Opinion Title: 11/22/2004 UNPUBLISHED Gregory A. Smith and Allison D. Smith, 03-36469, Judge Thurman.

Body: Upon a motion brought by the United States Trustee, the Court ruled on dismissing a chapter 13 case with prejudice to the Debtors receiving any discharge on their scheduled debts pursuant to §349(a) of the Bankruptcy Code. The Court ruled that Debtors who had filed eight bankruptcy petitions over the preceeding nine years including chapter 7 petitions in 1995 and 2001 where discharges were obtained and had filed chapter 13 petitions in 1996, 1997, 1998, 2000, 2002 and 2003 where no significant activity or confirmation of plan had occured; who had failed to make any pre-confirmation plan payments except for the initial payment to the Trustee in the present case and were otherwise delinquent a total of five pre-confirmation payments to the Trustee in the present case, should have their case dismissed with prejudice from receiving any discharge for the debts listed on their schedules.The Court reviewed the history of §349(a) of the code going back to the Chandler Act of 1898 and determined that such history coupled with the plain meaning of that section all direct that a case may be dismissed with this type of prejudice under egregious facts. The Court adopted the Flygare (In re Flygare, 709 F.2d 1344 (10th Cir. 1983) for badges of bad faith as a beginning point of analysis. The Court further concluded that this type of dismissal with prejudice was consistent with the Tenth Circuit's decision in Frieouf (In re Frieouf, 938 F. 2d 1099, (10th Cir. (1991) which forbade denial to bankruptcy court access for more than 180 days, but authorized denial of discharge of scheduled debts for cause.

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Judge: Judge William T. Thurman [2]

Date: Monday, November 22, 2004

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