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CREDITOR COMMITTEE CONFLICT IN CHAPTER 11 CASES

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Section 1102 of the U.S. Bankruptcy Code provides, among other things, for the establishment of creditor committees in Chapter 11 cases by the United States Trustee. The purpose of the committee for unsecured creditors is to represent that group's interest in the Chapter 11.

Section 1103 provides an unsecured creditor's committee with extensive powers. For example, the committee may consult with the debtor in possession, conduct investigations, participate in plan formulation, and make determinations as to any plan formulated. The Bankruptcy Code does not, however, address the situation where the committee cannot agree on a particular course of action.

Code Section 1103(a) states that a majority of the members of the committee that are present may select and authorize accountants and attorneys to perform certain services for the committee.

Code Section 1102 states that the committee "... shall ordinarily consist of the persons willing to serve that hold the seven largest claims against the debtor." The Bankruptcy Code does not require the committee to act by a majority, except for those powers described in Code Section 1102(a). Furthermore, the Code does not require that there be seven members, or any other number of members. Thus, a committee may consist of an even number of creditors leaving the committee's course of action open to a deadlock.

This issue was recently raised in In re Gordon and Lillian Long, Western District of Michigan, Southern Division, Case No. GL-91-85163, an unreported case. In that case, the unsecured creditors committee had two members. The committee had recommended to the unsecured creditors that they reject the Debtors' Chapter 11 Plan. It also filed objections to the Plan. However, the Plan was accepted by a substantial number of the unsecured creditors (and eventually confirmed). More significantly, the committee became evenly divided, i.e. one creditor accepted the Debtors' Plan while the other creditor rejected it.

Judge James D. Gregg ruled that the committee could not speak for the unsecured creditors. The committee's counsel was ordered to serve upon all unsecured creditors notice that the committee's objections to the Debtors' Plan would be withdrawn unless they were pursued by a creditor through their own counsel. Since the unsecured creditors' committee was without authority to pursue the objection, the committee's counsel could not pursue the objection as its counsel.

While the concept of creditors' committees in the U.S. Bankruptcy Code is not new, this particular area appears to be one which is open for developing case law. Perhaps with their greater utilization, clearer guidelines will be available through case law. Even more helpful would be more definite standards for the

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operation of these committees either from congressional action and/or court rule.

[Editor's Note: Mr. Panek raises an interesting point, but unfortunately fails to offer guidance on how to resolve it. Perhaps someone would like to take up where this article leaves off as the basis for a future article for the Newsletter.]

RECENT BANKRUPTCY DECISIONS

BFP v Resolution Trust Corporation, as Receiver of Imperial Federal Savings Assoc., Case No. 92-1370 (S. Ct., May 23, 1994). Petitioner, BFP, a partnership of three individuals was formed in 1987 for the purpose of buying a beach front home in Newport Beach, California, from Sheldon and Ann Forman. Petitioner took title to this home subject to a first deed of trust in favor of Imperial Savings Association. Certain of Imperial's assets were eventually transferred to Respondent, Resolution Trust Corporation (RTC). Imperial, because its loan on the home was not being paid, entered a notice of default against BFP and scheduled a properly noticed foreclosure sale. The foreclosure sale was temporarily delayed by the filing of an involuntary bankruptcy petition on behalf of BFP. This petition was dismissed in June of 1989 and the foreclosure sale was completed in July, 1989.

In October of 1989, BFP filed a voluntary Chapter 11 Petition and sought to set aside the sale to the buyer, Respondent, Paul Osborne. Osborne purchased the home at the sale for $433,000.00. BFP alleged that the sale constituted a fraudulent transfer under 11 USC § 548, since the home was actually worth $733,000.00. The bankruptcy court granted summary judgment in favor of Imperial, holding that the sale had been conducted in compliance with California law and was neither collusive nor fraudulent. The district court affirmed the bankruptcy court decision, and, a bankruptcy appellate panel affirmed the district court decision. 132 BR 748 (1991). Applying the analysis of In re Madrid, 21 BR 424 (9th Cir. BAP 1982), the panel majority held that a "non-collusive and regularly conducted nonjudicial foreclosure sale . . . cannot be challenged as a fraudulent conveyance because the consideration received in such a sale establishes 'reasonably equivalent value' as a matter of law." The Court of Appeals affirmed. In re BFP, 974 F2d 1144 (1992).

