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

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 is 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, which will appear in the February, 1993 Bankruptcy Law Newsletter, is a mock negotiation between borrower's counsel and bank's counsel of an out-of-court forbearance agreement.]

Tom Schouten:

What we thought we would cover today are some of the symptoms and strategies for workouts of troubled businesses. I thought I would start by giving you some good news about troubled businesses, and that is some statistical information from our bankruptcy court. I checked yesterday, and limiting this report to Chapter 11s, in 1990, there were 154 Chapter 11 cases filed in the Western District of Michigan, excluding the Upper Peninsula. In 1991, there were 153. In 1992 I am pleased to report (although I make my living working in that court) there were only 129 Chapter 11 cases. With the new people in the White House and the Congress, perhaps with their innovative economic plans which we are promised to see within the first 100 days, maybe there will be even more relief for troubled businesses and we will see these statistics going down even further.

What we are going to do is cover some workout issues and then do a point-counterpoint on what you might to expect to hear in a meeting between a borrower and his bank when he tells the lender that he has a problem in his business.

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**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.

What I would like to tell you first of all, though, is that in my experience one sees three principal reasons why businesses fall into trouble. One is under-capitalization. They did not have enough money from the get-go. Second, there is flat-out poor management. It is difficult, but sometimes we have to tell a client, "You are a nincompoop, you do not know how to run your business, and you have to step aside." It is easier to do that in a Chapter 11 when you have the Judge and the Creditors' Committee who can help brush the incompetent manager aside and boot him out the door. Third, and sometimes notwithstanding good capitalization and good management, there are external factors in the industry, the marketplace, or the economy that affect companies, such as the recession for the last several years that has affected tool and die shops -- for example, Autodie -- and the auto supply companies.

As a quick personal example of the third factor, we brought in a client last week that is very well attuned and educated, so management is not the problem. He certainly had sufficient capital, he raised $2 million to start this business. Unfortunately, he started a miniature golf course, go-cart race track, batting cage, and other recreational facilities in southwestern Michigan at the beginning of the summer of 1992, only to have 90 percent of his best days washed out with rain and temperatures less than 70 degrees. He is way off his cash position mark, and he and I are now discussing with his bank the fact that we can't pay the interest payment. That is an example of an extraneous factor that caused this particular economic problem for this particular creditor and debtor.

I would like to quickly focus you on the twelve early detection signs of a troubled business. [Editor's note: See Sidebar.] If several of these twelve points are existing in your business, you are definitely a troubled business. These are the detection signs that accountants and business managers should be anticipating to determine that there is indeed some trouble. And they should be reacting to them, because counsel who do bankruptcy work generally see clients when it's too late. All of these detection signs are existing when we first see the client, or most of them, and all of them have been existing for a considerable number of months or perhaps years.

Probably the key early detection sign is cash flow. You don't have to be a Philadelphia lawyer to understand you can't run a business without cash. Cash flow projections and sales projections must be used to determine where your industry is going and where your business is going. What borrower's counsel see, typically, is that companies have received cash from the worst sources.

EARLY DETECTION SIGNS OF THE TROUBLED BUSINESS

1. Declining cash flow and net profit ratios.
2. Performance objectives - Not defined and if defined, not met.
3. Declining sales growth.
4. Loss of major customers due to poor product quality or late deliveries.
5. Inability to adjust to a changing economy.
6. Inability to re-deploy low productivity assets.
7. Increasing unit costs affecting price competitiveness.
8. Declining credit rating and terms.
9. Increasing age of accounts payable.
10. Slow decision making.
11. Bloated or obsolete inventory.
12. Employee discontent, absenteeism, and high turnover.

There are three main sources of cash. First, the owners of the business invest as equity contributions. Second, they borrow it from either their banks or other lenders. And third, they indirectly borrow it by not paying their trade creditors and not paying their payroll taxes. It is the last item that is the principal problem. Unfortunately, depending upon the size of the business, one can "borrow" as much as fifty thousand to hundreds of thousands of dollars by not turning over the federal payroll taxes on a timely basis. That is an informal way of using cash flow that always gets them in trouble, not to mention that responsible parties -- shareholders, directors, officers, people with check-signing authority -- will be assessed the 100 percent penalty for those unpaid payroll taxes.

