No. 13-50374

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN THE MATTER OF CHARLES E. HARRIS, III,
Debtor.

MARY K. VIEGELAHN,
Trustee-Appellant
— v. —

CHARLES E. HARRIS, III,
Debtor-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, NO. 5:12-cv-00540

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF DEBTOR-APPELLEE

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August 20, 2013

CERTIFICATE OF INTEREST AND CORPORATE DISCLOSURE STATEMENT

Viegelahn v. Harris, 13-50374

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure *Amicus Curiae* the National Association of Consumer Bankruptcy Attorneys makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations.
NONE.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock. **NONE.**

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests. **NONE.**

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.
NOT APPLICABLE.

Pursuant to 5th Circuit Local Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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29(c)(5) CERTIFICATION

Pursuant to Rule 29(c)(5), *amicus* affirms that no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus* or its counsel, make a monetary contribution to the preparation or submission of this brief.

/s/ Tara Twomey
Tara Twomey
Attorney for the National Association of Consumer Bankruptcy Attorneys

Dated: August 20, 2013

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STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICUS

Amicus Curiae National Association of Consumer Bankruptcy Attorneys (NACBA) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 3,500 members located in all 50 states and Puerto Rico. NACBA files amicus briefs in selected appellate and Supreme Court cases that could significantly impact consumer bankruptcy rights. This program has achieved national recognition and has participated many important judicial decisions, some of which have specifically cited NACBA's briefs. *See, e.g., In re Woolsey,* 696 F.3d 1266, 1279 (10th Cir. 2012); *In re Puffer*, 674 F.3d 78, 80 (1st Cir. 2012).

The issue involved in this appeal—regarding the proper disposition of undistributed wage-order funds in the possession of a chapter 13 trustee at the time a case is converted to chapter 7—is one with a substantial history, both in Congress and the courts. NACBA desires to share its knowledge of that history with this Court and believes that this contribution will assist the Court in reaching a result in accordance with legal authorities insufficiently discussed by the parties to this appeal.

SUMMARY OF THE ARGUMENT

This is not a close case. Congress already decided in 1994, when adding 11 U.S.C. § 348(f) to the Bankruptcy Code, that absent some bad faith by the debtor, when a case is converted from chapter 13 to chapter 7, the "property of the estate" in the converted chapter 7 case consists of the debtor's property as of the date of the original petition, while in the case of bad faith conversions, on the other hand, property of the estate is determined as of the date of conversion. Because a debtor's post-petition wages are *not* a component of a chapter 7 estate, see 11 U.S.C. § 541(a)(6), undistributed, post-petition wages in the possession of a chapter 13 trustee at the time a debtor converts to chapter 7 are the property of the debtor, not his creditors. Not only does the legislative history make clear that Congress intended to resolve the very dispute that this appeal seeks to reignite, Congress also expressly adopted the policy argument articulated by the Third Circuit Court of Appeals in *In re Bobroff*, 766 F.2d 797, 803 (3d Cir. 1985), favoring interpretations of the Code that incentivize debtors to try to pay their debts through chapter 13 without penalty if those efforts fail.

The debtor-Appellee converted his case after more than a year of submitting a portion of his earnings to a chapter 13 trustee pursuant to confirmed chapter 13 plan. As a result of those payments, his creditors received payments that they would not have received had he filed a chapter 7 case originally. When, due to financial circumstances, his chapter 13 plan ceased being feasible and he abandoned his effort

to save his house, he exercised his right to convert his case to chapter 7 and sought the return of his plan payments that were undistributed and still in the possession of the chapter 13 trustee. By virtue of 11 U.S.C. § 348(f), those funds are properly his, not his creditors'.

With minimal attention to the language and history of § 348(f) and the contrary, post-enactment decisions by other circuits, and relying mainly on pre-enactment bankruptcy court decisions, the Appellant argues that these undistributed funds remaining from Appellee's wage order are the property of creditors who have a supposedly vested claim to this property. Her argument is without statutory basis and is grounded in a policy view rejected by Congress. The decisions below should be affirmed.

