BANKRUPTCY LAW NEWSLETTER

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WESTERN DISTRICT OF MICHIGAN CHAPTER

DECEMBER, 1995

THE BALANCING ACT REVISITED

By: Alexander C. Lipsey*

A trustee faces a number of significant issues in trying to administer a Chapter 13 Plan under the Bankruptcy Code (11 U.S.C §101 et seq or "Code") but none so vexing as balancing the requirements of 11 U.S.C. §501 et seq. concerning the allowance of claims (especially §506 - secured claims) against 11 U.S.C. §1327, the effect of confirmation. Section 1327 read:

> (a) The provisions of a confirmed Plan bind the Debtor and each creditor, whether or not the claim of such creditor is provided for by the Plan, and wether or not such creditor has objected to, has accepted, or has rejected the Plan.
>
> (b) Except as otherwise provided in the Plan or the Order confirming the Plan, the confirmation of a Plan vests all of the property of the estate in the Debtor.
>
> (c) Except as otherwise provided in the Plan or in the Order confirmation the Plan, the property vesting in the Debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the Plan.

These two concepts are typically at odds with each other because the Debtor normally

*Alexander C. Lipsey, Attorney for Joseph A. Chrystler, Chapter 13 Trustee.

authors the Plan which is confirmed while the creditor files the claim which may be allowed. For example, the Debtor may file a Plan proposing to treat creditor A as totally unsecured, to be paid a 10% dividend along with the other general unsecured creditors. When the trustee calculates the feasibility of the Plan, such treatment yields a Plan which can be funded within the requirements of the Code. However, creditor A subsequently files his proof of claim alleging that he is fully (or even partially) secured. Using the creditor's classification (secured claims are paid in full up to the value of the collateral), the trustee determines that the Debtor's Plan is no longer feasible. Each party prefers to have its position upheld as the law of the case subject only to objection by the other side. The trustee has to strike a balance because it is clear the Code does not provide either the Plan or the proof of claim with total control of the administration of the case.[2] The question then is where is the balance point and how can that balance be struck.

The purpose of this article is to quickly trace the history of the conflict between claims-driven and confirmation order-driven administration and to try to discern where most courts (hopefully including those in the Western District of Michigan among them) have determined that balance point to be, and then to examine how one Chapter 13 trustee has implemented a system to strike that balance.

THE HISTORIC TRILOGY

Any review of the conflict between claims and the effect of the confirmation order has to start with the three positions espoused in Simmons v. Savell, 765 F2d. 547 (5th Cir. 1985), In re Pence, 905 F2d. 1107 (7th Cir. 1990), and In re Linkous, 990 F 2d. 160 (4th Cir. 1993). Each of these cases sets forth the policy considerations important in establishing a balancing point which adequately addresses the interests of both the Debtor and the creditors.

In Simmons, the Debtor filed a Plan which listed the creditor as unsecured and the debt as disputed. It seems that Mr. Savell, a plumber had performed work for Mr. Simmons for which he was not paid. Mr. Savell filed a construction lien and sought to enforce it in State Court. However, Mr. Simmons filed for protection under Chapter 7 of the Code before a determination of whether to enforce the lien could be made in State Court. A couple of months later, Mr. Simmons decided to convert his case from Chapter 7 to Chapter 13 and to propose a Plan paying unsecured creditors a 10% dividend. Prior to confirmation, Mr. Savell filed a proof of claim asserting secured status. No objection was filed either to the claim or to confirmation and the plan was confirmed as originally written. Debtor then sought to set aside Mr. Savell's lien as the confirmed plan provided that his claim was unsecured.

The Appellate Court took the position that a claim, not subject to objection, is deemed allowed under §501 and therefore must be honored under the terms of the Plan. In essence, the filing of the claim served as a *de facto* amendment to the plan. Unless there was a formal objection to the claim, its terms governed the treatment of the creditor for Chapter 13 purposes. This position was based upon the court's view that "under the Code ... any statutory lien that is valid under state law remains valid through bankruptcy unless invalidated by some provision of the Code."[3] The court held that a formal objection

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[2]For example, §506(d) provides that a secured creditor's lien survives the confirmation process even if the creditor fails to file a claim.

[3]765 F.2d at 556. See also In Re Tarnow, 749 F.2d 464 (7th Cir. 1984) and In Re Lee, 182 BR 354 (Bankr.

to the claim was the only way to attack a creditor's assertion of secured status.

