BANKRUPTCY LAW NEWSLETTER

Published by Federal Bar Association
Western District of Michigan Chapter

Vol. 2, No. 5 January, 1990

BANKRUPTCY APPEALS

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I. INTRODUCTION

As a general rule, only a small percentage of bankruptcy court decisions are appealed. As a result, bankruptcy practitioners spend less time working in the area of bankruptcy appeals than in most other areas of bankruptcy practice. Nonetheless, the appeal can be the most critical stage of an important case. In some cases an appeal is not just the best choice for a client; it's the only choice. In this situation knowing what to do and when to do it could be invaluable to a client. This article will generally outline some of the major preliminary and procedural considerations required in taking an appeal from a bankruptcy court decision.

II. THE APPEAL PROCESS

Appeals from bankruptcy decisions in the Western District of Michigan are taken to the United States District Court for the Western District of Michigan. 28 U.S.C. §158(a). Bankruptcy court appeals are taken in the same general manner as civil appeals are taken from the district court to the 6th Circuit Court of Appeals. 28 U.S.C. §158(c). However, appeals from a bankruptcy court are specifically governed by Part VIII of the Bankruptcy Rules and the decisions thereunder. Bankruptcy Rules 8001-8019. Although prior to 1987 in certain circumstances parties to an appeal from a bankruptcy court in this district could have taken their appeal directly to the 6th Circuit Court of Appeals, this option was abrogated by the 1987 Amendments. Advisory Committee Notes to 1987 Amendments, Bankruptcy Rule 8001(d).

A. Standing

Subject to certain limitations by the courts, any "person aggrieved" by a bankruptcy court decision should have standing to appeal. In re Commercial Oil Service, Inc., 88 BR 128 (Bankr. N.D. OH, 1987); Cosmopolitan Aviation Corp. v. New York State Dept. of Transportation (In re Cosmopolitan Aviation Corp.), 763 F2d 507 (2d Cir), Cert. Den. sub nom. Rothman v. New York State Dept. of Transportation, 106 S. Ct. 593, 88 L.Ed. 2d 573 (1985); Fondiller v. Robertson (In re

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Fondiller), 707 F2d 441 (9th Cir, 1983). This standard is broader than that imposed on non-bankruptcy federal court litigants, who are generally permitted to appeal only if they are parties or privies to an action. Adams v. Morton, 581 F2d 1314 (9th Cir, 1978), Cert. Den. 440 US 958, citing Fed. R. App. P. 3. As a result, persons who were not actually parties to a bankruptcy court proceeding may have standing to appeal the court's decision. In re Sweetwater, 57 BR 743 (D. Utah, 1983).

A "person aggrieved" by a bankruptcy decision has been defined by the courts as a person "directly and adversely affected pecuniarily by the challenged order of the bankruptcy court". In re Cosmopolitan Aviation Corp., supra. Whether a party is a "person aggrieved" has been held to be a question of fact for the district court. In re El San Juan Hotel, 16 Collier Bankr. Cas. 2d (1st Cir, 1987), citing In re E. C. Ernst, 2 BR 757, 760 (S.D. N.Y., 1980). Under this standard courts have held that persons have standing to appeal a bankruptcy court decision under the following circumstances:

> A party not classified by a confirmed plan of reorganization had standing to appeal a bankruptcy court's order confirming the plan. In re Sweetwater, supra.
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> A creditors' committee was held to have standing to appeal an order approving a compromise between the trustee and the debtor's landlord. In re General Store of Beverly Hills, 11 BR 539 (Bankr. 9th Cir, 1981).
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> Creditors whose liens are avoided upon confirmation of debtor's plan of reorganization held to have standing to appeal confirmation of plan. In re Commercial Western Finance Corp., 12 Collier Bankr. Cas. 2d 1177 (9th Cir, 1985).
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> Chapter 11 debtor may appeal a bankruptcy court decision holding that a contract for deed was an executory contract where the Chapter 11 trustee had abandoned his right to appeal and the bankruptcy court authorized the debtor to proceed. Frank Seitzinger Farms, Inc., of Iowa v. Waller, 67 BR 869 (D. S.D., 1986).

