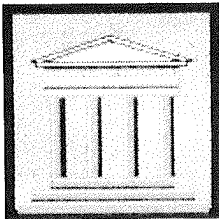


BANKRUPTCY LAW NEWSLETTER

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Western District of Michigan Chapter

February/March, 1998



FROM THE COURT: by: Mark VanAllsburg

Judge Howard Announces Retirement: The Hon. Laurence E. Howard, Chief Bankruptcy Judge has recently notified Hon. Boyce F. Martin, Chief Judge of the United States Court of Appeals for the Sixth Circuit, of his retirement which will be effective on February 28, 1999. It is hoped that a replacement will be found by that date. Judge Howard was appointed to the Bankruptcy Court on January 14, 1976 by U.S. District Court judges, Noel P. Fox and Wendell A. Miles. Upon his retirement next year Judge Howard will have served 23 years with the court.

Autocop: The Clerk's office is now using Autocop to process new bankruptcy cases. This system should result in faster processing of cases and should provide more current information about new cases to both the Bankruptcy Bar and to the public. Attorneys filing new cases will soon start receiving a receipt from the Court which will state the trustee and judge assigned to the case as well as the time, date and location of the first meeting.

It would greatly help the intake staff if attorneys filing new cases would use their State Bar P- numbers on the petition. The automated system uses this number to identify the filing attorney and to link that attorney to the case in our system. It is much more difficult to find the correct attorney if we have to search for a name.

New Forms: The new official bankruptcy forms which were approved by the Judicial Conference in September of 1997 became mandatory on March 1. The following forms have been revised:

Official Form 1 - Voluntary Petition
Official Form 3 - Application and Order

to Pay Filing Fee in Installments
Official Form 6F - Schedule F
Official Form 9A-1 - First mtg. notices
Official Form 10 - Proof of Claim
Official Form 14 - Ballot for Accepting or
Rejecting a Plan [Chapter 11]
Official Form 17 - Notice of Appeal

The court will not reject pleadings because a new required form has not been used. However, we encourage the bar to make the transition as quickly as possible. Most software vendors are marketing updates which include these forms. You will notice a change in first meeting notices and in other forms which are served by the court very shortly.

Videoconferencing: The contract to provide a videoconferencing link between the bankruptcy court in Grand Rapids and the bankruptcy court in Marquette has been approved. The successful bidder is Siemens Business Communication Systems, Inc. which plans to install the equipment in both locations during the first two weeks of May. This system will be used jointly by the U.S. District Court, Bankruptcy Court, and Office of Probation and Pretrial Services.

ADJUSTMENTS TO DOLLAR AMOUNTS IN THE BANKRUPTCY CODE

The *Bankruptcy Reform Act of 1994* provided for the automatic adjustment of certain dollar amounts in the Code in three-year intervals. On April 1, 1998 the following sections of the Code will be amended to reflect the figures which are listed below. These amended amounts will apply to cases filed on or after April 1. The next adjustment will occur on April 1, 2001.

11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 109(e) - allowable debt limits for filing bankruptcy under Chapter 13	\$250,000 (each time it appears) \$750,000 (each time it appears)	\$269,250 (each time it appears) \$807,750 (each time it appears)
Section 303(b) - minimum aggregate claims needed for the commencement of an involuntary bankruptcy (1) - in paragraph (1) (2) - in paragraph (2)	\$10,000 \$10,000	\$10,775 \$10,775
Section 507(a) - priority claims (1) - in paragraph (3) (2) - in paragraph (4)(B)(i) (3) - in paragraph (5) (4) - in paragraph (6)	\$4,000 \$4,000 \$4,000 \$1,800	\$4,300 \$4,300 \$4,300 \$1,950
Section 522(d) - value of property exemptions allowed to the debtor (1) - in paragraph (1) (2) - in paragraph (2) (3) - in paragraph (3) (4) - in paragraph (4) (5) - in paragraph (5) (6) - in paragraph (6) (7) - in paragraph (8) (8) - in paragraph (11)(D)	\$15,000 \$ 2,400 \$ 400 \$ 8,000 \$ 1,000 \$ 800 \$ 7,500 \$ 1,500 \$ 8,000 \$15,000	\$16,150 \$ 2,575 \$ 425 \$ 8,625 \$ 1,075 \$ 850 \$ 8,075 \$ 1,625 \$ 8,625 \$16,150
Section 523(a)(2)(C) - "luxury goods and services" or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable	\$1,000 (each time it appears)	\$1,075 (each time in appears)

CASE NOTES:

In re: Golliday, Case No. HK-97-08823.
Hon. Laurence E. Howard.

