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COMPARING THE PRACTICE OF LAW IN WESTERN MICHIGAN AND SOUTHERN CALIFORNIA

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I cannot count the number of times that I have been asked why I chose to move from Southern California to Western Michigan. It is no secret that most migration goes in the other direction. After all, is not California the land of golden sunshine and opportunity? How could I give up the obvious advantages of Southern California to move to the so-called "Rust Belt"?

Well, I could and I did make such a move. Furthermore, in general, the move has not been the source of great disappointment, as some seem to expect. After careful preparation for the move and a realistic understanding of what I could and could not find in Western Michigan, I have been pleased with the new life that I have begun in Western Michigan. With certain exceptions, I can honestly say that life for me in Western Michigan is an improvement over life in Southern California for a number of reasons. One of the main reasons for this is the comparison of the practice of law in the two areas, which is the subject of this article.

Before I begin, I think it is useful for me to summarize the differences between my legal practice here and my legal practice in Southern California. In Southern California, I had my own legal practice (with a partner) involving bankruptcy law in all areas, construction law, and general civil litigation. Here, I am associated with a 13-lawyer firm which has been known in the community for its long-standing real estate practice and, for that firm, I have handled creditor bankruptcy cases, construction law, and some initial work in real estate transactions. This background could explain a lot about my impressions and comparisons of practice in the two areas.

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A. Initial Impressions: Western Michigan over Southern California.

1. There is a great deal of respect in the legal community in Wes Michigan.

In Southern California, lawyers often delayed discovery, argued futil legal points to wear down and frustrate opponents, treated fellow lawyers rudely, and, in general, lacked respect. Some lawyers lied to get what they wanted. Once I became aware that a lawyer had lied during oral argument in court!

Similarly, judges were not accorded the respect that they are here. Rarely did anyone stand for a judge when entering the courtroom and it was rare if you were not met with a repeated announcement from the courtroom clerk not to do so. Furthermore, it was only a matter of style if an attorney stood while addressing the court. Many attorneys did not. Likewise, judges (especially state court judges) did not seem to respect lawyers. On more than one occasion, I saw a judge purposely embarrass an attorney who had not followed some courtroom procedure.

Furthermore, court employees were rarely helpful to lawyers. Either they had no idea about how to answer a question, or they gave the stock answer that they were not allowed to give legal advice even if the question related to local practice and expectations. They would routinely refuse to accept pleadings that did not conform to the numerous technical rules (e.g., placing the time, date and place of a hearing on every single bankruptcy file document, save claims and initial petitions in bankruptcy). Every day in the clerk's office, you would see many people milling about, not knowing what to do, where to go, or what to file, and nobody was there to help them.

One of the standing Chapter 13 trustees was similarly unhelpful. She was always a roadblock for a debtor's attorney. Debtor attorneys were more afraid of her than any creditor around, in most cases. She would raise issues in an accusatory manner about minor elements of a budget in a Chapter 13 case, and always had that "parental" tone to her voice when speaking to the court or to the debtor at a 341(a) hearing about the schedules or the plan. She always complained about debtors and their attorneys who did not comply with rules.

Not everyone acted in this manner, of course. I found almost all bankruptcy judges to be very courteous and well prepared. This is quite surprising because it was well known that they were substantially overloaded and probably still are, even with the recent addition of new judges. There were other standing Chapter 13 trustees who were courteous, despite huge case loads (it was estimated that there were 30,000 Chapter 13's pending at one time in Los Angeles alone!). There were attorneys and judges who similarly acted with respect, despite their heavy case loads.

In general, however, practicing law in Southern California was a stressful experience because you never knew when you were going to be treated with rudeness and when you were not. Furthermore, you felt that if you were too polite to opposing counsel, they could take this as a sign of weakness and they might try to take advantage of you. Sometimes, it seemed that it was better to start off a little rude, to establish some respect. You could always become polite later, but you needed to establish the respect first.

Contrast this to Western Michigan. Here, bankruptcy judges are very well prepared and courteous as in Southern California. Judges here, however, seem to have the <u>time</u> to consider more issues more carefully. I have never seen a judge deliberately embarrass an attorney in court here and I have seen a number of judges take pains to avoid doing this, even if the attorney has been

ult". Lawyers show more respect to judges here, starting with ities such as standing when the judge enters the courtroom and while essing the court.

