BANKRUPTCY LAW NEWSLETTER

Published by Federal Bar Association
Western District of Michigan Chapter

VOL. 5, NO. 2 OCTOBER, 1992

TRIBUTE TO JUDGE DAVID E. NIMS, JR.

On September 30, 1992 nearly 300 judges, attorneys, work colleagues, family and friends joined in a tribute to Judge David E. Nims, Jr., on the occasion of his retirement. It was a wonderfully spirited event.

Sending letters of congratulations to Judge Nims were President George Bush, former President Gerald R. Ford, former President Jimmy Carter, Governor Bill Clinton, U. S. Congressman Paul B. Henry, 6th Circuit Judges Gilbert S. Merritt, Albert J. Engel, and Pierce Lively, Judges Benjamin F. Gibson, Douglas W. Hillman and Wendell A. Miles of the United States District Court for the Western District of Michigan, and Judge Robert K. Rodibaugh of the United States Bankruptcy Court for the Northern District of Indiana. Senator Donald Riegle placed a tribute to Judge Nims in the Congressional Record on September 10, 1992.

Present in person were Circuit Judge Albert B. Engel; Judge Robert Holmes Bell, Jr., of the United States District Court for the Western District of Michigan; Hon. Hugh W. Brenneman, Jr., Hon. Doyle A. Rowland, and Hon. Joseph G. Scoville, Magistrates of the United States District Court for the Western District of Michigan; Judges Laurence E. Howard, James D. Gregg, and Jo Ann C. Stevenson of the United States Bankruptcy Court for the Western District of Michigan; Judge Arthur C. Spector of the United States Bankruptcy Court for the Eastern District of Michigan; Hon. Marvin Heitman, former Bankruptcy Judge for the Western District of Michigan; Judge Nims's family and numerous other judges and practitioners from both within and without the United States Bankruptcy Court system.

During the course of the evening, remarks were made by Bob Sawdey, Judge Stevenson, Judge Howard, Judge Heitman, Paul Davidoff, Wally Tuttle, Joe Chrystler, Barbara Rom, Tom Schouten, Jim Engbers, David Davidoff, Tim Curtin, Judge Gregg, and Brett Rodgers.

Following are edited excerpts from some of the letters of congratulations and the dinner presentations:

Dear Judge Nims:

I am delighted to send congratulations on your retirement. You can be very proud of your lasting contributions to our society. As you reflect on your numerous achievements, you can be secure in the knowledge that you have been an asset to your community and to our nation. On behalf of all of our citizens, thank you for a job well done. Barbara joins me in sending best wishes for every future happiness.

Sincerely,

George Bush
President of the United States

Congratulations on your long and outstanding service in the Bankruptcy Court for the Western District of Michigan. Your career spanned most of my congressional service, my time as Vice President and President, plus a few more added years. The Western Michigan community during those 37 years was the beneficiary of your hard work, ability and fairness. You have my highest compliments.

Gerald R. Ford
Former President of the
United States

Rosalynn and I are pleased to join your family, friends, and colleagues in congratulating you on this momentous occasion. Yours has been a long and distinguished career, during which you have provided exemplary leadership and service to the people of your community, state, and nation. You have served the Federal Judiciary with distinction for 37 years. The recognition you are receiving is testimony to the impact you have made on the many people whose lives you have touched over the years.

Sincerely,

Jimmy Carter
Former President of the
United States

Yours has truly been a esteemed career. As a judge you distinguished yourself with a profound knowledge of the law, dedication and fairness. Off the Bench, your efforts reflect not only a commitment to improving the character and expertise of the Bankruptcy Court, but a sense of compassion and caring as evidenced by years of volunteer work with family service organizations.

Sincerely,

Paul B. Henry
Member of Congress

You have been a great judge and bankruptcy scholar for many years and we are all in your debt. We look upon you and Clive Bare as the great bankruptcy judges of this generation.

Sincerely,

Gilbert S. Merritt
Chief Judge, 6th Circuit
Court of Appeals

I think you know with what mixed emotions I greet your decision to terminate your recall as a bankruptcy judge. I think we are extremely sorry to lose the benefit of your continued presence on the Court and hope it does not mean the loss of friendship of a valued colleague over many years. Our own friendship dates back to the early 1950s when I was still a very young private practitioner in Muskegon. In that time I have never observed anything in your behavior that represented less than the very highest standards of integrity, judicial demeanor, and intelligence.

