2006 Submission

I. STATEMENT OF THE BASIS OF JURISDICTION

11 U.S.C. § 329 and Rule 2017 of the Federal Rules of Bankruptcy Procedure expressly confer upon the Bankruptcy Court the power and authority to review payments to debtors' counsel for excessiveness.

II. STATEMENT OF THE ISSUES PRESENTED TO THE COURT

A. What is a reasonable "base" or "no look" fee which should be allowed attorneys for debtors in this district, in a typical or routine Chapter 13 case, given the expectations of this Court regarding such attorneys' duties to their clients, the Trustees and this Court, and in light of the additional work which will be expected of such attorneys under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereinafter "BAPCPA")?

B. Should the no look fee allowed by this Court in a typical or routine Chapter 13 case be adjusted to account for the relative experience or competence of attorneys, to account for an attorney's costs of doing business in a particular geographical location, for other reasons, and/or to promote certain goals and objectives of this Court? If so, what factors should the Court consider?

C. Should there be adjustments in the type or amount of, and eligibility for, the extra *a la carte* fees?

D. Should there be changes in the amount or duration over which the Chapter 13 attorney fees are paid by the Chapter 13 Trustee?

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III. INTRODUCTION

Consumer Debtors' Attorneys filing Chapter 13 Petitions in the Eastern District of North Carolina are expected to perform a wide range of services for their clients, both prior to and after the actual filing of the Petition, and are expected to perform such services competently and in a timely manner. Because of the enactment of BAPCPA, maintaining even the minimal level of attorney competence which is routinely required and expected by this Court has become much more difficult and costly. Already, competent debtors' attorneys have expended time, energy and money to familiarize ourselves with the changes to basic bankruptcy law mandated by BAPCPA, including significant additional attorney and filing requirements. Further, in order to properly represent clients before this Court, debtors' counsel will, much more than in previous years, need to be constantly vigilant of developing case law, and will have to continue to update forms and procedures, and increase staff, to handle additional attorney requirements under BAPCPA. In order to encourage and facilitate attendance by debtors' counsel of continuing legal education programs to increase their competence in this area, to encourage experienced attorneys to remain in bankruptcy practice, and to encourage new attorneys to enter the practice, the minimum no look Chapter 13 fee should be set at no lower than $3,500. In addition, such minimum fee should be adjusted to account for an attorney's experience, commitment to proficiency, costs of doing business and to promote other goals and objectives as determined by this Court.

IV. LISTING OF BASIC SERVICES EXPECTED TO BE PERFORMED UNDER THE OLD LAW

Attached (Exhibit A) for review and comparison is a list of the services routinely provided by debtors' counsel in Chapter 13 cases filed prior to the enactment of BAPCPA.

V. PRELIMINARY LIST OF EXTRA TASKS REQUIRED UNDER THE NEW REVISED CODE

See Exhibit "B", which also attempts to assign to each extra task the time it will take to complete each extra task. By rough calculation, it is estimated that it will take an average of between 14 and 43 hours of extra time to handle each Chapter 13 case filed under the new code.

VI. ARGUMENTS:

A. A no look fee set too low breeds attorney incompetence and/or inadequate representation.

A no look fee set too low simply provides no incentive for an attorney to do good, quality work. This is not to say that debtors' attorneys in this district do not provide quality representation to their clients. There are some that do, and some that do not. However, as to those that do, their incentive is not the fee they expect to receive, but rather it is their moral compass and commitment to serving the poor and unfortunate that motivates them. In short, they provide quality services in spite of the fee they receive, not because of it.

Yet, if the fee allowed is too low, even the representation of the self-motivated attorneys will suffer. In the end, we all have families to support and our own bills to pay, and there is a limit to the amount of services we can provide without running over on our own costs. Additional work requires an additional time commitment, and in many cases additional staff, but if the fee allowed is not sufficient to allow a debtors' attorney to expend the additional time, or add the additional staff, and still earn a profit, the attorney is forced to cut back on the quality and quantity of services he or she provides. We see this in the practice of law right now. Cutbacks

even tend to focus on such necessary things as handling client calls (that is, on trying to avoid having to handle as many) and on reducing spending for seminars or other continuing legal education programs.