In a 5-4 opinion authored by Justice Scalia, the Court affirmed the lower court decisions, holding that: A "reasonably equivalent value" for foreclosed real property is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with." The court did so because it felt that the only legitimate evidence of the value of the real estate at the time of sale is the foreclosure sale price. The court was also concerned that a contrary result would place foreclosure titles under a "federally created cloud". The court was not inclined to do so without clear direction by Congress.

The holding is expressly limited to real estate foreclosures, although its logic could be applied to similar types of foreclosure sales, such as UCC repossessions and tax sales.

[EDITOR'S NOTE: This case essentially affirms In re Winshall Settlors Trust, 758 F2d 1136 (6th Cir. 1985), so it should not impact practice in 6th Circuit to a great extent. Nationally, though, creditors are rejoicing: Ding Dong, Durrett is dead!]

In re Edward W. Toti, Toti v United States, Case No. 93-1206, 1994 WL 180678, 1994, U.S. App. Lexis 10597 (6th Cir. May 13, 1994). On February 27, 1990, Debtor/Plaintiff Edward J. Toti, filed a Chapter 7 Bankruptcy Petition. Later, he commenced an adversary proceeding to determine, *inter alia*, the dischargeability of certain tax liabilities. Defendant United States responded to Toti's complaint, contending that he willfully attempted to evade or defeat such taxes, thus making them nondischargeable under 11 USC § 523(a)(1)(C).

The Bankruptcy Court for the Eastern District of Michigan held that the taxes were dischargeable. In so holding, the court applied a criminal standard to the 11 USC § 523(a)(1)(C) phrase "willfully attempted in any manner to evade or defeat such tax". This requires the government to present evidence that Toti engaged in the willful commission of an act to evade or defeat his tax liability. This is the same standard used in the felony tax evasion statute. IRC § 7201. Further the bankruptcy court held that failing to file and make a payment is merely an omission, and since the Bankruptcy Code requires the commission of an act, Toti's omission was not willful.

The United States appealed to the district court who applied the standard used in other civil matters--"voluntary, conscious, and intentional". It then held that Toti's failure to file returns and to pay taxes were willful acts within the meaning of 11 USC §

523(a)(1)(C). Consequently, the matter was remanded back to the bankruptcy court.

In affirming the district court decision, the Court of Appeals stated that a plain reading of 11 USC § 523(a)(1)(C) includes includes acts of commission and acts of omission.

Teachers Creditor Union v Rowan (In re Rowan), Case No. 1:94-CV-158 (WD Michigan, 5/9/94). Judge Gibson affirmed the Bankruptcy Court's order denying Teachers Credit Union's (the "Teachers") motion for an order requiring the Debtor to surrender or redeem her residence in a Chapter 7 bankruptcy case.

Teachers held a second lien on the Debtor's residence. Debtor attempted to reaffirm the obligation under 11 USC 524(c). Teachers did not agree to the reaffirmation, and filed a motion with the Bankruptcy Court requesting that the Court order the Debtor to surrender or redeem the collateral.

Teachers argued that as a secured creditor, if it did not voluntarily agree to a reaffirmation, the Debtor must either redeem or surrender the collateral under 11 USC 722. The Court held that 11 USC 722 only applies to the redemption of "tangible personal property." The Court, relying on In re Laubacher, 150 BR (Bankr. ND Ohio 1992), held that the Debtor could remain in possession of her residence and continue the monthly payments under the loan agreement. However, the Court also held that if the Debtor defaulted on the mortgage, Teachers would be free to exercise its rights and remedies under the mortgage, including foreclosure.

Michigan Department of Social Services v Brown (In re Brown), Case No. 1:93-CV-900 (WD Mich 5/10/94). Judge Bell affirmed the Bankruptcy Court's order denying the Debtor's discharge of the obligation which she owed to the Michigan Department of Social Services (the "Department").

