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U.S. Courts Prepared For 'Chapter 13 Word?'

By Heather Fletcher

MINEOLA - Collection attorney Irwin S. Kirschenbaum fears he may not get the same high-quality Chapter 13 trustee service he's used to when new bankruptcy laws take effect this fall.

Kirschenbaum, a partner in the Mineola law firm of Kirschenbaum and Phillips, said he expects the Island to see a spike in the type of bankruptcy filings that force debtors to repay unsecured debts, such as personal loans. Previously, Chapter 7 filings dominated, which called for debtors to repay fewer obligations.

The U.S. Trustee Program is evaluating the need for additional trustees. Officials there and with U.S. District Court said it is too soon to predict the level of Chapter 13 filing increases. But the new law does provide the Eastern District with an additional bankruptcy judge.

"You're going to get a much more watered-down Michael Macco," confirmed Macco, one of two Chapter 13 trustees for U.S. Bankruptcy Court, Eastern District of New York. He oversees personal bankruptcies in Nassau and Suffolk, as well as Brooklyn, Queens and Staten Island.

Bankruptcy court records show the district's Chapter 13 trustees handled 4,717 cases in 2004 and the district's seven Chapter 7 trustees oversaw 21,570 bankruptcies.

But the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 makes filing a Chapter 7 bankruptcy more difficult due to a new "means test" that determines what level of payments a debtor can make,

experts say.

"The bankruptcy world is going to become almost a Chapter 13 world," said Macco, predicting more Chapter 13s. "Basically, it's going to flip flop."

That means the court may bury the same number of trustees with all these extra cases, Kirschenbaum said. While Chapter 13 trustees Macco and Marianne DeRosa are skilled enough to find, for instance, debtors' assets hidden in someone else's name, Kirschenbaum worries that those trustees may end up spread too thin and their support staff may not have as expert an eye to make such catches.

Macco said he may have to expand his support staff. Otherwise, his eight days in court overseeing asset-determining hearings may grow to 12 to 15 of his 22 monthly working days. In effect, the new law makes a trustee more of an administrator than a courtroom presence, he said. Macco said he'd like to expand his staff of seven full-timers and three part-timers to 12 to 15 full-timers.

Ideally, Macco said, he would like to see the trusteeship expanded, but that is unlikely. Four years ago, the Eastern District had four Chapter 13 trustees and the program hasn't replaced the two the district lost, he said.

DeRosa is more optimistic. "My guess is that it will eventually level out," she said. "The trustees that are on the panel, the bar and the bench will make it work, just as we always have."

Leslie A. Berkoff, a partner with the Garden City law firm of Moritt,

Hock, Hamroff and Horowitz, said if the new law works as intended, the Island will see a spike in Chapter 13 filings. But if debtors play the system and, say, hold off on filing bankruptcy so they can qualify for Chapter 7 or settle out of court, the numbers may be lower.

"Any system is always subject to loopholes."

Harold Somer, a sole practitioner in Westbury specializing in bankruptcy, said the whole system will become more costly with the law changes because more paperwork is required to verify the debtor's income and assets. "It's not going to get any easier," he said.

In the meantime, Chapter 7 trustee Kenneth Kirschenbaum, no relation to Irwin, said he expects a glut of filings in October. Personal bankruptcies will balloon because people will try to beat the law that takes effect mid-month, said the partner at the Garden City law firm of Kirschenbaum and Kirschenbaum.

"People are trying to file now, anticipating that the change in the law may adversely affect them or prevent them from filing a Chapter 7," he said.

After that, Kenneth Kirschenbaum said he expects a drop in Chapter 7 filings that will result in a loss of money in that part-time aspect of his career. But he expects to easily make up the slack by continuing to represent the burglar and fire alarm industries. "Being a Chapter 7 trustee is not a full-time position," he said.