

FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
OCTOBER, 2004

MESSAGE FROM THE CLERK'S OFFICE

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IMPORTANT DATES:

**17TH ANNUAL FBA
BANKRUPTCY SEMI-
NAR: July 28, 2005 to
August 30, 2005, Boyne
Highlands, MICHIGAN**

**Make your reservations now
at the hotel.**

**JANUARY 1, 2004:
MANDATORY DATE
FOR ATTORNEYS TO
USE ELECTRONIC
FILING.**

**Something missing? Let us
know about other dates!**

Just a friendly reminder that our court will require mandatory electronic filing pursuant to Administrative Order 2004-06 effective January 1, 2005. This means that only 100 days remain after September 22nd to get ready for the new e-filing requirement. Please sign up for training today if you have not done so by going to our court's website: www.miwb.uscourts.gov

I should mention also that half of the students we have trained thus far have neglected to return the required exercises to the court so that a password may be issued. All of the training becomes useless if you fail to obtain a password. If you have taken the training and neglected to receive your password, please contact us immediately before the "holiday rush" of training begins in earnest!

The judges will rotate assignments effective January 1st also. Judge Hughes will hear Marquette cases, Judge Gregg will move to the Traverse City docket and Judge Stevenson will preside in Lansing. Also, Judge Gregg will move to a Kalamazoo docket with Judge Hughes as Judge Stevenson rotates out of Kalamazoo. All judges will continue hearing cases in Grand Rapids. The judges typically rotate every three years.

Finally, our renovated bankruptcy court in Kalamazoo opened for hearings on September 23, 2004. We hope that you will be pleased with the new courtroom in the Federal Building located at 410 West Michigan.

Have a great autumn!

Dan Laville, Clerk of the Bankruptcy Court.

REPORT FROM THE DEBTORS BAR OF WEST MICHIGAN.

The Debtors Bar of West Michigan had its annual meeting at the FBA Seminar in Traverse City. Judge Gregg and Ray Johnson attended. Judge Gregg led a discussion of issues for debtors counsel and indicated that he encourages counsel to become Board Certified and will enhance attorney fees for Board Certified attorneys (including the chapter 13 "basic fee"). Judge Gregg was honored by the bar for his many years of hard work, bankruptcy expertise and achievements in the field. Ray Johnson also received the appreciation from the bar for his many years of chapter 13 work and trust. The Debtors Bar of West Michigan resolved to submit a proposal to the Court for review of attorney fee rates in chapter 13 cases. That proposal has now been submitted to the Clerk of the Court for consideration by the judges. If anyone would like a copy, email David Andersen at d.andersen.usa@comcast.net.

David Andersen, Chairman, Debtors Bar of West Michigan

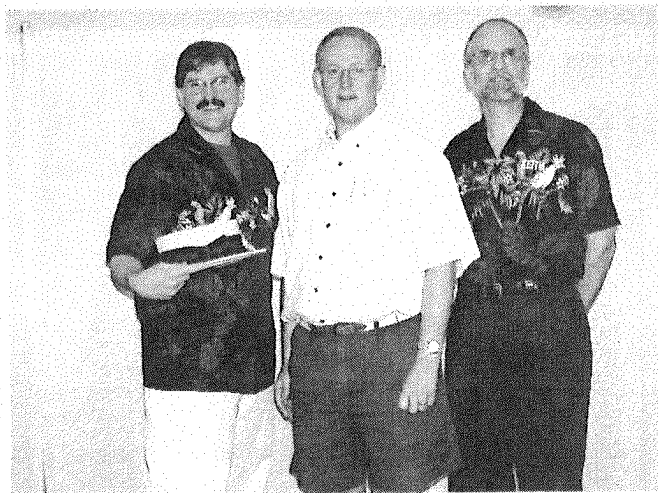
Annual Summer Seminar

The Federal Bar Association of the Western District of Michigan held its 16th Annual Bankruptcy Seminar at the Park Place Hotel in Traverse City, Michigan. We had a great turnout: there were 150 registrations. As always, we mixed business with pleasure, with various groups holding meetings, breakout sessions for updates and current topics, and the plenary session covering chapter 7 topics. Judge Steven Rhodes of Detroit was awarded a camouflage robe, in honor of his regular participation in the Seminar (see photo). Pat Mears won Judge Hughes' limerick contest with an very extraordinary award from the Judge, who showed a lot of imagination in the process. We will let those who litigate with Pat in the future discover the nature and effect of this award. We were treated to a funny demonstration of various legal issues from Judge Keith Lundin and trustee Henry Hildebrand (see photo).

