BANKRUPTCY LAW NEWSLETTER

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VANISHING DEBTOR'S RIGHTS

CHAPTER 13 PROCEEDINGS

*By James M. Keller**

In this article, I will address areas of development in Chapter 13 proceedings from a debtor's perspective. The conclusion that will be apparent is that debtors' rights have been significantly reduced since the Bankruptcy Code was enacted in 1978. Prior to 1978, Chapter XIII of the Bankruptcy Act provided consumers reorganization relief but required a favorable vote from the consumer's creditors. Like Chapter 11 proceedings today, the significant administrative costs prevented the average consumer from obtaining relief. In 1978, with the adoption of the Bankruptcy Code, the creditor's right to vote was eliminated and for the early years of the Code so were most of the creditor's rights. Although the Code provided creditors substantial rights, very few creditors were prepared. In the 12 years of time since the enactment of the Code, which includes congressional reform in 1984 and 1986, the rights of creditors have caught up in most areas reviewed below.

THE GOOD FAITH REQUIREMENT

Chapter 13 plans providing for one percent distributions to unsecured creditors were being confirmed in the Western District of Michigan in the early years of the Bankruptcy Code. On one black Monday for debtors in 1981 Judge Nims denied confirmation of several nominal percentage plans. The general practice rule which has developed from that date is that plans which provide ten percent (10%) distribution to unsecured creditors and not less than the amount of attorney fees for the Debtor's attorney are confirmable.

DISPOSABLE INCOME RULE

In 1984, the disposable income test was added to the calculation required by Debtors desiring Chapter 13 relief. Section 1325(b)(1) provides that, "If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective

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* Mr. Keller is a graduate of the University of Michigan (BA, 1981) and received his J.D. from Wayne State University Law School in 1984. He is a partner in the law firm of DeGroot, Keller & Vincent/Chapter Law Center which specializes in consumer and small business bankruptcy proceedings.

date of the plan - (A) the value of the property to be distributed under plan on account of such claim is not less than the amount of such claim, (B) the plan provides that all of the debtor's projected disposable income be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan. (2) For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended - (A) for the maintenance or support of the debtor or a dependent of the debtor; and (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, reservation, and operation of such business." Now, in addition to providing for at least ten percent (10%) distribution to unsecured creditors, every plan providing for payment of less than ten percent (10%) must also provide for turnover of all projected disposable income for thirty-six (36) months. In practice, the trustee's office will multiply the debtor's proposed monthly payment by thirty-six (36), add fifty percent (50%) of any income tax refund, and will not discharge a debtor until that amount is paid.

While attempting to get more money to creditors, Congress overlooked the negative side effect. That is, for a period of three years from filing, debtors have no incentive to improve their income level in light of the fact that any increase would go to creditors. It can be argued that the disposable income rule solely applies at confirmation and that the debtor's post-confirmation income is not relevant. However, 11 U.S.C. 1329 permits creditors to seek amendments to increase payments. The prudent advice to debtors must therefore remain that there may be no benefit to them to increase their income during the first three years of a Chapter 13 proceeding.

What is disposable income? 11 U.S.C. 1325(b)(1)(2) vaguely defines the term. "Enough" remains the debtor's best answer. If the projected length of the plan exceeds the sixty (60) month limit provided for in 11 U.S.C. 1322(c), then the expenses must shrink. In a case with small secured and priority claims the budget expense would be maximized to permit the debtor to pay as close to ten percent (10%) to unsecured creditors at the end of thirty-six (36) monthly payments. Creditors would prefer specific maximum expenses. As each case is decided rejecting debtor's claim to expenses, their rights will be restricted. Some questionable expenses for debtors are private education for children, assistance with children's college expenses, religious and charitable donations, luxury vehicle payments, retirement plan payment, and recreational expenses.

REAL ESTATE MORTGAGES

11 U.S.C. 1322b(2) and (5) provide that debtors may cure defaults in mortgages "within a reasonable time". Until the decision In re Glenn, 760 F2d 1428 (CA6 1985), debtors in the Western District of Michigan could cure a mortgage default at any time prior to the end of the redemption period. The Glenn decision moved the last date to permit a cure up to the foreclosure sale date. Debtors' sole remedy after a mortgage foreclosure sale is now 11 U.S.C. 108 which will permit them an additional sixty (60) days to sell their residence. Assuming a timely filing, a cure must be accomplished within a "reasonable time". The general rule accepted by creditors has been that a minimum of thirty-six (36) months is a reasonable time. The thirty-six (36) month cure with regards to land contracts, however, is no longer a safe harbor for debtors.

