



AMERICAN
BANKRUPTCY
INSTITUTE

Consumer Practice Extravaganza

Evidentiary Mock Trial

Joseph A. Ferrise

Chapter 13 Trustee | Akron, Ohio

Patrick Hruby

Brock & Scott, PLLC | Tampa, Fla.

Hon. Cecelia G. Morris

U.S. Bankruptcy Court (S.D.N.Y.) | Poughkeepsie

Nicole P. Novak

Sirody & Ruben Bankruptcy Center LLC; Baltimore

Marianne T. O'Toole

O'Toole + O'Toole PLLC | Bedford Hills, N.Y.

Keith L. Rucinski

Office of the Chapter 13 Trustee | Akron, Ohio

The Case of the Average Joe

Average Joe has dedicated his career to helping the citizens who live in the City of Financial Despair. Unfortunately, in his zeal to help others, the Average Joe has fallen on hard times. His residence, Debt Manor, is in disrepair. Items which need immediate attention include a new roof, updated electrical wiring, a new computer server for the Debt E-mail and Debt Text to replace the Debt Phone (have to keep up with the times), and there are foundation issues in the Debt Basement. The Debt Mobile also needs new tires.

Average Joe has had to lay off his lawncare provider. All that remains is Fred, his faithful dog who helps the Average Joe get through the day. Average Joe has not been able to pay for Fred's doggy daycare and several months of doggy daycare bills. Without doggy daycare, there would be no one to watch Fred while Average Joe works. Average Joe is too busy working a second job at night and has to sleep during the day.

To make matters worse, his son, Rick recently started college and the \$800 monthly tuition bill is using up whatever spare cash Average Joe can put together. Rick also is whining that he needs money for spring break. Sometimes Average Joe wishes he had not talked Rick into going to college and had let him join the circus after high school.

Although Average Joe grew up middle-class, his parents got sick and had to be moved into a nursing home, which required all of the family savings. The \$2500 monthly bill for the nursing home means that even with two jobs, Average Joe can barely cover the mortgage, utility bills and property taxes for Debt Manor.

Average Joe is the sole owner of Average Joe LLC. The limited liability company was his accountant's suggestion to help Average Joe keep track of the money he receives for his side hustles, such as picking up shifts at the grocery store and the county fair. To make ends meet the last few years, Average Joe has begun driving an Uber. Average Joe is not sure if he has filed and paid all of his taxes since his accountant retired a few years ago. From 2000-2010, the limited liability company had good revenue. The last few years revenue has not been as good due to the recession, Uber riders are way down. After all, you can walk to the bar. Average Joe must also compete with Uber drivers who have nicer cars and with each passing year it is getting more difficult for Average Joe to maintain his vehicle. Average Joe had his mechanic adjust the Debt Mobile to hide the rust it has accumulated over the years.

Recently, bill collectors have been hounding Average Joe for failing to pay back his own student loans. Average Joe is burdened by high student loan debt. His alma mater, Big Ripoff University, is now defunct and his four year degree in bird watching has not been very marketable. Average Joe would like to eliminate that student loan in bankruptcy.

To help pay some living expenses, Average Joe has taken a job at Big Box Retailer, although standing all day is hard on his knees and back due to his weight problem and ongoing health issues from his years of working at a desk. His credit cards are maxed out due in part to medical bills from treatments for his knees and back problems.

When working at Big Box Retailer, Average Joe has to hide the Debt Mobile behind the store so it cannot be seen by the repo man. To make his son's last semester tuition payment, Average Joe took out a car title loan from the "Say Goodbye to Your Title" Loan Company for \$10,000. Average Joe has not been able to pay back the loan. The Average Joe purchased the Debt Mobile in 2005 for \$25,000. Sadly, the Debt Mobile is no longer in prime condition. It has about 250,000 on the odometer (and is on its third transmission). The vehicle has several years of road nicks, the windshield is cracked, and the engine misfires all the time. Still, he needs it to get to work and still gets an impressive seventeen miles per gallon.

Luckily, in the yellow pages Average Joe has found the name of a good bankruptcy attorney. Average Joe makes an appointment with Attorney Morris the Magnificent. Attorney Magnificent has a reputation for working magic when it comes to difficult cases.

Attorney Magnificent explains the options under consumer bankruptcy. Average Joe decides that Chapter 7 is too scary and with his luck he will end up with one of the mean Chapter 7 Trustees. He decides to go Chapter 13 where the Trustee will still take his money but will do so in a nice way.

Attorney Magnificent files a Chapter 13 bankruptcy for Average Joe. The fight to help Average Joe achieve a fresh financial start is on!

