

BANKRUPTCY LAW NEWSLETTER

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January/February, 1997

Thomas M. Cooley Law School

Bankruptcy Reorganization Workshop
Final Examination

Judge Gregg and Eric Richards taught a Chapter 11 Workshop at Thomas M. Cooley Law School. The following is a copy of the final exam. Let's see how the attorneys compare to the students. The exam consists of two parts. Part A consists of 25 questions with a "yes" or "no" response and a citation to the applicable code section. Each question is worth 2 points. Part B is an essay - confirmation requirements for a Chapter 11 Plan. The essay is worth 30 points.

- The answers will
be provided in the next

newsletter.

A.1 Big Car Finance Co. is owed \$8,000.00 on its debt secured by an automobile which is worth \$5,000.00. Therefore, its unsecured claim is \$3,000.00. Yes or No? Statutory subsection?

A.2 A debtor possesses a bulldozer which is subject to a security interest held by WeeFinance, Inc. The dozer is not insured. Is WeeFinance entitled to relief from stay? Yes or No? Statutory subsection?

A.3. Jim Squatter lives in a house which he does not own but is in possession as a holdover tenant per an expired lease. Does the stay prevent the landlord from evicting him? Yes or No? Statutory subsection?

A.4 After a Chapter 11 bankruptcy case is filed, Tim Trustee seeks court authority to borrow money from a bank to pay expenses of preserving a building which is unencumbered by any mortgage. Tim files a motion to grant the bank a mortgage on the property to secure the funds advanced. Is this a core proceeding? Yes or

No? Statutory subsection?

A.5 Paul Prosecutor is in a quandary and asks you for advice. Does the automatic stay prohibit continuation of state criminal action against a Chapter 11 debtor corporation? Yes or No? Statutory subsection?

A.6 Your client, Joe Needsmoney, is owed \$5,000.00 and is listed on the Chapter 11 Debtor's schedules as being a "disputed debt". May you rely upon the "deemed filed" claim provision in the Bankruptcy Code? Yes or No? Statutory subsection?

A.7 Five months after Pro Crastin Ate Co. files its Chapter 11 case, your client, Friendly Bank (who is a creditor), asks you to file a Chapter 11 Plan. May you do so? Yes or No? Statutory subsection?

A.8 We-Made-It, Inc. has its Chapter 11 Plan confirmed by the Bankruptcy Court. Two months after confirmation, We-Made-It, Inc. fails to pay a land contract obligation to your client, as the land contract vendor. Must the vendor seek relief from stay to enforce the default and collect the land contract payment? Yes or No? Statutory subsection?

A.9 Dr. Doomuch, an individual Chapter 11 debtor, has \$500,000.00 in an ERISA qualified pension plan to be used towards his retirement. He only owes his creditors \$300,00.00. Are the funds in the pension plan property of his bankruptcy estate? Yes or No? Statutory subsection?

A.10 May a bankruptcy judge issue a temporary injunction to prohibit a creditor from collecting an obligation from a nondebtor guarantor of a Chapter 11 corporation's debt? Yes or No? Statutory subsection?

A.11 A debt for alimony and support has a higher priority than a debt for federal income taxes. Yes or No? Statutory subsection?

A.12 May the bankruptcy court appoint an attorney who holds an uncontested claim against the debtor as the attorney for the debtor-in-possession? Yes or No? Statutory subsection?

A.13 A Chapter 11 debtor owns Blackacre, which is valued at \$80,000.00. A bank holds a mortgage on Blackacre for \$80,000.00. Because the debtor has no income, it cannot reorganize in the near future.

Should the bank be given stay relief? Yes or No? Statutory subsection?

A.14 A secured creditor is listed as "unimpaired" (and is in fact unimpaired) in the debtor's Chapter 11 Plan. The secured creditor believes that taxing authorities are treated unfairly under the Plan. May the secured creditor submit a "no" vote to oppose the Plan? Yes or No? Statutory subsection?

A.15 The automatic stay does not prohibit the United States from exercising its police powers to collect money from a Chapter 11 debtor to rectify an immediate danger from pollution under CERCLA (i.e. applicable federal law). Yes or No? Statutory subsection?

A.16 A chapter 11 debtor is prohibited from using cash collateral, unless there is court approval or the interested party consents. Yes or No? Statutory subsection?

A.17 A disclosure statement for a Chapter 11 debtor should include a liquidation balance sheet? Yes or No? Statutory subsection?

A.18 Whoops, Inc. files a

Chapter 11 case. Whoops' two major creditors are locked in a battle over intellectual property rights that are licensed to Opps, Inc., the parent company of Whoops. Opps, Inc. is not in bankruptcy. The two creditors sue each other in the bankruptcy court over the intellectual property rights. Does subject matter jurisdiction exist? Yes or No? Statutory subsection?