At the same time courts have found that the following parties do not have standing to appeal a bankruptcy court decision:

> Debtor does not have standing to appeal bankruptcy court's denial of a trustee's objection to claim where reversal would not create a surplus estate for the debtor. In re Broady, 96 BR 221 (Bankr. W.D. Mo., 1988), citing Kapp v. Naturelle, Inc., 611 F2d 703 (8th Cir, 1979). See also Behling v. M & I Marshall & Ilsley Bank, 86 BR 144 (W.D. Wis., 1988) and In re Goodwin's Discount Furniture, Inc., 5 Collier Bankr. Cas. 2d 1458 (Bankr. 1st Cir, 1982).

An unsecured creditor did not have standing to appeal the imposition of sanctions against its attorney as the attorney, not the creditor, was the aggrieved party. In re Englander, 92 BR 425 (Bankr. 9th Cir, 1988).

> A guarantor whose property secures a debt of the Chapter 7 debtor held not to have standing to appeal a bankruptcy court order requiring a creditor to marshall assets by liquidating the security prior to pursuing the debtor. In re Multiple Services Industries, Inc., 12 Collier Bankr. Cas. 2d 1121 (E.D. WI, 1985).

> Debtor and unsecured creditor are not aggrieved parties who can appeal a bankruptcy court's order denying a trustee's objection to claim. Wells v. Dickinson, 403 F2d 635 (6th Cir, 1968).

As to the standing of the United States Trustee to appeal a bankruptcy decision, see 11 U.S.C. §307 and Bankruptcy Rule X-1009(a).

The majority of cases also require that the "person aggrieved" have been present and voiced his or her objection to the proposed bankruptcy court order or judgment in order to have standing to appeal. In re Commercial Western Finance Corp., 761 F2d 1329 (9th Cir, 1985); In re Record Club of America, 28 BR 996 (M.D. Pa., 1983). Not all cases follow this view, however. See In re E. C. Ernst, Inc., 2 BR 757 (S.D. N.Y., 1980). Even where the requirement of attendance and objection is also present, the "person aggrieved" who does not receive notice of the hearing which produces the appealable order will have standing to appeal. In re Commercial Western Finance Corp., supra.

B. Final vs. Interlocutory Orders

Once it has been determined that a person is aggrieved and therefore has standing to appeal, the proper method of appeal must be determined. This requires an analysis of the decision being appealed. If the bankruptcy court's order or judgment is "final", an aggrieved person may appeal the decision as of right to the district court for the judicial district in which the bankruptcy judge serves. 28 U.S.C. §158(a) and (c), and Bankruptcy Rule 8001(a). If the order or judgment is "interlocutory", the aggrieved person must request leave to appeal from the district court. 28 U.S.C. §158(a) and Bankruptcy Rule 8001(b).

Determining whether an order of the court is final or interlocutory is sometimes difficult. Generally courts attempt to determine if the order appealed from conclusively resolved some distinct proceeding within the bankruptcy case thereby making it a final order. In re Saco Local Development Corp., 711 F2d 441 (1st Cir, 1983). An analysis of the issue of finality in a bankruptcy context is also set out in Midland Mutual Life Ins. v. Sellers, 101 BR 921 (S.D. Oh., 1989). In Sellers, the court states:

> "For civil litigation in general, a final decision is one which 'ends the litigation on its merits and leaves nothing for the court to do but execute the judgment.' The standards of finality in bankruptcy cases, however, are laxer than those in other civil contexts. Given the unique cumulative nature of discreet units of litigation in bankruptcy, courts are willing to treat as final, those orders which dispose of individual units. An interlocutory order is, by contrast, one 'which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause and which requires some further steps to be taken in order to enable the court to adjudicate the cause on the merits.'" Id., at 926-27 (Citations omitted.)

This flexible view of finality under the Bankruptcy Code has been questioned by at least one court, however. In re Stable Mews Associates, 778 F2d 121 (2d Cir, 1985), citing In re International Environmental Dynamics, Inc., 718 F2d 322, 325 and Note 5 (9th Cir, 1983).

Under the majority's view of finality, the following orders have been determined to be final:

> An order requiring a pension plan to turn monies otherwise payable to the debtor over to a Chapter 13 trustee. In re Watkins, 95 BR

483 (W.D. MI, 1988) (J. Enslen). See also MESC v. Jenkins, 64 BR 195 (W.D. MI, 1986) (J. Enslen).

An order allowing debtors to assume and assign a lease of real property. In re Peaches Records & Tapes, Inc., 51 BR 583 (Bankr. 9th Cir, 1985).