LAND CONTRACTS

Land contracts survived In re Glenn and by Bankruptcy Court decisions remain curable if the Chapter 13 proceeding is filed prior to the end of the State Court ordered redemption period. It is simply not safe practice though to rely

ese decisions when it has been the practice of the Sixth Circuit to reduce ors' rights.

In re Terrell, 892 F.2d 469 (CA6 1990), is another example of the restrictions. Terrell forced bankruptcy courts to treat land contracts as executory contracts governed by 11 U.S.C. 365. There is no longer any right to cram down the land contract claims as permitted by 11 U.S.C. 506 and 1325(a)(5). This does not have a significant effect on Chapter 13 debtors because most real estate has appreciated in value. The Terrell case is significant in determining the length of time within which to cure a default. What was once settled law in mortgage cases that thirty-six (36) months is a reasonable time, is now in question. 11 U.S.C. 1322(b)(5) uses the language that a default must be cured within a reasonable time. 11 U.S.C. 365(b)(1)(a) provides with regards to defaults that the trustee must cure or provide adequate assurance that the trustee will promptly cure such default. A persuasive argument can be made that "promptly" does not mean thirty-six (36) months. I am not aware of any decisions on the issue, but I am certain that land contract vendors can expect more favorable treatment from debtors in light of Terrell.

TAX SALES

Prior to May 1 of any year, a significant number of individuals will be reminded of a looming tax sale. After a tax sale occurs, there is a one year redemption period. In practice, I have not found a County Treasurer or tax sale purchaser ever to appear in a proceeding other than to file a claim. However, sua sponte, the Court has raised the issue. Can a debtor cure a property tax default subsequent to a tax sale? Is a tax sale more akin to a land contract or a mortgage? If the trend to reduce debtors' rights continues, it is safe to presume that a cure will not be permitted after tax sales occur on May 1.

TRUSTEE'S EXPENSE

Trustees are authorized to retain ten percent (10%) of funds disbursed. For many years mortgage payments disbursement fees were reduced to one percent (1%). There is a standard charge now of six and one-half percent (6.5%). It is going up to six and three-quarter percent (6.75%) shortly. Presumably it will reach ten percent (10%). Trustees' postage fees are being added to debtors' plans for the first time in the year 1990. Debtors may still exclude from their plan residential mortgage and land contract payments which are current at the date of filing. For how much longer is uncertain. There is sufficient precedent to permit the trustee to require all payments to creditors to go through the plan. Debtors will be charged for the increase.

ATTORNEY FEES

Perhaps the most significant benefit creditors have received in debtors' proceedings is limitation of attorney fees. Most debtors' attorneys commence cases without retainers and expect to be paid from monthly installment payments made by the debtor to the trustee. Subtract the trustee's fees, the filing fee, any mortgage payments on a principal residence, and any adequate protection payments required to satisfy other secured creditors, and the remainder, if any, goes to attorney fees prior to other creditors. It is not uncommon to have attorney fees stretched over years. If debtors miss payments creating post-petition mortgage arrearages, the arrearages must be cured before attorneys can expect payment. Because of the restrictions many prospective Chapter 13 debtors will be faced with retainer fee requests which will restrict the availability of the proceedings.

The courts will approve $1,000.00 for fees in a Chapter 13 at the confirmation of the plan without an itemization. This is not a guarantee, though. Sua

sponte reduction in fees on simple cases has occurred to as low as $50 Attorneys may file fee petitions with itemizations for additional serv rendered. Local Rule 14 applies in these situations. Fees under $500.00 be approved without notice and hearing, by obtaining the debtor's and trustee stipulation. The administrative cost of this procedure is uneconomical for th debtor or creditors. Additional fees in excess of $500.00 require notice and hearing and the following found in Local Rule 14C.

LOCAL RULE 14

FEE APPLICATIONS FILED PURSUANT TO BANKRUPTCY RULE 2016

(A) General Procedure for Applications Under Bankruptcy Rule 2016.

Except as noted in subdivision (b) for applications in cases under Chapters 12 and 13, the provisions of the paragraph shall govern all applications for compensation or reimbursement filed pursuant to Bankruptcy Rule 2016.

(a)(1) Filing the Application and Notice.

All applications for compensation or reimbursement in excess of $500 filed pursuant to Bankruptcy Rule 2016 shall be filed with the Clerk. Each application must be accompanied by a "Notice to Creditors and Other Parties in Interest" substantially in conformance with Exhibit 4. which is attached, a proof of service showing service of the notice on all interested parties, and compliance with paragraph (2) below.