Lawyers here are clearly more respectful to each other, with very few ceptions. What a pleasure it is to negotiate with an attorney with a certain ense of confidence that the attorney is not lying to you or to trust an opposing counsel to adjourn a hearing for you. It is amazing how quickly matters can be resolved under these circumstances.

The standing trustee's office here is far from being a thorny adversary. I have seen the standing trustee offices contribute substantially to the resolution of problems, which is another welcome change.

The various court employees are real human beings, generally very knowledgeable about local practice and quite helpful. I have been especially impressed with the bankruptcy court clerks, legal clerks and secretaries.

2. There is less insistence on formalities and technical rules in Western Michigan.

In Southern California, the local bankruptcy rules are over a half inch thick. An attorney had to worry about half a dozen different technical requirements to file any court document or the clerk would turn it back automatically. Typically, if you did not provide a complete brief of legal issues in a motion it would be highly unlikely that a judge would even consider it (even if the issues were simple or repetitive). Obtaining a continuance of trial date, especially within a month of the trial, was near to impossible. If you did not bring a proposed order with you at the time of hearing, you were always informed that you were putting an extreme burden upon the system, because there were so many pending matters that it was difficult for the clerks to locate the appropriate file in order to enter the order or judgment properly. Courts increasingly required the use of preprinted forms, some of which varied from court to court according to local court rules. As a result, a newcomer had a very difficult time determining exactly how to file papers and get things done. This created greater expense and much more frustration.

Here, of course, there are less local rules, technical requirements or required preprinted court forms. I have the impression that, generally, if an attorney presents a clearly stated court document, following a few procedural rules and containing the proper substance, it will be acceptable. This allows attorneys to focus more on what they are doing rather than how they are doing it. It is less stressful and less costly for clients, in most cases.

3. Attorneys in Western Michigan are more modest.

One example of this is a comparison of the cosmetic appearance of legal offices. In Southern California, many offices, large and small, would dazzle you in their presentation. If these offices did not cost a tremendous amount, they certainly looked as if they did. Furthermore, almost every attorney's private office has their numerous certificates showing admission to various bar associations and courts.

Here, law offices are much more modest, although not necessarily cheap looking or sloppy. Attorneys often choose not to display their certificates.

This modesty, in my view, is an advantage. I do not see why lawyers should have to spend hundreds of thousands of dollars to decorate their offices,

when it is clear that the clients are going to pay higher fees to suppor opulence. I think that it is better to either lower our fees, or provide b services to our clients with the money that we bring in, rather than spend amounts on office decor.

B. Southern California Over Western Michigan.

1. Legal research and information sources.

There is more binding legal authority available for research on most issues in California than there is in Western Michigan. This makes it easier to find answers to legal questions. (On the other hand, the lack of binding authority in Western Michigan gives attorneys the opportunity to be more creative in their arguments.)

There are more bankruptcy and other legal support groups in Southern California than there are in Western Michigan. In Southern California, I was a member of two luncheon groups and one dinner group that addressed issues relevant to bankruptcy law. One group presented the institutional creditor viewpoint, one presented the smaller creditor and debtor viewpoints, and the third addressed all viewpoints. As I was preparing to leave California, a fourth group developed in Orange County, which was to devote itself to in-depth presentations on subjects six times a year. Similar opportunities were offered to attorneys in other legal fields.

These support groups helped substantially to keep attorneys advised of recent legal developments or new legal areas.

2. The Bankruptcy Appellate Panel (BAP).

The Ninth Circuit has a BAP. This provides attorneys in the Ninth Circuit with review of bankruptcy decisions from a knowledgeable source. California attorneys appreciated the BAP for this reason. Federal district court judges also appreciated the BAP because they did not want to hear bankruptcy appeals.

