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WHAT'S NEW IN LBO CASES?

Part II

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In Part I, we examined the early LBO cases. These cases established several legal principles:

1. Fraudulent conveyance laws can be applied generally to LBOs and LBO participants.

2. The various steps (or transactions) in an LBO will be collapsed and the LBO will be viewed as one integrated transaction (subject in some jurisdictions to the requirement that the defendant had knowledge of all the steps in the LBO).

3. The LBO lender cannot sustain the good faith defense because it has knowledge of the entire LBO transaction, including the conduit role of the Borrower with respect to the loan proceeds.

4. Non-insider selling shareholders generally are immune because of their lack of knowledge of the entire LBO transaction; and anyone who receives a "settlement payment" as defined in § 546 is immune.

5. Determinations on insolvency and capital adequacy involve enough subjective conclusions that judges can, in close cases, rule in favor of the LBO participants if the judge feels the deal was not a "bad LBO deal;" and *vice versa*. The close calls usually seem to go in favor of the LBO participants.

6. The proof necessary to satisfy the pre-existing creditor test is not clearly or consistently defined by

the cases.

7. LBO deals that are well publicized have a better chance to survive a fraudulent conveyance attack.

8. The extent of a lender's responsibility to determine that creditors' rights are not unreasonably prejudiced by the LBO is unclear.

9. Different courts adopt different approaches to valuation for solvency determinations – some use going concern value of the entire enterprise, others use going concern values of individual assets and others use liquidation values of individual assets.[1]

10. For solvency determinations:

- goodwill generally has no value
- book and/or GAAP values have minimal presumptive validity
- going concern values will generally be used unless the Borrower's failure is imminent

In Part II, we will examine the three major trial decisions of 1991 and 1992. These decisions contain lengthy micro-analyses of the financial proofs submitted by the litigants and serve as textbook examples of "do's" and "dont's" for LBO participants. We will also examine the LBO mega deals which were the subject of reported decisions in the pre-trial and settlement phases. Then, a review of noteworthy recent decisions will be followed by some guidelines for LBO deal participants, including my observations on the recently emerging LBO asset sale deal structure safe harbor.

THE MAJOR TRIAL DECISIONS

1991 - Jeannette (Trial/Appeal)[2]

- **LBO Transaction Summary** - July, 1981 purchase of 100% of stock of target operating company (Jeanette was engaged in the manufacture and sale of glassware, candles, ceramics and housewares) by a newly formed acquisition corporation; purchase price of $12.1 million was financed by an $11.7 million loan secured by a first lien on all assets of target; involuntary Chapter 7 filed in September, 1982.
- **Lawsuit** - Chapter 7 Trustee brought adversary against all LBO participants under fraudulent conveyance laws.
- **Significant Findings at Trial** - No actual intent to defraud; various steps comprising the LBO should be collapsed and treated as "one integral transaction;" target Jeannette did not receive fair consideration in exchange for the lien given on its assets; if conveyance was not made for fair consideration, then burden of proof on solvency shifts to the defendant; present fair saleable value should employ going concern value unless the company's failure is clearly imminent; business failure was due to a number of complex factors not reasonably foreseeable - principally a dramatic increase in foreign competition after the LBO; the acquirors' projections made at the time of the LBO were as reasonable as those done by the Trustee's expert several years later for trial.
- **Significant Findings on Appeal** - Fraudulent conveyance laws extend to LBOs[3]; the target, Jeannette, did not receive fair consideration in exchange for the debt incurred and lien granted - all it received was new

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[1]Since LBOs by definition have substantial leverage (debt) and small equity, use of liquidation values almost assures a finding of insolvency.

[2]Moody v Security Pacific Business Credit, Inc., 127 B.R. 958 (W.D. Pa. 1991); aff'd 971 F.2d 1056 (3rd Cir. 1992).

[3]By this time, the Court noted, the issue is no longer subject to dispute. The defendants did not even contest the issue.

management and access to credit[4]; upon establishing lack of fair consideration, the burden of proof shifts to defendants as to solvency and capital adequacy, which must be proven by clear and convincing evidence; although only $12.1 million was paid for Jeannette, the parties to the LBO viewed the purchase price as a significant bargain - the trial court's going concern valuation of Jeannette's total assets of at least $26.2-$27.2 million (compared to $25.2 million in liabilities) upheld - going concern value equals "present fair saleable value" unless bankruptcy is "clearly imminent;" adopted the trial court's finding that the projections were reasonable based upon the Credit Managers "reasonable foreseeability" test.[5]

- **LBO Fraudulent Conveyance Law Principles** - Although highly probative, purchase price is not the only measure of asset value for insolvency purposes; going concern value should be used for insolvency in determining "present fair saleable value" unless bankruptcy is imminent; even if credit availability is the only source of capital, if projections were reasonable, the capital adequacy test can be met.

1991 - O'Day (Trial)[6]

- **LBO Transaction Summary** - Stock purchase LBO of target sailboat manufacturing company closed in June, 1987 for $13,915,000 of which $9.571 million was borrowed and secured by first liens on assets of target; due to declining sales and gross profit margins, O'Day ceased operations in April, 1989 and an involuntary Chapter 7 was filed in May, 1989.

- **Lawsuit** - Chapter 7 Trustee filed adversary against LBO lender under § 544(b)/Massachusetts UFCA alleging LBO was fraudulent conveyance and seeking to avoid LBO lender's lien on Debtor's assets and to equitably subordinate LBO lender's unsecured claim under § 510(c).

- **Significant Findings at Trial** - Massachusetts UFCA would be used rather than Pennsylvania law because Debtor's assets, employees, operations and greatest concentration of its creditors were located in Massachusetts and the only connection to Pennsylvania was the location of the LBO lender and the designated forum clause in the loan documents; the LBO must be viewed as one collapsed transaction since the LBO lender was aware of the structure of the transaction and participated in its implementation; fair consideration was not received by Debtor in exchange for loans granted on its assets to secure $9.571 million in loans, most of which were paid directly to the LBO seller; nor did the cancellation of $14.2 million in intercompany notes constitute consideration because the notes were created during the LBO transaction for tax advantages and there was no evidence that repayment of the notes from operations was ever contemplated; nor did the providing of a line of credit constitute consideration because it would only allow Debtor to go further into debt; insolvency test: since Debtor experienced losses post-LBO, a piecemeal asset valuation approach, rather than going concern value of the assets as a whole, would be used - after adjustment for $6.549 million goodwill amount on balance sheet, the liabilities of Debtor exceeded the present fair saleable value of its assets as of the LBO by more than $2.5 million - thus, Debtor was insolvent;

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[4]Also by now, an uncontested issue in an LBO stock deal, despite the Metro Communications decision.

