

BANKRUPTCY LAW NEWSLETTER

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BANKRUPTCY DECISIONS INDEX

By: *Thomas C. Richardson** & *Gregory G. St. Arnauld***

PREAMBLE

What follows is a summary and index of all written opinions in Western District of Michigan court cases and district court cases involving bankruptcy since the newsletter originated in September, 1988. The purpose of the index is to help practitioners find relevant local bankruptcy cases. It is not suggested that all of the holdings listed are representative of current law or that they would necessarily be followed by other judges in this district. Some have been overruled by subsequent Sixth Circuit or Supreme Court decisions. Shepardization of the case and pertinent code section is advised.

Cross references appear in parentheses after the headings. For example, "See ER-2" refers to the second case in category ER (ERISA). Bankruptcy Reporter (BR) citations are given where known. In other cases the bankruptcy court's case number is given. The last entry in each listing is the judge's initial and the year the matter was decided. For example, "H/90" refers to a 1990 Judge Howard decision.

Abstention (Abs) (see also ER-2, Ven-1, Jrs-1)

1. Abstention appropriate as to non-core related proceeding where jury demanded. D.C. Equip. 86-49 H/90
2. Mandatory abstention appropriate for noncore contract/tort actions not involving b'cy issues. Marshall 118 BR 954 Gibson/90

Appeals (App) (see also Jrs-2)

1. Stay pending appeal only where (a) substantial likelihood of winning on merits, (b) irreparable harm if stay not granted (c) no harm to other party if stay granted and (d) not adverse to public interest to grant stay where no likelihood of movant winning on merits. Cybernetic Services 94 BR 951 G/89

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2. Stay pending appeal denied where no likelihood debtor could prevail where motion to assume lease of non-residential real property filed > 60 days after filing. Urbanco 122 BR 513 S/91
3. B'cy ct. has jurisdiction to order disbursement of proceeds while appeal pending as to whether they are property of the estate. Bencker 122 BR 506 H/90
4. Waiver of appeal fees denied due to lack of good faith. Anderson 130 BR 497 G/91

Attorneys/fees (Att) (see also Jry-2)

1. Law firm owed money for prepetition services is "creditor," thus not "disinterested," and is prohibited from representing D-I-P unless waives claim. Watervliet Paper 90 BR 768, S/89, aff'd 111 BR 131
2. Fees for appealing previous order (see Att-1) disallowed -no benefit to estate. Watervliet Paper 109 BR 733 S/89
3. Ch. 13 debtor's att'y fees reduced to \$600 for routine case. Bush 131 BR 364 S/91
4. Creditor's right to interest and att'y fees under §506(6) considered. Award of \$5,000 attorney fees (of \$58,000 sought) affirmed. Interest limited where creditor delayed pay-off. Huhn 145 BR 872 S/92 (aff'd Bell/92)
5. Fact issue as to whether corp's att'y owed fiduciary duty to shareholder. D.C. Equip. 112 BR 855 H/90

Automatic stay (ASt) §362

- effect of (see Non-6, Tax-2, Tax-3)

1. (1) Automatic stay applies (to Debtor's residence) after Chapter 13 confirmation; (2) actions taken in violation of stay are void; (3) finding of contempt not warranted where creditors did not knowingly violate stay; (4) "cause" for lifting stay exists where debtor-lessee has mere tenancy-at-will which landlord desires to

terminate; (5) annulment of stay requires extraordinary circumstances, not present here. Schewe 94 BR 938 G/89

2. IRS can't offset tax refund against dischargeable, nonpriority tax claim. Miel 134 BR 229 H/91

- relief from (§362(d))

3. Standards discussed. Relief granted for cause based on debtor's bad faith. Grand Traverse Dev. 150 BR 176 S/93
4. Modification of stay to date certain after filing date, though authorized by §362(d), held not warranted. Barker-Fowler El. 141 BR 929 G/92
5. Denied where property necessary for effective reorganization, through no equity. "Cause" due to mismanagement/fraud not found. Multi-part adequate protection ordered. (Extensive discussion of relief from stay standards.) Holly's 140 BR 644 G/92

- violation of (§362(h))

6. Insurance co. estopped from asserting 60 day proof of loss requirement where it tried to cancel policy post-petition in violation of stay. (Judge Bell had held on appeal that cancellation of policy violated stay and was void.) Scrima 116 BR 951 H/90
7. Trustee's abandonment does not terminate stay as to debtors. Actual and punitive damages imposed against creditor's att'y for stay violation. Markey 144 BR 738 S/92

