



# FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER  
JANUARY, 2004

## ELECTRONIC CASE FILING IS HERE

### Inside this issue:

Article on ECF	
Important dates	
Recent Cases	
Chapter 7 Issues	
Clerk's Office Issues	
New Rules for SS Numbers	
Statistics	

December 1, 2003 may have passed for most without notice, but I remember it. It was the day that chapter 7 trustees in the Western District of Michigan "went electronic". Starting that day, the court began its relationship with us by the internet and email or Electronic Case Filing ("ECF"). I had trustee hearings on December 1, and, somewhat symbolically, I caught one of my fingers on a new file folder and the folder gave me one of those nasty papers cuts that lasts way longer that one would expect. It hurt all day. I imagined that perhaps it was the old system giving me a parting shot, similar to those rotten ice storms during March or April around here as winter stubbornly refuses to give way to spring.

**The court is training attorneys now for ECF.** In listening to attorneys, I believe that many could use some help in getting ready for this conversion even now as it is upon us. So I will review some of what I have learned over the past year hoping it could help others get ready.

### Your computer system.

Of course, the more recent your system is, the better you can handle ECF and support the software and equipment sold today. **The court website states, however, that all you need for ECF is:** a standard platform with Window 95 or more recent or MacIntosh. There are various recommendations regarding your system on the court website. Look under CM/ECF and System Requirements.

If you are considering buying a new computer, get as much RAM as you can. I liken RAM to the short term memory of the computer. The more you have, the more the computer can do at one time. You will find that you will want to have a number of programs running at the same time and it takes space to do this. If you have limited RAM, the computer will freeze up, you may lose work and you waste time re-booting and starting over.

Most computers today come with lots of space on the hard drive, but don't go cheap on that either. Software programs take up more and more space all of the time.

### Internet access.

With a basic phone internet connection, you will spend tremendous time waiting for the information to arrive at your computer or to complete delivery to someone else, especially with attachments. In reviewing claims with a basic phone connection, I found that some took almost one minute just to download. While this might not seem significant at first, multiply that by 300 claims in some cases. That's 300 minutes in just waiting! Of course, with larger cases, I continued to go to court to review claims, until I obtained a high speed connection.

I learned that there are various alternatives for high speed internet connection. First there is DSL, which I understand to be a relatively older alternative. It is apparently phone based, but quite fast in my experience. This is what I have at my office, through our local phone company. Second, there is cable, offered by the same companies that provide television cable. I have that at home because I could not connect with the DSL there and the cable company provided a good deal. Third, there might be a fiber connection in your community. In Holland, the Board of Public Works can install this much like installing other infrastructure to a building. It would have costs thousands of dollars (paid by a long term assessment), but was billed as potentially the fastest and safest form in the long run. My firm opted against the installation costs.

### IMPORTANT DATES:

**16TH ANNUAL FBA BANKRUPTCY SEMINAR: JULY 29-31, 2004, PARK PLACE HOTEL, TRAVERSE CITY, MICHIGAN**

We are seeking speakers and input on topics for the seminar. If you are interested, please contact Mary Hamlin @ (269) 343-0305 or Hal Nelson @ (616) 459-1971.

**CONTACT MARY OR HAL IF YOU ARE INTERESTED IN SERVING ON THE STEERING COMMITTEE. THERE ARE POSITIONS OPENING THIS AUGUST, 2004.**

Something missing? Let us know about other dates!

(Continued on page 2)

*(Continued from page 1)*

During the year plus time with DSL, I have experienced interruption maybe twice and not for long. It is certainly fast enough for me (not a computer wiz) and much more reliable than the regular phone connection which knocked me off the internet constantly. Cable works well at home too. I would recommend either. Ask around in your community. Check with realtors, other lawyers, accountants. I started with the basic speed, thinking that I could always increase it. I have not needed to yet.