C. Conclusions Based on Impressions: Why the Difference? What Does this Mean to Us?

I believe that the differences listed above between practicing law in Southern California and Western Michigan are caused mainly by the fact that the Southern California legal community is substantially larger than the legal community in Western Michigan. According to the California State Bar, California has over 105,000 attorneys, and over 45,000 attorneys practice in the Southern California counties of Los Angeles and Orange. (This does not include Riverside, San Bernadino and other counties, in which I practiced rarely. These counties have sustained substantial growth in all manners over the past few years, as the population moved eastward into the desert.) Compare this to 24,123 attorneys practicing in Michigan and 2,023 in Kent and contiguous counties, according to the 1990 State Bar Journal Directory. When the bankruptcy support groups assembled for dinner, it was not rate that we would fill a ballroom of 500 people.

The Southern California bankruptcy caseload is also substantially larger, of course. Los Angeles is known as the bankruptcy capital of the world. Note the comparative recent statistics of cases filed in Los Angeles and Orange Counties and in Western Michigan.

1989	Los Angeles	Orange	Western Michigan
Chapter 7	27,179	5,957	3,289
Chapter 13	5,247	1,987	1,420
Chapter 11	849	362	98
Chapter 12	2	-0-	17
	33,227	8,306	4,824

1990 (through 10/90)	Los Angeles	Orange	Western Michigan
Chapter 7	23,580	5,340	3,324
Chapter 13	4,091	1,285	1,419
Chapter 11	693	219	119
Chapter 12	-0-	-0-	15
	28,364	6,844	4,877

There are 12 judges in Los Angeles County, 3 in Orange County, and, of course, 4 in Western Michigan. For 1989, therefore, 2,768.91 cases were commenced per judge in Los Angeles, 2,786.66 were commenced per judge in Orange, and 1,206 were commenced per judge in Western Michigan.

With all of the filings and the attorneys it is no wonder that such support groups existed in Southern California. It is also no wonder that the bankruptcy system, including the lawyers, judges and clerks were under such pressure that it was very difficult for them to perform their jobs well and with courtesy. I do not believe that the lack of courtesy occurs because Californians have less character than do Michigan residents. I sincerely believe that any group of people would act in a similar manner when placed under such overwhelming stress and pressure.

This provides an opportunity for us to reflect on our responsibilities to accommodate our growth as a legal community so that we can avoid the detractions that exist in the Southern California legal community, while taking advantage of some of the benefits of a larger legal community. Although I do not expect the Western Michigan legal community to approach the size of the Southern California legal community, I do see that the Western Michigan legal community is growing, and I see some signs that certain participants in the legal community are becoming more technical, less personable, and perhaps a little less cooperative, even during the short time in which I have practiced in Western Michigan (since March, 1989). Because I have not been in Western Michigan for a long time, it is difficult for me to determine whether this is a trend, or whether I am seeing isolated incidents. I do believe, however, that such a trend is natural when a legal community or anything grows, especially if it grows substantially.

I think that it would be a shame if Western Michigan grew and lost the sense of respect that I have seen amongst the participants in the legal community since I began practicing here. I think that the participants in the legal community here would feel a great sense of loss if this respect fell by the wayside because of growth. I therefore think that it should be an important goal for us to take any steps that we can to prevent this from happening.

One way to do this would be for the participants in the legal process to regularly communicate with each other and resolve problems that arise. I have

seen the Bar Association - Western Michigan, Bankruptcy Section facilita conflict resolution. I think that the Bankruptcy Section could continue increase its efforts to facilitate conflict resolutions in the future. participants in the legal community know that the Bankruptcy Sectio available for this purpose, they can bring their problems to the Section, have the Section act as mediator, arbitrator or whatever other function necessary in order to achieve a resolution that is acceptable to all. I se many people willing to assist in this role.

I understand that if any bankruptcy attorney or other participant in the bankruptcy legal community in Western Michigan has a problem that they would like to see resolved, that they should contact any member of the Bankruptcy Section Steering Committee and that this member will bring the problem before the Steering Committee, where some form of review of the problem can be commenced and accomplished. I urge everyone to consider using this approach if they have a problem that has arisen in the bankruptcy process in Western Michigan.

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United States Bankruptcy Court for the Western District of Michigan during the period from January 1, 1990 through November 30, 1990. These filings are compared to those made during the same period one year ago, and two years ago.