(a)(2) Service of the Application.

Not later than concurrently with the filing of the application with the Clerk, every applicant shall file a copy of the application, supporting documents and proposed order with the United States Trustee, as directed by the Bankruptcy Rules, and upon any standing or case trustee, any creditors' or equity security holders' committees of record, and the attorney for any of the preceding parties.

(a)(3) Objections.

Interested parties and the United States Trustee shall have 20 days from the date of service of the notice in which to file with the Clerk a written statement of any objection which they might have to the application. A copy of the objection shall be sent to the applicant.

(b)(3) Applications for Compensation Beyond the Basic Fee.

Application for fees in excess of the basic fee must conform to the applicable provisions of the general fee agreement. No additional fees beyond the basic fee shall be approved by the Court unless the applicant submits an itemized statement or other documentation which comports with the method for computing additional compensation set forth in the general fee agreement. Applications for compensation beyond the basic fee shall be treated in accordance with paragraph (a) of this Rule. All such applications must be accompanied by a plan amendment explaining how this additional fee will be paid through the plan, and how this additional fee will affect the

distribution to creditors, the length of the plan, or otherwise adversely affect parties in interest.

The purpose of the Rule appears to require notice to creditors regarding how ...e additional fees will affect their distribution. This can be accomplished ...y adding the required information on the notice of fees requested which the attorney sends out. If an amendment is prepared, signed, and filed, there will be two offices supplying the same information. The attorney's notice will go out. The trustee will notice out the amendment. The Judge will eventually receive two orders. The duplication in cost and fees borne by the debtor is not warranted.

An amendment may be proper if the distribution amount to creditors is affected or if the additional fees force the plan to exceed 60 months. If either of these items is applicable, then one notice to creditors should be sufficient and debtors can save fees and costs.

CONCLUDING REMARKS

Did you know that a credit card issuer filed a non-dischargeability complaint against a Chapter 7 debtor and, while the case was pending, issued the debtor another card? It is not uncommon to have unsecured credit card issuers send Chapter 7 debtors reaffirmation agreements suggesting that they may retain their credit account so long as they agree to pay the balance. It is difficult to sympathize with the aggressive sales and solicitation approaches of the many lenders involved in the credit card industry. The credit card debt invariably pushes the debtor into a proceeding because of the high rates of interest and extension of credit beyond their capacity to pay. If there were a means to restrict these lenders, it should be advocated. The vanishing rights of debtors discussed in this article can only add to the problem.

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 October 31, 1990. These filings are compared to those made during the same period one year ago, and two years ago.

	1/1/90 - 10/31/90	1/1/89 - 10/31/89	1/1/88 - 10/31/88
Chapter 7	3,324	2,777	2,288
Chapter 11	119	79	75
Chapter 12	15	15	31
Chapter 13	1,419	1,060	979

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.

Langenkamp v. Culp, Case No. 90-93 (U.S. S. Ct. Nov. 13, 1990). In a per curiam opinion, the United States Supreme Court held that creditors who file proofs of claim in a bankruptcy case are not entitled to a jury trial under the Seventh Amendment when they are later sued by the trustee to recover preferential monetary transfers. The Supreme Court noted that this holding is consistent with its earlier decision of Granfinanciera, S.A. v. Nordberg, 109 S. Ct. 2782 (1989).

Robinson v. Michigan Consolidated Gas Co., Case Nos. 89-2097, 2098 (6th Cir. Nov. 1, 1990). This decision arose from the Chapter 7 cases of In re Woodward East Project, Inc., and other related entities that were commenced in the Detroit Bankruptcy Court in 1985. Prior to the filing date, Michigan Consolidated Gas Company ("MichCon") terminated gas service to an apartment building managed by one of the debtors. Immediately after the filing, the bankruptcy court appointed David Allard as interim trustee to protect and preserve estate property. In February, 1986, the bankruptcy court entered an order authorizing Allard to manage the apartment building and directed all tenants to pay rent to Allard. This order also directed Allard to contact MichCon to arrange for resumption of gas service to the building and permitted Allard to pay MichCon for this service from the collected rents. This order finally provided that, upon restoring gas service to the building, MichCon could terminate that service five days after filing with the bankruptcy court and serving upon "the interested parties" an affidavit attesting either that the gas service had been interfered with or that Allard had failed to pay for gas services rendered.

