

FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
OCTOBER, 2003

CHAPTER 13 SUCCESS - PART 3 BY: DAVID C. ANDERSEN

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"SUCCESS" CAN MEAN DIFFERENT THINGS TO DIFFERENT READERS. IN THE CONTEXT OF CHAPTER 13, SUCCESS WOULD MEAN THE ACTUAL COMPLETION BY THE DEBTORS FILING THESE CASES. IT MIGHT BE ARGUED THAT TO OTHER INTERESTED PARTIES SUCH AS SOME CREDITORS, "SUCCESS" MIGHT ACTUALLY MEAN DISMISSAL OF THE CASES. PERHAPS TO A SMALL NUMBER OF DEBTORS, SUCCESS IS ACCOMPLISHED BY A TEMPORARY DELAY OR STAY OF ACTION FOR THE TIME BEING.

THE VAST MAJORITY OF DEBTORS WANT TO COMPLETE THEIR PLANS AND THEY HAVE EVERY INTENTION OF DOING SO. INTERESTINGLY ENOUGH, MOST CREDITORS ALSO SEEM TO WANT THE PLAN TO SUCCEED TO COMPLETION. I HAVE FOUND IT VERY RARE THAT UNSECURED CREDITORS ARE INTERESTED IN DISMISSAL SINCE THEY KNOW THAT CHAPTER 7 IS THE ONLY REASONABLE NEXT STEP FOR MOST DEBTORS WHO HAVE TRIED TO REORGANIZE THEIR DEBTS UNDER CHAPTER 13 AND HAVE FAILED. THEREFORE, WE WILL DEFINE "CHAPTER 13 SUCCESS" AS THE SUCCESSFUL PAYMENT ALL THE WAY THROUGH DISCHARGE OF THE CASE AND PLAN COMPLETION.

THE STRUCTURE OF CHAPTER 13 OF THE BANKRUPTCY CODE ENVISIONED THAT DEBTORS WOULD PAY TO THE BEST OF THEIR REASONABLE ABILITY FOR AT LEAST 3 YEARS BUT NO MORE THAN 5 YEARS, THAT SECURED CREDITORS IN THE PLAN WOULD BE PAID THE VALUE OF THEIR SECURED CLAIMS, AND THAT UNSECURED CREDITORS WOULD RECEIVE AT LEAST AS MUCH AND USUALLY MORE THAN WOULD BE PAID THEM IN A CHAPTER 7 AND MORE IF THE DEBTOR'S BUDGET REASONABLY ALLOWS. THE RESULT IS FAIR AND BENEFICIAL TO MOST OF THE PARTICIPANTS IN THE PROCESS.

IN ORDER TO TRACK A TRUE SUCCESS RATE IN A STATISTICALLY VALID SENSE, ONE WOULD NEED TO SELECT A STATISTICALLY SIGNIFICANT SAMPLE OF CHAPTER 13 DEBTORS AND TRACK THE CASES UNTIL DISMISSAL, CONVERSION OR DISCHARGE. FOR EXAMPLE, WE COULD SELECT A NUMBER OF CASES AT RANDOM, FILED AT VARIOUS TIMES, AND COMPOSED OF A CROSS SECTION OF THE KINDS OF DEBTORS, AND TRACK ALL THE SELECTED CASES, CALCULATE THE RATE OF COMPLETION, DISMISSAL AND CONVERSION, AND IF THE NUMBERS ARE REPRESENTATIVE OF THE AVERAGE, APPLY THOSE PERCENTAGES TO PROJECT OR REVEAL THE ACTUAL SUCCESS RATE. SOME OF THESE KINDS OF STUDIES HAVE BEEN UNDERTAKEN AND PUBLISHED IN THE AMERICAN BANKRUPTCY INSTITUTE JOURNAL AND HAVE SHOWN MIXED RESULTS. SOME DISTRICTS SHOW A SUCCESS RATE OF UP TO ABOUT 60% ALTHOUGH THIS WAS APPARENTLY VERY UNUSUAL. OTHER DISTRICTS REPORTED SUCCESS RATES AT AROUND 30 TO 35%. THE AVERAGE RATE OF SUCCESS APPEARS TO BE BETWEEN 35 TO 45%, OR AT LEAST BELOW 50%. THE RESULTS USUALLY DEPEND ON THE DISTRICT SUBJECT TO THE STUDY. RESULTS MAY VARY FROM YEAR TO YEAR AND MAY BE BASED ON STABILITY OF THE ECONOMY OR LACK THEREOF AS WELL AS THE GENERAL ENVIRONMENT FOR ADMINISTRATION OF CHAPTER 13 CASES.