	1/1/90 - 11/30/90	1/1/89 - 11/30/89	1/1/88 - 11/30/88
Chapter 7	3,665	3,031	2,531
Chapter 11	142	89	78
Chapter 12	17	16	33
Chapter 13	1,562	1,186	1,102

THE 'BASE' CHAPTER 13 PLAN REVISITED

In the March, 1990 issue of this Newsletter I was privileged to have an article published detailing the inner workings of a so-called 'base' Chapter 13 plan, whereby a debtor proposes specific plan payments for a limited duration of time, with administrative, secured and priority creditors generally paid in full with any resulting funds left over from the base 'pot' being divvied up pro rata among allowed unsecured claimants. The article set forth the too-often unfortunate result to the unsuspecting unsecured creditor of what happens when a debtor falls behind in his or her plan payments, thus causing extra house payments and/or additional interest on other secured claims to be paid from the 'pot', and since the 'pot' is limited, the unsecured creditors effectively end up funding those additional payments to other creditors.

As a result of the substantial potential effect caused by delinquent debtor payments, the writer made the case management decision to convert all his 'base' plans to percentage plans once the bar date for claims had expired, using the base amount as the limit on total plan payments, with the assumption that payments are made timely as set forth in the confirmed plan. As of this writing 341 such cases have been converted, with somewhat startling overall results, as follows:

Total cases converted to date	341
Total unsecured claims filed and allowed in the 341 cases	$4,699,389
Average unsecured claims filed and allowed per case	$ 13,781
Total unsecured claims unfiled (based on amounts listed as owing by debtors)	$1,763,838
Average unfiled unsecured claims per case	$ 5,173
Percentage of claims filed (based on dollar amounts)	72.7
Percentage of claims unfiled (based on dollar amounts)	27.3
Number of cases in the sample in which unsecured creditors were listed as owing, but NONE filed claims	11
Creditors who appear to fail to file claims most often:	V.I.S.A. MasterCard Hospitals Doctors American Express
Geographical region which appears to be most negligent in filing unsecured claims	California

Since it appears that debtors have the tendency to underestimate the amount owing to unsecured creditors, likely because they don't keep up with the monthly accrual of finance charges on the credit cards and other debts, this suggests that the actual percentage of unfiled claims in the average case in the sample

may be somewhat higher. All of this is alarming to the writer, especiall light of the fact that V.I.S.A. has launched a nationwide program to become m involved in cases in which it appears as a creditor, hoping to obtain as result a higher level of non-dischargeability in Chapter 7 cases through frau litigation, and a higher payment percentage in Chapter 13 cases based on a 'lack of good faith' objection to confirmation, again, with the misuse and abuse of the credit card privilege being the thrust of their argument. The writer had one recent case, a 100% plan as proposed, where a health care provider failed to file a claim on a debt listed at over $13,000, thus effectively shortening the debtor's proposed plan from 4.9 years to 2.3 years. Yes, the debt did exist, and had not been paid by health insurance, because the writer heard from the health care provider after the time for filing claims had expired, inquiring as to how it could get its claim allowed. This is an unfortunate situation from the standpoint of the creditor, and should be embarrassing in light of the recent hue and cry regarding the escalating cost of medical care. By the same token, it is wonderful relief for the debtor in the situation cited, who not only gets the intended fresh start, but in reality a head start in that his plan payment time has been shortened by 2.6 years.

How much of the unfiled claim situation is brought on by the creditor failing to get notice, caused by a faulty address used in the matrix by the debtor? Certainly it happens, but apparently rather seldom, or we would be seeing much more activity by creditors seeking to have their debts determined to be non-dischargeable due to inability to file a claim based on no knowledge of the case filing within the claim filing period. Further, the writer has heard of extremely few instances where an unfiled, and likely improperly noticed, creditor has attempted to enforce collection by its own means, either during the Chapter proceedings (likely in violation of the automatic stay) or after the debtor's discharge has been entered.

Obviously in a 100% Chapter 13 plan the unfiled claim is a complete forgiveness of obligation to the debtor, and shortens the time he has to make his plan payments. It also represents completely lost profits/income to the creditor. A fair percentage of the 'base' plans converted to date became 100% plans to those creditors who bothered to file claims because of those who didn't. When the conversion still results in a less than 100% payout the creditors with filed claims still reap a benefit in the form of an increased payout percentage thanks to their brethren who, for whatever reason, failed to file a timely claim.

