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THE TROUBLED BUSINESS: A DISCUSSION FROM THE DEBTOR'S AND THE BANK'S POINTS OF VIEW - PART II

By Thomas W. Schouten* and Donald A. Snide**

[Editor's Note: The following is an edited transcript of a presentation to the Grand Rapids Bar Association luncheon on January 6, 1993. Part I, which appeared in the January, 1993 Bankruptcy Law Newsletter, was an overview of the issues in dealing with a troubled business, first from the debtor's perspective, and then from the perspective of the bank. Part II discusses the major issues in a negotiation between borrower's counsel and bank's counsel of an out-of-court forbearance agreement.]

Schouten:

I would like to pose the situation, Don, where the bank is an under-secured creditor. Your loan is $1 million, there is another $1 million in trade debt, and the whole battery of assets, receivables, inventory, and machinery is only $600,000. I have come to see you as the attorney for the borrower, to talk about one of our workout options. We have narrowed it to four potential options. The first is an out-of-court workout. The second is the bankruptcy process. The third is a voluntary surrender of the assets to the bank. And the fourth is a bulk sale under Article 6 of the Uniform Commercial Code. Any of these four options could work, depending on the facts and circumstances.

First let's talk about an out-of-court workout with the bank. I say to the bank, my borrower is an honest person, he didn't pilfer the bank account, he doesn't drive a Mercedes, he didn't have dinner last night at Cygnus. He is trying hard and he is beset by the circumstances I described to you: he made the foolish investment of putting $2 million into a go-cart/miniature golf course in the middle of the coldest, wettest, rainiest season in Michigan in 1992. The place is now closed for the winter, and we have no cash flow.

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*Thomas W. Schouten received his bachelor's degree in Business Administration from Western Michigan University in 1970 and is a 1973 graduate of Detroit College of Law. He is a partner with the firm of Dunn, Schouten & Snoap, P.C., where his practice concentrates on debtor/creditor and corporate reorganization matters.

**Donald A. Snide graduated from Valparaiso University School of Law in 1972. From 1972 until 1982, he was in private practice with the firm of Lampson, Humphrey, Snide & Clark. In 1982, he joined the legal counsel's office for Michigan National Bank. He is presently a senior attorney for Michigan National Bank, where his practice includes commercial loan documentation, real estate matters and workout/bankruptcy matters.

He raised the proper money via an equity offering, he is a competent business person, the bank is under-collateralized; and for that reason we want you to do three things. First, suspend the payments that are due for the next four months and tack them on to the back of the loan. Second, rewrite the loan and amortize it over a ten-or-fifteen-year period with a three-year call, to give us three years to work our way out of this unfortunate business situation. Third, reduce the interest rate from 10 percent which was the market rate when we wrote this loan and received your commitment two years ago, to more accurately reflect the market at 2 points over prime, fully floating, with a cap of 8 percent, so that the bank is helping us for a change. More importantly, if I take this company through a Chapter 11 -- and we would like to avoid the cost of that -- we can split your claim to a $600,000 secured claim, the true value of your collateral, and a $400,000 unsecured claim.

So we want you to rewrite your loan down to $600,000 and take a charge-off for $400,000, because then at 8 percent we can service this loan and work our way out. And also, your loan officer promised me when we met that if there were unfortunate weather situations, the bank would wait and see what happened and we would find a way to work this out. I think you owe us a duty, because you made that promise. Plus, you loaned money to our principal competitor, which didn't help my client's situation. As far as the guarantees go, my client, the president and sole shareholder, is uncollectible: here is his financial statement. So we want you to reduce the guaranty to the $600,000. We will leave it in place for that, but these are the things I need from you so that I can go to the next group of creditors and offer them ten cents on the dollar out of next year's revenues at the end of the summer season.

Snide:

I would give Tom two answers in this case. I would have already met with my loan officer, and depending on what my loan officer told me, and if Tom's client is an honest businessman and the bank has confidence in him, we actually might talk to Tom about this. If the loan officer has no confidence in the borrower, we would tell Tom that. If we are going to take a loss, we might as well take it now, get it over with, and end the agony. But in Tom's scenario, where we have an honest businessman, a good customer of the bank, we would probably attempt to work something out with him. That's the first answer. The second answer is that I would probably want something in return. Tom is asking me to give up everything. Do you want the combination to the vault, Tom? Step right in when you need more money?