ARGUMENT

A. This Appeal Is Governed by 11 U.S.C. § 348(f) which Treats a Debtor's Post-Petition, Pre-Conversion Earnings as His Property, Not His Creditors'

Prior to the passage of 11 U.S.C. § 348(f) as part of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, Act of Oct. 22, 1994, § 311, the courts were divided over what happens to undistributed funds in the possession of a chapter 13 trustee when a debtor converts the case to chapter 7. The pre-existing language in 11 U.S.C. § 348(a) provided that a conversion from one chapter to another "does not effect a change in the date of the filing of the petition," but when debtors sought to use that provision to claim that property acquired post-petition and pre-conversion was rightfully theirs,

the courts responded differently. Some decided that such funds belong to the debtor's creditors, *see, e.g.*, *In the Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991); *Resendez v. Lindquist*, 691 F.2d 397, 399 (8th Cir. 1982); *In re Waugh*, 82 B.R. 394 (Bankr. W.D. Pa. 1988), while others decided they belong to the debtor. *See, e.g., In re Plata*, 958 F.2d 918 (9th Cir. 1992); *In re Doyle*, 11 B.R. 110 (Bankr. E.D. Pa. 1981).

This pre-1994 judicial split was, for the most part, an expression of differing policy approaches to a situation in which there was "no controlling statutory authority or case law mandating a result one way or the other, and the legislative history . . . [was] equally devoid of any guidance." *In re Plata*, 958 F.2d at 921. As observed by Judge Posner, one could reasonably interpret 11 U.S.C. § 348(a) as supporting a retroactive withdrawal of property from the estate back to the debtor, but could also adopt "an equally good alternative" reading " that conversion from Chapter 13 to Chapter 7 does not affect the bankruptcy estate but merely assures the continuity of the case for purposes of filing fees, preferences, statute of limitations, and so forth." *Matter of Lybrook*, 951 F.2d at 137.

In the Ninth Circuit, the issue first arose in the context of a chapter 13 dismissal, rather than a conversion, meaning that 11 U.S.C. § 349, rather than

§ 348, controlled the result. Relying on the legislative history of 11 U.S.C. § 349(b)(3),[1]

[1] 11 U.S.C. § 349(b)(3) reads as follows: "Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title . . . (3) revests

the court sustained the debtor's claim to undistributed, post-petition wages in the possession of the chapter 13 trustee, reasoning that "the basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." *In re Nash*, 765 F.2d 1410, 1414 (9th Cir. 1985). When confronted later with the same situation in the context of a conversion to Chapter 7, that same court reasoned that there was "no justification for requiring a debtor to dismiss rather than convert . . . in order to preserve his exemption rights." *In re Plata*, 958 F.2d at 922.[2] *See also In re Boggs*, 137 B.R. 408, 411 (W.D. Wash. 1992) (decided before *Plata*, reasoning that "the Congressional policy of encouraging debtors to repay their creditors via Chapter 13 is furthered by debtors (and their counsel) knowing they will not be penalized for attempting Chapter 13"); *In re Luna*, 73 B.R. 999, 1003 (N.D. Ill. 1987) (adopting reasoning of *In re Nash*, concluding that 11 U.S.C. § 348, "which determines the operative date for the filing of [debtor's] Chapter 7 proceeding, protects her from being penalized by providing that the Chapter 7 estate is deemed to have been filed at the time the Chapter 13 estate was filed."); *In re Mann*, 160 B.R. 517 (Bankr. D. Vt. 1993).

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the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title."

[2] While *Plata* dealt with a conversion to Chapter 7 from Chapter 12 rather than Chapter 13, Chapter 12 (dealing with the adjustment of debts of family farmers with regular income) was modeled after Chapter 13 (adjustment of debts of individuals with regular income). *In re Plata*, 958 F.2d at 919 n. 1.

Among the two Circuits making the opposite policy determination was the Seventh Circuit.[3] Rather than focusing on the need to incentivize Chapter 13 filings by allowing debtors, upon conversion, to reacquire their post-petition earnings and property, the Seventh Circuit viewed such a result as being unfair to creditors, concluding that "a rule of once in, always in is necessary to discourage strategic, opportunistic behavior that hurts creditors without advancing any legitimate interest of debtors." *Matter of Lybrook*, 951 F.2d at 137. Meanwhile, several bankruptcy courts around the country used different reasoning than *Lybrook* to reach the same result. They viewed a "literal reading" of 11 U.S.C. § 348(a) as suggesting that post-petition earnings should be retroactively withdrawn from the estate and returned to the converting debtor, but found such a result to be "anomalous." *In re Redick*, 81 B.R. 881, 883 (Bankr. E.D. Mich. 1987). While agreeing with *Lybrook*'s "once in, always in" rule, they reached that result by using other sections of the Bankruptcy Code, such as 11 U.S.C. § 1326, to infer that funds voluntarily paid to a chapter 13 trustee vest, upon such payment, in the creditors designated by the chapter 13 plan. *Redick,* 81 B.R. at 885-87 (inferring creditor vesting from statutory duty of chapter 13 trustee to distribute the debtor's payments to creditors and concluding that a ruling supporting retroactive withdrawal of the funds by the debtor would encourage creditors to seek daily distributions). *See also In re Waugh, supra* (same).

