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# Best Practices in a Chapter 7 Case: What Does the Trustee Want, and How Does Debtor's Counsel Respond?

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**The Responsibilities of the Debtor's Attorney  
Regarding the Disclosure of the Debtor's Assets**

**And**

**Undisclosed Assets In Chapter 7 Cases:  
*How Are We Doing?***

Hon. Steven Rhodes  
United States Bankruptcy Judge  
Eastern District of Michigan

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I. PRE-BAPCPA 2005

A. Cases:

1. *In re R & R Associates of Hampton*, 402 F.3d 257, 268 (1st Cir. 2005) (Prior to informing the bankruptcy court of facts, attorneys were duty-bound to exercise reasonable care to verify those facts.)
2. *In re Diaz*, 2006 WL 2474822 (Bankr. S.D. Tex. Aug. 28, 2006) (“Counsel for a debtor in a Chapter 13 case has a duty to supervise the debtor’s conduct for compliance with the Bankruptcy Code, and must instruct the debtor on appropriate conduct.”)
3. *In re McDermitt*, 2006 WL 1582390 (Bankr. D. Vt. May 30, 2006):

Depending on a debtor’s sophistication, he or she may complete a first draft of the schedules independently, but the debtor’s attorney still has the responsibility to ensure that the schedules are complete and in compliance with the Federal Bankruptcy Rules. *Id.* . . . The effective administration of a bankruptcy case depends upon the debtor’s attorney guiding his or her client toward the filing of complete and accurate schedules within the prescribed time period. Regardless of the financial or personal difficulties a debtor may be facing, the Bankruptcy Code requires a debtor and his or her attorney to guarantee the schedules that are filed are complete and accurate to the best of the debtor’s knowledge.

4. *United States v. Thomas*, 342 B.R. 758, 760 (S.D. Tex. 2005) (“Although debtors may consciously or unconsciously omit information that the law and their lawyers require, once a lawyer discovers the facts, he must notify, amend, and otherwise formally correct effects of the omission in a civil case.”)
5. *Penn. Higher Educ. Assistance Agency v. Taylor*, 334 B.R. 576, 582-83 (N.D. Ohio 2005)
6. *In re McKain*, 325 B.R. 842, 849 (Bankr. D. Neb. 2005) (“A debtor’s attorney . . . bears a significant degree of responsibility in assuring to the best of his or her ability that the schedules are complete and accurate before they are filed.”)
7. *In re Bellows-Fairchild*, 322 B.R. 675, 681 (Bankr. D. Or. 2005) (“Neither a debtor nor his attorney is entitled to omit information or provide partial information simply because, in their view, the information provided is sufficient

to allow the trustee to determine the value of a debtor's estate.”)

8. *In re Nigeles*, 301 B.R. 321, 325 (Bankr. N.D. Iowa 2003) (same)
9. *In re Ptasinki*, 290 B.R. 16, 26-27 (Bankr. W.D.N.Y. 2003) (“[N]otwithstanding all of the financial and perhaps personal difficulties that a debtor may be experiencing, the Bankruptcy Code expects that when debtors and their attorneys are finalizing and signing their schedules, they will devote their full attention to them in order to ensure that they are complete and accurate to the best of the debtor’s knowledge and information.”)
10. *In re Burnett*, 2002 WL 32001418, \*2 n.3 (Bankr. C.D. Ill. 2002) (“Both the debtors and their attorneys are responsible for making sure that the schedules are complete.”)
11. *In re Kloubeck*, 251 B.R. 861, 866 (Bankr. N.D. Iowa 2000) (“[C]ounsel for the debtor in a Chapter 13 case has a duty to supervise the debtor’s conduct for compliance with the Bankruptcy Code.”)
12. *In re Robinson*, 198 B.R. at 1017, 1024 (Bankr. N.D. Ga. 1996):  
 The duty of reasonable inquiry imposed upon an attorney requires the attorney (1) to explain the requirement of full, complete, accurate, and honest disclosure of all information required of a debtor; (2) to ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of a debtor; (3) to check the debtor’s responses in the petition and Schedules to assure they are internally and externally consistent; (4) to demand of the debtor full, complete, accurate, and honest disclosure of all information required before the attorney signs and files the petition; and (5) to seek relief from the court in the event that the attorney learns that he or she may have been misled by a debtor.
13. *In re Armwood*, 175 B.R. 779, 789 (Bankr. N.D. Ga. 1994) (same)
14. *In re Matthews*, 154 B.R. 673, 680 (Bankr. W.D. Tex. 1993) (“A debtor’s attorney of course has a duty to make reasonable inquiry into the accuracy of the Debtor’s petition before the Debtor signs the petition, statements and schedules. . . . The attorney, as an officer of the court, owes a duty of integrity to the court system.”)
15. *In re Prudhomme*, 152 B.R. 91, 114 (Bankr. W.D. La. 1993) (When awarding fees the court should consider whether the schedules and pleadings are accurate, complete, and professional.)
16. *In re Huerta*, 137 B.R. 356, 379 n.8 (Bankr. C.D. Cal. 1992) (“In my view, one of

the principal, and perhaps most neglected duties of attorneys who represent debtors, is to assist them with the “reasonable inquir[ies]” required of them before they advise or instruct debtors to “sign” their petition, statements and schedules. The client interview prior to the drafting and filing of the petition and schedules is critical to assisting the debtor’s good faith.”)

17. *In re Martinez*, 22 B.R. 419, 421 (D.N.M. 1982) (“We would also remind the debtors’ attorney that it is his duty as an officer of this court to take all possible steps to assure himself that the information listed in his clients’ petition is correct.”)

B. Other Authorities

4 Collier on Bankruptcy ¶ 521.03[3], page 521-10 (15th ed. Rev.2005)):

In the preparation of the schedules nothing should be taken for granted. The attorney should carefully investigate the affairs of the debtor and make certain that the attorney has all the information needed to prepare full and complete schedules, for it is the duty of the debtor to present intelligible and true schedules. Although, depending on the sophistication of the debtor, it may be possible to have the debtor, especially a business debtor, prepare a first draft of the schedules, the attorney for the debtor has a responsibility to review [the] schedules to ensure that they are complete and in compliance with the Code and the Federal Rules of Bankruptcy Procedure.