A.19 The debtor's Chapter 11 Plan provides that all priority taxes will be paid within six years of confirmation. However, no payments will be made during year no.1. During year nos.2 through 6, the full tax obligation will be paid in equal monthly payments. The Plan appears feasible. Should it be confirmed over the IRS' objection? Yes or No? Statutory subsection?

A.20 In a Chapter 11 case, a bank is owed \$100,000.00 by the debtor. The bank's collateral is worth \$250,000.00. May the bank seek postpetition interest? Yes or No? Statutory subsection?

A.21 Reorgs-R-Us, P.L.C., is a law firm which has been appointed to represent the creditors' committee in a large chapter 11 case. Must the law firm seek approval of its

compensation in the Bankruptcy Court for its representation of the committee? Yes or No? Statutory subsection?

A.22 Class VI in a Chapter 11 debtor's proposed plan is composed of impaired unsecured creditors who are owed more than \$1,000.00. There are 35 creditors in this class. The vote is 20 in favor and 3 against the plan treatment. The aggregate claims voting are \$150,000.00 in favor and \$100,000.00 against the plan. Has this class accepted the debtor's plan? Yes or No? Statutory subsection?

A.23 Jones, Smith and Brown, a partnership of attorneys under Michigan law, file a chapter 11 voluntary petition. Is it qualified to be a chapter 11 debtor? Yes or No? Statutory subsection?

A.24 Can a Bankruptcy Judge conduct a criminal trial involving the alleged violation of a federal drug law in which the president of the chapter 11 debtor is the defendant? Yes or No? Statutory subsection?

A.25 The votes are in pursuant to ballots received from creditors regarding a Chapter 11 plan. Two classes are impaired. One impaired class (the

unsecured creditors class) has voted "no". The other impaired class (a secured creditor) failed to vote. Can the debtor seek a cramdown regarding the class that has voted "no"? Yes or No? Statutory subsection?

ESSAY QUESTION

Blackwater Limited Partnership was formed by two couples for the sole purpose of purchasing a large tract of land in rural Arkansas and developing the property into an exclusive residential subdivision. James ("Big Daddy") McBugle is the general partner of Blackwater and his wife, "Lazy Susan" McBugle, is a limited partner. The other two limited partners are Bill "Slick Willie" Nelson, and his wife, Pillory Rodman Nelson. Blackwater purchased the property in 1990 for \$1,000,000.00. The acquisition was financed by Dolly Madison S&L under a 30-year mortgage with a 10% annual interest rate. Unfortunately, the venture proved unsuccessful and Blackwater filed a chapter 11 case on July 1, 1996.

As of the filing date, Blackwater's sole asset was the Arkansas real estate which had a current market value of \$500,000.00. The outstanding balance on the mortgage was \$600,000.00. Blackwater also owed property taxes in the amount of \$100,000.00 which

had accumulated over the six years prior to filing. Blackwater currently owes the Rosebud law firm \$100,000.00 in legal fees. Approximately one-half of the total amount was incurred post-petition in connection with Rosebud's representation of Blackwater in its bankruptcy case. Pillory Rodman Nelson is a partner in the Rosebud law firm.

Other creditors include an individual named "Juniper Flowers" who holds an allowed unsecured claim in the amount of \$100,000.00 for unspecified services rendered. The debtor's schedule of unsecured creditors also includes "Jonna Paula Jones" who holds a disputed, contingent, unliquidated claim in the amount of \$1,000,000.00 based on allegations in a civil complaint that she has filed against Slick Williw Nelson.

Within 120 days of the filing date, Jim McBugle, acting as D.I.P., filed a proposed plan of reorganization which provides for the following classes of claimants:

Class I - consists of administrative expense claimants. Class I consists of the Rosebud law firm which is to be paid \$100,000 in cash upon the effective date of the plan.

Class II - consists of the taxing authority. Under the plan, the taxing authority shall receive monthly deferred cash

payments on its unsecured tax claim of \$100,000.00, including interest at a rate of 10% annually, over a period of six years from the effective date of the plan.

Class III - consists of the secured claim of Dolly Madison S&L which is valued at \$500,000.00. The Plan provides that Dolly Madison will retain its lien on the property and will receive interest only payments for the first five years after the effective date of the plan. The deferred principal and interest would be capitalized and paid off over the remaining balance of the original term of the mortgage.

Class IV - consists of Juniper Flowers. Ms. Flowers will receive \$99,999.99 in cash on the effective date of the plan; provided that she enters into a strict confidentiality agreement.