#### **Your software.**

I believe that most debtor attorneys are now using a computer software program to prepare bankruptcy papers. If you are not doing so, go out and get a program. Ask the heavy filers what they use. Talk to their assistants and ask them how it works. My software provider sends updates (of course at a cost) for the changes that are made. For instance, when the rules changed regarding social security numbers in December 2003, we already had the CD ROM for the update and were told when to install it. It was on the computer when we needed it.

The same goes for when you will need to convert your papers so that they can be electronically filed. You will need to make the file a "PDF" (portable document format) file. Typical bankruptcy software programs make this so easy that it will take no time to make this a common step in your filing process.

ADOBE ACROBAT is also now a big part of my office. Most of us have ADOBE READER. It allows you to view (but only that) larger documents over the internet. It is a free download. ACROBAT and other ADOBE versions allow you to do other things like: convert files to PDF, make notes and other markings into a PDF file and scan documents easily. There are probably a number of other uses which I have yet to discover. You have to pay for it but it's worth it if you are going to work with documents from the internet on a regular basis. As I do more work electronically, I am using ADOBE ACROBAT more and more.

I am presuming that you know something about the various software options for accessing the internet and email. I have used INTERNET EXPLORER and OUTLOOK EXPRESS simply because they are the first products offered to me. To access PACER and ECF now, I had to download NETSCAPE NAVIGATOR 4.8 and use that in place of INTERNET EXPLORER. The court website addresses this and recommends a way to get this. I found this information to be confusing and went to netscape.com and did a search for that product. Apparently, a more recent version of NETSCAPE does not work as well, according to the court.

I don't like using two browsers, but NETSCAPE throws more advertisements at me when I use it, so I am going back and forth between the two and use NETSCAPE only for work with the court. I am looking forward to the day when our court system is compatible with INTERNET EXPLORER.

#### **Scanners.**

Rose Bareham has piloted trustee work on ECF for the last few months. She told me that the debtor attorneys in her area are emailing required documents to her. That means they are sending her deeds, mortgages, titles, etc... electronically. It also means that the attorneys must be scanning the documents. Many trustees are going to start expecting debtor attorneys to send documents by email, prior to the 341 hearings. You will also need to scan attachments to court filed documents in ECF. Scanners are a necessary part of this new system.

I found that the hardest part of scanning is finding a scanner that is easy to use and inexpensive. Part of the ease of use is the speed. The scanners that cost only a few hundred dollars are most likely very slow, 7 pages per minute or less. If you intend to scan regularly, this is not practical. I have seen some beautiful scanners that go as fast as copiers or printers. The list price for these can be over \$4,500.00.

I found two scanners which run 20 - 25 pages per minute and cost \$1,000.00 or \$1,500.00 respectively. They are made by VISIONEER and HEWLETT PACKARD. You can see all of their products on their websites.

As a trustee, I am looking forward to receiving emails from debtor attorneys. If I get them soon enough, I can review them prior to the 341 meeting and it will take the attorney less time to get through the hearing. This will cut down the time spent waiting to be called at 341 hearings, if most attorneys do this.

There are various options for setting up scanning in your office. You can use a stand alone scanner. You can use one of the "all in one" products: they serve as your fax, scanner, printer, perhaps other function. I believe that all scanners need to connect to a computer so that you can store it where you want it. Perhaps your copier is digital and can be converted to a scanner for little extra cost. That will depend upon the copier. You need to see what fits best with your needs.

I am not a computer genius. I find that I am flexible enough to enjoy computers when they work well, but not flexible enough to be positively challenged when they don't. It is very stressful for me when it does not work out and I constantly wonder what I am doing wrong. I am committed to getting it right, however, and, if I can do it, so can you. I hope that this article helps the those who have yet to address these issues. I also hope that it will stimulate discussion. Please feel free to comment to me personally about your insights about these issues. There is much more to do. If we communicate our successes and failures, we will all be better prepared for ECF.

THANK YOU TO DEAN RIETBERG FOR THESE SUMMARIES.