I think I can probably convince the bank on Tom's first issue, the interest rate. Now let's consider the second issue. Extend the payments? He's already four payments down -- obviously, he doesn't have the money to make them. We can set those aside. On to the third issue. Reduce the principal balance? Obviously you can do that to me in a bankruptcy. But are you going to give me anything at all to make all this cooperation worth what you're offering?

Schouten:

Well let's assume you are willing to consider reducing the balance, given that I have convinced you that unless you do so this company cannot survive, and that even in the best of all worlds we cannot service a million dollars in debt. What I may be willing to do if you are willing to concede something on the principle, is give the bank some preferred stock position or warrant position with an upside, to let you recover a portion of the forgiveness of debt that you are giving. The argument from the borrower's side is that I can do this to you anyway in Chapter 11. But we both know it is going to cost me $50,000 to $75,000 in fees for the debtor's counsel, the committee's counsel, the court costs, the delay, the stigma of the Chapter 11, the loss of confidence in our customer base.

This is a very hard sell, because banks don't like to give away principal. They have probably already charged this loan off, and they are facing the federal regulators' reporting requirements, so they have a whole different problem that we don't even know about. They also have to protect their shareholders and deal with the loan committee and the loan officer who made this bad loan in the first place.

Snide:

Reducing the principal amount of a debt is going to be the most difficult thing to sell the bank on. The bank is going to want a new appraisal right away, because we have to confirm that the assets are in fact worth what you're telling us they are.

Schouten:

Let's say we can't work things out. Bankruptcy is one of the options. But it is a very expensive process, because the estate, the property of the company, is the source for the payment of a great many expenses. The debtor's attorney' fees, its accountants' fees, its appraiser's fees, its consultant's fees, and the creditors' committee's counsel's fees, accountant's fees, and appraiser's fees all get charged to the estate. If banks are over-secured, their legal fees and their collection costs get added to the debt. This is all at the expense of the unsecured creditors, who get their margin of opportunity pinched down each time somebody else has to have a piece of it. I personally use the threat of bankruptcy more as a tool to negotiate with people: Don't make us do this in a Chapter 11, we would just as soon do it another way. We'll offer you ten cents, twenty cents, or thirty cents on the dollar, because if we do a Chapter 11, the dividend has to go down because of the costs. The statistics show that less than 10 percent of Chapter 11s are true reorganization cases where the same ownership and the same business come out of the process. Many Chapter 11s fail and end up in Chapter 7, and many of them are in a different little box we call a liquidating Chapter 11, where the owner of the business winds it down himself, trying to maximize value, probably to protect himself on guarantees and protect his exposure on the 100 percent tax penalty liability to the IRS and the state. So very, very few Chapter 11s succeed, and the argument can rightfully be made, that it is so expensive that it is very difficult to survive. That's especially true for small businesses, say $1 - $2 million in sales or less. It is just too, too expensive, and there is not sufficient cash flow in businesses of that size.

But often bankruptcy is a good alternative. It offers the automatic stay, which means creditors can't pursue collection actions or litigation against the company. It provides a breathing spell during which the business owner can try to put a plan together, try to negotiate with other creditors, try to find buyers and sellers, try to do the right thing if he believes the company can be and should be salvaged. If he can't, or if there isn't a viable business plan, he is going to end up in Chapter 7, and the bank will receive its collateral at that point.

Let's chat for just a minute, Don, about what you do from your collateral perspective when you see the Chapter 11 filed.

Snide:

There are times when we will negotiate our cash collateral order with the borrower's attorney before the Chapter 11 filing. The bankruptcy will then be filed, and the debtor and his bank will already know what the cash collateral agreement is going to look like.

Cash collateral is a defined term of the Bankruptcy Code. It is money, inventory, and receivables, things that are liquid and turn over very quickly. The bank is nervous about that because they don't want to see it go down. It can disappear immediately.

