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WHAT'S NEW IN LBO CASES?

Part I

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Not much is new, but they're still around. Although the dust from the LBO deals of the 1980s has died down, LBOs are fundamental creatures in the business world which will survive us all. LBO deals are still being done every day, but perhaps with more caution. The death of LBO[1] decisions from 1983 to 1992 resulted from the acquisition mania of the 1980s and served as a wake-up call to business acquisition lenders. More recent decisions have still primarily involved deals done in the 1980s. Since 1992, only one LBO decision has involved an LBO transaction that closed after 1990. Since there is nothing really new to talk about, I will embark on a synopsis of what happened in the early LBO cases in Part I and, then, in Part II, report on some recently decided cases and offer some thoughts for LBO transaction participants. First, a brief description of how fraudulent conveyance laws are applied to LBOs.

[1]The classic definition of a leveraged buyout ("LBO") contemplates an ambition-rich, but cash poor management that wishes to buy out the withdrawing stockholders of a corporation and finance the purchase by pledging the assets of the corporation to obtain the funds for purchase. Following completion of the transaction, which can be structured in several different ways, the managers own all of the stock, the old stockhodlers receive cash in exchange for all the stock, and the company has incurred new secured debt which may impair the ability of unsecured creditors of the company to recover on their claims. Murdoch, FRAUDULENT CONVEYANCES AND LEVERAGED BUYOUTS, 43 Bus. Law. 1,3 (November, 1987).

APPLICATION OF FRAUDULENT CONVEYANCE LAWS TO LBOs

Fraudulent conveyance laws are found in §548 of the Bankruptcy Code[2], each state's version of the Uniform Fraudulent Conveyance Act (UFCA), Uniform Fraudulent Transfer Act (UFTA) or, in some instances, state common law. Bankruptcy trustees and debtors-in-possession may use state fraudulent conveyance laws via §544(b). §548 has a one-year statute of limitations, so most often §544(b) is used to attack LBOs.

Fraudulent conveyance laws contain two primary grounds for relief: (1) actual intent to hinder, delay or defraud creditors; and (2) the constructive fraud tests. Under the constructive fraud tests, it is usually the plaintiff's burden to prove that in exchange for a transfer, the debtor (1) received less than reasonably equivalent value (§548), or did not receive fair consideration (UFCA) and (2) (i) was insolvent or rendered insolvent, (ii) was left with unreasonably small capital with which to conduct its operations, or (iii) intended to incur debts beyond its ability to repay as they matured.

Applying fraudulent conveyance laws to LBOs can result in the following claims against:

LBO Selling Stockholder: Acquiror purchases controlling stock interest in target; acquiror causes target to borrow purchase price and grant lien on target assets to secure loan; selling stockholder receives loan proceeds for stock – target is only a conduit for loan proceeds; target obligates itself on loan, grants lien on assets and receives no direct consideration because the loan proceeds are paid out to selling stockholder as part of pre-arranged plan; selling stockholder's knowledge and/or participation in the pre-arranged plan may be a factor in his liability to return the sales proceeds. A stock redemption may be used instead, or combined with a stock sale.

LBO Lender: On the other side of the stock sale transaction, the LBO lender advances loan proceeds to the target for immediate payment to the selling stockholder as part of a pre-arranged plan; the target grants a lien to the LBO lender but receives no direct consideration in return; LBO lender's lien may be avoided and its unsecured claim may be equitably subordinated based on post-LBO conduct.

Other LBO Participants: Officers and directors of the target, investment bankers, lawyers and other professional participants in LBOs may have liability based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty and a variety of other tort claims.

ANCIENT HISTORY (1571-1982)

As we all know, modern fraudulent conveyance law derives from the statute of 13 Elizabeth Chapter 5 enacted in 1571 to deal with the "flying pig" problem.[3] But LBOs, as well as talking pigs, were unknown to the Elizabethans. The latter are inventions of the twentieth century.[4] Thus, the threshold question – can or should fraudulent conveyance laws be applied to LBOs? Pre-modern day cases do not provide an answer because the term LBO was not in use. Nevertheless, a look at these cases is instructive.

In 1933, the Second Circuit Court of Appeals decided In re: College Chemists, Inc.[5] holding that the chattel mortgage given by the corporate debtor on all of its assets to secure the unpaid balance of the purchase price for 100% of its stock owed by Weiner to former owner Diller

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[2]Title 11, U.S.C. All sections references are to the Bankruptcy Code, unless otherwise indicated.

[3]As contrasted from the problem recently addressed in the Oscar nominated motion picture "Babe".

[4]Although seller-financed LBO's have probably taken place for some time.

[5]62 F.2d 1058 (2nd Cir.1933).

was a fraudulent conveyance, since the Debtor did not receive fair consideration in exchange for the chattel mortgage given, and actually received nothing. In the mid-1960s another seller-financed case surfaced, also finding a fraudulent conveyance where the purchase price for the stock of the Debtor was paid for with corporate assets; again - the transfer was without "fair consideration."[6]

At about the same time, the Process-Manz case was decided.[7] This case involved a lender-financed LBO, although the lender did not become involved until post-closing when the Debtor encountered difficulty in making payments of the purchase price. In this case, the Trustee sued the lender. The District Court upheld the Bankruptcy Referee's findings that the liens granted by the Debtor to the lender to secure loan proceeds paid out to former stockholders were without fair consideration, left the debtor with unreasonably small capital, that the lender knew or should have known that the Debtor would incur debts beyond its ability to repay and, finally, that under the facts the lender was found to have had actual fraudulent intent.[8] The lender's liens were invalidated and its claims subordinated.

At this juncture, case law had not gone too far past the "flying pig" stage. The two seller-financed stock deals were easy calls based on lack of fair consideration involving only the seller (acting as lender) and the purchaser. And, in the Process-Manz case, the lender was easily found to have been involved in a fairly egregious situation amounting to actual fraud. The term "leveraged buyout" had not yet come into use and was not mentioned in these early cases. The landscape remained fairly constant for many years thereafter. Then, in the 1980s, the flying pigs attacked.