The only way this law firm has been able to continue to provide the quantity and quality of services to our clients which is rightfully expected and demanded by this Court is by constantly instituting and improving procedures, checklists, and automated forms. Even in our office, however, we have been forced to monitor our staff size and to otherwise "stream-line" our procedures to ensure that we have the capability to provide at least the most basic of client services. For those other law firms which may not be as organized, the burden is even heavier, and the pressure to cut back on essential client services is even greater. Furthermore, the enactment of BAPCPA will only exacerbate this already serious problem, as it will force upon debtors' attorneys a substantial number of additional tasks and responsibilities.

All of this can be fixed by a proper no look fee, plus additions and adjustments in the *a la carte* fees. A properly set no look fee will provide incentives, and will also give the Court and Trustees the right to demand better quality and quantity of services. With a no look fee set too low, such demands by the Court are likely only to force competent debtors' counsel from the practice because they will simply be unable to provide additional services for the money they are being paid.

B. An adequate no look fee will encourage good attorneys to stay in bankruptcy practice, and will encourage new lawyers to enter it.

There are basically two types of attorneys. First, there are those who cut every corner possible to make sure that they pocket as much of the money they take in as possible. Such

attorneys can survive on a no look fee that is too low, but at the expense of their clients and the system. In order to cut costs and increase their bottom-line, these attorneys tend to provide only the most basic of services, sometimes even relying on the Chapter 13 Trustees to formulate feasible plans, and will rarely respond to creditor motions, lest they be forced to attend a hearing.

On the other hand, there are the good, competent, conscientious debtor bankruptcy attorneys who will work their fingers to the bone, without complaint, to make sure their clients get the very best results available under the law. These attorneys will not allow the fact that they cannot afford to take on costly additional associates and staff affect the quality of their representation. They earn very little, especially relative to amounts earned by attorneys in other practice areas, and considering the hours they work and the time they spend away from their families. Roger Moore and Peggy Levin are good examples of these competent attorneys, but it may be only a matter of time before they feel compelled to leave bankruptcy practice altogether in favor of other areas of the law where they might enjoy a greater return for the substantial time and effort they expend.

Further exacerbating the problem is the fact that debtors' attorneys are being forced to take jobs not knowing what they are to be paid, or whether or not the rate of compensation allowed will be sufficient to meet future costs. No one in their right mind would take on a job for five years, not knowing what one was going to be paid, and especially if the employer said "Well, take the job and in a few months, we'll take a look at it and decide what you ought to get paid." However, that is exactly the position in which debtors' attorneys find themselves. Every time we file a case, we are forced by our local rules to sign on for the duration of the case, which in most cases will be for five years. The raw truth is that, at present, Chapter 13 cases do not

even pay for themselves, but rather each Chapter 13 case is subsidized by subsequent Chapter 13 filings. It has become a vicious cycle, where in order to pay for the Chapter 13 case which was filed two or three years ago, but which is still pending, the debtors' attorney is forced to file additional Chapter 13 Petitions, without which he or she could not hold trained personnel in place, could not continue to pay his or her fixed expenses, etc. Yet if the fee allowed in each "new case" is similarly inadequate, the attorney will be forced to continue the cycle over and over again, falling further behind, carrying a worthless caseload for which the attorney has already been "paid" and for which the attorney will remain responsible, and stuck in a practice he or she cannot sell. If the attorney ever hopes to retire, then by necessity he or she will be forced into other areas of the law where they might be better compensated, in order that they might wean themselves from a "successful", but financially hemorrhaging bankruptcy practice. Maintaining a financially viable Chapter 13 practice was a complicated proposition before the enactment of BAPCPA, but to file a Chapter 13 case now, not knowing what fee will be allowed, or that whatever is allowed is enough to pay our hugely increased costs under BAPCPA, is to take a terrible, and perhaps unbearable, risk.

Finally, a higher base fee is necessary to encourage younger, qualified attorneys to enter bankruptcy practice on the consumer side. The Court has surely noticed that the present consumer bar is aging out, and most of the practitioners (with the exception of the undersigned) are sole practitioners. The entry of "new blood" into the bar is vital to the continued success of the system, but most of the younger attorneys entering the practice enter as creditor attorneys, where the pay seems more lucrative. To be sure there are some excellent consumer debtor attorneys, but each year there will be less. Almost all of them now have gray hair, and as these

lawyers die off or become physically or mentally unable to continue in practice, the number of competent lawyers decreases. Even worse, as these lawyers die off or become disabled, their hundreds, if not thousands, of Chapter 13 clients will be left stranded, and there will be virtually no incentives for another lawyer to take on these cases. The fees allowed for handling these cases will have long since been spent, and the *a la cartes* will not provide enough incentive.