CERCLA (CER) (see also Cl-3)

1. Any contribution amounts b'cy ct. finds due from estate are entitled to admin. priority status. Defendant not liable for "passive" disposal. (B'cy Act of 1898 case.) Diamond Reo Trucks 115 BR 559 H/90

2. Postpetition releases of hazardous substance generally classified as admin. expenses; question of fact when release occurred. Great Northern Forest (Dock's Corner) 135 BR 46 G/91

Chapter 11 (Ch11) (see also Cl-3, Eq-2, Tax-2, Tr-2)

1. Ch. 11 plan payments are "involuntary payments" that may not be allocated to pay trust fund liabilities first. Shoup 96 BR 767 N/88 and Shreve Steel 92 BR 214 N/88
2. FUTA taxes subject to 6-year from assessment rule. 6-year rule not applicable to secured tax claims. 1129(a)(9)(c). Reichert 138 BR 522 H/92
3. Creditor can file plan where exclusivity period expired without confirmed plan. Mother Hubbard 147 BR 418 G/93
4. Creditor failed to establish cause for shortening exclusivity period. Grand Traverse Dev. 147 BR 418 S/92
5. Debtor authorized to incur debt by sale of notes. Notes exempt from registration under securities laws. Standard O & E 136 BR 141 G/92
6. Buyer breached postpetition contract to buy debtor trucking company's operating authority when it failed to timely exercise option to withdraw. Tucker Freight 133 BR 76 H/91

Chapter 12 (Ch12) (see also Prp-1)

1. Debtors may sometimes pay secured creditors directly without paying Ch. 12 trustee commission. 13 non-exclusive factors listed. Pianowski 92 BR 225 G/88
2. Motion for modification timely though debtors attempted to pay off plan (hours) before motion filed. Substantial unforeseen change in circumstances needed for modification and found here. Cause exists to extend term of plan to 5 years. Cook 148 BR 273 H/92

Chapter 13 (Ch 13) (see also Att-3, AS-1, LC-1, Ref-1, Tax-6)

1. Debtor can't stretch out mortgagee past 5 years. §1322(c). Debtor can modify secured claim where there was other collateral besides residence at filing date. Dewsnup does not preclude bifurcation of claim in Ch. 13. Hypothetical costs of sale not to be deducted in fixing allowed secured claim where debtor plans to keep property. Dinsmore 141 BR 499 H/92
2. Debtors can't modify plan to pay "balloon" (land contract) payment over remaining life of plan. Cooper 98 BR 294 G/89
3. B'cy ct. allowance of tithing by debtors does not violate establishment clause. Green 103 BR 852 Enslin/88
4. §1325(c) does not impliedly repeal anti-assignment of V.A. benefits law, nor is debtor's equal protection violated. Roach 90 BR 286 G/88

Claims (Cl) (see also CER-1, CER-2, Eq-4, Jry-1, Tax-4, Tax-7, Tr)

1. Cases with issue regarding late tax claim in Chapter 13 consolidated for hearing en banc. Zimmerman 91-86620 S/93
2. "Informal proof of claim" not found where creditor didn't demand payment. "Excusable neglect" for late claim not found. Mother Hubbard 91-80981 G/93
3. Landlord's expense in removing barrels containing toxic waste given Ch. 7 administrative status since barrels = property of estate. Expense for cleanup of waste committed during Ch. 11 given Ch. 11 admin. status based on D-I-P's negligence and breach of contract. Damages due to pre-b'cy operations w/o any priority. Kent Holland 125 BR 493 N/91
4. Objection to amended claim timely since order allowing claim was conditional and never became final. New IRS claim allowed as amendment to original claim, not untimely new

claim, since also for payroll taxes and balancing of equities (5 factors) favors IRS. Barton 23 BCD 1750 G/93

Collateral estoppel (Col) (see Non-2)

Conflict of laws (Con)

1. Forum state (Mich) law applied where interests of states equal. LaCosse 108 BR 140 H/89

Damages (Dam)

1. Damages reduced to present value. O'Connor 145 BR 883 N/92

Depositions (Dep)

1. 6 days notice reasonable. No requirement deposition witnesses be subpoenaed. Mendell 91-2000 H/92