THE EARLY CASES (1983-1991)

No sooner had Baird and Jackson proclaimed that fraudulent conveyance laws were not meant for modern LBOs,[9] then the flood gates opened. Festering and bubbling under the surface were scores of risky LBO deals recently completed or in gestation in the midst of the Reagan recovery. The Gleneagles case had been decided, but could be explained as an anomaly.[10] And close on the heels of Gleneagles, the LBO seller was exonerated in the Credit Managers decision. However, just around the corner were a series of cases that totally changed the picture. It went something like this:

1983 - Gleneagles/Tabor Court Realty (Trial/Appeal)

LBO Transaction Summary - 1973 leveraged stock acquisition of two Pennsylvania coal mines through a complex series of transactions by newly formed

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[6]Steph v. Branch, 255 F. Supp.526 (1966), aff'd Branch v Steph, 389 F.2d 233 (10th Cir. 1968).

[7]In re: Process-Manz Press, Inc., 236 F.Supp. 333 (1964), rev'd on other grounds In re: Process-Manz Press, Inc., 369 F.2d 513 (7th Cir. 1966).

[8]Id. at 346-347. There is no discussion of the question of the applicability of fraudulent conveyance laws to the transcation; and, since the Bankruptcy Referee concluded the lender had actual fraudulent intent, such a discussion would seem to be unnecessary. However, Process-Manz is noteworthy because for the first time a lender's actions in an LBO were challenged.

[9]Baird and Jackson, FRAUDULENT CONVEYANCE LAW ANDITS PROPER DOMAIN, 38 Vand.L. Rev.829, 850-54(1985). Despite this public pronouncement and the absence of case law to the contrary, sophisticated commercial lawyers had secretly been concerned for years about the potential for fraudulent conveyance law attacks on LBO deals.

[10]United States v Gleneagles Inv. Co., Inc., 565 F. Supp. 556 (M.D. Penn. 1983), aff'd United States v Tabor Court Realty Co.,803 F.2d 1288 (3d Cir.1986), cert. denied ___U.S.___,107 D.Ct. 3229, 97 L.Ed.2d 735(1987). Since the Gleneagles court found actual intent to defraud, the applicability of the constructive fraudulent conveyance tests (fair consideration/reasonably equivalent value, insolvency and inadequate capitalization) to LBO deals was not squarely addressed.

Great America Coal Company (owned 50% by James R. Hoffa, Jr.); $8.5 million purchase price financed with $8.53 million loan secured by first lien on coal mine assets.

Lawsuit - Trustee in bankruptcy for coal mines filed suit in District Court against the LBO participants to avoid mortgage liens on coal mines under Pennsylvania UFCA and to recover damages against LBO participants.

Significant Findings at Trial - District Court concluded parties to the transaction, including the lender, had full knowledge of the transaction, could have foreseen the effect on creditors and therefore "the parties must be deemed to have intended the same;" accordingly, Court held the LBO transaction was a fraudulent conveyance based on "actual intent to hinder, delay or defraud creditors."

LBO Fraudulent Conveyance Law Principles - Although this case was won by the Trustee under Pennsylvania's UFCA, it was regarded at the time as somewhat of an anomaly because the LBO transaction was so obviously an intended fraud and the Court did not use the constructive fraud tests nor rule on their applicability. Nevertheless, Gleneagles created the platform for the debate that was to follow in legal circles and the courts.[11]

1985 - Credit Managers (Trial)[12]

LBO Transaction Summary - The stock of the debtor, Crescent Food Company, was sold by The Federal Company to management of Crescent in an LBO. The purchase price was seller financed and secured by a lien on Crescent's assets. Crescent also borrowed $7.5 million on a secured basis to repay an intercompany debt owed to Federal. Crescent encountered several business setbacks and ceased operations 17 months after the LBO.

Lawsuit - Assignee for benefit of creditors of Crescent filed suit in District Court against Federal to recover monies paid pursuant to the LBO alleging fraudulent conveyance under California UFCA.

Significant Findings at Trial - The Credit Managers Court noted that this was a case of first impression with "no precedent directly on point." Two threshold issues were discussed but not decided by the Court: (1) whether fraudulent conveyance laws are generally applicable to LBOs, and (2) whether the plaintiff must represent a creditor who was a creditor at the time of the LBO (the "pre-existing creditor" test). Instead, the Court ruled there was no fraudulent conveyance. This conclusion was arrived at as follows:

Crescent did not receive fair consideration for its signature on the note to Federal in exchange for the lien given to Federal; however, a detailed analysis of cash flows established that Crescent did have sufficient capital after the LBO to continue operations (an unanticipated strike by Crescent's employees was the "crippling blow from which Crescent never recovered.") The insolvency issue was not discussed in the opinion, probably because the Court deferred on the "pre-existing creditor" issue.

LBO Fraudulent Conveyance Law Principles - The Court's discussion and analysis of the projections prepared prior to the LBO established this case as the leading case on the issue of unreasonably small capital - the question to examine is whether the projections were prudent based upon the information available pre-LBO, including reasonably foreseeable post-LBO events.

1985 - Anderson Industries

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[11]No discussion of the question of the general applicability of fraudulent conveyance laws to LBOs was contained in the trial decision.

[12]Credit Managers Association of Southern California v The Federal Company, 629 F.Supp. 175 (C.D. Cal. 1985).

(Trial)[13]

LBO Transaction Summary - Purchase of controlling stock interest in target operating company Anderson for $5,682,585 in August, 1979; Anderson simultaneously borrowed $4,600,000 and then immediately loaned that sum to acquiror for no consideration to pay purchase price; target filed Chapter 11 bankruptcy in July, 1983.

Lawsuit - Debtor and creditors committee brought adversary against selling stockholders to recover purchase price under § 544(b)/Michigan UFCA; defendants moved for summary judgment on ground that UFCA does not apply to leveraged buyouts, only creditors existing at the time of the LBO can recover and the transfer was for fair consideration.

Significant Findings on Motion - Judge Howard found the Michigan UFCA was designed to allow creditors to set aside conveyances which were fraudulent and that applying it to LBOs did not appear to be an absurd result, that the trustee/debtor-in-possession is the requisite creditor under § 544(b) and that evidence would be required on the issue of fair consideration.

[13]In re: Anderson Industries, Inc., 55 B.R.922 (Bankr. W.D. Mich. 1995).

LBO Fraudulent Conveyance Law Principles - Anderson was decided seven months after Baird and Jackson's article in the VANDERBILT LAW REVIEW, but does not mention the article. Nevertheless, Anderson is the first decision to clearly hold fraudulent conveyance laws applicable to LBOs generally.[14]

1987 - Ohio Corrugating (Motion/Trial)[15]

LBO Transaction Summary - Purchase of 100% of stock of target operating company Ohio Corrugating in November, 1984; acquiror and target borrowed $1,475,000 and gave lender first lien on all target assets; loan proceeds were used by acquiror to purchase target stock from individual shareholders; target filed Chapter 11 Bankruptcy in September, 1985.

