior to that. This is also the tenth anniversary of this newsletter. Actually, the very first edition of the newsletter was mailed in September 2006 to a few hundred clients, to announce the office move. People seemed to like it, so we continued to mail it out and improve it. We now mail it out monthly to almost 5000 current and past clients, other attorneys and friends of the firm. We hope you enjoy it, and pass important news on to your friends. Of course if you ever want us to stop mailing the newsletter to you, just let us know by emailing tom@jthomasblack.com.

You can now text us! If you are running late to our office or just want to tell or ask us something quickly, you can now text us at our main telephone number 713-772-8037 during working hours only.

Thank you for your referrals!

We accept cases in the following areas*—

Bankruptcy.

Stop I.R.S. Liens and Levies.

Stop Foreclosure and Repossession.

Serious Accidents and Injuries.

Disability Benefit Denials.

Student Loan Help.

Wills and Trusts.

***certain cases may be referred.**

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.ndc.org to set up your user ID and password.

Plan payment too high? Lose job or overtime? It may be possible to surrender property or if your situation has changed to lower your payments. If this is your situation, contact our office for an appointment to prepare a Motion to Modify.

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.



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A little humor– the “jumping to conclusions” edition..

A priest was riding the subway when a drunken man sat down beside him. The man smelled of beer, his shirt was dirty, and he had a prominent hickey on his neck.

The drunk opened a newspaper and began reading. After a few minutes, he turned and whispered to the priest, “Say, father, do you know what makes people get arthritis?”

Irritated, the priest replied, “It comes from drinking, hanging out with the wrong kind of woman, and not taking care of your body.”

“Wow.” The drunk looked at his paper again.

As the train slowed for the next stop, the priest suddenly felt bad about what he’d said. “I’m sorry, son. I should have shown more charity to you. How long have you had arthritis?”

“Oh, I don’t have it. I was just reading here that the Pope does.”