Equity/equitable subordination (Eq) (see also R/S-1)

1. "Unclean hands" doctrine, though not plead, bars fraud claims where plaintiffs bought restaurant based on defendant's representations of "skimming." Casa Nova 146 BR 370 S/92
2. Post-confirmation debtor may not pursue unscheduled, undisclosed claims that accrued pre-filing or preconfirmation based on theories of equitable estoppel, res judicata and judicial estoppel MFI 87-01401 H/89
3. Equitable subordination and fraudulent transfer case. Auto Specialties Mfg. 133 BR 384 S/93
4. Negative covenant (that debtor not be paid until contractually higher priority creditors paid) unenforceable in b'cy since conflicts with equity of distribution principle. Subordination of right to receive future management fees unenforceable as to post-petition (but not pre-petition) earnings. Holly's 140 BR 644 G/92

ERISA (ER) (see also Exe-1, Exe-3)

1. "ERISA qualified" plan means (1) subject to ERISA, (2) with anti-alienation clause and (3) tax qualified. Plan not qualified where debtor/employer is only participant. \$14,000 IRA exempt. L. Hall 91-81542 G/93.
2. B'cy ct. has jurisdiction to determine if b'cy filing disqualifies plan under ERISA; won't abstain. Witte 92 BR 218 H/88

Excusable neglect (ExN) (see also Cl-2)

1. Not found where atty's staff miscalculated deadline. Auto Specialties 133 BR 384 S/91

Executory contracts (ExC) (§365) (see also App-2, LC, Lea)

1. Agreement for purchase of mobile home is executory contract debtors may assume. Bencer 122 BR 506 H/90
2. Debtor may reject franchise agreement under §365 (including covenant not to compete) JRT 121 BR 314 G/90
3. Nonresidential lease deemed rejected unless assumed within 60 days from filing. Cybernetic Services 94 BR 951 G/89
4. Debtor allowed to assume dealership contracts where extension of credit incidental to larger arrangement. Cole Bros. 137 BR 647 H/92; rev'd Gibson/92

Exemption (Exe) (§522) (see also ER-1, Prf-2)

1. Debtor can exempt \$ held in state-established deferred compensation program under §522(d)(10). Factors re "reasonably necessary" listed. Rector 134 BR 611 H/91
2. Worker's compensation award not exempt once received. Claim of exempt status may not be raised by party other than debtor. Wickstrom 133 BR 339 G/90

3. Individual retirement annuity not exempt under fed. exemptions. Moss 143 BR 465 S/92

Fraudulent transfers (FrT) (§548) (see also Eq-3)

1. Assignment held fraudulent under UFCA. Mendell 91-2000 H/92

Garnishment (Gar)

1. Garnishment not proper procedure against real estate interest. Mendell 91-2000 H/92

Governmental immunity (GI)

1. Inapplicable where post-b'cy tax intimately related to b'cy filing. Witte 92 BR 218 H/88

Injunctions

Interest (Int) (see also Att-4, LC-3, Non-3, Tax-4)

1. Pre and post judgment interest awarded on b'cy judgment. Scrima 119 BR 539 H/90
2. Usury defense not available where loan at 16 1/2% rate was to a corporation and secured by lien on real estate, though bank overcharged. Cadillac Wildwood 82-00358 H/92

Involuntary bankruptcy (Inv) (§303)

1. Dismissed where 1 (of 3) petitioning creditor's claims subject to bonafide dispute; not cured by substitution of good faith creditor after filing. Centennial Insurance 119 BR 543 H/90

IRAs (see ER, Exe)

Jurisdiction (Jrs) (see also App-3, ER-2)

1. B'cy ct. has jurisdiction over Indian tribe but abstains so case goes back to tribal court. Adams 133 BR 191 H/91
2. B'cy ct. has authority to remand case back to state Court. Leave to app den where app would be futile. Atron of Michigan 1:93-CV-133 Bell/93

3. Adversary proceeding between nondebtors is noncore, related proceeding subject to B'cy ct. jurisdiction since b'cy claim could be affected. No jurisdiction to determine if defendant's debts would be nondischargeable if they someday file b'cy. Nissan 126 BR 966 G/91

Jury trials (Jry) (see Abs-1)

