

# Stream of Commerce

Published by the Bankruptcy & Commercial Law Section, Alabama State Bar


Spring 2008

## Judge Bennett Testifies before Senate on Proposed Bankruptcy Changes

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 n December 5, 2007, The Hon. Thomas B. Bennett, Bankruptcy Judge for the Northern District of Alabama, testified before the Senate Judiciary Committee on “The Looming Foreclosure Crisis: How to Help Families Save Their Homes.” Judge Bennett commented on the broad reach of the changes proposed by competing Senate Bills 2133 and 2136, both of which affect changes to a broader range of mortgages than the targeted adjustable rate mortgages originating within the sub-prime market. Additionally, Judge Bennett discussed the

effect changes proposed by the pending Senate Bills would have on the property interests of creditors, particularly interest-stream investors, and pointed out the potential repercussions of the proposed changes within the larger economy.

A transcript of Judge Bennett’s testimony may be found by directing your web browser to the Senate’s website. See the *Links of Interest Section* for details.

For a breakdown of the provisions contained in the bills discussed by Judge Bennett, please see page 11 of this newsletter.

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## Mediation in Bankruptcy Cases

**By: J. Thomas Corbett**

Important goals encompassed in the Bankruptcy Code include an expeditious resolution of a debtor's financial affairs and maximum recovery for creditors. Those goals can be frustrated by unnecessary delay, burdensome litigation expenses, or duplication of efforts. Time and costs are critical components of a bankruptcy case. Those components can be managed and the goals of the Bankruptcy Code furthered by the implementation of such techniques as mediation.

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## New Privacy Rule in Bankruptcy & Its Effect On Filing Proofs Of Claim

**By: Jesse S. Vogtle, Jr.**

On December 1, 2007, Federal Rule of Bankruptcy Procedure 9037 ("Rule 9037") became effective. Rule 9037 limits the discloser of certain personal information in documents filed electronically in bankruptcy cases including, but not limited to proofs of claim and attachments thereto. Specifically, Rule 9037 states that when filing papers electronically with the bankruptcy court that contain (a) an individual's social

security number or a taxpayer's identification number, (b) an individual's birth date, (c) the name of an individual, other than the debtor, known to be and identified as a minor, or (d) a financial account number, the document being filed should be reacted to include only: (i) the last four digits of the social security number and/or taxpayer identification number; (ii) the year of the individual's birth; (iii) the minor's initials; and (iv) the last four of the financial account number.

The practical effect of Rule 9037 is that creditors will need to closely monitor the supporting information attached to proofs of claim electronically filed in bankruptcy cases to ensure the non-disclosure, or redaction, of certain identifying information. Although Rule 9037 contains specific exceptions to the redaction requirement, these exceptions are narrow in scope and are not likely to be applicable for the majority of creditors filing proof of claims in bankruptcy cases.

The chart below summarizes the application of Rule 9037. To obtain a complete copy of, or for more information about, Rule 9037, contact the Creditors Rights and Bankruptcy Practice Group at Balch & Bingham LLP.

If the document to be filed contains....	Then Redact.....
social security or taxpayer identification number	All numbers but the last four
Individual's birth date	The month and day of birth
The name of a minor that is not the debtor	The entire name except for the minor's initials
A financial account number	All numbers but the last four

*Jesse S. Vogtle, Jr., is a Partner with Balch & Bingham, LLP, in Birmingham and is the Chairman of its Creditor Rights and Bankruptcy practice group. He specializes in creditors' rights, bankruptcy and commercial litigation.*

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## News from the Middle District

Last fall, the Bankruptcy Court for the Middle District of Alabama found a committee to consider and suggest proposed revisions to the Local Rules. The group is comprised of eleven practicing attorneys in the Middle District with a great deal of bankruptcy experience from the perspective of representing debtors, creditors, trustees and government interests.

The committee recently submitted a draft of the revised local rules for consideration by the Court. Judge Williams and Judge Sawyer are in the process of reviewing the proposed amendments to the local rules and expect a final draft to be released soon for public review and comment before submitting to the District and Circuit Courts for final approval.

For more information, contact Douglass F. Young, Chief Deputy U.S. Bankruptcy Court, Middle District of Alabama.