Joseph A. Chrystler

Standing Chapter 13 Trustee
Western District of Michigan
Kalamazoo Division

RECENT BANKRUPTCY DECISIONS:

The following are summaries of recent court decisions that address important issues of bankruptcy law and procedure. These summaries were prepared by Patrick E. Mears with the assistance of Larry A. Ver Merris.

In re George Worthington Co., 1990 WL 192057 (6th Cir. 1990). The Sixth Circuit Court of Appeals vacated its prior opinion issued in this case on September 12, 1990, which was summarized in the September 1990 issue of the Newsletter. The Sixth Circuit now holds that the expenses incurred by members of creditors' committees may qualify for treatment as administrative expenses under 11 U.S.C. § 506(b). This grant of administrative expense status was found to be implied "in the overall scheme for reorganization and in the legislative history of the [Bankruptcy] Code and its amendments."

Wasserman v. Immormino (In re Granger Garage, Inc.), 1990 WL 186273 (6th Cir. 1990). In this case, an involuntary Chapter 7 petition was filed against the debtor, Granger Garage Sales and Equipment, Inc. ("Debtor"), on May 6, 1981, with the United States Bankruptcy Court for the Northern District of Ohio. On April 30, 1982, a trustee was appointed. A court-appointed appraiser thereafter valued the personal property of the Debtor at $35,058. The trustee thereupon attempted to sell this property and, in August 1982, the trustee filed a motion with the bankruptcy court to sell all estate assets to a third party for $22,500. Certain creditors represented by an attorney, Mark Immormino, objected to this sale, claiming that an auction sale of these assets would result in a higher return to the estate. Immormino also claimed that the buyer located by the trustee was the Debtor's alter ego.

At a hearing held on these objections on September 2, 1982, the bankruptcy court dismissed Immormino's objection to the potential buyer's qualifications and also "expressed reluctance to jeopardize a firm offer to buy the [D]ebtor's assets." Nevertheless, the bankruptcy court continued the hearing to September 17, 1990, but only upon the condition that Immormino indemnify the estate for any loss resulting from any public sale that might be ordered.

At the adjourned hearing, the bankruptcy court denied the trustee's motion for a private sale and ordered an auction of the Debtor's assets. The court stated at his hearing that Immormino would be required to indemnify the estate for any difference between the offer previously received and the net proceeds received from the auction and directed Immormino to post a $40,000 bond to secure this indemnity obligation. The bankruptcy court, however, failed to enter a separate order requiring this indemnity and, only six days after the hearing, Immormino withdrew in writing any indemnity agreement he had previously made.

A public sale of the Debtor's assets was conducted on September 28, 1982; the proceeds received from this sale amounted to only $5,300. The prior interested purchaser had withdrawn its $22,500 bid one day before the auction sale. At the hearing on confirmation of the sale, the bankruptcy court entered an order confirming the sale and directed Immormino to indemnify the estate in the sum of $17,200. The bankruptcy court denied Immormino's motion for reconsideration and Immormino appealed to the federal district court on July 6, 1983. Six years later, the district court reversed the bankruptcy court. The district court held that (i) the bankruptcy court's finding that Immormino had voluntarily

indemnified the estate was clearly erroneous; and (ii) that the bankruptc lacked jurisdiction to order personal indemnification by an attorney.

On appeal by the trustee, the Sixth Circuit Court of Appeals affirmed district court's decision that the bankruptcy court lacked subject mat jurisdiction "over an indemnification order to an attorney who argued t creditor's motion for public sale." This indemnification order could not b upheld under Sections 105(a) or 363(b) of the Bankruptcy Code or under the general equity powers of the bankruptcy court.

In re Grand Jury Proceedings, 119 Bankr. 945 (E.D. Mich. 1990). This case arises from the grand jury investigation of the former trustee appointed in the Chapter 7 case of In re Jim's Garage, Inc., Sherman Sharpe, Jr., which decision was discussed in last month's Newsletter. In this decision, District Judge Rosen affirmed the prior order entered by Bankruptcy Judge Shapero requiring the former trustee to file his final accounting in the Chapter 7 case and to turn over all documents relating to that case that had been previously withheld by him upon the assertion of his privilege against self-incrimination. Since these documents were public records that the trustee was required to maintain in his official capacity, no such privilege attached to those documents.