1. Debtor does not have right to jury trial of matter involving claims allowance process. Frost 145 BR 878 H/92
2. Defendant has 7th Amendment right to jury trial where sued by debtor for not paying filing fees out of att'y fees defendant got (as debtor's attorney). B'cy ct. has authority to hold jury trial. Clairmont Transfer 117 BR 288 H/90
3. No jury trial of noncore-related proceeding in b'cy ct. where no consent by parties to b'cy ct. making final order. Fishell 132 BR 337 N/91

Land contracts (LC) (see also Ch13-2, ExC)

1. Chapter 13 doesn't revive vendees' interest surrendered before b'cy. Miller 90 BR 865 H/88
2. Good faith vendor without knowledge of voidability of transfer protected by §550(b)(1). Elkins 94 BR 935 S/88
3. Prepayment and calculation of interest discussed. Komives 92-80398 G/92

Leases (Lea) (see also App-2, ASt-1, ExC)

1. State court proceeding to evict still necessary despite §365(d)(4) "immediately surrender" language if debtor fails to comply. Urbanco 122 BR 513 S/91
2. "Lease" presumed true lease absent compelling factors to contrary. Look to economic substances; no single factor controls. Lansing Clarion 132 BR 845 G/91

3. Lease is "property" for §523(a)(2) purposes. O'Connor 145 BR 883 N/92
4. Postpetition storage costs, or use and possession costs, entitled to administrative expense priority. Great Northern Forest (Dock's Corner) 135 BR 46 G/91

Lien avoidance (LA) (§522(f), §544)

1. Denied where construction lien claimant filed lien, though lis pendens not recorded, since recorded claim of lien defeats bonafide purchaser. Michigan Lithographing 140 BR 161 S/92
2. In divorce case where husband got house subject to 2nd lien running to wife, wife's lien is judicial lien which impairs husband's bank'cy exemption in home and thus avoidable. Showinsky 117 BR 284 H/90

Limitations, Statutes of (Lim) (§546)

1. Stat/lims hasn't run where suit timely filed, though certification for class action denied; tolling not involved where suit itself timely filed. Check Reporting Services 133 BR 392 S/91

Nondischargeability of debt (Non) (§523) (see also ASt-2, Jrs-3, Tax-4, Tax-5)

1. Debtor's motion for summary judgment in nondischargeability case denied. Warren 89-00522 S/89
2. Judgment held nondischargeable by collateral estoppel (preponderance standard applied to §523(a)(6) case, not clear and convincing standard as would be applied to 523(a)(2) fraud case). Wellever 103 BR 856 H/89
3. Prejudgment interest appropriate in §523(a) nondischargeability case; interest nondischargeable as well; federal rate applied where cause of action entirely federal (e.g. B'cy Code, as opposed to diversity case). Brace 131 BR 612 H/91

4. Parent/co-maker's liability on child's student loan is dischargeable. Kirkish 144 BR 367 H/92
5. Student loan dischargeable where not guaranteed by government at time B'cy filed and credit union not "nonprofit institute" under 523(a)(8). Sinclair-Ganos 133 BR 382 N/91
6. Intercept of tax refund for back child support allowed despite b'cy. Rouse 145 BR 546 N/92
7. Credit card debt dischargeable where application drafted by bank was misleading but bank didn't reasonably rely on answers therein. Wymer 90-8176 N/91
8. Debt dischargeable as to wife where husband alone published false final statement. O'Connor 145 BR 883 N/92
9. Judgment against debtor who ran red light and accelerated into intersection, striking plaintiff, held nondischargeable (wilful and malicious). Adams 147 BR 407 G/92
10. Juvenile ct. ordered reimbursement costs dischargeable since owed to Ct., not to Debtors' child, and no valid assignment. Erfourth 126 BR 736 H/91

Post-petition lending (PPL) (§364)

1. Creditor that extended \$ during objection period of notice order that was disapproved after timely objection out of luck. Nunc pro tunc treatment denied. "Ordinary course of business" issue under §364(a) to be tried on facts. Grand Valley Sport & Marine 143 BR 840 G/92

Preferential transfers (Prf) (§547) (see also LC-2)

1. New value need not remain unpaid. Check Reporting Services 140 BR 425 S/92
2. Transfer of exempt property may still be a preference. Wickstrom 113 BR 339 S/90