[5]Most important in the analysis was the court's conclusion that the key line items in the projections - sales and gross profit margins - were in the line with Jeannette's historical performance; and that Jeannette had a positive cash flow for the first five monthss following the LBO, until increased foreign competition cut into sales.

[6]In re: O'Day Corporation, 126 B.R. 370 (Bankr. D. Mass. 1991); the O'Day opinion is a 40-page long exhausting micro-analysis of the solvency and capital adequacy tests which all LBO lenders should read and learn from.

unreasonably small capital test: the projections prepared at the time of the LBO and used by the parties, including the LBO lender, to determine that Debtor could service its debt and continue operation post-LBO were totally inconsistent with the historical performance of Debtor and even their "worst case" scenario was higher than Debtor's historical average[7]; actual intent to defraud - citing Gleneagles, the Court noted the present case was nowhere near the egregious factual scenario which led the Gleneagles court to its finding and that in the present case the conduct of the LBO lender regarding the accounts payable stretch and its continual post-LBO efforts to improve its loan position might support equitable subordination, they did not rise to the level of actual fraud; equitable subordination - the LBO lender's post-LBO conduct in requiring the accounts payable stretch, prepayments of principal on its loan and recording a $10.6 million mortgage on real estate 6 months after the LBO was overreaching and constituted sufficient grounds for equitable subordination.

- **LBO Fraudulent Conveyance Law Principles** - For insolvency determination: (1) piecemeal asset values may be used when the Debtor experienced losses post-LBO - such losses may demonstrate the LBO placed the Debtor on the brink of collapse[8]; and (2) goodwill has no realizable value; no answer to question whether, or under what circumstances, discounts may be applied to accounts receivable and inventory[9]; pre-LBO projections which bear no relationship to historical performance are probably presumptively unreasonable; post-LBO conduct by LBO lender can constitute grounds for equitable subordination.[10]

1992 - Morse Tool (Motions/Trial)[11]

- **LBO Transaction Summary** - August, 1984 sale of assets and liabilities of Morse Cutting Tool and Super Tool division to newly formed acquiror, Morse Tool, Inc. ("Debtor") for $10.71 million paid in cash ($3.821 million) and notes ($6.889 million). The cash portion was financed by a loan secured by a first lien on Debtor's inventory and accounts receivable; post-LBO events included: (1) trade payable stretch by Debtor as planned pre-LBO (2) Debtor borrowed more cash than it expected it could - the LBO lender allowed Debtor to exceed its lending cap (3) Debtor began losing money immediately; Debtor filed

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[7]The O'Day Court noted that the following specific problems with the projections: (1) O'Day's four year historical average gross profit margin was 19.62% while the "worst case" projected gross profit margin was 21.84% and gross profit margins were declining during the period just prior to the LBO (2) the "worst case" scenario projection was better than O'Day's best performance of the 1980's even though pre-LBO monthly reports from O'Day's controller clearly and repeatedly indentified labor problems and unfavorable cost increases (3) the sailboat industry was cyclical and in a current downward sales trend. Id. At pp. 405-407.

[8]The Jeannette Court did not address the issue from this perspective because Jeannette had positive cash flow for the first five months post-LBO.

[9]The Trustee's expert valued accounts receivable at 80% of book value and inventory at 50%, even though 100% of the accounts receivable were collected post-LBO and all inventory was sold in the ordinary course (presumably above cost). Unfortunately, the Court did not rule specifically on the issue of whether discounts could be properly applied to these assets under a liquidation valuation approach - such a ruling was unnecessary becuase the $6.549 million subtraction for worthless goodwill alone rendered O'Day highly insolvent. This question is critical in many cases, yet is unanswered.

[10]However, *see* In re: Virtual Network Services Corporation, 902 F.2d 1246 (7th Cir. 1990) where the Seventh Circuit adopted a "fairness" standard not dependent upon conduct.

[11]In re: Morse Tool, Inc., 108 B.R. 384 (Bank. D. Mass. 1989); In re: Morse Tool, Inc., 148 B.R. 97 (Bankr. D. Mass. 1992). Judge Kenner wins the battle of the LBO opinions in this 52-page analysis of solvency and capital adequacy, only to conludin in 4-pages near the end of the opinion (pp.134-37) that Debtor received fair consideration for the transfers.

Chapter 11 bankruptcy in January, 1987; Chapter 7 trustee settled with LBO seller for cash payment.

- **Lawsuit** - Chapter 7 trustee filed objection to LBO lender's secured claim; court converted the contested matter to an adversary proceeding; LBO lender filed motion for partial summary judgment.

- **Significant Findings on Motions** - The Trustee's fraudulent conveyance claims are governed by Massachusetts law because most of the assets were located in Massachusetts and qualified unsecured creditors exist to give the Trustee standing under § 544(b) to pursue the fraudulent conveyance claims under Massachusetts UFCA.[12]

- **Significant Findings at Trial** - Release: Trustee's release of LBO seller pursuant to settlement did not release LBO lender because under the modern rule (under both federal and Massachusetts law) a release agreement that fails to address its effect on other joint obligors does not release them; UFCA § 5/unreasonably small capital - the Court examined the parties pre-LBO prepared seven-year projections in detail, found them "seriously flawed" and concluded that Debtor "lacked the capital and earning capacity necessary to carry on its business and pay its debts as they became due" during the post-LBO period "under a reasonable range of likely business conditions;"[13] standing under UFCA § 4/insolvency (existing creditor test) - Trustee lacked standing because Debtor assumed pre-LBO debts of LBO seller in the LBO, but these were not debts of Debtor prior to the LBO (and the LBO actually gave these creditors a second source for collection since the LBO seller was still liable); fair consideration - court adopted LBO lender's "asset sale" view of the LBO that Debtor was a mere shell before the LBO and the assets it acquired constituted the consideration for the LBO debt and security interests it incurred - thus, Debtor received fair consideration; actual intent to defraud - the Court found the LBO lender was not aware of the pre-LBO formulated plan of the acquiror to "stretch" trade payables post-LBO and that the LBO lender was accordingly "a purchaser for fair consideration without knowledge of the fraud at the time of the purchase;"[14] equitable subordination - the Trustee's only evidence to support this claim was the "trade payable stretch" which the Court found the LBO lender did not know about.