ANOTHER WAY TO CALCULATE THE RATE OF SUCCESS IS TO TRACK THE TOTAL NUMBERS EACH YEAR FOR CASES FILED, CASES DISMISSED, CASES CONVERTED AND CASES DISCHARGED. THESE FIGURES WILL NOT YIELD A PRECISE RATE OF SUCCESS SINCE CASES COMPLETED THIS YEAR WERE FILED IN PREVIOUS YEARS AND CASES FILED THIS YEAR HAVE YET TO BE COMPLETED. BUT WE CAN GAIN SOME USEFUL KNOWLEDGE OF THE NUMBERS ON AVERAGE. WE CAN ALSO COUNT TO THE WAY CASES ARE CLOSED. THERE ARE THREE

IMPORTANT DATES:

Summer Seminar:

July 29-31, 2004

in Traverse City.

Something missing? Let
us know about other
dates!

(Continued on page 2)

(Continued from page 1)

WAYS A CHAPTER 13 TERMINATES: DISMISSAL, DISCHARGE AND CONVERSION. BY LOOKING AT THESE NUMBERS, WE CAN GET A GOOD IDEA OF HOW SUCCESSFUL OUR DISTRICT IS, ON AVERAGE, IN THE REALM OF CHAPTER 13 SUCCESS.

ACCORDING TO DAN LAVILLE, BANKRUPTCY COURT CLERK FOR THE W.D. MICHIGAN, THE RECENT NUMBERS ARE AS FOLLOWS:

FOR CALENDAR YEAR 2002, THE WD OF MI HAD 14,635 TOTAL CASES FILED IN THE SOUTHERN DIVISION AND 958 TOTAL CASES FILED IN THE NORTHERN DIVISION, FOR A DISTRICT TOTAL OF 15,593. (THIS COMPARES WITH A "RECORD" DISTRICT TOTAL OF 13,974 CASES FILED IN 2001, I.E. 12% INCREASE)

FOR CHAPTER 13 CASES IN SOUTHERN DIVISION: CHAPTER 13 CASES FILED: 3674 (3263 IN '01). CHAPTER 13 CASES TERMINATED: 3208. DISCHARGED: 1264 (39.4%). DISMISSED: 1490 (46.4%) . CONVERTED : 454 (14.2%). FOR CHAPTER 7 CASES IN SOUTHERN DIVISION: CHAPTER 7 CASES FILED: 10927 (9851 IN '01).

FROM THESE FIGURES SHOWING CHAPTER 13 CASES TERMINATED, SLIGHTLY LESS THAN 40% ACTUALLY MADE IT THROUGH TO DISCHARGE OF THE CASE, WHILE 60% WERE EITHER DISMISSED OR CONVERTED TO CHAPTER 7. WE MUST KEEP IN MIND THAT THIS ANALYSIS CAN AND DOES CHANGE FROM YEAR TO YEAR AND THAT OUR ECONOMY HAS SUFFERED FROM PLANT CLOSINGS, LAYOFFS AND JOB INSTABILITY.

