

**National Consumer Bankruptcy Rights Center  
Year in Review  
2023**

**Overview:**

The National Consumer Bankruptcy Rights Center (NCBRC) is a 501(c)(3) nonprofit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. Created in 2010, NCBRC was founded by the Board of the National Association of Consumer Bankruptcy Attorneys (NACBA) to provide assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law. This work is of the utmost importance in preserving options for vulnerable individuals and families struggling with overwhelming debt during the challenging economic times.

**Amicus Briefs**

NCBRC provides assistance either by working directly with debtors' attorneys or by filing amicus briefs in courts throughout the country. In cases with the potential to affect consumer debtors throughout the country, NCBRC amicus curiae briefs address broader issues so that the larger legal effects of courts' decisions do not depend solely on the parties directly involved in the case. As part of its amicus program, NCBRC received more than **300 hours** of pro bono support from leading bankruptcy attorneys and former bankruptcy judges around the country. Recent examples of NCBRC amicus briefs include:

***The Supreme Court Rules Native American Tribes Do Not Have Sovereign Immunity From The Bankruptcy Code:*** On June 15, 2023, the court ruled that Native American tribes are subject to the automatic stay and discharge injunction of the Bankruptcy Code. "We conclude that the Bankruptcy Code unequivocally abrogates the sovereign immunity of any and every government that possesses the power to assert such immunity. Federally recognized tribes undeniably fit that description; therefore, the Code's abrogation provision plainly applies to them as well." In an 8-1 decision (J. Gorsuch dissenting) in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 143 S. Ct. 1689 (2023), the court held that the term "governmental unit" found in 11 U.S.C. § 101(27) includes Native American tribes. As such, Native American tribes are included in the waiver of sovereign immunity pursuant to 11 U.S.C. § 106. NACBA and NCBRC submitted an [amicus curiae brief](#) in support of the Debtor along with Legal Aid Chicago and the Hon. Judith Fitzgerald, Hon. Joan Feeney, Hon. Phillip Shefferly, Hon. Eugene Wedoff, Hon. Steven Rhodes and the Hon. Carol Kenner. The brief was submitted by Daniel J. Bussel of KTBS Law LLP and G. Eric Brunstad, Jr. of Dechert LLP.

***The 9th Circuit Adopts NCBRC and NACBA's Amici Argument and Holds A Chapter 13 Trustee May Not Collect Her Percentage Fee If The Chapter 13 Is Dismissed Prior To Confirmation:*** The Ninth Circuit Court of Appeals held that 11 U.S.C. § 1326(b) requires a chapter 13 trustee to turn over all plan payments to the Debtor upon dismissal before confirmation, without deducting her statutory fee. See *Evans v. McCallister (In re Evans)*, 69 F.4th 1101 (9th Cir. 2023). The court agreed with the interpretation of the law submitted by the National Consumer Bankruptcy Rights Center and the National Association of Consumer Bankruptcy Attorneys: “The better approach, as proposed by amicus National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys (NCBRC), is to read 28 U.S.C. § 586 and 11 U.S.C. § 1326 together. ... We generally agree with NCBRC's construction of the relevant statutes, which renders harmonious an otherwise fragmented scheme.” Joining the Tenth Circuit, the Ninth Circuit held that the trustee was not entitled to a percentage fee of plan payments as compensation for her work in the Chapter 13 case.

A complete list of amicus briefs filed is listed below.

### **2023 Amicus Briefs:**

#### **Supreme Court:**

***Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 143 S. Ct. 1689 (2023).** The amicus brief supported the Respondent and argued that the term “governmental unit” found in 11 U.S.C. § 101(27) includes Native American tribes which makes lending organizations associated with the tribe subject to the automatic stay and discharge injunction.

#### **Circuit Courts of Appeals:**

#### **Decided Cases:**

***Goodman v. Doll (In re Doll)*, 57 F.4th 1129 (10th Cir. 2023) cert. denied sub nom. *Goodman v. Doll*, No. 23-218, 2024 U.S. LEXIS 918, 2024 WL 674703 (U.S. Feb. 20, 2024).** The amicus brief supported the holding that 28 U.S.C.S. § 586(e)(2) and 11 U.S.C.S. § 1326(a)(2) unambiguously required the standing Chapter 13 trustee to return pre-confirmation payments to the debtor without deducting the trustee's fee when a plan was not confirmed.

***Evans v. McCallister (In re Evans)*, 69 F.4th 1101 (9th Cir. 2023) cert. denied sub nom. *McCallister v. Evans*, 218 L.Ed.2d 22 (U.S. 2024).** The amicus brief argued that a chapter 13 trustee must turnover all plan payments to the Debtor upon dismissal before confirmation, without deducting her statutory fee.