You may not realize it, but it was also a source of considerable personal satisfaction for me to urge the Court to recall you into service after your retirement. As we know, not every judicial district in the United States has been as fortunate in having judges of the caliber of those in Western Michigan. It's a matter of personal pride that I can report from my own knowledge that you were exceptionally well endowed with what it took to continue work after retirement. I know you enjoyed it personally and I know it also benefited our court.

Sincerely,
Albert J. Engel
Judge, 6th Circuit
Court of Appeals

When I came to the bankruptcy bench in South Bend in late 1960, you were already a respected fixture in that capacity of United States Bankruptcy Judge. I appreciated very much being able to rely upon you for many of the difficult problems I had in the early days of my tenure. Any cry for help you gave kind and quick attention.

I still remember how quickly I acquired my tremendous respect for you as a legal scholar and your unceasing fairness with the attorneys that appeared before you. Your reputation so richly deserved for your service as United States Bankruptcy Judge has certainly made you a legend in your own time.

Robert K. Rodibaugh
United States Bankruptcy Judge
for the Northern District
of Indiana

From the program of the September 30, 1992 dinner:

BOB SAWDEY

1912 was a very eventful year. The Boston Red Sox won the World Series. New Mexico and Arizona were admitted to the Union. On the fourteenth of April, the Titanic hit an iceberg and sank. Woodrow Wilson was elected President. Jim Thorpe in 1912 was the prominent athletic hero.

Ragtime music and the animal dances were the rage. They included the fox trot, the horse trot, the crab step, the kangaroo dip, the camel walk, the fish walk, the chicken scratch, the turkey trot and, believe it or not, the bunny hop.

On the fourteenth of October in 1912, a fellow named John Schrank shot Teddy Roosevelt from a distance of six feet. Despite a chest wound, Roosevelt insisted on delivering a campaign speech before he went to the hospital.

However, I want to tell you that the most important thing that happened in 1912 was that on July fourteenth, here in Grand Rapids, at the end of the inter-urban line, a kid named David E. Nims, Jr., was born.

Now, it hasn't been recorded if young Dave Nims ever became proficient in the chicken scratch, let alone the kangaroo dip. However, he did become proficient in a number of things, especially the law, and some thirty-seven years ago he ascended to the bankruptcy bench and he has served there with distinction ever since.

Tomorrow Judge Nims officially retires. We're here this evening to pay him some very justifiable homage.

First, a little background. Judge Nims graduated from Muskegon High School after attending secondary school in Oklahoma, Arkansas and Louisiana. He earned his Bachelor's degree from Wayne University, which we now call Wayne State. And he got his law degree from that marvelous place in Ann Arbor, the University of Michigan.

After being admitted to the bar in 1937, he practiced law in Kalamazoo until 1955. Well, there was one little break in his law practice. It was called World War II. He served his country in World War II for five years in the United States Army, principally in the infantry. He rose to the rank of major. He was seriously wounded in action in Germany. Following the war he served for some 23 years in the Judge Advocate General Corp Reserve from which he retired as a colonel.

Both as a lawyer and a judge, David has always been active in his profession and in civil affairs. The list is so long, I'll mention only a few of his endeavors. He was United States Commissioner from 1950 to 1955. He has been President of the Kalamazoo Bar Association; President of the YMCA Men's Club; President of the Kalamazoo Tuberculosis Society; President of the Grand Rapids Child Guidance Clinic; and President of the Grand Rapids Torch Club.

He has served on the Board of Trustees of so many organizations it's hard to imagine, including the Grand Rapids Bar Association and the National Conference of Bankruptcy Referees.

In addition, he has been something of an habitual writer and lecturer, principally on bankruptcy matters.

I won't even mention his myriad activities on behalf of the Michigan State Bar Association.

Somehow during all this time, during his career, he found time to make a living and raise a lovely family.

Since 1955, Judge Nims has served on the bankruptcy bench. He has had an illustrious career on that bench. He has, for me, epitomized what I think a good judge is all about: he has a keen legal mind; and he was always prepared. He always had compassion for people in front of him. He always showed fairness to people in front of him. And he always showed patience to people in front of him, especially inexperienced and often very inept lawyers.