In October, 1986, MichCon filed with the bankruptcy court an affidavit stating that Allard had defaulted on his payment obligations. This affidavit was not served upon the tenants of the building. On October 29, 1986, MichCon discontinued gas service to the apartment building. Approximately one month later, a number of tenants commenced a civil action in Wayne County Circuit Court against MichCon and Allard "seeking relief for violations of various Michigan statutes and of Section 56 of the Detroit Code governing termination of utility service." Thereafter, Allard and MichCon removed this action to the United States District Court for the Eastern District of Michigan, filed answers to the complaint, and moved for summary judgment. The tenants moved to remand the action to state court on the ground that federal subject-matter jurisdiction was lacking. In the alternative, the tenants asked the district court to abstain from deciding this case under 11 U.S.C. § 1334(c)(2). The tenants also moved to amend their complaint to add additional state and municipal law claims against Allard.

The district court thereafter granted the summary judgment motions filed by Allard and MichCon and, in so doing, "deemed all remaining issues, including those raised in the motion to remand and the motion to amend the complaint, 'moot' in light of the entry of the final judgments." The tenants then appealed to the Sixth Circuit Court of Appeals from the orders granting summary judgment and from the district court's mootness ruling.

e first issue addressed by the Sixth Circuit was whether the action was erly removed from state court and, if not, should be remanded to that court. Sixth Circuit, after a detailed examination of the federal statutes verning jurisdiction and removal, concluded that the action was "related to" bankruptcy case under 11 U.S.C. § 1334(b) and, therefore, had been properly emoved to the federal district court. The Sixth Circuit then held that, since Allard could have been sued by the tenants in federal district court under 28 U.S.C. § 959(b), that court was not required to abstain under 28 U.S.C. § 1334(c)(2).

The Sixth Circuit then held that the district court had erred in granting MichCon's summary judgment motion. After examining the provisions of 11 U.S.C. § 366(b) and the utility termination requirements contained in the Detroit Code, the Sixth Circuit concluded that it saw

> . . . no reason why the protections afforded to tenants by the Detroit Code may not be reconciled with the obligations of the bankruptcy trustee to manage the Woodward estate as would an owner according to the valid laws of the State of Michigan. 28 U.S.C. § 959(b). Accordingly, we find that the Detroit Code provisions governing utility termination procedures are not preempted by either the terms or the 'general policies' of the Bankruptcy Code.

Finally, the Sixth Circuit held that, although the district court properly granted Allard's summary judgment motion, that court should have granted the tenants' motion to amend their complaint against Allard. Upon remand of the action, the district court was directed to consider and rule upon the motion to amend.

Ashbrook v. Block, Case No. 89-1443 (6th Cir. Oct. 25, 1990). This decision arises from the Chapter 11 case of Robert and Rose Marie Ashbrook ("Debtors") commenced in the United States Bankruptcy Court for the Western District of Michigan. Prior to their bankruptcy filings, the Debtors operated a farm in Van Buren County. Debtors obtained a loan from the Farmers Home Administration ("FmHA") to construct a barn on their farm. Debtors hired Jerry Brower to construct the barn. When Brower delayed in his work, Debtors asked FmHA County Supervisor "to coax Brower into performing." After Brower completed the barn, a section of its floor collapsed, causing extensive damage. Debtors then sued Brower for these damages and thereafter settled this claim. Debtors' total unrecovered loss arising from the barn floor's collapse amounted to $73,741.60.

In Debtors' Chapter 11 case, FmHA filed a proof of claim for $573,160.87. Thereafter, Debtors filed "what purported to be a compulsory counterclaim under 11 U.S.C. § 106(a), commencing an [adversary] proceeding" against the FmHA and other related entities. The gist of the counterclaim was that "FmHA officials failed to abide by regulations promulgated" pursuant to federal statutes governing the FmHA's operations.

The defendants thereafter moved to dismiss the Debtors' claims or, alternatively, for summary judgment. The bankruptcy court entered findings and recommendations in which it was recommended to the district court that the summary judgment motion be granted. In March, 1989, the district court granted the defendants' motion for summary judgment. Debtors thereafter appealed to the Sixth Circuit.

On appeal, the Sixth Circuit first held that Section 106(a) of the Bankruptcy Code permitted the Debtors to sue the United States notwithstanding the Federal Tort Claims Act requirement that the Debtors first exhaust their administrative remedies. The Sixth Circuit relied upon the legislative history of Section 106(a) in concluding that the filing of a proof of claim by a governmental

unit constitutes a waiver of sovereign immunity with respect to compulsory terclaims. Nevertheless, the Sixth Circuit held that Section 106(a) di apply in this case since the Debtors' claims against the FmHA did not consti a compulsory counterclaim--the facts giving rise to the counterclaim occur after the FmHA loans were closed. The Sixth Circuit nevertheless held th Debtors' counterclaim was cognizable under 11 U.S.C. § 106(b), which permitte Debtors to offset the amount of their counterclaim against FmHA's claim but provided for no affirmative recovery against the FmHA.