- **LBO Fraudulent Conveyance Law Principles** - Even though Morse Tool was clearly inadequately capitalized[15], the LBO lender prevailed for two very important reasons - in an asset sale LBO the Debtor is not the same entity as the Target and therefore (1) the pre-LBO creditors are not creditors of the Debtor until the LBO deal closes (where the Debtor assumes the obligation to pay - the pre-LBO creditors are still creditors of the Target from whom they may also seek to collect) and (2) the Debtor receives as consideration the assets it purchases from the Target. If the assets received have sufficient value in relation to the purchase price, the fair consideration (or reasonably equivalent value) test can be satisfied - in which case solvency and capital adequacy become

[12]The Court noted that many trade creditors and future creditors cannot or do not perform solvency or cash flow analyses before extending credit and that involuntary creditors, like taxing authorities and tort claimants, obviously never have such an opportunity.

[13]For example, the Court found as to the assumption in the LBO purchaser's projection that "the economy would remain healthy for at least seven years," that it was " unrealistic to assume the econony would not suffer at least a modest downtown for at least two of Morse's first seven years. A company has to be able to survive normal fluctuations in the business cycle. Morse could not." Id. At 125.

[14]Id. At p. 140.

[15]An important principle was incorporated in this finding - the projections must not ignore the reality of normal fluctuations in our economy. See note 13 *supra*.

irrelevant.[16]

THE MEGA LBO DEAL CASES

The early years also produced a series of decisions involving mega LBO deals, which I define as LBO deals involving public companies and deal sizes in the hundreds of millions of dollars. These cases generally involved the appointment of an examiner to investigate the LBO transaction and then report to the bankruptcy court on the nature and viability of fraudulent conveyance and related claims against the LBO participants. These examiner reports, like the major trial decisions reviewed above, provide textbook analyses of LBO fraudulent conveyance legal and financial principles. By their sheer size and complexity, these cases demanded settlement. The examiner reports served as a catalyst for settlement discussions.

1990 - Revco (Motion/Settlement)

- **LBO Transaction Summary** - $500 million plus stock acquisition of Revco by management led buyout group financed by bank and public subordinated debt on December 30, 1986; Goldman Sachs issued a fairness opinion and Price Waterhouse delivered a "soft" solvency letter to support the LBO; fees and expenses paid by Revco in the LBO, primarily to investment bankers and lawyers, totalled $73 million; Revco experienced financial difficulties soon after the LBO closing as it implemented several key operational changes; Revco filed Chapter 11 petitions in July, 1988.

- **Examiner's Preliminary Report** - An examiner was appointed by the Bankruptcy Court in June, 1990 (after the infamous Sixth Circuit decision[17] interpreting the word "shall" in then § 1104(b)(2) as meaning "shall") to investigate "potential causes of action and other remedies" arising out of the Revco LBO; the Examiner issued a preliminary report (the "Report") in July, 1990[18]; the Report concluded potential claims existed under fraudulent conveyance laws, the Michigan Business Corporation Act (improper dividends and share repurchases), equitable subordination and various other claims against former Revco officers and directors and professionals who received fees in the LBO.

- **Significant Findings on Motion** - Because of certain expiring claims under the Michigan Business Corporation Act identified in the Report, an equity holder moved for authority to commence suit against the LBO participants on behalf of the Debtor Revco; the Court denied the motion because (1) the equity holder was not a "creditor" and therefore lacked standing; (2) the equity holder who actively participated in the LBO was not the proper party to bring the claims; and (3) the active LBO participant could not adequately and fairly represent creditors and other interest holders in derivative action based claims.

- **Examiner's Final Report** - The 300+ page Final Report was filed in December, 1990 and concluded that viable fraudulent conveyance and other claims existed against the LBO participants; the Final Report contains extensive analyses regarding solvency, appraisals and valuations of Revco assets and stock, and capital adequacy. The Final Report concluded with the hope that it would assist in bringing the Chapter 11 case to a successful conclusion.

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[16]This is the blockbuster decision of the 1990's, which establishes a potential safe harbor for asset sale LBO deals. This reasoning was also adopted in WCC Holding Corporation, 171 B.R. 972 (Bankr. N.D. Tex. 1994), but has not been subject of any appeals court rulings.

[17]In re: Revco D.S., Inc., 898 F.2d 498 (6th Cir. 1990).

[18]Revco D.S., Inc., 118 B.R. 468 (N.D. Ohio 1990); a complete copy of this 52-page report is in the Appendix to the decision on the motion by an equity holder to commence suit on claims identified in the Report.

1991 - Interco (Examiner Report)

- **LBO Transaction Summary** - The Interco LBO was a stock recapitalization/divestiture transaction closed on November 29, 1988 involving a diverse conglomerate with recent earnings problems in a retained subsidiary, Converse; the transaction included over $1.5 billion in bank and subordinated debt financing; legal opinions and solvency opinions were rendered; Interco filed Chapter 11 bankruptcy in early 1991.

- **Examiner's Report** - The Examiner's Report (the "Report") concluded valid fraudulent conveyance claims existed under Missouri's common law equivalent of the UFCA, as well as claims against professionals for recovery of substantial fees paid in the LBO. The Report emphasized the actions of the LBO participants in ignoring rather clear financial reports which indicated serious financial problems already manifesting themselves in the pre-closing period.

- **Settlement** - The Report strongly recommended settlement through a consensual plan due to the high cost and time consuming nature of the litigation that would be required to pursue the potential claims identified in the Report.

1990 - Resorts International (Chapter 11 Plan Settlement)[19]

- **LBO Transaction Summary** - 1988 stock acquisition LBO transaction whereby Merv Griffin acquired Resorts International ("Resorts"), a holding company which, through its subsidiaries, owned various casino resorts in New Jersey and the Bahamas; the LBO involved the issuance of over $900 million in senior and subordinated debentures secured by assets of the subsidiaries; an involuntary bankruptcy was filed in November, 1989 resulting in Chapter 11 case.