II. POST-BAPCPA 2005

A. The Bankruptcy Code As Amended

1. 11 U.S.C. § 707(b)(4) provides:  
\* \* \*

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has --

- (i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and
- (ii) determined that the petition, pleading, or written motion --
  - (I) is well grounded in fact; and
  - (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

2. The “Debt Relief Agency” provisions also address the responsibilities of the debtor’s attorney regarding the disclosure of assets.

a. The Debtor’s Attorney Must Warn the Debtor That:

- (1) “. . . a person who knowingly and fraudulently conceals assets . . . in connection with a case under this title shall be subject to fine, imprisonment, or both . . .” Section 342(b)(2)(A)
- (2) “. . . all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.” Section 342(b)(2)(B)
- (3) “. . . all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful . . .” Section 527(a)(2)(A)(iv)
- (4) “. . . all assets . . . are required to be completely and accurately disclosed in the documents filed to commence the case . . .” Section 527(a)(2)(B)
- (5) “. . . information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.” Section 527(a)(2)(D)

b. Statutory Ethical Standards:

- (1) “A debt relief agency shall not . . . counsel or advise any assisted person . . . to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading.” Section 526(a)(2)
- (2) “A debt relief agency . . . shall provide each assisted person . . . reasonably sufficient information . . . on how to provide all the information the assisted person is required to provide under this title pursuant to section 521.” Section 527(c)

3. In addition, BAPCPA § 319 expresses the “sense of Congress” that Federal Rule of Bankruptcy Procedure 9011 should be modified to include the requirement that all documents, including schedules, whether signed or unsigned, that are submitted to the court or to a trustee by a debtor who is acting pro se or who is represented by an attorney should not be submitted until the debtor, and where represented, the debtor’s attorney, have made “reasonable inquiry to verify that the information contained in such document is--(1) well grounded in fact; and (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.”

B. Cases

1. *In re Unruh*, 2008 WL 341465 (5th Cir 2008):

For purposes of denying an amended exemption, bad faith may be shown by a gross and deliberate understatement of the value of an asset, made in an attempt to deceive creditors or the bankruptcy court. *See also In re Hannigan*, 409 F.3d 480, 484 (1st Cir.2005) (affirming a finding of bad faith where debtor had intentionally undervalued property by listing value for only one of two parcels); *In re Bauer*, 298 B.R. 353, 356 (8th Cir.BAP2003) (affirming a finding of bad faith where debtors substantially undervalued their home in schedules).

2. *In re McLain*, 2008 WL 274403 (5th Cir 2008):  
Chapter 7 debtors who allegedly failed to disclose funds on hand when bankruptcy petition was filed and then used funds, or portion of funds, to make first premium payment on life insurance policy could not belatedly claim undisclosed funds as exempt, to prevent trustee from reaching policy proceeds for benefit of estate.
3. *In re McKain*, 325 B.R. 842, 851 (Bankr. D. Neb. 2005):  
Both the debtor and her attorney share the responsibility for the current situation. They each had a duty to make sure the schedules and statement of financial affairs were correct, and they each dropped the ball. This issue takes on even greater significance in light of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005, most of which takes effect in October 2005. Under the provisions of the new law, counsel's signature on a petition constitutes a certification that the attorney has no knowledge, after an inquiry, that the information in the schedules filed with the petition is incorrect. 11 U.S.C. § 707(b)(4)(D). Attorneys may be subject to assessment of a civil penalty for signing a document without conducting a reasonable inquiry into the underlying facts. § 707(b)(4)(B).  
\* \* \*  
Those who file bankruptcy petitions and schedules for debtors are reminded of their duty to ensure that accurate, complete, and reliable information is contained in those documents and is promptly provided to the case trustee if changes occur after filing.
4. *In re Gutierrez*, 356 B.R. 496 (Bankr. N.D. Cal. 2006) (attorney violated provision of the BAPCPA by failing, within three days after meeting with debtor-client to discuss possibility of filing bankruptcy petition, to provide debtor-client with Bankruptcy Truthfulness Notice." Accordingly, disgorgement of fees was ordered.)
5. *In re Gordon*, 2008 WL 2901583 at \*3 (Bankr. D>Md. 2008) (The debtor's attorney has a duty "that the [debtor's] papers were to the best of Counsel's knowledge, information and belief formed after an inquiry reasonable under the circumstances.").
6. *In re Light*, 357 B.R. 23 (Bankr. N.D.N.Y 2006) (The debtor's attorney has a duty to review the documents with the client before they become a part off the public

record.).

7. *In re Robertson*, 370 B.R. 804, 809 n.8 (Bankr. D. Minn. 2007):  
[D]ebtors’ counsel are to exercise significant care as to the completeness and accuracy of all recitations on their clients' schedules, after they have made a factual investigation and legal evaluation that conforms to the standards applicable to any attorney filing a pleading, motion, or other document in a federal court. The content of a debtor's petition and schedules is relied on, and should have the quality to merit that reliance.

C. Other Authorities

1. The Ad Hoc Committee on Bankruptcy Court Structure and Insolvency Processes, Task Force on Attorney Discipline, ABA Section of Business Law, Attorney Liability Under Section 707(b)(4) of the Bankruptcy Abuse Prevention And Consumer Protection Act of 2005, 61 Bus. Law 697 (February 2006)

§ 3. § 707(b)(4)(C)§ 3.1 “Reasonable Investigation”

Recommendations

As a standard, “reasonable investigation” should be governed by the case law interpreting and applying the “reasonable inquiry” standard under Rule 9011.

Attorneys should be able to rely on case law that allows time constraints to be taken into account.

The reasonableness of the attorney’s inquiry should not be analyzed with the benefit of hindsight; rather, the analysis should, as under Rule 9011, focus on the attorney’s inquiry at the time that the inquiry was made.

Attorneys should verify information supplied by the debtor if such verification may be accomplished with a reasonable expenditure of time and expense and, in the attorney’s professional judgment, the information provided by the client is inconsistent or contains other indications of inaccuracy.

Attorneys should be able to rely upon documents prepared by third parties in the scope of their employment, including tax returns, credit and title reports, child support enforcement agency statements, or information from the debtor’s pre-petition credit counseling agency.

Unless and until the courts articulate new standards for § 707(b)(3)’s good faith requirement, attorneys should be able to rely on case law developed under § 707(a), specifically those cases interpreting and applying the “bad faith” and “totality of the circumstances” tests.

“The duty of reasonable inquiry imposed upon an attorney by

Rule 11 and by virtue of the attorney's status as an officer of the court owing a duty to the integrity of the system requires that the attorney (1) explain the requirement of full, complete, accurate, and honest disclosure of all information required of a debtor; (2) ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of a debtor; (3) check the debtor's responses in the petition and Schedules to assure they are internally and externally consistent; (4) demand of the debtor full, complete, accurate, and honest disclosure of all information required before the attorney signs and files the petition; and (5) seek relief from the court in the event that the attorney learns that he or she may have been misled by a debtor." In re Robinson, 198 B.R. 1017, 1024 (Bankr. N.D. Ga.1996); In re Armwood, 175 B.R. 779, 789 (Bankr. N.D. Ga. 1994); In re Matthews, 154 B.R. 673, 680 (Bankr. W.D. Tex. 1993). See In re Huerta, 137 B.R. 356, 379 n.8 (Bankr. C.D. Cal. 1992). Another court explained: Litigation lawyers have a broad responsibility under Rule 11 and the Code of Professional Responsibility (now the Model Rules of Professional Conduct): to confer with the client about the facts -- and not to accept the client's version on faith, but to probe the client in that respect ('reasonable inquiry'); to do the lawyers' homework on the law; and then to counsel the client about just which claims the law reasonably supports in terms of the facts the lawyers' proper investigation has disclosed. That often involves counseling the client -- sometimes against the tide of the client's displeasure -- as to how best to vindicate the client's interests without abusing another's. In some instances that may involve advising a client not to pursue a claim or a theory of recovery that in a technical sense (of surviving a Rule 12(b)(6) motion) might perhaps go forward, but by rights should not.).Fleming Sales Co., Inc. v. Bailey, 611 F. Supp. 507, 519 (N.D. Ill. 1985).

