

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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VIA FACSIMILE TRANSFER

September 26, 2005

Bruce J. Gering,
Assistant United States Trustee
230 S. Phillips Ave., #502
Sioux Falls, South Dakota 57102

David L. Claggett, Esq.
Counsel for Debtors
522 Main Street
Spearfish, South Dakota 57783

Subject: *In re Mark A. and Jolene T. BeVier,*
Chapter 7, Bankr. No. 05-50209

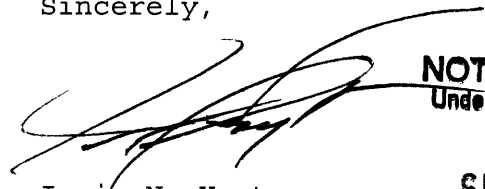
Dear Counsel:

I have reviewed the parties' briefs regarding the United States Trustee's motion to dismiss for substantial abuse. Given Debtors' income level, amount of debt, and the total they are spending on housing (numbers on which the parties do not have a material disagreement), and in light of the case law submitted by the United States Trustee, there is simply no scenario Debtors could present that would justify their extremely high housing costs. To allow Debtors to continue such expenditures while still receiving a Chapter 7 discharge would constitute a substantial abuse of the bankruptcy process.

The evidentiary hearing set for October 5, 2005, is cancelled. If Debtors do not voluntarily convert their case to a Chapter 13 case within ten days, the case will be dismissed upon Assistant U.S. Trustee Gering's affidavit of default.

The Court cautions Debtors that just converting their case to a Chapter 13 may not solve their problem. Excessive housing expenses may also preclude confirmation of a Chapter 13 plan on good faith grounds. See 11 U.S.C. § 1325(a)(3); *In re Baird*, 2005 WL 612863, slip op. (Bankr. N.D. Iowa March 10, 2005); *In re Henry*, 328 B.R. 529 (Bankr. S.D. Ohio 2004), *In re Leone*, 292 B.R. 243 (Bankr. W.D. Pa. 2003).

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

SEP 26 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota

By m s

INH:sh

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

SEP 26 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

CC: case file (docket original; serve parties in interest)

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