See the report from the debtors bar. In connection with that, note is made of Judge Gregg's comments about board certification for bankruptcy attorneys. He strongly encourages this and has backed this up with a policy of granting 10% larger fees to debtor attorneys who are board certified. The American Board of Certification is the place to go in order to get certified. Certifications are available for consumer bankruptcy law, business bankruptcy law and creditors' rights law. See their website for the process and qualifications for becoming certified and well as information about the required examination. <http://www.abcwold.org/rules.html>.

Next year's seminar

The Summer Seminar for 2005 will be held at Boyne Highlands from July 28, 2005 to August 30, 2005. You can call 800 - GO BOYNE to make reservations. If you have suggestions or idea for the education part of the Seminar, contact Lori Purkey at purkey@millercanfield.com or Steve Rayman at slr@raymantattorney.com. They have some excellent new ideas for next summer.



**Hal Nelson with Speakers Judge Lundin
and Trustee Hildebrand**



Camo Judge

6th Circuit

United States v. Wagner, No. 03-4313, 2004 U.S. App. LEXIS 19140; 2004 FED App. 0311P (6th Cir.). Defendant's convictions for bankruptcy fraud and concealment were affirmed, where defendant falsely represented that he had obtained refinancing and changed the locks on properties to keep potential buyers from accessing the property.

Heavrin v. Nelson, No. 03-5892, 2004 U.S. App. LEXIS 19141; 2004 FED App. 0312P (6th Cir.). Plaintiff's claims for fraud, perjury, and outrage based on defendants' filing allegedly false proofs of claim in bankruptcy and giving false testimony in criminal trial were properly dismissed as protected under judicial-proceeding privilege.

Gregory v. Ocwen Fed. Bank (In re Biggs), No. 03-5626, 377 F.3d 515. District court properly affirmed a bankruptcy court decision that invalidated a deed of trust held by a creditor of Chapter 7 debtors because the deed of trust acknowledgment form omitted the debtors' names.

In re Miller, No. 03-5167, 377 F.3d 616. Partial bankruptcy discharge by dismissing more than half of a debtor's student loan debts was reversed and remanded. The bankruptcy court impermissibly relied on its equitable authority rather than undue hardship to discharge this indebtedness.

Kovacs v. First Union Home Equity Bank (In re Huffman), Nos. 02-4468; 03-3174/03-3175, 369 F.3d 972. The bankruptcy trustee could avoid mortgages that were not properly witnessed, and subsequent changes in Ohio law did not validate the execution of the mortgages; one statute could not be applied retroactively to impair the trustee's vested rights.

6th Circuit BAP

Corzin v. Decker, Vonau, Sybert, & Lackey, Co., L.P.A., (In re Simms Constr. Servs. Co.), 311 B.R. 479. A bankruptcy appellate panel reversed an order, finding that a law firm's charging lien against debtor's arbitration proceeds was validly secured to the amount received by the firm, and therefore did not constitute an avoidable preferential transfer.

Geberegeorgis v. Gammarino (In re Geberegeorgis), 310 B.R. 61. Where Chapter 13 debtor defaulted on monthly plan payments due to health problems and his case was dismissed, after debtor

recovered and resumed payments, the situation constituted extraordinary circumstances warranting vacation of the dismissal.

Yenkin-Majestic Paint Corp. v. Wheeling-Pittsburgh Steel Corp. (In re Pittsburgh-Canfield Corp.), 309 B.R. 277. The bankruptcy court's decision that vendors' reclamation claims had no administrative expense priority under the Bankruptcy Code due to secured lenders' prior floating liens, and thus, that the vendors held general unsecured claims, was affirmed.

Western Michigan District Court

Spears v. Boyd (In re Spears), Case No. 1:04-CV-418, 313 B.R. 212. Appellate court overruled bankruptcy court decision that the filing of a bankruptcy by a married individual severed the entireties exemption.

Western Michigan Bankruptcy Court

In re Spears, Case No. HT 03-00738, Case No. HT 03-01234, Case No. HT 03-01306, Case No. HT 03-03959, 2004 Bankr. LEXIS 1331, September 9, 2004, Decided. Judge Hughes' follow up order after decision of the District Court.