Lawsuit - Creditors committee brought adversary against lender and acquiror to avoid lien under § 548 and § 544(b)/Ohio UFCA and subordinate lender's unsecured claim under § 510(c); lender settled; defendant acquiror moved for summary judgment on ground that § 548 and Ohio UFCA are inapplicable to LBOs.

Significant Finding on Motion -The Court held § 548 and Ohio UFCA apply to LBOs citing Anderson and Tabor Court Realty.

Significant Findings at Trial - The Court (i) reaffirmed its earlier decision regarding the applicability of § 548 and Ohio UFCA to LBOs; (ii) held that transfers between purchaser and target in an LBO may be avoided using fraudulent conveyance law; (iii) held that § 548(a)(2) can only be used to protect creditor whose claims existed at the time of the LBO unless actual fraud is proven; (iv) held the debtor/target did not receive reasonably equivalent value in exchange for the lien on its assets since the loan proceeds were used by the acquiror to purchase target stock; and (v) held the debtor was not rendered insolvent by the LBO on a very close call giving presumptive validity to a balance sheet conforming to GAAP, even though the Court's reconstituted balance sheet showed insolvency by $700,000 on $2,235,063 of assets.

LBO Fraudulent Conveyance Law Principles - This is a curious decision. The Court's reconstituted balance sheet did show insolvency. However, the Court had its doubts about

[14]The Tabor Court Realty court reached the same conclusion in 1986 in its decision on the Gleneagles appeal, noting the discussion on the subject that had surfaced after the Gleneagles trial decision in 1983.

[15]In re: Ohio Corrugating Company, 70 B.R. 920 (Bankr. N.D. Ohio 1987); In re: Ohio Corrugating Company, 91 B.R. 430 (Bankr. N.D. Ohio 1988).

whether the Debtor really was insolvent because it continued for some time after the LBO to pay its debts as they matured; and, factors such as industry-wide price reductions and declining sales volumes caused the Debtor's eventual insolvency. The LBO principle that may have emerged in this decision is that if the Court does not view the LBO as a "bad LBO," then it will find a way to rule for the LBO participants. Later LBO decisions seem to reflect this principle, at least in part.

1988 - Kupetz (Trial/Appeal)[16]

LBO Transaction Summary - July, 1979 stock sale by Wolf of 100% of stock of operating company, Wolf & Vine, for $3 million, paid $1.1 million in cash and $1.9 million in installments over two years; Debtor pledged its assets to secure new loans, the proceeds of which were used to make the cash payment at closing; new management made substantial changes in Debtor's operations; Debtor filed Chapter 11 bankruptcy in December, 1981.

Lawsuit - Trustee Kupetz filed suit in District Court against the LBO seller and LBO lender to recover sale price paid and avoid liens as a fraudulent conveyances under § 544(b)/California UFCA; claims against LBO lender were dismissed on summary judgment; trial was held against the LBO sellers on UFCA § 5 (unreasonably small capital).

Significant Findings at Trial - There were no pre-existing creditors; the Court noted that the sale of the target was "widely advertised in trade journals and known throughout the industry;" said it was not clear whether post-LBO creditors should be able to set aside the sale under such circumstances - then cited the concerns of the Credit Managers Court as to whether any creditors other than those in existence at the time of the LBO could attack the LBO, if LBOs are even subject to fraudulent conveyance attack - and finally, as in Credit Managers, decided the case without ruling on whether fraudulent conveyance laws are "generally and broadly applicable" to LBOs; the LBO sellers had no knowledge of the financing details of the LBO and sold their stock for a fair price to "an independent and wealthy purchaser who had a strong relationship with a major financial institution;" since the LBO sellers had no knowledge of the financing side of the LBO transaction, the issue of fair consideration should be viewed by focusing on whether the sale price was fair - and the Court concluded it was,[17] without needing to go further, the Court found the Debtor target was not left with unreasonably small capital nor rendered insolvent because the Trustee's expert lacked valuation expertise and made several assumptions which were questionable given the evidence; the directors of the target did not breach their fiduciary duties to the target - it was reasonable and prudent for them to rely on the apparent financial strength of the LBO purchaser and to assume that his bank would not make a loan "to a buyer who did not have adequate collateral and a strong financial background."

Significant Findings on Appeal - The Court reviewed existing case law on the applicability of fraudulent conveyance law to LBOs noting that LBO transactions which are "above board" from the start are "ratified" by courts - on the other hand, LBOs intentionally designed to defraud creditors are set aside, citing Credit Managers and Gleneagles; without reaching a specific rule on when LBOs may be avoided by fraudulent conveyance laws, the Court

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[16] Kupetz v Continental Illinois National Bank and Trust Company of Chicago, 77 B.R. 754 (C.D. Cal 1987); Kupetz v Wolf, 845 F.2d 842 (9th Cir. 1988).

[17] Later decisions have analyzed this differently, but reached the same conclusion. In In re: Bay Plastics, Inc., 187 B.R. 315 (Bankr. N.D. Cal. 1995), the court ruled that the LBO transaction should not be collapsed with respect to LBO sellers who have no knowledge of the financing side of the LBO transaction.

declined to avoid the LBO because it found (1) no actual intent to defraud by the LBO sellers (2) the LBO sellers had no knowledge of the LBO financing and were careful in selecting a purchaser, after rejecting several, who was financially sound (3) there were no pre-existing creditors and all existing creditors thus had an opportunity to learn about the target's new heavily leveraged financial structure prior to extending credit[18] and (4) the form of the LBO appeared to be more like a straight sale rather than a serial redemption by the target of its stock and the LBO sellers did not have knowledge of the LBO financing.[19]

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[18]Except, of course, for those pesky involuntary creditors like tax claimants and tort judgment holders who have no such opportunity. See Note, FRAUDULENT CONVEYANCE LAW AND LEVERAGED BUYOUTS, 87 Colum. L. Rev. 1491, 1512 (1987) and In re: Morse Tool,Inc., 108 B. R. 389, 391 (Bankr. D. Mass. 1989).

[19]The Court suggested the Trustee's case would have been stronger if the LBO sellers "should have known" more about the transaction suggesting a "notice" type standard. Id. At 850. Since few LBO cases are brought against the LBO sellers (because Trustees prefer the deep-pocket LBO lenders who almost by definition have extensive knowledge of the LBO financing and the complete LBO deal structure), there is little discussion to date about whether the "notice" standard, rather than "actual knowledge", applies to LBO sellers or whether LBO sellers have any duty at all, absent noticeor knowledge, to look out for the rights of creditors of the target.