In Pence, stands in direct contrast to Simmons. In Pence, the Debtor operated a small business which began to fail when Mrs. Pence's husband died. Before her husband died, and while the business was profitable, the couple obtained a loan from the creditor using their residence and business property as security.

When Mrs. Pence filed Bankruptcy, her Chapter 13 Plan proposed to pay the creditor in full using the proceeds from the sale of her business property. The Plan further provided that the lien on the residence would be released when the creditor received all of the business property sale proceeds. At the time of confirmation, the creditor was owed $47,000.00 and the business property was appraised by a neutral third party at $58,500.00. The Plan was confirmed without objection.

Shortly after confirmation it became clear that the business property was worth substantially less than its appraised value. The creditor sought to maintain its lien on the residential property by asking for the revocation of the confirmation order and the lifting of the automatic stay. As part of its argument for revocation, the creditor maintained that it had not received adequate notice of the Confirmation Hearing and the possible loss of its rights.

The Court, after summarily dismissing the creditor's assertion that it had not received notice of the Confirmation Hearing, held that where a Plan provides for "fair and equitable treatment" for the secured creditor and such Plan is confirmed without objection, a creditor cannot later challenge confirmation based upon making a bad deal with the Debtor.

It is interesting to note that these two cases are not as far apart as they may at first seem. The underlying policy driving Simmons, is expressed in Pence, namely that unless an action is taken to avoid a lien, it passes through a Bankruptcy proceeding.[4] In fact, the court in Simmons was concerned that the Plan was confirmed when it was clear that the secured creditor didn't consent to its proposed treatment. It points out that "because the requisites of §1325(a)(5) were not satisfied with regard to Simmons' proposed Plan, it was erroneously confirmed."[5] Under the circumstances, the secured creditor was denied any opportunity to contest his treatment and therefore he was in effect denied his due process rights. Faced with the choice of upholding a confirmation order which did not resolve the conflict between the Plan and the claim through some kind of hearing and upholding the lien as manifested by the proof of claim, the Simmons Court chose to come down on the side of the proof of claim. The Court was unwilling to extinguish the lien rights of a creditor without giving him some opportunity to object.

Likewise, the Pence Court was faced with a situation where the creditor had participated in the process of confirmation by filing a claim and monitoring the case through confirmation. It appeared that the creditor was willing to accept the deal (Plan) offered by the Debtor, after getting the information from a third party that its interests would be protected. Clearly the creditor was afforded every opportunity to challenge its proposed treatment under the Plan and it chose not to object to confirmation. The creditor had full due process protection and therefore the Court was not willing to let the creditor "stick its head in the sand and pretend it would not lose

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SD GA 1995).

[4]905 F.2d at 1109. See also Long v Bullard, 117 U.S. 617, 6th Cir. 917, 29 L.Ed. 1004 (1886), In Re Tarnow, 749 F.2d 464, 465 (7th Cir. 1984).

[5]765 F.2d at 554.

any rights by not participating in the proceedings."[6]

It was against this backdrop of apparently conflicting policies that the case of In Re Linkous, 990 F.2d 160 (4th Cir. 1993) was decided. In Linkous, the Debtor filed a Chapter 13 Plan providing that the creditor was partially secured on a mobile home and a vehicle. The Court sent the creditor a notice of filing and the Debtor sent the creditor a summary of the Plan, both of which the creditor acknowledged receiving. The creditor did not object to confirmation and the Plan was confirmed. Two weeks later, the creditor filed proofs of claim at odds with the treatment in the confirmed Plan. It then sought to have the confirmation order revoked.

The Court examined the issue, not from the standpoint of whether §506 or §1327 controlled but whether there was a violation of the creditor's constitutional rights to due process under the Fifth Amendment. In that vein, the Court acknowledged that the confirmation Order is normally entitled to res judicata considerations. However, it carved out an exception when such an Order results in the denial of due process to the creditor. Quoting the U.S. Supreme Court In Re Mullane v. Central Hanover Bank and Trust, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the Court noted "(a)n elementary and fundamental requirement of due process in any proceeding which is accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[7]

The Linkous Court took the position that the Confirmation Order should be given finality if adequate notice is given to the creditor as to how the Plan proposes to affect the creditor's rights. This position supports the Pence position that the Confirmation Order should control as to treatment but it protects the policy that the creditor be allowed an opportunity to object to adverse treatment proposed by Debtor's Plan. This right is present with or without the creditor having filed a proof of claim prior to confirmation.