An order granting creditor relief from the automatic stay. Farmers & Merchants Bank & Trust of Watertown v. Trial West, 28 BR 389 (D. S.D., 1983); In re 8th Street Village Ltd. Partnership, 94 BR 993 (N.D. Ill., 1988).

Conversely, orders found to be interlocutory include:

An order enjoining a creditor from taking further action to foreclose on debtor's property and staying the statutory period in which to redeem the property. First National Bank of Montevideo, Minn. v. Johnson, 19 BR 651, rev. on other grounds 719 F2d 270, Cert. Den. 104 S. Ct. 1015, 465 US 1012, 79 L. Ed. 2d 245.

An order requiring a Chapter 11 debtor's CEO to release books and records to the chairman of the debtor's board in order to aid in the preparation of a reorganization plan. In re Leibinger - Roberts, Inc., 92 BR 570 (E.D. N.Y., 1988).

An order charging secured creditors for the maintenance costs of a Chapter 11 debtor's assets pursuant to §506(c) of the Bankruptcy Code. In re Bekker Industries Corp., 89 BR 336 (S.D. N.Y., 1988).

An order denying leave to dismiss an adversary proceeding. U.S. v. Sayres, 43 BR 437 (W.D. N.Y., 1984).

An interim order approving a partial payment of trustee's and attorneys' fees. In re Stable Mews Associates, 778 F2d 121 (2d Cir, 1985).

An order authorizing debtor to pay for legal representation of non-management directors. In re Baldwin - United Corp., 43 BR 443 (S.D. OH, 1984).

An order denying a motion to disqualify a bankruptcy judge. In re Johns-Manville Corp., 43 BR 765 (S.D. N.Y., 1984).

An order requiring creditor, defendant in an adversary proceeding, to file an answer to plaintiff's complaint. In re Personal Computer Network, 89 BR 17 (N.D. Ill., 1988).

If the order to be appealed is final, filing a notice of appeal within 10 days of entry of the bankruptcy court's order or judgment properly commences the appeal. Bankruptcy Rule 8001(a) and Bankruptcy Rule 8002(a). Subsequently the appeal procedure set out in Part VIII of the Bankruptcy Rules should be followed.

If the order to be appealed is interlocutory, a motion for leave to appeal in the form defined by Bankruptcy Rule 8003 must be filed with the notice of appeal and a proper proof of service. Bankruptcy Rule 8001(b). A motion for leave to appeal will be granted if the district court finds that a controlling question of law is involved in the appeal, the question is one where there is substantial ground for a difference of opinion and an immediate appeal would materially advance the ultimate termination of the litigation. In re Neshaminy Office Building Associates,

BR 301 (E.D. Pa., 1987); In re Iateaugay Corp., 64 BR 990 (S.D. .Y., 1986), citing 28 U.S.C. §1292(b). In certain narrowly defined circumstances some interlocutory orders can be appealed as of right. See In re Huff, 61 BR 678 (N.D. Ill., 1986) [recognizing collateral order doctrine]; In re Electronic Theatre Restaurants, 53 BR 458 (N.D. Oh., 1985) and Buffler v. Electronic Computer Programing Institute, 466 F2d 694 (6th Cir, 1972) [recognizing the exception set out in 28 U.S.C. §1292(a)].

If a timely notice of appeal is filed without a motion for leave to appeal after an interlocutory order, the district court may treat the notice of appeal as a motion for leave to appeal. In the interests of justice, the court may then grant the "motion", request that a formal motion for leave be filed, or deny leave to appeal. Bankruptcy Rule 8003(c); In re Johns-Mansville, 43 BR 765 (S.D. N.Y., 1984); In re Huff, supra; In re Electronic Theatre Restaurants, supra. Due to the courts' leeway in this area, it is important to file a detailed motion for leave to appeal pursuant to Bankruptcy Rule 8003(a) whenever you believe the order being appealed is interlocutory.

C. Other Procedural Considerations.

Part VIII of the Bankruptcy Rules detail the procedure necessary to continue and complete a proper appeal. Follow these Rules closely, and you will be able to successfully file, or defend against, an appeal. See 9 Collier's on Bankr., 15th ed, ¶8001.07.