Post-Trial Litigation - After the trial, the LBO sellers filed a malicious prosecution case against the Chapter 7 trustee, Kupetz, for bringing the fraudulent conveyance action. The Complaint was dismissed on summary judgment and Kupetz was awarded sanctions. The original Complaint by Kupetz had been filed in 1983 before Tabor Court Realty, Credit Managers and any law review articles on the subject. Nevertheless, the Court found probable cause to support the construction of the law proposed in the original complaint in an area where the "applicable law is unsettled." This is generous since there was virtually no case law or commentary on the subject. But by 1990, when this case was decided, the issue had been addressed in numerous cases and in the literature.

LBO Fraudulent Conveyance Law Principles - In the 9th Circuit, LBO sellers who lack knowledge of the LBO financing side of the transaction are protected. LBO deals for which there is public knowledge and advertising have a better chance to be upheld as valid. This has its roots in the original notion about concealed conveyances. However, it does not adequately address the involuntary creditor. See endnote 18, *infra*.

1988 - Wieboldt Stores (Motion)[20]

LBO Transaction Summary - Wieboldt repurchased 99% of its stock for $38 million *via* a tender offer in 1985; the tender offer was financed through a combination of loans secured by Wieboldt assets and sale of a real estate parcel; an involuntary Chapter 7 was commenced in September, 1986 which was converted to Chapter 11.

Lawsuit - Debtor Wieboldt brought adversary against all selling stockholders and lenders under § 548 and § 544(b)/Illinois UFCA; all shareholders brought motions to dismiss on ground that fraudulent conveyance loans do not apply to LBOs.

Significant Findings on Motion - § 548 and Illinois UFCA apply to LBOs; claim of actual intent to defraud under § 548(a)(1) was sufficiently alleged by reference to the structuring of the LBO by the lenders and controlling shareholders to avoid/evade fraudulent conveyance liability; and Wieboldt received less than reasonably equivalent value because it granted a lien on its assets in exchange for 99% of its stock which was virtually worthless. Non-insider shareholders were dismissed; all other claims survived dismissal.

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[20]Wieboldt Stores, Inc. V Schottenstein, 94 B.R. 488 (N.D.Ill. 1988).

LBO Fraudulent Conveyance Law Principles - Non-insider shareholders without knowledge or involvement in the LBO transaction are protected. This case also suggests that LBO participants and their lawyers who talk about and then structure the transaction so as to avoid or minimize fraudulent conveyance risk, could be begging the question. The reality today is that the fraudulent conveyance risks of LBOs are well understood and must be dealt with. Perhaps, this is form over substance. This principle has rarely surfaced in later decisions.

1989 - Metro Communications (Trial/Appeal)[21]

LBO Transaction Summary - April, 1984 sale of 100% of stock of operating company, Metro Communication, to shell acquisition corporation ("TCI") formed by acquiror; Debtor Metro guaranteed $1.85 million loan to TCI secured by a first lien on all of Debtor Metro's assets; TCI used the loan proceeds to acquire Debtor Metro's stock; LBO lender also granted Debtor Metro a $2.3 million operating line of credit; Debtor Metro filed Chapter 11 bankruptcy in March, 1985.

Lawsuit - The LBO lender filed a Complaint to determine secured status; creditors committee intervened and answered the Complaint alleging various transfers to the LBO lender must be avoided as fraudulent conveyances under § 548.

Significant Findings at Trial - § 548 is applicable to LBOs; Debtor did not receive reasonably equivalent value in exchange for the guaranty and liens granted because the debt could only be repaid by the Debtor (since the obligor/acquiror was a shell holding company) and the $2.3 million line of credit received by the Debtor was not consideration because it really was only an opportunity for the Debtor to incur additional debt; Debtor was rendered insolvent by clear logic since LBOs cause insolvency by their very nature and the Debtor pledged all of its assets for the $1.85 million loan; the District Court affirmed.

Significant Findings on Appeal - Reversed. The target did receive reasonably equivalent value in the LBO transaction - although the target did not receive the proceeds of the acquisition loan and gave a lien on its assets to secure it (thus, receiving no direct benefit in return for what it gave, as is the typical LBO structure), indirect benefits may also be evaluated; the ability to borrow money in the commercial world has considerable value, the LBO resulted in the affiliation of two companies in the communications industry which the LBO participants felt and reasonably expected would produce a certain synergy; the demise of Metro was largely attributable to an unpredicted ruling of the U.S. Supreme Court that NCAA restrictions on college football game broadcasts violated antitrust laws - which resulted in an unforeseen increase in competition and a resulting severe decline in Metro revenues; finally, guaranties given by Metro affiliates also were an indirect benefit because of the right of contribution among co-guarantors Metro thereby acquired; no evidence was presented on the value of these indirect benefits and since it is the Trustee's burden to establish the Debtor received less than reasonably equivalent value, the LBO lender prevails.[22]

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[21] In re: Metro Communications, Inc., 95 B.R. 921 (Bankr. W.D. Pa. 1989); rev'd Mellon Bank v Metro Communications, Inc., 945 F.2d 635 (3d Cir.1991).

[22] Although not necessary to its holding, the Appeals Court also pointed out that the Bankruptcy Court was "cavalier" in its analysis in finding of insolvency and made several errors. First, Metor's liability on its guaranty of the LBO debt should have been reduced by the value of the affiliate guaranties; second, there was no evidence on the value of accounts receivable and payable and a contemporaneous income tax return in the record shoed a small, but positive net worth. In short, the record was to sparse to determine the solvency issue.

LBO Fraudulent Conveyance Law Principles - This case is somewhat of an anomaly. The Appeals Court was obviously stretching to justify reversal. If evidence had been presented on the value of the indirect benefits, it seems doubtful that it could have amounted to $1.85 million. Most LBO decisions to have discussed the issue have sided with the District Court on the value of the availability of borrowing under a loan facility.

1989 - Vadnais Lumber (Trial)[23]

LBO Transaction Summary - December, 1987 stock redemption of 80% of debtor's stock held by four of five shareholders with only a limited noncompete covenant given by the selling shareholders; the four sellers immediately went into direct competition with the debtor; Debtor filed Chapter 11 Bankruptcy in August, 1988.