## Undisclosed Assets in Chapter 7 Cases

*How are we doing?*

1

## The Responsibility of Debtor's Attorney Regarding Schedules (Pre-BAPCPA)

2

## The Responsibility of Debtor's Attorney Regarding Schedules (Pre-BAPCPA)

- *In re McDermitt*:
  - “Regardless of the financial or personal difficulties a debtor may be facing, the Bankruptcy Code requires a debtor and his or her attorney to guarantee the schedules that are filed are complete and accurate to the best of the debtor’s knowledge.”

3

## The Responsibility of Debtor's Attorney Regarding Schedules (Pre-BAPCPA)

- *In re McKain* :
  - “A debtor’s attorney . . . bears a significant degree of responsibility in assuring to the best of his or her ability that the schedules are complete and accurate before they are filed.”

4

## The Responsibility of Debtor's Attorney Regarding Schedules (Pre-BAPCPA)

- *In re Bellows-Fairchild*:
  - “Neither a debtor nor his attorney is entitled to omit information or provide partial information simply because, in their view, the information provided is sufficient to allow the trustee to determine the value of a debtor’s estate.”

5

## The Responsibility of Debtor's Attorney Regarding Schedules (Pre-BAPCPA)

- *In re Robinson*:
  - “The duty of reasonable inquiry imposed upon an attorney requires the attorney . . . (2) to ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of a debtor; . . .”

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## 1999 Study

- ED Michigan - Detroit
- Every asset case closed January-June, 1999 (103)
- 38% of administered assets were not disclosed in initial papers (51 of 133)
- 41% of asset cases had undisclosed assets (42 of 103)

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## BAPCPA's Response

- Warning, WARNING, **WARNING!!!** Six new warnings!!! (Notices)
  - 2 Honesty Warnings
  - 2 Audit Warnings
  - 2 Consequence Warnings
- Three new requirements
- Enforcement

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## Section 527(a)(2)(A) Honesty Warning 1

“ . . . all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be **complete, accurate, and truthful** . . . ”

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## Section 527(a)(2)(B) Honesty Warning 2

“ . . . all assets . . . are required to be **completely and accurately** disclosed in the documents filed to commence the case . . . ”

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## Section 342(b)(2)(B) Audit Warning 1

“ . . . all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.”

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## Section 527(a)(2)(D) Audit Warning 2 Consequence Warning 1

“ . . . information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.”

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## Section 342(b)(2)(A) Consequence Warning 2

“. . . a person who knowingly and fraudulently conceals assets . . . in connection with a case under this title shall be subject to fine, imprisonment, or both . . .”

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## Section 526(a)(2) Required Ethical Standard

“A debt relief agency shall not . . . counsel or advise any assisted person . . . to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading.”

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## Section 527(c) Required Advice

“A debt relief agency . . . shall provide each assisted person . . . reasonably sufficient information . . . on how to provide all the information the assisted person is required to provide under this title pursuant to section 521.”

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## Section 707(b)(4)(D) Required Responsibility

“The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.”

16

## The Responsibility of Debtor's Attorney Regarding Schedules (Post-BAPCPA)

- *In re Robertson*:
  - “[D]ebtors’ counsel are to exercise significant care as to the completeness and accuracy of all recitations on their clients’ schedules, after they have made a factual investigation and legal evaluation that conforms to the standards applicable to any attorney filing a pleading, motion, or other document in a federal court.”

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## Scope of New Study

- Twelve judicial districts
- Every asset case filed during one year after BAPCPA (10/17/05-10/16/06 ) (1,553 cases) (No sampling)
- Assets administered through 12 months ago (2,242 assets)
- Evident in ECF
- Individuals only
- Not converted cases

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## Methodology of Study

- Using ECF:
  - Identified asset cases
  - Found the assets administered in those cases
  - Determined whether each administered asset was disclosed in debtor's initial papers
  - Did not examine amendments

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## Methodology of Study

- For each administered asset, recorded each asset, proceeds and whether disclosed or undisclosed
- For each asset case, recorded filing date, case number (location), trustee, final report

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## Disclaimer

- These are *preliminary* results!
- No statistician was involved.

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## Limitations of Study

- The study only identifies assets that trustees discovered and administered. It does not identify:
  - Assets that are undiscovered.
  - Assets that are discovered but abandoned.
- The study *estimates* undiscovered assets.

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## Limitations of Study

- The study does not identify the reason for nondisclosure:
  - Fraud?
  - Neglect?
  - Incompetence?
  - Forgot?

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## Limitations of Study

- The study does not investigate the reasons for the statistical variations among districts.
- These likely result from variations in local legal culture, including:
  - Different exemption schemes
  - Varying levels of judicial tolerance
  - Variations in trustee practices
  - Variations in attorney practices

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## Comparing Study Districts Undisclosed Assets

Texas N.D.	16%
New York S.D.	17%
New Mexico	18%
<b>Massachusetts</b>	<b>22%</b>
Georgia N.D.	23%
Illinois N.D.	23%
North Carolina E.D.	24%
Pennsylvania W.D.	30%
Michigan W.D.	32%
Missouri E.D.	36%
Michigan E.D.	38%
Oregon	38%

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## Comparing Study Districts Cases with Undisclosed Assets

New York S.D.	20%
Georgia N.D.	24%
Illinois N.D.	25%
<b>Massachusetts</b>	<b>25%</b>
Texas N.D.	25%
New Mexico	27%
North Carolina E.D.	32%
Pennsylvania W.D.	36%
Michigan W.D.	38%
Michigan E.D.	42%
Missouri E.D.	43%
Oregon	58%

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## Comparing Mass Court Locations Undisclosed Assets

Boston	Worcester
18%	31%
15 of 85	15 of 49

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# OHIO

???

