

FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
OCTOBER, 2002

CHAPTER 13 SUCCESS - Part 2 DAVID C. ANDERSEN

THE PREVIOUS ARTICLE DEALT WITH HOW THE SUCCESS OR FAILURE OF CHAPTER 13 PLANS DEPEND ON THE ADEQUACY OF PREPARATION FOR MOTION DAY IN ORDER TO ASSIST CLIENTS IN THE COMPLETION PROCESS OF CHAPTER 13 CASES. THIS ARTICLE CONTINUES WITH OTHER ASPECTS OF HELPING CHAPTER 13 DEBTORS THROUGH THE SUCCESSFUL COMPLETION OF THEIR PLANS.

LABOR INTENSIVE ASPECTS OF CHAPTER 13 SUCCESS:

AS CHAPTER 13 CASES PROGRESS, THERE ARE MANY ISSUES THAT COME UP THAT THE ATTORNEY MUST DEAL WITH. THESE MATTERS INCLUDE THE FOLLOWING SERVICES THAT SHOULD BE RENDERED BY CHAPTER 13 DEBTOR'S ATTORNEYS:

- DEALING WITH DEFAULTS IN PAYMENTS TO THE PLAN OR ON POST PETITION PAYMENTS ON MORTGAGES OUTSIDE THE PLAN
- FREQUENT ADVICE FOR GENERAL MATTERS OF CONCERN TO THE CLIENT (RELATED AND UNRELATED TO THE CASE)
- AMENDMENTS THAT ADJUST PAYMENTS BASED ON CHANGES IN CIRCUMSTANCES
- TAX REFUND ISSUES AND OTHER ISSUES RELATING TO DISPOSABLE INCOME
- PERIODIC FURNISHING COPIES OF TAX RETURNS AND INCOME DOCUMENTATION TO THE TRUSTEE
- FINANCING REQUESTS FOR VEHICLE LOANS OR HOME PURCHASES
- SALES OF ASSETS
- PLAN PAYOFFS
- CONTINUOUSLY UPDATING CLIENT REQUESTS FOR INFORMATION ON THE PLAN STATUS
- RESPONDING TO CREDITOR INQUIRIES ON PLAN STATUS AND PLAN TREATMENT
- ADDING CREDITORS THAT WERE OMITTED IN THE ORIGINAL SCHEDULES
- RESPONDING TO AND APPEARING FOR RELIEF OF STAY MOTIONS
- RESPONDING TO OBJECTIONS TO PLANS OR TO PLAN AMENDMENTS
- RESPONDING TO CLIENT INQUIRIES ABOUT CLAIMS AND CLAIMS STATUS
- FILING OBJECTIONS TO CLAIMS WHERE APPROPRIATE
- RESPONDING TO FAMILY OR BUDGET CRISES IN THE DEBTOR'S FAMILY
- SEEKING EMERGENCY REFUNDS OR A MORATORIUM ON PAYMENTS OR OTHER RELIEF FROM EXISTING PAYROLL DEDUCTIONS
- VERIFYING TO CREDITORS THAT A DEBT WAS LISTED OR DISCHARGED BY PENDING OR COMPLETED CASES
- ADVICE ABOUT OTHER OPTIONS IF THE CHAPTER 13 PLAN MAY NOT BE FEASIBLE OR ADVISE ABOUT THE NECESSITY TO STAY IN CHAPTER 13 FOR THE PROTECTION OF THE CLIENT

THE FOREGOING ASPECTS ARE GENERAL STATEMENTS OF SERVICES FREQUENTLY RENDERED IN A SIGNIFICANT PERCENTAGE OF CASES. THERE ARE MANY DETAILS TO EACH ASPECT OF THE ABOVE SERVICES. ONE COULD WRITE A CHAPTER OF A BOOK ON EACH OF THE ABOVE TOPICS, EXPLAINING HOW THESE SERVICES HELP THE CLIENT THROUGH THE PROCESS OF COMPLETING THE CHAPTER 13 PLAN. THESE SERVICES ARE EXTREMELY TIME CONSUMING. SINCE THE TRUSTEE'S SYSTEM IS NOT AVAILABLE TO DEBTORS AND SINCE TRUSTEES MAY NOT GIVE LEGAL ADVICE OR COUNSEL, DEBTORS *MUST* RELY ON THEIR ATTORNEYS TO RENDER THE SERVICES AND FURNISH THE INFORMATION NEEDED. EVEN ROUTINE INFORMATION FROM THE TRUSTEE'S SYSTEM CAN ONLY BE ACCESSED BY THE ATTORNEY'S OFFICE.