Lawsuit - Debtor brought adversary against the four redeemed shareholders under preference and fraudulent conveyance (§ 548 and § 544(b)/Massachusetts UFCA) grounds to recover redemption funds.

Significant Findings at Trial - A corporation receives no direct consideration in return for a purchase of its own stock; in this case, the Debtor came out with even less because it replaced the broad noncompetitive obligation of its shareholder/directors as fiduciaries with limited noncompete agreements - no value was received; no reasonable projection of the Debtor's cash flow as of the LBO would have shown the Debtor could avoid insolvency.

LBO Fraudulent Conveyance Law Principles - Not central to the Court's ruling was a discussion of valuation standards for purposes of determining solvency, an issue which is also important in later LBO cases. The Court noted that for solvency determinations "going concern" value should be used rather than liquidation value of individual assets minus liabilities, unless "at the time in question the business is so close to shutting its doors that a going concern standard is unrealistic."[24]

1990 - Kaiser Steel (Motion)[25]

LBO Transaction Summary - 1984 LBO of Kaiser Steel Corporation - common stockholders tendered shares for cash ($162 million in total) and preferred stock in acquiror; $100 million of the purchase price was borrowed and secured by Kaiser Steel assets; some Kaiser Steel stockholders were customers of Schwab who delivered the cash and preferred shares to these customers in the normal course through the settlement process; Kaiser filed Chapter 11 bankruptcy in 1987.

Lawsuit - Debtor Kaiser brought adversary suit against the brokers involved in the LBO stock tender transaction to recover from the broker as transferees of fraudulent conveyance under § 550(a); Schwab moved for summary judgment.

Significant Findings on Motion - Payments Schwab received were exempt from avoidance as settlement payments under § 546(e) - the broad definition of "settlement payment" under § 741(8) and related legislative history was designed to provide stability in the securities markets and there was no basis for distinguishing settlement payments in LBO transactions from any other stock sale.

LBO Fraudulent Conveyance Law Principles - Parties handling settlement payments are protected.

1991 - Crowthers McCall Pattern (Motion)[26]

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[23] In re: Vadnais Lumber Supply, Inc., 100 B.R. 127 (Bankr.D. Mass. 1989).

[24] Id. at 131.

[25] Kaiser Steel Corporation v Charles Schwab & Co., Inc., 913 F.2d 846 (10th Cir. 1990).

[26] Crowthers McCall Pattern, Inc. v Lewis, 129 B.R. 992 (S.D. N.Y. 1991).

LBO Transaction Summary - 1987 sale of stock of operating company (designer and manufacturer of home sewing patterns) McCall Pattern for $63 million cash; $35 million of sale price borrowed and secured by first lien on McCall Pattern assets; voluntary Chapter 11 petition filed in December, 1988.

Lawsuit - Debtor filed suit against LBO lender, former shareholders (the LBO sellers) and former directors of the debtor under New York Debtor and Creditor Law alleging fraudulent conveyance, breach of fiduciary duty by directors, improper corporate distributions and violation of various contracts; various defendants brought motions to dismiss the complaint.

Significant Findings on Motion - various steps in the LBO transaction should be collapsed and considered "one integrated transaction" and viewed from the perspective of the creditors; accordingly, the LBO lender must "make a reasonable determination that the buyout is consistent with the rights of creditors before advancing funds;" claim against LBO lender for aiding and abetting McCall Pattern directors' breach of fiduciary duty in consummating the LBO because the LBO lender had knowledge of the LBO including that McCall Pattern would not retain the loan proceeds and therefore not receive fair consideration was adequately pled; claim of illegal distributions to shareholders adequately pled.

LBO Fraudulent Conveyance Law Principles -

All steps in an LBO transaction are collapsed and treated as one integrated transaction (except as to participants who do not have knowledge, such as the sellers in Kupetz[27] and the public shareholders in Kaiser Steel).

LBO lender may have affirmative duty to determine that creditors' rights are not unreasonably prejudiced by the LBO.

Directors can be liable in LBO for breach of fiduciary duty.

LBO lender can be liable in LBO for aiding and abetting directors based only on LBO lender's knowledge of the LBO transaction and assistance in providing the financing.

1991 - Aluminum Mills (Motion)[28]

LBO Transaction Summary - Certain officers and directors of investment banking firm formed acquisition corporation and in January, 1988 acquired the assets and assumed the liabilities of aluminum mill for $34 million of which $17 million was borrowed and secured by a first lien on the purchased assets; post-LBO Debtor borrowed additional funds and executed releases in favor of various defendants in the lawsuit just prior to its March, 1990 Chapter 11 petition.

Lawsuit - Creditors committee filed adversary suit against LBO lenders, director of debtor who approved the LBO and officers and directors of the acquisition corporation under § 548 and § 544(b)/Illinois UFCA to avoid LBO lenders liens as fraudulent conveyance, to subordinate the LBO lender's claims and alleging breach of fiduciary duty by directors; all defendants filed motion to dismiss.

Significant Findings on Motion - Pursuant to the Court's prior authorization and established precedent, the creditors committee had standing to pursue the LBO claims; prior decisions have uniformly held that fraudulent conveyance laws are applicable to LBOs; although the Complaint did not identify a specific creditor whose claim existed at the time of the LBO and as of the Chapter 11 bankruptcy (the "pre-existing creditor"), the Complaint did allege at least 42 of Debtor's current creditors had claims against Debtor at the time of the LBO and at least five had amounts continuously owing

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[27]Later decisions noted in Part II have rejected this Kupetz principle.

[28]In re: Aluminum Mills Corporation, 132 B.R. 869 (Bankr. N.D. Ill. 1991).

from Debtor from the time of the LBO until the bankruptcy filing - "trade creditors could very well have been prejudiced by the LBO since their relationships with Debtor were in place prior to the LBO and allegedly continued without interruption until the bankruptcy filing;" complaint sufficiently pled breach of fiduciary duty claims against the directors of the acquiror and the seller, inducement of breach of fiduciary duty claims against the LBO lenders for inducing the directors of the acquiror to approve the LBO and to release the LBO lender just prior to the bankruptcy, and equitable subordination against the LBO lender based on allegations the LBO lender had a source of power over Debtor in its security interest in Debtor's assets and used its power to (i) control a variety of key decisions made by Debtor's management and (ii) keep Debtor in business while it was insolvent to frustrate potential fraudulent claims.