Schouten:

So, what a cash collateral agreement says is that the borrower may continue in business, it may use its cash, receivables, and inventory, just as long as the bank is adequately protected. Generally, that means the borrower must pay the bank interest and make sure there is a minimum level of inventory, receivables, and cash at least equal to the amount that existed on the date the case was filed. Then there is no diminution or reduction in the bank's position, and, if that can be achieved, then frankly, even over the bank's objection, the court will order that the Chapter 11 business operator can continue on in business.

Snide:

That's the first thing I am going to want to know. What's going to happen? Because if my assets are going to just disappear immediately in the bankruptcy, I might as well file my motion to convert it to a Chapter 7 and get it over with. If we have a dishonest borrower, as soon as the case is filed we may request that a trustee be appointed and get the debtor-in-possession out of there. I want a trustee in operating this business, someone I can trust.

Schouten:

That is a very good strategic move, if the facts fit. You must understand that the bankruptcy court has a bias, and I think justifiably so, to allow this business to have a chance. So you are not likely to succeed as a secured creditor in the early days or months of the case. You will get your adequate protection, but if we can convince the judge that in addition to the receivables, the inventory, and the cash, the bank has a mortgage on a building worth $1 million and they are only owed $500,000, the court will probably ignore the cash and let the bank rely on the building.

[Editor's Note: Lack of space prevents us from including the questions and answers following this presentation. However, both Tom Schouten and Don Snide would be happy to discuss strategy with FBA Bankruptcy Division members on matters on which they do not have a conflict.]

RECENT BANKRUPTCY DECISIONS

In re Montgomery, Case No. 92-5392 (6th Cir. January 21, 1993). In this decision, the Sixth Circuit held that a bank received preferential transfers in the context of a check kiting scheme.

The debtors operated a massive check kiting scheme through which they obtained what amounted to unauthorized loans from a number of different banks. Within the 90-day preference period, the level of unauthorized loans at the defendant bank reached $2 million. The debtor completely paid off the bank within the preference period with commingled funds generated partly through legitimate business activities and partly through the kiting of checks at other banks.

The Trustee filed suit against the bank to recover the value of the payoff as a voidable preference. According to the Sixth Circuit, there was a transfer of an interest in "property." The property consisted of cash equivalents deposited in the bank account for application against the debtors' negative balances. There is no conceptual reason why credits in a bank account may not constitute property of the estate and the fact that much of the property was created illegally does not mean that it was not "property." In addition, the funds obtained by kiting checks at other banks constituted "an interest of the debtor in property" within the meaning of §547(b). If the fruits of the check kiting scheme had been segregated, thus being held in constructive trust for the victimized institutions, the funds would not have been part of the debtors' estate and the bankruptcy would not have prevented the institutions from recovering their money. However, the debtors did not preserve the separate identity of the funds obtained from any of the banks at which checks were being kited and there was no constructive or actual trust. When a debtor effectively borrows nonearmarked funds and exercises control by using the funds to pay a preferred creditor over others, the estate is diminished. The debtors' estate was depleted in this case when the debtors elected to use the proceeds of unauthorized loans obtained from other banks to discharge their indebtedness to the defendant bank. The assets obtained by kiting checks were clearly in the debtors' control and the use of the assets to pay off the defendant bank created preferential transfers.

In re McLaren, Case No. 92-3130 (6th Cir. January 8, 1993).

In this opinion, the Sixth Circuit affirmed the lower courts that a debt was nondischargeable under §523(a)(2)(A). However, the existence and validity of the underlying debt was a non-core related proceeding.

The three categories of proceedings in bankruptcy are core proceedings, non-core related proceedings and non-core unrelated proceedings. Under 28 U.S.C.