- **Chapter 11 Plan Settlement** - Through a consensual Chapter 11 Plan of Reorganization, a global settlement of various claims based on fraudulent conveyance, as well as preference, substantive consolidation and equitable subordination was proposed; several objections to confirmation, including the settlement, were filed; following a detailed description of the various claims being settled and the consideration provided by the settling defendants in the form of substantial cash contributions to the Debtor ($26 million by Griffin) and substantial reductions in the debenture holders' debt, the Court concluded the settlement was fair and equitable to all creditors and in the estate's best interests[20]; the Court followed closely the guidelines set forth in the Supreme Court's Protective Committee[21] decision.

1994 - Best Products (Plan/Settlement)[22]

- **LBO Transaction Summary** - Best was a successful discount retailer which solicited bids for its stock in response to a takeover threat; 97% of Best's stock was repurchased pursuant to a tender offer in late-1988; the tender

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[19]Resorts International, Inc., 145 B.R. 412 (Bankr. D. N.J. 1990).

[20]The Court observed that by 1990 it was well settled that fraudulent conveyance laws could be applied generally to LBOs, that LBO litigation was unquestionably expensive and tiem consuming and the likelihood of success and the extent of the estate's recoveries were uncertain. All of the above are obviously true in LBO litigation, especially in the mega cases. The key here was probably the cash contributions and debt reductions that were fairly significant. However, the opinion gives no evidence that the Court performed or the parties submitted any quantitative analysis of the claims, expenses and possible recoveries.

[21]Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. V Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed. 1(1968).

[22]In re: Best Products Co., Inc., 168 B.R. 35 (Bankr. S.D. N.Y. 1994) aff'd 177 B.R. 791 (D.N.Y. 1995) aff'd 68 F.3d 26 (2nd Cir 1995).

offer consideration was financed with over $600 million in senior and subordinated debt financings; Best filed Chapter 11 in January, 1991.

- **Examiner's Report** - An examiner was appointed to investigate the LBO and report to the Court on potential claims and recoveries; the examiner's interim report addressed a key issue - choice of law between Virginia and New York; Virginia fraudulent conveyance law (not UFCA or UFTA) contains no "fair consideration" requirement - only slight consideration is sufficient; the examiner concluded on a close call that New York substantive law would most likely be applied to the Best LBO; the examiner's two-volume, 500+ page Final Report found viable fraudulent conveyance and other claims against LBO participants and strongly recommended settlement due to costly, time consuming litigation and uncertain outcomes for all litigants.

- **Plan Settlement** - The LBO case was commenced by Best five days prior to expiration of two years from Best's Chapter 11 filing; Best immediately moved for a standstill order to facilitate settlement discussions; no settlement was reached and extensive motions and discovery followed; ultimately a settlement was reached through Best's Chapter 11 Plan filed in September, 1993 and four successive amendments; claims against banks were settled and claims against other LBO participants were preserved.

RECENT DECISIONS

The volume of LBO decisions has slowed, probably due to a number of factors - fewer business bankruptcy filings, fewer LBO deals in the 1990s, less money chasing marginal deals and smarter lending decisions. Recent cases are going like this.

1994 - WCC Holding (Trial)[23]

This case involved a 1988 asset purchase LBO of a bike retailing business. The acquiror (Newco) assumed $2.5 million of trade debt, however, the Target seller remained liable to the assumed trade. The Court cited the Morse Tool asset sale decision and similarly found, after valuing the Debtor's assets on a going concern basis, that the assets received in the LBO constituted fair consideration in relation to the debt incurred and security interests given. The Court also concluded the Debtor's capital was not inadequate finding that several pre-LBO projections prepared under various assumptions were based upon reasonable assumptions and "fairly and reasonably predicted that WCC had adequate assets to give it the ability"[24] to meet its debts as due.

1995 - Oxford Homes (Motion)[25]

Bankruptcy followed a 1990 100% stock acquisition LBO by seven months. The Chapter 11 Trustee filed fraudulent conveyance claims and then moved for a preliminary injunction against the LBO sellers' disposition of the sale proceeds. The Trustee submitted proofs on value, solvency and capital adequacy. The Court concluded a reasonable likelihood of success on the merits was established and an injunction was appropriate to prevent loss of $740,000[26] in liquid sales proceeds, even though there was no proof of threatened or impending disposition.

1995 - Richmond Produce (Trial/Appeal)[27]

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[23] WCC Holding Corporation, 171 B.R. 972 (Bankr. N.D. Tex. 1994).

[24] Id. At 985.

[25] In re: Oxford Homes, 180 B.R. 1 (Bankr. D. Me. 1995).

[26] The Trustee sought to enjoin the transfer of a larger amount - $1,600,000 constituting 100% of the purchase price. The evidence established that only $740,000 was paid to the LBO seller.

[27] In re: Richmond Product Company, Inc., 151 B.R. 1012 (Bankr. N.D. Cal. 1995), aff'd; In re: Bay

- **LBO Transaction Summary** - December, 1987/March, 1988 sale and redemption of 100% of stock of operating company, Richmond Produce (produce wholesaler) (Debtor/Richmond) through a two-part closing and financing ultimately involving the issuance by LBO lender of a $1.5 million letter of credit in favor of the LBO sellers secured by a $1.5 million certificate of deposit purchased with the proceeds of a $1.5 million draw on a line of credit secured by assets of the Debtor. The Debtor defaulted and the LBO sellers drew on the Letter of Credit.

- **Lawsuit** - The Chapter 11 Trustee filed an adversary proceeding against the LBO lender to recover the $1.5 million it received by enforcing its security interest in the certificate of deposit after the LBO sellers drew on the letter of credit on the grounds that the LBO lender was the initial or was an immediate or mediate transferee under § 550(a)(1) or § 550(a)(2), respectively, of a fraudulent transfer under § 548 and § 544(b)/California UFCA.