LBO Fraudulent Conveyance Law Principles - The Court's analysis on the pre-existing creditor issue is somewhat tenuous, suggesting that trade creditors need only have existing contracts with the Debtor at the time of the LBO and at bankruptcy, not necessarily the same unpaid claim; or that trade creditors with rolling accounts that are unpaid at both dates (as one would typically expect, since there is always some 60-90 days of trade credit unpaid at all times) can qualify; LBO lenders should note the inducement of breach of fiduciary duty claims, although no trial decision has yet upheld these claims.

PART I SUMMARY

The foregoing decisions constituted the first wave of LBO cases. Most of them were on motions or were trial decisions with selected glimpses at the evidence. The extensive trial opinions that examine the financial evidence in LBO deals under a microscope represent the next stage in LBO cases. Another factor to note - all of the cases involved either stock sale or stock redemption transactions. The issue of the applicability of fraudulent conveyance laws to asset sale LBO deals was yet unaddressed in the courts.

In Part II the major LBO trial opinions which were decided in 1991 and 1992 will be examined, as well as the second generation of LBO decisions in 1994 through the present.

RECENT BANKRUPTCY COURT DECISIONS

The Sixth Circuit and Supreme Court Decisions were summarized by John A. Potter. The Western District Court decisions were summarized by Dean Rietberg. The Eastern District Court decisions were summarized by Mary K. Viegelahn Hamlin.

* * * * * * * * * *

In Re: STALLMAN, 198 B.R. 491 (Bankr. W.D. Mich 1996), the Hon. Jo Ann C. Stevenson dismissed the Debtor's Chapter 7 bankruptcy under 11 U.S.C. § 707(b) because the granting of a discharge would have constituted a substantial abuse of the Bankruptcy Code.

After analyzing the Debtor's budget, the Court first found that the Debtor could repay his debts with "relative ease". The Court determined that specific expenditures for both the Debtor's 20-year-old son and items in the Debtor's personal budget were not reasonably necessary, and additionally noted that the Debtor had demonstrated an ability to supplement his salary with outside income.

The Court then flunked the Debtor under the honesty test. The Court cited the Debtor's failure to file an amended bankruptcy *Schedule I* as well as the Debtor's subtle improvement of his equity position in his condominium by applying money previously escrowed for Court-ordered

alimony payments to instead reduce his condominium land contract debt.

Applying the Sixth Circuit's "totality of the circumstances" standard formulated in In Re Krohn, 86 F.2d 123 (6th Cir. 1989), the Court concluded the Debtor was both non-needy and lacking in honesty, and that "with a little 'old-fashioned belt tightening' the Debtor could easily fulfill his responsibilities to his creditors."

* * * * * * * * * *

The Hon. James D. Gregg faced the issue of how the "universe of claims" and the base amount of votable claims was to be calculated for the purpose of determining whether 20% of creditors holding allowable unsecured claims had requested and voted at a Chapter 7 trustee election under §702 of the Bankruptcy Code in the case of In re Michelex, Ltd., 195 B.R. 993 (W.D. Mich. 1996).

The Court first concluded that the universe of claims under §702(a)(1) should initially be determined by relying upon the Debtor's schedules, and not restricted to proofs of claims actually filed at or before the §341 Meeting. The Court then developed a four-step process for making adjustments to determine the amount of "votable claims".

Having applied the standards to this particular disputed election, the Court ruled that the creditor had validly elected the permanent trustee.

* * * * * * * * * *

"Under Michigan law, is continuous possession required to maintain a valid and enforceable statutory artisan's lien?" was the issue framed by the Hon. James D. Gregg in the Chapter 13 case of In Re Lott, 196 B.R. 768 (Bankr. W.D. Mich. 1996).

In this dispute over security interests in a tractor, the Court first determined that the repair shop's artisan lien for the first repair bill was lost when it unconditionally and voluntarily released possession of the tractor to the Debtor. When the repair shop again possessed the trator to make additional repairs, a new and separate common law and statutory artisan's lien arose which remained valid and enforceable for the amount of the second repairs because the repari shop never relinquished possession.

Applying Michigan's Uniform Commercial Code, the Court then determined that the repair shop's artisan's lien for the second repair bill was entitled to priority over the other existing secured creditors.

The Court also rejected the Debtor's argument that the repair shop's lien was avoidable under §541(1)(D) of the Bankruptcy Code for the dual reason that a Chapter 13 debtor lacks standing to exercise a trustee's lien avoidance powers and because a Michgian's artisan lien is not a statutory lien which falls within the parameters of 11 U.S.C. §545.

* * * * * * * * * *

NEW CENTER HOSPITAL (D.C. E.D. MI, July 1996).

The Debtor filed a Chapter 11 and a Chapter 11 Trustee was appointed. The New Center Hospital Employee's Pension Plan and Trust ("Plan") filed a motion with the Bankruptcy Court to compel the Trustee to administer the Plan or to remove the Trustee. The Bankruptcy Court denied the Plan's request. The Plan appealed the Bankruptcy Court's decision. It was the Trustee's position that it would be a conflict for him to serve as an ERISA fiduciary and a bankruptcy estate fiduciary. The District Court found that prior to filing its Petition the Debtor had served as the Plan administrator and that a trustee assumes the position of the Debtor, including the obligation to serve as the Plan administrator. The Bankruptcy Court's decision was reversed and remanded.

* * * * * * * * * *

In Re: AL VALENTINE (B.C. E.D. MI, May 1996). Creditors filed a Request for Report to

United States Attorney Pursuant to 18 U.S.C. §3057 asking the Bankruptcy Court to make a report to the U.S. Attorneys Office regarding alleged misconduct by the Debtor. The Debtor objected to this request. 18 U.S.C.§3057(a) provides that a judge, receiver or trustee suspecting a violation of the laws must make a criminal referral to the United States attorney. The Bankruptcy Court held "that creditors in a bankruptcy case do not have a legally cognizable right to make such a request to the bankruptcy court, and accordingly, the request is denied."

* * * * * * * * * *

In Re THOMAS LAZAR (B.C.E.D. MI, May 1996).

Plaintiff filed an adversary proceeding against Debtor seeking to have a judgment for legal malpractice determined to be nondischargeable under §523(a)(4)&(6) and that the Debtor's discharge should be denied under §727(a)(2)&(3). The Court dismissed Plaintiff's claim under §523(a)(6) but granted the Plaintiff's Motion for Summary Judgment as to §523(a)(4) finding that the Debtor's conduct as Plaintiff's Counsel in a previous child custody and divorce matter was willful and malicious.

* * * * * * * * * *

In Re: THOMPSON BOAT COMPANY (B.C. E.D. MI, August 1996).