With all due respect, this Court really should take note of the fact that so few young lawyers are entering consumer practice, and it should ask why. There are a number of possible answers, all of which (and perhaps others) contribute: First, law school does a poor job of preparing attorneys to practice bankruptcy law. Bankruptcy is even not a required course. Not putting any emphasis on this area of law, very few, if any lawyers set their minds on entering bankruptcy practice. In addition, there is no incentive for older lawyers to take on and teach younger lawyers. Why? The no look fee is set too low. A higher no look fee that allows for the experienced lawyer to make a decent living, while also taking on, training and paying for a younger lawyer, would provide this incentive. Furthermore, opening a law practice is a daunting task. To do so, and then to jump into the hugely complex area of Chapter 13 law, is risky. In order to encourage entry into the filed, there has to be the perception that a decent living can be made, <u>especially in comparison to other areas of law</u>. Without such perception, a sharp young attorney is far more likely to handle traffic or DWI cases, where a fee of $1,000 or more may be charged for a file only few pages thick, and in a case that may be handled in a few hours. Finally, dabbling in Chapter 13 is not possible. The law and practice of Chapter 13 is simply too complicated and tricky. In my experience, young lawyers often need only handle one Chapter 13 case to convince themselves that doing almost any other type of law is preferable.

The only effective way to get good, younger attorneys into this area of law is to make sure they get paid well and to make sure they have a good teacher to guide them, a teacher who has every incentive to make sure that the student succeeds. The older, more experienced, lawyers are the key. This court should raise the no look fee enough to insure that older, experienced sole-proprietors can afford to take on and teach younger lawyers. Otherwise, there will be no next generation of consumer bankruptcy lawyers. Furthermore, this issue should be addressed now. It takes at least two 2 years full time (prior to BAPCPA) to teach an attorney to be competent in consumer debtor law, and it takes closer to five or six years to transform him or her into a good attorney, knowledgeable in all aspects of the practice. Now is the time for this court to start addressing this looming problem.

C. Better lawyers should be paid more than lazy or less competent attorneys.

The better the lawyer, the more valuable his service and the higher his hourly rate. This is common knowledge and practice outside the realm of debtor bankruptcy work, and the same axiom should apply to the no look fee. The better the quality of the work provided, the better the benefit to the public, the less complaints there will be from debtors, and the less problems there will be, across the board, for the Trustees and the Court. It makes no sense to pay the incompetent or lazy lawyer the same fee as the acknowledged experts and those who demonstrably work to improve their knowledge and representation. The changes mandated by BAPCPA make practicing consumer bankruptcy law more complicated than ever, with a plethora of pitfalls even for the experienced attorney, much less for an inexperienced one, and as a result, lawyer competency is all the more important. One potential problem with a no look fee is that it

does nothing to encourage a sub-par attorney to improve or increase his or her knowledge, which in turn will serve as a disincentive for otherwise competent lawyers to continue to strive for excellence. The solution is to set up objective standards by which the base no look fee may be adjusted, up or down, as appropriate, based on a lawyer's performance. With such adjustments, a lawyer who is unwilling to do what he or she needs to do to get a higher no look fee, or whose fee is adjusted down for cause, will gradually get driven out of the profession. All others will have the incentive to improve, participate, and provide better quality and quantities of services.

The two most obvious bases for adjustment would be a lawyer's efforts toward continuing legal education, and a lawyer's demonstrated legal competence. For example, the Court might adjust the standard fee upward by $100 per case to an attorney which obtains bankruptcy specialization certification, perhaps with a one year temporary adjustment allowed to "grandfather in" those good attorneys who previously have seen no benefit to obtaining certification, without being penalized. Similarly, full attendance at the EBI seminar, and full membership in and attendance at the annual North Carolina Bar Association Bankruptcy Section seminar, would each warrant an additional $100 per case. Likewise, attendance at the annual seminar of a nationally recognized bankruptcy organization, such as the National Association of Consumer Bankruptcy Attorneys would justify an additional $100 per case. Certificates of attendance or a copy of the N.C. State Bar CLE list could be required as proof of attendance prior to allowance of the higher fees. Furthermore, the Chapter 13 Trustees could be allowed to mete out an additional $100 per case, subject to an annual review, based upon their experience with specific attorneys. On the other hand, a Chapter 13 Trustee might recommend a lower fee for attorneys who fail to provide basic services, or who file sloppy or incomplete Schedules, etc.