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

*In re Feldman*, (Bankr. E.D. Mich 2003) (December 19, 2003, Hon. Steven W. Rhodes). The bankruptcy court ruled that a creditor's actions to obtain and collect on a garnishment judgment against the debtor's employer under Michigan law constituted acts to enforce its claim against the debtor and, therefore, violated the automatic stay.

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

*Brown v. Puerner*, (*In re Brown*), (W.D. Mich. 2004) (1-8-04, Hon. Gordon J. Quist). Affirming the bankruptcy court's orders denying the debtor's motion to convert his Chapter 7 case to a Chapter 13 case and denying the debtor's emergency motion for an extension of time to file a notice of appeal, the district court found that the debtor failed to show "excusable neglect" to support his emergency motion for an extension of time. While the debtor claimed his delay should be excusable due to his diminished mental capacity, the court noted that his neglect appeared to be based more on the debtor's ongoing pattern of obstruction and delay and that the debtor's alleged mental incapacity did not resemble the sudden, unexpected illness which courts have deemed as grounds for "excusable neglect." Since the bankruptcy court did not abuse its discretion in denying the time extension request, the district court did not reach the merits of the bankruptcy court's denial of the conversion request.

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

*ATD Corp. v. Advantage Packaging, Inc., et al.* (*In re ATD Corp.*), (6<sup>th</sup> Cir.), (December 17, 2003, before Circuit Judges Guy and Gilman and District Judge Reeves). In affirming the bankruptcy court's order allowing the claims of two creditors who did not file a proof of claim before a claims bar date order in a Chapter 11 case, the Sixth Circuit concluded that the directive in the bar date order that "all creditors" must file a proof of claim by the bar date did not adequately notify creditors that the order superceded 11 U.S.C. Section 1111(a) and

F.R.B.P. 3003. In other words, the creditors were not required to physically file a proof of claim because under the Bankruptcy Code and Rules they were already deemed to have filed a claim. The Sixth Circuit did not find it necessary to decide the issue of whether a bankruptcy court could ever issue such a claims bar date order.

*In re Brookover, et al.* (6<sup>th</sup> Cir.), (December 19, 2003, before Circuit Judges Keith, Daughtrey, and Gilman). A Sixth Circuit panel of judges ruled that the district court erred by affirming the bankruptcy court's order refusing to accept the resignation of the standing Chapter 12 trustee and establishing its own procedures for the resignation. The Sixth Circuit concluded that where the United States Trustee has the express statutory authority to replace the trustee without judicial supervision, the United States Trustee also has the authority to accept the voluntary resignation of a trustee in a pending case, and no bankruptcy court approval of the decision is required.

*United States v. J. Baxter Schilling* (*In re Big Rivers Electric Corp.*), (6<sup>th</sup> Cir.), (January 8, 2004, before Circuit Judges Gibbons and Sutton, and District Judge Mills). The Sixth Circuit affirmed the district court's ruling that Schilling, a bankruptcy practitioner appointed by the United States Trustee to serve as examiner in this Chapter 11 case, together with his law firm must disgorge all of the fees dispensed to them during this case (totaling nearly 1 million). As examiner, Schilling privately attempted to negotiate a success fee with some of the estate's unsecured creditors under which agreement the creditors would pay him a percentage of their increased recovery in addition to the hourly fee the bankruptcy court had authorized for his services. The Sixth Circuit found that the examiner violated his duties of disclosure, loyalty, and remaining disinterested.

## **CHAPTER 7 ISSUES**

Lisa Gocha' has been appointed to the United States Trustee's Chapter 7 panel of trustees to accept cases primarily in the Grand Rapids assignment area. Lisa is a 1988 graduate of University of Toledo Law School where she was a member of the National Moot Court Team. She previously had graduated cum laude from University of Toledo with a B.A. in Political Science.

From 1988 through 1994, Lisa represented debtors in Chapter 7 and 13 cases while in private practice in the Eastern District of Michigan, primarily in Flint and Waterford, Michigan. From 1994 to 2002, Lisa was the managing attorney for Shermeta Chimko & Adams' Grand Rapids office (in the Western District of Michigan) where she represented creditors in both federal and state courts. When Shermeta Chimko closed their Grand Rapids office in late 2002, Lisa opened a debtor's bankruptcy practice in Holland, Michigan that she continues today.