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## News from Northern District

### From the Office of the Clerk of the Court:

Greetings to all members of the Alabama State Bar's Bankruptcy and Commercial Law section. As many of you know, I am new to the position of Clerk of Court and, therefore, am taking this opportunity to ask for your help. The Bankruptcy Court Clerk's Office strives to make its offices run smoothly and effectively for you and our other external users. Each office (Anniston, Birmingham, Decatur and Tuscaloosa) sets goals to serve the public as best it can with quick and accurate information or assistance. As you may have noticed, we are working towards achieving these goals

with fewer persons in each office. Unfortunately, we are facing some of the same economic issues that many of our filers face, thus we have not replaced most of the persons that have retired or left our employment. I tell you all of this to ask for your patience and assistance as we work with you. The employees in this District are truly dedicated to helping you and the public we serve. If there is ever a way in which you believe we can assist you better or in a different way, please do not hesitate to

contact any division manager, supervisor or me. Below is additional news that I wanted to share with each of you. If you have any questions concerning the below, please contact us.

### New Tuscaloosa Federal Building and Courthouse Project

Design of the new Tuscaloosa Federal Building and Courthouse is moving forward at a fast pace. The building is being designed by Hammond Beeby Rupert Ainge Inc., of



On December 13, 2007, The Judges and Clerk's Office of the United States Bankruptcy Court for the Northern District of Alabama hosted a reception honoring the Honorable Judge Thomas B. Bennett on his election as President of the National Conference of Bankruptcy Judges. The NCBJ is an association of the bankruptcy judges of the United States that works to provide continuing legal education to judges, lawyers and other involved professionals, to promote cooperation among bankruptcy judges, to secure a greater degree of quality and uniformity in the administration of the bankruptcy system and to improve the practice of law in the Bankruptcy Courts of the United States.

Pictured from left are: Chief Judge Benjamin Cohen, Judge Tamara O. Mitchell, Case Administrator Sherry Reaves, and Judge Thomas B. Bennett.

## Bankruptcy & Commercial Law Section Officers

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Chicago, Illinois. The architects completed the final concept design package and it was presented to the GSA Commissioner in Washington, DC on October 30, 2007. After the project received final approval, the City of Tuscaloosa hosted an open house and ceremony to unveil the new federal building model on December 18, 2007.

The 129,000 square foot building will be a two-story Greek Revival design facing University Boulevard and

covering two city blocks between 20<sup>th</sup> and 21<sup>st</sup> Avenue.

The tenants in the complex will include the U.S. District Court, the U.S. Bankruptcy Court, the Bankruptcy Administrator, the U.S. Probation office and the Social Security Administration.

Construction on the new building is projected to begin in the third quarter of 2009 and should take approximately 20 months. Move-in and occupancy of the new building is projected to take place in the second quarter of 2011.

### **New Privacy Rules and Forms**

On December 1, 2007, the amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure that implement the E-Government Act of 2002 became effective. The amendments require that personal identification information be redacted from documents filed with the court, e.g., individuals' Social Security and taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses. A memorandum briefly describing the new privacy rules, the text of the rules and committee notes, and additional information contained in the excerpt reports of the Rules Committees can be found on

the U.S. Courts website. Please see the *Links of Interest* section of this Newsletter.

Several forms were also changed and all updated forms are located on the Court's website. Please see the *Links of Interest* section of this Newsletter.

Amended "means test" forms have been approved by the Judicial Conference and are effective as of January 1, 2008. The amended versions of Bankruptcy Official Forms 22A, 22B, and 22C are posted on our Court's website.

### **CM/ECF Practice Pointers**

Please remember to use our Attorney Quick Reference Guide. This is a valuable tool for attorneys when there is a question as to which docket event should be used. We update this reference guide regularly and hope that it is useful to our users.

### **CM/ECF Training**

Please remember that our Court offers **FREE** in-house training on CM/ECF filing procedures. If you are having trouble electronically filing pleadings or processing certain matters, each divisional office is prepared to offer you or your staff person one-on-one training (you must be a registered participant to participate). If you or someone new on your staff needs this training, please contact the CM/ECF help desk at [ecf@alnb.uscourts.gov](mailto:ecf@alnb.uscourts.gov) and

someone will reply to your email and schedule training in the division office nearest to your office.

### **CM/ECF Maintenance**

Please take note that on the SECOND TUESDAY of each month at 4:00 p.m., CM/ECF will be taken down in order to update databases and conduct any needed repairs or maintenance. Of course there may be other times in addition to this monthly date that the Court needs to take CM/ECF off line but we will always post a notice under ANNOUNCEMENTS on our website and will send an email to all CM/ECF users if it is not the normally scheduled time.

