

BANKRUPTCY LAW NEWSLETTER

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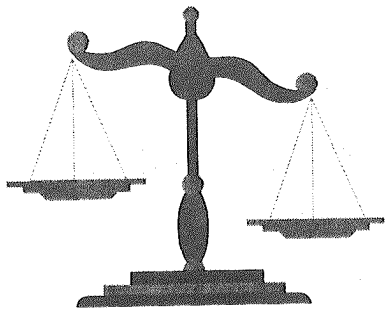
HOUSE PASSES BANKRUPTCY REFORM ACT

On June 10, 1998 the U.S. House of Representatives passed the "Bankruptcy Reform Act of 1998" (HR 3150). This Act, if it becomes law, would drastically overhaul the bankruptcy laws by introducing a "needs-based" bankruptcy system. The Act would require individuals who file for bankruptcy to seek relief under Chapter 13 if they earn a regular income equal to or greater than the national median income, could pay at least 20% of their unsecured, non-priority debts over a five-year period, and could pay at least \$50 per month.

In addition, HR 3150 initiates comprehensive reforms pertaining to business bankruptcy laws and practice, and includes provisions regarding the treatment of tax claims, family farmers, municipalities, and devotes a separate chapter to concerns presented by international insolvencies.

The legislation has numerous hurdles to overcome before it becomes law. The Senate is expected to support a "needs-based" system, although there are major differences in approach within its bill as compared to the House version. Additionally, the Clinton administration has indicated that it cannot support the means test in HR 3150 as well as other provisions in the bill that would make

credit card debt non-dischargeable. Because of the potential changes in a Senate bill, and given the uncertainty of what any ultimate legislation might look like we have not attempted to analyze HR 3150. Perhaps the best way for members to keep up to date on the status of the legislation is to monitor the American Bankruptcy Institute web site at <http://www.aviworld.org>.



CASE NOTES

U.S. Supreme Court Chapter 11 - New Value Exception to the Absolute Priority Rule

The United States Supreme Court has granted certiorari in a case involving the applicability of the "New Value Exception" to the absolute priority rule. A Chapter 11 Plan provided that the Debtor's pre-petition equity holders would retain their interest in exchange for a contribution of new capital. The Plan did not provide for full payment to a senior objecting class of creditors. Those creditors contended the Plan violated Section 1129(b)(2)(B)(ii), the absolute priority rule. The Seventh Circuit ruled in October that the new value exception survived the enactment of the Bankruptcy Code.

(Bank of American National Trust & Savings Association vs. 203 North LaSalle Street Partnership. U.S. Supreme Court 97-1418, cert. granted May 4, 1998.)

6th Circuit B.A.P. Section 1322(c)(2) Allows Bifurcation of "Short-Term" Home Mortgages

The Debtors executed a note secured by a second mortgage on their principal residence. The note required 60 monthly payments with a maturity date of July 11, 2000. On October 16, 1996, the Debtors filed a Chapter 13 petition, and proposed a Chapter 13 Plan that bifurcated the second mortgage into an allowable secured and unsecured component. The Creditor objected on the ground that bifurcation of its claim was a modification prohibited by Section 1322(b)(2). The B.A.P. examined the statutory language and the "plain meaning" doctrine and held that Section 1322(c)(2) created a narrow exception to the protection from modification set forth in Section 1322(b)(2) and allowed the Debtor to bifurcate the second mortgage claim into secured and unsecured portions.

(First Union Mortgage Corp vs. Eubanks (In re Eubanks), 97-8078 and 97-8084, 6th Circ. B.A.P.)

**U.S. BANKRUPTCY JUDGE
Western District of Michigan
Notice of Vacancy**

The Sixth Circuit Judicial Council is soliciting applications from persons interested in appointment as United States Bankruptcy Judge for the Western District of Michigan at Grand Rapids. This position will become vacant upon the retirement of United States Judge Laurence E. Howard on February 28, 1999.

United States Bankruptcy Judges exercise highly important judicial powers and responsibilities as officers of the United States District Courts. All bankruptcy cases under Title 11, United States Code, and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the Bankruptcy Judges of a district. A person appointed as Bankruptcy Judge should have the character, ability, and impartiality to qualify such person for service in the Federal Judiciary. The term of office is 14 years. The salary of the position is \$125,764.00.