The other thing that businesses do that get them in trouble is to stretch their trade payables. They stretch them 60, 90, 120, 180 days. By the time they are that old, their credit is gone, people won't ship, or they will only ship C.O.D., and the cash situation shrinks and tightens even further.

What do we do once we see these signs? Look for some workout strategies. First, we have to assess the people. Is the right management team running this show? Is the president competent? Is the president or owner even coming to work? Is he out playing golf too often? Is he paying attention, and is he able to take the reins and do the right thing? No one likes to terminate employees. Far too many times the right decision is not made because it is a difficult decision -- to terminate, lay off, or reduce employee requirements and staffing. We incorporate a very strict budget requirement immediately and watch cash carefully.

We identify the business. If we have a client that makes two or three things, we analyze which one is the core business, which is the most profitable. If a line or a product is only marginally profitable, with a 2, 3, or 4 percent return on investment, we say drop it, sell off the excess assets, reduce the bank loan, and concentrate on the core business. We analyze immediately what can be done to reduce costs, because another way to improve cash flow is to reduce cost. We aim for cost reduction and increased profits. We also examine the pricing structure.

We see if there is any money that can be generated from existing stockholders. It is not a very easy sell. They've already been stuck once on an investment, and we come along and ask them to go back to their pocketbooks and do it again or seek a new merger candidate or new investors. There are very many creative new ways to bring in new money that attempts to protect the new investor. We assemble the workout team, and function as part of it. We find a competent CPA who can assist in budgeting and forecasting and can read and understand the numbers and monitor them carefully. There is a new breed of cat out there, the turn-around consultant or crisis manager. They are brought in, often at the behest of a bank or by creditors' committees in Chapter 11 matters, and in out-of-court workouts. These people are very, very competent. They are also very expensive, but they will offer a sense of impartiality and direction and can make the kind of decisions that the owner sometimes cannot.

Don Snide:

The first thing I can tell you, as a very practical bit of advice, is how to approach me as banker and the loan officers in handling the situation. Be very honest with the bank. For example, don't surprise the bank with anything. Suppose your client is going to have a bad financial statement at the end of a quarter. The loan documents are going to require that you provide that statement to the bank, and what you should do is have the client call, make an appointment, personally present the financial statement to the loan officer. The client should explain why the problem arose and how he is going to solve it.

Another typical problem (the bank always finds out afterwards) is that our customer has lost its primary customer. As soon as the bank finds that out, the first thing they are going to want to know is how the borrower is going to replace this customer. If the borrower can't do that immediately, how is it going to cut its costs to keep its profits and income at the same level. Again, your client is going to realize it lost a customer before the bank does. Rather than let the bank see a drop in the receivables on your agings, come into the bank, tell us what is happening. One of the most important things in being open and honest with the bank is to not promise anything you or your client can't or won't do. Tell us what you will do. We will determine whether that is sufficient, whether we can live with it or not. The last thing we want is a promise that an investor is coming in Friday, that it is all going to be taken care of and then to discover on Friday, that there is no investor. At that point, the bank has this horrible feeling it has been lied to -- and you are really in trouble.

Don't threaten the bank with anything you don't intend to do -- for instance, a lender liability suit. If you point a gun at the bank, make sure you intend to pull the trigger. The Michigan legislature has taken some of the threat away, because effective January 1, 1993, the Michigan Statute of Frauds was amended and MCLA 566.132 now includes language that says that no action can be brought against a financial institution for a promise to (1) lend money; (2) renew or extend a loan; or (3) waive a provision of a loan, unless that promise is in writing. Obviously, borrower's counsel can still threaten a negligence action, but this amendment has done away with at least the knee-jerk reaction that we have seen for years, a claim that our loan officer had promised he

would extend the loan repayment period. The statute is not a perfect solution, because it does not obviously remove the fact that the customer can still use this claim of an oral promise as a defense to our action, but he can no longer bring an affirmative action.