Frequently appeals are filed in the wrong court. Rule 8001 requires that notice of appeal and, if necessary, motion for leave to appeal, be filed with the "clerk". Bankruptcy Rule 8001(a). The clerk referred to by Rule 8001 is the clerk of the bankruptcy court, not the clerk of the district court. See Bankruptcy Rule 9001(3). Hence a notice of appeal -- and motion for leave to appeal, if necessary -- are to be filed with the clerk of the bankruptcy court in order to perfect an appeal. The last sentences of Bankruptcy Rule 8002(a), however, direct the district court to accept a misfiled appeal, time-stamp it, and forward it to the bankruptcy court for docketing. Pursuant to this Rule, if a notice of appeal is filed with the district court, the appeal will have been perfected as of the date and time stamped on the pleadings by the district court.

The 10-day time period within which an appeal must be filed pursuant to Bankruptcy Rule 8002 must be adhered to strictly. Courts have held that failure to file a notice of appeal within 10 days of entry of a bankruptcy court order is a jurisdictional defect, thereby forcing the district court to foreclose a party's rights of appeal. In re Ambassador Park Hotel Ltd., 61 BR 792 (N.D. Tex., 1986), citing Matter of Robinson, 640 F2d 737 (5th Cir, 1981) and Matter of Ramsey, 612 F2d 1220 (9th Cir, 1980); In re Souza, 795 F2d 855 (9th Cir, 1986); In re Universal Minerals, Inc., 755 F2d 309 (3d Cir, 1985). Alteration of the 10-day time period occurs if a post-judgment motion of the type specified in Bankruptcy Rule 8002(b) is served within 10 days of entry of a bankruptcy court's order or judgment. Bankruptcy Rule 8002(b); In re Ambassador Park Hotel Ltd., supra; In re Shehady, 97 BR 252 (W.D. Pa., 1989); In re 8th Street Village Ltd. Partnership, supra. Under these circumstances, the party's notice of appeal must generally be filed within 10 days after the motion is disposed of by the bankruptcy court. Id. Filing a notice of appeal prior to the court's disposition of a post-judgment motion of a kind specified in Bankruptcy Rule 8002(b) has no effect. Bankruptcy Rule 8002(b).

The Bankruptcy Rules also allow a person aggrieved to request an extension of time within which to file a notice of appeal. See Bankruptcy Rule 8002(c). This request must be filed within the initial 10-day appeal period absent a showing of excusable neglect. Id.

A notice of appeal may not be required from a proposed order of a bankruptcy judge in a related proceeding since the bankruptcy judge transmits proposed findings of fact and conclusions of law only, to the district court. In re K & L Ltd., 741 F2d 1023 (7th Cir, 1984).

If a proper and timely notice of appeal is filed, jurisdiction over the matter involved in the appeal is transferred from the bankruptcy court to the district court. 28 U.S.C. §158(a). At this point the bankruptcy court may take no further action in the matter or issue being appealed but may continue to have jurisdiction over that portion of the bankruptcy case which is not the subject of the appeal. Midwest Properties No. 2 v. Big Hill Investment Co., 93 BR 357 (N.D. Tex., 1988); In re Bialac, 694 F2d 625 (9th Cir, 1982).

After filing the notice of appeal and the motion for leave if required, the appellant must also take all steps required by Part VIII of the Bankruptcy Rules to keep the appeal proceeding to a conclusion. If significant delay is the fault of the appellant, the appeal can and will be dismissed. In re Winner Corp., 29 BR 383 (6th Cir, 1980); In re Duncan, 95 BR 672 (Bankr. W.D. Mo., 1988); In re Crisp, 77 BR 215 (W.D. Mo., 1987).

Although space does not permit a full discussion of the subject matter, every appellant should consider filing a motion for stay of proceedings pending an appeal. The timing of a motion for stay is very important and should be considered immediately upon the filing of the notice of appeal. See Bankruptcy Rule 8005 and 9 Collier's on Bankr., 15th ed., ¶8005.01 - 8005.11.

III. BANKRUPTCY APPELLATE PANEL

28 U.S.C. §158(b) allows each circuit to establish a bankruptcy appellate panel if it so desires. Such a panel is composed of selected bankruptcy judges from the circuit creating it and would be available to hear and render opinions on appeals from bankruptcy courts within circuit. As stated in the statu no appeal could be heard by a ban ruptcy appellate panel unless al parties agree to use the panel and unless the district judges for a particular district authorize the referral of cases to the bankruptcy appellate panel. Establishment of a bankruptcy appellate panel in the 6th Circuit would change appellate practice in the 6th Circuit somewhat. Each party could agree to have its appeal heard by a bankruptcy appellate panel.