I DO BELIEVE THAT WE CAN DO BETTER. THE STATISTICS FOR MY LAW FIRM WERE APPARENTLY BETTER THAN THE DISTRICT AVERAGE. I HAVE KEPT COUNTS OF OUR CLIENT FILINGS, DISCHARGES, DISMISSALS AND CONVERSIONS. FOR CLIENTS OF MY FIRM IN THE 2002 CALENDAR YEAR, OVER 60% OF ALL CHAPTER 13 CLOSINGS WERE DISCHARGES. DISMISSALS ACCOUNTED FOR 31% AND CONVERSIONS WERE 7% OF CLOSINGS. WHY THE DIFFERENCE? I WILL SPECULATE THAT SINCE MY FIRM HAS A FULL TIME STAFF ATTORNEY AND A GROUP OF PARALEGALS THAT DO NOTHING BUT HELP CLIENTS THROUGH THE ENTIRE PLAN, THAT WE CAN DEAL WITH THE VARIOUS ISSUES THAT COME UP AND HELP MANY PEOPLE THROUGH THE AMENDMENTS, MOTIONS, COUNSELING, DOCUMENTING AND COMPLETION PROCESS, WHEREAS MOST DEBTORS ATTORNEYS HAVE SMALLER OFFICES WITH FEWER PEOPLE AND ARE NOT AS EQUIPPED TO HANDLE THE MYRIAD OF LABOR INTENSIVE DEMANDS PUT ON THEM BY CHAPTER 13 CLIENTS. CHAPTER 13 CASES HAVE NEVER BEEN MORE LABOR INTENSIVE FOR DEBTORS COUNSEL. THE DEMANDS FOR DOCUMENTATION, TAX RETURNS, TITLES, DEEDS, BUDGET ANALYSIS, AND ONGOING SERVICING OF THESE CASES ALL FALLS ON DEBTORS COUNSEL. ANY CHANGE TO THE PLAN THAT ADVERSELY AFFECTS CREDITORS MUST BE NOTICED OUT TO INTERESTED PARTIES AND A NEW BUDGET IS CALCULATED. ALL MOTIONS TO DISMISS REQUIRE RESPONSES AND MANY TIMES AMENDMENTS TO THE PLAN. MOTIONS TO LIFT STAY NEED TO BE DEALT WITH. COUNSELING CLIENTS ON BUDGETS, NEGOTIATIONS AND SETTLEMENTS WITH PLAN AMENDMENTS ARE CRITICAL TO SALVAGING PLANS THAT ARE IN TROUBLE. WITHOUT A DEBTORS ATTORNEY STAFF THAT IS CAPABLE OF COACHING AND ASSISTING CLIENTS TO COMPLETION, MANY PLANS CAN AND DO FAIL BY DEFAULT. WHAT THIS MEANS TO THE DEBTORS BAR IS THAT THE ATTORNEY FEES IN CHAPTER 13 MUST BE ADEQUATE AND THAT WE AS DEBTORS ATTORNEYS MUST USE THE INCOME FROM CHAPTER 13 FEES TO ADEQUATELY STAFF OUR OFFICES AND TRAIN OUR STAFF TO DEAL WITH THE MANY ISSUES THAT NEED ASSISTANCE WHILE THE PLAN IS PENDING. IF CHAPTER 13 FEES ARE NOT ADEQUATE OR IF WE DO NOT PUT THOSE FEES TO GOOD USE TO ASSIST OUR CLIENTS, WE WILL NOT SEE THE SUCCESS THAT WE, PERHAPS, COULD OR SHOULD SEE. IF THE CHAPTER 13 FEES ARE ADEQUATE AND ARE PUT TO GOOD USE BY THE DEBTORS BAR FOR SERVICE TO CHAPTER 13 CLIENTS, WE CAN SEE AN IMPROVEMENT IN OVERALL SUCCESS FOR OUR DISTRICT.

DAVID C. ANDERSEN

CHAPTER 13 ISSUES (AND BEYOND).