Tom mentioned in his presentation entering into a forbearance agreement. And typically that is what I do. We try to do them out of court. We are aware our borrower is in default and we may have accelerated the balance. The borrower acknowledges that he is in default and he now asks us to forbear from exercising our rights on default. Generally, you can work out some type of forbearance with the bank, but there is going to be some sort of quid pro quo. You want the bank to forbear; the bank is going to want something in return. Obviously the easiest thing for us is for you to offer us additional collateral. Bring us a new guarantor. Or if the owner hasn't already signed a guaranty, offer a guaranty. If the owner has already guaranteed the debt, but it is unsecured, offer collateral for the existing guaranty. That is another easy one the bank will take.

In a line of credit situation, if you are lucky enough not to have your client fully advanced on his line of credit, offer to reduce the bank's commitment. It doesn't cost your client anything, but the bank can now show on its books that it had a $500,000 commitment that is now reduced to $350,000. The bank feels that it has just improved its position by $150,000 at no cost to your client. Another possibility in the line of credit situation is to offer to reduce the formula. If your borrower is borrowing on 80 percent of accounts receivable, offer to reduce that to 75 percent. These are things that the bank will do. If your client is at the maximum, you obviously are not going to have any choice except perhaps to offer to freeze the line of credit where it is and begin reducing it during the forbearance agreement. If your customer is out-of-formula because your receivables became ineligible because they are over ninety days, what do you do now? What you could do is ask the bank if it will take the out-of-formula portion, set that aside from the line of credit, and specifically agree in the forbearance agreement that as you collect those ineligible receivables, the collections will go directly to the bank to reduce that out-of-formula portion.

One of the things that I like the most is a deed in lieu of foreclosure. That makes my life a lot easier. What you do (and Tom is good at this) is negotiate a deal that the deed in lieu of foreclosure will be escrowed for six months. Each time the borrower makes some specifically obtainable goal, the bank will extend the escrow period for 30 days. Those are the kinds of deals that are very easy to handle. Obviously, if we are going to do the deed in lieu of foreclosure and we are going to escrow it, the forbearance agreement is going to have to contain some type of provision where our customer is going to consent to lift of stay, whether enforceable or not, because the last thing we want now that we are ready to record our deed, is to find ourselves in bankruptcy court, back in the same fight we tried to avoid to begin with. We are going to want provisions in that forbearance agreement that say your client has agreed to consent to lift of stay right up front.

If your client wants to agree to liquidate assets that aren't specifically necessary for his operation, liquidate those assets and use that money to reduce debt.

One big problem for a bank is the situation where the bank is fully secured and has a security interest in all of a customer's assets, and the borrower tells us that for the next 60 days he wants to pay the bank nothing but interest; he wants to use his accounts receivable payments to pay his trade payables. We always have trouble with that because we are giving up our collateral -- it's like watching our collateral being liquidated to pay unsecured debt. If that is the situation you are looking at, you might as well put your client in bankruptcy right now, because the unsecured creditors aren't going to get anything. I can say never say never, but you are going to have to offer me something to make it worth while for me to watch my collateral go out the door to pay unsecured debt.

Schouten:

You notice that Don didn't give anything away. It was give me, give me, give me. And, if indeed the bank enjoys an over-secured position, he has every right to take that position. You are not going to get the bank to give you any concessions if they are over-secured.

[**Next Month:** The give-and-take of a forbearance agreement negotiation.]

RECENT BANKRUPTCY DECISIONS

U.S. v. Hess, Case No. 92-3320 (6th Cir. December 11, 1992). In this case, the Sixth Circuit held that the district court erred in determining that documents should be transferred to the Chapter 7 trustee rather than the corporation the trustee claimed was the individual debtor's alter ego.

Prior to the indictment of the debtor for bankruptcy fraud, the government seized the corporation's business records. After the debtor was sentenced, the corporation, which was not a defendant in the criminal case, filed a motion for the return of all property seized from it. The trustee filed a response in opposition to the corporation's motion and moved for turnover of the records.

The Sixth Circuit held that the district court should not have ruled on the trustee's motion before the corporation's time to respond had expired. In addition, the corporation was denied its right under Federal Rule of Criminal Procedure 41(e) to a hearing regarding the trustee's right to the records and the reasonableness of the government's retention of the records.