Currently only one bankruptcy appellate panel exists in the country. This is in the 9th Circuit. According to several bankruptcy attorneys who regularly practice in the 9th Circuit, the bankruptcy appellate panel is popular and well-received because it has generally allowed for quicker bankruptcy appellate decisions on appeal by acknowledged bankruptcy experts. According to statistics reported by the 9th Circuit, approximately 66% of all bankruptcy appeals in the 9th Circuit were heard by the bankruptcy appellate panel in 1988. This percentage was generally acknowledged to be on the rise. Although the establishment of a bankruptcy appellate panel for the 6th Circuit appears unlikely in the near future, it may be an idea whose time has come.

IV. CONCLUSION

Bankruptcy appellate procedures can be complicated and unfamiliar to even the most experienced bankruptcy practitioner. When an appellate situation arises, however, it is important to act quickly to protect the client's rights. Failure to properly perfect a litigant's appeal in a timely manner may forever foreclose its legal remedies. Therefore, it is important to become familiar with appellate procedures prior to finding yourself faced with a situation requiring an immediate appeal.

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.

Terrell v. Albaugh, Case No. 89-1011 (6th Cir. December 21, 1990). A land contract vendor appealed to the Sixth Circuit Court of Appeals from the decision of the United States District Court for the Eastern District of Michigan confirming the Chapter 12 debtors' plan. This plan treated the land contract between the vendor and the debtors as a secured transaction and "crammed down" the vendor's "lien" under 11 U.S.C. § 1225(a)(5). The district court's decision is reported at 93 Bankr. 115 and is summarized in the December, 1988 issue of the Newsletter.

On appeal, the land contract vendor argued that the Michigan land contract for the sale of farmland on an installment basis to the debtors should have been classified as an executory contract subject to the assumption/rejection requirements of 11 U.S.C. § 365. The Sixth Circuit agreed with the vendor and reversed the district court's decision. In its opinion, the Sixth Circuit referred to the legislative history of 11 U.S.C. § 365, which defines an executory contract as a contract "on which performance remains due to some extent on both sides." Applying this definition to the facts before it, the Sixth Circuit found that "there are material obligations left to be performed by both parties to the contract" and that "the failure of either party to fulfill his or her obligations would excuse the other from continued performance." This decision effectively overrules contrary holdings by Bankruptcy Judge Spector in In re Britton, 43 Bankr. 605 (Bankr. E.D. Mich. 1984) and by Bankruptcy Judge Gregg in In re Cooper, 98 Bankr. 294 (Bankr. W.D. Mich. 1989).

DSQ Property Co. v. DeLorean, 891 F.2d 128 (6th Cir. 1989). This decision arises from the bankruptcy case of DeLorean Motor Company. The plaintiff, DSQ Properties, Ltd., was the successor corporation of DeLorean Motor Cars, Ltd. that was established by John DeLorean in Northern Ireland. In 1987, five years after DeLorean Motor Company commenced its bankruptcy case in the Detroit Bankruptcy Court, DSQ commenced suit in Great Britain against John DeLorean and other entities arising from their transactions with DeLorean Motor Cars, Ltd. In its complaint, the plaintiff alleged that John DeLorean misappropriated funds from the Northern Ireland company. When John DeLorean failed to file an answer, the British court entered a default judgment of $54 million against him. Thereafter, DSQ filed a diversity action in the United States District Court for the Southern District of New York to enforce this judgment under New York law. Venue of this action was subsequently transferred to the United States District Court for the Eastern District of Michigan under 28 U.S.C. § 1404(a).

The federal district court in Michigan thereafter found after a hearing that John DeLorean was properly served with process in the British action. On appeal, the Sixth Circuit affirmed this holding. The Sixth Circuit then addressed the other issue raised by John DeLorean on appeal--that his settlement with the bankruptcy trustee in the DeLorean Motor Company bankruptcy case pending in Detroit barred enforcement of the British default judgment under the doctrines of res judicata and collateral estoppel. Under the terms of this settlement, John DeLorean and the trustee agreed to submit to binding arbitration all disputes between them. This agreement also provided that the arbitrator's jurisdiction and findings would not have any effect on third-party claims against the Trustee or

John DeLorean. Before these claims were arbitrated, they were settled pursuant to a stipulation approved by the Detroit Bankruptcy Court.