The Chapter 7 Trustee brought an action against Volva Penta of the Americas ("Defendant") for a preference under §547(b). The Defendant asserted the "ordinary course" defense under §547(c)(2). The Trustee asserted that the payments made by the Debtor to Defendant were not pursuant to ordinary business terms. The issues were:

1. Were the payments made in the ordinary course of business between the Debtor and the Defendant?; and

2. Were the payments made according to ordinary business terms?

As to the first issue, the Court must conduct a factual analysis - if late payments are the standard course of dealings between the parties it is within the ordinary course of business. The factors to be considered are: timing, amount and manner payment was made, and circumstances under which payment was made. The Debtor's average payment history to Defendant during the 90 day period was 76 days and during the 7 months prior to the preference period was 70 days. In this case the Court found that even though the payments were consistently late the Defendant in the months just prior to filing had stepped up its collection efforts and no longer acquiesced to late payments. As to the 2nd issue the Court found this late payments made by the Debtor to Defendant during the 90 days prior to filing were not made in the industry as to payment terms. The Court found that the ordinary businses terms in this particular industry was invoice terms.

CASES OF INTEREST

In Re:Charles Andrew and Terry Lynn Seal, Case No.: GK 93-80366, District Court Case No.: 1:96-CV-277. This is a Chapter 13 in which the Schedules listed a debt owed to a David Rosenberg, that was allegedly secured by an interest in a Ford Aerostar Van. There was an order issued requiring that payments made to Rosenberg pursuant to the terms of the confirmed plan be held in escrow by the Chapter 13 Trustee until Rosenburg provided Debtors with a Michigan vehicle title. After repeated requests, Rosenberg did not turn over the title to the Debtors. On September 2, 1994 the Court instructed Rosenberg to turn over the Michigan motor vehicle title to the Debtor's within 10 days. On February 9, 1995 the

Court issued an Order which required the Secretary of State to issue a title for the van to Terry Seal. Rosenberg filed a request to rescind the Court's order which was denied. Rosenberg filed a motion to release escrow funds on May 12, 1995 so that the funds could be applied toward the Debtor's indebtedness to Rosenberg. The Court denied Rosenbergs's motion and granted the Debtor's amended damages motion. The Court found that the Debtors had suffered damages as a result of Rosenberg's contumacious conduct. The Court ordered that all funds held in escrow by the Trustee were to be paid to the Debtors. Rosenberg now appeals this Order. Hon. Gordon J. Quist upheld the decision of Judge Gregg. Appeal is denied 10/15/96.

Report Submitted By: Roger J. Bus

STEERING COMMITTEE

The next Steering Committe meeting will be November 8, 1996 at 12:00 Noon at the Peninsula Club in Grand Rapids.

EDITOR'S NOTE

With this edition is a survey for possible education topics for the 1997 FBA Bankruptcy seminar. Please take a few minutes to complete the survey.

Next years seminar is scheduled for June 26-28, 1997 at Boyne Highlands.

LOCAL BANKRUPTCY NOTICE

Enclosed from Mark VanAllsburg is a memo from the Court, New Reaffirmation Agreement Form and the Court Motion Calendar for November, 1996.

* * * * * * * * * *

The 57th Conference of the Sixth Judicial Circuit of the United States will be held May 14-16, 1997at the Opryland Hotel in Nashville, Tennessee. If you are interested in attending please send your name, title, mailing address, telephone number and fax number to:

James A. Higgins
Circuit Executive
503 Potter Stewart
United States Courthouse
Cincinnati, Ohio 45202
Fax: 513/564-7210

E-Mail: conf97@ck6.uscourts.gov

If you have any questions please contact the Circuit Executive's Office at 513/564-7200.

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	August of 1996	August of 1995	August of 1994
Chapter 7	523	410	363
Chapter 11	7	3	11
Chapter 12	0	0	3
Chapter 13	240	178	164
Totals	770	591	541

Bankruptcy Chapter	January - August of 1996	January - August of 1995	January - August of 1994
Chapter 7	4239	3175	2824
Chapter 11	51	46	64
Chapter 12	5	13	14
Chapter 13	1744	1160	1085
§304	0	1	0
Totals	6039	4395	3987

1997 F.B.A. BANKRUPTCY SEMINAR
SURVEY RE POSSIBLE EDUCATION TOPICS

To FBA Bankruptcy Section Members:

RESERVE THIS DATE ON YOUR CALENDAR NOW! The 1996 FBA Bankruptcy Seminar will be held on Thursday, June 26 to Saturday, June 28, 1997 at Boyne Highlands, Harbor Springs, Michigan.
Your committee is now commencing planning for the educational program. Your suggestions are welcomed and appreciated.

1. Do you have any suggested educational topics that will be of interest?

_____

_____

2. Do you recommend any keynote speaker or other guest speaker(s) from outside the district? If so, who? _____ Topic? _____

3. Do you desire to be a speaker on the panel for an educational topic?

   (A) If so, what topic? _____

   (B) If so, will you be responsible for preparation of materials?

   ☐ Yes ☐ No

4. Should we again have a speakers' barbeque or some other type of dinner open to all registrants? ☐ Yes ☐ No
   If so, what is your suggestion? _____

5. Do you have any other suggestions that you would like us to consider in planning the seminar and/or social activities? _____

_____

_____

_____
NAME (Please Print)
Telephone No. _____

Return completed questionnaires to James D. Gregg, P.O. Box 3310, Grand Rapids, MI 49501

From the Court:

New Reaffirmation Agreement Form: The Court has recently reviewed and revised local form # 1 (reaffirmation agreement) to make the language of that form more closely adher to the language of 11 USC 524(d). This form is dated 8/1/1996 in the lower left hand corner of the form. It should be noted that the B-240 form (reaffirmation agreement), which is still being printed by some publishers, was created before the Bankruptcy Reform Act of 1994 and it has never been revised to include language required by that Act. The form created by this court is a suggested form. Any form submitted to the court will be accepted by the clerk and filed.

E-Mail Address for the Court: Those of you who are connected to the internet and who wish to correspond with the court using e-mail may now do so. Use the following e-mail address: **"Clerk_MIWB@miwb.uscourts.gov"** You can attach files formatted in WordPerfect 5.1 or 6.1. to your e-mail messages. Other formats may not be recognized by our software. Do not send us any documents which you want filed.