It is standard fare at seminars to complain about the less competent lawyers. In many cases, these less competent attorneys never hear the complaints, because they usually do not attend the seminars. Let us change that by adjusting the no look fee accordingly.

D. The base fee should be adjusted according to the geographic location of the office of the debtors' attorney.

The truth is that it is simply much more expensive to do business in some areas of Eastern North Carolina than others. This is, in large part, a function of having to pay more or less in wages to acquire intelligent, hard-working personnel, depending upon where the debtor counsel happens to have his office(s) located. This factor should, in all fairness, be given some weight in setting a new "no look" fee.

Attached as Exhibit "C" is a comparison of Median Family Income for all of the Counties in the Eastern District. For instance, Median Income in Wake County, presumably an indication of the higher cost of acquiring competent personnel to work in Wake County, is 132.4% higher than that for the County with the lowest Median Income in the Eastern District. Additional confirming data indicative of this variance in the cost of personnel, and in turn the overall cost of doing business, can be garnered from another source available to this Court. Upon information and belief, this Court has in its possession a report which includes data on the relative costs of personnel compiled with respect to Chapter 13 Trustee offices across North Carolina.

To the extent that a county-by-county approach to adjusting the base fees appears to the Court to be unworkable or over-burdensome on the Chapter 13 Trustees, attached hereto as Exhibits D and E, respectively, are comparisons of the Average Median Family Income by division in the Eastern District of North Carolina, and of the Average Median Family Income by

Trustee. Should the Court deem it reasonable to make some adjustment to the base fee based on geographic location, these Exhibits outline a reasonable procedure whereby this might be done. For example, if the Court allowed an adjustment based on the division in which the case was filed, the presumed allowable "no look" fee set for cases filed in the Wilson and Fayetteville Divisions might be adjusted upward by 3.3 percent, 4.8 percent, 6.4 percent and 22.7 percent for cases filed in the New Bern, Wilmington, Elizabeth City and Raleigh Divisions, respectively. Similarly, if an adjustment were allowed according to the Chapter 13 Trustee, the case fee allowed in those cases where Mr. Browning or Mr. Stubbs is Trustee could be adjusted upward by 4.9 percent in cases where Mr. Stearns is the Trustee, and by 22.7 percent in cases where Mr. Logan is the Trustee. This type of fee adjustment is reasonable, and this approach provides a workable and fair approach to compensating attorneys who operate in "higher cost" areas.

E. We do not collect all of the fees you approve.

The truth is, $3,500 is not $3,500. As you know, more than 50% of the Chapter 13 cases fail. And unfortunately, the cases that succeed have to help pay for the ones that do not. The bottom line is that, if I had to guess, I would estimate that we still do not collect more than about 75% of the fees that we are awarded in Chapter 13. If so, a $3,500 no look fee is not really a $3,500 fee at all. It's only worth $2,625. An extra $200 fee for defending a motion to dismiss in a case that quickly thereafter fails is worth $0.00.

A fee of $3,500 paid over 12 months, as opposed to 18 months, is worth more because of the time value of money, but more importantly, because every month that passes increases the

percentage of cases that fail, through no fault of the debtor's attorney, but simply because life has once again reached over the edge of the cliff and grabbed the legs out from under another struggling debtor.

So, please, when you think or say a number realize that such number is not really that number at all, but something less. And please remember, we cannot pay our expenses with the money we do not collect.

F. The one-year waiting period on certain *A La Carte* fees should be removed.

The best thing this court did was to set in place a method to collect certain *a la carte* fees. These recognize the need to compensate for additional services. By not including these services in the no look fee, the extra services can be paid for only when the service is rendered, and not where it is not. In addition, these extra fees serve as an incentive for attorneys to keep providing additional necessary services. However, we submit that the *a la carte*s for defending motions to dismiss, defending motions for relief, and for filing motions to modify should be allowed starting immediately after confirmation, instead of starting 1 year afterwards.

