

Chapter 13 Compensation

March 23, 2015

On Friday, March 20th, the Court announced an increase in the limits for fees that may be charged by counsel for the debtor in chapter 13 cases in which a fully executed Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys, LBR Form 3015-1.RARA (“RARA”) is filed with the Court. The new limits are \$5,000 for nonbusiness cases and \$6,000 for business cases and these new amounts take effect on March 23, 2015. For all of Judge Johnson’s chapter 13 cases filed on or after March 23, 2015, the following provisions apply.

Non-Business Cases. In a chapter 13 case not involving a business, it is not necessary for an attorney for a chapter 13 debtor who seeks compensation of no more than \$5,000 to file a fee application if the attorney executes a RARA, files it with the Court and complies with all RARA requirements provided that (1) the fee is not more than \$5,000, (2) the attorney receives a retainer of no more than \$2,500, (3) the chapter 13 plan is confirmed and (4) the remaining balance is paid over a period of not less than ten months post-confirmation (i.e. the portion of the \$5,000 fee not paid by the retainer would be paid by the trustee post-confirmation at a level monthly rate equal to 10% of \$5,000 less the retainer for ten months assuming sufficient funds exist each month after payment of all monthly secured obligations (if any)).

So, for example, if an attorney charges \$5,000, the attorney may receive a retainer of \$2,500 and the remaining balance of \$2,500 will be paid post-confirmation at the rate of \$250 per month for ten months. If an attorney charges \$5,000 but only receives a retainer of \$1,000, the remaining \$4,000 will be paid at the rate of \$400 per month for ten months. If an attorney charges \$4,000, the attorney may receive a retainer of \$2,500 and the remaining balance of \$1,500 will be paid at the rate of \$150 per month for ten months. If an attorney charges \$4,000 but only receives a retainer of \$1,000, the remaining \$3,000 will be paid at the rate of \$300 per month for ten months.

Business Cases. In a chapter 13 case involving a business, it is not necessary for an attorney for a chapter 13 debtor who seeks compensation of no more than \$6,000 to file a fee application if the attorney executes a RARA, files it with the Court and complies with all RARA requirements provided that (1) the fee is not more than \$6,000, (2) the attorney receives a retainer of no more than \$2,500, (3) the chapter 13 plan is confirmed and (4) the remaining balance is paid over a period of not less than ten months post-confirmation (i.e. the portion of the \$6,000 fee not paid by the retainer would be paid by the trustee post-confirmation at a level monthly rate equal to 10% of \$6,000 less the retainer for ten months assuming sufficient funds exist each month after payment of all monthly secured obligations (if any)).

As always, counsel for chapter 13 debtors may file fee applications to request compensation different than the terms provided herein or under the RARA.

Cases That Fail Prior to Confirmation. In any case in which a chapter 13 plan is not confirmed, an attorney who files with the Court a fully executed RARA may charge up to \$1,250 for the chapter 13 case without filing a fee application. A fee application is required for any compensation in excess of \$1,250 in a chapter 13 case in which a plan is not confirmed. If a fee application is pending at the time of dismissal of the case, the chapter 13 trustee may (but is not required to) retain sufficient funds to pay the requested fee pending adjudication of the fee application. If no fee application is pending at the time of dismissal, the trustee should use any funds on hand to pay any remaining trustee fees or administrative expenses and then distribute sufficient funds to counsel for the debtor to pay up to \$1,250 (assuming a fully executed RARA has been filed with the Court) and then the balance of funds to the debtor.

In any chapter 13 case which is dismissed or converted prior to confirmation, counsel for the chapter 13 debtor shall file with the Court and serve within fourteen days of dismissal or conversion either (1) a declaration that the attorney has refunded to the debtor any and all compensation received by the attorney in the case in excess of \$1,250 or (2) a fee application regarding the amounts in excess of \$1,250.