TAKE A LOOK AT THE INSERT WITH A PROPOSAL FROM BRETT RODGERS' OFFICE ABOUT DOCUMENT PRODUCTION. HOW MANY TIMES HAVE YOU SPENT TOO MUCH TIME AT 341 HEARINGS, SHUFFLING THROUGH DOCUMENTS (OR WATCHING THE TRUSTEE DO THIS WHILE YOU AND YOUR CLIENTS WAIT) TRYING TO FIGURE OUT WHAT IS GOING ON WITH YOUR CASE? DON'T YOU GET TIRED OF WAITING TO BE HEARD WHILE ALL OF THIS CONTINUES IN CASE AFTER CASE? JUST IMAGINE HOW IT WOULD WORK IF YOU COULD SEND THE DOCUMENTS TO THE TRUSTEE BEFORE THE HEARING AND THEN BREEZE THROUGH THE HEARING LIKE SOME OF THE OTHER ATTORNEYS. YOU WOULD LOOK BETTER TO YOUR CLIENTS AND YOU WOULD FEEL MORE IN CONTROL OF YOUR CASES. TRY THIS WITH CHAPTER 7 TRUSTEES, TOO.

A CHANGE! BRETT RODGERS IS NOW ON ECM. THAT MEANS THAT CONFIRMATION ORDERS WILL NO LONGER BE PREPARED OR SERVED IN HIS CASES. THIS CAUSES A TEMPORARY PROBLEM THAT DEBTOR ATTORNEYS ARE NOT ON ECM NOW TO RECEIVE THE EMAIL NOTICE OF CONFIRMATION. TRY THIS: CALENDAR YOUR CASE FOR A WEEK AFTER CONFIRMATION TO CHECK CITRIX. THIS SHOULD TELL YOU ABOUT CONFIRMATION AND FEE ORDERS. WE HOPE THAT THIS HELPS DURING THIS INTERIM PERIOD OF ADJUSTMENT.

AUDIT PILOT PROGRAM

THE FEDERAL UNITED STATES TRUSTEE PROGRAM IS CONDUCTING A "DEBTOR AUDIT" PILOT PROGRAM TO DETERMINE THE ACCURACY, VERACITY AND COMPLETENESS OF THE INFORMATION CONTAINED IN THE PETITIONS, SCHEDULES AND STATEMENTS FILED BY INDIVIDUAL CHAPTER 7 DEBTORS PURSUANT TO THE BANKRUPTCY CODE. THE TERMS "DEBTOR AUDIT" AND "AUDIT" AS USED FOR THIS PILOT PROGRAM DO NOT REFER TO AUDITS CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS. DEBTOR AUDITS INVOLVE THE REVIEW OF INFORMATION LISTED BY CHAPTER 7 DEBTORS IN THEIR BANKRUPTCY PETITIONS, SCHEDULES AND STATEMENTS, AND ADDITIONAL INFORMATION PROVIDED BY DEBTORS SPECIFICALLY FOR THE DEBTOR AUDITS.

THIS PILOT PROGRAM COMMENCED SEPTEMBER 2003 AND WILL PROCEED FOR 6 MONTHS AS PART OF THE PROGRAM'S CIVIL ENFORCEMENT INITIATIVE. IT WILL INVOLVE CASES FILED BETWEEN OCTOBER 2003 AND MARCH 2004. CASES MAY BE SELECTED EITHER RANDOMLY OR BASED UPON CERTAIN PRE DEFINED CRITERIA. INDEPENDENT AUDITORS WILL CONDUCT AUDITS IN CHAPTER 7 CONSUMER CASES AND DEBTORS WHO ARE FOUND TO HAVE FILED INCOMPLETE OR INACCURATE INFORMATION IN CONNECTION WITH THEIR CASES MAY BE SUBJECT TO ENFORCEMENT ACTIONS BY THE UNITED STATES TRUSTEE.

THERE ARE 9 OTHER REGIONS IN THE COUNTRY WHICH ARE PART OF THIS AUDIT PILOT PROGRAM.

NOTE: DEBTOR ATTORNEYS HAVE ALREADY NEEDED TO TAKE CARE THAT THE INFORMATION REPORTED IN THE PAPERS THEY FILE FOR BANKRUPTCY CASES IS ACCURATE AND COMPLETE. PREPARATION IN ADVANCE FOR THE POTENTIAL AUDIT WILL, IT WOULD SEEM, BE VERY HELPFUL FOR YOU IF ONE OF YOUR CASES GETS AUDITED. THIS MEANS TAKING AND KEEPING YOUR NOTES OF THE QUESTIONS YOU ASK OF YOUR CLIENTS IN PREPARING PAPERS, AS WELL AS THE DOCUMENTS YOU COLLECT FROM YOUR CLIENT IN THE PREPARATION OF THOSE PAPERS.