Craft v. Ratti (In re Craft), 120 Bankr. 84 (Bankr. E.D. Mich. 1989). Prior to the commencement of their Chapter 13 case, one of the debtors, Judy Craft, entered into a written contract with Garry Ratti for the remodeling of the debtor's home. This remodeling work was performed by Ratti but debtors failed to pay him for these services. Prior to his foreclosure of a construction lien on debtors' home, debtors commenced a Chapter 13 case. In their plan, debtors classified Ratti's claim as unsecured and commenced an adversary proceeding to avoid Ratti's lien under 11 U.S.C. § 544(a). Debtors also alleged that the interest rate charged by Ratti in the construction contract was usurious and, therefore, debtors could deduct their attorney fees from Ratti's lien amount.

A trial was held in the adversary proceeding before Bankruptcy Judge Arthur Spector. On June 30, 1989, Judge Spector issued his memorandum opinion dismissing the debtors' complaint and allowing Ratti's claim as secured. Judge Spector rejected debtors' argument that Ratti's construction lien was unperfected since (i) Ratti failed to list the number and type of license he held; (ii) Ratti's sworn statement failed to list two suppliers; and (iii) Ratti's statement of lien stated the wrong date the work began. Judge Spector found that these omissions were merely technical ones and that Ratti had substantially complied with the requirements of Michigan's Construction Lien Act in order to perfect his lien.

Judge Spector then rejected debtors' argument that Ratti's 2% per month service charge on the unpaid balance of the construction contract was usurious under M.C.L.A. § 438.31. Judge Spector concluded that this service charge was a time-price differential not limited by the general usury statute. Furthermore, this charge amounted to an annual interest rate less than the 25% per annum criminal usury limit set by M.C.L.A. § 438.41.

EDITOR'S NOTEBOOK:

On November 13, 1990, the U.S. Supreme Court remanded the Ben Cooper case (Insurance Company of PA vs. Ben Cooper, Inc. (1990, US) (1990 US LEXIS 5830, Case No. 89-1784) to the Second Circuit for determination of that court's jurisdiction over that case. As you may recall, the Ben Cooper case dealt with the issue of whether bankruptcy courts can hold jury trials, an issue where there is a decided split among the Circuits.

On November 5, 1990, the President signed two laws amending the Bankruptcy Code. First, Public Law 101-581, Criminal Victims Protection Act of 1990 (S 1931) amends §523(a)(9) and §1328(a)(2) to make non-dischargeable certain debts arising from unlawful driving while intoxicated or impaired through the use of alcohol, drugs, or other substances and to delete the "judgment or consent decree" language from the drunk driving exception to discharge. Further amendment is made to §1328(a)(1)(2)(3) so as to make non-dischargeable certain debts for restitution imposed for committing crimes. This Act was effective on the date of enactment but is not applicable to cases commenced prior to such time.

Second, Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (HR 5835) amends the automatic stay provisions [§362(b)] of the Code to add on additional sub-paragraphs (14), (15), and (16) so as to make it clear that the filing of a petition does not stay any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution (14); any action by a state licensing body regarding the licensure of the debtor as an educational institution (15); or any action by a guaranty agency, as defined in §435(j) of the Higher Education Act of 1965 (20 USC 1001 et seq) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act (16).

Public Law 101-508 further amends the property of the estate provisions of the Code [§541(b)] so as to add an additional sub-paragraph (3) which states that property of the estate does not include, "Any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 USC 1001 et seq; 42 USC 2751 et seq) or any accreditation status or state licensure of the debtor as an educational institution." These amendments, as well, are effective as of the date of enactment of such Act.

This latter law also modified the treatment of certain educational loans in bankruptcy proceedings under Chapter 13 by striking out the reference in §1328(a)(2) to §523(a)(5) and inserting "paragraph (5) or (8) of §523(a)". This amendment, again, is effective as of the enactment date and cannot be applied retroactively.

The amendments made by Public Law 101-508 have a sunset provision which indicates that such amendments shall cease to be effective on October 1, 1996.