THERE MAY BE SOME DEBTORS ATTORNEYS WHO THINK THAT ONCE THE CASE IS FILED AND THE FIRST MEETING IS OVER, THERE IS NOTHING ELSE TO DO. THE REALITY IS THAT EVEN AFTER CONFIRMATION, THERE ARE NUMEROUS ISSUES THAT MUST BE TAKEN CARE OF. WITHOUT CONTINUOUS SERVICE AND SUPPORT, MANY DEBTORS FAIL IN THEIR ATTEMPTS TO COMPLETE A CHAPTER 13 PLAN. WITH SUPPORT FROM A GOOD ATTORNEY, MANY DEBTORS CAN AND DO SUCCEED. ANY SUCCESSFUL CHAPTER 13 ATTORNEY NEEDS TO HAVE ADEQUATE AND WELL TRAINED STAFF TO DEAL WITH THE CASES ALL THE WAY THROUGH COMPLETION OR DEAL WITH EACH CASE PERSONALLY. TO THE EXTENT THAT AN ATTORNEY FAILS TO DELIVER THESE SERVICES, MANY CHAPTER 13 PLANS WILL FAIL. WITH ADEQUATE

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IMPORTANT DATES:

CONSUMER BANKRUPTCY COALITION MEETINGS:

SECOND FRIDAY OF JULY AND EVERY SEC-
OND MONTH THEREAF-
TER @ 9:00 A.M. @
FIFTH THIRD BANK,
EAST PARIS ROAD,
GRAND RAPIDS. CALL
JOHN PIGGINS OR JILL
@ (616) 447-1800
FOR DETAILS, TO GET
ON THE MAILING LIST
AND TO VERIFY MEET-
ING.

Something missing? Let us
know about other dates!

(Continued from page 1)

LEGAL SERVICE, MANY CLIENTS WHO WOULD FAIL NOW SUCCEED IN COMPLETING THEIR CHAPTER 13 PLANS.

ATTORNEY FEES:

THE ADEQUACY OF ATTORNEY FEES FOR DEBTOR'S ATTORNEYS IS ANOTHER SIGNIFICANT FACTOR IN THE OVERALL ENVIRONMENT UNDER WHICH CHAPTER 13 CASES SUCCEED. WITH ADEQUATE AND REASONABLE FEES, ATTORNEYS CAN EITHER ATTEND TO THEIR CASELOAD PERSONALLY OR HIRE AND TRAIN THE STAFF THAT IS NECESSARY TO ASSIST THEIR CLIENTS THROUGH THE ENTIRE PROCESS TO COMPLETION.

DO WE WANT DEBTORS TO SUCCEED?

MY BELIEF IS THAT CONGRESS HAS OFTEN EXPRESSED ITS PREFERENCE FOR CHAPTER 13 PLANS WHICH PAY DIVIDENDS TO CREDITORS. THE DISCHARGE IS STRONGER AND DEBATE OVER BANKRUPTCY REFORM HAS TOUTED THE PROPOSED AMENDMENTS AS STEERING DEBTORS TOWARD CHAPTER 13 WHERE CREDITORS ARE PAID AND AWAY FROM CHAPTER 7 WHERE THERE IS TYPICALLY NO DIVIDEND. ALTHOUGH I THINK THE LEGISLATIVE PROPOSALS WILL DO MORE TO HURT CHAPTER 13 THAN HELP, THE POLITICAL RHETORIC AND DEBATE HAS FOCUSED ON THE ARGUMENT THAT MORE PEOPLE SHOULD BE IN CHAPTER 13 AND PRESUMABLY THAT THEY SHOULD SUCCEED IN SOME TYPE OF PAYMENT PLAN ON THEIR DEBTS.