Linkous focuses the discussion on the question of due process rather than whether the claim or the confirmation of the Plan controls. If the creditor receives adequate notice of its proposed treatment under the Plan, he acts at his own peril if he fails to object to adverse treatment and the plan is confirmed.[8]

The question then becomes what is adequate notice to the creditor. This appears to be the balance point between the rights of the claimant and the rights of the Debtor. In Linkous the Court found that a Court notice which stated the first meeting date and the date of confirmation and a summary of the Plan, mailed by the Debtor, which did not explicitly state that the secured loans would be treated as only partially secured was not sufficient notice so as to alert the creditor that its interests were being adversely affected. The Court appears to be placing the burden on the Debtor (or the Court or trustee) to insure that each creditor has enough information to make a decision whether to object to a Plan before it is confirmed .

On the other hand, In re Rodgers, 180 B. 504 (Bankr. ED Tenn. 1995) declared the following language sufficient notice to a creditor to advise them they would receive no

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[6]905 F.2d at 1109, contra see Matter of Howard, 972 F.2d 639 (5th Cir. 1992).

[7]990 F.2d at 162.

[8]See In Re Arkell, 165 BR 432 (Bankr. MD Tenn 1994). Judge Lundin's reaffirmation of In Re Tucker, 35 BR 35 (Bankr. MD Tenn 1983) holding that a creditor is bound by the valuation established at confirmation. Also see In Re Rodgers, 180 BR 504 (Bankr. ED Tenn 1995); In Re Moore, 181 BR 522 (Bankr. D. Idaho 1995).

payments in the Chapter 13 Plan:[9]

> The Plan proposes payments to the trustee of $50.00 semi-monthly. This claim was scheduled as unsecured. The Debtor proposes to settle your debt for 100%. The list of debts contained the following remarks or comments about this claim--
>
> Notice of filing/To receive no distribution.
> Disputed.

The Court held that while the notice "may not have been a model of clarity, it was certainly adequate to apprise (the creditor) or any prudent person exercising reasonable diligence, about the specific treatment proposed".[10]

While the Rodgers facts may provide more clouds than sunlight, the author would submit that the above language does provide sufficient guidance to allow the development of a reasonable system to strike the balance between the competing interests.

TRUSTEE'S RESPONSE

In trying to provide adequate notice to creditors, the standing trustee has several options. He could require that the Debtor submit enough copies of the Petition, Plan and Schedules to serve each and every creditor with full copies of the filing documents. This has been done in various Districts but has proven very costly. In addition, since a copy of the filing documents are on file at the Court, the entire record is available to any creditor who simply visits the court clerk's office. This of course, assumes the creditor or his representative is close to the Bankruptcy Court and can take the time to pour over Court records to determine its treatment in various Plans.

A variation of the above which would be more cost effective is for the Debtor's counsel to issue a separate notice to all creditors advising them of the availability of full copies of the Plan and Schedules upon their written request. While this places some onus on the creditor to monitor the case, it does not address the central issue of giving them notice of their proposed plan treatment as any given creditor will only gain that information through the second (or third) step of requesting copies of the Plan and Schedules.

The trustee could also review each claim and file the necessary objections (either to the claim or the Plan) to resolve any conflict. This however, would place the trustee squarely in the middle of any confirmation dispute involving the treatment of a particular creditor. As the trustee's position should be to defend the integrity of the system, it is difficult to imagine a trustee maintaining a neutral posture while advocating treatment of an individual creditor for reasons other than explicitly set forth in the Code or Bankruptcy Rules. In addition, since many claims are not even filed prior to plan confirmation, feasibility is necessarily calculated based upon the amounts scheduled by the Debtors. If the trustee is then asked to formally advocate for one side or the other when a claim is filed a potential conflict could arise.

The Standing Trustee for the Western District of Michigan, Southern Division after reviewing the case law and examining numerous alternatives, has adopted the following procedures in an attempt to provide adequate notice to creditors in time for them to protect their rights. The system is by no means foolproof and it will not prevent every

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[9] 180 BR at 505.