LANSING TRUSTEE POSITION

THE US TRUSTEE OFFICE WILL BE REVIEWING APPLICATIONS FOR THE OPEN CHAPTER 7 TRUSTEE POSITION IN THE LANSING AREA. RESUMES WERE DUE NO LATER THAN OCTOBER 31, 2003 TO THE OFFICE OF THE UNITED STATES TRUSTEE, GRAND RAPIDS, MICHIGAN. ONCE A DECISION IS MADE TO RECOMMEND A CANDIDATE, THAT CANDIDATE WILL NEED CLEAR A BACKGROUND CHECK AND THEN THE APPOINTMENT CAN BE MADE. LOOK FOR A NEW TRUSTEE SOMETIME DURING THE NEW YEAR.

PEOPLE AND CHANGES

JOHN PIGGINS LEFT HIS POSITION AS CHAPTER 7 TRUSTEE FOR KALAMAZOO TO JOIN MILLER JOHNSON SNELL & CUMMISKY IN GRAND RAPIDS.

ELIZABETH CHALMERS LEFT HER POSITION AS TRUSTEE FOR GRAND RAPIDS AND WILL CONTINUE HER PRIVATE LEGAL PRACTICE. THE US TRUSTEE OFFICE HAS ADVERTISED FOR APPLICANTS FOR THE GRAND RAPIDS POSITION.

MIKE PUERNER IS LEAVING HIS POSITION AS TRUSTEE FOR LANSING TO WORK AS IN HOUSE COUNSEL FOR AN INSURANCE COMPANY IN HASTINGS, MICHIGAN.

IF YOU HAVE SOME NEWS WHICH WOULD BE OF INTEREST TO THE BANKRUPTCY BAR, PLEASE E MAIL IT TO MMEOLI@AMERITECH.NET.

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 OCTOBER 8, 2003:

CHAPTER 7: 10,007 CHAPTER 13: 2,858 CHAPTER 11: 48 CHAPTER 12: 3 TOTAL: 12,916

OFFICE OF THE STANDING TRUSTEE

CHAPTER 12 AND CHAPTER 13 PROCEEDINGS

Brett N. Rodgers

Standing Trustee

Carol S. Chase

Staff Attorney

300 Ottawa N.W. Suite 210
Grand Rapids, Michigan 49503

Telephone: 616-454-9638

Fax: 616-454-9798

MEMO: To Debtor's Attorneys

RE: Trustee Transmittal Letter

DATE: September 10, 2003

Enclosed for your use is a proposed "Trustee Transmittal Letter." The purpose of this form is to encourage the early transmittal to the Trustee's Office of the various documents that we need to review for a Chapter 13 case. We would like to be able to review as many of the documents as possible well before the First Meeting of Creditors. This will benefit both you and your clients by reducing or eliminating the time spent at the First Meeting searching for and shuffling papers between the debtors, attorneys and the Trustee. Use of this checklist will also reduce the number of Confirmation hearings which are adjourned just because the Trustee is waiting to receive and review a document. In addition, the collection and review of the documents prior to filing will help you to comply with your due diligence responsibilities which have been recommended in the US Trustee's "Best Practices" Seminars.

Some attorneys have already been sending us documents right after the case is filed. Others have been attaching them to the original bankruptcy petition that is filed with the court. We would prefer, in the future, that the documents be sent to us under separate cover with the enclosed checklist. This will also save the staff at the bankruptcy court the time it takes to scan in the extra pages attached to a bankruptcy petition. Once CM/ECF is fully implemented, the petition and attached documents will be transmitted to our office via computer, and many of the forms, such as mortgages, are difficult to review on a computer screen.