By definition, having to provide these services in any case is not anticipated. The need generally arises due to changes in the debtor's circumstances. These are not the fault of the debtor's attorney, but the debtor's attorney still needs to do the work. The problem is that most all debtors live "on the edge". In most cases, Chapter 13 only retrieves a debtor from hanging over the edge. By living on the edge, I mean that even with the help of a Chapter 13 plan payments, most debtors are barely making it. This being the case, it does not take much of an

interruption in income or an increase in expenses to throw them back over the edge. Chapter 13 is a "contingency" practice in the true sense of that concept, arguably much more than personal injury work, where that term is more often applied.

The problems for Chapter 13 debtors, and therefore their attorneys, are only aggravated by the new law. For debtors, any increase in the amount of their plan payments may easily be the "straw that breaks the camel's back". Under the new law, there are 3 huge factors that will naturally drive plans higher: One is the requirement to pay secured creditors "equal monthly payments". Under the old law, we could push these creditors out of the way to some degree to allow for the payment of attorney fees, paying them more later. This is no longer allowed. Two, with the loss of "cram down", plans will have to increase. Three, with the extra "red tape" caused by the new law, all lawyers have a ton more work to do to set up and service every Chapter 13 plan. Ultimately, this cost is borne by the debtor, and since most of this cost is figured into the plan, this factor forces the Chapter 13 plan to increase. All of these factors push debtors, desperately in need of help, closer and closer to the edge. The closer to the edge, the less it takes to push the debtor over. As a consequence, we can expect to see an increase in the percentage of debtors failing in the first year of their plans, due to their inability to pay secured creditors outside the plan along with their inability to pay the plan payment itself. When this happens, the result is increased numbers of motions to dismiss and motions for relief. Where appropriate, these need to be defended. This drives up the cost for the debtor's attorney. This additional cost can be addressed by increasing the no look fee or by allowing the *a la carte* starting after confirmation, instead of 1 year after confirmation. Either way, this needs to be addressed.

Last, but not least, is the fact that, under the new law, there is a ton of extra work that must be performed pre-filing and also post-filing before confirmation. There is so much extra work, in fact, that arguably, all or most of whatever flat fee this Court sets would be earned pre-confirmation. It is simply not fair to include in the flat fee the extra, unanticipated work involved in post-confirmation motions to dismiss, defense of motions for relief, and motions to modify plans.

G. In retrospect, the truth is that the $1,600 "no look " fee was never enough.

The proof is that no one in the consumer debtor bankruptcy bar is getting rich. Far from it. And many, if not most, are just getting by. Running a law practice is hugely expensive, and the money gets used up as fast as it comes. This results in a situation where the lawyer must always take in new cases, because he needs some of that money to pay for the expense of providing services in older cases from which all money has already been tapped. It is a huge trap for the consumer debtor bankruptcy attorney, and one that will really come to roost as the older bankruptcy attorneys become too old to practice. That is, new cases always end up, to some degree or another, paying for the older cases. The money from the older cases was used up to pay the for the work on the cases prior to them. And so on, and so on. So what are we left with. If the whole practice halted right now, a lot of the Chapter 13 bankruptcy attorneys would themselves have to file bankruptcy. They would be strapped with stacks of Chapter 13 cases with services required for the next 1 to 5 years, but no money coming in, except for a few a la carte fees. This being the case, the truth is that the $1,600 no look fee was too low.

H. Attorney's fees do not take away from the unsecured creditors.

We are finding that under the Means Test, in many, if not most cases, the Disposable Monthly Income (hereinafter "DMI") is $0.00, and thankfully so. Otherwise, we may have ended up with a system that would have collapsed. Debtors can only afford so much. This being the case, and where DMI equals $0.00, there is no requirement to pay the unsecured creditors a particular dividend in Chapter 13. Thus, to the extent that this Court is concerned that the payment of attorney fees will cut into the dividend to unsecured, in many cases, such concern may have been mooted by act of Congress.

Furthermore, even in those cases where DMI and the Means Test suggest a payout of more than $0.00, it arguably determines a specific and fixed dollar amount of such payout. As long as the plan proposed will, if completed, pay such amount, and the amount of the attorney's fee requested is otherwise reasonably, the fee should be allowed.