Class V - consists of the remaining unsecured creditors. Dolly Madison S&L will be paid \$10,000.00 on the unsecured portion of its claim which is valued at \$100,000.00. Jonna Paul Jones is also included in Class V; however, she will receive nothing under the plan because her claim is disputed.

Class VI - consists of the Blackwater partners who will retain their ownership interests in the reorganized debtor.

According to the Disclosure Statement, the

proposed plan payments will be financed with the proceeds from the following sources: (1) each of the original limited partners will contribute an additional \$50,000.00 upon confirmation of the plan; and (2) the reorganized debtor plans to charge tourists for rafting trips down the Blackwater river which will provide income to pay the long term obligations.

Assume the following: Classes I, IV and VI voted to accept the proposed plan; Class III voted against the plan; and Classes II and V did not vote.

Identify possible objections to confirmation and explain whether or not the plan can be confirmed notwithstanding the possible objections. Your answer should include relevant statutory subsections and/or case names where appropriate, e.g., "§1129(a)(9)(B)(i)" and/or "In re U.S. Truck". No credit will be given if an issue is raised, or a statutory subsection is cited, that is not germane to the facts.

**RECENT BANKRUPTCY
COURT DECISIONS**

The Western District

Court decisions were summarized by Dean Rietberg.

Periodic Garnishments as Avoidable Preference under §547(b)

In Guernsey v Old Kent Bank (In re Guernsey), (Bankr. W.D. Mich. December 11, 1996), one of the debtors brought an action to recover and exempt wages garnished for nine consecutive weeks before her filing of the Chapter 7 bankruptcy. Called upon to interpret the meaning of the word "transfer" in 11 U.S.C. §547(e), the Honorable Laurence E. Howard ruled that the nine periodic payments made within the 90-day period prior to the filing of the Chapter 7 bankruptcy constituted avoidable preferences under 11 U.S.C. §547(b) despite the fact that the writ of garnishment was served outside that period.

The Eastern District cases were summarized by Mary K. Viegela Hamlin.

In Re: Beta International, Inc., (E.D. MI, Nov. 7, 1996). Harness, Dickey, & Pierce (HDP) was owed in excess of \$300,000.00 in legal fees by the debtor. HDP and the debtor entered into a security agreement granting HDP a lien on all of the

debtor's assets, including equipment. HDP filed a financing statement but it did not include equipment. The debtor filed Chapter 11 and as adequate protection the Cash Collateral Order granted HDP a replacement lien in all assets of the debtor except its lien as to machinery and equipment was limited to one-half or in the event of sale one-half of the net proceeds. The debtor's Plan provided that HDP would retain its lien as defined in the Cash Collateral Order. No action was brought during the Chapter 11 to avoid HDP's unperfected security interest. After confirmation the debtor defaulted, ceased operations and sold its equipment for \$125,000.00. HDP received \$82,500.00 from the debtor. After the sale the case was converted to Chapter 7.

The Trustee requested that HDP return the money it had received from the sale of the equipment. The basis for the request was §547, §549 and that the transfer violated the plan entitling the Trustee to injunctive relief. The Trustee filed an ex parte motion for an order to show cause why HDP should not be held in contempt. A hearing was held and the Bankruptcy Court held that HDP was not in contempt but that it had violated the plan and ordered HDP to return a portion of the sale proceeds to the Trustee.

HDP appealed the Bankruptcy Court's order

requiring it to return \$27,333.15 to the Trustee. The issues before the Court were: (1) Did the Bankruptcy Court violate BR 7001 by failing to require an adversary product?; (2) Did the Bankruptcy Court violate HDP's due process rights by not providing sufficient notice and an opportunity to be heard?; (3) Did the Bankruptcy Court err when it required HDP to disgorge monies tendered under a confirmed Plan and prior to conversion?; and (4) Was HDP's unperfected security interest still enforceable?

As to the first issue the Court affirmed the Bankruptcy Court's decision even though it found that the Bankruptcy Court's decision that "this matter fell within the exception of Fed. R. Bank. P. 7001(1), because it was a proceeding to compel the debtor to deliver property to the trustee" was erroneous as HDP is not the debtor but a creditor. However, the Court found that it was a harmless error and that an adversary proceeding was not necessary because the Trustee's motion was to enforce a confirmed Plan and the Bankruptcy Court's role was to interpret the Plan. There were no material facts in dispute and therefore, HDP failed to demonstrate any prejudicial affect in the absence of an adversary proceeding.