In addition, some attorneys have expressed concern over privacy issues for their clients if these documents become part of the court file and therefore available for anyone to look at. The Trustee's file is not public record, so sensitive documents sent to the Trustee will not be accessible by the general public.

Please send us as many of the standard documents that you can, even if your client has not yet provided you with all of the papers that the Trustee will need to review. You can indicate at the bottom of the checklist which documents your client is still in the process of gathering. We will always need to review the deeds, recorded mortgages, SEVs, and appraisals (if your client has had one done recently) for any parcel of real estate; all Certificates of Title; tax returns for the previous year; and paycheck stubs used to calculate Schedule I. Also send other documents that you feel are appropriate for the particular case and/or that you anticipate we will request. Of course, we may ask for additional documents at the First Meeting.

This form is a tool, please modify or improve it for your own use. Feel free to contact our office with any suggestions as to ways to further improve this process.

Brett N. Rodgers, Chapter 13 Trustee

[Attorney Letterhead]

Brett N. Rodgers
Chapter 13 Trustee
300 Ottawa Avenue NW, Ste 210
Grand Rapids, MI 49503

Date: _____
Re: [Debtor(s) name] _____
Case No: _____

Dear Mr. Rodgers:

Enclosed are copies of documents regarding the above case: (Check all that apply.)

- A. Real Estate
Residence at _____; Other Real Estate at _____
____ Deed _____
____ 1st Mortgage w/ _____; _____ w/ _____
____ 2nd Mortgage w/ _____; _____ w/ _____
____ SEV/Tax Statement _____
____ Appraisal _____
____ Other (Ins. Etc) _____; _____
B. Vehicles/Mobile Home
____ Certificate of Title for: (yr/make/model) _____
____ Certificate of Title for: (yr/make/model) _____
____ Loan Document/Lease for _____
____ Other: (Proof of Ins., etc.) _____
C. Other Personal Property _____
D. Financial Information
____ Tax Returns for tax years: _____ w/ w2's _____
____ Paycheck stubs used to prepare Schedule I for H &/or W _____
____ 401K/IRA/Pension/Retirement Account: _____
____ Other: _____
E. Miscellaneous
____ Divorce Judgment/Child support Order _____

My client does not yet have, but is in the process of providing: _____

Very Truly Yours,

[Attorney's Name]

Enc.

Cc: [Debtor(s) Name(s)]

SUMMER SEMINAR

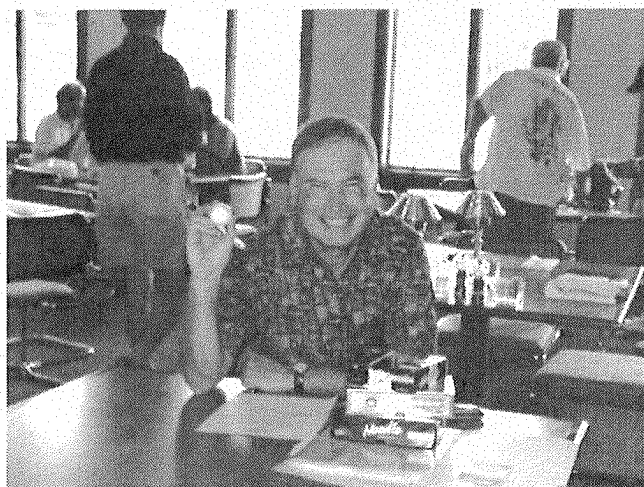
FROM AUGUST 7 TO 9, 2003, 162 PEOPLE MET IN TRAVERSE CITY FOR THE SUMMER SEMINAR. THIS WAS OUR LARGEST ATTENDANCE EVER. IT WAS ALSO "EAST MEETS WEST" PART TWO, MEANING THAT MANY OF OUR COLLEAGUES FROM THE EASTERN DISTRICT ATTENDED, INCLUDING MANY OF THE JUDGES, SOME NEWLY APPOINTED TO THE BENCH IN THAT DISTRICT. AS USUAL, WE ATTENDED EDUCATIONAL AND PRACTICE SESSIONS, SOCIAL GATHERINGS AND GOLF. HERE ARE SOME PICTURES FROM THE GOLF TOURNAMENT, WHICH WAS ORGANIZED BY IMMEDIATE PAST PRESIDENT ROBB WARDROP:



The Hillegonds enjoy the game together



Tom Van Hattum tries to sink one



Would you buy a golf ball from this man?