I. The present fee structure amounts to a mandatory, unpaid retainer.

The standard base fee provided in Local Rule 2016-1 was and is intended to cover all services reasonably necessary to be performed by an attorney for the debtor in a Chapter 13 case through the first 12 months subsequent to the filing of such case. Local Rule 2016-1 also provides that an attorney for a debtor in Chapter 13 may be compensated for certain additional services performed beyond the first 12 months subsequent to the filing of the case, and for more than three additional services performed within the first 12 months subsequent to the filing of the case. However, upon information and belief, the base no look fee was not, and is not, meant to

compensate the attorney for a debtor for being, in effect, on a retainer, for the two to four years which remain in a typical Chapter 13 case after the expiration of the first 12 months subsequent to its filing.

A retainer provides an entity with the right to expect professional services from his or her attorney when requested, but none which is not requested, and binds the attorney not to take a fee or provide services to another which is against the debtor's interest. The right of the debtor to effectively hold an attorney on retainer should be considered a separate service for which the attorney for the debtor should be compensated, based upon the expected duration of the case. Accordingly, a debtors' attorney should be allowed an additional base fee based upon the duration of the proposed plan. A reasonable retainer, just to have the attorney remain "on call" for any bankruptcy related service which a debtor might need, would be at least $25 to $50 per month, and this adjustment to the base fee should be allowed as a non-refundable retainer which may be retained by debtors' counsel regardless of the outcome of the case, irrespective of whether or not this case is dismissed or converted before its original proposed completion date, and irrespective of whether the plan may thereafter be modified to complete at an earlier date.

J. In chapter 13 practice, a flat or no look fee is preferable to an hourly fee.

Most prospective Chapter 13 debtors prefer the certainty of a "flat fee" over the uncertainty of a fee paid on an hourly basis, and accordingly most debtors' attorneys charge a "flat fee". Notwithstanding, a flat fee exposes debtors' counsel to a substantial risk of loss, inasmuch as the value of the total services expected to be performed may well substantially exceed the amount flat fee allowed, especially in light of the drastic changes to bankruptcy

practice and resulting uncertainty caused by the enactment of BAPCPA. Any flat fee allowed should be large enough, on average, to pay for the value of the services reasonably anticipated, including those services associated with interpreting and arguing new and emerging issues under BAPCPA. Inasmuch as it is impossible to determine, at this point, the time which will be spent on dealing with these drastic changes, the Court should err on the side of caution and in favor of debtors' counsel. All of the services which will be required by this Court of debtors' counsel will be necessary, and will be in the best interest of the debtor and the bankruptcy estate. Any fee charged by debtors' counsel in connection with representation in a Chapter 13 case will have been negotiated by the debtor and counsel, and will have been agreed upon by the debtor after the debtor has been informed of and given a copy of the Local Rule outlining the procedures applicable in this district to awards of attorney fees in Chapter 13 cases. Such agreement provides further evidence that the fee is reasonable, at least in light of the services the debtor expects to receive, and accordingly the agreement should be given strong deference by this Court.

K. Free initial interviews are necessary, but they are not free to debtors' counsel.

On average, we only file one(1) case for every three(3) prospective clients we interview, and our interviews under the new law are taking about 2 hours each. This is twice as long as under the old law. As any consumer debtor attorney knows, we have to offer a free initial consultation. Otherwise, the number of potential clients drops precipitously. There are a number of reasons for this fact. One of the main reasons is this: For a person who is already in financial trouble, the prospect of paying even as low as $50 for an interview where we will determine, not how we might help them, but rather if we can help them, is unacceptable. Therefore, the initial

interview must be free. However, that means that we subsidize the "free" consultations for all prospective clients with the fees we charge in cases that are actually filed and actually succeed. This is a true "contingency" practice. In turn, that means that, on average, we have about six (6) hours invested in "initial interview time" for every one (1) case actually filed. At just $200 per hour for experienced attorney time, this equates to an investment of approximately $1,200 in attorney time before even 1 cent is received.

L. High up-front costs lower the number of filing and low up-front costs increase the risk that attorneys will not get paid for their work.

Most debtors' attorneys charge only a small portion of the fees they ultimately expect will be allowed. The reason for this is simple: The more an attorney charges "up front" the less the number of clients who can afford it. The less the number of clients who can afford it, the less the number of cases filed and, in turn, the less the number of deserving clients who get the help that only filing bankruptcy can provide. This is an unfortunate reality that comes with handling Chapter 13 cases. As a result, we agree to take the balance through the plan. However, that puts us at substantial risk, because if the case falters within the first year, we will not actually collect all of the fees we have charged. Again, in order for us to stay in business and make a reasonable profit, the unfortunate reality is that the cases which succeed, by necessity, have to help subsidize our losses in those cases that fail.