Most importantly, I don't believe I can ever recall Dave Nims ever being haughty or, overbearing or exhibiting anything close to a so called-better-than-thou attitude, regardless of the circumstances. Although he has always been a strong jurist whose courtroom has always been a very tight ship, it was a venue where right was right and wrong was wrong. From a lawyer's standpoint, David's courtroom has always been a place where, if you were right, you could expect to win; if you were wrong, you could expect to lose. There were a few exceptions. I think I was a part of a few of those exceptions.

However, David is not without fault. For example, I don't believe that God ever blessed this man with any hair. But then, I'm not entirely sure we should hold that against him.

JUDGE JO ANN C. STEVENSON

As might be expected, we're not the only people who appreciate and know the wonderful work that Judge Nims has done over the many years he served on the bankruptcy court. There have been many letters, congratulations and best wishes which have been sent to him, including letters from the following: former President Jerry Ford, former President Jimmy Carter, President of the United States George Bush, Congressman Paul Henry, Judge Gilbert Merritt and Judge Douglas Hillman. I urge you to please stop and read them, because they are really quite impressive. I read them all, and they all say wonderful things about my colleague. But the one I think that really captures the spirit, at least the person that I've come to know and respect and hopefully learn from during the five short years that I have been on the bench, was a letter from Judge Hillman addressed to Tim Curtin.

I'll only read one paragraph of it. It says: "In your letter to me you said it all when you stated the occasion was to honor a "fine judge and a true gentleman." On a scale of one to ten, Judge Nims rates a ten in both categories! He not only is the dean of the bankruptcy judges in our district, but is considered by the Court of Appeals as the finest bankruptcy judge in the entire circuit. In addition to being an outstanding scholar in a very difficult and complex field, he is at the same time a thoughtful, considerate, compassionate human being whose door is always open. His wise counsel, good judgment and common sense have over the years greatly assisted many lawyers and others who have sought his advice." I don't think anyone could have said it better.

JUDGE LAURENCE E. HOWARD

We're all called to pay tribute to Judge Nims tonight, but the real tribute is not us, it's you. We have almost 300 people here. When they take off time in the middle of the week to come here to pay tribute to Judge Nims, that's more than any one of us could say at this dinner.

I knew Judge Nims as a judge when I was a lawyer practicing in front of him. I was a general practitioner and most general practitioners do a bit of everything, bankruptcy included. When you'd see a question you didn't know how to answer, you'd go over and talk to Judge Nims and Judge Benson at that time. Their doors were always open. You could go in. You always felt comfortable. You weren't intruding. And they would always try to help you. And that really has made a difference.

Later on, in 1976, I was appointed bankruptcy judge. I had some experience in bankruptcy, but not a great deal. And in bankruptcy, as most everybody here knows, things happen fast. Somebody comes in to court, they need to pay their payroll, they need

action. It's not a time to learn on the job. You have be ready to make decisions. For the first six or twelve months that I was on the bench, Judge Nims made my life bearable and even good at a time when, due to my inexperience, it could have been very difficult. His door was always open and he was always ready and available to talk to me as well as other people. And, more than once, I must confess that in a difficult case, I've taken a little earlier noon hour. I'd go down and get Judge Nims and we'd go to lunch, as we have for the last seventeen years, and we'd talk about things. After we got back, things were a little clearer. And he was always available. Never once in the seventeen years that I've served with him, has there been one cross word. We didn't always agree, but we could always agree to disagree. We always worked things out that way.

Every day when Judge Nims comes into the office, he goes to every person in the bankruptcy court - says hello, says their name - to see how they're doing. He knows everybody's name. He's got a good memory, but he cheats a little bit -- he has a little book that he puts down their names in.

I would just like to say in closing that I think a man's success in life and his profession can be measured by the number of people who respect and love him. Look around this room tonight. Judge Nims's life and career have been extremely successful. Dave, have a good and fulfilling retirement.

CLOSING REMARKS BY JUDGE NIMS

Hearing all of these wonderful things said about me, you might think of the story of the funeral and the widow who's sitting with her son listening to all of the eulogies about the departed husband. Finally, after going on for some time, she turns to her son and says, "would you go over and see if that's your father in that casket?"