As to the second issue HDP argued that it was not given adequate notice of the proceedings or an opportunity to present argument in the contempt

proceeding with respect to the issue of disgorgement. The Court held that HDP had not been deprived of its procedural due process rights as the Trustee's motion "set forth an adequate description of the issues surrounding the dispute."

As to the third issue the Court held that the Bankruptcy Court did have the authority to interpret the Plan. The Plan provided that the Bankruptcy Court retained jurisdiction to interpret the Plan. The Plan was not clear that HDP was entitled to the full amount of the proceeds from the sale of the equipment as such was not a payment mandated by the Plan.

As to the fourth issue the Court found the issue to be - "what effect the plan had on HDP's security interest." The Court affirmed the Bankruptcy Court's interpretation of the Plan and related documents which limited HDP's security interest in the equipment or sale proceeds of such equipment to one-half.

STEERING COMMITTEE

The next Steering Committee meeting will be March 21, 1997 at the Peninsular Club in Grand Rapids at noon.

EDITORIAL

The newsletter has been a success because of those individuals who have contributed articles and case summaries. It is time consuming to research and write an article but it is an opportunity to give something back to our local bankruptcy bar. There are 330 subscribers receiving the Newsletter and if each person volunteered to prepare an article that equates to one article every 27 years. Instead there are a handful of people who contribute year after year.

As the Editor it is frustrating to solicit articles, confirm the due date and then not have an article arrive on time or as has been the case over the last eight months, not at all. Anyone interested in submitting an article is encouraged to complete the enclosed form and return it to my office. The topic is left to the discretion of the author. Consideration will be given to the preferred month for publication. I would merely ask that all articles be submitted by the 20th of each month to enable the issue to go to print by the 1st of the month.

The continued success of the Newsletter is the responsibility of the bar as a

whole not a handful of people.

BANKRUPTCY NEWS

The following is a summary of future events:

Conference of the Sixth Judicial Circuit - May 14-16, Nashville, Tennessee. This is now open to all attorneys.

FBA Bankruptcy Seminar - June 26th and 28th, Harbor Springs, Michigan.

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 November, December, 1996 and January, 1997. These figures are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	November of 1996	November of 1995	November of 1994
Chapter 7	531	388	365
Chapter 11	9	10	4
Chapter 12	1	2	1
Chapter 13	186	178	142
Totals	727	578	512

Bankruptcy Chapter	January - November of 1996	January - November of 1995	January - November of 1994
Chapter 7	5765	3989	3486
Chapter 11	68	59	76
Chapter 12	6	18	16
Chapter 13	2164	1498	1370
§304	0	1	0
Totals	8003	5565	4948

Bankruptcy Chapter	December of 1996	December of 1995	December of 1994
Chapter 7	462	365	323
Chapter 11	4	4	6
Chapter 12	1	0	4
Chapter 13	224	140	113
Totals	691	509	446

Bankruptcy Chapter	January - December of 1996	January - December of 1995	January - December of 1994
Chapter 7	6303	4442	3791
Chapter 11	69	62	85
Chapter 12	7	17	20
Chapter 13	2500	1659	1469
§304	0	1	0
Totals	8879	6181	5365

Bankruptcy Chapter	January of 1997	January of 1996	January of 1995
Chapter 7	554	410	311
Chapter 11	6	9	7
Chapter 12	1	1	4
Chapter 13	252	191	102
Totals	813	611	424

STEERING COMMITTEE MEMBERS

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FROM THE COURT:

Change in case numbers: On January 1, 1997 we changed our case numbering system in order to avoid problems which will occur when we exceed 10,000 cases per year. In the past the numbers of bankruptcy cases and adversary proceedings in Grand Rapids all started with a leading 8. Therefore, the first case filed on January 1, 1996 was 96-80001. We have dropped the leading 8 indicator for Grand Rapids cases and therefore the first case in 1997 was 97-00001. Marquette cases however still use the leading 9. The first case filed in Marquette this year was 97-90001. Adversaries now have two leading numbers: Adversaries filed in Grand Rapids begin with 88 (example 97-88001) and in Marquette with 99 (example 97-99001). This confusing system results from the fact that all cases filed in the district are filed in a single database with a single set of numbers. We have to divide the 5 digits into 4 discrete subsets.

When you send correspondence to Grand Rapids, please send the correct case number including all leading numbers and please use the initials of the judge as part of that number. This is necessary because we sort the mail by judge for distribution to the proper case administration teams. Thanks for your help.

