

# Central District Consumer Bankruptcy Attorney Association

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## From the President

By: **Brett Curlee**

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I hope you all had a great summer. We are kicking off the fall season with a number of important events.

First, I am proud to announce the first season of the Southern California Bankruptcy Inn of Court sponsored by the CDCBAA. The Inn of Court is a time-honored tradition going back to the British Barrister system prior to the American Revolution and we are one of only four bankruptcy Inn's in the United States.

The Inn of the Court will have six dinner meeting starting October 16, 2007 at Taix Restaurant, at 1911 Sunset Boulevard, in Los Angeles. If you have not received your invitation, please call our Inn of Court Coordinator, Cynthia Meza, at (818) 242-1100 for more information and an


invitation. Cynthia, thanks for your hard work and dedication in helping the committee get the Inn off the ground!

The Inn will feature interactive programs and an opportunity for bankruptcy judges, bankruptcy attorneys, U.S. Attorneys, and law students interested in practicing bankruptcy law, yes law students, to sit down and engage in the civil art of conversation, team building, and mentoring while enjoying a meal together, as colleagues sharing experiences and insights. All participants are required to check their game faces at the door, and to be ready to enjoy an evening of fine dining and collegiality. I would especially like to thank the committee that worked so hard on this event, including Judge Robert Kwan, James King, Byron Moldo, David Titem, and Dennis McGoldrick for their hard work. Byron and Jim, the extra effort that you put in this summer was especially appreciated. I would also like to thank Chief Judge Zurzolo and Bankruptcy Judges, Alan M. Ahart, Samuel Bufford (CDCBAA's Judge of the year for 2005), Thomas Donovan, Meredith Jury, Geraldine Mund, Maureen Tighe, and Kathleen Thompson for their support in getting this Inn off the ground.

Our next CDCBAA meeting, October 20, 2007, will be unique given its importance to all bankruptcy practitioners.



daughter Vanessa is on the Costa Rica National Soccer team. She has travelled the world playing soccer including a recent trip to Egypt. She, of course, showed me pictures like the proud mom she is.

Check out Liz' website at [www.ch13wla.com](http://www.ch13wla.com). All the forms are there plus instructions, news and answers to questions. 

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## Filing Bankruptcy For Debtors Living/Working Outside the United States

By Mark J. Markus  
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This article addresses the confusion and issues involved in representing debtors who on the petition filing date live or work outside of the United States and have done so for more than 90 days prior to the petition date. This arises more frequently than one might imagine, with military, people caring for sick relatives abroad, or even people who simply moved outside the United States, leaving behind lots of debt incurred here.

The questions/issues revolve around two main concepts: Subject Matter Jurisdiction and Venue. These are two separate and distinct concepts. The former tells you IF a debtor may file a bankruptcy case (or, more accurately, whether the bankruptcy court has jurisdiction over that particular debtor). The latter tells you WHERE the bankruptcy case may be commenced. You can't get to the venue question unless Subject Matter Jurisdiction is met. Ok, so much for the review of the first week of your law school Civil Procedure class.

### SUBJECT MATTER JURISDICTION

11 U.S.C. §109(a) provides that "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." Thus, in order to file a bankruptcy in the United States, a

debtor must meet at least one of the above disjunctive requirements. This discussion will be limited to non-municipalities.

In determining domicile, physical presence is not required, but rather a subjective intent to make a place their domicile. See for example, In re Donald, 328 B.R. 192 (9<sup>th</sup> Cir. BAP 2005). When a person's domicile is in doubt, the difficult question is usually whether the individual had the requisite subjective intent. "This enquiry is 'essentially factual' in a sense that it requires consideration of all the circumstances." Lew v. Moss, 797 F.2d 747, 750 (9<sup>th</sup> Cir. 1986).

"One's own declarations regarding intent are pertinent but ordinarily will be substantially discounted by the court when inconsistent with objective facts." Coury, 85 F.3d at 251; The Supreme Court has noted that a declaration regarding intent for purposes of domicile "is, of course, to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negated by other declarations and inconsistent acts." Dist. of Columbia v. Murphy, 314 U.S. 441, 456 (1941) (tax domicile).