### **Local Rules**

Please look for new Local Rules to be published for comment in the coming weeks. We will send an email to all users and ask for comments to the draft of Local Rules which will be accessible via the Court's website.

Again, we welcome your comments. Please feel free to call or email me at any time with your comments. Each division manager and supervisor is available to you as well. We appreciate your cooperation.

Scott W. Ford  
Clerk of Court  
[Scott.Ford@alnb.uscourts.gov](mailto:Scott.Ford@alnb.uscourts.gov)  
205-714-4001

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## **News from the Southern District**

As of March 15, 2008 attorneys will have the opportunity to select hearing dates for the following matters\*:

- Motion to Extend Automatic Stay
- Motion to Amend Extend Schedules
- Motion to Withdraw as Counsel
- Motion to Extend Chapter 13 Plan
- Motion to Suspend Payments
- Motion to Reinstate Case
- Motion to Reduce Time of Injunction
- Motion to Waive Filing Fee
- Motion to Modify Chapter 13 plan
- Motion to Borrow or Incur Debt
- Application for Compensation

Each courtroom deputy will post available dates and times for the applicable judge's docket on the court's website. The attorneys will then select the preferred date, prepare a notice and serve the pleading. The court will provide a more comprehensive set of instructions prior to March 15, 2008.

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## **Bankruptcy Trustee Update**

Updated Census Bureau Data & Administrative Expenses Multipliers become effective February 1, 2008.

The Census Bureau's Median Family Income Data and Administrative Expense Multipliers have been updated, and the U.S. Trustee Program will apply the updated data to the cases filed on or after February 1, 2009.

The new multipliers may be found on the Department of Justice website. Please see the *Links of Interest* section of this Newsletter.

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## **Selected Opinions from the Middle District of Alabama**

**In re S. T. Tuck** (Case No. 06-10886; Bankr. M.D. Ala., Dec. 10, 2007) - Status Rule determines whether creditor, who rolled "negative equity" into a new car loan, held a purchase money security interest. Under the "dual status rule," if the contract provides a method for allocating payments between the purchase price and the negative equity, the purchase price portion of the debt retains its purchase money status. Because the contract contained no such allocation, the creditor did not have a purchase money security interest and its claim was not subject to the hanging paragraph of 11 U.S.C. §

1325. Therefore, the creditor retained its right to a deficiency claim on surrender of the vehicle. (J. Williams)

**In re Warren** (Case No. 07-30721; Bankr. M.D. Ala., Sept. 6, 2007) - In a Chapter 13 case, the Form 22C determination of disposable income merely creates a presumption that an above median income debtor must pay that amount to unsecured creditors over the life of the plan. That presumption may be rebutted with evidence of changes in income. The debtor was able to rebut that presumption in this case by showing a reduction of income since the calculation of Current Monthly Income. (J. Williams)

**FIA Card Services, N.A. v. Flowers (In re Flowers)** (Case No. 06-31560, Adv. No. 07-3009, Bankr. M.D. Ala., Sept. 26, 2007): Court upheld Roddenberry, 701 F.2d 297 (11<sup>th</sup> Cir. 1938) which holds that for credit card debt to be non-dischargeable under § 523(a)(2)(A) there must be more than an intentional concealment of insolvency; there must be an affirmative misrepresentation that one is entitled to possess and use the card. The creditor established no factual basis for fraud. The debtor was awarded attorneys' fees for defending the dischargeability action. (J. Sawyer)

**In re Baxter** (Case No. 06-10672; Bankr. M.D. Ala., Aug. 21, 2007) - Proceeds of a post-

confirmation cause of action are not property of the Ch 13 estate; however, they can be considered as additional disposable income warranting modification of the plan. (J. Williams)

**In re Barrett** (Case No. 07-30424; Bankr. M.D. Ala. July 18, 2007) - Under the "hanging paragraph" a 910 claim cannot be bifurcated whether the debtor is either keeping or surrendering the vehicle. (J. Williams)