Mourer v. Equicredit Corp. of Am. (In re Mourer), Case No. SG 00-10103, Chapter 13, Adversary Proceeding No. 01-88196, 2004 Bankr. LEXIS 1267, August 23, 2004, Decided, August 23, 2004, Served. Debtors who prevailed on Truth in Lending Act claims in an adversary proceeding in a Chapter 13 bankruptcy case were entitled to attorney fees. The creditor's failure to file a timely appeal was not excusable neglect.

In re Jackson, Case No. SK 02-14533, Chapter 7, 311 B.R. 195. Debtor properly sold her rights to periodic payments under a structured settlement to funding company despite anti-assignment clause, payments due the funding company were not part of estate, and automatic stay was lifted as to these payments.

MBNA Am. Bank, N.A. v. Henning (In re Henning), Case No. HK 02-11862, Adv. Pro. No. 03-88040, 309 B.R. 508. Where a creditor's original complaint had no factual allegations to support actual fraud, it was appropriate for the bankruptcy court to require the parties to address concerns about a nondischargeability consent judgment before the judgment entered.

CHAPTER 7 ISSUES

"It is my pleasure to announce that United States Trustee Saul Eisen has appointed Scott A. Chernich as a Chapter 7 panel trustee assigned to administer cases in the Kalamazoo, Michigan area.

Scott has a wealth of training and experience which qualifies him to be appointed chapter 7 trustee. He has a Bachelor of Political Science degree and a Master of Public Administration and Finance degree from Shippensburg University in Shippensburg, Pennsylvania and was a 1993 cum laude graduate from Thomas M. Cooley Law School in Lansing, Michigan. He is a shareholder of the Foster, Swift, Collins & Smith law firm in Lansing and practices in the areas of bankruptcy, creditors' rights, banking and business workouts, and commercial and general litigation. As a practicing attorney, Scott represented former chapter 7 trustee Michael Puerner from Foster Swift as trustee's attorney in many cases and has represented other chapter 7 trustees as well. Since 1999, Scott has served as an Adjunct Professor of Law teaching Bankruptcy and Business Reorganization classes at Thomas M. Cooley Law School.

Scott is married and has two children. His interests include golf and racquetball and he served as chairman of the Capital Area Humane Society.

Dan Casamatta, Assistant United States Trustee"

**Bankruptcy Section Newsletter
October, 2004**

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WORKSHOPS ON HOW TO PREPARE BANKRUPTCY SCHEDULES.

The Office of the US Trustee, along with the chapter 7 and 13 trustee are again offering free workshops on preparing bankruptcy schedules. All attorneys and their staff who are involved in the preparation of bankruptcy papers for debtors should consider attending a workshop. There is an ongoing Civil Enforcement Initiative to improve the practice of bankruptcy law and, if you are practicing bankruptcy law and do not meet the duties required of debtors and their attorney, you and your clients could be subject to enforcement action. The court website has specific information about these workshops and also a form for signing up. See the website and click the NEWS button.

CHANGES TO ADMINISTRATIVE RULES - ECF

Administrative Order Mandating Electronic Filing

Administrative Order 2004-06 was signed July 14, 2004 Mandating Electronic Case Filing. Effective January 1, 2005, all petitions, pleadings and other papers filed in all cases and proceedings, whether pending or new, shall be filed electronically according to the procedures established by the Court.

Effective September 1, 2004, the court is using a new point of sale module, in order to accept payment for filing fees from electronic filers. Viewing the court website, it appears that we will now be receiving a screen with windows to complete, much like when you purchase a product on line from a commercial vendor.

PEOPLE AND CHANGES

Denise Twinney has returned to the regular practice of law and joined the firm of WARDROP & WARDROP. You may reach her at (616) 459-1225 and denise@wardroplaw.com.

STATISTICS

COURT WEBSITE STATISTICS ON THE NUMBER OF CASES FILED THROUGH 9/21/04:

2004:	CHAPTER 7: 9178	CHAPTER 13: 2276	CHAPTER 11: 36	CHAPTER 12: 0	TOTAL: 11490
2003:	CHAPTER 7: 13,076	CHAPTER 13: 57	CHAPTER 11: 57	CHAPTER 12: 5	TOTAL: 16,900