In reviewing the Debtors' various tort and contract claims against FmHA, the Sixth Circuit held that none of these claims had merit. The Sixth Circuit also held that there existed no basis to justify equitable subordination of FmHA's claim under 11 U.S.C. § 510(c)(1). Consequently, the Sixth Circuit affirmed the district court's grant of summary judgment.

United States v. Cardinal Mine Supply, Inc., Case No. 89-6475 (6th Cir. Oct. 22, 1990). In this decision, the Sixth Circuit held that, in Chapter 7 cases, priority claimants who filed late claims because they had received no notice or had no knowledge of the bankruptcy case were entitled to receive distributions on those priority claims before any distributions were made to general unsecured creditors in the case.

United States v. Flo-Lizer, Inc. (In re Flo-Lizer, Inc.), Case No. 89-4093 (6th Cir. Oct. 18, 1990). In this case, the Sixth Circuit held that interest which accrues on postpetition taxes and penalties is entitled to first priority as an administrative expense under 11 U.S.C. § 503(b).

Marshall v. Michigan Department of Agriculture (In re Marshall), 118 Bankr. 954 (W.D. Mich. 1990). In this case, District Judge Benjamin Gibson adopted verbatim the report and recommendation of Bankruptcy Judge JoAnn Stevenson that was summarized in the January, 1990, issue of this Newsletter. Consequently, Judge Gibson abstained from deciding two related state court actions commenced by debtors against the Michigan Department of Agriculture and remanded those actions to state court for determination.

Koenig v. Ruskin, Case No. 89-CV-73030 (E.D. Mich. Oct. 2, 1990). In this Chapter 13 case, the debtor, Helen Koenig ("Debtor"), claimed an exemption of $7,900 in certain rental real estate located in Birmingham, Michigan. Debtor thereafter failed to make her required payments under her confirmed Chapter 13 plan and failed to timely pay real estate taxes due on this realty. Thereafter, the bankruptcy judge ordered the trustee to sell the real estate. This property was thereafter sold for $120,000, which sale was subsequently approved by the bankruptcy court. In the trustee's proposal for distribution of sale proceeds, he allocated no money to the Debtor for her exemption on the theory that a Chapter 13 debtor could not claim exemptions. Debtor thereafter filed a motion with the bankruptcy court for determination that a Chapter 13 debtor was entitled to exemptions. Bankruptcy Judge Walter Shapero denied this motion and the Debtor then appealed to the district court.

On appeal, District Judge Lawrence Zatkoff reversed the bankruptcy court by holding that a Chapter 13 debtor is entitled to claim exemptions. Judge Zatkoff remanded the case to the bankruptcy court for a determination as to whether the Debtor waived her right to an exemption in the realty.

JRT, Inc. v. TCBY Systems, Inc., (In re JRT, Inc.), Adversary Proceeding No. 90-8377 (Bankr. W.D. Mich. Nov. 6, 1990). On August 13, 1990, JRT, Inc. ("Debtor"), commenced a Chapter 11 case in the United States Bankruptcy Court for the Western District of Michigan. Debtor was a franchisee of TCBY Systems, Inc. ("TCBY"), selling yogurt products at six stores in the Grand Rapids area. At the time Debtor filed its bankruptcy petition, TCBY had commenced a civil

STEERING COMMITTEE MEETING MINUTES

A meeting was held on November 16, 1990 at noon at the Peninsular Club.

1. Mark Van Allsburg made a presentation regarding progress on the attorneys lounge and passed around architectural plans, which were approved. These plans together with an announcement from this sub-committee concerning the donation of furniture to furnish the lounge and/or a request for monetary contributions for this purpose is found elsewhere in this Newsletter.

2. It was announced that the keynote speaker for the 1991 Shanty Creek Seminar, to be held on August 15 - 17, will be the Honorable Barry Russell, Bankruptcy Judge for the United States Bankruptcy Court for the Central District of California, located in Los Angeles.

3. Robert W. Sawdey gave an update on the status of B.A.P. in the Sixth Circuit. All present were also apprised of the happenings at the recent Judicial Conference held in Chicago.