**Alexander v. Delong, Caldwell, Novotny & Bridgers, LLC. (In re Terry Manufacturing Co., Inc.)** (Case No. 03-32063; Adv. No. 04-3135; Bankr. M.D. Ala., May 29, 2007): Money paid to law firm which represented Debtor in civil action in Georgia was constructively fraudulent in that Debtor did not receive reasonably equivalent value for money paid. Court declined to rule on Trustee's malpractice claim as it was not a core proceeding. (J. Sawyer)

**Carn v. Medical Data Systems, Inc. (In re Cambron)** (Case No. 05-11879, Adv. Nos. 06-1057 and 06-1058; Bankr. M.D. Ala., April 5, 2007): Collection letter questioning debtors about employment and assets created an apprehension that the debtor's assets and wages were in jeopardy. As majority of debt was barred from collection by the statute of limitations, defendant's actions were an unlawful attempt to coerce payment of a debt and a violation of FDCPA. (J. Sawyer).

**Tarver v. CitiFinancial Auto (In re Tarver)** (Case No. 07-01033; Bankr. M.D. Ala., Jun. 28, 2007) - The court ruled that the filing of an Truth in Lending recoupment action was not time barred because the proof of claim was an action to collect the debt. TILA claims have a one year statute of limitation except when the it is for recoupment

## BANKRUPTCY AT THE BEACH



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The Twenty-First Annual  
Seminar of the Alabama  
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Commercial Law Section

For More Information,  
contact Larry Voit

[lvoit@silvervoit.com](mailto:lvoit@silvervoit.com)

or set-off. The requested attorney fees were denied as not being a set-off. (J. Williams)

**Alexander v. J. Martin & Associates, et al. (In re Terry Manufacturing Co., Inc.)** (Case No. 03-32063; Adv. No. 05-3051, Bankr. M.D. Ala., Feb. 20, 2007): Investigators were hired by a law firm. The law firm paid the investigators from money they received from the debtor. The investigators were not initial transferees and therefore were not liable for either fraudulent conveyances or preference actions. (J. Sawyer)

**Dixon v. Green Tree, Inc. (In re Dixon)** (Case No. 06-08054; Bankr. M.D. Ala., Mar. 5, 2007) - The court held that TILA claims are non-core issues and that the bankruptcy court had no discretion as whether to refer non-core matters to arbitration, the motion to compel arbitration was granted. (J. Sawyer)

**In re Yelverton** (Case No. 06-10664; Bankr. M.D. Ala., May 22, 2007) - *Till* applies in all "cram-down" cases. The secured debt should be paid at prime-rate with no debtor-specific adjustment. (J. Williams)

**In re Bethea** (Case No. 07-10232; Bankr. M.D. Ala., May 11, 2007) - An imminent repossession is not an exigent circumstances that would

exempt a debtor from receiving credit counseling prior to filing bankruptcy. (J. Williams)

**In re Yelverton** (Case No. 06-10664; Bankr. M.D. Ala., Mar.

## Submissions Wanted

*Stream of Commerce* is continually looking for articles on current topics in the areas of creditors' rights and bankruptcy law. If you have any article we can review and possibly publish, please contact:

Buddy Oldshue  
Rosen Harwood P.A.  
P.O. Box 2727  
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19, 2007) - The court interprets § 7-9A-204 of the Alabama Code concerning after-acquired property ruling future advance or cross collateralization clauses must be between the same parties. Also, a lien is not valid on after acquired property unless it was acquired within 10 days of the value being given. (J. Williams)

**Bell v. Bell (In re Bell)** (Case No. 06-03036; Bankr. M.D. Ala., Dec. 12, 2006) - In a Chapter 7 case, the court

determined that the debtor's obligation to pay the lien payments and insurance on the trucks driven by debtor's adult children were in the nature of a support obligation and were non-dischargeable. Interest and attorney fees assessed in the collection of these obligations were also non-dischargeable. (J. Sawyer)

**In re Davis** (Case No. 06-10461; Bankr. M.D. Ala., Dec. 12, 2006) - A vehicle which was not acquired for the debtor's personal use but rather for the use of a non-debtor spouse, did not invoke the provisions of the §1325(a) hanging paragraph.