The Debtor received benefits from the Department between 1970 and 1975. Later the Department determined that the Debtor was not entitled to some of those benefits. In 1975, the Debtor entered into an Agreement with the Department under which the Debtor agreed to repay the debt by allowing the Department to withhold 10 percent of her total monthly grants if and when she received further assistance. Thereafter, the Department recouped 10 percent of the Debtor's grants during the periods which she was eligible for assistance between August of 1975 and February 1987. In 1992, the Debtor filed bankruptcy under Chapter 7. The Department filed an adversary proceeding seeking a determination that the obligation was non--dischargeable. The Debtor argued that the action was barred by the six year statute of limitations barring actions for breach of contract. The Bankruptcy Court held that the Debtor had voluntarily agreed to the repayment schedule which was consistently applied against her until 1987 and that the Debtor had therefore impliedly consented to revive and recommence the payments on the obligations. As such, the six year statue of limitations for breach of contract had not run.

On appeal, the Debtor argued that the partial payments were not voluntarily made because the Agreement was not revocable and that she had made no subsequent agreement, nor had she taken any action acknowledging responsibility for the obligation. The Debtor also argued that because the Department has an independent statutory authority to recoup overpaid benefits, the recoupment was made pursuant to statute rather than the Agreement.

The Court held that under Michigan law, a partial payment may operate as an acknowledgement of the continued existence of a debt and a waiver of a right to take advantage of the statute of limitations. The partial payment need only be voluntary and free from any uncertainty as to the identification of the debt on which it was made. Acknowledgement may be inferred from facts without words. The Court held that the Agreement and the Debtor's acceptance of the reduced grant payments pursuant to that Agreement over 12 years, without objection, was ample evidence of her continued acknowledgement of the debt. The Court further held that, although the Department has independent statutory authority for administrative recoupment of overpaid benefits, the Debtor did not establish that the payments she made were made involuntarily merely because the payments were required by law. The Debtor failed to come forward with evidence that the recoupment in this case was made pursuant to an involuntary administrative procedure rather than pursuant to her voluntary Agreement.

In re Garcia, Case No. 90-06032-G, (Bankr. ED Mich, 10/8/93). In a case of first impression in the Eastern District, Judge Graves held that monthly condominium association fees which accrue post-petition, are a pre-petition obligation and therefore, dischargeable.

Debtor purchased a condominium in June 1988. The condominium bylaws provided for a monthly condominium association fee, which included the owner's proportionate share of the condominium expenses. Debtor defaulted in paying her fees and on

7/16/90 the condominium association served her with a notice of lien against her property, for fees then due. The Debtor filed bankruptcy later that same day, after the lien was served. On her petition, the Debtor listed the condominium association as a contingent, unliquidated debt. She claimed that the correct amount of the debt could not be ascertained until her ownership interest was terminated.

The first mortgagee undertook foreclosure of condominium before the association sought foreclosure of its lien. The Debtor continued to live in the unit while the foreclosure went forward, and vacated five months before the redemption period expired. At the time she vacated the premises, 15 months of post-petition association fees had accrued.

A discharge was granted to the Debtor and the case was closed. Thereafter, the condominium association sued the Debtor in state court for non-payment of the post-petition fees, claiming that such fees were not discharged because they accrued post-petition. The case was mediated by the Circuit Court, and remanded to the District Court. The Debtor then petitioned to reopen the case to determine if the post-petition fees had been discharged.

Judge Graves analyzed the rulings of other districts on this subject and found as follows:

1. The fees do not constitute an executory contract, subject to acceptance or rejection under §365(d)(1).
2. §727 provides discharge of debt, which the Code defines in §101(12) as liability on a claim. A claim is defined broadly, and includes a right to payment on unliquidated, unmatured, contingent obligations, as well as the right to an equitable remedy for the breach of performance.
3. While the post-petition assessment could not have been liquidated at the time the petition was filed, the Debtor's obligation to pay was a pre-petition debt that was extinguished upon the chapter 7 discharge.

In so ruling, the court agreed with the reasoning of courts in Ohio, Illinois and California, which presented factually similar cases.

The court also noted that Michigan law gives wide discretion to condominium associations in the assessment of fees. Fees can be assessed prospectively or retroactively, monthly or in larger lump sums. The post-petition accrual of a monthly assessment has the same source as a yearly, prospective assessment. The obligation to pay comes into effect on the purchase of the condominium, and ceases only when a new owner is obligated.

In re RCS Engineered Products Co., Himmelspach v Railcar Specialties, Inc., Railcar Specialties, Inc. v Himmelspach & Spartan Tube & Steel, Inc., Case No. 91-30695 (Bankr. ED Mich). In an interesting case involving a "reverse piercing" of the corporate veil, Judge Spector held that a cause of action against a third party, which alleges that the third party treated the Debtor as its alter ego, is an asset of the estate which may be brought by the Trustee, on behalf of all creditors.

