

After the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Steven Taieb has had 2 very favorable Bankruptcy Court opinions that have been very beneficial to the debtors bankruptcy bar and debtors who file for bankruptcy.

In Re Fox, 370 R.R. 639 (Bankruptcy D.N.J. 2007) dealt with the issue of whether means testing was applicable to cases converted from a Chapter 13 to Chapter 7.

One of the major changes in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 deals with means testing. Means testing looks at the debtor's income over the six months prior to filing to determine if they qualify for Chapter 7, or if it would be an abuse since the debtor's current monthly income is greater than the applicable median family income for the applicable State and household size, and after filling out the Form B22A the debtor fails the means test.

Judge Burns held that the debtor, having converted her case from one under Chapter 13 to one under Chapter 7, is not subject to the means test under the plain language of section 707(b)(1) and is thus not required to file a Form B22A under Rule 1007(b)(4), 370 B.R. at 648.

Thus, after Fox any debtor who converts a case from Chapter 13 to Chapter 7 is no longer obligated to do an additional Form B22A means test, which is clearly favorable to both debtors and debtor's attorneys.

The second crucial case that Steven Taieb had a published opinion was In Re Kemp, 391 B.R. 262 (Bankruptcy D. N.J. 2008).

In Kemp, Mr. Taieb filed a motion to reclassify a wholly unsecured mortgage on the debtor's residence as an unsecured claim pursuant to In Re McDonald, 205 F. 3d 606 (3d Cir. Cert denied, 531 US 822, 121 S. Ct. 66, 148 L. Ed. 2d 31 (2000)). This issue in Kemp was whether the request must be brought by a Motion, or an Adversary Proceeding which is much more involved and costly.

In distinguishing the Third Circuit decision in In Re Mansary-Ruffin, 530 F. 3d 230 (3d Cir. 2008), Chief Judge Wismur concluded that the matter could be brought by Motion rather than an Adversary Proceeding, and granted Mr. Taieb's Motion.

Chief Judge Wismur ultimately concluded that Fed. R. Bankr. P 701(2) does not require the filing of an Adversary Proceeding to accomplish the reclassification of a secured claim to an unsecured claim 391 B.R. at 266.