***Bruce v. Citigroup Inc.*, 75 F.4th 297 (2d Cir. 2023).** The amicus brief supported Appellant’s argument that the Bankruptcy Code and Rules allow a class action to enforce the discharge injunction in a jurisdiction other than the originating court.

**Goetz v. Weber, Case No. 23-2491 (8<sup>th</sup> Cir.).** The amicus supported the debtor's argument that post-petition increases in non-exempt equity in real estate during a chapter 13 bankruptcy should not belong to the estate in a converted chapter 7 case.

**Pending Cases:**

***In re Soussis, Case No. 22-155 (2<sup>nd</sup> Cir.).*** The amicus supported the decision in *Evans* and *Doll* that chapter 13 trustees are not entitled to a fee if the case is dismissed pre-confirmation.

***In re Trantham, Case no. 22-2263 (4<sup>th</sup> Cir.).*** The amicus supported the debtor's position that a mandatory non-standard provision concerning the timing of vesting of property violates the debtor's right to choose when vesting occurs pursuant to 11 U.S.C. § 1322(b)(9).

***Lopez v Bejar, Case No. 23-55680 (9<sup>th</sup> Cir.).*** The amicus supported the debtor's argument and urged the court not to adopt a broad and precedential ruling regarding whether a debtor's pre-petition right to appeal is an estate asset.

***Marshall v. Johnson, Case No. 23-2212 (7<sup>th</sup> Cir.).*** The amicus brief supported debtor's argument that the chapter 13 trustee is not entitled to her fee if the chapter 13 bankruptcy is dismissed prior to confirmation.

***Munding v. Masingale, Case No. 22-60050 (9<sup>th</sup> Cir.)*** The amicus brief supported the debtor's argument that an exemption of "100% of FMV" protects all equity in the debtor's real estate, both pre and post-petition if no objection to the exemption is filed.

***Feyjinmi v. Maryland, Case No. 22-2252 (4<sup>th</sup> Cir.)*** The amicus brief supported the argument that a criminal court's order to pay restitution pursuant to a "Probation Before Judgment" is dischargeable under 11 U.S.C. § 1328(a)(3).

***Tico v Van Meter, Case No. 22-1014 (9<sup>th</sup> Cir.)*** The amicus brief argued that a chapter 13 debtor has an absolute right to dismiss the bankruptcy even if the debtor was ineligible to file a chapter 13 bankruptcy.

***In re Saldana, Case No. 23-15860 (9<sup>th</sup> Cir.):*** The amicus supported debtor's argument that debtors should be able to deduct voluntary retirement contributions in the means test calculation.

**Pro Bono Appellate Program** In addition to filing amicus curiae briefs, NCBRC also works to encourage, identify and support volunteer attorneys interested in providing pro bono appellate services to debtors. Specifically, NCBRC can train attorneys, provide support in navigating the bankruptcy appellate process, and assist pro bono attorneys in writing appellate briefs and preparing for oral argument by reviewing and commenting on briefs and offering moot argument opportunities. Recent cases in which, NCBRC has recruited or assisted pro bono counsel, include: *Trantham v Tate*, Case No. 22-2263 (4<sup>th</sup> Circuit) (whether the bankruptcy court

can mandate a non-standard provision concerning vesting of estate property in chapter 13 plans). *Ovation Services v. Morgan*, Case No. 23-40558 (5<sup>th</sup> Circuit) (whether a chapter 13 bankruptcy plan can require a tax lien creditor to comply with reporting requirements similar to Fed. R. Bankr. P. 3002.1). *Mission Hen, LLC v. Lee*, Case No. 23-4220 (9<sup>th</sup> Circuit) (whether 1322(c)(2) permits bifurcation of an undersecured claim).

**Educational Programs** Executive Director, Jim Haller, regularly participates in educational programs throughout the year both in person and in on-line trainings. Recent trainings include:

- *Caselaw and Legislative Update & Unpacking and Organizing your Client's Baggage: When Love, Marriage, Divorce, Mental Illness, or Death collide with Bankruptcy Law* – NACBA's Fall 2023 Workshop
- *How to Maximize Your Fee Representing Clients In Chapter 13 Bankruptcy - How to Introduce Valuation Evidence in Bankruptcy* —NACBA Webinar
- *Litigating the Fraud Exception to Discharge* – NACBA Webinar
- *Short Sales and Carve Outs*
- *Caselaw Update and NCBRC Appeals FCRA and Bankruptcy* —NACBA Annual Convention 2023.

New to NCBRC's website is a bi-monthly case law update and a Guide for Pro Bono Attorneys When Prosecuting an Appeal from Bankruptcy Court under the Resources tab.