Spartan Tube and Steel (Spartan) was a petitioning creditor in an involuntary proceeding brought against RCS Engineering Products Co., (RCS), the Debtor, a wholly owned subsidiary of Railcar Specialties, Inc. (Railcar).

Prior to the entry of the order for relief in the involuntary case, Spartan sued the Debtor and Railcar in state court, alleging that Railcar should be held liable for the debt owed to Spartan by RCS, because Railcar had disregarded RCS as a separate entity and had treated RCS as if it were a part of Railcar. Consequently, Spartan asked the circuit court to disregard the separation of identity between Railcar and RCS, and to recognize a reverse piercing of the corporate veil. After an order for relief was entered in the bankruptcy court, Spartan prosecuted its alter ego action in the circuit court against Railcar, alone.

Railcar filed a motion to dismiss in the circuit court, claiming that the alter ego cause of action alleged by Spartan was a general asset of the estate of RCS, belonging to the trustee on behalf of all creditors. Since the trustee had not abandoned the claim, Railcar challenged Spartan's standing to proceed in circuit court, in effect exercising the trustee's right of action. Spartan defended the motion by producing a letter from Himmelspach, the trustee, in which he "consented" to Spartan bringing an action against Railcar in the circuit court. The circuit court denied the motion.

Shortly after the circuit court denied the motion to dismiss, the trustee filed an adversary proceeding which claimed that Railcar had treated RCS as a division and not as a separate legal entity. The trustee alleged that Railcar should be held liable on the contracts of the Debtor because the debtor served as a mere instrumentality or adjunct of Railcar. Railcar's answer was a general denial.

Railcar then moved to amend its answer, to add a counterclaim for declaratory relief from the bankruptcy court, which asked the court to decide whether Spartan or the trustee had the standing to bring the alter ego complaint. Although the court granted the motion, Railcar never filed the amended pleading. Instead, it brought the same complaint in

the state court, naming the trustee and charging that the trustee had changed his position. Railcar asked the state court to enter a binding declaration of rights stating which of the parties had the right to maintain the alter ego lawsuit. The trustee filed a notice of removal under 28 USC §1452(a), which removed to the bankruptcy court, the action filed against him by Railcar in the Spartan litigation.

All parties asked the bankruptcy court to resolve the issue of standing. Spartan first alleged that the trustee and Railcar were precluded from raising standing based on equitable estoppel and waiver. The court rejected that argument.

The court then reviewed the Michigan case law on alter ego and reverse piercing causes of action, and concluded that under Michigan law, the Debtor RCS would have standing to pursue such an action against Railcar. Since the objective of such an action by the trustee, on behalf of RCS, would be to have Railcar declared liable for certain RCS debts, the court was not troubled by the idea of a corporation "suing itself." Said the court, "The objective of the complaint is to obtain a determination that Railcar is liable for certain debts. The 'single entity' analysis is simple a means of reaching that end, with no other legal or practical significance."

Since the Debtor would have had standing to sue Railcar itself, the trustee had standing to bring his action in the bankruptcy court. The court found that the trustee had removed only the counterclaim naming him as a party, from the circuit court. Spartan's original complaint was still in the circuit court, but the bankruptcy court held that Spartan was stayed from pursuing any claim against Railcar based on an alter ego theory, such theory belonging to the estate for the benefit of all the creditors. However, the court recognized that the trustee might be vulnerable to some defenses which would not necessarily inure against Spartan. Accordingly, the court left the door open for Spartan to ask for reconsideration, should any such defense imperil the trustee's ability to prosecute his cause of action.

In re Mitan, Case No. 93-49786, (Bankr. ED Mich). Debtor filed simultaneous petitions for relief under chapter 13 and chapter 11, at a time when her previously filed chapter 7 case was still pending. Debtor was an individual, apparently unemployed, whose sole ascertainable sources of income were alimony and social security. Her sole asset was a house, that was subject to a mortgage taken out after the filing of the Debtor's chapter 7 filing. The Debtor was in default of the mortgage.

The Debtor's chapter 13 petition was dismissed. Before the order of dismissal was entered, Debtor filed a motion to convert the chapter 13 to an 11. Before the motion to convert was heard (and denied), the Debtor filed a chapter 11.