§157(b)(2), bankruptcy courts can issue final judgments in core proceedings. If a matter is a non-core proceeding, the bankruptcy court has jurisdiction to hear the case, but may not issue final judgments without the consent of both parties. Absent consent, the bankruptcy judge must submit proposed finding of fact and conclusions of law to the district court, which is then empowered to issue a final judgment. Pursuant to 28 U.S.C. §157(c)(1), bankruptcy judges may not issue final orders in non-core related proceedings. Therefore, although the determination as to the dischargeability of the debt was a core proceeding, the district court should have vacated the final judgment entered by the bankruptcy court regarding the validity of the underlying debt and then later approved, adopted or otherwise acted upon the bankruptcy court's findings and conclusions.

In re Terex Corporation, Case No. 91-3865 (6th Cir. January 20, 1993). In this case, the Sixth Circuit upheld the bankruptcy court's order directing the debtor to pay the creditor interest on a claim for unpaid post-petition insurance premiums.

The premiums were due under a contract that provided insurance benefits for the debtor's employees. The debtor's plan provided that §507(a)(4) claims were to be paid in cash on the distribution date. However, the creditor's claim was not paid on the distribution date. Instead, the debtor objected to the claim. Along with its motion for summary judgment on its claim for unpaid premiums, the creditor requested interest from the date of distribution so that it would receive the value of its claim as of the distribution date.

The Sixth Circuit upheld the award of interest, finding that the bankruptcy court could award the interest based upon equitable principles and that such award was not contrary to the plan.

U.S. v. Toti, Case No. 92-73870 (E.D. Mich. January 7, 1993). In this opinion by Judge Cohn, the district court found that the bankruptcy court erred in its adoption of the criminal definition of "willfully attempted to evade" under §523(a)(1)(C). Section 523(a)(1)(C) provides in part that a discharge does not discharge an individual debtor from any debt for a tax with respect to which the debtor made a fraudulent return or willfully attempted to evade or defeat such tax. According to the district court, the proper definition of "willfully attempted to evade" in the context of §523(a)(1)(C) is that found in other civil tax cases -- voluntary, conscious and intentional. There is no requirement of an affirmative act or commission as was suggested by the bankruptcy court. The debtor's failure to file returns and pay taxes was done with knowledge of a duty under the law to file and pay his taxes and was voluntary, conscious and intentional. Accordingly, the debtor willfully attempted to evade or defeat his tax liability as defined in §523(a)(1)(C) and the taxes were not dischargeable.

In re Fischell, Case No. 1:92-CV-363 (W.D. Mich. January 19, 1993). In this opinion, Judge Bell held that the bankruptcy court erred when it determined that it did not have subject matter jurisdiction over property after it had lifted the automatic stay. According to the district court, the debtors' statutory right of redemption was an asset of the estate which remained within the jurisdiction of the bankruptcy court even after the automatic stay was lifted to allow a foreclosure sale. Therefore, the case was remanded to the bankruptcy court to address the validity of the debtors' actions to redeem the foreclosed property.

In re Guerrant, Case No. 91-CV-76923 (E.D. Mich. October 7, 1992). In this case, Judge Zatkoff granted the creditor's motion to dismiss the debtor's bankruptcy appeal. The debtor filed her appellate brief five months late and the brief was silent as to why it was filed late. Therefore, the appeal was dismissed for failure to comply with the time constraints set forth in Fed. R. Bankr. P. 8009(a).

In re Mahoney, Case No. 92-CV-2587-DT (E.D. Mich. November 6, 1992). In this case, Judge Friedman reversed the bankruptcy court's order denying the creditor's objection to confirmation of a Chapter 13 plan and the creditor's motion to compel assumption or rejection of rental-purchase agreements on the ground that they were not true leases. The district court held instead that the rental purchase agreements were true leases subject to §365 and not disguised security agreements.

In general, the best way to determine if an agreement is a true lease is to ascertain whether the "lessee" is obligated to accept and pay for the property or instead is obligated only to return or account for the property if the "lessee" chooses not to exercise an option to purchase. If the "lessee" is obligated to purchase the property, a true lease does not exist. The debtor was not obligated to renew the agreements, but could instead terminate the agreements at any time with no further obligation by simply returning the property to the creditor. In addition, the Michigan Legislature did not intend to make the agreements intended for security when it specifically excluded them from its definition of a retail installment sale. The creditor's objection to confirmation of the Chapter 13 plan, which listed the creditor as a secured creditor, was sustained and the debtor was required to either assume or reject the leases.