Lisa served as a panel member at the American Bankruptcy Institute's Midwest Seminar in 2001 as well as seminars conducted by the Federal Bar Association of Western Michigan Bankruptcy Section in 1997 and 2001. She has also been a member of the Western District of Michigan Bankruptcy Court's Local Rules Committee and assisted in drafting the current model Chapter 13 plan used in Grand Rapids.

PRSRST STD MAIL  
U.S. POSTAGE  
PAID  
Holland MI 49423  
Permit #66

Bankruptcy Section Newsletter  
January, 2004

Federal Bar Association, Bankruptcy Section  
c/o Marcia R. Meoli  
NANN PERSINGER, PC  
503 Century Lane  
Holland, Michigan 49423

Phone: (616) 396-1245  
Fax: (616) 396-9638  
E mail: meoli@triton.net

**BANKRUPTCY SECTION  
STEERING  
COMMITTEE:**

DAVID C. ANDERSEN  
DAN E. BYLENGA, JR.  
STEPHEN V. CARPENTER  
DANIEL J. CASAMATTA  
TIMOTHY J. CURTIN  
MICHAEL W. DONOVAN  
DANIEL R. KUBIAK  
LORI L. PURKEY  
STEVEN L. RAYMAN  
MARCIA R. MEOLI, EDITOR  
HAROLD E. NELSON, CHAIR ELECT  
BRETT N. RODGERS  
THOMAS P. SARB  
PETER A. TEHOLIZ  
MARY K. VIEGELAHN HAMLIN, CHAIR  
ROBB WARDROP, PAST CHAIR  
NORM C. WITTE  
ROBERT E. LEE WRIGHT



4/1  
Peter A. Teholiz  
Hubbard Law Firm  
PO Box 80857  
Lansing MI 48908-0857

**FROM THE CLERK'S OFFICE**

The U. S. Bankruptcy Court for the Western District of Michigan is now ready to receive case filings and other documents via electronic filing. As a prerequisite to participation in this CM/ECF program, attorneys are required to attend and complete a training course sponsored by the court. We are happy to offer multiple times and dates for these training classes. Attorneys are encouraged to immediately apply for CM/ECF training and registration. Training applications and upcoming dates are now available on the court's website, [www.miwb.uscourts.gov](http://www.miwb.uscourts.gov), under the "CM/ECF Information" link. I am confident that our electronic case filing program will be a valuable tool for all participants and I look forward to working together with you. If you have any questions regarding upcoming training, please feel free to contact us at: [ecftrainmiwb@misb.uscourts.gov](mailto:ecftrainmiwb@misb.uscourts.gov).

Daniel M. LaVille, Clerk, United States Bankruptcy Court

**NEW RULES REGARDING SOCIAL SECURITY NUMBERS FOR DEBTORS**

Commencing December 1, 2003, public bankruptcy documents need to keep private the full social security numbers for the debtors. Petitions, schedules, statements of affair and other documents can only show the last 4 digits of the social security numbers. Full social security numbers can no longer get stated in open hearings. Debtors need to file a separate statement to disclose the full social security number to the court and this document will not be open to public view.

**Please review the new court rules on this subject, including FRBP 1005, 1007 and 2002. If you have not revised your forms and procedures, do so immediately.**

Trustees still need to verify social security numbers at 341 hearings, however. Typically this will be done by the court sending the trustee the notice of the bankruptcy which contains the full number. In some cases, however, the trustee might not receive the notice prior to 341 hearing. Be prepared to show the trustee your copy of the petition or notice with the full number along with the separate proof of the number, so that the trustee will be able to hold the hearing.

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	
2003:	CHAPTER 7:	13,076	CHAPTER 13:	3,762	CHAPTER 11:	57	CHAPTER 12:	5	TOTAL:	16,900	