In re MCI, Inc., Case No. 92-CV-71679-DT (E.D. Mich. October 27, 1992). In this decision by Judge Zatkoff, the district court affirmed the bankruptcy court's order allowing the Chapter 7 trustee to abandon the debtor's interest in contaminated real property to the EPA and to the DNR. According to the district court, the bankruptcy court properly ordered abandonment on the grounds that there was no imminent threat of harm to the public and that the trustee had no unencumbered assets to finance the cleanup of the soil. The district court found that there was no imminent harm since the EPA and DNR were in possession of the property and under a duty to clean it up. In addition, the district court upheld the abandonment of personal property which was subject to liens in excess of the property's value.

In re Seven Lakes of Northville, Case No. 92-76146 (E.D. Mich. October 22, 1992). In this opinion, authored by Judge Edmunds, the district court denied the motion of the debtor's general partner for a stay of foreclosure pending appeal and affirmed the bankruptcy court's order lifting the automatic stay. According to the district court, the appellant did not prove a strong likelihood of success on the merits of the appeal. The district court found that the bankruptcy court properly determined that there was cause to lift the stay due to the lack of the debtor's cash flow and concomitant inability to reorganize and the ability of state court to protect the parties' interests.

In re Laguna Associates Limited Partnership, Case No. 92-02870-S (Bankr. E.D. Mich. August 12, 1992). In this opinion, Judge Shapero granted the secured creditor's motion to lift the automatic stay because the Chapter 11 case was filed in bad faith.

The court stated that in evaluating whether a petition is filed in good faith, the court may consider any factors which evidence an intent to abuse the judicial process and the purposes of the reorganization provisions or, in particular, facts which evidence that the petition was filed to delay or frustrate the legitimate efforts of secured creditors to enforce their rights. Here, bad faith existed under the "new debtor syndrome," which is characterized by a one-asset entity that has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors. The court found bad faith based on the following factors:

(a) a flawed eleventh hour attempt of the borrower and its partners to transfer the property to a commonly and similarly held and owned debtor;

(b) a transferee, asset-less debtor which appeared to have been created solely for the purpose of holding the property and isolating and separating its operations from the remaining operations of the borrower/transferor;

(c) the property could not itself support its expenses and required debt payments;

(d) the filing of a bankruptcy in close proximity to the transfer or attempted transfer;

(e) the day-to-day management was unlikely to change, because it remained in the same managerial hands (of an associated entity) as it was before the transfer;

(f) the asset-less substance of the corporate general partner of debtor, which materially and adversely changed the liability picture relative to the ongoing expenses of operating the property, with no apparent means, other than the receipts from the property itself, to sustain the property or pay all of those ongoing expenses;

(g) apparently no consideration being paid for the transfer other than the transferred interests in the debtor; and

(h) a situation where the secured creditor suffered the indicated adverse effects upon its bargained for relationship with the borrower.

In re Ocean Beach Properties, Case No. 92-06689-R; In re Ocean Shore Investments, Case No. 92-06691-R (Bankr. E.D. Mich. December 8, 1992). In this case, Judge Rhodes lifted the automatic stay because the debtors filed their Chapter 11 petitions in bad faith.

The debtors were related general partnerships which owned undeveloped land on an island off the coast of Florida. The bank held a mortgage on the properties which were the debtors' sole assets.

In examining whether a Chapter 11 petition has been filed in good faith, the relevant factors include whether the debtor has any assets, whether the debtor has an ongoing business to reorganize and whether there is a reasonable probability that the debtor can propose a viable plan of reorganization.

Two of the partners of each partnership held title to the parcels as co-trustees. The court found that according to trust principles under Florida law, the debtors held the beneficial interest in the properties. As a result, the real estate was property of the bankruptcy estate.

The court next stated it was difficult to find that the debtors had a business to reorganize. Neither rehabilitation nor an orderly liquidation was involved. Instead, the case involved two entities which resembled start-up operations with insufficient capital, which invoke Chapter 11 in an effort to get their business to the point where it will become operational with income to pay its debts. The court concluded that such a use of Chapter 11 was questionable.

Lastly, the court held that the debtors failed to establish any reasonable prospect of reorganization because of problems with permits, financing and marketing. Although an enterprise without current income may be eligible for Chapter 11, such an enterprise faces substantial obstacles in establishing a reasonable prospect of reorganization.

Since the cases were filed in bad faith, there was cause to lift the automatic stay.