3. No preferential transfer since transfer not of interest in property of debtor, and transfer according to ordinary business terms. Zwagerman 115 BR 540 N/90
4. § 547(c)(5) improvement in position ("floating lien") case. Remes Glass 136 BR 132 N/92
5. Preference recoveries subject to bank's liens. Ellingsen MacLean Oil 98 BR 284 N/89
6. No preference because letter of credit beneficiary didn't improve position as a result of pre-b'cy transfer. §547(b)(5). Auto Specialties Mfg. 88-03095 S/93
7. Prepetition payments by debtor to insurance fund (mandated by collective bargaining agmt.) for work performed by debtor's employees on construction projects constitute trust funds and are not avoidable as preferences. Imperial Tile 94 BR 97 H/88

Property of the estate (Prp) (§541) (see also App-3, Lea-3, Prf-3)

1. Lottery winnings part of estate. Cook 148 BR 273 H/92

Reaffirmations/redemption (Rea) (§524)

1. Debtor cannot retain collateral without either reaffirmation or redemption, even if no default. Schmidt 145 BR 543 N/92

Reclamation (Rcl) (§546(c))

1. Value of reclamation creditor's lien set based on invoice price (not amount debtor later sells goods for). Performance Papers 119 BR 127 G/90

Recoupment/setoff (R/S)

1. Denied due to creditor's inequitable conduct. American Sunlake 109 BR 727 G/89

Refiling (Ref) (§109(g)(2))

1. Dismissal of new Ch. 13 not required where petitioning creditor has shown no harm by debtor's voluntary dismissal and refiling. Santana 110 BR 819 S/90

Relief from stay (see also Automatic stay)

Rents, assignment of (Rnt) (see also Lea-2)

1. Valid as to third parties (perfected) upon recording; service requirement relates to enforcement. Mount Pleasant 144 BR 727 S/92

§105 orders (§105)

1. Factors considered re preliminary injunction: (1) likelihood of success on merits, (2) whether would prevent irreparable harm to debtor, (3) harm to others if issued and (4) public interest. JRT 90-83557 G/90

Security interests and agreements (SI&A) (see also Att-4, LA-1, LA-2, Prf-5, Rnt-1, Stl-3, Tax-1)

1. Liquor license is general intangible subject to perfection by filing UCC-1. Three Lakes Cocktail 131 BR 70 H/91
2. Where Mich. motor vehicle code applies its provisions on transfer of title preempt UCC as to when sale occurs and whether plaintiff is buyer in ordinary course of business. Superior Ground Support 140 BR 878 H/92
3. Ski chairlift held a fixture. Circular priority problem (caused by subordination) discussed. Cliff's Ridge Skiing 123 BR 753 G/91

Settlement agreements (Stl)

1. Is valid contract and will not be set aside (despite trustee's claim of mutual mistake). American Plastics 102 BR 609 N/89
2. Settlement based upon att'y error will not be set aside. Check Reporting Serv. 89-00270 S/92
3. Cash collateral order giving bank replacement lien on crops not set aside where no mistake, no

newly discovered evidence, and no meritorious defense shown by debtor. Parker 87-1105 H/88

Statute of limitations (Lim) (§546)

Taxes (Tax) (see also ASt-2, Ch11-1, Ch11-2, Cl-1, Cl-4, Non-6)

1. Personal property tax lien has priority over bank's lien. Reef Petroleum 92 BR 741 N/88
2. IRS entitled to set off mistakenly paid post-petition refund despite Ch. 11 plan language granting unsecured creditors a lien on all assets of debtor where case was converted to Ch. 7; setoff does not violate stay. Reef Petroleum 99 BR 355 N/89
3. Automatic stay prohibits attachment of tax lien for real estate taxes where b'cy filed before December 1 (lien day), though taxes already due and owing. Shoreham Paper 117 BR 274 S/90
4. 100% penalty and prepetition interest nondischargeable in b'cy. Fernandez 130 BR 757 G/91
5. Dischargeability of federal income taxes considered. §507(a)(7)(A)(i). Luke 142 BR 160 S/92
6. Under Mich. tax sale redemption rules, cutoff date to file Ch. 13 to cure unpaid real estate taxes is when "second redemption period" starts (where tax sale buyer not gov't). Sabec 137 BR 659 G/92
7. IRS secured claim limited to value of collateral as of filing date, penalties are general unsecured claims and rest are priority claims. Because IRS undersecured, no interest on secured claim. Benjamin 88-409913 G/90

Trustees (Tr) (see also Ch12-1)