M. Under the new law, chapter 7 filings can no longer subsidize chapter 13 cases.

It used to be the case that attorney fees paid in Chapter 7 cases, which were simple to handle relative to Chapter 13 cases, would help subsidize the unpaid costs involved in providing

representation in Chapter 13 cases, both those that did and did not succeed. However, under the new law, Chapter 7 cases are much more complicated and paperwork intensive, and require a much more substantial time investment. Unfortunately, affordability concerns prevent us from raising fees substantially in Chapter 7. Very simply, a client who cannot afford to pay the lump sum necessary to get a Chapter 7 case filed does not file. We will continue to offer Chapter 7s as an option, because we believe it essential to our business that we do so. However, the reality is the work involved, especially under the new law, has increased more than the ability of the public to pay. As a result, under the new law, Chapter 7 cases arguably do not even pay for themselves anymore, much less do they serve as a source of funds to help subsidize the tremendous amount of work necessary to properly handle Chapter 13 cases.

One other note, with regard to the method of payment of our fees in a Chapter 13, the Local Rules provide for payment at the rate of $100 per month. If that is not changed, then even if we are allowed a significantly higher fee, in many cases we will never collect it because the case will get dismissed well before our fees are paid out.

VII. CONCLUSION

Arguably, the no look fee allowed in chapter 13 cases prior to the enactment of BAPCPA was too low. It did not account for the fact that debtors' attorneys remain, essentially, on a retainer through the pendency of the chapter 13 case, which is a service for which an attorney should be compensated. It also did not account for the myriad of tasks which a debtors' attorney is expected to perform, and for which no reasonable basis of compensation exists. Finally, the reality with respect to the $1,600 base fee was that most chapter 13 debtors' counsel were forced to subsidize their practices with chapter 7 case filings, and it was only through these and

continued chapter 13 filings that they were able to continue in business.

With the enactment of BAPCPA, if this Court were to consider only the time which may reasonably be expected to be expended by debtors' counsel in the preparation, processing and filing of a chapter 13 Petition, schedules and plan, and on the basic services which will be necessary to see such case and plan to completion, in light of the complications and new tasks which are now required, a reasonable attorney's fee will likely greatly exceed $3,500. Furthermore, BAPCPA makes chapter 7 filings far more complicated, and these will likely no longer be used to subsidize a chapter 13 practice. Notwithstanding, $3,500 is a reasonable starting point, with respect to a no look fee, based on all of the arguments made herein. Undersigned believes that, as a whole, the debtor bar is willing to trade a potentially higher fee for the tedium of keeping time, and filing fee applications, in every case. Likewise, undersigned believes that consumer debtors are similarly willing, and actually prefer, to trade the uncertainty of an hourly fee, for a reasonable flat one.

Certain adjustments to the standard "base" fee should be allowed in order to promote certain worthwhile goals and objectives, and to account for the higher costs of business in certain geographic locations. With respect to higher business costs, the U. S. Census Bureau provides information on a periodic basis on which a reasonable adjustment to the base fee may be made, and such adjustments can be made according to the divisions of the Court, or according to the Trustee designated in the case, with little additional effort.

With respect to other goals and objectives which the no look fee may (and should) support, those attorneys who consistently demonstrate a high level of competency should be compensated at a rate higher than those who do not. Similarly, those attorneys who spend the

time, money and effort to continue their legal education in the bankruptcy practice area, and those who are certified as a "specialist," should be rewarded for such efforts. By providing a monetary incentive for attorneys to provide quality service to their clients, and to be more knowledgeable and proficient in their dealings with this Court and the chapter 13 Trustees, the system itself will improve.

Finally, the *a la carte* system should be adjusted so that debtors' counsel may be compensated for unexpected services they may be required to perform immediately after confirmation, but prior to 12 months after confirmation. If a case begins to falter so soon after it has been filed, it is usually the creativity and extra work of the debtors' counsel that saves it. By definition, these cases are more complicated, and consume more of the attorney's time, and for this extraordinary service, the attorney should be compensated.

Respectfully submitted this 20th day of January, 2006.

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