Attorney Magnificent expects the following challenges to the Chapter 13 plan:

Challenge One

The Chapter 13 Trustee will object to confirmation. At the 341 meeting the Trustee wanted a copy of Average Joe's parents bank accounts and the nursing home agreement to determine who controls the Average Joe's parents money. Additionally, Average Joe is having trouble verifying his income from Average Joe LLC. It is not clear to the Chapter 13 Trustee if Average Joe has fully disclosed all income and is devoting his best efforts into the plan

On the expense side, there is the \$1,000 monthly expense for Fred's doggy daycare. The Trustee will say that other debtors in Chapter 13 do not have doggy daycare (that Trustee, always argues about what other debtors do – who cares? Maybe other debtors do not love their dogs!).

Then there is the \$800 expense for Rick's college tuition. Trustee always argues that college tuition is not a necessary expense. But does the world really need another uneducated person?

To oppose the objection to confirmation, Attorney Magnificent will have Average Joe testify and hope the Judge is a fan of regular guys.

Challenge Two

Attorney Magnificent has filed an adversary to allow Average Joe to get a hardship discharge of the student loans.

Stipulations of law, fact, and evidence have already been filed.

Negotiations to dismiss the lawsuit broke down when the debtor determined that none of the Department of Education's administrative remedies (income based repayment plan) would alleviate the financial burden, despite the fact that his monthly payment under the newest student loan repayment program would be \$10 per month.

The adversary proceeding goes forward to trial where Attorney Magnificent seeks to qualify Dr. Strange as an expert witness.

Challenge Three

The "Say Goodbye to Your Title" Loan Company will oppose the Average Joe's valuation of the Debt Mobile. Average Joe's plan proposes to pay back the loan at \$5,000 secured at 5% interest, \$5,000 unsecured. The Debt Mobile needs extensive repairs. Average Joe has a lot of quotes for the necessary repair work.

Average Joe used the Debt Mobile as collateral for a \$50,000.00 loan he took out in January of 2014. Say Goodbye to Your Title" Loan Co. ("Creditor") placed a lien on the Debt Mobile in February of 2014. Creditor filed a Proof of Claim indicating its entire outstanding balance of \$10,754.00 should be treated as a secured claim. Immediately, Average Joe filed an objection to the Proof of Claim ("Objection") and Creditor's claims of its claim being fully secured.

Average Joe believes the Debt Mobile hold little value based upon his opinion, Nellie Blue Book and the repair work estimate. Subsequent to the Objection, Creditor files a Response to Average Joe's Objection as Creditor believes that the Debt Mobile has value based upon BADA views and an appraiser's opinion.

The Judge has set an evidentiary hearing on the debt mobile's valuation to determine the status of Creditor's claim. Until the value is determined, the Court continued the confirmation hearing.

Faculty

Joseph A. Ferrise is the attorney for the Chapter 13 Trusteeship in Akron, Ohio, a position he has held for 15 years. Mr. Ferrise received his undergraduate degrees in political science and history, and his J.D. in taxation, from the University of Akron.

Patrick Hruby is a senior associate attorney at Brock & Scott, PLLC in its Tampa, Fla., office. His practice focuses on creditor-side bankruptcy matters in all Florida and Ohio bankruptcy courts. Mr. Hruby has a broad understanding of bankruptcy from his creditor representation in all chapters, and from having served as a judicial law clerk in the U.S. Bankruptcy Court for the Northern District of Ohio and serving chapter 7 trustees for several years. He writes frequently for industry publications and is currently serving as the Editor of ABI's Consumer Committee Newsletter. Mr. Hruby received his undergraduate degree *summa cum laude* in 2006 from Cleveland State University and his J.D. *cum laude* in 2009 from Case Western Reserve University School of Law.