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## Results of All Study Districts

- 31% of assets were undisclosed (701 of 2,242)
- 38% of asset cases had undisclosed assets (590 of 1,553)

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## Comparing Pre- And Post-BAPCPA

ED Michigan - Detroit

	1999 Study	Current Study
Undisclosed Assets	38%	38%

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## Proceeds

	Sum U \$	Sum D \$	Sum \$
Georgia ND	\$593,217	\$7,961,956	\$8,555,173
Illinois ND	\$1,020,646	\$6,311,306	\$7,331,952
Massachusetts	\$519,211	\$2,385,372	\$2,904,583
Michigan ED	\$2,660,763	\$5,194,171	\$7,854,934
Michigan WD	\$313,945	\$2,891,217	\$3,205,162
Missouri ED	\$368,455	\$738,414	\$1,106,869
New Mexico	\$316,089	\$681,221	\$997,310
New York SD	\$412,980	\$5,141,644	\$5,554,624
North Carolina ED	\$104,225	\$1,810,267	\$1,914,492
Oregon	\$620,645	\$3,190,056	\$3,810,701
Pennsylvania WD	\$631,198	\$1,685,916	\$2,317,114
Texas ND	\$93,356	\$867,924	\$961,280
<b>TOTALS</b>	<b>\$7,654,730</b>	<b>\$38,859,464</b>	<b>\$46,514,194</b>

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## Proceeds - % Undisclosed

Georgia ND	7%
Illinois ND	14%
Massachusetts	18%
Michigan ED	34%
Michigan WD	10%
Missouri ED	33%
New Mexico	32%
New York SD	7%
North Carolina EI	5%
Oregon	16%
Pennsylvania WD	27%
Texas ND	10%
<b>TOTALS</b>	<b>16%</b>

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## Assets – 12 Study Districts

Account	U A	D A	U + D	% U A
Account	34	163	197	17%
Annuity	2	5	7	29%
Business Assets	12	51	63	19%
Cash	16	22	38	42%
Contract Claim	27	49	76	36%
Damage Claim	26	47	73	36%
Fraudulent Trans	53	24	77	69%
Inheritance	11	15	26	42%
Insurance Claim	5	2	7	71%
IRA	1	8	9	11%
Life Insurance	5	26	31	16%
Personal Proper	6	60	66	9%
Preference	157	145	302	52%
Real Property	40	338	378	11%
Recreation Prop	5	67	72	7%
Stock	12	53	65	18%
Tax Refund	197	80	277	71%
Vehicle	20	301	321	6%
Wages	66	85	151	44%
727 Settlement	6	0	6	100%
<b>Sum</b>	<b>701</b>	<b>1541</b>	<b>2242</b>	<b>31%</b>

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## Assets – Mass.

Asset	U A	D A	U + D	% U A
Account	5	8	13	38%
Annuity	0	0	0	-
Business Assets	1	6	7	14%
Cash	0	0	0	-
Contract Claim	0	4	4	0%
Damage Claim	1	1	2	50%
Fraudulent Transfer	3	6	9	33%
Inheritance	0	2	2	0%
Insurance Claim	0	0	0	-
IRA	0	1	1	0%
Life Insurance	0	2	2	0%
Personal Property	1	3	4	25%
Preference	3	3	6	50%
Real Property	4	16	20	20%
Recreation Property	0	7	7	0%
Stock	2	4	6	33%
Tax Refund	7	2	9	78%
Vehicle	3	39	42	7%
Wages	0	0	0	-
727 Settlement	0	0	0	-
<b>Sum</b>	<b>30</b>	<b>104</b>	<b>134</b>	<b>22%</b>

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## Extrapolating Undisclosed Assets to All Districts

- Actual for 12 Study Districts:
  - Undisclosed Assets = 701
  - Proceeds of Undisclosed Assets = \$7,654,730
  - Average Proceeds Per Undisclosed Asset = \$10,920
- Estimated for 91 Districts:
  - Undisclosed Assets = 5316
  - Proceeds of Undisclosed Assets = **\$58,048,368**

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*Can Undiscovered Assets Be Estimated?*

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## Percent Undisclosed Assets by Trustee – E.D. Mi.

Trustee	% U A	Trustee	% U A
Dery	71%	Shapiro	37%
Frank	58%	Lim	36%
Miller	57%	Turner-Lewis	35%
Kohut	51%	Gold	33%
Dakmak	47%	Sweet	33%
Wells	41%	Evangelista	32%
Allard	40%	Stevenson	32%
Ellmann	40%	McClarty	18%
Simon	40%	Nathan	8%
Corcoran	38%	Mason	6%
Taunt	38%	<b>Average</b>	<b>28%</b>
<b>Average</b>	<b>56%</b>		

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## Percent Undisclosed Assets by Trustee – Mass.

Trustee	% U A	Trustee	% U A
A	100%	N	0%
B	50%	O	0%
C	50%	P	0%
D	50%	Q	0%
E	50%	U	0%
F	38%	R	0%
G	29%	S	0%
H	25%	T	0%
I	23%	U	0%
J	22%	V	0%
K	21%	X	0%
L	17%	Y	0%
M	16%	<b>Average</b>	<b>0%</b>
<b>Average</b>	<b>28%</b>		

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## Percent of Undisclosed Assets Administered by Top 50% Trustees

Massachusetts	100%
Georgia ND	97%
Illinois ND	95%
North Carolina ED	95%
Texas ND	94%
New York SD	92%
Pennsylvania WD	87%
Missouri ED	86%
Oregon	81%
Michigan WD	78%
New Mexico	78%
Michigan ED	69%
Average	82%

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## Estimating Undiscovered Assets – 12 Study Districts

- Total Undisclosed Assets = 701
- Undisclosed Assets Found by Top Half Trustees = 575 (82%)
- Potential Undisclosed Assets for All Trustees  
 $2 \times 575 = 1150$
- Potential Undiscovered Assets = **449**  
 $(1150-701)$

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## Estimating Undiscovered Assets – 12 Study Districts

- Potential Undisclosed Assets = 1,150 (vs. 701) (64% increase)
- Average Proceeds Per Undisclosed Asset = \$10,920
- Value of Potential Undisclosed Assets = \$12,557,688 (vs. \$7,654,730)

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## Estimating Proceeds from Undiscovered Assets 91 Districts

- Potential Undisclosed Assets = **8,721** (vs. 5,316)
- Additional Potential Undisclosed Assets = **3,405** (8,721 - 5,316)
- Value of Potential Undisclosed Assets = **\$95,229,135** (vs. \$58,048,368)

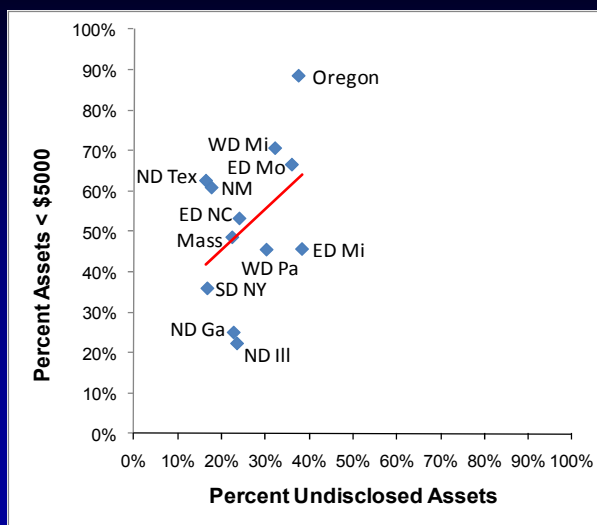
42

## Comparing Study Districts Assets < \$5000

Oregon	88%
Michigan W.D.	71%
New Mexico	71%
Missouri E.D.	66%
Texas N.D.	63%
North Carolina E.D.	53%
Pennsylvania W.D.	49%
Michigan E.D.	46%
<b>Massachusetts</b>	<b>45%</b>
New York S.D.	36%
Georgia N.D.	25%
Illinois N.D.	22%

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## A Correlation?