CREDITORS GENERALLY, IN MY EXPERIENCE, RARELY CHALLENGE A CHAPTER 13 PLAN SINCE IT MAY BE THEIR LAST AND BEST HOPE OF GETTING SOME PAYMENT ON THE DEBT. OBJECTIONS TO CONFIRMATION USUALLY DEAL WITH TREATMENT OF SECURED OR SPECIAL DEBTS AND OCCASIONALLY SIMPLY ARGUE FOR A SLIGHTLY HIGHER PAYMENT, BUT THIS IS RARE. LEGALLY, CREDITORS HAVE MANY MORE AVENUES OF ATTACK ON A CHAPTER 13 DEBTOR THAN A DEBTOR WHO FILES CHAPTER 7. YET WE RARELY SEE PLAN OBJECTIONS FROM UNSECURED CREDITORS. USUALLY THE ONLY ALTERNATIVE TO SUCCESSFUL COMPLETION OF A CHAPTER 13 PLAN IS TO PETITION FOR CHAPTER 7 RELIEF. IT IS NO SURPRISE THAT CREDITORS ARE COOPERATIVE IN THE CONFIRMATION PROCESS. WE GENERALLY DO NOT SEE CREDITORS ARGUING FOR DISMISSAL, EITHER, EVEN IF THE DEBTOR RUNS BEHIND IN PAYMENTS, UNLESS IT IS FOR THE PURPOSE OF RECOVERING COLLATERAL. MOST UNSECURED CREDITORS WOULD RATHER SEE A DEBTOR CATCH UP OR EXTEND PLAN LENGTH TO STAY IN CHAPTER 13 SO THAT THEY GET PAID SOMETHING. DISMISSAL USUALLY MEANS THE DEBTOR WILL FILE A CHAPTER 7 AT SOME POINT, HAVING FAILED TO COMPLETE THE LONG PROCESS OF GETTING TO A CHAPTER 13 DISCHARGE. DEBTORS WILL OFTEN REFILE CHAPTER 13 PLANS AFTER DISMISSAL IN ORDER TO PROTECT A HOME OR VEHICLE, BUT WHERE A DEBTOR HAS UNSECURED DEBT AND WANTS TO PAY, THE UNSECURED CREDITORS' BEST HOPE OF A DIVIDEND IS THAT THE DEBTOR'S CHAPTER 13 PLAN SUCCEED.

MOST PEOPLE WHO FILE CHAPTER 13 WANT TO PAY THEIR DEBTS. THEY WANT TO SUCCEED. THEY FEEL A LEGAL AND MORAL OBLIGATION TO PAY. A VISIT TO A BANKRUPTCY PROFESSIONAL IS A HUMILIATING EXPERIENCE. SOME OF THE STING OF NOT BEING ABLE TO PAY DEBTS DIRECTLY IS REDUCED BY AGREEING TO A PAYMENT PLAN. ALTHOUGH GETTING THROUGH THE ENTIRE PLAN PROCESS IS A LONG AND ARDUOUS JOURNEY FOR MANY, THE VAST MAJORITY OF CHAPTER 13 DEBTORS WANT TO SUCCEED IN THE COMPLETION OF THEIR CASE. WHEN A CASE IS COMPLETE, THEY ACHIEVE A DISCHARGE OF DEBTS, AND ALSO FEEL THAT THE PROCESS OF REBUILDING OF THEIR FINANCIAL AFFAIRS HAS BEGUN, ENDING A BAD CHAPTER IN THEIR LIVES. IN ORDER TO START ON A NEW PATHWAY OF SUCCESS, THE CHAPTER 13 MUST BE COMPLETED. CHAPTER 13 SUCCESS IS HOPEFULLY THE START OF A NEW PATHWAY LEADING TO SUCCESS IN LIFE. ALTHOUGH THEY HAVE FAILED AT PERSONAL FINANCIAL MANAGEMENT IN THE PAST, THEY LEARN THAT SUCCESSFULLY COMPLETING A PLAN CAN PUT DEBTS BEHIND THEM. THIS IS NOT ALWAYS THE CASE, BUT IS TRUE FOR MANY.