Hon. Cecelia G. Morris is a U.S. Bankruptcy Judge for the Southern District of New York in Poughkeepsie, appointed on July 1, 2000. She served as Chief Judge from 2012-22. Prior to her appointment to the bench, Judge Morris clerked for the U.S. Bankruptcy Court for the Southern District of New York starting in December 1988. Prior to that, she clerked for the U.S. Bankruptcy Court for the Middle District of Georgia from February 1986 until she moved to New York. Before her career with the court, Judge Morris had a private law practice in Macon, Ga., from May 1981 until February 1986. She served as an Assistant District Attorney and as the administrator of the Civil Division Child Support Recovery Unit, Griffin Judicial Circuit in Griffin, Ga., from September 1979 until May 1981. She also had a private law practice in Griffin from October 1977 until January 1978 and clerked at Seay Sims & Park (now Bolton & Park) in Griffin in 1976. Judge Morris has participated as a trainer in many mediation/arbitration programs sponsored by the Federal Judicial Center, the Association of the Bar of the City of New York, the National Association of Security Dealer Regulation and Bankruptcy Court, Endispute Inc. and the Center for Public Resources, Inc. She has successfully mediated many disputes in some of the most prominent cases pending before the U.S. Bankruptcy Court for the Southern District of New York. Judge Morris is an active participant in many bar outreach programs and has been honored to be the keynote speaker at several events, including the Federal Judicial Center's Clerk of Court and Chief Deputies Conference and Weil Gotshal and Manges' Women@Weil program. She has authored several articles on electronic filing, including a chapter on electronic case filing in *Collier on Bankruptcy*, and has published articles on loss-mitigation, mediation, the consumer credit counseling requirement in bankruptcy and cross-border insolvency cases under chapter 15 of the Bankruptcy Code. Judge Morris has testified before Congress and served on the Bankruptcy Judges Advisory Board to the Administrative Office of the U.S. Courts. She also has taught bankruptcy ethics at St. John's University's LL.M. in Bankruptcy program and is a member of the Barry Zaretsky Roundtable Steering Committee at Brooklyn Law School, sits on the advisory board of the *ABI Law Review*, and is a member of the International Insolvency Institute, American College of Bankruptcy, National Conference of Bankruptcy Judges and the Global Restructuring Organization's Scientific Committee, headquartered in Modena, Italy. Judge Morris received the Annual Conrad B. Duberstein Memorial Award for Excellence and Compassion in the Bankruptcy Judiciary

and the *New York Law Journal* Impact Award for pioneering the use of e-filing in federal court. She received her B.S. from West Texas State University and her J.D. from the John Marshall Law School.

Nicole P. Novak is an attorney with the Sirody & Ruben Bankruptcy Center in Baltimore. She is licensed to practice law in Maryland (2018) and Ohio (2006). Ms. Novak has worked for debtors, creditors and trustees. Her current practice focuses on debtor representation with an emphasis on chapter 13. While practicing in Ohio, Ms. Novak actively volunteered on committees for the Bankruptcy Section of the Cleveland Metropolitan Bar Association and co-chaired The William J. O'Neill Great Lakes Regional Bankruptcy Institute. She serves as contributor to the Maryland section of the *Bankruptcy Exemption Manual*, published by Thomson Reuters, and is a frequent author for the NACTT Academy. Ms. Novak is a current member of the National Association of Chapter 13 Trustees, the NACTT Academy, the National Association of Consumer Bankruptcy Attorneys, the Maryland State Bar Association and its Consumer Bankruptcy Section, and the Maryland Bankruptcy Bar Association. She received her J.D. *magna cum laude* from Cleveland State University College of Law.

Marianne T. O'Toole is the founding member of O'Toole + O'Toole PLLC in Bedford Hills, N.Y., and practices primarily in the areas of bankruptcy, creditors' rights and other insolvency matters. She has practiced law since 1989, previously as an assistant U.S. attorney for the Southern District of New York and Chief of Tax and Bankruptcy, and as a clerk for then-Chief Judge for the U.S. District Court for the Southern District of New York. During her tenure with the U.S. Attorney's Office, Ms. O'Toole represented the U.S. and its agencies in all phases of civil litigation, including trials and appeals in both federal and state court. She was responsible for a range of cases involving commercial law, tax, bankruptcy, fair housing, employment law, constitutional law, environmental law and tort law. Since 2006, Ms. O'Toole has served as a chapter 7 panel trustee in the Southern District of New York. She also has been appointed as a chapter 11 trustee, plan administrator, distribution agent, special master in multi-district litigation, and as guardian *ad litem*. Ms. O'Toole is a Fellow in the American College of Bankruptcy and a member of the New York State Bar Association, the New York City Bar, the District of Columbia Bar Association, the National Association of Bankruptcy Trustees and ABI. She received her B.A. *cum laude* in 1986 from Pace University and her J.D. in 1989 from Pace University School of Law, where she was managing editor of the *Pace Law Review*.

Keith L. Rucinski, CPA is an attorney and the chapter 13 trustee for the Northern District of Ohio in Akron, appointed in October 2008. He has served as an expert witness in bankruptcy for private attorneys, state prosecutors and the U.S. Department of Justice. Mr. Rucinski has taught more than 30 graduate and undergraduate courses in taxes, financial statement analysis, accounting and business law, and he has published several articles in the areas of bankruptcy and accounting. In addition, he has been a seminar speaker for numerous local and national organizations. Mr. Rucinski is a member of ABI and the National Association of Chapter 13 Trustees, Ohio State Bar Association, Ohio Society of CPAs, Akron Bar Association and Federal Bar Association, and he is a life member of the Sixth Circuit Judicial Conference. He received his B.S. in business administration with a concentration in finance from the University of Akron and his J.D. from the University of Akron School of Law.