One of the things I always liked about the practice of law was the fact that you never knew when you went to the office in the morning what that day would bring. But I never was prepared for that day in March of 1955 when I was told that Judge Starr was on the telephone and wanted to talk to me and he asked me to be the Bankruptcy Referee for the Western District of Michigan. That was a real shock and led to my having to make the most difficult decision in my life.

I have not been sorry about the decision that I made. I've enjoyed every day of the last thirty-seven years.

So it has been a wonderful life and I have enjoyed it. I've enjoyed the staff that I've worked with. When I was going around and saying good morning to all of these people, I wasn't doing it because I thought I should or had to, I did it because I wanted to and because I enjoyed seeing them and saying good morning to them and having them smile at me, that made the rest of the day for me.

I have enjoyed many of the people that have come before me. Even the Reverend Jenks. I liked him. I'm sorry that Ruth Shriver isn't here tonight. Ruth Shriver, as some of you know, was the one who sued me for a quarter of a million dollars. I felt quite flattered by the fact that she would think that a bankruptcy judge would amass such a great sum as a quarter of a million dollars.

The hour is late. I'd like to tell you all about bankruptcy and why I love it and why I think the Bankruptcy Act is one of the great statutes of all times, as far as giving freedom to debtors, giving rights to creditors and always attempting to balance the rights of creditors and debtors. I think the Act has come very close to it. Sometimes it goes a little to one side, sometimes a little to the other. But, generally, the effect is to balance all of these rights for the best interests of all parties concerned.

So I'm not going to take up any more of your time. I just want to say good night to you. God bless you, and I love you all.

RECENT BANKRUPTCY DECISIONS

In re Baker & Getty Financial Services, Inc., Case No. 91-3195 (6th Cir. September 2, 1992). In this case, the Sixth Circuit affirmed the district court's conclusion that the bank's claims should not be subordinated, pursuant to §510(c), to the claims of the general unsecured creditors.

The following three conditions must be proved to justify equitable subordination: (1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the creditors of the debtor or conferred an unfair advantage on the claimant; and (3) equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act. The trustee was required to prove that the bank, as a non-insider, was guilty of gross misconduct tantamount to fraud, overreaching or spoliation to the detriment of others.

According to the Sixth Circuit, while the bank might clearly have been guilty of gross misconduct toward its shareholders by its lax and ill-advised lending policies, including its failure to perfect its security interests, the bank's conduct was not specifically directed toward the injury of the debtor or other creditors, or for gaining an unfair advantage over other creditors. The Sixth Circuit rejected the trustee's argument that a finding of inequitable conduct is no longer required as a prerequisite for equitable subordination. The Sixth Circuit refused to apply a standard of overall fairness to be applied on a case-by-case basis, which would allow equitable subordination even in circumstances where no gross misconduct has occurred.

In re Huhn, Case No. 1:92-CV-377 (W.D. Mich. September 22, 1992). In this decision, Judge Bell upheld the bankruptcy court's determination of the amount of attorney fees and interest allowable to an oversecured creditor under §506(b).

The creditor claimed he was entitled to recover $58,000 in attorney fees. However, the bankruptcy court awarded attorney fees of $5,000.

There was no dispute that the creditor was oversecured and that the agreement provided for attorney fees. However, the fees were sought pursuant to a mortgage contract of a bank, which the creditor purchased after the petition was filed. The attorney billings included bills for services performed before the creditor's purchase of the mortgage. Since §506(b) only allows recovery of "charges provided for under the agreement under which such claim arose", the bankruptcy court properly disallowed the creditor's claim for attorney fees incurred prior to his purchase of the mortgage.

In addition, the fee application did not comply with the content and specificity requirements imposed by the Bankruptcy Code and Local Rules.

The district court also held that an oversecured creditor is not entitled to compensation for its attorney fees for every action it takes by claiming its rights have been affected. The case had been overlitigated and some of the fees were not reasonably incurred in protecting the creditor's secured claim since there was never any question that the mortgages would be paid in full.

Lastly, the bankruptcy court properly allowed only simple interest on the principal balance, rather than compound interest.

In re Cole Brothers, Inc., Case No. 1:92-CV-219 (W.D. Mich. September 2, 1992). In this case, Judge Gibson reversed the bankruptcy court's order allowing the debtor to assume farm equipment dealership agreements with its major secured creditors.