The mortgagee filed a motion seeking dismissal of the chapter 11 filing for bad faith under §1112(b)(1)(2), or for lift of stay under §362(d). In support of the latter, the mortgagee claimed that the Debtor had no equity in the residence, the residence was not necessary to her effective reorganization, and the Debtor had no reasonable ability to effectuate a plan.

Judge Graves considered whether the simultaneous filing of petitions under chapter 11 and 13 constituted bad faith. It also analyzed the Debtor's case as a single asset filing. The court found that the case was filed in bad faith as a single asset case, and it further found that the Debtor's conduct evidenced an intent to abuse the judicial process. Consequently, it dismissed the petition, with prejudice.

In re Acorn Building Components, Inc., UAW v Acorn Building Components and the Unsecured Creditors Committee, Case No. 92-04583, (Bankr. ED Mich). On remand from the District Court for the Eastern District of Michigan, Judge Graves considered the merits of a motion by the UAW pursuant to §1113(f), for payment of pre-petition health benefits under a collective bargaining agreement, as an administrative expense. The UAW contended that the language of §1113(f) superseded the priorities of payment set down in §507, and that the 6th Circuit in Unimet Corp. v United States Steel Workers, 842 F2d 879 had declared that health benefits payable under a collective bargaining agreement are an administrative expense.

The court found the union's position to be untenable. It noted that the health benefits in Unimet were post-petition. Judge Graves stated that Unimet only stands for the proposition that the Debtor in possession could not unilaterally abrogate its post-petition obligations under a collective bargaining agreement, regardless of whether the obligations ran to current employees or retirees and regardless of whether the service provided by such current employees and retirees would otherwise qualify for administrative expense treatment under §503(b)(11).

The court went on to cite, with approval, In re Armstrong Store Fixtures 135 BR 18 (Bankr. WD PA 1992), which addressed the identical claim made by the union, that §1113(f) supersedes §507(a). The Armstrong court found that the seemingly opposing sections could be harmonized, rather than the former

rendering the latter inoperative. Application of §507 would not facilitate unilateral termination or alteration of collective bargaining agreements. Rather, §507 applies only after a violation of §1113(f). At the point of a violation, claims which arise out of the violation are then classified in order of priority under §507. In order to be treated as an administrative claim, it must qualify as such under §507.

In re Gateway North Estates, 165 BR 427 (ED Mich 1994). Judge Gadola affirmed the bankruptcy court's dismissal of a chapter 11 as a bad faith filing. The Debtor, a land holding corporation, filed chapter 11 at a time when it owned 3 pieces of property, 2 of which were in foreclosure in Florida. At the time of filing, the Debtor had no ongoing business. It filed a one page reorganization plan which proposed to sell the property being foreclosed and to pay the mortgagees.

The district court found that dismissal for cause was within the sound discretion of the bankruptcy court, and the decision would be reviewed under an abuse of discretion standard. The court found no abuse of discretion under the facts of the case and it upheld the bankruptcy court.

In re Crittenden, Thomas v Crittenden, Case No. 93-CV-71119-DT, (ED Mich). In this appeal from the decision of the bankruptcy court to dismiss a complaint for denial of discharge or dischargeability. Judge Woods reinstated one of the courts for a trial on the merits.

Thomas was incarcerated, during which time he turned certain properties over to the Debtor, his accountant, for management. On his release, he filed an adversary proceeding, *pro se*, against the Debtor, alleging breach of contract, wrongful conversion, breach of fiduciary/professional responsibility and common law fraud. His pleadings were dismissed on a motion for summary disposition, for failure to state a cause of action upon which relief could be granted, and for failure to plead fraud with sufficient specificity. He was allowed to amend, which he did. Another motion was brought, to which Thomas failed to file a timely reply. His case was again dismissed. He sought reconsideration, and his motion was dismissed as untimely. The tenacious Thomas appealed the bankruptcy court to the district court, lost, appealed to the 6th Circuit, and won when the 6th Circuit found that his motion for reconsideration was indeed timely. The case was remanded to the bankruptcy court, which again dismissed all 4 counts of the amended complaint. The plucky plaintiff appealed again, and this time, Judge Woods of the District Court, saved one of his counts.