4. It was announced that Daniel J. Casamatta has been appointed the new Acting Assistant U.S. Trustee in this District. It is expected that he will become the Assistant U.S. Trustee on December 16, 1990, once all appropriate documents have been executed.

5. Mark Van Allsburg announced that there will probably be a reassignment of Judge Nims' Lansing and Kalamazoo cases, which reassignment is anticipated to be effective January 1, 1991. Further information on this subject will follow.

6. It was agreed that, because of the holidays, there would be no December Steering Committee meeting. The next meeting is scheduled to be held at noon at the Peninsular Club on Friday, January 18, 1991.

Larry A. Ver Merris

action against the Debtor's principals in the United States District Cou the Western District of Arkansas to recover sums due under the princi guaranty of the Debtor's obligations to TCBY (the "Collection Action").

In its Chapter 11 case, Debtor sought to enjoin TCBY from prosecuting th Collection Action under 11 U.S.C. § 105(a) and also moved to reject the Debtor's franchise agreements with TCBY, including the covenants not to compete contained within those agreements. After a trial was held on these two matters, Bankruptcy Judge James D. Gregg issued a written decision (i) denying Debtor's request for a preliminary injunction; and (ii) permitting Debtor to reject the franchise agreements.

In deciding not to enjoin TCBY from prosecuting the Collection Action, Judge Gregg first noted that, "[i]n prior bench decisions, when appropriate circumstances are demonstrated, this court has granted very limited injunctions which prohibit a creditor from continuing an action against an officer of a debtor corporation." However, after reviewing the evidence presented at trial Judge Gregg concluded that "the grant of a preliminary injunction will not assist the Debtor's efforts to formulate, file and confirm a feasible, effective plan of reorganization." Specifically, the Debtor failed to demonstrate that a successful reorganization "will be likely" if the preliminary injunction was granted. Moreover, Debtor failed to show that it would suffer irreparable injury if an injunction were not granted. Finally, the granting of an injunction would not protect the estate from a "destructive race-for-assets among creditors."

Judge Gregg, however, found that the franchise agreements were executory contracts within the scope of 11 U.S.C. § 365 and permitted Debtor to reject them as burdensome. Judge Gregg found that if the agreements were not rejected Debtor would suffer approximately $400,000 in losses between October 1, 1990 and December 31, 1991. Finally, Judge Gregg held that this rejection also encompassed the covenants not to compete. These covenants were characterized as an "integral, nondivisible part of the executory franchise agreement."

In re Jim's Garage, 118 Bankr. 949 (Bankr. E.D. Mich. 1989). In this Chapter 7 case administered by Bankruptcy Judge Walter Shapero, the United States Trustee sought to obtain from the panel trustee certain of his records relating to the case after the United States Trustee had noted "unexplained activity" in the panel trustee's savings and checking accounts. After the United States Trustee filed a motion to remove this panel trustee and to force the production of these records, the panel trustee resigned. This motion was then dismissed as moot. Thereafter, Judge Shapero entered an order (i) requiring the United States Trustee to appoint a successor trustee in this case; (ii) mandating the resigned trustee to cooperate with the successor trustee and the United States Trustee; and (iii) requiring the resigned trustee to turn over numerous documents to the United States Trustee's office.

The resigned trustee resisted the turnover demand on the ground that these records, which included bank statements and other records generated in this Chapter 7 case, were protected by the Fifth Amendment privilege against self incrimination. This argument was rejected by Judge Shapero, citing the "required records" exception to the Fifth Amendment privilege.

CHAPTER 13 PAYROLL ORDERS

ou probably have already received notification that the Trustee's office has hanged to a Lock Box System. All Chapter 13 payments must now be mailed to:

Raymond B. Johnson
Chapter 13 Trust Account
P.O. Box 3235
Grand Rapids, MI 49501

Brett N. Rodgers
Chapter 13 Trust Account
P.O. Box 3538
Grand Rapids, MI 49501

The intake clerks at the Bankruptcy Court now have stamps with the above information. Mark Van Allsburg has agreed to have the clerks use these stamps to indicate the appropriate Trustee and address on new payroll orders in Chapter 13 cases.

For future Chapter 13 cases, please use the attached form when you file a payroll order with the new case. **Note** that a blank space has been left for the Trustee's name and address. The court will stamp the payroll order and give it back to you for service.

Please keep in mind that the lock box address is for payments only. The bank will forward to us any correspondence that comes to the lock box with a payment, but this should be kept to a minimum to avoid delays in processing payments. Our general mailing address is still 850 Forest Hill, S.E., Grand Rapids, MI 49546.