- **Significant Findings at Trial** - The Court had ruled on an earlier motion that Richmond had an interest in the cashier's check used to fund the C/D; the Debtor Richmond did not receive reasonably equivalent value in exchange for the transfer of the C/D to the LBO lender - the letter of credit secured the individual obligation of the LBO purchaser to the LBO seller and the value of the LBO purchaser's managerial skills, after deducting the $20,000 per month salary and given the rapid failure of the Debtor, had no value, also citing Norwest Bank of Worthington v. Ahlers, 485 U.S. 197 (1988); Debtor was rendered insolvent by the transfer - goodwill and organization expenses were disregarded since they could not be sold to satisfy creditor's claims and the $1.5 million liability created by the line of credit draw reduced shareholders' equity since the LBO purchaser had no ability to repay it; Debtor was under capitalized because it was reasonably foreseeable that when the Debtor's 1987 financial statements were issued, its credit rating would be downgraded, thus cutting off trade credit; the LBO lender was not an initial transferee of the cashier's check, however, it was an immediate transferee who gave value in good faith but failed the "without knowledge" prong of its defense because it was heavily involved in the LBO deal negotiations, knew the details of the sale, the heavy leverage it caused and had it investigated further would have discovered the transfer rendered the Debtor insolvent.[28]

- **Significant Findings on Appeal** - The LBO lender was not a mere conduit for the $1.5 million since it had dominion of said funds after it issued the C/D which was then pledged as security for the letter of credit; recovery from an immediate transferee is not dependent on a prior action or recovery as to the initial transferee; § 550(b)(1) does not require "actual knowledge" - the bankruptcy court's application of the "notice" standard was correct.

1995 - Bay Plastics (Motion)[29]

- **LBO Transaction Summary** - October, 1988 sale of 100% of stock of operating company, Bay Plastics, to acquisition corporation formed by acquiror for $5.3 million ($3.5 million in cash and $1.8 million in deferred payments); acquiror caused target Bay Plastics to borrow

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Plastics, Inc., 187 B.R. 315 (Bankr. C.D. Cal. 1995).

[28]The LBO lender's in-house lawyer relied on a letter (which was claimed to have been understood to be an opinion letter, but was not) from the LBO purchaser's law firm "reassuring Purvis [the lawyer] that the transaction was not vulnerable to attack by a creditor or trustee of the Debtor" which Purvis relied on to advise the LBO lender's loan officer that "the proposed transaction was sound".

[29]In re: Richmond Product Company, Inc., 195 B.R. 455 (N.D. Cal. 1996).

$3.95 million secured by first lien on all assets, $3.5 million of which was paid to the LBO sellers; the acquiror did not invest any money in the LBO; LBO sellers and acquiror persuaded largest trade creditor to release security interest in Bay Plastic assets and personal guaranties of LBO sellers to allow for LBO financing without disclosing LBO character of the sale transaction; LBO sellers were aware of the LBO character of the transaction, consulted with their legal counsel on the subject and were provided with a post-LBO closing balance sheet. Bay Plastics was unable to service its debt and filed Chapter 11 bankruptcy in January, 1990.

- **Lawsuit** - Debtor Bay Plastics brought adversary proceeding against the LBO seller shareholders to recover the funds they received in the LBO as fraudulent transfers under § 544(b)/California UFTA. Debtor moved for summary judgment on undisputed facts under UFTA § 5 - the insolvency section.

- **Significant Findings on Motion** - The steps of the LBO could be collapsed because of the existence of the pre-LBO creditor without regard to the knowledge of the LBO sellers of the LBO structure of the transaction; collapsing the LBO and viewing it as one integrated transaction, the Debtor did not receive fair consideration for the debt it incurred and the liens it granted on its assets because the loan proceeds were paid to the LBO sellers; the Debtor's balance sheet as of the LBO, after adjustment to a "fair valuation" of assets, including a $2.26 million reduction in asset values for good will that had not been on the books pre-LBO, showed a negative net worth of $2 million, and was therefore rendered insolvent by the LBO; the fact that (i) the account of the pre-existing creditor was current at the time of the LBO did not disqualify it as a pre-existing creditor because it had a requirements contract in place to supply resin to the Debtor which continued in effect through the date of bankruptcy - this continuous contract right satisfied the definitional requirements of UFTA § 1(b) as a creditor holding a claim; and (ii) the pre-existing creditor did not ask questions to discover the LBO nature of the transaction was irrelevant since it was a pre-existing creditor, not a future or post-LBO creditor; fraudulent conveyance laws can be used to attack LBO.[30]

[30]In an interesting discussion, the Court noted that two kinds of LBO's ordinarily escape fraudulent transfer attack - (1) legitimate LBOs where the assets mortgaged to fund the LBO do not exceed the net equity of the business - because this means the target will ordinarily remain solvent; (2) LBOs where the cash flow is actually sufficient to pay all debts when due, either because of good financial projections or luck.

Other Recent Decisions

Several other recent decisions involving LBO stock transactions confirm the LBO fraudulent conveyance principles of previous decisions. See, In re: Jolly's, Inc., 188 B.R. 832 (Bankr. D. Minn. 1995) (strict ruling on the pre-existing creditor requirement for standing to bring claim based on insolvency); In re: Structurlite Plastics Corp., 193 B.R. 451 (Bank. N.D. Ohio 1995) (opportunity for additional loans did not constitute consideration, nor did new management which was separately compensated for their management efforts; revolving trade creditors whose claims at bankruptcy were based on separate transactions from their LBO closing date claims satisfied pre-existing creditor test for standing or insolvency claims); In re: Healthco International, Inc., 195 B.R. 971 (Bankr. D. Mass. 1996) (pre-existing creditor need not have same claim at LBO closing and bankruptcy to satisfy pre-existing creditor requirement for insolvency; to be reasonable, projections must leave some margin for error; corporate directors can be liable for breach of duty of loyalty when approving LBO with knowledge, or if they should have known, that the projections were unreliable); In re: Integra Realty Resources, Inc., 198 B.R. 352 (Bankr. D. Colo. 1996) (shareholders who knowingly receive dividend which renders

Debtor insolvent or with inadequate capital can be liable under fraudulent conveyance claims).

GUIDELINES FOR LBO PARTICIPANTS

The LBO cases have obviously raised new transaction risks for LBO lenders. However, sifting through the cases reveals a number of useful guidelines to minimize these risks, which together with overall heightened sensitivity, should result in fewer "flying pig attack" incidents.

Solvency - Solvency Opinion/Affidavits/Lender Due Diligence

Solvency opinions and affidavits are generally required by lenders in LBO deals. Solvency opinions are expensive and therefore cost prohibitive in most LBO deals; and they too often can be "made as instructed."[31] Accountants will no longer render solvency opinions. Solvency affidavits from borrowers are not worth the paper they are printed on. The LBO lender should perform its own solvency analysis. Sound fixed asset appraisals are essential and should contain "fair market" and "liquidation" values. Off balance sheet liabilities, contingent or otherwise, must be evaluated. Intangible assets pose special valuation problems - conservatism is imperative. Goodwill, even if purchased, has questionable value. Accounts receivable and inventory may be discounted to realizable liquidation value for solvency purposes when post-LBO business continuation is dubious or results in losses.[32] An adequate "cushion" is suggested for balance sheet solvency.