The Court held that *pro se* complaints are held to less stringent standards than formal pleadings drafted by lawyers. However, even *pro se* parties must put forth more than bare assertations of legal conclusions in order to satisfy federal notice pleading requirements. In reviewing the amended complaint, the district court found that the count entitled "Wrongful Conversion" quite clearly made out a case of embezzlement, with specific dollar figures and sources of funds. Accordingly, the Debtor was on adequate notice of the charges against him.

The court examined the other 3 counts and finding them lacking, dismissed them.

In re Tony Johnson, (Bankr. ED Mch) Judge Shapero, issued 6/3/94. Creditor JI Case Credit (Case) repossessed two pieces of excavation equipment from the Debtor, a back hoe and a bulldozer. In response, Debtor filed a petition under chapter 13 and demanded turnover of the equipment. Case refused and filed a motion for lift of stay, in order to complete a sale of the equipment. It was agreed that the Debtor had no equity in the equipment. Adequate protection was not an issue, since the Debtor proposed to pay for the equipment in full. Case alleged that the equipment was not necessary to the Debtor's effective reorganization, and that the Debtor's poor business performance made him an unlikely candidate for a successful reorganization.

The Debtor was employed as a delivery truck driver, and conducted an excavation business on the side. Historically, the excavation business had not made money sufficient to service the debts evidenced by the Debtor's filing. The Debtor's truck driving wages were to be used in the proposed plan to subsidize the business expenses for most of its 5 year period.

The Debtor's proposed plan did not project expenses consistent with historical evidence. For example, where his tax returns and business ledgers showed an average of 33% of gross income had been spent on "operating supplies", the Debtor's projected business budget proposed to spend only 7% of gross income on the same supplies. The plan further failed to account for certain necessary expenses for taxes, insurance and outside labor. Debtor admitted the inaccuracies of his projections, as measured against his historical books and records, and he admitted that if he gave up excavation, he could pay his debts using his wages only in less than 5 years.

Nevertheless the Debtor insisted that he had the ability and he wanted the opportunity to make a go of his excavating business.

Case argued that the Debtor's plan showed a lack of sound judgment, and that the plan as proposed was not feasible. Further, the Case equipment secured to Case was not necessary to the Debtor's effective reorganization under §362(d)(2), because the Debtor could successfully complete a chapter 13 and pay all of his debts, using his wages alone. In fact, the equipment was detrimental to the Debtor's efforts, because the payments proposed on the equipment were more than the business would generate over the life of the plan.

"Effective" reorganization has been interpreted to mean:

a. there must be an reasonable possibility of a successful plan proposed within a reasonable time; and
b. a factual analysis is required to determine the Debtor's intent, the relationship between the property involved and the anticipated income production, as well as how realistic the Debtor's expectations appear to be.

United Sav. Ass'n. of Texas v Timbers of Inwood Forest Assocs. Ltd., 484 US 365 (1988). According to Judge Shapero, effective reorganization involves the feasibility test, which means that:

1. the Debtor must "do more than manifest unsubstantiated hopes for a successful reorganization"; In re Canal Place, 921 F2d 569, 577, (5th Cir. 1991); but,
2. the Debtor is not required to show that its then particular plan is in fact confirmable (i.e. the lift of stay hearing is not a confirmation hearing). Rather the inquiry is the Debtor's general ability to propose a plan - not whether or not a particular plan can or will be confirmed.

The Court found it inappropriate to consider the various sources of income, and expenses allotted to each, separately, in determining whether or not an effective reorganization was feasible. Further, the Case equipment was integral to the Debtor's excavation business. Accordingly, the Court could not conclude that the Debtor was incapable of proposing a feasible plan under chapter 13, at this point in the proceedings, and the Debtor was entitled to an opportunity to confirm a plan. The motion for lift of stay was denied.

The court went on to note that the Debtor would stand a stricter test of feasibility when he moved to confirm a plan, and that the noted inconsistencies would have to be corrected by that time.

EDITOR'S NOTEBOOK

This edition marks the last Newsletter in which Vicki Young is contributing as a case summarizer. Vicki has been submitting case summaries diligently since May, 1993 (except for recently, when she came up with some lame excuse about having a baby), and she will be missed. Her spot will be taken by Mary Hamlin, who will step in without missing a beat next edition. If anyone else is interested in summarizing cases for the Newsletter, please let me know.

Should anyone have any interest in serving on the Steering Committee, they should contact Pat Mears or Bob Wright. Alternatively, should anyone have any interest in becoming editor of the Newsletter, they should contact me.