Fee Data Research. In contemplating chapter 13 compensation issues, the Court has conducted extensive research regarding this subject. Specifically, there are currently 661 cases assigned to Judge Johnson which were filed from 2011 to the present. These are cases in which Judge Johnson has been the presiding judge since the filing of the case. (Numerous other chapter 13 cases have been transferred to Judge Johnson which were filed prior to 2011 and originally assigned to other judges). All of the 661 pending cases have been confirmed and (so far) have succeeded. Of the 661 pending cases, the court has compiled information regarding compensation to counsel for the debtor for 653 cases.

Of these 653 cases, counsel for the chapter 13 debtor received no retainer in 10% of the cases (66 of 653 cases). In addition, counsel for the chapter 13 debtor received a retainer of \$1,500 or less in 83% of the cases (545 of the 653 cases). In 89% of the cases (583 out of 653), counsel for the chapter 13 debtor received a retainer of \$2,500 or less. The average amount of the retainer for all 653 cases is \$1,543 per case.

With respect to the overall fees charged by counsel for a chapter 13 debtor, in 6% of the cases (40 of 653 cases) counsel for the chapter 13 debtor charged \$2,000 or less. In another 5% of the cases (31 of 653 cases), counsel for the chapter 13 debtor charged between \$2,000 to \$3,000. In another 11% of the cases (74 of 653 cases), counsel for the chapter 13 debtor charged between \$3,000 to \$4,000. In 73% of the cases (477 of 653 cases), counsel for the chapter 13 debtor charged \$4,000. In 5% of the cases (31 of 653 cases), counsel for the chapter 13 debtor charged more than \$4,000. The average fee for all 653 chapter 13 cases is \$3,759 per case.

The Court has also researched data regarding 149 chapter 13 cases which were confirmed by Judge Johnson but ultimately failed when the cases converted to chapter 7 or were dismissed. Most (but not all) of these 149 cases failed within the last twelve months. Of these 149 cases, the average length of time from the date of confirmation to the date of dismissal or conversion is 504 days (i.e. 17 months). Of these 149 cases, 77% of the cases (115 of 149 cases) succeeded for at least six months post-confirmation, 60% of the cases (89 of 149 cases) succeeded for at least ten months post-confirmation, 51% of the cases (76 of 149 cases) succeeded for at least one year post-confirmation, 41% of the cases (61 of the 149 cases) succeeded for at least eighteen months post-confirmation, 30% of the cases (45 of 149 cases) succeeded for at least two years post-confirmation and 7% of the cases (10 of 149 cases) succeeded for at least three years post-confirmation.

Conclusion. The existing RARA system authorizes the same compensation of \$4,000 or \$5,000 on a blanket basis to all attorneys regardless of competency or experience. This “no-look” system permits all attorneys to receive the same compensation without obtaining court approval. This system has certain obvious strengths and certain obvious weaknesses. With respect to the former, the system authorizes compensation of \$4,000 to \$5,000 to experienced and competent chapter 13 attorneys with no need for a fee application in meritorious chapter 13 cases. Unfortunately, the current system also authorizes compensation of \$4,000 to \$5,000 to attorneys who have no chapter 13 experience or are otherwise insufficiently competent with no need for a fee application in all kinds of chapter 13 cases (whether meritorious or not).

As a result, the RARA limitations described herein are designed to preserve the strengths of the existing system while reducing the harms. In light of the research mentioned above, the RARA limitations herein are designed to have very little impact on the competent chapter 13 debtors attorneys who are successfully presenting chapter 13 cases in good faith and achieving confirmation. In the vast majority of such cases, compensation will increase from \$4,000 (or \$5,000) to \$5,000 (or \$6,000) with little impact on amounts of retainers or the time period during which counsel is paid the full authorized fee.

With respect to cases which fail prior to confirmation, however, the impact will be more significant. In those cases, no-look RARA fees are limited to \$1,250. A fee application is required for amounts in excess of \$1,250. The \$1,250 figure will be too high in some cases (for example, when a chapter 13 case fails entirely due to attorney error), just right in other cases (for example, when a chapter 13 case fails due to joint errors by attorneys and debtors) and too low in other cases (for example, when the attorney is competent, performed all necessary tasks but the debtor failed to cooperate). In the latter cases, counsel for chapter 13 debtors may seek additional compensation by filing fee applications.