



# FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER  
JULY, 2003

## FBA CIVILITY EVENT IN HONOR OF JUDGES NIMS AND GREGG

On May 8, 2003, the bankruptcy section of the Federal Bar Association hosted a civility event. For those who could not be there, you missed an opportunity to gather in a friendly environment with your fellow practitioners and to pay respects to our late great Bankruptcy Judges David E. Nims and Laurence E. Howard.

Mary Viegelahn Hamlin started us off with her warm comments about the late judges, our bar and the need to have similar social events to bring us together as a bar.

Paul Davidoff spoke eloquently about his memories practicing before Judges Nims and Howard. He remembered Judge Nims as the finest judge he had ever met. It was clear that Paul was more than pleased when Judge Nims saw a case the exact same way that he had. Regarding Judge Howard, Paul fondly remembered how the judge would give a debtor a chance to succeed. He remembered one motion in particular that he thought he could never win, but Judge Howard took the time to inquire directly of the debtor, asking him: "Do you have any idea when you will get a job?" The debtor replied that there was a rumor that people would start work at his employer the next Monday. So Judge Howard adjourned the hearing, much to the consternation of the creditor attorney. After that, the debtor went back to work, cured the mortgage arrearages, paid off the plan and received his discharge. It was one of the many success stories in Judge Howard's time on the bench.

Judge Stevenson remembered Judge Howard as the brother she never had, a great man with a great sense of humor. She also remembered how he thought that the bankruptcy bar was terrific. She agreed.

Judge Gregg, who wrote a wonderful essay about the judges for a recent newsletter for the general FBA, spoke with obvious admiration of both men. He stated: "There is not a day that I sit on the bench that I do not think about Judge Howard or Judge Nims or both." He recounted a personal story of a time that he was on the bench reviewing the case of an honest debtor who was behind on payments on a secured debt, but had just found a job and was making regular payments. Adjourning the motion for lift of stay to the final, Judge Gregg decided to discuss with the creditor attorney the option of giving the debtor more time. He knew that Judge Howard did this 100's of times.

Tom Schouten reminisced about the humanity of Judge Nims. After a long hearing in a complicate business case, he took the time to recognize that the attorneys involved were working hard during Christmas time and how this could save the jobs of the 84 people who worked at

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### IMPORTANT DATES:

**15TH ANNUAL FBA BANKRUPTCY SEMINAR:** AUGUST 7-9, 2003. @ TRAVERSE CITY PARK PLACE HOTEL

**CONSUMER BANKRUPTCY COALITION MEETINGS:**

SECOND FRIDAY OF JULY AND EVERY SECOND MONTH THEREAFTER @ 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 MEETING.

**NATIONAL CONFERENCE OF BANKRUPTCY JUDGES:** THE ANNUAL MEETING THIS YEAR IS IN SAN DIEGO FROM OCTOBER 15-18. SEE [WWW.NCBJ.ORG](http://WWW.NCBJ.ORG).

Something missing? Let us know about other dates!

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the business in question.

Dan Hess remembered Judge Nims' humility. When he first met Judge Nims, his office was old with a leaky roof. Yet Nims seemed not to mind and went about his work professionally and cheerfully.

Dennis Chamberlain was Judge Howard's law clerk. He remembered many personal events. Judge Howard was his boss, mentor and colleague. They could argue points and, a couple of times, Denny got his way and performed the victory dance. They could talk about personal things, children, fatherhood, religion, family. His time with Judge Howard forever changed him and blessed him.

Martin Rogalski remembered a case which he had before Judge Howard with an attorney from Boston. This attorney was very condescending to many in the courtroom including to Judge Howard. Now, one would expect a strong reaction from a judge treated in this manner. Judge Howard, however, always had grace and dignity, but still remained firm when he said to the Boston attorney: "I don't know how you treat your judges in Boston, but here we treat them with a modicum of respect."

Martin further remembered Judge Nims' penchant for punctuality. He was late for a hearing on objections to claims one day. By the time he reached the courtroom, Nims had already held 3 of the hearings without him. He had denied the objections in those hearings and then went through the others with Martin.

Patrick Mears remembered how Judge Howard could laugh, even though the message of the joke pointed to a disagreement with one of his decisions, pointing up his humility again, as many at the function did.