Court Motion Calendar

	Monday	Tuesday	Wednesday	Thursday	Friday
OCTOBER	30 SG	1 HG	2 COURT ADMIN MTG.	3	4 HK
	7 SK	8 GG	9	10 GK	11
	14 COLUMBUS DAY	15 SM	16 SM	17 ST	18
	21	22 SG GL HG	23	24 GT	25 HK GT
	28	29 GG	30	31 HL GK	1
NOVEMBER	4 SK	5 HG	6	7	8 HK
	11 VETERANS DAY	12 GL	13	14 GT	15 GT HL
	18 SG HM	19 GG HM	20 HM	21 ST GK	22 HK
	25	26 HG	27	28 THANKSGIVING DAY	29

(LOCAL FORM # 1)

REAFFIRMATION AGREEMENT

Debtor's name	Case No.

Creditor's Name and Address

PART A -- AGREEMENT

Summary of Terms of the New Agreement

Principal Amount Due_____

Description of Security:

Interest Rate (APR)_____

Monthly Payments_____

Present Market Value:

Please attach any additional written agreement to this form.

The parties understand that this agreement is purely voluntary and is not required under the Bankruptcy Code, under nonbankruptcy law, or under any agreement not in accordance with the provisions of 11 USC 524. The debtor may rescind the agreement at any time prior to discharge or within 60 days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the creditor.

_____ X_____

Date Signature of Debtor

X_____ X_____

Signature of Creditor Signature of Joint Debtor

PART B -- ATTORNEY'S DECLARATION

This agreement represents a fully informed and voluntary agreement that does not impose an undue hardship on the debtor or any dependent of the debtor. The debtor has been fully advised about the legal effect and consequences of this agreement and of any default under this agreement.

_____ X_____

Date Signature of Debtor's Attorney

PART C -- MOTION FOR COURT APPROVAL OF AGREEMENT

Complete only when the debtor is not represented by an attorney.

I (we), the debtor affirm the following to be true and correct:

1) I was not represented by an attorney in negotiation of this reaffirmation agreement.

2) My current monthly net income is $ _____.

3) My current monthly expenses total $_____, including any payment due under this agreement.

4) I believe that this agreement is in my best interest because _____

_____

Add another page if you wish to provide additional information to the court.

Therefore, I ask the court for an order approving this reaffirmation agreement.

_____ X_____

Date Signature of Debtor

_____ X_____

Date Signature of Joint Debtor

PART D -- COURT ORDER

The court grants the debtor's motion and approves the voluntary agreement upon the terms specified above.

_____ X_____

Date Bankruptcy Judge

Date: 8/1/1996

To: All Federal Practitioners in the Sixth Circuit

1997 Sixth Circuit Judicial Conference

For the first time in its history, the Sixth Circuit will hold an open Conference and all attorneys admitted to practice in the federal courts in the Sixth Circuit are cordially invited to attend.

The 57th Sixth Circuit Judicial Conference will be held May 14-16, 1997 at the Opryland Hotel in Nashville, Tennessee. The Conference program will present an opportunity for judges and lawyers to exchange ideas on how the federal courts are operating and how they can be improved.

The Conference will open with a plenary session entitled, "Whose Case Is It?" on Thursday morning, May 15, and be followed by breakout sessions on Thursday afternoon. Topics for the group sessions include Contemporary Linguistics and Statutory Interpretation; Use and Abuse of Expert Testimony; Bankruptcy Appellate Panels; Impact of Bankruptcy on State Court Proceedings; a criminal session entitled "Everything But Trial"; Providing Effective Representation in Death Penalty Habeas Corpus Cases; ADR: What Works and Why; Employment Law; and Computer Enhanced/Generated Demonstrative Evidence.

The program will continue on Friday morning with District Meetings. A common group of topics will be identified and placed on the agenda for each of these meetings.

Friday afternoon will be free for recreational activities. The Conference will conclude with a banquet on Friday evening, May 16.

All program sessions will be held at The Opryland Hotel.

During the program sessions, there will be optional recreational activities for spouses.

For those attorneys from Kentucky, Ohio and Tennessee, the Conference will seek approved CLE credit for attendance at this program.

If you are interested in attending the 1997 Sixth Circuit Judicial Conference, please complete this information form so that registration materials can be sent to you in March. Please return by JANUARY 31, 1997 to:

James A. Higgins
Circuit Executive
503 Potter Stewart
United States Courthouse
Cincinnati, Ohio 45202
Fax: 513/564-7210
E-Mail: *conf97@ck6.uscourts.gov*

Name: _____

Title: _____

Mailing Address: _____

_____

_____

Telephone: _____

Fax: _____

Admitted to Practice in Federal Judicial District:
(Circle appropriately)

6CA EDKY WDKY EDMI WDMI

NDOH SDOH EDTN MDTN WDTN

If you have any questions concerning the Conference, please contact the

Circuit Executive's Office at
Telephone: 513/564-7200

MEMORANDUM

TO: Chapter 11 Debtors-in-Possession, Attorneys, Trustees and/or Examiners

DATE: October 8, 1996

FROM: Joan Waldmiller, Office of U.S. Trustee, 456-2002

RE: Chapter 11 quarterly fee update

The quarterly fee schedule for Chapter 11 Debtors-in-Possession has been changed. The following schedule is in effect October 1, 1996, that is beginning with the fourth quarter, 1996.

If you have any questions, please call.

TOTAL QUARTERLY DISBURSEMENTS			QUARTERLY FEE
0	-	$14,999.99	$250
$15,000	-	$74,999.99	$500
$75,000	-	$149,999.99	$750
$150,000	-	$224,999.99	$1,250
$225,000	-	$299,999.99	$1,500
$300,000	-	$999,999.99	$3,750
$1,000,000	-	$1,999,999.99	$5,000
$2,000,000	-	$2,999,999.99	$7,500
$3,000,000	-	$4,999,999.99	$8,000
$5,000,000	or more		$10,000

Quarter	Ending	Due Date for Payment
1st Quarter Jan-Feb-Mar	March 31	April 30
2nd Quarter Apr-May-June	June 30	July 31
3rd Quarter July-Aug-Sept	Sept 30	Oct 31
4th Quarter Oct-Nov-Dec	Dec 31	Jan 31

ISSUE SUMMARY

NAME OF CASE: _____

_____

_____

CHAPTER: _____

RELIEF SOUGHT: _____

_____

ISSUE: _____

_____

_____

_____

_____

BENCH DECISION: _____

_____

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_____

REPORT SUBMITTED BY: _____

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Federal Bar Association
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