*Special thanks to Michael A. Fritz, Sr., of the Middle District B.A.'s Office, Rebekah Pugh, law clerk to the Hon. William R. Sawyer, and Anna Williams, law clerk to the Hon. Dwight H. Williams for their assistance in compiling and summarizing the Middle District cases.*

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## Selected Opinions from the Northern District of Alabama

**In re Axelroth** (Case No. 06-71266; Bankr. N.D. Ala., Sept. 14, 2007): Buyer bought property at second mortgagee's foreclosure sale under the belief that it was the first mortgage on the property. Subsequently, first mortgagee foreclosed and

buyer paid an additional sum for the property at the second sale. The buyer sought a constructive trust for the surplus funds. The Court held that there were no entitlement to constructive trust where no misrepresentation about the status of the mortgages had been made and there was no evidence of due diligence in examining the property's title prior to making a bid for the property at a foreclosure sale. (J. Stilson)

**In re Cook** (Case No. 07-40947; Bankr. N.D. Ala., Jan. 11, 2008): Debtor and contractor had a contractual agreement for contractor to build a home on debtor's property. Debtor allegedly did not pay the amount due and contractor filed a mechanic's lien on the property. The debtor file for bankruptcy and Contractor moved the court to amend the petition and arbitration order to satisfy the mechanic's lien. Contractor further filed a Motion for Relief from Stay with the bankruptcy court.

The Court found that unless stay relief is first obtained, the commencement or continuation of any litigation to enforce a prepetition claim, or lien securing such claim against property of the estate is prohibited and constitutes a violation of the automatic stay. The Court reasoned that determining the validity and priority of contractor's lien and its perfection were core proceedings and would there

for not be excluded from adjudication by the bankruptcy. (J. Robinson)

**In re Jemison** (Case No. 07-40761; N.D. Ala., Sept. 6, 2007): The Court considered whether proposed plans containing provisions seeking to delay the "re-vesting, in the debtor of all property of the estate until the case is dismissed, converted or closed" violated 11 U.S.C. §§ 1325 (a) (I) and 1325 (a)(3). The Court denied confirmation of the plans based on their violation of §§ 1325 (a)(1) and 1325(2)(3), reasoning that confirming the plans as written and allowing estates to keep surplus property and earnings would be abuse of the court's discretion. (J. Robinson)

*Special thanks to Emily K. McCarson of Rosen Harwood, P.A., for her assistance in compiling and summarizing the Northern District cases.*

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## Selected Opinions from the Southern District of Alabama

**In re Crews** (Case No. 06-10338, Bankr. S.D. Ala. June 26, 2007): Joint debtors paid \$6,335.90 into Chapter 13 case that was never confirmed, then converted case to Chapter 7 and dismissed one of the joint debtors. Both debtors file a motion for turnover of funds. The Court held that property acquired after commencement of a chapter 13 case but prior

to conversion to a chapter 7 does not constitute property of the estate. (J. Mahoney)

**In re Davis**, (Case No. 07-11795, Bankr. S.D. Ala. October 31, 2007): Post-petition rents for real property due the debtor are not personal property that can be exempted under Alabama law. The court held that "[t]he rents follow the real property," and become property of the bankruptcy estate at the filing of the case. (J. Mahoney)

**In re Colston** (Case No. 07-10746, Bankr. S.D. Ala. August 23, 2007): Debtor objected to claim of Alabama DHR, which sought to have child support arrearage paid in full through plan, and argued that repayment arrangement agreed to in pre-petition state court proceeding should control in bankruptcy. The Court held that the Bankruptcy Code dictates that the entire child support arrearage must be paid through the plan unless DHR agrees to a different treatment after the case is filed.

*Special thanks to Emily K. McCarson of Rosen Harwood, P.A., for her assistance in compiling and summarizing the Southern District cases.*

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## Mediation in Bankruptcy Cases

**Continued from Page 2**

Numerous issues in a bankruptcy case, whether by way of a contested matter or an adversary proceeding, can be addressed by mediation. Those issues may include disputes concerning claim amounts, violations of the automatic stay, preference and fraudulent conveyance actions, contract disputes, and dischargeability complaints under Bankruptcy Code Section 523. Mediation has even been used as a formal "claims resolution facility." A claims resolution facility is usually employed in large cases and is a specifically designed program that incorporates a structured negotiation procedure to resolve large numbers of disputed claims. A claims resolution facility was used in In re P.A. Bergner Holding Company wherein a mediator was retained on the debtor's motion to facilitate, prior to confirmation of a plan of reorganization, the resolution of hundreds of personal injury claims and several thousand disputed trade claims. The mediator's report to court showed that over 1,200 claims in the approximate amount of \$1.2 billion were resolved under the claims resolution facility.