In re Coventry Commons Associates, Case No. 91-CV-75730-DT (E.D. Mich. February 19, 1993). In this decision, authored by Judge Duggan, the district court affirmed the bankruptcy court's confirmation of the debtor's Chapter 11 plan of reorganization.

The debtor owned a retail shopping center. To secure a note, the debtor granted the creditor a mortgage and assignment of rents. Pursuant to a prior district court order, the creditor had a perfected security interest in the rents, a post-petition lien on the rents under §522(b) and the rents were the creditor's cash collateral.

In the plan, the creditor was treated as having a fully secured claim of $9.25 million even though the estimated value of the property was $8.1 million. The plan provided for the payment to the creditor of $400,000 from accumulated rents on the plan's effective date, with the remaining balance of the claim to be paid on a monthly basis on a thirty year amortization schedule with the full balance due in seven years. The debtor also purposed to pay interest at the rate of 8.5%. The debtor intended to use the balance of the accumulated rents of over $200,000 to pay Chapter 11 administrative expenses.

The creditor first argued that administrative expenses could not be paid out of the rents without the creditor's consent. However, the creditor's consent was not required since its interest in post-petition rents was adequately protected. The plan ensured that the creditor would recover the full mortgage value of the property. Therefore, "adequate protection" did not require that the creditor receive 100% of the accumulated rents.

The district court next rejected the creditor's argument that confirmation should be denied because there was no market for a similar loan. In addition, the bankruptcy court's ruling that 8.5% was an appropriate market rate of interest was not clearly erroneous.

The creditor next argued that the plan violated the absolute priority rule in §1129(b)(2)(B) because the class of claims containing the creditor's unsecured claim rejected the plan and the plan provided for the retention of all equity interests in the debtor without providing for either the full payment of the claims in the creditor's unsecured class or a cash infusion by the debtor's interest holders. According to the district court, the creditor would receive property of a value equal to the amount of its allowed secured claim. Therefore, no violation of the absolute priority rule occurred because the creditor's interest was unimpaired.

In addition, the bankruptcy court's findings were not clearly erroneous regarding the feasibility of the plan with respect to the debtor's ability to make a balloon payment at the expiration of the seven-year term of the plan.

Lastly, the creditor argued that the plan was not fair and equitable with respect to its claim because both the 30-year amortization period and the provision allowing the debtor to assign the note without the consent of the creditor were commercially unreasonable. According to the district court, the proposed plan payment terms were an improvement over the terms of the pre-petition note which provided for interest only payments. The creditor did not show that the bankruptcy court was clearly erroneous in assigning a 30-year amortization period and failed to show that the assumability feature was commercially unreasonable.

In re Grand Traverse Development Company Limited Partnership, Case No. ST 92-83818; ***In re Grand Traverse Development Company, Inc.***, Case No. ST 92-83819; ***In re Grand Traverse Condominium Developers, Inc.***, Case No. ST 92-83820 (Bankr. W.D. Mich. February 8, 1993). In this opinion, Judge Stevenson granted the secured creditor's motion to lift the automatic stay under §§362(d)(1) and (2) as to all real property and all personal property except vehicles, intangibles and accounts. The court also denied confirmation of the debtors' fifth amended plan of reorganization and remanded the debtors' adversary proceeding against the secured creditor to state court.

Section 362(d)(2) provides in part that the stay may be lifted if the debtor does not have equity in the property and the property is not necessary to an effective reorganization. The court lifted the stay under §362(d)(2) on the basis that the debtors had no equity in the property and the confirmation of a plan was not reasonably in prospect given the litigation which had to be resolved before confirmation could proceed.