PLAN PROVISIONS THAT HELP COMPLETION:

OBVIOUSLY, ONE OF THE IMPORTANT FACTORS IN SUCCESS IS HOW WELL A PLAN IS DRAFTED TO MEET THE CIRCUMSTANCES AND NEEDS OF THE DEBTOR. THE DEBTOR MUST BE ABLE TO AFFORD THE PAYMENTS FOR THE DURATION OF THE PLAN. COUNSELING THE DEBTOR AT THE BEGINNING OF THE CASE TO SURRENDER UNNEEDED COLLATERAL IS IMPORTANT EVEN THOUGH SOME DEBTORS ARE RELUCTANT TO GIVE UP THEIR HOMES, VEHICLES, BOATS, CAMPERS, VACATION PROPERTIES OR RENTAL UNITS. A THOROUGH BUDGET ANALYSIS CAN UNCOVER WEAKNESSES IN A DEBTOR'S CHOICES AND A GOOD PLAN CAN SET THINGS RIGHT.

CRAM DOWN AND PAYMENT REDUCTIONS ON AUTO LOANS AND SAVING A NECESSARY HOME FROM FORECLOSURE ARE EXTREMELY HELPFUL TO DEBTORS WHO NEED THESE ITEMS TO MAINTAIN A REASONABLE LIFESTYLE. SOME DEBTORS NEED THEIR INCOME TAX REFUNDS EACH YEAR TO TAKE CARE OF ANNUAL EXPENSES SUCH AS HOME AND AUTO MAINTENANCE, CLOTHING PURCHASES AND MISCELLANEOUS ITEMS WHEN THEIR BUDGET IS OTHERWISE TOO TIGHT. A PLAN PROVISION ALLOWING THE DEBTOR TO RETAIN A REASONABLE PORTION OF THE ANNUAL INCOME TAX REFUND AVOIDS MANY NEEDLESS DISMISSALS. IT ALSO AVOIDS DISMISSALS FILED LATER IN THE CASE IF THE DEBTORS ARE FORCED TO USE THE REFUNDS DURING THE PLAN. OTHER USEFUL PLAN PROVISIONS INCLUDE ALLOWING MISSED PAYMENTS TO BE MADE UP BY EXTENDING PLAN LENGTH, ALLOWING EMERGENCY REFUNDS TO DEBTORS, ALLOWING THE ADDITION OF OMITTED CREDITORS, AND REQUIRING PAYROLL DEDUCTIONS FOR PLAN PAYMENTS.

HOW THE COURT HANDLES PLAN DEFAULTS:

HOW THE COURT AND TRUSTEE HANDLE DEFAULTS CAN BE ANOTHER SIGNIFICANT FACTOR IN SUCCESS OR FAILURE. STRICT ENFORCEMENT WITH PROMPT DISMISSAL MOTIONS WILL KEEP DEBTORS ON THEIR TOES, BUT OVERDOING IT WILL NEEDLESSLY KILL GOOD PLANS. ONE MIGHT SAY, "BE CAREFUL WHAT YOU WISH FOR," BECAUSE IF YOU REQUEST A DISMISSAL, YOU MIGHT JUST GET ONE, AND THAT MEANS THE CREDITORS MAY NEVER GET PAID ANYTHING. THE TYPICAL CONSUMER CASE IS A NO ASSET CASE IF FILED UNDER CHAPTER 7. DISMISSAL OF A PENDING CHAPTER 13 PAYMENT PLAN WILL RARELY BENEFIT UNSECURED CREDITORS IF THE DEBTOR IS TRYING AND PROPOSES TO STAY IN THE PLAN. A BETTER APPROACH TO PLAN DEFAULTS IS A CASE BY CASE REVIEW. IS THE DEBTOR TRYING? ARE THERE ASSETS THAT COULD BE LIQUIDATED TO PAY DEBTS (IF NOT, STAYING IN THE PLAN IS THE BEST OPTION FOR UNSECURED CREDITORS)? WOULD CREDITORS BE BETTER OFF IN A CHAPTER 7? IS THERE A REASONABLE LIKELIHOOD OF SUCCESS IF THE DEBTOR IS GIVEN MORE TIME? IS THE PLAN STILL WITHIN 60 MONTHS IF PAYMENTS ARE RESTARTED? IS A PLAN AMENDMENT FEASIBLE? GOOD COUNSEL REPRESENTING DEBTORS WILL EXPLORE THESE ISSUES IN DEALING WITH DEFAULTS AND EXPLAIN OR ARGUE FOR CONTINUING THE CASE IN APPROPRIATE CIRCUMSTANCES, ESPECIALLY WHEN MANY DEBTORS SINCERELY WANT TO COMPLETE THEIR CASES. A GOOD TRUSTEE WILL WEIGH ALL THE CIRCUMSTANCES BEFORE GOING FORWARD WITH A MOTION TO DISMISS AND AGREE TO ADJOURN THE HEARING IF THERE IS A GOOD CHANCE OF SAVING THE PLAN. THE JUDGE SHOULD CONSIDER ALL THE CIRCUMSTANCES. WITH PLAN LANGUAGE ALLOWING FOR MISSED PAYMENTS TO BE MADE UP OR EXTENDED (IT'S IN THE STANDARD LANGUAGE OF PARAGRAPH ONE OF MY PLANS), THERE IS ROOM FOR DISCRETION IN DEALING WITH PLAN DEFAULTS. FLEXIBILITY IS USUALLY BETTER FOR CREDITORS WHEN THE DEBTOR IS HONEST AND SINCERELY TRYING TO PAY. ON THE OTHER HAND, IF A DEBTOR IS TRYING TO DELAY OR HINDER COLLECTION OF DEBTS, OR IF THERE IS NO HOPE FOR SUCCESS, THERE IS NO REASON TO CONTINUE A DEFAULTED PLAN.