Bankruptcy Court, W.D. MI:

In re Fortier, (Bankr. W.D. Mich. 2003) (September 18, 2003, Hon. James D. Gregg). The Court determined that the IRS's tax lien claim against the Debtor was subordinate to the tardily filed priority claim of the Debtor's ex-spouse for child support arrearage. Concluding that the trustee "commences distribution" for purposes of 11 U.S.C. Section 726(a)(1) on the date the bankruptcy court approves the trustee's Final Report and Account, the Court found that the ex-spouse's filed claim was allowable and entitled to priority distribution since the trustee's Final Report and Account had not yet been approved by in this case. The fact that the IRS had to disgorge a \$30,000 advance payment that it had previously received in order to facilitate the proper outcome did not alter the express distribution requirements of 11 U.S.C. Section 724(b).

In re Quinn, (Bankr. W.D. Mich. 2003) (September 30, 2003, Hon. Jeffrey R. Hughes). The Debtor's interest in a TIAA annuity, but not his interest in a trust created in conjunction with a Ford SSIP, should be included among the interests which become property of the estate when the Debtor filed his Chapter 7 case. The Debtor's claimed exemption in the TIAA must now be determined in a separate proceeding.

District Court, W.D. MI:

Cotner v. U.S. Trustee (In re Wilson) (W.D. Mich. 2003) (10-14-03 Hon. Gordon J. Quist). Affirming the bankruptcy court's order denying the Debtor's counsel's motion for reconsideration of the order granting the U.S. Trustee's motion requesting review and disgorgement of attorney compensation under 11 U.S.C. Section 329(b), the district court concluded that the services performed by Debtor's counsel did not benefit the Debtors in any way because their case was dismissed when the bankruptcy court determined that Debtor's counsel prepared the bankruptcy schedules without taking additional steps to obtain accurate information.

Sixth Circuit Court of Appeals:

Eglinton v. Loyer and Chapel (in re G.A.D., Inc.), 2003 FED App. 0285P (6th Cir.), (August 13, 2003, before Chief Circuit Judge Martin and Circuit Judges Kennedy and Daughtrey). In affirming the district court's decision not to reconsider the Plaintiff's untimely motion to vacate under F.R.C.P. 60(b), the Sixth Circuit found that the district court did not abuse its discretion because the Plaintiff filed her motion almost a year after the bankruptcy court entered judgment and failed to comport with other procedural rules.

Nardei v. Maughan (In re Maughan), 2003 FED App. 0286P (6th Cir.), (August 14, 2003, before Circuit Judges Marritt and Batchelder, and District Judge Duplantier). In concluding that the bankruptcy court properly exercised its equitable power to allow the Plaintiff to file an untimely dischargeability action, the Sixth Circuit determined that F.R.B.P. 4004(a) and 4007(c)—the rules regarding the filing of complaints objecting to discharge under 11 U.S.C. Sections 523 and 727—are not jurisdictional in nature, but establish only filing deadlines that are subject to equitable tolling.

In re Hurtado, 2003 FED App. 0312P (6th Cir.), (August 28, 2003, before Circuit Judge Daughtrey, Moore, and Sutton). The Sixth Circuit, in affirming the district court, ruled that the defendant, the debtor-husband's mother, was the recipient of a fraudulent convey-

ance made by her son and daughter-in-law because she met the definition of an "initial transferee." As opposed to being a mere conduit for the funds and therefore lacking the legal dominion over the funds necessary to be considered an initial transferee, the mother instead was given legal title to the funds to insulate the debtors and their creditors from the money and therefore was vested with legal authority to do what she liked with the funds.

