

FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
MAY, 2004

MESSAGE FROM THE STEERING COMMITTEE

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IMPORTANT DATES:

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

DEBTOR'S BAR OF WESTERN MICHIGAN WILL MEET AT THE SEMINAR ON FRIDAY, AFTER THE MORNING SESSION. LOOK FOR DAVID ANDERSEN.

Make your reservations now at the hotel.

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

Something missing? Let us know about other dates!

Mark your calendars - 16th Annual FBA Bankruptcy Seminar is scheduled for July 29 - 31, 2004 at the Park Place Hotel, Traverse City, Michigan. Thursday, July 29th will begin with registration and an opening reception. Friday, July 30th will begin with breakfast at 8:00 a.m. and a plenary session. The key note speakers are the Hon. Keith Lundin and Hank Hildebrand, Chapter 13 Trustee. They will speak on current Chapter 13 issues. If you have not had an opportunity to hear these two speak do not miss this event. They are entertaining and informative. Following the key note presentation break out sessions will be held. As is tradition, there will be a golf outing in the afternoon. On Friday there will a reception later in the evening featuring deserts and refreshments. Saturday, July 31st will begin with breakout sessions. Breakfast and a plenary session will follow. The key note presentation will be on current Chapter 7 issues. Speaking on this subject will be Hon. James D. Gregg, Hon. David W. Houston, and James Boyd, Chapter 7 Trustee. The seminar will conclude at noon on Saturday.

Effective April 1, 2004 the dollar amounts for debt limits per §109 (e) (Chapter 13 debt limits) ; §303(b) (involuntary petition); §507(a) (priority claim limits); §522(d)(1) - (6), (8) & (11) (exemptions); and §523 (a)(2)(C) (non dischargeable consumer debt). Please note these changes.

Effective December 19, 2003 the new Service members Civil Relief Act of 2003 took effect. Please review this statute as it may affect debtors who are involved in a bankruptcy proceeding and are in active service

Mary K. Viegelahn Hamlin
Chair FBA Bankruptcy Section Steering Committee

Materials for the Seminar will be sent in the next few weeks and will also be placed in the hearing rooms. If you do not receive or see them, contact Mary Hamlin, mhamlin@chpt13.com or Hal Nelson, hnelson@bpfr.com.

NOTICE OF ADJUSTED DOLLAR AMOUNTS (effective April 1, 2004)

On April 1, 2004, automatic adjustments to the dollar amounts stated in various provisions of the Bankruptcy Code, Title 11, U.S.C., became effective. These amended dollar amounts will apply to cases filed on or after April 1, 2004. Here are the amended dollar amounts:

Bankruptcy Court:

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.

In re: Spears (and other cases), (Bankr. W.D. Mich 2004) (April 26, 2004, Hon. Jeffrey R. Hughes). In four cases filed by individual debtors (as opposed to joint cases filed by married couples), Judge Hughes held that the filing of a chapter 7 petition automatically transfers the interest in entireties property to the bankruptcy estate and this had the effect of severing the tenancy by the entireties. The bankruptcy estate therefore acquired the debtor's undivided interest in property as a tenant in common with the non filing spouse. The court then held that a debtor can claim an entireties exemption in the estate's interest, except to the extent of joint debts between the debtor and the non filing spouse. In this 69 page opinion, the court made other holdings and included an extensive analysis which should be reviewed in detail. It is posted on the court website, under Judge Hughes' opinions.

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.

ATD Corp. v. Advantage Packaging, Inc., et al. (In re ATD Corp.), (6th 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. (6th 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.), (6th 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.

CHANGES TO LOCAL RULES

Administrative Order 2004-03 provides:

IT IS ORDERED that Section II(E)(4) of (the Administrative Procedures for Electronic Filing) shall read as follows:

A copy containing an original signature of a party or individual other than that of the filing user must be retained for a period of 5 years after the closing of the case and all time period for appeals have expired, unless the Court orders a different period. This retention period does not affect or replace any other periods required by other applicable laws or rules. Upon request for the court, the filing user must provide original documents for review.