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## Questions

- Why was there no change in the rate of disclosure in ED Michigan after BAPCPA?
- Is a 31% rate of non-disclosure (38% of cases) acceptable?
- If not, what more can be done to improve it?

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## What Can We Do?

- Rewrite the forms
- Reverse the burden of proof on objections to discharge and objections to exemptions for undisclosed asset
- Report all undisclosed assets

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## E.D. Mi. Local Rule 2015-1

“If a trustee discovers an asset that the debtor failed to disclose and the trustee’s discovery of the asset occurs after the debtor has testified at the meeting of creditors that the schedules are accurate, then the trustee shall, as promptly as practicable after the discovery, file a completed form ‘Trustee’s Report of Undisclosed Asset,’ available on the court’s website.”

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UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

DONALD T. CATHEY  
and LORNA M. CATHEY,

Debtors.

Case No. 08-53835-TJT  
Chapter 7  
IBON, Thomas J. Tucker

**TRUSTEE’S REPORT OF UNDISCLOSED ASSET**

Pursuant to E.D. Mich. LBR 2015, the Trustee hereby reports that the Trustee discovered the following assets after the Debtors testified at the § 341 Meeting of Creditors that the schedules are accurate:

Fidelity IRA account - Joint	\$113.18
Fidelity IRA account - Husband	\$31,515.28
Fidelity IRA account - Wife	\$255.01

This report is for informational purposes only. No response is permitted.

/s/ Mark H. Shapiro (243134)  
Trustee  
24901 Northwestern Hwy.  
Suite 611  
Southfield, MI 48075  
(248) 352-4700  
shapiro@sw-law.com

Dated: August 7, 2008

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:  
ANTHONY S. ANNEMARIE DWIGHE  
Debtor(s) /

Case No. 08-54687-DWR  
Chapter 7  
Honorable S.W. RHODES

**TRUSTEE'S REPORT OF UNDISCLOSED ASSET**

Pursuant to E.D. Mich. LBR 2015, the trustee hereby reports that the trustee discovered the following assets after the debtor testified at the meeting of creditors that the schedules are accurate:

Describe assets

1. UNDISCLOSED EMPLOYMENT LAW TORT ACTION:  
Trustee is in the process of employing special counsel to prosecute this cause of action.
2. UNDISCLOSED FMLA (Family Medical Leave Act) WRONGFUL DISCHARGE ACTION:  
Trustee is in the process of employing special counsel to prosecute this cause of action.

This report is for informational purposes only. No response is permitted.

/s/ BASIL T. SIMON  
BASIL T. SIMON (P26240)  
Trustee  
422 W. Congress, Suite 400  
Detroit, MI 48226  
313.962.6400  
[bsimon@aspcc.com](mailto:bsimon@aspcc.com)

Date: September 10, 2008

08-54687-dwr Doc 25 Filed 09/18/08 Entered 09/18/08 10:05:42 Page 1 of 1

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:  
DIETRICH, PAUL JOSEPH  
Debtor /

Case No. 08-51418  
Chapter 7

**TRUSTEE'S REPORT OF UNDISCLOSED ASSETS**

Pursuant to E.D. Mich. LBR 2015, the trustee hereby reports that the trustee discovered the following assets after the debtor testified at the meeting of creditors that the schedules are accurate:

This report is for informational purposes only. No response is permitted.

1. Debtor has interest in Stocks

/s/ Stuart A. Gold  
STUART A. GOLD  
24001 NORTHWESTERN HIGHWAY, SUITE 444  
SOUTHFIELD, MI 48075  
(248) 350-8220

Date: June 23, 2008

08-51418-rbm Doc 12 Filed 06/23/08 Entered 06/23/08 16:18:21 Page 1 of 1

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*An Empirical Study of Consumer Bankruptcy Papers*

73 Am. Bankr. L.J. 653 (Summer 1999)  
Westlaw: 73 AMBKRLJ 653

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*A Preview of "Demonstrating a Serious Problem with  
Undisclosed Assets in Chapter 7 Cases"*

2002 No. 5 (May) Norton Bankr. L. Adviser 1  
Westlaw: 2002 NO. 5 NRTN-BLA 1

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[steven\\_rhodes@mieb.uscourts.gov](mailto:steven_rhodes@mieb.uscourts.gov)

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**APPENDIX C SECTION 341(a) MEETING OF CREDITORS****REQUIRED STATEMENTS/QUESTIONS<sup>131</sup>**

1. State your name and current address for the record.
2. Please provide your picture ID and Social Security number card for review.
  - a. If the documents are in agreement with the ' 341(a) meeting notice, a suggested statement for the record is:  
  
 AI have viewed the original State of \_\_\_\_\_ drivers license (or other type of original photo ID) and original Social Security card (or other original document used for proof) and they match the name and Social Security number on the ' 341(a) meeting notice.@
  - b. If the documents are not in agreement with the ' 341(a) meeting notice, a suggested statement for the record is:  
  
 AI have viewed the original Social Security card (or other original document used for proof) and the number does not match the number on the ' 341(a) meeting notice. I have instructed the debtor (or debtor=s counsel) to submit to the court an amended verified statement by [date], with notice of the correct number to all creditors, the United States Trustee, and the trustee; and to file with the court a redacted copy of the notice, showing only the last four digits of the Social Security number, and a certificate of service.@
  - c. When the documents do not match the petition, the trustee shall attempt to ascertain why and shall report the matter to the United States Trustee.
  - d. If the debtor did not bring proof of identity and Social Security number, the trustee shall determine why.
3. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?
4. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?
5. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
6. Have you previously filed bankruptcy? (If so, the trustee must obtain the case number and the discharge information to determine the debtor(s) discharge eligibility.)
7. What is the address of your current employer?
8. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
9. Do you have a domestic support obligation? To whom? Please provide the claimant=s address and telephone number, but do not state it on the record. Are you current on your post-petition domestic support obligations?
10. Have you filed all required tax returns for the past four years?

**SAMPLE GENERAL QUESTIONS**

(To be asked when deemed appropriate.)

1. Do you own or have any interest whatsoever in any real estate?

If owned: When did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate the present value of the property to be? Is that the whole value or your share? How did you arrive at that value?

If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?

2. Have you made any transfers of any property or given any property away within the last one year period (or such longer period as applicable under state law)?

If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds?

3. Does anyone hold property belonging to you?

If yes: Who holds the property and what is it? What is its value?

4. Do you have a claim against anyone or any business?

If there are large medical debts, are the medical bills from injury?

Are you the plaintiff in any lawsuit?

What is the status of each case and who is representing you?

5. Are you entitled to life insurance proceeds or an inheritance as a result of someone's death?

If yes: Please explain the details.

If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the trustee must be advised within ten days through your counsel of the nature and extent of the property you will receive. FRBP 1007(h)

6. Does anyone owe you money?

If yes: Is the money collectible? Why haven't you collected it? Who owes the money and where are they?