While the benefits of mediation are well known, a potentially unrecognized benefit is that mediation in bankruptcy cases in the Northern District of Alabama can be obtained without the cost of a private mediator.

The Bankruptcy Administrator for the Northern District of Alabama established a formal mediation division within the Bankruptcy Administrator program. Active support of the mediation division came from the Chief Judges of the Eleventh Circuit Court of Appeals, Federal District Court for the Northern District of Alabama, and the Bankruptcy Court for the Northern District of Alabama and resulted in authority from the Judicial Conference of the United States for the appointment of a Chief Deputy Bankruptcy Administrator who has as a primary duty the conducting, developing, and implementing the policies, procedures, and practices of the mediation division. Mediation is available in all divisions of the Northern District of Alabama and is conducted by Bankruptcy Administrator (BA) employees who have received formal mediation training.

The mediation process can be initiated in various ways. Litigants frequently avail themselves of mediation in a bankruptcy case simply by asking the Bankruptcy Court to allow the mediation. Frequently, the Court during a pre-trial conference or hearing will ask the litigants if they believe mediation would prove useful in resolving issues and whether the litigants would like to participate in a mediation.

On occasion, the Court will direct that the parties participate in a mediation session. Local Rule of Bankruptcy Procedure 9019 addresses the use of alternative dispute resolution, including mediation. Due to the numerous routes that can lead to mediation, litigants need no longer be concerned that mediation highlights a perceived flaw or failing of a case and can thereby enter the mediation process with confidence.

Mediation through the BA mediation division is very similar in both attributes and procedure to traditional private-based mediation. A date will be set for the mediation which will usually be within 30 days of an order to mediate or the request to mediate by the parties/litigants. The parties will provide the BA mediator with a position statement in advance of the mediation. The position statement is not filed with the court or served on other parties. The mediation will begin with a joint caucus session and separate caucuses thereafter. At the joint caucus session, the BA mediator will explain the rules and procedures for the mediation and will outline the basic facts of the case as the BA mediator understands those facts. During separate caucus sessions the BA mediator meets with each of the parties and allows them to speak frankly about their needs, concerns and the

strengths and weaknesses of their position. The separate caucuses are an effort to narrow and evaluate the issues and concerns of the parties. Because caucus sessions are not bound by procedural and evidentiary rules, the parties are at liberty to discuss and explore peripheral issues or concerns that may be more likely to lead to acceptable settlements than if those issues or concerns were left dormant and unaddressed by a trial.

If at any time during the process of mediation, the BA mediator becomes aware of, or a party raises an issue concerning the mediator's neutrality based on either an interest in the case or a relationship or affiliation with one of the parties, or any other matter, the mediation will cease and the BA mediator will withdraw as mediator and report his withdrawal to the Court. In such event, the parties/litigants may proceed with mediation with a non-BA mediator in accordance with Local Rule of Bankruptcy Procedure 9019. At the conclusion of the mediation the BA mediator will file a report with the Court that informs the Court that the mediation either resulted in a settlement or that the matter remains unresolved. If the parties are able to reach a settlement, a settlement agreement will be drafted by the parties and presented to

the Court as necessary or appropriate.

Mediation is most effective if the parties are well prepared for the mediation session. Preparation typically includes providing the BA mediator with any relevant case law or documents the litigants feel will be beneficial or that the BA mediator specifically requests. Counsel should review the strengths and weaknesses of the case with their client well in advance of the mediation and speak at length with their client about possible resolutions. Attendance by the litigants, and not just their attorney's, is of extreme importance. The active participation in the process of mediation is key to reaching a resolution. Failure of a litigant to attend is often viewed by the other litigant as a lack of sincerity or willingness to negotiate in good faith and limits the mediation process and accordingly limits the chances of crafting a resolution.

Bankruptcy lends credence to the adage that "time is money". Mediation through the BA Mediation Division offers a rapid and cost free option for resolving disputes, preserving business relationships, increasing the participants' satisfaction with the bankruptcy system and attaining the goals of the Bankruptcy Code.

If additional information is needed about the BA Mediation Division contact J.

Thomas Corbett at 1800 5<sup>th</sup> Avenue North, Suite 132, Birmingham, AL 35203 or by email at [Thomas.Corbett@alnbarts.uscourts.gov](mailto:Thomas.Corbett@alnbarts.uscourts.gov) or by phone at 205-74-3838.