In re Eastland Partners Limited Partnership, Case No. 91-03149-R (Bankr. E.D. Mich. December 8, 1992). In this opinion, Judge Rhodes overruled the secured creditor's objections to confirmation of a Chapter 11 plan.

The first objection was that the proposed interest rate was insufficient under §1129(b)(2)(A). The debtor proposed to pay an interest rate of 8.75% on the claim for the first five years and then 9.5% for the sixth and seventh years. The creditor claimed that it would not receive amounts equal to the present value of the property under the plan because the current market rate of interest for similar loans in the region was 9.5% or greater.

The court noted there was essentially no current market for similar loans. To determine the appropriate market rate, the court must first determine the risk free rate and then increase that rate by a certain factor to compensate the lender for the risk associated with the loan.

To establish the risk-free rate, the court used the seven year treasury bill rate of 5.9% because the plan proposed to pay the secured creditor over seven years. The court concluded that the market rate range for a loan on the property, given its risk factors, including its age and condition, would be 275 to 300 basis points over the treasury bill rate, or 8.6% to 8.9%. Accordingly, the debtor proposed an interest rate which was within the range of pertinent market rates.

The second objection was that the debtor's plan was not feasible as required by §1129(a)(11). The court overruled the objection, concluding that the debtor established by a preponderance of the evidence that the plan was likely to succeed and the debtor's projections were reasonably realistic.

In re Washtenaw Huron Investment Corporation No. 8, Case No. 92-04545-R (Bankr. E.D. Mich. January 11, 1993). In this decision, Judge Rhodes annulled the automatic stay because the debtor's Chapter 11 petition was not filed in good faith.

The borrower/limited partnership conveyed property to the debtor by quit claim deed. After receiving notice of the quit claim deed, the secured creditor filed a foreclosure action against the debtor and the limited partnership. The debtor filed its Chapter 11 petition a few hours before the foreclosure sale. Unaware that a petition had been filed, the property was sold at the foreclosure sale.

Based upon the case's unique and complex facts, the court found that the petition was filed in bad faith. According to the court, the debtor used the bankruptcy proceeding to create and organize a new business and did not use the proceeding to reorganize and rehabilitate its previously successful existing enterprise or for the purpose of preserving any going concern value. In the court's view, the bankruptcy petition was filed for the improper purpose of delaying or frustrating the secured creditor's legitimate efforts to enforce its rights. As a result of the debtor's bad faith, the court retroactively annulled the stay, which allowed the post-petition foreclosure sale to stand.

Sparta State Bank v. Covell, Case No. 139815 (Mich. Ct. App. December 21, 1992). In this decision, the Michigan Court of Appeals held that the bank's claim for breach of an installment loan agreement was not barred by the six-year statute of limitations governing contract actions.

By letter dated July 18, 1984, the bank informed defendant that it intended to accelerate the entire debt owed pursuant to the default provisions of the loan agreements. On April 23, 1990, the bank sued defendant for the deficiency. As of July 18, 1984, the date the bank exercised the acceleration clause, the entire unpaid balance became due and payable. At this point, all future installments became due and the bank's claim as to the remainder of the unpaid balance accrued. Contrary to the trial court's opinion, the claim did not accrue when the payments first became past due. Since the complaint was filed within six years after the claim first accrued by reason of acceleration, it was not time barred.

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 January 15, 1993, at the Peninsular Club. Present: Pat Mears, Mark Van Allsburg, Tim Hillegonds, Mike Maggio (for Dan Cassamata), Bob Mollhagen, Steve Rayman, Peter Teholiz, Bob Wright, John Arndts (guest of Bob Wright), Jeff Hughes (for Tim Curtin), Tom Sarb, and special guest Linda Slotsema (aide to Congressman Paul Henry).

1. Status of Proposed Bankruptcy Legislation. Pat Mears asked Linda Slotsema of Congressman Paul Henry's office to report on the current status of bankruptcy litigation. Ms. Slotsema reported that she had discussed the issues with Alan Coffey, minority counsel of the House Judiciary Committee. Ms. Slotsema indicated that Mr. Coffey would be available to answer any further questions that any bankruptcy practitioner may have as to the status of the legislation. Ms. Slotsema recounted the history of the attempts to pass a Bankruptcy Reform Act during the last Congress. Although the proposed act passed the Senate, it died on the last day of the House session. Unfortunately, Congressman Jack Brooks, Chairman of the House Judiciary Committee, does not see bankruptcy reform legislation as a high priority.