[10] 180 BR at 506.

conceivable dispute[11]; however, the trustee has determined that the interest of the parties balanced with the economies of targeted noticing can best be served by these recently adopted procedures.

As claims are filed with the trustee's office, each secured claim will be reviewed to determine how it matches with the proposed treatment in the Debtor's Plan. If the claim agrees with the proposed treatment, nothing will be done by the trustee as the Plan will be administered in accordance with the expectations of both the Debtor and the creditor.

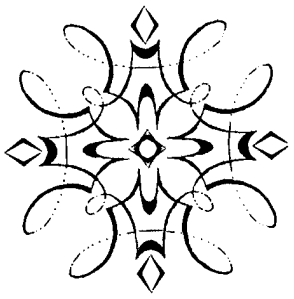
If the claim does not agree with the proposed Plan treatment, one of a number of things will happen. If the Plan proposes to treat the claim as secured but the claim is filed as unsecured, the Debtor's attorney will be notified and asked whether the Debtor wishes to amend his plan to conform with the claim filed by the creditor. If nothing is done the claim will be treated as secured (the term of the Plan). (See appendix A for a copy of the letter used by the trustee).

If the claim is filed as secured and the Plan lists it as unsecured both the creditor and the Debtor's attorney will be notified of the discrepancy. The Debtor's counsel will be given the option of amending the Plan to conform with the claim while the creditor will be advised that unless the debtor amends the plan, the claim will not be treated as filed except as to the validity and amount. If the creditor wishes different treatment, he will either have to convince the Debtor to amend or he will have to file an objection to confirmation. (See appendices B & C)

For claims which are filed as partially secured, the parties will be notified as to the nature of any disputed value and advised that confirmation cannot go forward until all conflicts are resolved. While, absent creditor objection, there is no legal basis for denying confirmation of a plan which treats the creditor differently than the filed claim, the trustee will make every effort to assure the parties an opportunity to negotiate a resolution. The creditor will still have the obligation to try to block confirmation if he disagrees with his proposed treatment.

For claims received post-confirmation, where there is a conflict, the trustee will notify both parties of the problem and encourage a resolution. In this situation, the trustee can only serve as a facilitator to help both sides reach an accommodation. (See appendix D)

When combined with the Notice of Commencement issued by the trustee's office, the above communications will serve as a filter to minimize the Linkous-type problems. Obviously all scenarios cannot be covered with this type of system. In particular, the question of how to handle pre-petition claims, received post-confirmation, which are at variance with the confirmed Plan remains a thorny problem. However, this system is a reasonable beginning.



[11]In fact, the Trustee is aware that there may be several variations of this system which may be preferable to Debtor and/or creditors. We would welcome input to this ongoing process.

JOSEPH A. CHRYSTLER
Standing Chapter 12/13 Trustee
906 East Cork Street
Kalamazoo, Michigan 49001-4876
Telephone: (616) 343-0305

Dec 07, 1995

TO:

IN RE:

CASE NO:
Chapter 13

This office has received a claim from in the total amount of $ 6,872.00 . The claim was filed as:

UNSECURED

but the plan treats this creditor as:

SECURED

The terms of the plan govern the situation. To treat this creditor differently, the plan will have to be amended.

Barring a pre-confirmation amendment, we will assume your recommendation to your client(s) is to continue to treat this creditor as listed in the plan for purpose of distribution in any confirmed plan.

Your prompt attention to this matter, if appropriate, is appreciated.

Very truly yours,

Standing Chapter 13 Trustee
Western District of Michigan -
Southern Division

(nfg146/9.1095)

APPENDIX A

JOSEPH A. CHRYSTLER
906 East Cork Street
Kalamazoo, Michigan 49001-4876
Telephone: (616) 343-0305

Dec 06, 1995

TO:

ACCT NO:

IN RE:

CASE NO:
Chapter 13

This office has received your claim, filed in the total amount of $ 1,001.29 with $ 156.98 requested to be treated as secured, and the balance of the claim, if any, to be treated as general non-priority unsecured.

The plan proposes treatment of your claim as follows:

TOTALLY UNSECURED

The plan is unconfirmed as of the date of this writing. If you do not obtain a stipulation with the debtor(s) as to different treatment than proposed by the plan, or if you do not object to confirmation of the plan for the purpose of obtaining treatment in accordance with the claim filed, if the plan is confirmed by the Court without amendment dealing with your claim, you will be bound by the terms of the confirmed plan.