1. UAW's estimated claim not sufficient to allow it to vote for trustee under §702(a) since < 20% of eligible claims (in total \$) voted. Election not valid. Interim trustee becomes permanent trustee. Lindell Drop Forge 111 BR 137 G/90

2. After conversion, trustee may assert claims of debtor, even if plan had waived claim. MFI 87-01401 H/89

Venue (Ven)

1. Venue, abstention, dismissal considered. Haworth 131 BR 359 H/91

RECENT BANKRUPTCY DECISIONS

Beginning with this issue, the Recent Bankruptcy Decisions for the Supreme Court and Sixth Circuit will be summarized by John A. Potter; the Western District of Michigan bankruptcy and district court opinions will be summarized by Vicki S. Young; and the Eastern District of Michigan bankruptcy and district court decisions and relevant State of Michigan cases will be summarized by Jaye M. Bergamini. Larry Ver Merris will continue to assist in the preparation of the case summaries.

In re C.J. Rogers, Inc. (Grabscheid v. Calvert Sales, Inc.), 150 B.R. 413 (Bankr. E.D. Mich. 1992). In this case, the defendant sold equipment to the debtor five months prior to the debtor's filing of a petition under chapter 11. Defendant had timely filed a UCC-1 financing statement with the Michigan Secretary of State and had paid the correct filing fee. However, the defendant had failed to list the debtor's tax identification number on the statement and it was rejected by the Secretary of State as nonconforming under UCC §9402. The defendant claimed that it had no notice of the rejection until after the filing of the Chapter 11 petition.

The trustee objected to the secured status claimed by the defendant. Judge Spector found the trustee to be the superior creditor under 11 U.S.C. §544.

The decision holds that a secured creditor whose UCC filing is rejected as a result of the creditor's error or omission has not properly filed, and its lien can be set aside under the trustee's strong-arm

powers. However, a creditor whose UCC filing is improperly rejected has properly filed under UCC §9-403(1) and may take priority over subsequent

secured creditors, even if the improper rejection results in a lack of notice.

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, 1993 through April 30, 1993. These filings are compared to those made during the same period one year ago and two years ago.

	<u>1/1/93- 4/30/93</u>	<u>1/1/92- 4/30/92</u>	<u>1/1/91- 4/30/91</u>
Chapter 7	1,679	2,002	1,776
Chapter 11	40	40	63
Chapter 12	12	9	3
Chapter 13	<u>499</u>	<u>577</u>	<u>608</u>
	2,230	2,628	2,450

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 May 21, 1993 at the Peninsular Club. Present: Pat Mears, Brett Rodgers, Steve Rayman, Peter Teholiz, Denise Twinney, Jim Engbers, Tom Sarb, Scott Hogan (for Tim Hillegonds), and Tom Schouten.

1. 1993 Seminar. Steve Rayman discussed final arrangements regarding the educational program for the 1993 seminar at the Lakeview Hotel on Mackinac Island on July 29 - 31, 1993. In addition to the Bankruptcy Section mailing list, notice of the seminar will also be submitted for inclusion in the Grand Rapids Bar Association Newsletter. Denise Twinney discussed the recreational arrangements for the 1993 seminar.

2. 1994 Seminar Site. Scott Hogan reported on behalf of Tim Hillegonds that the

committee planning for the 1994 seminar site had narrowed the possible locations to the Sugar Loaf Resort or the Park Place Hotel. More details will be forthcoming.

3. Membership Fees. There was a discussion concerning whether membership fees should be raised to ensure that costs of the Newsletter are fully covered by such fees. After discussion, the decision was made to table the discussion until the financial results for the 1993 seminar are known.

There being no further business before the committee, the meeting was adjourned.

REMINDER OF SUMMER SEMINAR

The 1993 Summer Seminar of the Bankruptcy Section of the Western District of Michigan Chapter of the Federal Bar Association will take place on Mackinac Island on July 29-31, 1993. Information

may be obtained from the office of Steven L. Rayman, phone: (616) 345-5156.

SUNSET CRUISE AT THE SEMINAR

All seminar attendees and their families are invited to join the FBA Bankruptcy Steering Committee aboard one of Arnold's boats for a SUNSET CRUISE. While the departure time is flexible, we'd like to depart the island around 7:45 and cruise up to the Mackinac Bridge to catch the sunset and return around 9:45 p.m. The cost of the cruise depends on the number of people aboard!