What became clear at the event was how everyone admired and respect both judges. What a legacy for these men to leave after their long careers! These men are inspirations for all of us to practice law with great dedication but also to remember the human aspects of what we do - how we affect people, the system, the community. It is also gratifying to hear that both men thought well of us as a bar, not so that we can "pat ourselves on the back" but so that we can strive ever more diligently to practice law as they would want.

Here is what Brett Rodgers, chapter 13 trustee, wrote about the judges:

In March of 1981 I was hired by Judge Nims and Judge Howard as the Estate Administrator. After having approximately 20 jobs from age 12 to 31, I can say without hesitation that they were the best employers I had ever served for. When I asked Judge Nims to be appointed as a Chapter 13 Trustee, he put his arm on my shoulder and walked me down to Judge Howard to discuss the matter. While Judge Howard wasn't thrilled about losing his Estate Administrator, both men were gracious in helping me advance.

They always saw the best in people, debtors, creditors, lawyers, and Trustees. Their honesty, empathy, patience and loyalty to those they worked with was always impressive. These virtues have left a positive impact on our bankruptcy bar.

After Judge Howard retired, I recall my "Lunches with Larry" (actually, they were mostly breakfast dates). Larry proved to be a good personal friend. I miss his candid, caring, honest conversations regarding politics to personal matters. He always had an opinion but never judged outside the court.

## CHAPTER 7 ISSUES

Effective now, adjournments of chapter 7 341 hearings must be done through the office of the chapter 7 trustee appointed for the case. Please remember that notice of these adjournments need to be served upon the trustee, the debtor, all creditors, the court and the us Trustee office as provided by FRBP 2002. (this does not apply to adjournments by announcement at the meeting of creditors.) To avoid undue legal expense to creditors, obtain and serve notice of any adjournment well prior to the date of the 341 hearing.

## FROM THE CLERK'S OFFICE—IMPORTANT CHANGE

EFFECTIVE JULY 9, 2003, THE CLERK'S OFFICE WILL ONLY ACCEPT CREDITOR MATRICES ON DISKETTE. TO INTRODUCE AND FAMILIARIZE COURT CUSTOMERS WITH THE CONCEPT OF FILING ELECTRONIC DOCUMENTS, TO MINIMIZE NOTICING ERRORS AND TO INCREASE THE EFFICIENCY OF CREDITOR INFORMATION INPUT INTO THE COURT'S DATABASE, THE COURT IS REQUESTING CUSTOMERS FILE THEIR CREDITOR MATRICES IN TEXT FORMAT ON DISK. FOR MORE INFORMATION REGARDING THIS CHANGE AND INSTRUCTIONS FOR SUBMITTING A MATRIX ON DISKETTE, SEE [HTTP://WWW.MW.USCOURTS.GOV/CONTENT/OTHER/PUBNOTICE02.PDF](http://www.mw.uscourts.gov/content/other/pubnotice02.pdf).

ACCORDING TO THE CLERK'S OFFICE, THIS CHANGE WAS REQUIRED AFTER THE COURT MOVED TO THE CASE MANAGEMENT DATA ENTRY SYSTEM, IN ANTICIPATION OF THE MAJOR CHANGE TO ELECTRONIC CASE FILING. THE CLERK'S OFFICE IS WORKING NON STOP TO GET THE SYSTEM READY FOR DEBTOR ATTORNEY USE OVER THE NEXT FEW MONTHS. ONCE AN ATTORNEY SIGNS UP FOR ELECTRONIC CASE FILING, THE FLOPPY DISKS WILL NOT BE NECESSARY, AS ALL FILING WILL BE DONE ELECTRONICALLY. IN THE MEANTIME, IF YOU WISH TO HAVE A DISK RETURNED FOR FUTURE USE, SEND A SELF ADDRESSED STAMPED ENVELOPE WITH THE DOCUMENTS AND THEY WILL DO SO. YOU ALSO MUST HAVE A SEPARATE DISK FOR EACH CASE FILED, EVEN IF YOU ARE FILING CASES TOGETHER, BECAUSE OF THE REQUIREMENTS ON THE CLERK'S OFFICE FOR INPUT. UNFORTUNATELY, THIS PROCEDURE SEEMS TO BE A PRODUCT OF THE TRANSITION TO ELECTRONIC CASE FILING, AND WE WILL NEED TO LIVE WITH IT UNTIL THE SYSTEM AND THE DEBTOR ATTORNEYS CAN COMMENCE WITH THE NEW SYSTEM. FINALLY, CHECK YOUR SOFTWARE FOR BANKRUPTCY SCHEDULES, - IT MIGHT HAVE A BUILT IN CONVERSION PROGRAM FOR YOUR MATRIX !