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

Mark Van Allsburg has suggested that this form be filled out with the language on the attached sample. The Trustee's office pays the filing fee as quickly as possible, but since these payments usually are not in equal installment amounts, this general language is more appropriate than listing the specific installment amounts.

ALPHABETICAL DIVISION OF CASES

As you probably know, the Chapter 13 cases are divided among our staff alphabetically. If you have any questions on a particular case, you may want to ask directly for the case analyst. The cases are divided as follows:

A,B	Amy
C,D,E,F,G	Carrie
H,I,J,K,R	Jari
L,M,N,O,P,Q	Linda
S,T,U,V,W	Shelly
X,Y,Z	JoAnne

f you have any questions, please don't hesitate to call us.

Raymond B. Johnson

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN

In re:	)
	)
	)
	)
	) Chapter 13 Case No. _____
Soc. Sec. #	)
	)
Debtor(s)	)

ORDER DIRECTING EMPLOYER TO PAY TRUSTEE

The above noted debtor(s) has filed a Chapter 13 case, and has consented to deduction of plan payments directly from his/her wages to the Chapter 13 Trustee, Therefore

IT IS HEREBY ORDERED that _____ shall deduct the sum of $_____ each _____ pay period and send the said amount to:

IT IS FURTHER ORDERD that all earnings of the debtor, except amounts required to be withheld by any provisions of the laws of the United States, this state or any political subdivision, or by any insurance, pension or union dues agreement between the employer and the Debtor, or by order of this Court, be paid to the debtor in accordance with the employer's usual payroll procedure.

IT IS FURTHER ORDERED that no deductions for any garnishment, wage assignment, credit union or other purpose not specifically authorized by this Court, be made from the earnings of said debtor, Except: _____

_____

IT IS FURTHER ORDERED that a copy of this Order be served by ordinary mail upon:

1. The Debtor(s) at: _____
2. The Employer at: _____
3. The Trustee: _____
4. Debtors' Attorney: _____

United States Bankruptcy Court

By: _____
Clerk of the Court

Served as ordered:

_____

If you have questions about this order please call the trustee at (616) 957-3550.

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(Official Form 2)
(1/87)

United States Bankruptcy Court

_____ District of _____

In re

Bankruptcy Case No.

Debtor

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

In accordance with Bankruptcy Rule 1006, application is made for permission to pay the filing fee on the following terms:

$ 0.00 with the filing of the petition, and the balance of

$ 120.00 on or before 120 days after filing this petition.

I certify that I have not paid any money or transferred any property to an attorney or any other person for services in connection with this case or in connection with any other pending bankruptcy case and that I will not make any payment or transfer any property for services in connection with the case until the filing fee is paid in full.

_____
Date

_____
Applicant

_____
Address of Applicant

_____

ORDER

IT IS ORDERED that the debtor pay the filing fee in installments on the terms set forth in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay, and no person shall accept, any money for services in connection with this case, and the debtor shall not relinquish, and no person shall accept, any property as payment for services in connection with this case.