The Sixth Circuit rejected on two separate grounds John DeLorean's argument that the settlement agreement between him and the bankruptcy trustee barred enforcement of the British default judgment. First, the Sixth Circuit held that a bankruptcy trustee has no authority under the Bankruptcy Code to affect third-party claims against non-bankrupt entities, citing Caplan v. Marine Midland Grace Trust Co. of New York, 406 U.S. 416 (1972). Second, the settlement agreement by its own terms did not purport to affect these claims.

Archer v. Macomb County Bank, Case Nos. 89-71358 and 89-71371 (E.D. Mich. Dec. 26, 1989). This decision is an outgrowth of the Sixth Circuit's earlier opinion of the same name reported at 853 F.2d 497 and discussed in the October, 1988 issue of the Newsletter. The United States District Court for the Eastern District of Michigan, per Judge Barbara Hackett, directed the Detroit Bankruptcy Court to adjudicate the amount of damages the Archers were entitled to that resulted from the Bank's violation of the automatic stay, notwithstanding the voluntary dismissal of the Archers' Chapter 11 case. In support of her decision, Judge Hackett cited notions of judicial economy.

In re Marshall, Case No. SK 89-02377 (Bankr. W.D. Mich. Jan. 12, 1990). This 32-page Report and Recommendation to the District Court authored by Bankruptcy Judge JoAnn Stevenson addresses the issues of when a bankruptcy court should invoke the doctrines of mandatory abstention and remand under 28 U.S.C. §§ 1334(c)(2) and 1452(b). Due to its length and complexity, this Report will not be summarized herein. Copies of this Report may be obtained from the Bankruptcy Court Clerk in Grand Rapids.

FROM THE BANKRUPTCY COURT:

NEW FEES

On December 21 a new fee scheduled went into effect which increased the filing fee for Chapter 7 and 13 cases to $120 (from $90) and which added a motion fee for relief of stay, withdrawal of reference and motions to compel abandonments. As of this date the Court is accepting new case filings if only $90 is submitted with the petition. We then bill the filing attorney for the extra $30 or for the entire motion fee if we have accepted the motion. Beginning on February 1, we will reject new case filings and motions if the fee submitted is not correct.

CHAPTER 13 CLAIMS

Remember that on February 1 Chapter 13 claims should be filed with the Bankruptcy Court and not with the Trustee. The original claims will be held in the case file, and the date the claims are received by the Court will be the date of filing.

AMENDMENTS

One of the most confused and confusing areas of bankruptcy practice is the procedure for amending the matrix, schedules and lists of creditors after a case is filed. It is very common for attorneys to file amended lists of creditors several weeks or months after a case is filed to add creditors. Here are the rules which apply to this area:

1. Fee: There is a $20.00 fee for amending a debtor's schedules or list of creditors after the 341 meeting notice has been sent out. Since first meeting notices are generated within 2-4 days of the filing or conversion date, it is almost certain that you will have to pay the fee if you are adding creditors. There is one exception - if you have provided us a complete matrix before the 341 notice

sent and you simply wish to correct ...e address of a creditor (or ...creditors) who are already in the system, we will not consider this to be an amendment requiring a fee. If you send in address changes, please do not label the request as an amendment of the schedules - send this in as "Address changes".

2. New Matrix: When you amend schedules to add creditors, you must also give us a new matrix. Because of the new BANCAP automated docketing system, and because the Court has only some of the open cases in the computer, there are three types of matrix formats:

A. If the case was filed after September 1, 1989, the matrix should list only the creditors being added, and you should use the new format.

B. If the case was filed after January 1, 1988 but before September 1, 1989, the matrix should list all creditors and interested parties, and you should again use the new format.

C. If the case was filed before 1988, you should list all creditors and interested parties, but you should use the old 3-column format for copying labels.

3. Number of Copies: If you are amending only the matrix, all we need is the original matrix. If you are amending schedules or lists of creditors, then we need the same number of copies as if the schedules were being originally filed.

4. Verification: Bankruptcy Rule 1008 requires that amendments to lists of creditors, schedules, or the matrix be verified. At a minimum, this means that the debtor (and co-debtor if applicable) must sign the amendments. The best practice would be to create a general verification form which could be used to verify all types of amended lists or schedules. It is very common for this office to return amendments because they have not been verified.

When you are sending in amendments it will help us greatly if you could include with the amendments a cover letter which would tell us whether you are adding creditors or, if not, why you are amending the schedules.