Larry A. Ver Merris

REAFFIRMATION AGREEMENTS

As regular Western District bankruptcy practitioners are aware, the bankruptcy court no longer routinely schedules hearings on reaffirmations. Pursuant to the November 25, 1988 Notice and General Order, 524(c) hearings are now required where the debtor is not represented by counsel, the reaffirmation agreement was made after the discharge was granted, or for some other reason.

This procedure was adopted so as to cut down the necessity for debtors to take time off from work to travel to court for reaffirmation purposes. While this appears to have indeed diminished the need for such hearings, the judges report that the number of reaffirmation agreements and proposed orders returned to debtor's counsel is steadily increasing.

Initially the judges request that whenever possible counsel use the enclosed form reaffirmation agreement and order, copies of which can be obtained at the office of the bankruptcy court clerk. The use of this form rather than individually drafted reaffirmation agreements will cut down on the number of reaffirmation agreements and orders which have to be returned because of missing or insufficient information.

When the court receives a reaffirmation agreement, the judges typically review the debtor's petition and schedules, particularly the schedule of current income and expenses, to determine whether (1) the debt to be reaffirmed is a secured one; and (2) the debtor has sufficient monthly income to make the necessary payments and, therefore, reaffirmation will not impose an undue hardship on the debtor or a dependent of the debtor. 11 U.S.C. Section 524(c)(3)(B). With increasing frequency reaffirmation agreements and proposed orders must be returned to debtor's attorney. The accompanying letter explains that the order cannot be signed because based on the judge's review of the schedule of current income and expenses (generally, the only financial information available to the court), debtor's monthly expenses exceed monthly income and reaffirmation may indeed impose an undue hardship.

To cut down on the burgeoning paperwork, the court asks that before a reaffirmation agreement and proposed order are forwarded, debtor's counsel carefully check the debtor's schedule of current income and expenses. If that schedule indicates a significant disparity between monthly income and expenses, or that such a disparity would result if the reaffirmation order were signed, counsel should prepare and include with the reaffirmation agreement and proposed order an affidavit of the debtor which clearly shows that reaffirmation would not result in an undue hardship.

Mark Van Allsburg

REAFFIRMATION AGREEMENT

's Name | Bankruptcy Case No.

TRUCTIONS:

1) Write debtor's name and bankruptcy case number above.
2) Part A – Must be signed by both the debtor and the creditor.
3) Part B – Must be signed by the attorney who represents the debtor in this bankruptcy case.
4) Part C – Must be completed by the debtor if the debtor is **not** represented by an attorney in this bankruptcy case.
5) File the completed form by mailing or delivering to the Bankruptcy Clerk.
6) Attach written agreement, if any.

COURT USE ONLY

PART A – AGREEMENT

Creditor's Name and Address

Summary of Terms of the New Agreement

a) Principal Amount $ _____
Interest Rate (APR) _____
Monthly Payments $ _____
b) Description of Security: _____
Present Market Value $ _____

Date Set for Discharge Hearing (If any)

The parties understand that this agreement is purely voluntary and that the debtor may rescind the agreement at any time prior to discharge or within 60 days after such agreement is filed with the court, whichever occurs later, by giving notice of recission to the creditor.

Date _____ *Signature of Debtor* _____

Signature of Creditor _____ *Signature of Joint Debtor* _____

PART B – ATTORNEY'S DECLARATION

This agreement represents a fully informed and voluntary agreement that does not impose an undue hardship on the debtor or any dependent of the debtor.

Date _____ *Signature of Debtor's Attorney* _____

PART C – MOTION FOR COURT APPROVAL OF AGREEMENT – Complete only where debtor is not represented by an attorney.

I (we), the debtor, affirm the following to be true and correct:

1) I am not represented by an attorney in connection with this bankruptcy case.
2) My current monthly net income is $ _____
3) My current monthly expenses total $ _____, including any payment due under this agreement.
4) I believe that this agreement is in my best interest because _____

Therefore, I ask the court for an order approving this reaffirmation agreement.

Date _____ *Signature of Debtor* _____

Signature of Joint Debtor _____

PART D – COURT ORDER

The court grants the debtor's motion and approves the voluntary agreement upon the terms specified above.

Date _____ *Bankruptcy Judge* _____