_____
Date

_____
Bankruptcy Judge

ATTORNEYS' CONFERENCE ROOM PROPOSED

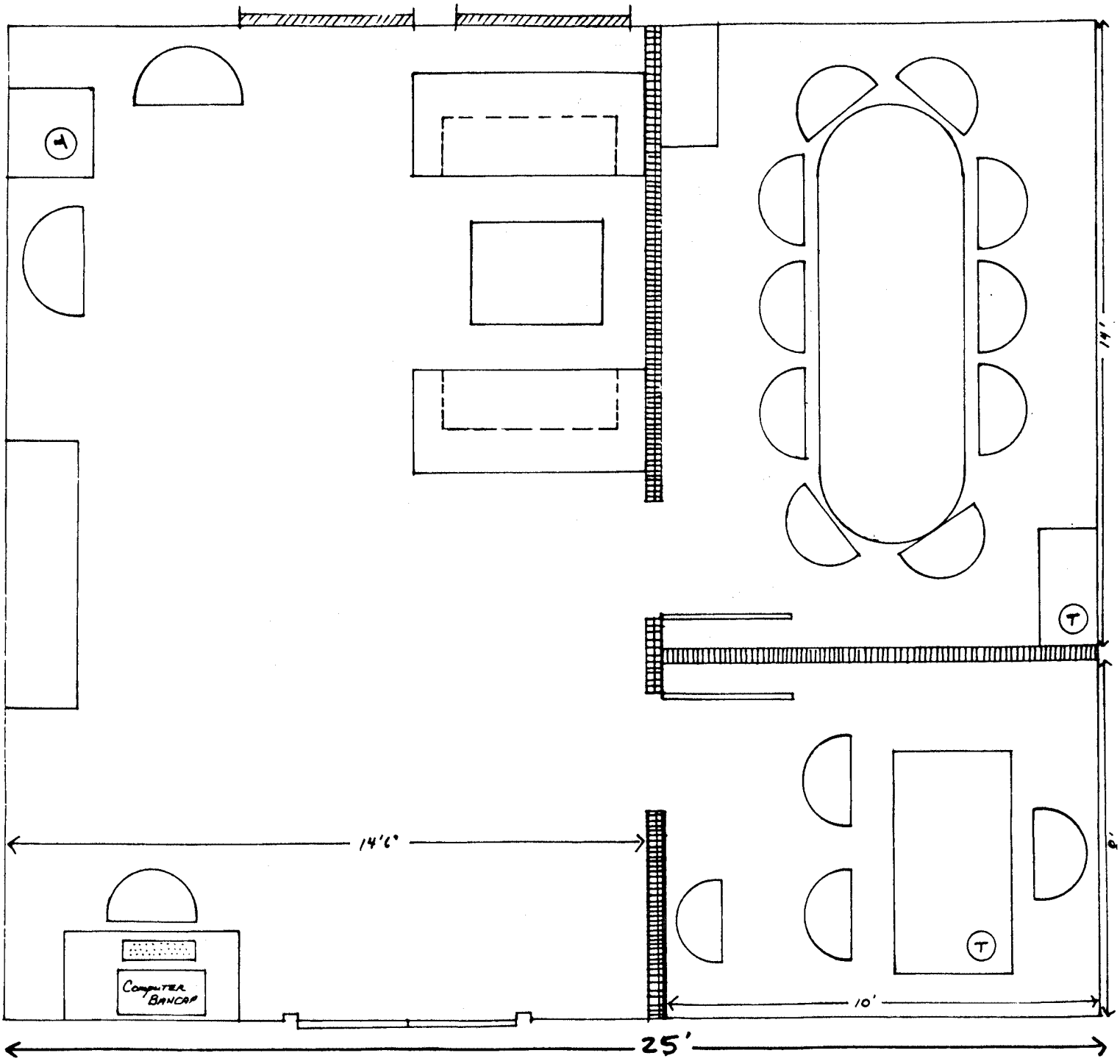
The Bankruptcy Court and the Bankruptcy Section of the Federal Bar Association are cooperating in the planning, construction and furnishing of an attorneys' lounge and two conference rooms on the seventh floor of the federal building in Grand Rapids. The Court has designated room 746 as an attorneys' conference room. This space is 25 x 22.5 feet and is currently furnished with miscellaneous pieces of furniture, making it serviceable for small conferences. It will be divided into a lounge (14.5' x 22.5') and two small conference rooms (10' x 8' and 10' x 14') and will be furnished as shown on the adjoining floor plan (below). Telephones will be available to Bar members in each of the rooms.

Although the Court will pay for construction of the interior partitions, members of the Bankruptcy Bar will furnish the space. Therefore, the Federal Bar Association has begun to solicit donations of furniture. Donations can be made in two ways. First, if an individual or law firm has existing furniture which is compatible with other furnishings, it can be loaned for this purpose. If, however, members have no readily available furniture, they can still make contributions. We would like Bar members to purchase furniture from the following inventory list and loan it to the Bar Association for the indefinite future. The furniture would be owned by the individuals or firms making the contribution and would be returned to them should the Court ever need to use the space for another purpose.

The following list of furniture items (with approximate prices) has been developed by Jim Engbers and Mark Van Allsburg, both of whom are willing to work with persons wishing to make contributions.

Furniture Item	Number Needed	Approximate Unit Cost	Total Cost
Conference Table (8')	1	350	350
Chairs (w/wheels)	13	230	2990
Lounge Chairs	2	300	600
Conference Table (5')	1	280	280
Computer Table	1	230	230
Coffee Table	1	100	100
Misc. Small Tables	3	100	300
Sofa	2	500	1000
Telephones	2	150	300
Misc. (tax, etc.)		350	350
Total:			6500
Original Renoir (Optional)	1	15,000,000	

Assuming that sufficient donations of furniture are made before the first of the year, the conference rooms could be ready for use by March 1. Please contact Mark Van Allsburg or Jim Engbers if you are willing to contribute to furnishing the attorneys' conference room.



Attorneys' Conference Room