ASSUMING, THEN, THAT SUCCESS IS BETTER THAN FAILURE FOR ALL CONCERNED, ARE WE DOING A GOOD JOB FOR CHAPTER 13 DEBTORS? THIS SERIES OF ARTICLES WILL CONTINUE.

DAVID C. ANDERSEN

BANKRUPTCY COURT, WESTERN DISTRICT OF MICHIGAN

IN RE NEWSTAR ENERGY OF TEXAS, LLC, 80 B.R. 623 (HON. JAMES D. GREGG, JULY 15, 2002)

WHILE A CONFIRMED PLAN NORMALLY CANNOT BE COLLATERALLY ATTACKED AND IS BINDING ON ALL PARTIES TO THE BANKRUPTCY, IF A CREDITOR DOES NOT RECEIVE ADEQUATE NOTICE, THAT CREDITOR IS NOT BOUND BY THE CONFIRMATION ORDER, EVEN IF THAT CREDITOR HAD BEEN SERVED WITH AN EARLIER VERSION OF THE PLAN.

IN RE COMMONPOINT MORTGAGE CO., 2002 BANKR. LEXIS 1024 (HON. JAMES D. GREGG, SEPTEMBER 19, 2002)

THE COURT CERTIFIED A CLASS UNDER F.R.B.P. 7023 BASED UPON A PROOF OF CLAIM FILED ON BEHALF OF A GROUP OF INDIVIDUALS WHO RECEIVED LOANS FROM THE DEBTOR.

BANKRUPTCY COURT, EASTERN DISTRICT OF MICHIGAN

IN RE HTHIY (HON. STEVEN W. RHODES, JULY 19, 2002)

A DEBTOR'S ONE-HALF INTEREST IN HER FORMER HUSBAND'S ERISA-QUALIFIED 401(K) PLAN WAS A SEPARATE PROPERTY INTEREST BUT STILL EXCLUDED FROM THE BANKRUPTCY ESTATE UNDER 11 U.S.C. SECTION 541(C)(2).

IN RE MCCALL-PRUITT, 281 B.R. 910 (HON. STEVEN W. RHODES, JULY 19, 2002)

CREDITOR VIOLATED THE AUTOMATIC STAY BY ACCEPTING FUNDS POST-PETITION FROM THE STATE OF MICHIGAN UNDER A PREPETITION GARNISHMENT FILED AGAINST THE DEBTOR'S INCOME TAX REFUND. CREDITOR HAD A DUTY TO HALT ALL COLLECTION PROCEEDINGS, REGARDLESS OF PERFECTION AND ATTACHMENT, WHEN THE DEBTOR FILED FOR BANKRUPTCY.