Our annual bankruptcy seminar is coming up on July 21, 22 and 23 at the Park Place Hotel in Traverse City. The seminar opens with a cocktail reception on Thursday evening, with a varied selection of courses on Friday morning, and a breakfast talk by Sally Neely of Los Angeles on Saturday morning. Bob Sawdey reports that if only 5 or 6 people sign up for his discussion on Malpractice Traps in Bankruptcy, he may end up taking them all out to a local drinking estabishment (and you wonder why they call it the Bar). Now, if that doesn't get you excited about attending the seminar, I don't know what will! I hope to see many of you in Traverse City.

Legal Definition -- Trover, or more accurately, T. Rover: a large carnivorous dinosaur which makes an excellent pet.

Peter A. Teholiz, Editor

STEERING COMMITTEE MINUTES

A meeting of the bankruptcy steering committee of the Federal Bar Association of the Western District of Michigan was held on June 17, 1994, at the Peninsular Club in Grand Rapids. The following members were present: Brett Rodgers, Bob Sawdey, Peter Teholiz, Janet Martin, Bob Wright, Gordon Toering (for Tim Hillegonds), Denise Twinney, Dean

Rietberg (for Dan Casamatta), Tom Sarb, Jeff Hughes, Steve Rayman and Tom Schouten.

1. 1994 Seminar. Steve Rayman reported that he had already received 70 registrations and hoped that more would be coming in the next few weeks. He indicated that the limited sessions seemed to be popular, but that he hoped to accommodate everyone who provided a preference. As of this time, he thought that notification would be through the receipt of materials: because the limited sessions require advanced study, the materials for these sessions would be sent out before the seminar. Those persons receiving the materials would thus be notified that they were in the sessions, while those persons who did not receive the materials would therefore realize that they were not included. Steve also indicated that, notwithstanding the committee's vote to increase the price this year, the flyers had been sent out with the old prices. Consequently, prices will stay the same for this year, but be increased next year. Steve reported that he was going to look into the possibility of videotaping the sessions, with the hope of marketing them after the seminar was finished. Bob Sawdey moved that Steve be given the authority to hire someone to do so for $1000.00 or less. Janet Martin seconded the motion, which was then unanimously passed. Lastly, the Committee reviewed the various options for sites for next year's seminar, and decided to return to the Lakeview on Mackinac Island.

2. Social Activities. Denise Twinney reported that she had only received a few inquiries about the sail cruises. She indicated that if a group discount rate was desired, there would have to be sufficient sign-ups by July 4, 1994. She also reported that the 12-2 lunch cruise included up to three spots for children with two paid adult tickets. Steve Rayman indicated that he had been collecting the activities preferences and was going to turn them over to Denise in bulk. Brett Rodgers reported that the Federal Bar had authorized the deposit for the golf course only if the full amount was refunded to the Bar. He indicated that Jim Engbers, who was in charge of the golf, knew of this requirement.

Steve Rayman reported that the Park Place was providing the Presidential Suite to the Bar Association without cost as part of the seminar package. After much discussion, it was decided that the room is going to be used for the cocktail reception and that Mary Hamlin, who was planning the cocktail reception, would be allowed to stay in the room. To avoid similar problems in the future, Brett Rodgers moved that in the future, the Chair of the steering committee attempt to persuade the seminar hotel to provide a room for the cocktail reception without charge. The Chair will then coordinate the reception and use the room during the seminar. In the event that the hotel will not provide the room free of charge, the FBA will pick up the cost, along with the cost of the reception. Tom Schouten seconded the motion, which was unanimously passed.

3. Re-election. There are four spots open on the committee this year. Both Brett Rodgers and Tom Schouten indicated that they were interested in serving for another term. Denise Twinney indicated that she was not interested in serving for another term, and Bob Sawdey reported that Jim Engbers had also indicated this. Brett Rodgers reported that Marcia Meoli has a conflict with the Friday meetings, because of her work as a chapter 7 trustee. Further activity was tabled until the next meeting.