Confirmation of the plan binds the debtor and each creditor. Your claim is prima facia only as to amount. The res judicata effect of an order confirming a plan is what binds the parties, not the treatment requested by the claim. If the creditor finds the proposed treatment in the plan of its claim unacceptable, it has an affirmative duty to object to the plan or seek a voluntary modification, if unconfirmed, or to seek a voluntary modification or file a Motion to modify under 11 U.S.C. § 1329, if confirmed.

This letter is sent to you for informational purposes, and because it appears the plan proposes treatment different than that which you would prefer. The responsibility to seek what you would consider as more appropriate treatment is up to you.

Very truly yours,

Standing Chapter 13 Trustee
Western District of Michigan - Southern Division

cc: Attorney for debtor(s): Attorney for creditor (if any):

APPENDIX B

JOSEPH A. CHRYSTLER
Standing Chapter 12/13 Trustee
906 East Cork Street
Kalamazoo, Michigan 49001-4876
Telephone: (616) 343-0305

Dec 06, 1995

TO:

IN RE:

CASE NO:
Chapter 13

This office has received a claim from SEARS ROEBUCK & COMPANY in the total amount of $ 1,001.29 , filed as secured for $ 156.98 , with the balance, if any, unsecured. The collateral listed on the claim is REFRIGERATOR

The terms of the plan govern the situation. To treat this creditor as secured, the plan will have to be amended, and notice will then have to be given by my office to all affected parties, with twenty days allowed for possible objection before confirmation can occur.

Barring a pre-confirmation amendment, we will assume your recommendation to your client(s) is to continue to treat this creditor as unsecured for purpose of distribution in any confirmed plan.

Your prompt attention to this matter, if appropriate, is appreciated.

Very truly yours,

Standing Chapter 13 Trustee
Western District of Michigan -
Southern Division

APPENDIX C

JOSEPH A. CHRYSTLER
Standing Chapter 12/13 Trustee
906 East Cork Street
Kalamazoo, Michigan 49001-4876
Telephone: (616) 343-0305

Dec 07, 1995

TO:

IN RE:

CASE NO:
Chapter 13

This office has received a claim from in the total amount of $ 6,872.00 . The claim was filed as:

UNSECURED

but the plan treats this creditor as:

SECURED

Confirmation of this plan has occured, with this creditor to be treated as the plan states. If you want to treat it in any other fashion, an amendment to the plan will be necessary.

Your prompt attention to this matter, if appropriate, is appreciated.

Very truly yours,

Standing Chapter 13 Trustee
Western District of Michigan -
Southern Division

(nfg146/9.1095)

APPENDIX D

RECENT BANKRUPTCY COURT DECISIONS

The Western District cases are summarized by Vicki S. Young. There were no Sixth Circuit and Supreme Court decisions nor any Eastern District decisions.

FCC National Bank v MacRoberts, (In Re: MacRoberts), (Bankr. WD Mich November 6, 1995) Case No.: SK 95-82228. Judge Stevenson issued a Supplemental Opinion to an opinion which was given in open court and affirmed in the Court's Judgment of No Cause of Action concerning the Plaintiff's Complaint seeking nondischargeability of debt.

The Plaintiff filed its Complaint seeking nondischargeability of a $7,723.61 debt pursuant to 11 U.S.C. §523(a)(2)(A). The Debtor failed to file an answer and the clerk served a "Notice of Time Set for Taking Default Judgment". At the default hearing, both Plaintiff's counsel and the Debtor appeared. Although present with witnesses, Plaintiff's counsel did not present testimony, but instead, requested to adjourn the hearing to afford the Plaintiff an opportunity to attempt to settle with the Debtor. At the adjourned hearing, Plaintiff's counsel appeared sans witness and the Debtor did not appear. Plaintiff's counsel proceeded, advising the Court of several factual allegations supporting the Plaintiff's Complaint and request for relief.

The Court held that the Plaintiff had not met its burden of proof as to intent, a necessary element of §523(a)(2)(A) because Plaintiff's counsel did not present evidence to the Court, only argument. The Court noted that it could not consider Plaintiff's counsel's statements as offers of proof. However, the Court noted that even if counsel's statements were considered offers of proof, the Plaintiff still did not meet the burden of proving the Debtor's intent. Grogan v Garner, U.S. 279, 291 (1991). The Plaintiff must prove actual fraud, which involves intentional wrong on the part of the Debtor. Proof of constructive implied fraud, is not enough; however, convincing circumstantial evidence can support a finding of actual fraud. Generally, this requires taking the testimony of the accused.