IN RE A.P. LIQUIDATING CO. (OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF APEX GLOBAL INFORMATION SYSTEMS, INC., ET AL., V. QWEST COMMUNICATIONS CORP.), 2002 BANKR. LEXIS 1099 (HON. STEVEN W. RHODES, OCTOBER 1, 2002)

A CHAPTER 11 LIQUIDATING AGENT'S POSTCONFIRMATION CLAIM FOR BREACH OF CONTRACT AND FRAUD WAS BARRED BY *RES JUDICATA* UNDER THE TERMS OF THE CONFIRMED PLAN.

IN RE DEVELOPMENT CORP. OF PLYMOUTH, INC., 2002 BANKR. LEXIS 1101 (HON. STEVEN W. RHODES, OCTOBER 1, 2002)

IN DENYING A MOTION TO DISQUALIFY CHAPTER 7 TRUSTEE'S SPECIAL COUNSEL FILED BY THE DEFENDANT'S IN AN ADVERSARY PROCEEDING FILED BY THE TRUSTEE, THE COURT DETERMINED THAT 11 U.S.C. SECTION 327(E) WAS LIMITED IN ITS APPLICATION TO ATTORNEYS WHO HAD PREVIOUSLY REPRESENTED THE DEBTOR. FURTHER, NO ADVERSE INTEREST EXISTED TO PRECLUDE THEIR APPOINTMENT UNDER 11 U.S.C. SECTION 327(A) BECAUSE THE MOVANT AND TRUSTEE'S INTERESTS WERE ALIGNED.

IN RE JAMES TOSTIGE, 2002 BANKR. LEXIS 1100 (HON. STEVEN W. RHODES, OCTOBER 1, 2002)

DEBTOR'S EX-WIFE'S ATTEMPTS TO MODIFY THE PARTIES' DIVORCE JUDGMENT BY SEEKING REIMBURSEMENT FOR HER MAKING SEVERAL POSTPETITION BOAT PAYMENTS ON THEIR JOINT DEBT VIOLATED THE DISCHARGE INJUNCTION UNDER 11 U.S.C. SECTION 524 BECAUSE THE DEBTOR'S DEBT TO THE BANK FOR THE BOAT WAS DISCHARGED BY HIS BANKRUPTCY UNDER 11 U.S.C. SECTION 727(B).

IN RE HOSPITALITY INVESTMENT CORP. (JOHN HANCOCK LIFE INSURANCE CO., ET AL., V. JANKOWSKI, ET AL.), 2002 BANKR. LEXIS 1052 (HON. STEVEN W. RHODES, SEPTEMBER 23, 2002)

INSURANCE COMPANIES' MOTION FOR SUMMARY JUDGMENT IN AN ADVERSARY PROCEEDING FILED TO DETERMINE THE VALIDITY OF ASSERTED LIENS IN AVOIDANCE RECOVERY FUNDS HELD BY THE TRUSTEE WAS GRANTED BECAUSE THE INSURANCE COMPANIES COULD SHOW THAT THEY HAD A PROPERLY PERFECTED PREPETITION SECURITY INTEREST IN THE FUNDS AND THAT THE TRANSFER OF THOSE FUNDS TO THE DEBTOR'S PRINCIPAL DID NOT EXTINGUISH THEIR SECURITY INTEREST SUCH THAT THEY HAD AN INDEPENDENT RIGHT TO RECOVER THOSE FUNDS OUTSIDE OF BANKRUPTCY.

DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN

IN RE THRUSH, (TIBBLE V. BYRON CENTER STATE BANK) (HON. ROBERT HOLMES BELL, OCTOBER 3, 2002)

APPLYING MICHIGAN'S MOBILE HOME COMMISSION ACT, THE DISTRICT COURT FOLLOWED THE ANALYSIS OF *IN RE FLEMING*, 226 B.R. 3 (W.D. MI 1998), AND CONCLUDED, "UNTIL A NEW APPLICATION IS DELIVERED TO THE DEPARTMENT OF COMMERCE OR THE DEPARTMENT CANCELS A TITLE AFTER NOTICE AND HEARING, THE PRIOR TITLE, AND ALL SECURITY INTERESTS NOTED THEREON, CONTINUE TO BE VALID." ACCORDINGLY, THE COURT REVERSED THE BANKRUPTCY COURT'S DECISION AND UPHELD THE PERFECTED STATUS OF THE SECURED BANK.