THANK YOU TO DEAN RIETBERG FOR THESE SUMMARIES.

### **Bankruptcy Court, W.D. MI:**

*Word Investments, Inc. v. Bruinsma (In re TML, Inc.)*, 291 B.R. 400 (Bankr. W.D. Mich. 2003) (3-26-03 Hon. James D. Gregg). In a factually detailed opinion, the bankruptcy court ruled that the trustee was not able to receive contribution from the debtor's landlord for payments the debtor made to its secured creditor under a note. The trustee, however, did prevail in his claim against the landlord to recover a constructive fraudulent conveyance.

*In re Brown*, 2003 Bankr. LEXIS 553, (Bankr. W.D. Mich.) (6-4-03 Hon. James D. Gregg). Lack of good faith is an exception to a Chapter 7 debtor's absolute right to convert his case to Chapter 13 found in 11 U.S.C. Section 706(a).

### **Bankruptcy Court, E.D. MI:**

*Bli Farms v. Greenstone Farm Credit Services, et al. (In re Bli Farms)*, 2003 WL 21489729 (Bankr. E.D. Mich. 2003) [undated] (Hon. Walter Shapero). The court ruled that notwithstanding dismissal of the "base" case, the court retained jurisdiction over this adversary proceeding to determine whether the foreclosure sale was valid. Also, finding "excusable neglect", the court granted the debtors' motion to extend the time to file a notice of appeal.

*Barrick v. Haverstick (In re Haverstick)*, 2003 Bankr. LEXIS 680, (Bankr. E.D. Mich. 2003) [undated] (Hon. Phillip J. Shefferly). The court denied summary judgment, determining that an order allowing postpetition financing was ambiguous on its face regarding whether the financing was a conveyance with a leaseback or simply a mortgage.

*In re Moses*, 293 B.R. 711 (Bankr. E.D. Mich. 2003) [undated] (Hon. Phillip J. Shefferly). In a limited factual ruling, the court determined that nothing in 11 U.S.C. Section 1322(a)(2) precluded full payment of the debtor's attorney fees prior to payment to the secured creditor. The court also declined to recognize any requirement for adequate protection to the secured creditor beyond the treatment required for its claim under 11 U.S.C. Section 1325(a)(5)(B).

*Crestmark Bank et al. v. U.S. (In re Spearing Tool and Manufacturing Co.)* 292 B.R. 579 (Bankr. E.D. Mich. 2003) (5-14-03 Hon. Steven W. Rhodes). In deciding a lien dispute, the court concluded that although state law controls the place for filing a federal tax lien, federal law controls the form and content of the filing. Accordingly, the IRS properly identified the taxpayer as required by a Treasury regulation, thereby validating and giving priority to the IRS' lien.

*In re John Richards Homes Building Co., L.L.C.*, 291 B.R. 727 (Bankr. E.D. Mich. 2003) (4-25-03 Hon. Steven W.

Rhodes). The court sanctioned the petitioning creditor \$4,100,000 in compensatory damages, \$2,000,000 in punitive damages, and attorney fees and costs of \$313,230.68 for filing an involuntary petition in bad faith.

*Shapiro v. Jacob's Electrical Construction et al. (In re Eastern Concrete Paving Co.)*, 293 B.R. 704 (E.D. Mich. 2003) [undated] (Hon. Phillip J. Shefferly). Since the general indemnity agreement between the debtor and its bonding company was insufficient to create an express trust, the court determined that payments from the debtor to its subcontractor were transfers of property under 11 U.S.C. Section 541.

