THE BANKRUPTCY ABUSE PREVENTION CONSUMER PROTECTION ACT OF 2005 SEVENTEEN MONTHS OF REFLECTION:

By: Wesley F. Smith

October 16, 2005 came on a Sunday. For many of us fortunate enough to practice in a district which allowed electronic filing, many of us got to experience the true push of a full weekend full of seeing bankruptcy debtors and getting their rushed cases ready to file. Personally, I had started turning away clients early enough to not have to work through that weekend, but there were some in my office who were still filing cases on Saturday, if not Sunday. I did not take the time to look up the statistics, but approximately six to nine months worth of cases were filed in that last push before the law changed. I filed more cases than I had in quite sometime. However, Monday seemed a little like a post apocalyptic day. We had all rushed around, there had been a deadline, and then there was silence.

For the first ninety days or so, as far as the work load goes, not much changed. There were 341 meetings to attend, documents to be gathered from hastily filed cases and the cleaning up of some fights we started we wished we hadn't. This first three months or so we all busied ourselves with cases we had filed before the law changed. We worked on getting paid from those, where, in a weak moment, we had agreed to file a case for either less up front than what we thought it was worth, or for the promise of some money to come.

The next ninety days we started to feel like no one liked us anymore. The phone didn't ring, no more buzzes back to my office from the receptionist saying "New bankruptcy on line three". No one called. It was reminiscent of the night I was stood up for the prom, but I won't go into that here. There just weren't a lot of new cases. However, it wasn't a total loss, as there were plenty of activities to bide our time. CLEs! There were nine thousand CLEs on the new bankruptcy act by a smattering of prognosticators and pontificators who probably knew less about it than any of us did. But, we were all scared so we went–in droves. We went to CLEs to learn this mythical new statute that we wondered if we would ever get to use again. These lectures should have all begun "...if you ever get a new client, this is what you tell them.." These CLEs sort of reminded me of my college calculus class–lots of knowledge, we just needed somebody to use it on.

Then in the next nine months or so, the volume picked up. Our phones began to ring again. It was a little bit like the day after the Grinch brings back all of the presents to Whoville. Eager lawyers began to dust off their bankruptcy software. I could now stop getting traffic tickets fixed and remove myself from the $45 an hour criminal appointments list. Finally, people were calling–but now we couldn't talk to them. We had to explain to them that we are now "Debt Relief Agencies." I told these new clients that I couldn't even talk to them about their case until I gave them some new disclosures. Conversations went: "I know you are scared, you have been sued by Megalobank for $27,000.00, they are garnishing your wages and your bank account, but first I have to get you to sign a contract and give you these menacing multi-page disclosures. If you were scared before you called me, you are now." This was the true beginning of the practice under the

Bankruptcy Abuse Prevention and Consumer Protection Act.

After I asked them to produce about three reams of paper worth of data, fill out a bunch of forms and sign a contract with a lawyer that they have never seen, nor met, before, I finally got these folks in my office. The meetings that used to take one hour now take two to three. The files went from an inch and a half thick to a bankers box full. We meet with these folks and assimilate all of this data and then plug their income into the Means Test–(has anyone ever failed the Means Test? It takes two hours to complete and everyone passes–this does not remind me of calculus.) We ask people whether or not they have owned their house for 1,215 days. We ask questions like "have you had your car for greater than 910 days?" (would anybody care to guess how many fortnights are in 910 days?). We also learned new words and phrases like "current monthly income" and started saying things like "Oh, don't worry, she's below the line". Does that refer to what side of town she lives on? Possibly her limbo skills?

Even after all of the CLEs and all the study, one thing is for certain. We can no longer predict results. Under the old law, I used to tell my clients that bankruptcy was a lot like riding those Model T's at an amusement park. You got to steer them from side to side, and there was some variation in the path you took, but it was impossible to get off the track. Moreover, you would always end up at the station for the next person to have a turn. This is no longer the case. At least not until we get some more cases decided with which we can use to advise our clients.

Once we survived the initial doldrums of no cases being filed, and the learning curve which accompanied those first cases we all filed, the volume seems to have picked up to "pre" pre-October 17, 2005 rush numbers. We are settling into our new jobs as Debt Relief Agencies and our phones are ringing again. Some other sacrificial lambs have been slain by the new bankruptcy act so that we can once again start to predict results. We are comfortable about talking about "910 cars" (it is not the new model number of a Volvo). We are getting more comfortable with the Means Test.

Seriously though, I think lots of attorneys were scared of the new law (some still are). Many were scared totally off. However, those who survived seemed to be settling in nicely and adapting well. Trustees, lawyers and the Courts are putting out decided cases daily to give us some guidance. Everyone is getting more comfortable with life after BAPCPA. Sure, lawyers have to work harder per case, but we are presumably earning more money per case. To some extent it is still a learning process, but we are all getting used to the practice. Anytime there is change, lawyers are loathe to the process. It is human nature to like what feels comfortable to you. Not many people do like change, especially when you were allowed to practice in the "Six Flags, Tin Lizzy" environment in which we have all enjoyed in the District of Kansas. I don't think anything about the collegial nature has changed. We are just going to have to continue to learn ourselves; and educate others as to the what it is, rather than the way it was.

Sure, some things are different, but that is not always a bad thing.