7. Have you made any large payments, over \$600, to anyone in the past year?

8. Were federal income tax returns filed on a timely basis? When was the last return filed?

Do you have copies of the federal income tax returns? At the time of the filing of your petition, were you entitled to a tax refund from the federal or state government?

If yes: Inquire as to amounts.

9. Do you have a bank account, either checking or savings?

If yes: In what banks and what were the balances as of the date you filed your petition?

10. When you filed your petition, did you have:

- a. any cash on hand?

APPENDIX C SECTION 341(a) MEETING OF CREDITORS

- b. any U.S. savings bonds?
- c. any other stocks or bonds?
- d. any certificates of deposit?
- e. a safe deposit box in your name or in anyone else's name?

11. Do you own an automobile?

If yes: What is the year, make, and value? Do you owe any money on it? Is it insured?

12. Are you the owner of any cash value life insurance policies?

If yes: State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries.

13. Do you have any winning lottery tickets?

14. Do you anticipate that you might realize any property, cash or otherwise, as a result of a divorce or separation proceeding?

15. Have you been engaged in any business during the last six years?

If yes: Where and when? What happened to the assets of the business?

.....

[1] These statements/questions are required. The trustee shall ensure the debtor answers the substance of each of the questions on the record. The trustee may exercise discretion and judgment in varying the wording of the statements/questions, if the substance of the questions is covered.

AMERICAN BANKRUPTCY INSTITUTE

2010 NORTHEAST CONSUMER WINTER FORUM

JANUARY 18, 2010

**FULL DISCLOSURE OF ASSETS IN A CHAPTER 7 CASE ----**

**A CHECKLIST FOR DEBTOR'S COUNSEL**

George I. Roumeliotis  
HENDEL & COLLINS, P.C.  
101 State Street  
Springfield, MA 01103  
(413) 734-6411  
[groumeliotis@hendelcollins.com](mailto:groumeliotis@hendelcollins.com)

John J. Aquino, Esq.  
ANDERSON AQUINO LLP  
240 Lewis Wharf  
Boston, MA 02110  
(617) 723-3600  
[jj@andersonaquino.com](mailto:jj@andersonaquino.com)

**SATISFYING THE REQUIREMENT OF FULL  
DISCLOSURE OF ASSETS IN A CHAPTER 7 CASE –  
A CHECKLIST FOR DEBTOR'S COUNSEL**

**I. REAL PROPERTY**

. Provide all evidence of debtor's current ownership interest of real property, including property in which the debtor may be a co-owner, life tenant, remainderman or beneficiary under a real estate trust.<sup>1</sup> Although the prospective debtor may not believe they have an ownership interest in the parental property, a good practice may be to ask the debtor where the parents live, and then check the real estate records for that county.

. Provide documentation regarding all real estate transferred by the debtor within four years of the bankruptcy filing. In the event the debtor is divorced, provide the separation agreement to determine whether the debtor retains any right to proceeds in the event of a future sale of the property.

. Disclose all interests in real estate held by non-debtor insiders with respect to which the debtor receives any direct or indirect benefit, including use or occupancy, income, etc.

Representative Examples of Cases Involving Undisclosed Real Estate Assets:

1) Debtor held an interest in a vacation home that she inherited from her late husband, who owned the house as a tenant-in-common with his siblings. House was originally owned by husband's parents, who transferred property to children as estate planning measure. Result: Recovery of \$43,000 for benefit of estate.

2) Debtor's mother transferred ownership of her residence to the debtor and his brother, subject to a life estate, without the debtor's knowledge. Result: Recovery of \$83,500 for estate.

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<sup>1</sup>Note that often the failure to disclose an interest in real estate is unintentional, as the debtor may not even be aware of the ownership interest. Counsel should ensure that debtors make due inquiry of non-debtor spouses, parents, and siblings as to any interests in real property they may exist as of the petition date.

3) Debtor did not list any ownership interests in real estate in bankruptcy schedules. Shortly before the petition date, the debtor's spouse commenced a divorce action. Approximately six months after the petition date, the debtor entered into an agreement in the divorce action that would have entitled him to a 50% share of the proceeds of real estate (the former marital home) held in wife's name. Result: Recovery of \$22,000 for estate.

4) Debtor transferred interest in residence to children, reserving for himself a life estate interest in the property. Debtor failed to disclose that prior to the petition date a state court had determined the transfer to be a fraudulent conveyance and ordered transferees to re-convey the property to the debtor. Result: Recovery of \$683,000 for estate.

5) Debtor failed to list any ownership interests in real estate in bankruptcy schedules. Based upon information from a former business partner, trustee identified raw land in Idaho titled in Debtor's name. Result: Recovery of \$29,000 for estate.

6) Debtor failed to list ownership interest in parcel of land subject to tax taking as of petition date. Debtor redeemed property post-petition. Result: Recovery of \$15,000 for estate.

7) Debtor failed to list ownership interest in real estate (and various items of personal property) in bankruptcy schedules. After the case was commenced, the Debtor became involved in a divorce proceeding in Nova Scotia where he filed an affidavit detailing property holdings he held there. Debtor's spouse learned he filed for bankruptcy in Massachusetts, and then shared the affidavit with the Office of the U.S. Trustee here. Result: Recovery of real estate and other assets in Canada worth over \$500,000, denial of the Debtor's discharge, and prosecution for bankruptcy fraud.

8) Debtor failed to list existence of a legal action in which he sought a mechanic's lien on real estate owned by another party. Result: Recovery of approximately \$10,000 for estate.

## II. **PERSONAL PROPERTY**

### A. Tangible Personal Property

. Obtain and be prepared to provide documentation (bills of sale, insurance binders, appraisals, etc.) regarding debtor's ownership interest in any tangible personal property having a value in excess of \$1,000, including automobiles, boats, ATVs, jet skis, artwork, jewelry, etc.

Disclose and provide explanation of basis of ownership status regarding any tangible personal property owned individually by non-debtor insiders, in particular assets acquired by non-debtor spouses during course of marriage.

### Representative Examples of Cases Involving Undisclosed Tangible Personal Property:

#### 1) Motor Vehicles:

a) Debtor failed to disclose interest in automobile transferred to non-debtor spouse prior to petition date. The spouse used the vehicle as a trade-in toward the purchase of a new automobile, which was then registered in spouse's name, individually. Result: Recovery of \$7,500 for benefit of estate.

b) Debtor failed to list ownership of any vehicles. Upon investigation, trustee found that non-debtor spouse held title to multiple vehicles, including vehicle primarily used by debtor. Other than the vehicles, the debtor and his spouse did not maintain separate financial accounts or assets. Trustee determined that debtor held equitable interest in vehicle. Result: Recovery of \$11,000 for estate.

c) Debtor (same one as above with Nova Scotia real estate) failed to disclose vintage Corvette, construction equipment, and over \$60,000 in cash hidden in various compartments in a recreational vehicle. Result: Recovery of Corvette and equipment for estate and one half of the value of the RV and the hidden cash (the other half being kept by U.S. Customs as a result of the Debtor failing to disclose the movement of more than \$10,000 in cash into the United States).