The dealership agreements included terms schedules which enabled the dealer to obtain floor plan financing for new machines and trade-ins, and finance agreements which required financing for sales to retail customers.

Section 365(c)(2) provides that a trustee may not assume "a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor." The district court held that the requirement that the secured creditors extend

floor plan financing to the debtor was a contract for financial accommodations. The financing requirements were not incidental to the overall contract, but were an integral component of the dealership agreements. Accordingly, the entire dealership arrangement was an agreement for financial accommodation, which the debtor could not assume.

Michigan National Bank v. ***Newman***, Case No. 92-CV-40132-FL (E.D. Mich. July 29, 1992). In this opinion, authored by Judge Newblatt, the district court affirmed the bankruptcy court's decision that the bank failed to prove, pursuant to §523(a)(2)(B), that a financial statement contained materially false representations. As a result, the debt to the bank was dischargeable. There being no evidence of the actual market value of the personal property, or even some evidence of what property the debtors owned as of the date of the financial statement, it was impossible for the bankruptcy court to determine whether the personal property figure was materially false.

In re Coventry Commons Associates, Case No. 91-CV-75730-DT (E.D. Mich. April 14, 1992). In this opinion, Judge Duggan held that the assignment of rents statutory provisions permit a mortgagor to grant to a mortgagee an assignment of rents as additional security and that the assignee/mortgagee's rights are perfected and binding against the assignor/mortgagor when such assignment is recorded and a default occurs in the terms of the mortgage. The secured creditor had a perfected security interest in the post-petition rents since it recorded the assignment of rents and the debtor defaulted under the terms of the mortgage. Since the secured creditor had a perfected security interest in the rents, the district court held that the rents must be treated as cash collateral. The district court remanded the case to the bankruptcy court since the bankruptcy court did not expressly determine whether the secured creditor's interest in the rents, as cash collateral, was adequately protected.

In re Rouse, Case No. NG 92-83300 (Bankr. W.D. Mich. September 29, 1992). In this opinion by Judge Nims, the debtors filed a motion for an order requiring the Friend of the Court to return the debtors' 1991 income tax refunds pursuant to §524(a). The refunds were claimed to be exempt under §522(d)(5).

The debtor/husband was delinquent in paying child support and confinement costs for the birth of his child. In May, 1992, the Friend of the Court intercepted the tax refunds. In June, 1992, the debtors filed a Chapter 7 petition.

The court first rejected the debtors' request to find the Friend of the Court in violation of the automatic stay. The stay did not come into effect until the bankruptcy filing. By that time, the intercept procedure had been completed and the Friend of the Court protected the rights of the parties by placing the funds in escrow.

In addition, even though an income tax refund is part of the debtor's estate and is generally an asset that can be exempted under §522(d), the court denied the debtors' request to turn over the tax refunds since exemptions do not protect property from liability for child support pursuant to §§522(c)(1) and 523(a)(5).

In re Schmidt, Case No. NG 91-86617 (Bankr. W.D. Mich. September 29, 1992). This opinion by Judge Nims involves the issue of whether a Chapter 7 debtor can continue to perform post-petition under the terms of a promissory note/security agreement, which is not in default other than for the filing of bankruptcy, even though the seller/secured party objects based on the debtor's refusal to sign a reaffirmation agreement.

The debtors financed the purchase of a van with the bank. The debtors refused to sign a reaffirmation agreement, but continued to make payments.

According to the court, the debtors wanted to continue under the purchase agreement without reaffirming so that they could keep the collateral and at the same time, discharge their personal liability. The court held that the debtors were required to either enter into a reaffirmation agreement or redeem in order to retain the van.

In re O'Connor, Case No. 91-80206 (Bankr. W.D. Mich. September 25, 1992). In this case, authored by Judge Nims, the plaintiff/lessor filed a complaint based on §523(a)(2)(B), seeking a determination that the unpaid balance due under a lease was a non-dischargeable debt of the debtors/defendants, guarantors of the lease.