Bankruptcy Judges are appointed by the United States Court of Appeals pursuant to the Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, 98 Stat. 345, and regulations promulgated by the Judicial Conference of the United States. The Court of Appeals will make an appointment to this vacancy from a list of at least three nominees submitted to it by the Sixth Circuit Judicial Council.

Qualifications. To be qualified for appointment as a bankruptcy judge, an applicant must possess the following minimum qualifications:

(a) The applicant must be a member in good standing of the highest

court of at least one state or the District of Columbia, and a member in good standing of every other bar of which the applicant is a member.

(b) The applicant must have engaged in the active practice of law for at least five years (with some substitutions authorized).

(c) The applicant must also possess the following abilities or characteristics: (1) competence to perform the duties of the office; (2) integrity and good character; (3) commitment to equal justice under the law; (4) sound physical and mental health; (5) outstanding legal ability and competence as evidenced by ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes; (6) demeanor, character and personality that would exhibit good judicial temperament.

(d) An applicant may not be related to a judge of the Court of Appeals, or to a judge of the judicial council of the Circuit, or the District Court in the district in which the vacancy occurs by blood or marriage within the degree of first cousin.

An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups.

Application forms and further information may be obtained from the Office of the Circuit Executive, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202, (513) 564-7200, or from the offices of the clerks of the District and Bankruptcy Courts in the Western District of Michigan. Applications must be submitted by potential nominees personally and must be received in the Office of the Circuit Executive no later than 5:00 P.M. on August 14, 1998.

STEERING COMMITTEE MEETING MINUTES FROM MAY 15, 1998.

Present: D. Andersen; J. Engbers; P. McDonagh; Eric Richards; B. Rodgers; T. Schouten; P. Teholiz; G. Toering; N. Witte

I. REPORT ON SUMMER SEMINAR Peter Teholiz reported to the Steering Committee that while some details have yet to be confirmed, the plans are nearly complete for the FBA Summer Seminar which will be held at the Park Place Hotel in Traverse City, Michigan, on July 30, 31, and August 1, 1998. As noted earlier, the seminar will include panel discussions regarding the following topics as they relate to bankruptcy law: tax issues and dealing with the IRS; family law and marital issues; religious contributions; retirement plans; dealing with the Chapter 13 Trustee's Office; and HMO insolvencies. Judge Stevenson has coordinated the drafting of seminar brochures and invitations which will be mailed very soon. The Committee has requested that the invitations be returned by Memorial Day at the latest. The Steering Committee is still waiting for a commitment by a proposed keynote speaker. In addition, Judge Howard has agreed to speak at the seminar regarding his observations as to how bankruptcy law and practice have changed over the years.

II. PENDING LEGISLATION. David Andersen presented his position on bills S.1301 and H.R.3150 now pending before the Senate and House Judiciary Committees. The proposed legislation may make it more difficult for some Chapter 7 debtors to obtain relief, based on more strenuous eligibility criteria. Andersen's position is that while one of the stated objectives of the proposed legislation is to target and curb abuses of the bankruptcy system, the bills include sweeping changes which deny bankruptcy protection to those who genuinely need it. Andersen urges all bankruptcy law practitioners to write their Congressional Representatives to oppose the bills.

NO FUTHER BUSINESS WAS DISCUSSED.

1998 FBA BANKRUPTCY SEMINAR
JULY 30-AUGUST 1, 1998 - TRAVERSE CITY

Name _____ Firm/Company _____
Address _____ City, State, Zip _____
Telephone (_____) _____

FRIDAY, JULY 31 SESSIONS

(Please choose one topic for each session)

Session I (8:30-9:30)

- "Oh God, Part I: Religious Issues in Bankruptcy"
 "Retirement Plans in Bankruptcy: Here Today - Gone Tomorrow"

Session II (9:45-10:45)

- "Chapter 13 Practice Pointers & Procedures"
 "Code Blue: Health Facilities in Financial Distress"

Session III (11:00-Noon)

- "Breaking Up is Hard to Do: Divorce and Nondischargeability Issues"
 "Almost Everything You Wanted to Know About the IRS, But Were Afraid to Ask"

OPTIONAL CONFERENCE EVENTS

- Cocktail Reception on July 30, 1998 N/C
- Continental Breakfast on July 31, 1998 N/C
- The Grand Traverse Dinner Train on July 31, 1998; boarding at 5:45 p.m. \$ _____
Adults at \$60.00/person; Children at \$60.00/person
- Breakfast with the Judge on August 1, 1998 (Seminar Registrants Only) N/C
- Golf on July 31, 1998 at Matheson Greens. \$50.00 per person. \$ _____
(Enclose partner's fee unless partner is registering separately).
Partner's Name _____
Other members of your foursome: _____

No cancellations after July 24, 1998.