#### 2) Recreation Vehicles:

Debtors failed to disclose ownership interest in two All Terrain Vehicles. A review of bank records uncovered purchase of ATVs. Result: Recovery of \$6,000 for estate.

#### 3) Boats:

Debtor failed to disclose ownership interest in boat. An asset search by United States Trustee revealed a 20 foot boat registered in name of the debtor. Result: Recovery of \$4,500 for estate.

4) Equipment:

a) Commercial debtors failed to disclose interest in construction equipment. Result: Recoveries of \$15,000 and \$10,000 for estates (separate cases).

b) Individual debtor failed to disclose interest in manufacturing equipment. Result: Recovery of \$15,000 for estate.

B. Intangible Personal Property

. Provide all available documentation regarding debtor's interest in intangible personal property, including accounts, utility, insurance and tax refunds, and potential causes of action, including personal injury claims.

. With respect to bank accounts, confirm amounts on deposit and review pre-petition transfers for the one year period prior to the bankruptcy filing. Disclose all payments made outside the ordinary course of business where required in the *Statement Of Financial Affairs*. Regarding life insurance policies, provide evidence of ownership, beneficiaries, death benefit and cash value of all policies.

Representative Examples of Cases Involving Undisclosed Intangible Personal Property:

1) Debtor failed to disclose employment discrimination claim. Result: recovery of \$50,000 for benefit of estate.

2) Debtor failed to disclose personal injury claim against Catholic Church. Result: recovery of \$107,000 for benefit of estate.

3) Debtor failed to disclose personal injury claim against the City of Boston and individual police officers. Debtor commenced lawsuit on account of claims within 30 days of case closing. Result: Recovery for estate: \$37,000.

4) Debtor failed to disclose personal injury claim as well as pending insurance recovery claim for loss of personal property. Result: Recovery for estate: \$19,600.

5) Debtor failed to disclose personal injury claim against City of Somerville. Result: recovery of \$55,000 for benefit of estate.

6) Commercial merchant debtor failed to disclose status as class action claimant in lawsuit involving overcharges of VISA and Mastercharge credit card fees. Result: Receive of \$65,500 for benefit of estate.

7) Commercial debtors failed to disclose status as class action claimants in lawsuit involving overcharges for gasoline deliveries. Result: \$186,600 and \$46,700 for benefit of estate (separate cases involving same litigation).

8) Commercial debtors failed to disclose potential claims against officers and directors. Result: Recoveries of \$2,500,000 and \$435,000 (separate cases and lawsuits).

9) Commercial debtor failed to disclose claim against Citibank for allowing unauthorized withdrawal of funds. Result: Recovery of \$45,700 for benefit of estate.

10) Commercial debtor failed to disclose estate's interest in liquor license. Following closure of case, debtor attempted to convey asset to third party. Result: Recovery for estate of \$220,000.

11) Debtor failed to disclose estate's interest in promissory note resulting from sale of commercial business and property. Result: Recovery for estate of \$208,000.

12) Commercial debtor failed to disclose estate's ownership interest in whole life insurance policies on debtor's principal. Result: Recovery for estate of \$9,900.

13) Tax Refunds: Recoveries for numerous undisclosed federal and state tax refunds have ranged from \$168 to more than \$70,000.

14) Bank Accounts: Recoveries for numerous undisclosed (or under-disclosed bank accounts) have ranged from \$500 to more than \$10,000.

15) Insurance Refunds: Recoveries for undisclosed workers' compensation or general liability insurance refunds have ranged from \$200 to more than \$14,000 per policy.

### III. MISCELLANEOUS

A. Fraudulent and Preferential Transfers – Review bank statements and check registers for at least 3 months prior to the bankruptcy filing to identify larger payments to creditors. Also, review credit card statements going back several months to look for balance transfers which may

constitute preferential transfers. Disclose unusual transfers where appropriate on debtor's schedules and/or Statement of Financial Affairs.

B. Closely Held Businesses – Check public records concerning connection between debtor and corporations or other business entities. In one case, a Debtor failed to list ownership of corporation in which she owned 100% of the stock, and which had as its only asset a single parcel of real estate that had over \$50,000 of equity. Result: Recovery of that equity for the bankruptcy estate and denial of discharge.

**Inconsistencies Discovered by Judge Rhodes in his  
1998 Empirical Study of Consumer Bankruptcy Filings**

Ann Brennan, Esq.  
Stephen E. Shamban Law Offices, P.C.  
PO Box 850973  
222 Forbes Road, Ste. 208  
Braintree, MA 02185  
[ann\\_shambanlaw@yahoo.com](mailto:ann_shambanlaw@yahoo.com)

- 1. 54% of married debtors did not state whether the property listed on Schedule A & B were owned by either husband, wife, joint or was community property.**
  - Importance of determining and labeling ownership interest for the purpose of allocating the automobile and general exemptions.
- 2. 81% of debtors paying rent disclosed no security deposit.**
  - Make sure you ask client if there is a security deposit.
- 3. 85% of renting debtors did not disclose a lease.**
  - Do you have to identify the landlord?
  - Do you have to give them notice?
  - Can the landlord refuse to renew because of the bankruptcy?
- 4. 73% of Debtors who show an expense for life insurance disclosed no life insurance.**
  - Term/Whole life, loans against policy?
- 5. 54% of debtors who disclosed pension income, expense or union dues did not list a pension as an asset.**
- 6. 16% of debtors who filed joint petitions did not identify whether each debt was husband, wife or joint.**
  - Important to identify the % distribution of debt between the spouses, may be not in the best interest for both to file.
- 7. 83% of debtor's with business income or expenses failed to attach detailed statement of income and expense.**
  - What type of statement should you use?

8. **21% of debtors who stated an intent to reaffirm secured debt did not include it in budget.**
9. **14% of all Chapter 7 debtors did not address all their secured debt in their Statement of Intentions.**
  - Do you include real estate mortgage?
  - Is retain/pay a valid other option?
10. **5% of debtors disclosed expenses for automobile payment but no automobile**
  - What is the proper way to list an auto when another family member purchased it for debtor, is on the title, or took out loan for debtor?
11. **43% of Chapter 7 debtors disclosed expenses not within 10% of income.**
  - If current with minimum payments, how were they making them?
  - If not current and expenses greater than income, how do they make monthly utilities, mortgage payments?
  - Are these questions relevant?
12. **In 12.5% of cases, debtor's disclosure of fee paid was inconsistent with attorney's disclosure.**
13. **71% of Chapter 13 debtors improperly estimated that no funds would be distributed to creditors.**
  - Common error.
14. **2% of debtors who indicated primarily consumer case should have indicated a business case.**
  - How do you determine?
  - Do you measure dollar balance, number of creditors?
  - Is the residential mortgage considered consumer debt?
  - Is tax debt considered consumer debt?
  - Effects whether you need to submit means test, and bad faith filing (i.e. too much excess income on budget) not relevant.
15. **10.5% of Debtors fail to date their Schedules.**
16. **19% of debtor's signed papers more than 15 days before the petition was filed.**
  - When is the right time to have the client sign?
  - Effect a client's 2 week pay check could have on bank account balance before monthly mortgage, utility payments are cleared.