[3] The other Circuit was the Eighth Circuit. *See Resendez v. Lindquist*, 691 F.2d 397 (8th Cir. 1982).

The Third Circuit Court of Appeals, while not deciding the precise issue of how to classify a converting debtor's undistributed, post-petition earnings, did confront a very similar issue in *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). *Bobroff* held that a tort action, which accrued post-petition but pre-conversion, belonged to the debtor, not the bankruptcy estate. In so ruling, this Court adopted the same interpretation of Congressional intent with regard to the status of post-petition property as did the Ninth Circuit, reasoning as follows:

> This result is consonant with the Bankruptcy Code's goal of encouraging the use of debt repayment plans rather than liquidation. If debtors must take the risk that property acquired during the course of an attempt at repayment will have to be liquidated for the benefit of creditors if chapter 13 proves unavailing, the incentive to give chapter 13—which must be voluntary—a try will be greatly diminished. Conversely, when chapter 13 does prove unavailing "no reason of policy suggests itself why the creditors should not be put back in precisely the same position as they would have been had the debtor never sought to repay his debts...."

Id. at 803 (citations omitted).

The circuit described above split was resolved by Congress when it enacted 11 U.S.C. § 348(f). The pertinent language provides as follows:

> **(f)(1)** Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—
>
> **(A)** property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;
>
> * * *

> **(2)** If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

Since a chapter 7 debtor's post-petition earnings belong to him, not the bankruptcy estate, 11 U.S.C. § 541(a)(6), such earnings that are in the possession of a chapter 13 trustee at the moment of conversion to chapter 7 revert to the debtor. Leaving no doubt that this is the result it intended, Congress explained the purpose of the amendment as follows in the House Report accompanying passage of the 1994 legislation:

> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopts the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

H.R. Rep. 103-835, 103rd Cong., 2d Sess. 1994, 1994 U.S.C.C.A.N. 3340, 3366.

Since the passage of 11 U.S.C. § 348(f), all of the Circuits that have considered the question at issue here in light of § 348(f) have concluded that the policy reasoning expressed by this Court in *Bobroff* and by the Ninth Circuit in *Plata* and *Nash* has now become settled law. *See In re Michael,* 699 F.3d 305 (3d Cir. 2012) (holding that requiring the Chapter 13 trustee to distribute undisbursed plan payments to creditors would contravene Congress's reasoning in adopting 348(f)); *In re Stamm*, 222 F.3d 216, 217-18 (5th Cir. 2000) ("Congress added Section 348(f) 'to resolve the circuit split' . . . and 'took issue with *In re Lybrook*'"); *In re Young*, 66 F.3d 376, 378 (1st Cir. 1995) ("The

Bankruptcy Reform Act of 1994 answered the very question that confronts us. It essentially codified the *Bobroff rule*. . .”). *Accord In re Bell*, 225 F.3d 203, 217 (2d Cir. 2000) (in dicta, observing, “In the Bankruptcy Reform Act of 1994, Congress resolved this circuit split, . . . by enacting 11 U.S.C. § 348(f).”) The leading bankruptcy treatise has reached the same conclusion. 3 Collier on Bankruptcy ¶ 348.07 (16th ed. 2010) (“The addition of [§ 348(f)] clarified that Congress had intended the result reached by cases that had not included in the postconversion chapter 7 estate the property acquired by the debtor during the preconversion chapter 13 case.”)

Appellant fails to cite this extensive line of authority which stands against her in this appeal, including this Court’s decision in *In re Stamm*, 222 F.3d 216 (5th Cir. 2000). In Appellant’s view, the legal issue she is raising on appeal is one unresolved in the courts. That view is plainly wrong. While it is true that the issue was in dispute prior to the 1994 amendment to 11 U.S.C. § 348, that dispute was resolved when Congress added subsection (f). As made clear by the statutory language and legislative history, as interpreted by the relevant, post-enactment appellate decisions cited above, the Bankruptcy Code, through 11 U.S.C. § 348(f), now incorporates the policy preference articulated by the Third Circuit Court of Appeals in *Bobroff* with regard to post-conversion property disputes between debtors and creditors. That governing policy is that creditors should be “put back in precisely the same position as they would have been had the debtor never sought to repay his debts....” *Bobroff*, 766 F.2d at 803. The overriding concern of the statute is be to avoid creating disincentives

against debtors trying to pay their debts through Chapter 13, not the equally reasonable, but legislatively rejected, concern about fairness to creditors.