Arnold's has also provided us with coupons for free overnight parking and discounted transportation to the Island.

Call Denise Twinney at (616) 774-0641 to make your SUNSET CRUISE reservations and she'll send you the coupons and schedule for the ferry service.

EDITOR'S NOTEBOOK

On behalf of the Federal Bar Association, Western District of Michigan Chapter, I would like to extend our gratitude to Joseph M. Ammar, who has prepared the Recent Bankruptcy Decision summaries for the past year. The summaries have been lucid and concise. Joe has put in a tremendous number of hours in preparing those summaries, considering that there were so many blockbuster

decisions (in terms of importance and length) over the past year. Joe will find it ironic (cruelly unfair?) that in the last issue he prepared there were twelve cases to summarize, including three Supreme Court and two Sixth Circuit cases. This issue, however, finds only one case available for summary. Again, many thanks to Joe for all of his hard work.

We received too late to include in this month's summaries, decisions from the United States District Court for the Eastern District of Michigan involving two important real estate cases. In the first, Judge Duggan reversed himself and grants the motion of the mortgagee for reconsideration in the Coventry Commons case, finding that the debtor's plan improperly forced a §1111(b) election on the secured creditor. In the case of In re Washtenaw/Huron Investment Corporation No. 8, District Judge Edmonds upholds Judge Rhodes' decision annulling the automatic stay retroactive to the filing date, on the basis of the debtor's bad faith. Therefore, the foreclosure sale that occurred post-petition was allowed to stand.

Finally, the Wall Street Journal in its May 13, 1993 edition reported that the Sixth Circuit reluctantly ruled in the Eagle-Picher Industries case that, because of the specific language of §327 and §101(14), an investment banker who had worked for the debtor pre-petition could not be appointed as the debtor's investment counsel, despite the fact that all parties in interest with the exception of the U.S. Trustee consented to the appointment, and the appointment of the investment banker would have been in the best interests of the bankruptcy estate. The Eagle-Picher case will also be summarized in the June issue.

By Thomas P. Sarb

BANKRUPTCY SEMINAR FOR SECRETARIES AND PARALEGALS

The Bankruptcy Court will be presenting a seminar intended for secretaries and paralegals who work with attorneys specializing in bankruptcy practice and procedure. This seminar will last one full day (9:00 - 4:30) and will cover the following topics plus many more:

- Getting information. The methods available for getting case information quickly and efficiently from the court.
- Basic requirements for filing a new bankruptcy case or adversary proceeding. There will be discussion of the procedure for amending cases to add creditors, reopening closed cases for any purpose, and the various fees which apply and how to avoid them.
- The new Local Bankruptcy Rules. There will be a discussion of the new "notice

with opportunity to object" option for filing motions, the new reaffirmation procedure, and changes in the court's policy on rejection of defective pleadings.

- Use of standard forms. Review of required forms and suggested forms to accomplish routine procedures. We will discuss the areas of practice which cause us (and you) the most problems.

This seminar will be given without cost to the participants. However, participants will be given 1½ hours for lunch and we recommend that firms provide participants with \$10.00 per person for a lunch.

The seminar is being presented on 6 dates in August and September so that we can keep the class sizes small.

REGISTRATION FORM Bankruptcy Seminar for Secretaries and Paralegals

The seminar will be presented on the following dates: August 4, 11, 18, 25 and September 1 and 15.

How many people from your office will attend? _____

Date of first preference _____

Date of second preference _____

Name of firm _____

Telephone number of firm _____

Names of persons who will be attending:

Return this form to Mark Van Allsburg, Bankruptcy Court, PO Box 3310, Grand Rapids, MI 49501

SATURDAY, JULY 31, 1993

8:00-9:30 a.m. KEYNOTE SPEAKER/BREAKFAST MEETING

This year's "keynote" speaker will be Professor Lawrence P. King of the New York University School Of Law. Professor King is currently Of Counsel to the firm of Wachtell, Lipton, Rosen and Katz of New York City. He is a member of the National Bankruptcy Conference, Editor-in-Chief of the *Collier's Bankruptcy Series*, a prolific author in the Bankruptcy field and is generally recognized as a national expert in the area of the Bankruptcy and reorganization.