Entry of a Default Judgment with respect to a dischargeability challenge is governed by Fed.R.Bankr.P. 4007(b) and 7055. Rule 7005 requires the Plaintiff to "...establish the truth of any averment by evidence..." Furthermore, the Notice of Time Set for Taking Default Judgment states that "testimony and proofs will be required for objections to discharge or dischargeability matters." The Court held that Plaintiff was required to question the Debtor under oath, either through a Fed.F.Bankr.P. 2004 exam, the transcript of which could have been submitted as evidence if the Debtor were unavailable to testify, or by serving the Debtor with a subpoena under Fed.R.Bankr.P. 9016. The matter was permitted to proceed to trial.

* * * * *

In Re: Parsons, (Bankr. WD Mich October 20, 1995) Case No.: ST 92-84428. Judge Stevenson, after sua sponte reviewing the Debtor's attorney's fee application in this case, entered an Order allowing the fees and expenses in a reduced amount.

The Court noted that pursuant to 11 U.S.C. §330(a), "the Bankruptcy Court has a responsibility to sua sponte examine requests for professional fees even when no objection

has been filed." Furthermore, the Court noted that it had the authority to examine entire fee application, including a re-examination of a previously approved fee application.

The Court noted that billed time, when recorded in minimal increments, does not equate to the "actual time" requirement of §330(a), and that "the more routine telephone calls and form letters there are, the greater the distortion between "actual" and "billed" time and the higher the cost of the estate." Citing, In Re: Copeland, 154 BR 693 (Bankr. WD Mich 1993), the Court explained that attorneys seeking fees are expected to exercise billing judgment in the fee applications, "adjusting their bills to eliminate unproductive time or to reduce hours on productive projects where the total amount billed would be unreasonable in relation to the economic value of the matter in question."

Guided by the principals that: (1) "the Court is itself an expert on the issue of attorneys fees and may consider its own knowledge and experience concerning what constitutes a reasonable and proper fee"; and (2) the lodestar method should be used in determining reasonable fees (Boddy v U.S. Bankruptcy Court (In RE: Boddy), 950 F.2d 334, 337 (6th Cir. 1992)), the Court reduced the fees requested in the attorney's second application and disallowed an expert witness fee because the expert had not been appointed by the Court in this case.

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Williams v Hoerner, (Bankr. WD Mich September 28, 1995) Case No.: 1:95:CV:467. Judge Enslen affirmed Judge Gregg's decision holding the Debtors in this case may not exempt their workers' compensation proceeds and certain traceable assets purchased with such proceeds under 11 U.S.C. §522(d)(11)(D).

Pre-petition, Debtor James Williams received a lump sum workers' compensation claim settlement in the amount of $64,900.00. Williams and his wife filed a Chapter 7 Bankruptcy and claimed as exempt under 11 U.S.C. §522(d)(11)(D) the workers compensation proceeds and all traceable assets. The Chapter 7 trustee's objection to the exemption was sustained by the Bankruptcy Court and Williams appealed.

The Court agreed with the Bankruptcy Court's analysis that the 11 U.S.C. §522(d)(11) exemption was intended to cover only compensation based on tort liability, whereas workers' compensation awards were intended to be exempt under 11 U.S.C. §522(d)(10) as payment in lieu of future earnings. The Court noted that such analysis complied with the legislative history of the Bankruptcy Code and was consistent with the majority of the case law and commentary on point. Finally, the Court held that the Debtors' property acquired with the workers' compensation payments are not exempt under 11 U.S.C. §522(d)(10).

STEERING COMMITTEE MINUTES

No meeting was held in December. The next meeting will be held on January 19, 1996, at noon at the Peninsula Club, Grand Rapids.

EDITOR'S NOTEBOOK

I wish to thank the following individuals for graciously submitting articles for the 1995 Newsletter:

Donald B. Lawrence, Jr.
Larry A. VerMerris
Samuel R. Maizel
Bruce R. Grubb
Lori L. Purkey
Gordon J. Toering
Thomas King
Denise D. Twinney
Stephen L. Langeland
Michael V. Maggio
Alexander C. Lipsey

Anyone interested in submitting an article in 1996 should contact me.