*J. Thomas Corbett is the Chief Deputy Bankruptcy Administrator for the Northern District of Alabama. He is a graduate of the University of Alabama School of Law and the University of Alabama wherein he received his degree in corporate finance and investment management. Mr. Corbett served as law clerk to former Chief Bankruptcy Judge George S. Wright. Mr. Corbett was formerly a managing partner in the firm of Burnham, Klinefelter, Halsey, Jones & Cater P.C., specializing in bankruptcy and business litigation. Mr. Corbett is a registered mediator with the state of Alabama.*

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## Links of Interest

*A transcript of Judge Bennett's testimony may be found by directing your web browser to:*

[http://judiciary.senate.gov/testimony.cfm?id=3046&wit\\_id=6811](http://judiciary.senate.gov/testimony.cfm?id=3046&wit_id=6811)

*A memorandum briefly describing the new privacy rules, the text of the rules and committee notes, and additional information contained in the excerpt reports of the Rules*

*Committees may be found by directing your web browser to:*

<http://www.uscourts.gov/rules/privacy2.html>

*All updated forms on the Court's website may be found by directing your web browser to:*

<http://www.alnb.uscourts.gov/>

*Updated Census Bureau Data & Administrative Expenses Multipliers may be found by directing your web browser to:*

<http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm>

# Proposed Bankruptcy Bills Pending Before Congress

	S. 2136 (Durbin Bill)	S. 2133/H. 3778 (Specter/Chabot Bill)	H.R. 3609 (Miller Bill)
<b>Current Status</b>	12/5/2007 Senate committee/subcommittee actions. Status: Committee on the Judiciary. Hearings held.	10/3/2007 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary; 10/9/2007 Referred to House committee. Status: Referred to the House Committee on the Judiciary.	12/12/2007 House committee/subcommittee actions. Status: Ordered to be Reported (Amended) by the Yeas and Nays: 17 - 15.
<b>Applicable Chapters</b>	All provisions apply to Chapter 13; some to other chapters	Only Chapter 13	Only Chapter 13
<b>Sunset Provision</b>	None.	Seven years from date of enactment	None.
<b>Modification of 1322(b)(2)</b>	Permitted if debtor has insufficient current income to make mortgage payments and cure arrearages.	Permitted if debtor and spouse's yearly income is less than 150% of relevant median income;	Deletes 1322(b)(2)
<b>Limitation based on time of mortgage origin</b>	None.	Only applies to mortgages initiated before 9/26/07	None.
<b>Cramdown of Mortgage to value of home.</b>	Yes.	Yes, but only if debtor and mortgagee agree in writing.	Yes.
<b>Payment of modified mortgage beyond duration of plan</b>	Yes.	Yes.	Yes.
<b>Mortgagee to retain lien after discharge</b>	Unclear.	Unclear.	Yes. Mortgage obligation not discharged.
<b>Extension of mortgage payments beyond contract term under plan</b>	Yes, may be extended to thirty years from origination of mortgage.	No.	Yes; no express limitation of term
<b>Court determination of interest rate for modified mortgage contracts</b>	Court must set rate at most recent annual figure + risk premium; Debtor may opt for contractual rate instead.	Court not allowed to determine rate.	Court may determine interest rate by applying ordinary rules to provide full present value of secured claim.
<b>Plan determination of interest rate for modified mortgage contracts</b>	No.	Yes. Plan may prohibit or delay rate adjustment on ARM or void adjustments made within 2-years pre-petition.	No.
<b>Disallows mortgage claim for violation of law.</b>	Yes. Entire mortgage claim disallowed if mortgage is subject to damages or rescission claim for violation of TILA or state consumer protection law, even if mortgagee has foreclosed.	No.	No.
<b>Pre-filing credit counseling waived if home in foreclosure.</b>	Yes, if foreclosure sale has been scheduled; applied to all chapters.	Yes, but debtor must obtain counseling after filing, in addition to standard pre-discharge financial management course; waiver applies only in Chapter 13 cases.	Yes, if mortgagee has initiated foreclosure action on debtor's principle residence; waiver applies only in Chapter 13 cases.
<b>Allows debtor to pursue claims not scheduled as an asset of debtor</b>	Yes. Defendant may not assert judicial estoppel based on non-scheduling of claim; applies to all chapters.	No.	No.