The court next held that the lift of stay was appropriate under §362(d)(1) because of the debtors' bad faith. Whether bad faith exists is to be determined based upon the totality of circumstances. The court cited six factors listed in In re Phoenix Piccadilly, 849 F.2d 1393 (11th Cir. 1988), which evidence bad faith and were present in the case with only minor variations:

(1) The debtor has only one asset, the property, in which it does not hold legal title;

(2) The debtor has few unsecured creditors whose claims are small in relation to the claims of the secured creditors;

(3) The debtor has few employees;

(4) The property is the subject of a foreclosure action as a result of arrearages on the debt;

(5) The debtor's financial problems involve essentially a dispute between the debtor and the secured creditors which can be resolved in the pending state court action; and

(6) The timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights.

The court also noted that a debtor's inconsistent legal positions may constitute a bellwether of bad faith and that the merit of positions taken in a case may provide some measure of a debtor's good faith.

The court concluded that it had given the debtors more than enough of a breathing spell and had its fill of questionable attempts at reorganization. Therefore, it denied confirmation and lifted the stay.

In re Auto Specialties Manufacturing Co., Case No. SK 88-03095 (Bankr. W.D. Mich. January 28, 1993).

This lengthy opinion, authored by Judge Stevenson, involves equitable subordination issues.

The Chapter 7 Trustee claimed that the bank assumed and breached the duty of the debtor's fiduciary through the outside manager which the debtor hired at the bank's request. The Trustee also claimed that the bank's conduct during the workout period after the debtor's default was egregious. Based upon these claims, the Trustee requested the court to subordinate the bank's secured claim to the claims of the unsecured creditors.

The bank filed a motion for partial summary judgment as to the issue of equitable subordination. In determining whether a claim should be equitably subordinated, courts generally consider three factors: (1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the debtor's creditors or conferred an unfair advantage on the claimant; and (3) equitable subordination must not be inconsistent with the

provisions of the Bankruptcy Code. The first requirement is decided based on the relationship between plaintiff and defendant. A high standard of conduct is imposed where there is a fiduciary relationship. A lender may become a fiduciary of the debtor and possibly the debtor's creditors if it uses its leverage to take over operation of the company and thus steps into the shoes of traditional corporate fiduciaries. Where excessive lender control or influence can be established, the lender may be placed in a fiduciary capacity. The fact that the lender is the principal dominant lender, or that it offered advice or closely monitored the activities of the borrower is not sufficient to establish a fiduciary relationship. The Trustee did not allege facts showing that the bank controlled the debtor's day-to-day operations. Therefore, there was no genuine issue of material fact as to whether the bank was the debtor's fiduciary.

The claim of a non-fiduciary creditor generally will not be equitably subordinated unless egregious conduct on behalf of the creditor can be proven with particularity. The standard of conduct to which a non-fiduciary will be held is the morals of the marketplace -- sharp dealing and hard bargaining, with each player responsible for protecting its own self-interest. The court found that the Trustee failed to raise a genuine issue of material fact that the bank committed any fraud, overreaching or spoliation against the debtor. The court saw nothing more than a creditor trying its level best to get out of a bad loan cleanly without either sacrificing its collateral or exposing itself to liability. Therefore, the bank's motion for partial summary judgment was granted.

Lastly, the court denied the motion of the debtor's former CEO for summary judgment regarding the Trustee's claims of breach of fiduciary duty, breach of contract and equitable subordination, but granted the CEO's motion for summary judgment as to the Trustee's claim of fraudulent transfer, fraudulent conveyance and fraud.

In re Goss, Case No. 92-30059 (Bankr. E.D. Mich. December 23, 1992). In this case, Judge Spector held that the creditor did not establish special circumstances which would make the award of the debtor's attorney fees, pursuant to §523(d), unjust. The creditor failed to appear at trial in the nondischargeability action and claimed it did not receive notice of the trial and that it would have prevailed had it appeared. However, the creditor did not request a new trial. Therefore, the creditor was required to accept the facts in favor of the debtor as found at trial.