The court first determined that there was ample consideration for the personal guaranty, so that a debt under §523(a) existed. The court next held that the lease was "property" within the meaning of §523(a)(2)(B). The debtors also benefitted by the lease. In addition, the written financial statement given to the lessor was materially false respecting the debtors' financial condition and the lessor reasonably relied upon the financial statement. The debtor/husband caused the financial statement to be published with intent to deceive, but the debtor/wife, however, did not. As a result, the debtor/husband did not receive a discharge of his debt to the lessor, while the debtor/wife did.

In re Frost, Inc., Case No. HG 90-82387 (Bankr. W.D. Mich. September 17, 1992). This decision by Judge Howard involves a debtor's right to a jury trial in an adversary proceeding.

The debtor filed a voluntary Chapter 11 petition and obtained a confirmed plan. Prior to the bankruptcy filing, defendant law firm represented debtor in a state court lawsuit. The defendant filed a proof of claim for legal fees from the state court litigation. The debtor objected to the claim and asserted counterclaims for negligence and breach of contract. The debtor also demanded a jury trial.

The court granted defendant's motion to strike the debtor's demand for a jury trial. According to the court, the debtor's adversary proceeding arose out of the claims allowance process for which no Seventh Amendment right to a jury trial exists. The debtor's counterclaims were intertwined with its objection to defendant's claim. By filing for bankruptcy, the debtor submitted to the bankruptcy court's equitable determination of claims.

In re Gregory Boat Company, Case No. 91-08611-R (Bankr. E.D. Mich. August 28, 1992). In this case, Judge Rhodes confirmed a Chapter 11 plan which provided for payments to the taxing authorities commencing one year after the plan's effective date. The court held that nothing in §1129(a)(9)(C) requires that a Chapter 11 plan must propose equal monthly payments on priority tax claims. Nothing in §1129(a)(9)(C) even prohibits a single payment of principal and interest at the end of the six-year period.

The court also overruled the taxing authorities' objection that the plan violated §1129(b) in that it was not fair and equitable. The taxing authorities were concerned that the plan proposed to pay unsecured creditors on the plan's effective date and proposed to make periodic payments to the secured creditor beginning immediately after the effective date. According to the court, taxing authorities do not constitute a "class of claims" under §1123(a)(1). Since §1129(b) is applied only if a "class of claims" is impaired and has not accepted the plan, there was no cause to consider whether §1129(b) was satisfied.

The court also rejected the taxing authorities' argument that the treatment of their claims violated the §507(a) priorities. If a plan meets the requirements of §1129, it is confirmable, even if it proposes payments that are not in the time order set forth in §507(a).

In addition, the court found that the plan satisfied the §1129(a)(3) good faith requirement. The court stated that good faith means that the debtor must show that the treatment of the priority tax claims is reasonably necessary to the success of the debtor's reorganization. If there is a sound business justification for the treatment, then the plan is proposed in good faith. Tax claims should be paid as soon as is reasonably practicable consistent with sound business judgment, within the specific limits imposed by the Bankruptcy Code.

Lastly, the court found that the plan was feasible.

In re Karpinski, Case No. 91-09113-R (Bankr. E.D. Mich. August 21, 1992). In this case, Judge

Rhodes held that the obligations assumed by the debtor constituted support or maintenance of his ex-wife in connection with a divorce decree, and were therefore nondischargeable under §523(a)(5). In holding that the obligations were nondischargeable under §523(a)(5). Judge Rhodes found that the following three elements were satisfied: (1) the parties intended to create an obligation to provide support; (2) the obligations had the effect of providing the support necessary to ensure that the daily needs of the former spouse were satisfied; and (3) the amount of support was not so excessive that it was manifestly unreasonable.

In re Briggs, 143 B.R. 438 (Bankr. E.D. Mich. 1992). This decision by Judge Spector involves automatic stay issues.

The credit union had a security interest in the debtor's mobile home. The debtor also had an unsecured line of credit with the credit union. After the debtor filed a Chapter 7 petition, the credit union discontinued the debtor's membership and froze funds in the debtor's savings account.

The court first rejected the debtor's argument that the credit union, by terminating the debtor's membership, was guilty of improper discrimination under §525(b). An action can violate §525(b) only if it relates to the debtor's employment with the entity taking the action. Since that was not the case here, §525(b) was not implicated.

The court next held that the administrative freeze of the debtor's savings account did not violate §§362(a)(3),(4),(5), or (7).