If the debtor has no domicile, residence, or place of business in the USA, then *any* property should suffice to establish jurisdiction. Most (but definitely not all) courts allow even a simple bank account within the United States to establish jurisdiction. See for example, In re Iglesias 226 B.R. 721 (1998, BC SD Fla). See also In re Global Ocean Carriers, Ltd. 251 B.R. 31 (2000, BC DC Del). [bank accounts and attorney retainers held in escrow by counsel for debtor constituted sufficient property for eligibility under 11 USCS § 109].

Thus, it's possible that merely depositing retainer funds in your Trust account is sufficient to establish jurisdiction, and possibly even venue (although I'd personally feel much more comfortable with more connections than that).

### VENUE

Once you have established that a debtor is eligible to file in the United States, the next question becomes, "where?" The answer to this is provided in 28 U.S.C. §1408 which

**From the Clerk's Office - Filings are Up**  
These are actual filings in the Central District of California only.

	Jan-Jul 2007	Jan-Jul 2006	% difference
<b>Chap 7</b>	13,397	7,096	+89%
<b>Chap 11</b>	171	154	+11%
<b>Chap 13</b>	4,102	1,518	+170%

provides that a case may be commenced in the district in which “the domicile, residence, principal place of business **in the United States**, or principal assets **in the United States**, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than. . . of such person were located in any other district.” (emphasis added)

So what do you do when the debtor has been living outside the United States for more than the past 180 days? If they can prove domiciliary intent in a particular jurisdiction (in our case, hopefully in California), then that will suffice. If they own real property here, that will certainly suffice. Even a sole bank account, as with the Subject Matter Jurisdiction determination, will suffice in most instances although there are issues as to whether the situs of the bank controls in these matters. See for example, *In re Farmer*, 288 B.R. 31 (Bankr. N.D. NY 2002). The majority of courts have said that it does, but it would be best if the debtor has some other assets here. I’ve posited situations where the debtor owns a vehicle and parks it in someone’s garage in the district where he/she wants to file. If that’s their principal asset in the United States, I would argue that venue is appropriate where the car is parked even if it is potentially forum-shopping.

When relying solely on bank accounts, as mentioned, things can get dicey. For example, is it where the bank account was opened? Wells Fargo is based out of Portland, Oregon. If a debtor has an account with them, must they file in Oregon? Or, if they opened an account in Hollywood 25 years ago, is that sufficient to establish venue in Los Angeles?

Not to worry, folks. The reality is that venue is as it has always been. How many of you have seen venue objections before? They just don’t happen very often. If a debtor is eligible under 11 U.S.C. 109, then he MUST BE ABLE TO FILE SOMEWHERE in the United States. If there isn’t any overwhelming evidence pointing to one place over another (I can picture using Johnny Depp’s compass in “Pirates of the

Caribbean” to figure this out) then I submit that venue can be anywhere the debtor chooses. Worst case scenario is that the case gets moved to a different venue. 🚩

## Pay Attention to the Details in Your Chapter 13 Plan: Secured Creditors are Not Your Friend

By David Tilem  
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Over the last few years, NACBA has reported alarming rates of abuse by home mortgage servicers. Some believe that such abuse exists in EVERY Chapter 13 case where the debtor has a mortgage. To this point in time, our local bar has not reported these problems. There are three possible explanations. First, such abuse is grossly over-reported or over-stated (perhaps some are given to hyperbole). Second, the mortgage servicers have been more careful with respect to cases filed in our District (to placate the tooth fairy). Third, our practitioners are not sensitive to the problem and have not been recognizing it. Thanks to Erik Clark of Borowitz, Lozano & Clark, LLP, our local practitioners are getting a wake-up call. Erik deserves a huge vote of thanks not only from the practitioners, but also from our clients.

So what are these abuses? They include the assessment of miscellaneous fees for everything and anything which the lenders or servicers can dream up. They include the mis-allocation of payments received in Chapter 13 cases. They include filing relief from stay motions when such motions are clearly not warranted and then assessing legal fees. They include failing to give notice when such fees are assessed and then declaring defaults immediately after the conclusion of a Chapter 13 case - just when the client thinks they have solved their financial problems. They include failing to advise debtors and their counsel when adjustments occur on adjustable loans. They include failing to advise debtors and their counsel when tax and insurance escrow accounts are out of balance.

### Median Income Increasing on October 15, 2007

Dennis McGoldrick - demcg@demcg.com

The median income figures are increasing effective October 15, 2007. The new California numbers are:

#persons	1	2	3	4
Income	\$45,518	\$60,032	\$64,766	\$74,801