9:45-11:00 a.m. SIXTH CIRCUIT REVISITED

This year The Honorable James D. Gregg and West Michigan Attorneys Patrick E. Mears and Robert D. Mollhagen will be joined by Professor King in their analysis and critique of decisions made by Courts within the Sixth Circuit, the Sixth Circuit Court of Appeals itself and the U.S. Supreme Court.

11:15-12:00 a.m. OPEN FORUM

To close this year's seminar, as is traditional, a host of "characters" will take open questions from the audience.

NO AFTERNOON PROGRAMS

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This year's seminar will be hosted by the Lake View Hotel, which has reserved a block of rooms. There are several other hotels on the Island. Reservations for the Lake View, Chippewa and Murray Hotels will be handled through the Lake View Hotel on the enclosed Registration Form. Reservations for the Lilac Tree Hotel can be made at (906)847-6575. At this writing, the Grand Hotel is fully booked for Friday, July 30, 1993, although a waiting list is available. Reservations can be made at 1-800-33-GRAND. Other major hotels, Bed and Breakfasts, tourist homes and condos are available by contacting the Mackinac Island Chamber of Commerce at (906)847-3383 or (906)847-6418 or by contacting Jo Ella Heath at Steve Rayman's office for a list (616)345-5156.

Transportation to the Island is available from Mackinaw City and St. Ignace via the Arnold Line at (906)847-3351.

This year the Steering Committee invites all participants and their families to a two hour SUNSET CRUISE under the Mackinac Bridge departing Friday evening, July 30, 1993 at 7:45 p.m. on the Arnold Line. If we can get 100 people to go on the cruise, it will cost only \$6.00 per person, plus cash bar. If you register for the cruise, coupons for free overnight parking and discounted transportation to the Island, on the Arnold Line, will be mailed to you. Contact Denise D. Twinney at (616)774-0641 regarding information and reservations for the cruise or ferry service.

Bike Rental is available at Ryba's (906)847-3829, Iroquois (906)847-3321, Lakeside Bikes (906)847-3891 or Orr Kids (906)847-3211 or, for \$3.00, you can put your bike on the ferry.

Horses are also available by contacting either Carriage Tours Ticket Office (906)847-3325, Carriage Tours (hourly rental) (906)847-6152, Gough's Livery (906)847-3391, Jack's Livery (906)847-3391, Cindy's Riding Stable (906)847-3572 or Island Service Co. (906)847-6174.

There will be no organized golf this year. Golfing is available at Wawashkamo Golf Links or the Grand Hotel course, both 9 holes that can be played as 18. Greens fees are nominal. Electric carts can be rented. Club and shoes rentals are available. Jim Engbers (616)459-8311 has information regarding these and other Northern Michigan golf courses.

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LAKE VIEW HOTEL

*Mackinac Island's Downtown Resort
and Convention Center*

FEDERAL BAR ASSOCIATION
BANKRUPTCY DIVISION
CONVENTION

July 29 & 30, 1993

We are pleased to host your annual conference. The actual event will be held at the Lake View Hotel with overflow sleeping rooms being handled by the Murray and the Chippewa Hotels. Please fill out the below information and remit \$100.00 no later than Monday, June 14, 1993.

Mr.

Ms.

Mr. & Mrs.

First Name

Last Name

Address

City

State

Zip

Phone

Number of Adults

Number of Children

Arrival Date

Departure Date

Hotel Preference (please indicate 1, 2, & 3)

() Lake View () Chippewa () Murray

This preference is by request ONLY and will be placed by first reservations in, so get them in early!

Room rate is \$110.00 per room, per night, based upon 2 Adults. Children under 16 stay free in their parents room. Extra adult charge is \$15.00. Single Person rate is \$75.00. Rates are subject to 4% Michigan sales tax.

Deposit is fully refunded with at least 10 days notice prior to reservation date. Less than 10 days notice, no refunds.

Confirmations will be mailed to each guest on June 20, 1993. If you do not receive one by June 25, 1993, please notify our hotel.

Check in 3:00 p.m.

Check out 11:00 p.m.

PLEASE RETURN TO: Rick J. Peterson
General Manager
Lake View Hotel
Mackinac Island, Michigan 49757

MAY 1 THROUGH OCTOBER 31
MACKINAC ISLAND, MICHIGAN 49757
(906) 847-3384

NOVEMBER 1 THROUGH APRIL 30
626 N. STATE ST. • ST. IGNACE, MICHIGAN 49781
(906) 643-6202

Western Michigan Chapter of the
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