I have found that many opinions are issued from the bench which attorneys may find helpful but may not be aware of. I would like to try something new in 1996. If you have participated in a case in which a bench opinion has been issued and you believe the Bankruptcy Bar may be interested please complete the enclosed form and submit it to me. Every month these issue summaries will be published in the Newsletter.

LOCAL BANKRUPTCY NOTICE

Enclosed from Mark Van Allsburg is an amendment to the January Court Calendar for 1996 and a memo regarding "returned mail".

PACER Modification - Those attorneys who use PACER may be interested to know that you can now download a mailing matrix in a Bankruptcy case. However, it is not immediate. You may ask for the matrices of as many as 5 cases and the matrices will be available from the system the next day. The matrix request option has been added to the main PACER menu. In some instances the use of PACER to retrieve a mailing matrix will be considerably faster than calling to request the matrix from the court.

LOCAL BANKRUPTCY STATICS

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 months of November of 1995. These figures are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	November of 1995	November of 1994	November of 1993
Chapter 7	388	365	373
Chapter 11	10	4	15
Chapter 12	2	1	2
Chapter 13	178	142	126
Totals	578	512	516

Bankruptcy Chapter	January - November of 1995	January - November of 1994	January - November of 1993
Chapter 7	4068	3476	3751
Chapter 11	65	75	102
Chapter 12	16	14	27
Chapter 13	1570	1358	1222
§304	1	0	0
Totals	5720	4923	5102

FROM THE COURT:

Starting in January, 1996, we will try to send an updated court calendar to the Bankruptcy Law Newsletter so that you will be aware of the motion days which are scheduled somewhat in advance. Only motion days are noted on this calendar. The first letter refers to the first initial of the judge's last name and the second letter refers to the location e.g., GK = Judge Gregg in Kalamazoo for motions.

AMENDMENT DATE: 11/20/95 **COURT CALENDAR FOR 1996**

	Monday	Tuesday	Wednesday	Thursday	Friday
JANUARY	1 NEW YEARS DAY	2 GG	3	4 GK	5
	8	9 SK HG	10	11	12 HK
	15 M.L. KING DAY	16 SG GL	17	18 ST GK	19 HL
	22	23 GG	24 HG	25 GT	26 GT HK
	29 HM	30 HM	31 HM	1	2 HL GK

This calendar is subject to change without notice.

Returned Mail:

The court is considering a change in the way that returned mail is processed, and we would like comments from the bar on this proposed change. There is a tremendous amount of mail which is returned to the court each day as the result of incorrect addresses given to us by debtors when they file bankruptcy cases. We probably receive 50 pieces of returned mail per day. Our present procedure is to open the mail, find the attorney who filed the case, change the address on the mailing matrix to that of the debtor's attorney, create a returned mail form and then send the contents of the letter with the form to the attorney or debtor who filed the case asking that they find us a better address, send the notice or other document to the party who should have received it, and then file a proof of service and an address correction. Then, we file a copy of the returned mail notice in the file to document this process.

The Administrative Office has recently sent us a study recommending that mail be sent out with the address of the debtor's attorney printed on the envelope **as the return address**. This is being done in many courts already and is working well. The mailing service which we are using can easily make this change if we ask them to do so. If they did, then filing attorneys or pro per debtors would receive returned mail directly rather than through the court. We would send out a notice to attorneys and debtors with the 341 notice which would tell them that misdirected mail would be returned to them and would also tell them what to do with the mail. The procedure, therefore, would not be much different than it is now. However, the case file would not contain any documentation of the returned mail but would contain a proof of service showing the exact address to which each of the notices were sent.

Since this change of procedure would save court staff a great deal of time, we are likely to proceed in the absence of a good reason for not implementing it. This is where you come in. If you have comments or concerns about this procedure, please tell us now.

Mark Van Allsburg

ISSUE SUMMARY

NAME OF CASE: _____

_____

_____

CHAPTER: _____

RELIEF SOUGHT: _____

_____

ISSUE: _____

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_____

BENCH DECISION: _____

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REPORT SUBMITTED BY: _____

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John Grant (1997)	(616) 732-5000
Tim Hillegonds (1995)	(616) 752-2132
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