



# BANKRUPTCY NEWSLETTER

JAN  
2016

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STATE BAR  
of NEW MEXICO

# ***CHANGES*** **in the Official Bankruptcy Forms** ***EFFECTIVE DECEMBER 1, 2015***

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The updated bankruptcy forms became effective December 1, 2015.

As a reminder, the new forms must be used even for cases which were filed prior to that date.

For copies of the updated forms, consult your software provider or <http://www.uscourts.gov/forms/bankruptcy-forms>.



## **MALLO UPDATE:** **9th Circuit BAP Weighs In**

Those of you following the fallout from the Tenth Circuit's decision in Mallo that a late-filed tax return is not a tax return at all may be interested to know that the Ninth Circuit Bankruptcy Appellate Panel has weighed in on the issue. The Ninth Circuit did not spare criticism of the literal interpretation of the code used by the Tenth Circuit in Mallo and the Fifth Circuit in McCoy. The Ninth Circuit BAP goes so far as to say of the literal interpretation: "[t]his makes no sense," and "this reasoning not only is circular but also undermines a contextual reading of the statute." The case is *United States v. Martin et al.* (In re Martin et al.), 2015 WL 925290 (9th Cir. 2015). With the Martin decision, the stage has been set for a Supreme Court ruling to address this divisive issue. support it, an undersecured claim is still a "secured claim" within the meaning of 11 U.S.C. § 506(d).



## **Retirement of Chapter 7 Panel Trustee *MICHAEL CAPLAN***

Chapter 7 panel trustee Michael J. Caplan, a long-time fixture of Chapter 7 practice and the bankruptcy bar in general has officially announced his retirement and will not be taking any more new Chapter 7 cases. He has indicated that he plans to surrender his law license. At this time, the U.S. Trustee's office does not plan to appoint a new Chapter 7 panel trustee. Well-wishes and congratulations for Mr. Caplan may be directed to [michaelcaplanlaw@qwestoffice.net](mailto:michaelcaplanlaw@qwestoffice.net).

# Letter to the Editor

From: James A. Askew

I found Prof. Foster's analogy, from Dan Bussel's commentary, quite interesting in analogizing the relationship of the Supreme Court and the bankruptcy community to that of the Greek gods and mere mortals.

*"The decisions of the Supreme Court may fall like thunderbolts from Almighty Jove. There is a blinding flash, perhaps some spectacular damage to a restricted area. Temporarily there is terror and repentance. But soon calm is restored and with it confidence that, granted a proper observance of prescribed rituals and occasional adaptation of their form to the whims of an angry god, there is likely to be very little interference with the actual plans of those who walk the earth below."*

Think of Stern v. Marshall and Wellness.

Source: Daniel Bussel at <http://www.scotusblog.com/2015/05/commentary-wellness-after-stern/>



## US Trustee Program Settles with Wells Fargo on PCNs

On November 19, 2015, the United States Bankruptcy Court for the District of Maryland approved a settlement between the U.S. Trustee Program and Wells Fargo Bank, N.A.. As a part of the settlement, Wells Fargo has agreed to pay \$81.6 million in remediation for its repeated failures to provide homeowners in bankruptcy with mortgage payment change notices (PCNs) and to timely perform escrow analyses. The settlement results from Wells Fargo's failure to timely file more than 100,000 PCNs and its failure to timely perform more than 18,000 escrow analyses and over 42,000 untimely or missed PCNs. As a part of the settlement, Wells Fargo will be improving its processes

to ensure that PCNs are filed in bankruptcy court not less than 21 days before each payment is due. The settlement was approved in *In re Ernestine C.J. Green*, Case No. 11-33377, United States Bankruptcy Court for the District of Maryland (Doc. No. 54).



# SCOTUS

## to Weigh Whether § 523(a)(2)(A) Requires Misrepresentation

The Supreme Court has granted certiorari to resolve a circuit split as to whether nondischargeability for “actual fraud” under 11 U.S.C. § 523(a)(2)(A) requires misinterpretation, or may more broadly apply to a fraudulent transfer scheme. The case is *Husky International Electronics, Inc. v. Ritz*, Docket No. 15-145, and it is set for argument on March 1, 2016.



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## U.S. Trustee’s Referral Leads to Convictions in Loan Modification Fraud Scheme

On September 15, 2015, Ped Abghari and Justin Romero plead guilty to wire fraud and conspiracy to commit wire fraud in a massive loan modification scheme that defrauded over 8000 homeowners across the nation out of over \$18.5 million in the Southern District of New York. Evidence separately uncovered by Alice Page of the U.S. Trustee’s Albuquerque office, and subsequently provided to the U.S. Attorney for the Southern District of New York and SIGTARP contributed significantly to the third count against the defendants, misprision of a felony. Ms. Page’s investigation initially began as an action against a bankruptcy petition preparer under 11 U.S.C. § 110, but expanded once the scale of the fraud was revealed.







## *Lawyer Referral Programs:* A Message from the State Bar

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Just a reminder that the State Bar has two referral programs that you might want to consider joining - the General Referral Program and the Legal Resources for the Elderly Program (LREP). Both programs are great ways to connect with potential clients.

Attorneys who sign up with the Bar's General Referral Program agree to provide referral clients with a free, 30 minute consultation. Any services rendered after the initial 30 minutes would be billed at the attorney's regular hourly rate. The General Referral Program has no age or income limits. The State Bar charges the referral client a \$35.00 referral fee. The General Referral phone line receives over 10,000 calls per year.

LREP is a free legal helpline and referral service for New Mexico Residents age 55 and older (LREP also has no income limits). LREP clients speak with an LREP staff attorney who provides legal advice and brief services. If the LREP staff attorney determines that the client has a matter that would benefit from full direct representation, the staff attorney refers the client to an LREP referral panel attorney with a recommendation for pro bono, reduced fee, or full fee representation. Bankruptcy cases are almost always referred with a recommendation for full or reduced fee. LREP speaks with approximately 4,000 clients per year.

## UPCOMING EVENTS

### February 24th, 2016 Basketball Game

Sutin, Thayer & Browne is hosting 17 members of the bankruptcy bar in their UNM basketball suite on Wednesday, February 24, 2016, Women Lobos vs. Colorado State.

Sutin, Thayer & Browne will provide food and drink. Please RSVP to Jacqueline Ortiz at [jno@sutinfirm.com](mailto:jno@sutinfirm.com). First 17 to respond will receive tickets.

### Consumer Debt/Bankruptcy Workshops

Albuquerque: 6–8 p.m., State Bar Center, 5121 Masthead NE, Albuquerque, 87109  
January 27, February 24, March 23, April 27, May 25, June 22, July 27, August 24,  
September 28, October 26, December 14.

To attend the workshops, call 1-800-876-6657

To volunteer for the workshops as an attorney, call 505-797-6047



## Call for Topic Submissions

Did you or a friend do something fun? Take a great photo? Go someplace cool? Win an award? Know something interesting that's happening and want to let everyone know? Write to me at [dwhite@askewmazelfirm.com](mailto:dwhite@askewmazelfirm.com) and your vacation, award, cool event, activity, or photo could be featured in the next quarter's newsletter.