The result below in this case is plainly consistent with the rule Congress adopted. The debtor-appellee converted his case after more than a year of submitting a portion of his earnings to a chapter 13 trustee pursuant to his confirmed chapter 13 plan. As a result of those payments, his creditors received payments they would not have received had he filed a chapter 7 case originally. When, due to financial circumstances, debtor-appellee's chapter 13 plan ceased being feasible and he abandoned his effort to save his house, he exercised his right to convert his case to chapter 7 and sought the return of his plan payments that were undistributed and still in the possession of the chapter 13 trustee. By virtue of 11 U.S.C. § 348(f), those funds are properly his, not his creditors'.

B. The Fact that the Debtor's Chapter 13 Plan Was Confirmed Prior to His Conversion to Chapter 7 Is Not a Valid Reason for this Court to Ignore 11 U .S.C. § 348(f) and Recognize an Implied Vested Right in Undistributed Wage-Order Funds in Favor of Creditors.

In Appellant's view, despite the language and history of 11 U .S.C. § 348(f), once a chapter 13 plan has been confirmed, she is not required to return undistributed wage-order funds to a debtor who has converted his case to Chapter 7.

First, Appellant argues that there is a third option falling between treating the undistributed funds as property of the debtor, as the courts below ruled, on the one hand, or treating the undistributed funds as property of the chapter 13 estate subject

to section 348(f). *See In re Stamm*, 222 F.3d 216, 217-18 (5th Cir. 2000). That third option is to treat the funds as property directly vested in the creditors designated by the confirmed plan. *See* Brief for Appellant at 20 (citing *In re Redick*, a bankruptcy court decision from the Western District of Pennsylvania predating the enactment of § 348(f)). According to Appellant, though the passage of § 348(f) removed the possibility of treating such funds as being available to creditors by virtue of the funds being property of the estate, the funds were nevertheless transformed into creditor property by virtue of the order of confirmation. But there are various reasons why the "third option" identified in *Waugh* and similar cases cannot exist in this case.

Initially, there is nothing in the Bankruptcy Code itself that classifies a debtor's post-petition wages, or any property for that matter, as belonging to a creditor. The Bankruptcy Code contemplates only two possible classifications of a debtor's property, that is, as being either in or out of the "estate." *See* 11 U.S.C. §§ 541(a); 1306. It is the property of the estate against which creditors can assert claims or interests. 11 U.S.C. §§ 501, 502. Under chapter 7, a debtor's post-petition earnings are not in the estate, 11 U.S.C. § 541(a)(6), meaning that the debtor maintains possession and control over those earnings, free from the claim of creditors. In chapter 13, the debtor is afforded the opportunity of proposing a payment plan to pay his debts, and, in order to facilitate that right, his post-petition earnings are treated as property of the estate. 11 U.S.C. § 1306(a)(2). However, once a chapter 13 case is converted to chapter 7, all such remaining earnings are retroactively withdrawn from the estate,

unless the conversion is in bad faith. 11 U.S.C. § 348(f). In the absence of bad faith, therefore, such funds are free from creditor claims.

Prior to the passage of § 348(f), some bankruptcy court decisions, like *Waugh*, had inferred a vesting of money voluntarily paid by a chapter 13 debtor in favor of creditors designated in a confirmed chapter 13 plan. These courts tended to locate the source of this vesting in 11 U.S.C. § 1326(a)(2), which provides that "[i]f a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable." *In re Waugh*, 82 B.R. at 400 (inferring that the word "shall" in that provision "creates the condition of a trust" in favor of the creditors designated in the confirmed plan as the beneficiaries of the debtor's payments). But as even *Waugh* acknowledged, once a chapter 13 is converted, the chapter 13 plan is effectively terminated. *Id.* (citing 11 U.S.C. § 348(e) which provides that conversion "terminates the service of any trustee").

As the district court in *Michael* correctly observed, 11 U.S.C. § 1326(a) only addresses the obligation of the trustee upon confirmation of a chapter 13 plan to distribute any accumulated money paid by the debtor to the creditors in accordance with the plan; it does not vest creditors with any property rights. *Dehart v. Michael*, 446 B.R. 665, 668 (M.D. Pa. 2011). As the court noted, "To hold otherwise would be to stretch the language of the statute beyond it['s] intended scope." *Id.*

The Appellant's vesting argument is primarily supported by pre-enactment bankruptcy court decisions. There are, admittedly, a few bankruptcy courts that have,

notwithstanding the passage of 11 U.S.C. § 348(f), clung to the view advocated by the trustee here.[4] However, on the other side are decisions of several Courts of Appeals and the leading bankruptcy treatise, *supra* at 8-9, all of which support what the courts below did here.