### **Bankruptcy Appellate Panel:**

*Jefferson County Bd. of County Commrs. et al. v. Voinovich et al. (In re The V Companies et al.)* 292 B.R. 290, (6<sup>th</sup> Cir. B.A.P. 2003) (5-1-03 before Judges Aug, Howard, and Latta). In affirming the bankruptcy court, the B.A.P. determined that a creditor may be granted derivative standing to file an avoidance action because the Sixth Circuit's ruling in *Gibson Group* is not inconsistent with nor effectively overruled by the Supreme Court's holding in *Hartford Underwriters*.

### **District Court, W.D. MI:**

*Specker Motor Sales Co. v. Eisen (In re Specker)*, 289 B.R. 870, (W.D. Mich. 2003) (6-20-03 Hon. Richard Alan Enslin). The district court upheld the bankruptcy court's order directing debtor's counsel to disgorge \$9,026 of the \$10,000 retainer received because 11 U.S.C. Section 726(B) requires disgorgement of interim compensation in every case of administrative insolvency in order to achieve *pro rata* disbursement among all the Chapter 11 administrative claimants.

*In re Mileski*, 289 B.R. 870, (W.D. Mich. 2003) (5-1-03 Hon. David W. McKeague). Affirming the bankruptcy court's order granting the trustee's objection to the debtor's claim of exemption of more than one individual retirement annuity under M.C.L. Section 600.6023(1)(k), the district court agreed that the Michigan legislature intended the terms "a" and "an" to refer to single solitary items.

### **Sixth Circuit Court of Appeals:**

*In re Federated Department Stores, Inc.*, 328 F.3d 829, (6<sup>th</sup> Cir. 2003) (5-14-03 before Circuit Judges Moore and Gibbons and Senior District Judge Cohn). The Sixth Circuit vacated the district court's judgment dismissing the appeal holding that the bankruptcy court's power to stay other pending litigation pending completion of a dispute resolution process did not violate Article III under the criteria established in *Schor*.

**Bankruptcy Section Newsletter**  
July, 2003

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**SUMMER SEMINAR — EAST MEETS WEST**

THE APPLICATIONS FOR THE SUMMER SEMINAR HAVE BEEN OUT AND HOPEFULLY IT HAS NOT BEEN FILLED YET, IF YOU STILL NEED TO SIGN UP. IF YOU NEED AN APPLICATION, THEY HAVE BEEN AVAILABLE AT THE CLERK'S OFFICE AND WERE DELIVERED TO THE COURT AND HEARING ROOMS. YOU MAY ALSO CONTACT MARY HAMLIN OFFICE AT MHAMLIN@CHPT13.COM OR (269) 343-0305 TO GET AN APPLICATION. THIS IS ANOTHER OPPORTUNITY TO INCREASE THE CIVILITY AMOUNT MEMBERS OF THE BAR. WE HOPE THAT ALL CAN PARTICIPATE.

**WHAT HAPPENED TO THE BANKRUPTCY REFORM LEGISLATION?**

THE HOUSE OF REPRESENTATIVES PASSED H.R. 975 ON MARCH 19, 2003. COMMENTATORS HAVE STATED THAT THIS BILL IS VERY MUCH LIKE LAST SESSION'S BILL, EXCEPT THAT THE ANTI ABORTION PROTESTOR TEXT IS NOT IN IT. THE BILL WAS RECEIVED IN THE SENATE, BUT IT APPEARS THAT NOTHING HAS BEEN DONE THERE ABOUT IT. SENATOR CHARLES SCHUMER FROM NEW YORK, THE AUTHOR OF THE ANTI ABORTION PROTESTOR PROVISIONS, STATED THAT HE WILL ATTEMPT TO ADD THE SAME PROVISIONS IN THIS SESSION'S BILL, BUT THAT REMAINS TO BE SEEN WITH THE REPUBLICANS IN CONTROL OF THE SENATE THIS TIME AROUND.

STATISTICS THE COURT WEBSITE PROVIDES STATISTICS ON THE NUMBER OF CASES FILED SINCE 1994 IN OUR DISTRICT.						
2002:	CHAPTER 7: 11,829	CHAPTER 13: 3,697	CHAPTER 11: 64	CHAPTER 12: 3	TOTAL: 15,593	
THROUGH JULY 2003:	CHAPTER 7: 5,914	CHAPTER 13: 1,595	CHAPTER 11: 33	CHAPTER 12: 1	TOTAL: 7,543	