Capital Adequacy - Cash Flow Projections

Cash flow projections prepared by borrowers are usually optimistic. Cash flow projections reviewed by a CPA firm in accordance with AICPA standards for Review of Financial Forecasts should be obtained if possible. Two factors have overriding importance - sales and gross margins. Deviations from historical levels and trends must be reasonable. Reliance upon acquiror's management skills, obtaining additional financing post-LBO, economy/industry upswings or favorable regulatory changes should be cautious. It is not reasonable to assume long-term economic stability - at least modest downturns occur periodically.[33]

Lender Due Diligence

Use the LBO examiner's reports and LBO trial opinions and trial exhibits to develop a due diligence checklist of factors to consider.[34] Perform LBO due diligence prior to issuance of commitment letter.

Asset Sale Structure

Most LBO lenders are now looking only at "asset sale" structures. The Morse Tool and WCC Holding cases strongly suggest this deal structure can insulate the LBO from fraudulent conveyance attack.[35]

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[31]The solvency opinion rendered in Interco was seriously flawed.

[32]*See* Footnote 9, *supra*.

[33]*See* Footnote 5, *supra*.

[34]I have a file containing trial exhibits from the O'Day, Jeannette and Morse Tool cases and examiner reports from the Revco, Interco and Best Products cases. I also have a case study which addresses many of these issues and includes due diligence and trial exhibits. Please call me at (810) 433-7424 for copies.

[35]The Morse Tool trial decision was appealed by the Trustee. The LBO lender reportedly paid $900,000 to obtain a dismissal of the appeal and keep his favorable "asset sale" opinion on the books. The WCC Holding opinion relied exclusively on Morse Tool on this issue. No District Court or Court of Appeals has considered this issue. There is still theoretical support for the treatment of "asset sale" deals as being no different, in substance from "stock sale" deals.

Stock Sale/Redemption Structure

Avoid deals with these structures. But if you must, then: (1) consider requiring an additional margin of safety on insolvency and capital adequacy; (2) if possible, require the Target to pay off all unsecured debt pre-LBO closing; (3) keep your fingers crossed.

Role of Legal Counsel

Legal counsel must educate and advise LBO participants as to the fraudulent conveyance and other legal risks associated with LBO deals. Unsophisticated sellers and lenders will need substantial guidance from legal counsel. Some deal structures which are not classic LBO structures may nevertheless carry fraudulent conveyance risk. Deal momentum and closing pressure can blind the LBO deal participants - legal counsel must keep a clear head and alert participants as conditions change. Because of the high leverage in LBO deals, the "no material adverse change" closing condition takes on greater importance - yet it is also risky to invoke.

BANKRUPTCY SALES AND COMPLIANCE WITH THE EPA/HUD REAL ESTATE NOTIFICATION AND DISCLOSURE RULE

By Judy L. Walton*

Pursuant to the directives of the Residential Lead-Based Paint Hazard Reduction Act of 1992, in March of 1996 the Environmental Protection Agency and the Department of Housing and Urban Development promulgated the Real Estate Notification and Disclosure Rule (the "Rule"). With few exceptions, the Rule applies to all residential dwellings constructed before 1978. The effective dates for the Rule were September 6, 1996 for owners of five or more dwelling units, and December 6, 1996 for owners of four or less dwelling units.

The Rule applies to both sales and leasing, but this article will focus on the impact of the Rule on sales. As we know, the Bankruptcy Code permits trustees and debtors in all chapters, subject to court approval, to conduct sales of real property which contain residential dwellings. These dwellings include but are not limited to single-family homes, condominiums, duplexes, and apartment buildings. Therefore, whether you are a trustee-seller or an attorney representing a debtor-seller or trustee-seller, you must determine whether the dwelling to be sold is covered by the Rule, and if so, you must then take the necessary steps to ensure compliance with the Rule.

Certain types of dwelling units are exempt from the Rule. First and most obviously, any housing built after 1977 is exempted. This is because in 1978 the Consumer Product Safety Commission banned the use of lead-based paint for residential use. Also exempted are zero-bedroom units, such as efficiencies, lofts and dormitories. Further exemptions include housing for the elderly or the handicapped, unless children live there, and an additional exemption exists for rental housing that has been inspected by a certified inspector and found to be free of lead-based paint. Finally, there is an exemption for foreclosure sales.

The Rule requires the seller to issue to the prospective buyer a copy of the government-issued pamphlet entitled "Protect Your Family From Lead In Your Home." The Rule also requires that the seller of a dwelling unit must disclose in writing to a prospective buyer the presence of any known lead-based paint or lead-based paint hazard. If there is more than one dwelling unit in the building, e.g., an apartment

building, the seller must also provide records of any lead-based paint inspections, assessments or abatement activities in common areas, and must disclose whether other units contain or did contain lead-based paint or lead-based paint hazards. If in the context of a bankruptcy sale the seller is a trustee, it would be best to have the debtor or someone else with knowledge of the property to assist the trustee in making these disclosures. If the debtor is not cooperative, the trustee could use Bankruptcy Code provisions to compel cooperation; however, with or without cooperation, the trustee should still condition his or her seller's disclosure to the buyer by expressly indicating the source of any information provided and, if applicable, that the trustee, as seller, has no personal knowledge. However, the seller is not required to conduct any testing or to remove any lead-based paint.

The buyer must sign an acknowledgment form that they received the disclosure information and a copy of the pamphlet. The buyer must also be given ten days to conduct a lead-based paint inspection before they become obligated on the buy/sell or other contractual agreement, and the acknowledgment form must include a provision regarding this ten-day period. The seller and buyer can mutually agree to another time period, and the buyer can also decide to waive the opportunity to conduct an assessment or inspection.

In addition, if you employ a real estate agent or broker, they must also sign a form acknowledging that they have informed the seller of their obligations under the law. Further, the agent or broker is responsible for ensuring that the seller fulfills their duties in regard to the notice and disclosure provisions, and if a seller fails to do so, the agent or broker must do so in their place. An agent or broker who ensures that the seller fulfills their duties or who personally fulfills those duties for the seller is not liable for any failure to disclose.