New Bankruptcy Facilities: We are now using our new courtroom in **Traverse City**. This facility has just been completed and will be the site of bankruptcy hearings as well as first meetings and U.S. Trustee conferences. The court is located in Logan's Place West which is on S. Airport Road across from Logan's Landing. The court is in the first building on the right and faces the road. We hope to have a sign next to the door within the next 30 days. The judges have also made the decision to reactivate our plans to move the **Kalamazoo Courtroom** into the federal building. The court acquired space in the federal building in 1992 but the project has not proceeded beyond preliminary planning. We now intend to seek funding for the move which may take place within the next two years. We have also been seeking funding for remodeling the **Lansing Courtroom**. This will not involve any change in location but will merely be a reconfiguration and renovation of existing space.

Staff News: We are delighted to announce the marriage of Diane Bonfiglio to Tim Veenkamp on January 18. Please remember to change her name on your directories to Diane Bonfiglio Veenkamp. We are also pleased to announce the addition of Jo Anna Cushing to our staff. Jo Anna is our new employee who has joined the Intake Team. She was also recently married.

Membership in Federal Bar: We are finding a larger than expected number of attorneys who are not admitted to the Federal Bar for the Western District of Michigan. This is a new requirement for practice before this court. The judges of this court have recently signed a general order which amended LBR 2019(a) to remove the third sentence of that rule and add the following:

" Notwithstanding the foregoing, in the interests of justice and in the discretion of the court, upon a written or oral motion, the court may permit any licensed attorney to be admitted pro hac vice and participate, appear or be heard in a particular case, matter, or adversary proceeding, if the circumstances so warrant."

COURT MOTION DAY CALENDAR FOR 1997

THESE DATES ARE SUBJECT TO CHANGE AT ANY TIME

	Monday	Tuesday	Wednesday	Thursday	Friday
JANUARY			1 NEW YEARS DAY	2 GK	3
	6	7 HG	8	9 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
FEBRUARY	27	28	29 GM	30	31 HT
	3 SG	4 GG	5 HL	6 HG GK	7 HK
	10	11 SK	12	13 GT SL	14
	17 PRESIDENTS DAY	18 GG	19	20 GK	21
MARCH	24	25 SM HG	26	27	28 HT
	3 SG	4 GT	5 CT ADMIN MTG	6	7 HK
	10	11 GG SK	12	13 GK SL	14 HL
	17	18 HG	19	20	21 HK
APRIL	24 SG	25	26 GM	27	28 HT
	31 GK	1 GG	2 HG	3	4 HK
	7	8 SK	9	10 GT SL	11
	14	15	16	17	18 SG
MAY	21 GG	22 SM HG	23 CT ADMIN MTG	24 GK	25 HT
	28	29	30 HL	1	2 HK
	5	6 GG SK	7 HG	8 GK SL	9
	12	13	14	15	16
JUNE	19 SG	20 GK HG	21	22 GT	23 HK
	26 MEMORIAL DAY	27 GG	28 HL	29 GM	30 HT
	2	3 SK HG	4 CT ADMIN MTG	5 GK SL	6
	9	10 GG	11	12 SG	13 HK
	16	17 HG	18	19 GT	20 GK HL
	23	24 SM GG	25	26 HT	27
	30 SG				

NOTE: THIS CALENDAR LISTS MOTION DAYS ONLY. IN EACH TWO LETTER BLOCK, THE FIRST LETTER STANDS FOR THE JUDGE (e.g. H = Howard, S = Stevenson, G = Gregg) AND THE SECOND LETTER STANDS FOR THE LOCATION (i.e. G = Grand Rapids, K = Kalamazoo, T = Traverse City, and M = Marquette) EXAMPLE: GT is Judge Gregg in Traverse City. THIS COURT WILL BE CLOSED ON THE HOLIDAYS NOTED ON THIS CALENDAR.

NEWSLETTER ARTICLE

NAME: _____

ADDRESS: _____

PHONE #: _____

TOPIC OF INTEREST: _____

MONTH FOR PUBLICATION:	_____	1st Choice
	_____	2nd Choice

Please return to:
Rayman & Hamlin
Attn: Beth M. Seiler
141 East Michigan Avenue
Suite 301
Kalamazoo, MI 49007

**NAME AND ADDRESS AS IT CURRENTLY
APPEARS ON THE MATRIX:**

CORRECTION OF NAME AND/OR ADDRESS:

Please return to:
Rayman & Hamlin
Attn.: Beth M. Seiler
141 East Michigan Ave., Ste. 301
Kalamazoo, MI 49007

ISSUE SUMMARY

NAME OF CASE: _____

CHAPTER: _____

RELIEF SOUGHT: _____

ISSUE: _____

BENCH DECISION: _____

REPORT SUBMITTED BY: _____

Western Michigan Chapter of the
Federal Bar Association
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