The court then examined whether §362(a)(6) was violated. According to the court, an action taken by a creditor in the process of seeking voluntary repayment of a pre-petition indebtedness violates §362(a)(6) only if the action: (1) could reasonably be expected to have a significant impact on the debtor's determination as to whether to repay, and (2) is contrary to what a reasonable person would consider to be fair under the circumstances. Under this test, the administrative freeze and threat to repossess the mobile home did not violate §362(a)(6). Section 362(a)(6) also was not violated by the termination of the debtor's membership services and by requiring the debtor to reaffirm his unsecured loan as a condition to reaffirming the secured loan. However, the credit union violated §362(a)(6) by communicating a message to the debtor that he had to take the initiative to terminate automatic loan payments and by refusing to file the original mobile home reaffirmation agreement.

McFarlane v. ***Estate of McFarlane***, Case No. 127877 (Mich. Ct. App. September 15, 1992). In this unpublished decision, the Michigan Court of Appeals held that a claim for contribution or indemnification by the former wife of the deceased debtor for a joint credit card debt was discharged in the husband's bankruptcy. Although the divorce judgment equally divided the credit card debt, it did not bind the creditor. Therefore, the former wife was liable to the creditor for the full amount of the joint debt and she could not obtain indemnification or contribution against the decedent's estate because of the bankruptcy discharge.

VOLUNTEER NEEDED

Joe Ammar of Miller, Johnson, Snell & Cummiskey is in the midst of his year-long commitment to prepare the Recent Bankruptcy Decision summaries for this Newsletter. We are looking for volunteers to continue the case summary preparation after Joe's year of service (servitude?) is up in April. Please let Tom Sarb know at (616) 459-8311 if you would be willing to take over this task or are in a position to "nominate" someone to do so. The time commitment is significant, but the benefits of being up-to-date on all of the current bankruptcy cases are great.

STEERING COMMITTEE MEETING MINUTES

The meeting of the Steering Committee scheduled for October 16, 1992 was not held. The next meeting of the Steering Committee will take place at 12:00 noon on Friday, November 20th at the Peninsular Club. At that time, an election will be held to fill expiring terms of the Steering Committee. Attorneys interested in serving on the Steering Committee should give notice of their interest to Brett Rodgers no later than November 19, 1992.

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 (Lower Peninsula) during the period from January 1, 1992 through September 30 1992. These filings are compared to those made during the same period one year ago and two years ago.

	1/1/92 - 10/31/92	1/1/91 - 09/30/91	1/1/90 - 09/30/90
Chapter 7	4,087	3,774	2,965
Chapter 11	98	123	107
Chapter 12	21	21	14
Chapter 13	1,211	1,283	1,249
Totals	5,417	5,201	4,335

NOTICE UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN NOTICE TO BANKRUPTCY PRACTITIONERS September 30, 1992

The Bankruptcy Judges in Detroit have decided to hold confirmation hearings in Chapter 13 cases approximately 45 days after the meeting of creditors. The first sentence of Local Bankruptcy Rule 13.08(a) (E.D.M.), which states that objections to confirmation shall be filed within the time for filing proofs of claim (90 days after the § 341 meeting under F.B.R. 3002(c)), must be suspended in order to facilitate the new schedule. Therefore,

Pursuant to Administrative Order Number 92-03, for cases filed in Detroit on and after October 1, 1992, the first sentence of Local Bankruptcy Rule 13.08(a) (E.D.M.) is suspended.

The deadline for filing an objection to confirmation of a Chapter 13 Plan shall be 21 days from the § 341 Meeting of Creditors.

Mary G. Turpin
Clerk of Court
United States Bankruptcy Court

NOTICE FROM THE BANKRUPTCY COURT

On September 22, 1992 the Judicial Conference imposed a new administrative fee of $30.00 in Chapter 7 and 13 cases, by amending the Bankruptcy Court Fee Schedule in accordance with 28 USC 1930 (b). This fee is due at the time of filing and is not a part of the filing fee. Therefore, it may not be paid in installments.

The new fee will go into effect on December 1, 1992.