In re Dekelata, Case No. 92-21248 (Bankr. E.D. Mich. January 7, 1993). In this case, Judge Spector denied the creditors' timely motion seeking an extension of the Rule 4007(c) deadline for filing a non-dischargeability complaint and a Rule 2004 examination of the debtors. The creditors' request for a Rule 2004 examination was made for the very first time only 11 days before the expiration of the Rule 4007(c) deadline. According to the court, the request was too close to the deadline. Creditors' counsel knew that debtor's counsel was a sole practitioner who had a busy and geographically extensive bankruptcy practice and also knew of the imminent disruption of the Thanksgiving holiday. The court stated that it should have been apparent to creditors' counsel that there would be insufficient time to accommodate a Rule 2004 examination on its schedule. The creditors had months before the deadline to request the examination and sat on their rights. Therefore, the creditors did not establish cause for an extension.

ANNOUNCEMENT FROM OFFICE OF THE U.S. TRUSTEE

The United States Trustee is pleased to announ that Mr. Thomas R. Tibble has been named to t Chapter 7 private panel of trustees for the Weste District of Michigan and will be taking cas primarily in the Kalamazoo area.

Mr. Tibble is a Certified Public Accountant w both a Bachelor's Degree in Accountancy a Master's Degree in Finance from Western Michi University. He has public and private account experience, including experience in fraud auditi Currently Mr. Tibble manages a small accoun concern in Kalamazoo.

He can be reached at 6100 N. 14th Street, Kalamazoo, Michigan 49004 and his telephone number is (616) 342-9482. Please join us in welcoming Mr. Tibble to the trustee panel.

INFORMATION FROM THE BANKRUPTCY FRAUD TASK FORCE

Bankruptcy Fraud Indictments and Convictions*

1. United States v. Gary Meyers, Case No. 1-92-CR-103. Gary Meyers pleaded guilty on September 24, 1992 to a one count information charging him with concealment and transfer of assets in contemplation of bankruptcy in violation of 18 U.S.C. §152. Meyers was sentenced on December 2, 1992 to 27 months in custody, to be followed by 3 years of supervised release, and ordered to pay $385,389.84 restitution.

2. United States v. Thomas Hammond, Case No. 1-92-CR-153. Thomas Hammond was indicted on November 19, 1992 by a grand jury in the Western District of Michigan on a six count indictment charging concealment of assets and false statements under penalty of perjury in violation of 18 U.S.C. §152. Thomas Hammond has been arraigned and released on bond; no trial date has been set.

3. United States v. Thomas Campau, Case No. 1-92-CR-166. Thomas Campau was indicted by a grand jury on December 10, 1992 in the Western District of Michigan on a one count indictment charging him with fraudulent removal of funds from the debtor in possession account and conversion of the funds to his own use. This charge was dismissed without prejudice after arraignment based upon a state court plea agreement Thomas Campau had entered into relating to state charges for substantially the same conduct charged in the federal indictment. A small amount of money was recovered for the benefit of creditors of the debtor, Campau Mechanical Services, Inc.

4. United States v. Judson MacDonald Brake III and Sandra M. Strickland, nee Brake, Case No. 1-92-CR-139. Judson and Sandra Brake were indicted by a grand jury in the Western District of Michigan on November 5, 1992 in a three count indictment charging both defendants with concealment of assets and false statements in a §341 creditor's meeting in violation of 18 U.S.C. §152. Both defendants pleaded guilty to one count of concealment of assets pursuant to a plea agreement and are currently awaiting sentencing. Sentencing is set for April 26, 1993.

* Information provided by Janice Kittel Mann, Assistant United States Attorney

STEERING COMMITTEE MEETING MINUTES

A meeting of the Steering Committee of the Bankruptcy Section of the Federal Bar Association for the Western District of Michigan was held on February 19, 1993 at the Peninsular Club. Present: Pat Mears, Brett Rodgers, Denise Twinney, John Arndts (for Bob Wright), Tom Sarb, Bob Sawdey, Janet Thomas, Tim Hillegonds, Dan Casamatta, Steve Rayman, and Marcia Meoli.

1. Educational Program for 1993 Seminar. Steve Rayman reported that the basic arrangement from prior seminars would be continued, with Chapter 11/business programs running simultaneously with Chapter 7/Chapter 13 issues. Among the probable topics are a panel discussion involving bank workout officers, professional responsibility and ethics (including bankruptcy fraud issues), current developments in Chapter 7 and Chapter 13, and the Sixth Circuit review. Anyone with program suggestions should contact Steve Rayman.