Although there has been much discussion of a possible new small business chapter, it is unlikely that will happen according to Mr. Coffey, due to concerns regarding uniformity and constitutionality. If legislation addresses this area, it will probably be by an amendment to one of the existing chapters. It is

also likely that whatever legislation is passed will address cash collateral issues and the treatment of post-petition rents. According to Ms. Slotsema, the likely time for consideration during the current Congress is possibly late summer or early fall.

2. 1993 Seminar. Steve Rayman has arranged for Prof. Lawrence P. King, Charles Seligson Professor of Law at New York University Law School to be the key note speaker. Some of the educational programs being considered are a panel of bank loan officers regarding workout issues (with possibly a mock workout negotiation), current developments in Chapter 11, a joint Chapter 7/Chapter 13 presentation on consumer bankruptcy issues, attorney's fee issues, bankruptcy fraud issues, and ethical/conflict issues. Anyone with program suggestions should contact Steve Rayman.

3. Bylaws. There was a discussion about the possible need for the adoption of Steering Committee bylaws. The consensus of the Steering Committee was to keep the meetings informal and without bylaws, but to memorialize the decisions that had previously been made with regard to composition and election of the Steering Committee. Tom Sarb will prepare a memorandum from the Minutes of past Steering Committee meetings. A question was also raised as to insurance coverage and indemnification of Steering Committee members. Brett Rodgers agreed to pursue the issue with the Federal Bar Association of the Western District of Michigan.

4. Lunch Speakers. A discussion was held with regard to the possibility of inviting speakers on a regular basis to the Steering Committee meetings. After discussion, a straw vote was taken, with the majority voting to occasionally invite speakers on topics of interest relating to the liaison function of the Steering Committee, with the proviso that the content of the lunch speakers be fully reported in the Minutes for the benefit of all FBA Bankruptcy Group members.

5. Mailing List. Pat Mears reported that the Grand Rapids Bar Association is preparing an updated list of bankruptcy section members. After discussion, the consensus of the Steering Committee was that the FBA bankruptcy section mailing list should not be sold or otherwise be made available to other parties.

6. Judge Nims' Portrait. Brett Rodgers has made arrangements for the preparation of a portrait of Judge Nims. Arrangements are also being made with the Bankruptcy Court for the hanging of the portrait.

EDITOR'S NOTEBOOK

On January 1, 1993, an important amendment to the Michigan Statute of Frauds took effect. The relevant language of the amendment to MCLA 566.132 reads as follows:

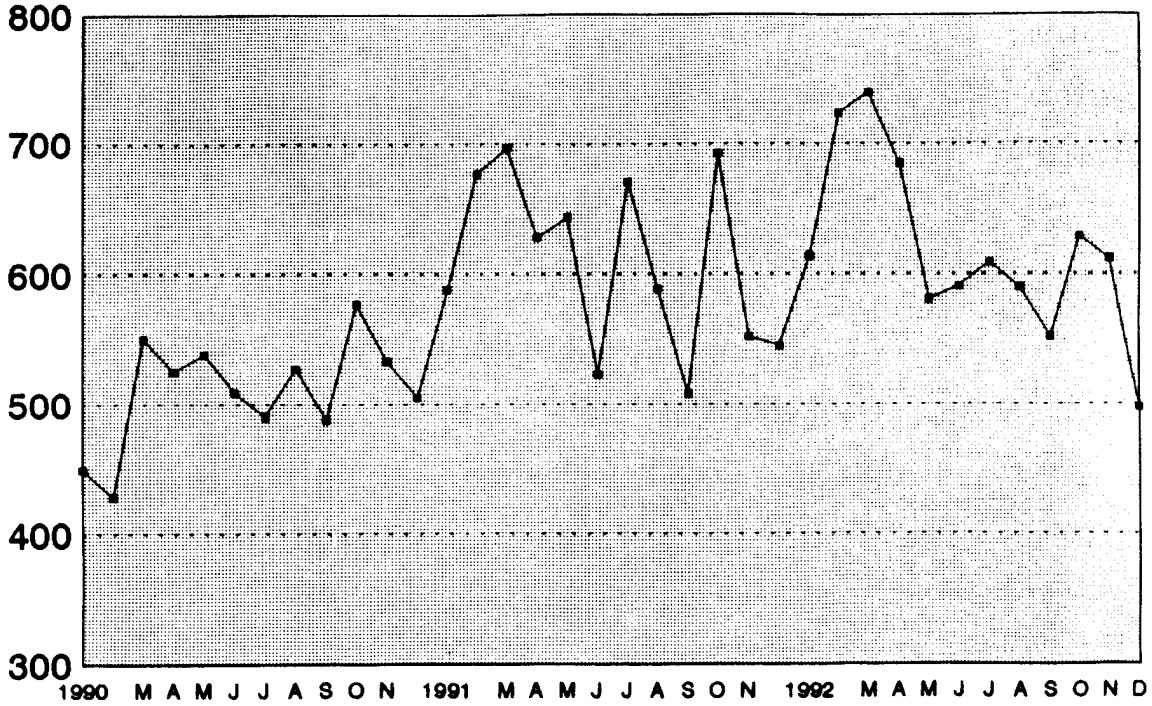
> (2) An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:
>
> > (a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
> >
> > (b) A promise or commitment to renew, extend, modify, or permit a delay in the repayment or performance of a loan extension of credit, or other financial accommodation.
> >
> > (c) A promise or commitment to waive a provision of a loan, extension of credit, or other financial accommodation.

As Don Snide notes in our lead article this month, the amendment does not provide that such an oral promise or commitment is void as a defense, but only

(continued on page 12)

U.S. Bankruptcy Court

Base Case (bk) Filings



Automation Department

Totals 1990 (6119) 1991 (7315) 1992 (7426)

Note: Totals include both Upper Peninsula and Lower Peninsula Filing for the Western District of Michigan

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United States Bankruptcy Court for the Western District of Michigan (Lower Peninsula) during the period from January 1, 1992 through December 31, 1992. These filings are compared to those made during the same period one year ago and two years ago.

	1/1/92-12/31/92	Percent Increase (Decrease) Over 1991	1/1/91-12/31/91	Percent Increase (Decrease) Over 1990	1/1/90 12/31/90
Chapter 7	5,281	5.1%	5,027	5.7%	3,999
Chapter 11	127	(1.7%)	153	(0.6%)	154
Chapter 12	24	0%	24	33.3%	8
Chapter 13	1,582	6.3%)	1,699	(1.0%)	1,717
	7,024	1.8%	6,903	17.2%	5,888

BANKRUPTCY COURT CALENDAR OF MOTION DAYS IN 1993

The following is a copy of the Calendar of Motion Days for the balance of 1993 for the United States Bankruptcy Court for the Western District of Michigan. This is a tentative list which can and will be changed by the judges from time to time to accommodate unanticipated events.

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
FEBRUARY	1	2 HG	3 CA	4 GK	5 HK	6 7
	8 SK	9 GG	10 SL	11 GL	12 LINCOLN'S BIRTHDAY	13 14 VALENTINE'S DAY
	15 WASHINGTON - LINCOLN DAY HOLIDAY	16 SG	17	18 GK ST	19 ST	20 21
	22 WASHINGTON'S BIRTHDAY GG	23 GM	24 ASH WEDNESDAY GM	25 HT GM	26 HT GM SK	27 28
MARCH	1	2 HG	3	4 GK	5 HK	6 7
	8 SG	9 GG	10 SL	11 GL	12 HT	13 14
	15	16 HG	17 ST. PATRICK'S DAY CA	18 GK ST	19 HK	20 21
	22 SK	23 GG HM	24 HM	25 HM	26 HM	27 28
	29 SG	30 HG	31	1	2 GL HK	3 4 PALM SUNDAY
APRIL	5 PASSOVER begins at sundown CA	6 PASSOVER GG	7 SL	8 GK HT	9 GOOD FRIDAY HT	10 11 EASTER SUNDAY
	12 SK	13	14	15	16	17 18
	19 SG GG	20 HG GM	21 PROFESSIONAL SECRETARIES DAY GM	22 ST GM	23 ST GM HK	24 25
	26	27	28	29	30 GK	1 2
MAY	3 SK	4 GG	5 SL	6 GL	7 HT	8 9 MOTHER'S DAY
	10 SG	11 HG	12 CA	13 GK ST	14 HK	15 ARMED FORCES DAY 16
	17	18 GG HM	19 HM	20 HM	21 HM	22 23
	24 VICTORIA DAY (CANADA) SK	25 HG	26	27 GK	28 HK	29 30 MEMORIAL DAY
	31 MEMORIAL DAY (OBSERVED) HOLIDAY	1 GG	2 SG	3 GL	4	5 6
JUNE	7	8 HG	9 CA	10 GK ST	11 HK ST	12 13
	14 FLAG DAY SK	15 GG	16 SL	17 GK HT	18 HT	19 20 FATHER'S DAY
	21 GM SG	22 GM HG	23 GM	24 GM	25 HK GM	26 27
	28	29 GG	30			