SIXTH CIRCUIT COURT OF APPEALS

IN RE KENNETH ALLEN KNIGHT TRUST, 303 F.3D 671 (6TH CIR. SEPTEMBER 13, 2002)

THE SIXTH CIRCUIT AFFIRMED THE DISTRICT COURT'S INDEPENDENT FACTUAL FINDINGS AND CONCLUSION THAT THE DEBTOR WAS A BUSINESS TRUST AND THEREFORE ELIGIBLE TO BE A DEBTOR. THE COURT DISTINGUISHED BUSINESS TRUSTS—TRUSTS CREATED WITH THE PRIMARY PURPOSE OF TRANSACTING BUSINESS OR CARRYING ON COMMERCIAL ACTIVITY FOR THE BENEFIT OF INVESTORS—FROM NONBUSINESS TRUSTS—TRUSTS DESIGNED MERELY TO PRESERVE THE TRUST RES FOR BENEFICIARIES.

"THANK YOU TO DEAN RIETBERG FOR HIS WORK ON THESE SUMMARIES. ANY VIEWS THAT MIGHT BE EXPRESSED IN THESE CASE SUMMARIES ARE THE VIEWS OF THE AUTHOR AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE UNITED STATES TRUSTEE PROGRAM.

PEOPLE AND CHANGES

CONGRATULATIONS TO JUDGE GREGG ON BEING INSTALLED AS THE PRESIDENT OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES. IF YOU HAVE SOME NEWS WHICH WOULD BE OF INTEREST TO THE BANKRUPTCY BAR, PLEASE E MAIL IT TO MMEOLI@AMERITECH.NET.

CLERK'S OFFICE ISSUES

THE LANSING COURTROOM IS UNDERGOING RENOVATIONS, WHICH IS CAUSING A CHANGE IN THE COURT SCHEDULE FOR JUDGE GREGG. HIS LANSING HEARINGS FOR NOVEMBER 27, DECEMBER 18, JANUARY 7, JANUARY 28, AND FEBRUARY 19 WILL BE HELD IN GRAND RAPIDS. YOU MAY WISH TO CHECK AHEAD IF YOU HAVE A LANSING HEARING SCHEDULED AND DO NOT REGULARLY PRACTICE IN THAT LOCATION.

TECHNOLOGY TIPS. WE ARE STILL INTERESTED IN ANY IDEAS THAT YOU MIGHT HAVE, ESPECIALLY IF YOU THINK THAT BANKRUPTCY PRACTITIONERS DO NOT KNOW ABOUT IT.

STATISTICS

THE COURT WEBSITE PROVIDES STATISTICS ON THE NUMBER OF CASES FILED SINCE 1994 IN OUR DISTRICT.

2001: CHAPTER 7: 10,596	CHAPTER 13: 3,307	CHAPTER 11: 69	CHAPTER 12: 2	TOTAL: 13,974
THROUGH OCTOBER 6, 2002: CHAPTER 7: 7,831	CHAPTER 13: 2,417	CHAPTER 11: 43	CHAPTER 12: 2	TOTAL: 10,293

Bankruptcy Section Newsletter
October, 2002

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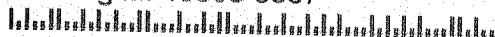
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FBA STEERING COMMITTEE

THE 14TH ANNUAL BANKRUPTCY SEMINAR WAS HELD JULY 25 - 27, 2002 ON MACKINAC ISLAND. THE SEMINAR WAS A GREAT SUCCESS WITH 115 IN ATTENDANCE. THE FACILITY WAS AT MAXIMUM CAPACITY AND UNFORTUNATELY OUR GROUP HAS OUTGROWN THE LAKEVIEW HOTEL. EVEN THOUGH CROWDED AT TIME, THE BREAKOUT SESSIONS WERE EXCELLENT. I WOULD LIKE TO THANK ALL OF THE SPEAKERS FOR ALL OF THEIR EFFORTS IN MAKING IT A GREAT EVENT: JUDGE GREGG, JUDGE HUGHES, JUDGE RHODES, DAN LAVILLE (AND STAFF), STEVE LANGE LAND, JIM BOYD (WHO GRACIOUSLY PINCHED HIT FOR WALLY TUTTLE), LARRY VERMERRIS, DAN CASAMATTA, JUDY CALTON, PERRY PASTULA, STEVE RAYMAN, SCOTT MIEDEMA, BRIAN CONNORS, JEFF MOYER, ROGER COTNER, BILL NAPIERALSKI, DAVID RUSKIN, LORI PURKEY AND JIM KELLER.