2. Hotel Accommodations and Recreational Arrangements for 1993 Seminar. The seminar will be headquartered at the Lakeview Hotel on Mackinaw Island on July 29 through July 31. As only 85 rooms are available at the Lakeview Hotel, with backup rooms at the Murray Hotel, Chippewa Hotel, or if desired, by making individual arrangements with the Grand Hotel, reservations must be made at least 45 days prior to the seminar. Those wishing to make early reservations at the Lakeview Hotel should contact Rick Petersen, hotel manager, at 906/643-6202.

Denise Twinney volunteered to chair the recreational activity committee.

3. Fee for 1993 Seminar. The fee for the 1993 seminar on Mackinaw Island will be $125 for Western District of Michigan Federal Bar Association, Bankruptcy Division members, and $145 for non-members.

4. 1994 Seminar. Bob Sawdey, Pat Mears, Tim Hillegonds, and Janet Thomas were appointed to a Committee to begin considering sites for the 1994 seminar.

5. New Trustee. Dan Casamatta announced that Tom Tibble has started as a new trustee as of February 16, 1993.

The next meeting of the Steering Committee will take place at the Peninsular Club on Thursday, March 18 (note change of date). The guest will be Bill Brandt of Development Specialists, Inc. of Chicago.

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United State Bankruptcy Court for the Western District of Michigan (Lower Peninsula) during the period from January 1, 199 through January 31, 1993. These filings are compared to those made during the same period one year ago an two years ago.

	January 1993	January 1992	January 1991
Chapter 7	311	437	385
Chapter 11	10	10	17
Chapter 12	5	3	0
Chapter 13	116	147	151
	462	597	553

EDITOR'S NOTEBOOK

The bankruptcy statistics this month show a significant decline in filings over January, 1992 and over January, 1991. According to Bankruptcy Court Clerk Mark VanAllsburg, most bankruptcy courts in the Midwest are reporting a decline in new c filings over the last six months.

Mark has also forwarded to me s interesting bankruptcy statistical information prep by the Administrative Office of the United St Courts. We will attempt to run excerpts from report as space permits. Among the notable fact that, nationally, the total filings on an annual basi creased by 171 percent from 1984 to 1991, wit

State of New Hampshire showing the largest percentage increase of 680 percent. As noted in the excerpt below, in the first decade of this century, there were 1.88 filings per 1000 population; in the 1980s there were 18.12 filings per 1000 population.

Average bankruptcy filings vary dramatically from state-to-state. For instance, in 1991, 1 in 134 households filed bankruptcy cases in Michigan, which placed Michigan only at number 33 on the national list. The state with the most frequent bankruptcy filings was Tennessee, in which 1 out of 43 households filed during 1991. At the low end in 1991, was Hawaii, which saw only 1 in 324 households filing.

By Thomas P. Sarb

STATISTICAL INFORMATION FROM THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

BANKRUPTCY FILINGS BY DECADE: Bankruptcy case filings were far higher during the 1980's than in any other decade. On a per capita basis, filings during the 1980's were about double the level of the 1970's, and nearly ten times as high as during the 1940's. Further, bankruptcy case filings during 1990 and 1991 have been nearly double the annual average during the 1980's.

DECADE	TOTAL FILINGS	U. S. POPULATION (AT END OF DECADE)	FILINGS PER 1,000 POP.
1900-1909	173,298	92,228,496	1.88
1910-1919	215,296	106,021,537	2.03
1920-1929	410,475	123,202,624	3.33
1930-1939	614,938	132,164,569	4.65
1940-1949	296,021	151,325,798	1.96
1950-1959	584,272	179,323,175	3.26
1960-1969	1,695,416	203,302,031	8.34
1970-1979	2,086,189	226,545,805	9.21
1980-1989	4,583,391	252,904,881	18.12

--Case filings through 1979 are for statistical years ended June 30th; filings since 1980 reflect calendar years. Population figures reflect census totals as of April 1, of each decade.

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

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LANSING MI 48908-0857