1993

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
			1 CANADA DAY (CANADA) GK	2	3 4 INDEPENDENCE DAY
5 HOLIDAY	6 SK HG	7 CA	8 GL	9 HK	10 11
12 SG	13 GG	14	15 GK ST	16 HT	17 18
19	20 HG	21 SL	22	23 HK	24 25
26 SK	27 GG HM	28 GK HM	29 HM	30 HM	31 1
2 SG	3 HG	4	5 GL	6 HK	7 8
9	10 GG	11 CA	12 GK HT	13 HT	14 15
16 SK GM	17 HG GM	18 GM	19 ST GM	20 ST GM HK	21 22
23 SG	24 GG	25 SL	26 GK	27	28 29
30	31 HG	1	2 GL	3 HK	4 5
6 LABOR DAY HOLIDAY	7 SK GG	8 CA	9 GK	10 HT	11 12
13 SG	14 HG	15 ROSH HASHANAH begins at sundown	16 ROSH HASHANAH ST	17 HK	18 19
20	21 GG HM	22 SL HM	23 GK HM	24 YOM KIPPUR begins at sundown HM	25 YOM KIPPUR 26
27 SK	28 HG	29	30 GL	1 HK	2 3
4 SG	5 GG	6 CA	7 GK HT	8 HT	9 10
11 COLUMBUS DAY (OBSERVED) HOLIDAY THANKSGIVING (CANADA)	12 COLUMBUS DAY HG GM	13 GM	14 ST GM	15 ST GM HK	16 17
18	19 GG	20	21 GK	22	23 24 UNITED NATIONS DAY
25 SK	26 HG	27 SL	28	29 HK	30 31 HALLOWEEN
1 SG	2 ELECTION DAY GG	3	4 GK	5 HT GL	6 7
8	9 HG	10 CA	11 VETERANS DAY HOLIDAY	12 HK	13 14
15 SK	16 GG HM	17 HM	18 GK HM ST	19 HM	20 21
22 SG	23 HG	24 SL	25 THANKSGIVING DAY HOLIDAY	26	27 28
29	30 GG	1	2 GK HT	3 GL HT	4 5
6 SK	7 HG GM	8 HANUKKAH begins at sundown GM	9 HANUKKAH GM	10 HK GM	11 12
13 SG	14 GG	15 CA	16 ST GK	17 ST	18 19
20	21 HG	22 HK SL	23	24 HOLIDAY	25 CHRISTMAS DAY
27	28 GG	29	30 GK	31	26
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN

JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

(continued from page 8)

that the borrower may not bring an action against the financial institution to enforce such an alleged promise.

The year-end statistics for filings with the Bankruptcy Court show another record number of filings, although the increase in filings over the prior 7,024 year has slowed dramatically. In fact, Chapter 11 filings in the Lower Peninsula are down significantly and total filings in the Upper Peninsula are down as well. However, total filings remain staggering, with the filings up 45% over as recently as 1989. In 1994, there was a new bankruptcy filing for one out of every 140 households living in Michigan. Add to that the number of employees, trade creditors, customers, and lenders affected by these bankruptcies as well as the large national bankruptcies, and virtually everyone in this district was affected in some way by a bankruptcy proceeding during the course of this past year.

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