REGISTRATION FEES

Conference registration received on or before June 30, 1998 (\$215.00) \$ _____

Conference registration for Paralegals received on or before June 30, 1998 (\$165.00) \$ _____

Late registration fee received after June 30, 1998 (additional \$20.00) \$ _____

Make Check Payable to Federal Bar Association

Mail Conference Registration and Check to: Judy L. Walton, McShane & Bowie, P.L.C. P.O. Box 360
Grand Rapids, Michigan 49501-0360

Make hotel reservations directly with The Park Place Hotel, 300 E. State St., Traverse City, MI 49684

STEERING COMMITTEE MEMBERS

Dan Casamatta	616-456-2002
Mary Hamlin	616-345-5156
Tim Hillegonds	616-752-2132
Jeff Hughes	616-336-6000
Pat Mears	616-776-7550
Hal Nelson	616-459-1971
Steve Rayman	616-345-5156
Eric Richards	616-459-3200
Brett Rodgers	616-732-9000
Tom Sarb	616-459-8311
Bob Sawdey	616-774-8121
Tom Schouten	616-538-6380
Peter Teholiz	517-886-7176
Robb Wardrop	616-459-1225
Norman Witte	517-485-0070
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LOCAL BANKRUPTCY STATISTICS

CHAPTER	APRIL 1998	YTD - 1998
Chapter 7	744	2,860
Chapter 11	6	17
Chapter 12	3	6
Chapter 13	252	972
TOTALS	1,005	3,855



CHAPTER	MAY 1998	YTD - 1998
Chapter 7	738	3,598
Chapter 11	4	21
Chapter 12	2	8
Chapter 13	246	1,218
TOTALS	990	4,845

United States Bankruptcy Court

WESTERN DISTRICT OF MICHIGAN
OFFICE OF THE CLERK
GERALD R. FORD FEDERAL BUILDING
P.O. BOX 3310
GRAND RAPIDS, MI 49501

MARK VAN ALLSBURG
CLERK
(616) 456-2693

MARQUETTE OFFICE
(906) 226-2117

ARE WE DOING OUR JOB?

The staff of the Bankruptcy Court is committed to serving you efficiently and courteously at all times. We work very hard to provide you with information and answers whenever possible. We believe that even good service can be improved, so please take this opportunity to offer your suggestions and comments. Thank you.

HOW WOULD YOU RATE THE SERVICE YOU RECEIVE FROM THE COURT?

Excellent ___ Good ___ Average ___ Needs Improvement ___ Poor ___

WHAT WAS THE REASON FOR YOUR VISIT? _____

ARE YOU A REGULAR CUSTOMER? _____ FROM/BUSINESS _____

OCCASIONAL CUSTOMER? _____ FROM/BUSINESS _____

ONE TIME CUSTOMER? _____ FROM/BUSINESS _____

WHAT KIND OF SERVICE DO YOU USUALLY REQUIRE? _____

HOW CAN WE IMPROVE SERVICE TO YOU? _____

DO YOU REQUIRE INFORMATION WHICH IS NOT NOW PROVIDED? ___ YES ___ NO
WHAT TYPE OF INFORMATION? _____

ARE YOU A REGULAR USER OF VCIS? YES ___ NO ___

ARE YOU FAMILIAR WITH PACER? YES ___ NO ___

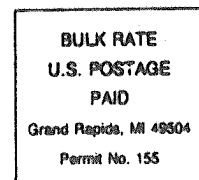
WOULD YOU LIKE TO RECEIVE INFORMATION ON THESE SERVICES? YES ___ NO ___

PLEASE TELL US WHO ON OUR STAFF HAS BEEN ESPECIALLY HELPFUL TO YOU.

YOUR NAME AND ADDRESS: (optional)

YOUR SUGGESTIONS AND COMMENTS ARE IMPORTANT!

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LANSING, MI 48908