The Debtor in this case had borrowed funds from the City of Benton Harbor, and subsequently defaulted in the repayment. The City sued, in state court, for a judgment, as well as for a declaratory judgment concerning the Debtor's eligibility to hold public office under the Michigan Home Rule Cities Act and the Benton Harbor City Charter. The matter came before the Bankruptcy Court on a motion for relief from the automatic stay filed by the City of Benton Harbor and on the Debtor's motion for a preliminary injunction to prohibit the City from taking any steps to bar or terminate the Debtor's right to continue to sit as a City Commissioner. The City contended that the Michigan Home Rule Cities Act prohibits municipalities from giving official positions to individuals who are in default to the municipality. The Debtor contended that 11 USC §525(a) prohibited the city from either voiding his election or denying him his seat on the city council. The Court found that while the situation did not specifically meet the statutory language of §525(a), the legislative history and the Supreme Court's decision of Perez v. Campbell, 402 U.S. 637 (1971) provided for protection for the Debtor in this case. The Court explained that Perez stands for the proposition that discrimination which adversely affects debtors is illegal without regard to motive. The Court found therefore that the City's actions in trying to deny the Debtor his seat on the

City Commission was impermissible and that a preliminary injunction should be granted.

In re: Randy B. Lundy, Case No. 96-56458-R, Eastern District of Michigan, Hon. Steven W. Rhodes.

In April 1995, the Debtor was involved in an automobile accident. Thereafter, on October 9, 1996, the Debtor retained a law firm to represent him in a potential personal injury lawsuit. A Chapter 13 petition was filed on December 6, 1996. The potential cause of action was not listed on the schedules, nor was the asset disclosed at the meeting of creditors or prior to confirmation of the Chapter 13 Plan. The Chapter 13 case was converted to Chapter 7 by an Order dated June 24, 1997. At the meeting of creditors in the Chapter 7 case, held on September 2, 1997, the Debtor disclosed for the first time that he had filed a personal injury lawsuit. The Debtor then filed an amendment to his schedules to add the personal injury lawsuit, and claimed an exemption of \$22,500 pursuant to §522(d)(5) and (11). The Trustee objected to the proposed amendment arguing that the Debtor had acted in bad faith by not disclosing the asset on his schedules and by waiting six months after filing the lawsuit before he disclosed it at the Chapter 7 meeting of creditors.

The Court stated that while an amendment, pursuant to Bankruptcy Rule 1009, may be made at any time before the case is closed, this right is not without limit. The Court indicated that amendments may be disallowed

based on a finding of bad faith or prejudice to creditors. Bad faith may be found where the Debtor attempts to conceal an asset.

The Court analyzed the facts in this case, particularly the various opportunities the Debtor had to disclose the lawsuit at various meetings of creditors or in various amendments to the Chapter 13 schedules. The lawsuit was never disclosed until the Chapter 7 meeting of creditors, after the Trustee indicated that failure to voluntarily disclose assets may result in a loss of exemption rights or denial or revocation of discharge. The Court found that under all the circumstances, the Debtor had acted in bad faith by failing to disclose the personal injury claim, and that this failure was not mere oversight. Accordingly, the Court denied the Debtor's right to exempt the personal injury lawsuit.

In re: Carol A. Bregni, Case No. 96-56418-R, and Philip J. Bregni, Case No. 96-48224-R, Eastern District of Michigan, Hon. Steven W. Rhodes.

The Debtors filed separate petitions for relief under Chapter 7 of the Bankruptcy Code. In their respective schedules, the Debtors listed their interest in a jointly owned condominium with a scheduled fair market value of \$120,000, and a first mortgage on the property for \$90,000.

Each Debtor claimed a \$15,000 exemption in the property pursuant to §522(d)(1).

Ten months after filing, the condominium was sold for \$158,000. After payment of the secured claim and the Debtors' exemptions, there remained approximately \$30,000 in proceeds from the sale. Carol Bregni contended that since the Trustee did not object to the claim of exemptions, and since there was no equity available to distribute at the time of filing, that the cash proceeds, over and above the exemption, belonged to her. It was her contention that any increase in the value of the property since filing belongs to her and not the estate. The Trustee objected, and the matter came before the Court on a motion to abandon the estate property.

The Court noted that the issue was not one of abandonment, but whether either the Debtor or the estate was entitled to the proceeds. The Court analyzed various decisions, and agreed with Judge Gregg's recent decision in In re: Heflin, _____ B.R. _____, 1997 WL 713258 (Bankr. W.D. Mich October 28, 1997). Accordingly, the Court limited the Debtor's exemption to the dollar amount claimed, and held that the sale proceeds held by the Trustee were property of the estate.