Eastland Partners Ltd. Partners v. Village Green Mgt. Co. (In re Brown), 2003 FED App. 0315P (6th Cir.), (September 3, 2003, before Circuit Judges Boggs, Suhrheinrich, and Clay). The Plaintiff filed suit against the Defendant and the Debtor seeking to recover damages allegedly sustained as a result of the Defendant disbursing money from the Plaintiff's reserve bank accounts to the Debtor without the consent of the Debtor's co-general partner. The Sixth Circuit determined that the Plaintiff presented sufficient evidence for a reasonable jury to have found a contract existed between the Plaintiff and Defendant and that the Defendant breached that contract damaging the Plaintiff because the Debtor did not have authority to withdraw money from the Plaintiff's accounts for his personal use.

In re Talbert, 2003 FED App. 0343P (6th Cir.), (September 24, 2003, before Circuit Judge Siler, Batchelder, and Cook). Affirming the district court and applying the Supreme Court's reasoning in *Dewsnup v. Timm*, 502 U.S. 410 (1992), the Sixth Circuit held that a Chapter 7 debtor may not use 11 U.S.C. Section 506(d) to "strip off" an allowed junior lien where the senior lien exceeds the fair market value of the property in question.

Montgomery v. Huntington Bank and Silver Shadow Recovery, Inc., 2003 FED App. 0362P (6th Cir.), (October 9, 2003, before Chief Circuit Judge Boggs, Circuit Judge Siler, and Chief District Court Judge Rice). Plaintiff's mother financed the purchase of a BMW by signing a personal loan agreement with Defendant-bank to whom she gave a security interest in the car as collateral for the loan. Upon breach, the bank retained defendant-repossession agency who successfully retrieved the car from Plaintiff's garage. In affirming the district court, the Sixth Circuit held that the Plaintiff was not a party in interest as to two sections of the Fair Debt Collection Practices Act and that neither of the Defendants were "debt collectors" as that term is defined by the FDCPA.

Hudson v. Coleman, 2003 FED App. 0367P (6th Cir.), (October 14, 2003, before Circuit Judges Batchelder and Moore, and Chief District Judge Forrester). The Sixth Circuit, in affirming the district court's order quashing a garnishment action, ruled that the issues to be litigated under an indemnity agreement, specifically legitimate unresolved disputes concerning whether conduct occurs within the scope of employment or authority, deprives a federal court of ancillary jurisdiction in a garnishment action. The Sixth Circuit, relying upon the Supreme Court's analysis in *Peacock v. Thomas*, overruled *Childress v. Williams* (E.D. Mich. 2000).

*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.

Bankruptcy Section Newsletter
October, 2003

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4/1

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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.

TO SCAN OR NOT TO SCAN

As we approach electronic filing, you may be wondering what to do with documents related to a bankruptcy proceeding in a paperless world. All of us need to review titles, mortgages and other papers to make legal determinations. If you go fully paperless, these items need to be stored on your computer.

Scanners are the typical devices mentioned to store copies of documents on a computer. There are various levels of scanners. Those priced at a few hundred dollars are not particularly fast. Some are as slow as 7 pages per minute, once they start the scanning process. Some are faster, but, to get to the speed of a printer, you are probably going to pay a few thousand dollars.

Another option could be the digital copier. Many new copiers are now digital and are not noticeably more expensive than the copier you might already have. You will need to order special extra equipment for your copier to use it digitally, but they have been recommended as an alternative method of storing documents on a computer.

Envision an office where the client comes in with 5 documents and, instead of making copies and putting it into a paper file, you scan it or copy it digitally onto your computer. You can attach the documents to the schedules as you file them electronically. Then you know that, if the trustee received the schedules, she also received the documents. Or, as soon as the trustee is named, you can then email the documents to her. If this is done well enough in advance of the 341 hearing, your hearing could go faster and smoother. Once the trustee receives the documents, she can store in on her computer and have it at the 341 hearing or wherever else it is needed.

This is one area that needs some consideration as we move to a "paperless" practice.