Administrative Order 2004-04 provides:

IT IS ORDERED that Local Bankruptcy Rules 2014(a)(7), 2016(a)(6), 3015(f)(2) and 9013(d)(3) are amended to strike existing language which required the filing of an affidavit ("an affidavit that no objection has been filed" and "an affidavit of no response") and replace that language with the

CHAPTER 7 ISSUES

Kelly Hagen has been selected to serve as chapter 7 trustee for the Lansing area. Kelly Hagen is a May, 1995 graduate of the University of Oregon School of Law as well as a 1991 graduate of the University of Michigan with a Bachelor of Arts in English and Literature. She is an associate attorney at Zimmerman, Kuhn, Darling, Boyd, Taylor & Quandt in Traverse City, Michigan representing chapter 7 bankruptcy trustees, debtors and creditors' committees in bankruptcy cases and adversary proceedings. Kelly is the author of "Perfecting Liens on Mobile Homes in Michigan," published in the Michigan Real Property Review in the Summer of 2003 and she successfully briefed and argued *In re Kroskie* in the Bankruptcy and District Courts and in the United States Court of Appeals for the Sixth Circuit.

PROPOSED CHANGES TO MICHIGAN EXEMPTIONS

Steven Rayman served on a committee for the last 2 years to study the Michigan exemptions and recommend changes to make them more current. This hard work culminated in proposed House Bill 5763 which you can view by doing a search at <http://www.michiganlegislature.org>. This bill contains substantial changes to the Michigan exemptions. Former chapter 7 trustee, State Representative Alexander Lipsey is the bill's sponsor and you can send comments to him at 994 House office Building, 124 North Capitol Avenue, Lansing, Michigan 48933 or alexanderlipsey@house.mi.gov.

STATISTICS	THE COURT WEBSITE PROVIDES STATISTICS ON THE NUMBER OF CASES FILED SINCE 1994 IN OUR DISTRICT.				
2004:	CHAPTER 7: 3512	CHAPTER 13: 858	CHAPTER 11: 15	CHAPTER 12: 0	TOTAL: 4385
2003:	CHAPTER 7: 13,076	CHAPTER 13: 3762	CHAPTER 11: 57	CHAPTER 12: 5	TOTAL: 16,900

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

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

Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5

**BANKRUPTCY SECTION
STEERING
COMMITTEE:**

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FROM THE CLERK'S OFFICE

Thanks to all of you for your patience as we transition from our old BANCAP system to the new CM/ECF system. Opening cases on the new system is more labor intensive for the court because we have to scan all the paper documents into our system. Many of you (see our web site's list of certified users) are now filing electronically and those cases get into our system and "get a number" immediately. If you are still filing paper, there is a one week delay currently between the filing date (we always note the date when we receive them) and "getting a number" (entered into our system) in Grand Rapids.

If you have not yet taken the training, please sign up on our web page as soon as possible. We have increased the number of classes in Grand Rapids each week from two (24 students) to three (36 students). We are currently booked well into June so please don't delay.

In the midst of our transition, we received 1770 cases in Grand Rapids and 130 cases in Marquette during the month of March, 2004. This represents an all time monthly filing record in Grand Rapids and Marquette was within 6 cases of a monthly filing record. (Our previous monthly record was 1559 cases in Grand Rapids in March, 2003.)

Our judges like the CM/ECF system and are currently discussing a mandatory date for the electronic filing system. I urge you to become certified and familiar with our CM/ECF system. Our help line stands ready to assist you at (616) 456-2266. Please also feel free to contact us at: ecfrain-miwb@misb.uscourts.gov.

Daniel M. LaVille, Clerk, United States Bankruptcy Court

Changes in Kalamazoo.

The lease for the space for the courtroom and trustee hearing room in Kalamazoo, which is administered by the GSA of the Federal Government, was not renewed. Therefore, starting July 1 2004, court hearings will be held in the Grand Rapids courtrooms for the particular judge assigned. Trustee hearings will be held in the Federal Building in Kalamazoo, 410 West Michigan Avenue. This building is not far from the present location of hearings. The hearings will be in the basement of that building. Parking will be difficult, because the building does not have any. Short term parking is available on the public streets. Long term parking is available in the parking structure at the RADISSON HOTEL, one block away. Please make a note of this for future hearings and look for the changes in location.