- Effect of holding cases to file as a group.

**17. 5.5% of debtors signed papers before filing of skeleton, but filed papers afterwards.**

- Is date important?

- Is holding back of Schedules, especially I & J, wise Chapter 13 planning?

Name of client: \_\_\_\_\_  
 Case No.: \_\_\_\_\_ Date of filing: \_\_\_\_\_

VOLUNTARY CHAPTER 13 CASE FILE CHECKLIST

- o Date of initial Consultation: \_\_\_\_\_
- o Ordered Title Rundown on \_\_\_\_\_ from \_\_\_\_\_ received \_\_\_\_\_
- o Declaration of Homestead recorded on \_\_\_\_\_ at \_\_\_\_\_
- o Clients Acknowledgement of Notices signed on \_\_\_\_\_
  1. 11 U.S.C. Sec. 527 Notice;
  2. Notice to Individual Consumer Debtor;
  3. Fee Schedule; and
  4. Initial Fee Agreement and Request for Information
- o Credit Counseling List
- o How to Request Copy of Tax Return
  - Tax Returns Current \_\_\_\_\_ Tax Returns Due \_\_\_\_\_
  - Copies of most recent Return \_\_\_\_\_, Tax Returns provided \_\_\_\_\_
  - Trustee \_\_\_\_\_
- o Median Family Income
- o Allowable Living Expenses
- o Means Test
- o How to request free credit report –
  - Credit Report Received \_\_\_\_\_
- o Questionnaire Consumer
- o Declaration of Electronic Filing (3)
- o Financial Management List & letter explaining requirement to obtain discharge
  - \_\_\_\_\_ Documents from Client
  - \_\_\_\_\_ Fee Agreement signed, received
  - \_\_\_\_\_ Credit Counseling Report
  - \_\_\_\_\_ Business Documents
  - \_\_\_\_\_ Pay Stubs \_\_\_\_\_ 6 Months \_\_\_\_\_ 2 Months
  - \_\_\_\_\_ Proof of income: Rent \_\_\_\_\_, Retirement \_\_\_\_\_
  - \_\_\_\_\_ Family contribution \_\_\_\_\_, Other \_\_\_\_\_
  - \_\_\_\_\_ Final Payment
  - \_\_\_\_\_ 341 Meeting \_\_\_\_\_ Trustee Documents due \_\_\_\_\_, sent \_\_\_\_\_
  - \_\_\_\_\_ Letter to Client Re: Meeting
  - \_\_\_\_\_ Skeleton filed
  - \_\_\_\_\_ Petition filed
  - \_\_\_\_\_ Chapter 13 Plan \_\_\_\_\_ Letter to client explaining Plan
  - \_\_\_\_\_ Certificate of Insurance \_\_\_\_\_ Declaration of Insurance
  - \_\_\_\_\_ Financial Management due \_\_\_\_\_, filed \_\_\_\_\_
  - \_\_\_\_\_ received discharge
  - \_\_\_\_\_ Letter to Client Re: Discharge

ab: file checklist. B. 121409

Name of client: \_\_\_\_\_

Case No.: \_\_\_\_\_ Date of filing: \_\_\_\_\_

VOLUNTARY CHAPTER 7 CASE FILE CHECKLIST

o Date of initial Meeting \_\_\_\_\_

o Ordered Title Rundown on \_\_\_\_\_ from \_\_\_\_\_ received \_\_\_\_\_

o Declaration of Homestead recorded on \_\_\_\_\_ at \_\_\_\_\_

o Clients Acknowledgement of Notices signed on \_\_\_\_\_

- 1. 11 U.S.C. Sec. 527 Notice;
- 2. Notice to Individual Consumer Debtor;
- 3. Fee Schedule; and
- 4. Initial Fee Agreement and Request for Information

o Credit Counseling List

o How to Request Copy of Tax Return

Tax Returns Current \_\_\_\_\_ Tax Returns Due \_\_\_\_\_  
 Copies of most recent Return \_\_\_\_\_

o Median Family Income

o Allowable Living Expenses

o Means Test

o How to request free credit report --

Credit Report Received \_\_\_\_\_

o Questionnaire Consumer

o Declaration of Electronic Filing (3)

o Financial Management List & letter explaining requirement to obtain discharge

\_\_\_\_\_ Documents from Client

\_\_\_\_\_ Fee Agreement signed, received

\_\_\_\_\_ Credit Counseling Report

\_\_\_\_\_ Pay Stubs \_\_\_\_\_ 6 Months \_\_\_\_\_ 2 Months

\_\_\_\_\_ Final Payment

\_\_\_\_\_ 341 Meeting \_\_\_\_\_ Trustee Documents due: \_\_\_\_\_ sent: \_\_\_\_\_

\_\_\_\_\_ Letter to Client Re: Meeting

\_\_\_\_\_ Skeleton filed

\_\_\_\_\_ Petition filed

\_\_\_\_\_ Means test filed

o Financial Management due \_\_\_\_\_, filed \_\_\_\_\_

\_\_\_\_\_ received discharge

\_\_\_\_\_ Letter to Client Re: Discharge

ab: file checklist. A. 121409

**CLIENT CHECKLIST**

Please provide copies of the following to be retained by  
Stephen E. Shamban Law Offices, P.C.

Client checklist	Document	Attorney checklist
	License or picture ID	
	Social security card	
	Deed into home (if own home or other real estate)	
	Latest mortgage statement	
	Latest property tax bill	
	Copy of homestead	
	Appraisal or broker's price opinion or comparable market analysis	
	Title exam	
	Declaration page of Property insurance with attachments	
	Auto title	
	Auto lease	
	Kelly Blue Book estimate of value (private sale) or: Year of car, make, model Condition, mileage	
	6 months of bank statements for each bank account	
	Latest statement for 401k, IRA or any other financial account	
	Divorce Judgment	
	Proof child support, alimony	
	Last 6 months of paystubs or Proof of income	
	Last 60 days before filing Paystubs or proof of income	
	Proof of rental income	
	Proof of family contribution	
	Proof of social security	
	Proof of monthly pension payments	
	Proof of any other form of Income	
	Tax returns and W2's for Last 2 years	

	If you have not filed last year tax returns – Chapter 13 Affidavit as to why taxes have not been filed	
	Credit card statements for last 3 months	
	Other proof of debt	
	Credit report	
	Credit Counseling Certificate	
	Budget (Schedules I and J)	
	Questionnaire	

Documents I cannot provide:

Document:

Reason:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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I, \_\_\_\_\_ (client) acknowledge that on \_\_\_\_\_  
 \_\_\_\_\_ I received the above referenced check list from \_\_\_\_\_  
 \_\_\_\_\_ (attorney). I acknowledge that Stephen E. Shamban Law  
 Offices, P.C. may not be able to file a bankruptcy petition for me until all of the documents  
 relevant to my case are provided by me.

\_\_\_\_\_  
 Signature (client)

\_\_\_\_\_  
 Signature (attorney)