The Future of Chapter 11

A conference on the future of the Reorganization provisions of the Bankruptcy Code

Sponsored by the University of Michigan Law School, The Federal Bar Association for the Eastern District of Michigan, and the Federal Bar Association for the Western District of Michigan

DATE: **Tuesday and Wednesday, November 17-18, 1992**
PLACE: **University of Michigan Law School, Honigman Auditorium (Room 100)**

NOVEMBER 17, 1992

1:30 - 3:30 p.m.
Bankruptcy in Operation: Who Files, What Happens, and How Much Does It Cost?

Michelle J. White
Ms. White is a Professor of Economics at the University of Michigan. She has written economic analyses of several legal procedures, including Bankruptcy.

The Honorable Steven W. Rhodes
Judge Rhodes is currently a Bankruptcy Judge for the Eastern District of Michigan, as well as the Chairman of the Bankruptcy Section of the Federal Bar Association. In Winter Term, 1992, Judge Rhodes taught Bankruptcy as an Adjunct Professor of the University of Michigan Law School

NOVEMBER 18, 1992

1:30 - 3:15 p.m.
Arguments For and Against the Abolition or Radical Modification of Chapter 11

Michael H. Bradley
Mr. Bradley is the Everett E. Berg Professor of Business Administration and a Professor of Law at the University of Michigan. He co-authored "The Untenable Case for Chapter 11," 101 Yale L.J. 1043, with Michael Rosenzweig.

Michael Rosenzweig, Esq.
A partner at the Atlanta law firm of Rogers and Hardin and a former Associate Professor at the University of Michigan Law School, Mr. Rosenzweig is a leading proponent for the abolition of Chapter 11.

Lynn M. Lopucki
Mr. Lopucki is a Professor of Commercial Law, Corporate Reorganizations and Creditors' Rights at the University of Wisconsin Law School. He has published "Strange Visions in a Strange World: A Reply to Professors Bradley and Rosenzweig," 91 Mich. L. Rev. 79.

3:15 - 3:30 p.m. *Break*

3:30 - 5:30 p.m.
The Lawyer's and Judge's View of Chapter 11

Robert J. White
Mr. White is a partner at the law firm of O'Melveny and Meyers, Los Angeles, California, who has worked as counsel for Baldwin-United and Phar-Mor in their reorganizations, and as counsel for Revco's secured creditors. He has authored several articles on Chapter 11 practice and is a Fellow of the American College of Bankruptcy.

The Honorable A. Thomas Small
Judge Small is Chief Bankruptcy Judge for the Eastern District of North Carolina. He was the lead drafter for Chapter 12 and the proposed Chapter 10. He has also spearheaded the use of Chapter 10 under the court rules of the Eastern District.

5:45 - 7:00 p.m. Social Hour: Lawyer's Club Lounge

All Bankruptcy Practitioners and other interested parties are invited to attend.
NO ADMISSION CHARGE
The University of Michigan, 551 South State Street, Ann Arbor, Michigan 48109-1215

EDITOR'S NOTEBOOK

This issue is a tribute to Judge David E. Nims, Jr. on his retirement. I was very disappointed that I was not able to attend because of some surgery that I'd had a few days before the dinner. However, I had the opportunity to experience the evening almost first-hand by viewing the videotape of the dinner during the course of preparation of this issue. As was noted by Judge Howard, the most eloquent tribute Judge Nims's career was the fact that nearly 300 people turned out to pay him tribute at his dinner.

Again, many thanks to Tim Curtin, Bob Sawdey, and the other members of the Court and local Bankruptcy Bar who participated in planning and executing the dinner. Also, thanks to Jim Blaszczyk and Kalynne Brookens of the Bankruptcy Court for their assistance in getting me the materials to prepare this issue of the Bankruptcy Law Newsletter.

At the time this issue is being prepared, the presidential election has not yet been decided. However, it is interesting to note that, despite the fact that it looks like this will be another record year for bankruptcy filings, there has been a significant decline in the rate of increase in filings in this district, with year-to-date filings up only four percent over 1991. In 1991 and 1990, the rate of increase from the prior year was 20% and 24%, respectively.

Thomas P. Sarb

Western Michigan Chapter of the
Federal Bar Association
250 Monroe Avenue, Suite 800
Grand Rapids, MI 49503

PETER TEHOLIZ
5801 W. MICHIGAN AVE
PO BOX 80857
LANSING, MI 48908