Second, Appellant argues that the recent Third Circuit decision of *In re Michael* is distinguishable because Harris's chapter 13 plan contains language retaining property as part of the chapter 13 estate after confirmation rather than vesting that property in the debtor. Appellant Brief at 19. This is a red herring argument. The vesting provision referred to by the trustee is irrelevant to the issue at hand. As noted above, the debtor's property is either in or out of the estate. *Supra*, at 12. That is, post-petition wages are either the debtor's property or property of the estate. Further, the two estates—the chapter 7 estate and the chapter 13 estate—cannot exist simultaneously. *See Michael*, 699 F.3d at 313 (upon conversion of the chapter 13 case, the chapter 13 estate ceases to exist).[5] Post-petition earnings of the debtor are treated as property of the chapter 13 estate. 11 U.S.C. § 1306(a)(2). Under the vesting

[4] Those cases are *In re Porreco*, 426 B.R. 529 2010 (Bankr. W.D. Pa. 2010); *In re Pegues*, 266 B.R. 328 (Bankr. Md. 2001); *In re Parrish*, 275 B.R. 424 (Bankr. D.D.C. 2002); *In re Hardin*, 200 B.R. 312 (Bankr. E.D. Ky. 1996).

[5] Similarly, upon conversion the chapter 13 plan ceases to operate. The trustee has no authority to distribute funds in her possession under a non-operative chapter 13 plan. *See* 11 U.S.C. § 348(e); *See Michael*, 699 F.3d at 314 (though the trustee must account for the funds that came into her possession by filing a final report after conversion, it does not follow that she is permitted to distribute funds under a plan that is no longer controlling).

provision referred to by the trustee, the debtor's post-confirmation wages remain property of the estate (i.e., they do not vest in the debtor). The question then is what happens to the property of the chapter 13 estate upon conversion. The answer is provided by § 348(f). The debtor's post-petition wages held by the chapter 13 trustee cannot be property of the chapter 7 estate upon conversion. *See In re Stamm*, 222 F.3d at 217-18. Nor can the debtor's post-petition wages held by the trustee be property of the chapter 13 estate, which ceases to exist. *See Michael*, 699 F.3d at 313. Finally, as discussed above, post-confirmation wages held by the trustee do not "vest" in creditors designated in the confirmed plan. Instead, once a chapter 13 case is converted to chapter 7, any remaining earnings held by the trustee are retroactively withdrawn from the estate, unless the conversion is in bad faith. 11 U.S.C. § 348(f). In the absence of bad faith, such funds must be returned to the debtor.

CONCLUSION

In the end, the position advocated by the Appellant boils down to little more than a strident policy argument against providing what they consider to be a "windfall" to the debtor Appellee. However, there is nothing unjust or anomalous about the lower court's proper disposition of this matter. On the contrary, having tried in good faith to use chapter 13 to save his home and having paid creditors payments through the chapter 13 trustee that would not have been paid had he initially filed chapter 7, the debtor had the right, granted to him by Congress, to

convert his chapter 13 case to chapter 7 and reclaim property that, under chapter 7, is his to keep. Indeed, to deny this debtor his post-petition earnings still in the possession of the chapter 13 trustee, based on a fairness-to-creditors rationale, would be to adopt precisely the policy choice that Congress expressly rejected.

Because the Bankruptcy Code provides that a debtor's undistributed, post-petition, pre-conversion earnings are, in the absence of bad faith, the debtor's property, the result below is exactly the result Congress contemplated. For that reason, this Court should affirm.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief, exclusive of the certifications, tables of contents and authorities and the identity of counsel at the end of the brief, is 4,051 words in text and footnotes as counted by Microsoft Word, the word processing system used to prepare this brief. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond 14-point font.

/s/Tara Twomey
TARA TWOMEY, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2013, I electronically filed the foregoing document with the Clerk of the Court for Fifth Circuit Court of Appeals.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

I further certify that some of the parties of record to this appeal have not consented to electronic service. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following parties: NONE

_/s/ Tara Twomey_____
Tara Twomey, Esq.

Addendum

11 U.S.C. § 348 – Effect of Conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701 (a), 727 (a)(10), 727 (b), 1102 (a), 1110 (a)(1), 1121 (b), 1121 (c), 1141 (d)(4), 1201 (a), 1221, 1228 (a), 1301 (a), and 1305 (a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

(c) Sections 342 and 365 (d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503 (b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(f)
(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in

a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.