A seller or real estate agent or broker who knowingly fails to provide full disclosure can be subject to three times the amount of damages suffered by the buyer, and possibly attorney fees and costs of the buyer. Further, there are civil penalties up to $10,000 for each violation, and criminal penalties up to $25,000 for each day of violation and up to one year in prison, or both. However, the Rule does not invalidate any sales contracts.

Given the harsh remedies provided for in the Rule, it is incumbent upon every trustee and attorney representing a debtor or trustee to ensure that sales of residential dwellings which are subject to the Rule be properly conducted according to the foregoing guidelines. Copies of the pamphlet, sample disclosure forms and the Rule can be obtained from the National Lead Information Clearinghouse at (800) 424-LEAD. Bulk copies of the pamphlet are also available from the Government Printing Office at (202) 512-1800, stock number 055-000-00507-9. Finally, the pamphlet and the Rule may be accessed through the Internet at "http://www.epa.gov/docs/lead_pm"

*Judy L. Walton is an attorney with McShane & Bowie, P.L.C. in Grand Rapids. Her practice concentrates in bankruptcy, commercial litigation, banking law, and real estate.

RECENT BANKRUPTCY COURT DECISIONS

The Eastern District Court decisions were summarized by Norman C. Witte.

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In Re: GRAPHICS COMMUNICATIONS, INC, Bankr ED Mich, Case No.: 95-48150-R, September 4, 1996, Rhodes, CJ.

Confirmation of Plan - Classification of Claims - Absolute Priority Rule

Unfair treatment of similar but differently classified claims and violation of the absolute priority rule led to denial of confirmation of a Plan in this Chapter 11 case.

Debtor was a printing business which for a time commingled its operations with Midwest Graphics. The companies never fully merged and eventually separated. During this period, Midwest Graphics was issued a nominal amount of stock in the Debtor, which was closely held. At the time of the separation Midwest Graphics made two loans to the Debtor so that it could meet its operational expenses.

The Debtor proposed a plan which would pay general unsecured creditors 100% of their claims. The Plan proposed that Midwest Graphics would receive 10% of its claim, and that the principal of the company would retain 100% of the stock of the reorganized Debtor in exchange for his personal guarantee to make available $15,000.00 as needed to meet cash flow needs.

The first basis for denial of confirmation was that the Plan unfairly discriminated against Midwest Graphics. Although the Court held that it was not unfair to classify Midwest Graphics separately from the other unsecured creditors, there was no compelling business reason to treat Midwest Graphics substantially differently from other unsecured creditors.

The Court also denied confirmation on the basis that the Plan violated the absolute priority rule set forth in 11 U.S.C. §1129(b)(2)(B). The Court adopted the reasoning set forth in In RE: Trevarrow Lanes, Inc., 183 BR 475 (Bankr ED Mich 1995) in which Judge Spector held that the shareholders' retention of an exclusive right to purchase equity in the Debtor constituted a distribution under the Plan in violation of the absolute priority rule. The Court found this holding applicable in the case before it.

Beyond the defect present in Trevarrow, the Court also held that the contribuion the principal was to make did not constitute sufficient value to justify the distirbuion to the principal. In the first place, the Debtor failed to cdarry its burden of proving that the contribution to be made by the principal equaled the fair market value of the Debtor. Second, as a matter of law, the guarantee of the principal to make a possible payment in the future was not value to the estate.

* * * * * * * * * *

In Re MANN, Bankr ED Mich, Case No.: 96-46048-R, October 11, 1996, Rhodes, CJ.

Exemptions - Annuities

A Trustee's objection to a Debtor's exemption of an interest in an annuity contract worth $35,000.00 was sustained in this opinion. The Court applied the test set forth in In Re Rector, 134 BR 611 (Bankr WD Mich 1991) in determining that the annuity was not exempt under 11 U.S.C. 522(d)(10)(E) because it was not "reasonably necessary" for the support of the Debtors or their dependents.

The Court conducted an evidentiary hearing on the Trustee's objection. At that hearing testimony regarding the Debtors' assets, expenses and income of the Debtors was adduced which was considerably at variance from the information set forth in the schedules and the statement of financial affairs filed by the Debtors. At the Court's direction, amended schedules were filed after the hearing, which presented a third set of facts inconsistent with the two previous versions.

The Court opted to use the income and expense amounts given at the hearing in computing the Debtor's disposable income. The court found that using these amounts the Debtor's had monthly disposable income of

$2,429.00. The Court further found that the Debtor's had respectively 12 and 21 years of employment before reaching age 65. No circumstances existed which warranted a holding that the Debtors were impaired in their ability to earn a living or that there would be additional health care expenses for the Debtors. The Court held that had the Debtor's taken exemptions in the amounts provided in §522 after the 1994 amendments to the bankruptcy code, rather than the pre-amendment amounts, the Debtor's would be able to exempt all their personal assets except $1,000.00 of equity in their home. Under all these circumstances, the Court held that the annutiy was not reasonably necessary for the Debtor's retirement and thus denied the exemption.

CASES OF INTEREST

In Re: REESE CORP. V RIEGER (U.S. District Court - Eastern District)

Plaintiff obtained a Florida Court judgment against Defendant and filed the judgment in Oakland County Circuit Court. Defendant filed a Chapter 7 petition and Plaintiff responded by filing an adversarial action, alleging that Defendant's fraud in the underlying case was sufficient to exempt the debt from discharge.

The Bankruptcy Court issued a notice that set a pretrial conference, closing date for discovery, a trial date, a directive that the parties file a joint final pretrial order and a warning that failure to appear at the pretrial conference and/or failure to prepare a joint statement could subject the party and/or attorney to sanctions.

Plaintiffs Counsel did not appear for a pretrial conference. Defense Counsel alleged that he contacted Plaintiff's Counsel several times to prepare the required joint statement, but received no response and filed his own statement which was served on Plaintiff's Counsel. Defense Counsel also state that he served discovery requests which were ignored by Plaintiff's Counsel. Six days before the trial, Defense Counsel formally requested a reply, he filed a Motion to Compel the next day. Plaintiff's Counsel admits to not responding to the Motion but stated that under the Bankruptcy rules he had until 12 days after trial was scheduled to file a response.

Trial was adjourned and Defense Counsel moved to have the complaint dismissed as a santion for Plaintiff's failure to cooperate. The Bankruptcy Court granted the motion. Plaintiff appeals.