4. Additional Seminars. Bob Sawdey reported that John Potter had requested that the committee investigate the possibility of holding an agricultural lending seminar, similar to the Asset-Based Lending seminar which was just recently concluded. The Committee unanimously agreed that this would be a useful project, to be modeled after the previous one (i.e., the seminar would be set up and run by the lenders involved, without cost to the FBA). Tom Schouten, Brett Rodgers and Steve Rayman were appointed to develop this idea further. The Committee also discussed the possibility of holding a seminar when the new bankruptcy bill is finally passed by Congress, to review its many new provisions.

5. Future Meetings. There will be no meeting in July. If any pressing business is required, the Committee will attempt to meet at the seminar. The next scheduled meeting of the steering committee will be on Friday, August 19, 1994, at the Peninsular Club in Grand Rapids.

BANKRUPTCY COURT ORDERS

See attached General Order 7, dated June 2, 1994.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

GENERAL ORDER 7

June 2, 1994

DETERMINATION OF PLACE OF HOLDING COURT

Whereas the Judicial Conference has designated 5 locations within the Western District of Michigan as appropriate places for holding court, and

Whereas this court wishes to establish a uniform rule for the assignment of cases to these locations for the purpose of setting hearings and other matters before the court and to establish the manner in which a change in such assignment can be requested, and

Whereas this court desires to work with nonprofit associations which provide legal assistance to indigent clients to encourage professional representation within the framework of this rule,

NOW THEREFORE, IT IS ORDERED that the Clerk of this court shall schedule all hearings, trials and other matters before this court to be held in the courtrooms specified below, unless the judge assigned to a specific case shall change the designation by order.

If the county of residence or principal place of business of the debtor listed on the bankruptcy petition is in one of the following counties, then the appropriate courtroom will be designated as follows. However, if it is clear that the debtor's county of residence or the location of the principal place of business has recently changed and that for the majority of the six months immediately preceding filing that county would have been another county within this district, then that previous location should be used for purposes of this order.

A. For the following counties the designated location for holding court is Grand Rapids:

Barry	Ionia	Kent	Mecosta	Montcalm
Muskegon	Newaygo	Oceana	Ottawa	

B. For the following counties the designated location for holding court is Kalamazoo:

Allegan	Berrien	Branch	Calhoun	Cass
Hillsdale	Kalamazoo	St. Joseph	Van Buren	

C. For the following counties the designated location for holding court is Lansing:

Clinton	Eaton	Ingham

D. For the following counties the designated location for holding court is Traverse City:

Antrim	Benzie	Charlevoix	Emmet	Grand Traverse
Kalkaska	Lake	Leelanau	Manistee	Mason
Missaukee	Osceola	Wexford		

E. For the following counties the designated location for holding court is Marquette: Any of the counties in the Upper Peninsula of Michigan.

IT IS FURTHER ORDERED that the debtor any creditor, or other party in interest may seek a transfer of the designated location for holding court in any bankruptcy case or adversary proceeding which may be warranted in the interest of justice or the convenience of the parties by filing a motion which shall be noticed to all interested parties pursuant to Local Rule # 9.

IT IS FURTHER ORDERED that notwithstanding the last paragraph, an attorney who is affiliated with a pro bono program and who has agreed as part of the program to represent an indigent client before this court without charge to the client, may submit a motion and ex parte order transferring the case to the location for holding court which is located nearest the principal office of the attorney. The Court may then issue an order transferring the location for holding court as prayed without prior hearing. All such orders shall be noticed by the Clerk to all parties in interest together with a notice of the action and an opportunity to object. If an objection is filed, the hearing will be scheduled for the courtroom to which the case would normally be assigned absent to request for redesignation. The standard for transfer of location of hearings shall be the interest of justice or convenience of all parties, including the ability of the indigent party to retain representation if such tranfer is denied.

Laurence E. Howard

Hon. Laurence E. Howard

Hon. James D. Gregg

Jo Ann C. Stevenson

Hon. Jo Ann C. Stevenson

At Grand Rapids, Michigan
this 2nd day of June, 1994.

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 through May 31, 1994. These filings are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	January 1- May 31, 1994	Percent Increase (Decrease)	January 1, May 31, 1993	Percent Increase (Decrease)	January 1, May 31, 1992
Chapter 7	1775	(11.6%)	2008	(16.6%)	2408
Chapter 11	40	(18.4%)	49	0%	49
Chapter 12	10	(41.2%)	17	54.5%	11
Chapter 13	665	7.6%	618	(11.9%)	702
	2440	(7.5%)	2692	(15%)	3170

Western Michigan Chapter of the
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