NEW LOCAL COURT RULES

The new local bankruptcy rules have not yet been finished and are not effective. I hope that they will be finished, that they will be effective and that we will be able to provide copies by February 1. I anticipate that there will be a modest charge for the final version. Since there will be some substantial changes from the draft copies which were circulated, you should get rid of the drafts and make sure that you are working from the actual rules.

Mark Van Allsburg

STEERING COMMITTEE MEETING MINUTES

A meeting was held on January 19, 1990 at noon at the Peninsular Club.

1. A brief discussion was had regarding the local bankruptcy rules and, from all indications, these should be out "soon". You will, however, have to obtain your own copy from the Bankruptcy Court at nominal cost.

2. Discussion was had regarding the Federal Court's Committee's recommendation that BAP be adopted in every circuit. Robert W. Sawdey and Timothy J. Curtin agreed to form a sub-committee to follow up on the same with one of the judges of the local U.S. District Court.

3. Discussion was had regarding the Bankruptcy Law Newsletter printing and mailing costs. Every

effort is being utilized to keep these costs at a minimum, including the use of downtown courier service and possible use of the Grand Rapids Bar Association bulk mailing permit. Waiver of sales tax is not possible as the local Chapter of the Federal Bar Association does not have a tax exempt certificate.

4. Extensive discussion was had regarding the 1990 Bankruptcy Seminar to be held at Shanty Creek on August 24 and 25. It was agreed that we would attempt to obtain James L. White, of the University of Michigan Law School, as the keynote speaker. Suggested topics and speakers were also discussed, as was the format, cost, entertainment, and other aspects of this Seminar. Be sure to block out Thursday, August 23 - Saturday, August 25, 1990 on your calendar as the topics appear to be quite informative and entertaining. One hundred twenty-five hotel rooms have been set aside for this Seminar, and you should be receiving more information in future Newsletters once the details become finalized.

5. Also present at the meeting were Robert D. Mollhagen, Chairman of the Real Property Section on Bankruptcy, Debtors/Creditors Rights, from the State Bar of Michigan, as well as Robert B. Borsos, representing bankruptcy attorneys from the Kalamazoo area. These gentlemen are expected to be regular participants in future Steering Committee meetings.

6. No date was set for the next Steering Committee meeting.

EDITOR'S NOTEBOOK

I am in the middle of a book titled The Logic and Limits of Bankruptcy Law by Thomas H. Jackson which deals with the history, philosophies and principles of bankruptcy law. Professor Jackson is from the Western Mic area and is the newly appointed L at the University of Virginia L School. Prior to such appointment, he served on the law faculties of both Stanford and Harvard Universities, as well as engaging in private practice. This book has received excellent reviews (see, e.g., the review by Paul Brickner in the August, 1989 edition of "The Business Lawyer", Vol. 44, No. 4, page 1707 et seq). I commend Judge Gregg and Robert W. Sawdey for recommending such book to me and would echo Mr. Brickner's feelings that if you are looking for a "stimulating theoretical work that provides insight and depth as well as careful analysis of fundamentals of bankruptcy law", this is the book.

In light of the Sixth Circuit's recent decision in Terrell, discussed earlier in this issue, we are uncertain as to how the local bankruptcy judges are going to rule in regard to land contracts where no action was taken to accept the same within 60 days after the case was filed. In such cases it is unclear whether parties will be given an additional 60 days to take action to accept the same or whether Terrell will be applied retroactively. Query: What "adequate assurance" a trustee would have to provide where the debtor was the vendor - that he accept payments and give a deed when the balance is paid? Other problems could potentially include a non-debtor land contract vendee as treating the contract as rejected and asserting a lien against the property for all the payments he has made on the land contract including principal, interest, taxes, and insurance pursuant to Bankruptcy Code §365(j). In some cases, these total costs could exceed the value of the property. Obviously, the Sixth Circuit has opened up a hornet's nest of problems which will take some time to sort out. Incidentally, I have spoken with the Debtors' attorney in Terrell and he does not plan on asking for a rehearing en banc, appealing or filing a petition for certiorari in light of the costs involved.

Larry A. Ver Merris

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, 1989 through December 31, 1989. These filings are compared to those made during the same period in 1988 and 1987, respectively:

	1989	1988	1987
Chapter 7	3,289	2,762	2,415
Chapter 11	98	84	91
Chapter 12	17	33	85
Chapter 13	1,420	1,215	1,269
	4,824	4,094	3,860