This Court says that "Perhaps the most crucial part of this analysis is whether the trial court sufficiently considered less drastic sanctions before dismissing the case. This Court is troubled by the trial court's cursory inquiry in this regard. Instead of an articulation on the record as to why lesser sanctions should be rejected, the trial court stated, in a rather conclusory manner, that 'the prejudicial disadvantage makes it fundamentally unfair to compel the Defendant debtor to go forward and defend the cause of acdtion which has not been flushed out (sic) out by the Plaintiff'". On Plaintiff's Motion for Reconsideration, the Court merely asked Defense Counsel whether a lesser sanction should be imposed and agreed with him that a lesser sanction would not be appropriate. This Court stated,"This casual approach to determining whether lesser sanctions would be appropriate is necessarily wanting. At no point in the record did the trial court articulate any reasons for rejecting lesser sanctions, let alone stating what those sanctions might be."
Reversed.
- Michigan Lawyers Weekly
November 4, 1996

STEERING COMMITTEE

The next Steering Committe meeting will be January 17, 1997.

LOCAL BANKRUPTCY NOTICE

A number of changes to the Rules of the Bankruptcy Procedure will take effect December 1, 1996. The changes include:

*Debts cannot be dishcarged until the Debtors have paid all the fees they owe to the U.S. Trustee's Office.

*Chapter 12 and Chapter 13 Debtors must file an inventory of the estate only if the Court requests it.(Chapter 7 Debtors alsways have to file an inventory and Chapter 11 Debtors have to do so only if the Court requests it. It was not clear in the past what the rule for Chapter 12 and 13 was.)

*Documents filed before a case is converted from one chapter to another will still be applicable in the converted case. (Previously, documents filed in Chapter 7 were applicable if the case was later converted, but it wasn't clear if this was true for other types of cases.)

*Trustees no longer have to send the Debtor and the creditors a list of what they paid to each creditor after they have finished distributing the property, as long as the Trustee sent a similar notice prior to making the payments.

*If a Debtor fails to serve papers on a government agency, he can have a "reasonable time" to correct the error without being penalized as long as the papers were served on either the Attorney General's office of the U.S. Attorney's office in his district. (The current ruled does not give a Debtor an opportunity to correct such an error.)

*Government agencies "Proof of Claims" will be "timely" if they are filed exactly 180 days after the notice of the bankruptcy is mailed. (Under the current rule, it is not clear whether they have to be filed by the 180th or before the 180th day.)

*Bankruptcy Courts will be allowed, but not required, to accept most documents in electronic formats. (A similar rule for other federal courts also goes into effect on December 1.)

Copies of the rule changes can be obtained by calling the U.S. Judicial Conferences's Rules Office at (202)273-1820.

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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 months of May of 1996. These figures are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	September of 1996	September of 1995	September of 1994
Chapter 7	546	426	297
Chapter 11	8	3	8
Chapter 12	0	3	1
Chapter 13	234	160	143
Totals	788	592	449

Bankruptcy Chapter	January - September of 1996	January - September of 1995	January - September of 1994
Chapter 7	5234	3601	3121
Chapter 11	59	49	72
Chapter 12	5	16	15
Chapter 13	1978	1320	1228
§304	0	1	0
Totals	7276	4968	4436

Bankruptcy Chapter	October of 1996	October of 1995	October of 1994
Chapter 7	607	476	347
Chapter 11	6	9	7
Chapter 12	1	1	1
Chapter 13	298	199	128
Totals	912	685	483

Bankruptcy Chapter	January - October of 1996	January - October of 1995	January - October of 1994
Chapter 7	5841	4077	3468
Chapter 11	65	58	79
Chapter 12	6	17	16
Chapter 13	2276	1519	1356
§304	0	1	0
Totals	8188	5671	4919

STEERING COMMITTEE MEMBERS

Dan Casamatta	(616) 456-2002
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John Grant	(616) 732-5000
Tim Hillegonds	(616) 752-2132
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Peter Teholiz	(517) 886-7176
Rob Wardrop	(616) 459-1225
Norman Witte	(517) 485-0070
Bob Wright	(616) 454-8656

FROM THE BANKRUPTCY COURT

Holiday Schedule: The Bankruptcy Court will be open every day that is not an official holiday and we intend to maintain a full working schedule. Therefore, we will be open on Christmas and New Year's Eves until 4:30 p.m.

Adversary Filing Fee to Increase on December 18: On October 19, 1996, the President signed into law the Federal Courts Improvement Act of 1996 which increased the civil action filing fee prescribed by 28 U.S.C. § 1914(a) from $120 to $150. Since the filing fee for an adversary proceeding in a bankruptcy case is tied to this fee, the adversary filing fee will also be increased to $150 on December 18.

Notes on Bankruptcy Practice: The new local rules which were effective on August 1 contained two provisions which we would like to emphasize. First, both LBR 1007.1 and 9013 state that a brief which is filed with the court must be **double-spaced** and must be filed with **two copies**. Second, the rules have been changed to require that all attorneys who practice before the Bankruptcy Court must be admitted to practice before the Federal Bar for the Western District of Michigan. We are creating a computer database using the District Courts attorney roll in the near future, and we will be taking action to ensure that this rule is enforced. If you have not been formally admitted to practice before the federal bar, you should seek admission now. If you are aware of any violations of this rule which are now occurring, please give me a call.

Venue: All bankruptcy judges are now taking ***sua sponte*** action to dismiss or transfer cases which are improperly filed with this court because the venue of the cases is improper. Such cases have tended to be filed for clients who live much closer to either Traverse City or Lansing than to Flint or Bay City and who find it more convenient to travel to the former cities for hearings.

COURT MOTION CALENDAR

	Monday	Tuesday	Wednesday	Thursday	Friday
DECEMBER	2	3 SK GG	4 COURT ADMIN. MTG.	5 GK	6 HK GT
	9 SM	10 SM	11	12	13 HL SG
	16	17 GG HG	18	19 ST GK	20 HK
	23 GL	24	25 CHRISTMAS DAY	26	27
	30	31 GG			
JANUARY			1 NEW YEARS DAY	2 GK	3
	6	7 HG	8	9 GT SK	10 GT HK
	13 SG	14 GG	15	16 GK SL	17 HL
	20 M.L. KING DAY	21 HG	22	23	24 HK
	27	28	29 GM	30	31 HT

ISSUE SUMMARY

NAME OF CASE: _____

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CHAPTER: _____

RELIEF SOUGHT: _____

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ISSUE: _____

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BENCH DECISION: _____

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REPORT SUBMITTED BY: _____

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