LOCAL BANKRUPTCY STATISTICS

CHAPTER	JANUARY 1998	YTD - 1998
Chapter 7	541	541
Chapter 11	2	2
Chapter 12	1	1
Chapter 13	231	231
TOTALS	775	775



CHAPTER	FEBRUARY 1998	YTD - 1998
Chapter 7	745	1,286
Chapter 11	4	6
Chapter 12	1	2
Chapter 13	233	464
TOTALS	983	1,758

STEERING COMMITTEE MEMBERS

Dan Casamatta	616-456-2002
Mike Donovan	616-454-1900
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
Bob Wright	616-454-8656

OFFICE OF THE STANDING TRUSTEE

CHAPTER 12 AND CHAPTER 13 PROCEEDINGS

Raymond B. Johnson

Standing Trustee

Brett N. Rodgers

Standing Trustee

Carol S. Chase

Staff Attorney

March 6, 1998

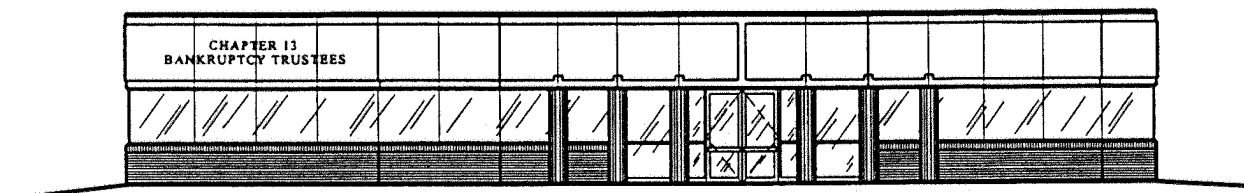
1122 Leonard, N.E.
Grand Rapids, Michigan 49503

Telephone: 616-732-9000

Facsimile: 616-732-9005

WE'RE MOVING

We will be moving to our new office the week of April 6, 1998. We have listed our new address and phone number below. We will begin holding our §341 First Meeting of Creditors at our new location the first week of May. Please note that our payment address to the Post Office Box remains the same for Chapter 13 proceedings. Chapter 12 payments need to be mailed to our new business address.



NEW ADDRESS

**RAYMOND B. JOHNSON, TRUSTEE
BRETT N. RODGERS, TRUSTEE
555 CASCADE WEST PARKWAY, SE
GRAND RAPIDS, MICHIGAN 49546-2105**

PHONE: 616-956-9900

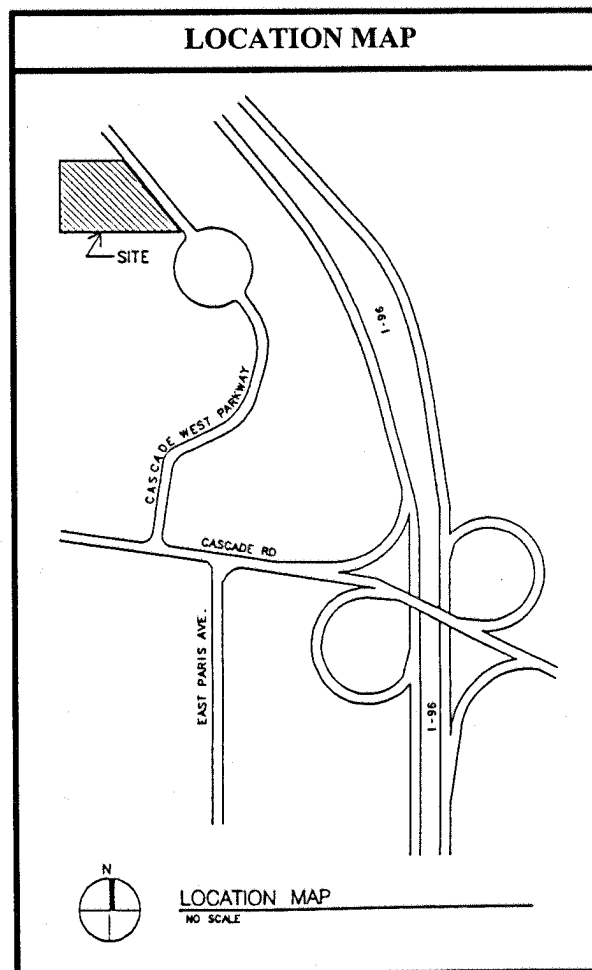
FAX: 616-956-7771

**CHAPTER 13 PAYMENT ADDRESS
FOR RAYMOND B. JOHNSON, TRUSTEE:**

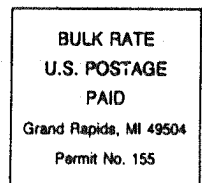
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FOR BRETT N. RODGERS:**

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