ROBB WARDROP SERVED AS CHAIR OF THE BANKRUPTCY STEERING COMMITTEE FOR TWO YEARS AND HIS REIGN HAS NOW CONCLUDED. DURING THAT TIME, ROBB WAS RESPONSIBLE FOR THIS YEAR'S SEMINAR, SCHEDULING THE COMMITTEE MEETINGS, AND SERVED AS OUR CONTACT WITH THE COURT AND THE FBA. ROBB GAVE MANY HOURS OF HIS TIME TO THE COMMITTEE AND THE BANKRUPTCY BAR AND SHOULD BE CONGRATULATED FOR A JOB WELL DONE. ROBB YOUR LEADERSHIP ROLE IS NOT OVER AS YOU REMAIN A VITAL MEMBER OF THE STEERING COMMITTEE (REMEMBER THE ONE THING YOU TAUGHT ME WAS TO DELEGATE.)

THE 15TH ANNUAL BANKRUPTCY SEMINAR IS SCHEDULED FOR AUGUST 7 - 9, 2003 AT THE PARK PLACE HOTEL IN TRAVERSE CITY. HAL NELSON HAS GRACIOUSLY AGREED TO CHAIR THE SEMINAR COMMITTEE. THE THEME OF THE SEMINAR WILL BE "EAST MEETS WEST II." IT HAS BEEN SEVERAL YEARS SINCE THE FIRST "EAST MEETS WEST" SEMINAR WAS HELD AND IT WAS A GREAT SUCCESS. WITH THE EASTERN DISTRICT ANXIOUSLY AWAITING THE ARRIVAL OF TWO TO THREE NEW JUDGES IT SEEMED APPROPRIATE TO INVITE THE NEW JUDGES (HOPEFULLY, THEY WILL BE ON THE BENCH BY NEXT AUGUST) TO THE SEMINAR AND TO GET A FLAVOR FOR THE VARIATIONS OF PRACTICE BETWEEN THE EASTERN AND WESTERN DISTRICTS. THIS WILL BE A GREAT SEMINAR SO MARK YOUR CALENDARS.

FIVE POSITIONS ON THE STEERING COMMITTEE WILL EXPIRE WITHIN THE NEXT YEAR. IF YOU ARE INTERESTED IN BEING ON THE STEERING COMMITTEE, PLEASE CONTACT ME.

I WOULD LIKE TO THANK MARCIA MEOLI WHO, SEVERAL MONTHS AGO, AGREED TO ASSUME THE ROLE AS EDITOR OF THE BANKRUPTCY NEWSLETTER. SHE HAS DONE A GREAT JOB IN PUTTING TOGETHER AN INFORMATIVE NEWSLETTER AND ON TIME. THE NEWSLETTER IS PUBLISHED QUARTERLY. ANYONE INTERESTED IN SUBMITTING AN ARTICLE SHOULD CONTACT MARCIA.

LASTLY, ON BEHALF OF THE BANKRUPTCY STEERING COMMITTEE AND THE BANKRUPTCY BAR I WOULD LIKE TO CONGRATULATE THE HONORABLE JAMES D. GREGG, THE NEWLY APPOINTED PRESIDENT OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES ("NCBJ"). EACH YEAR THE NCBJ HOSTS A CONFERENCE AND WHILE I HAVE NOT ATTENDED, I AM TOLD BY THOSE WHO HAVE THAT IT IS GREAT EVENT. NEXT YEAR THE NCBJ CONFERENCE WILL BE HELD IN SAN DIEGO. ANYONE INTERESTED IN ATTENDING SHOULD CONTACT JUDGE GREGG FOR THE DETAILS.

MARY K. VIEGELAHN HAMLIN, CHAIR