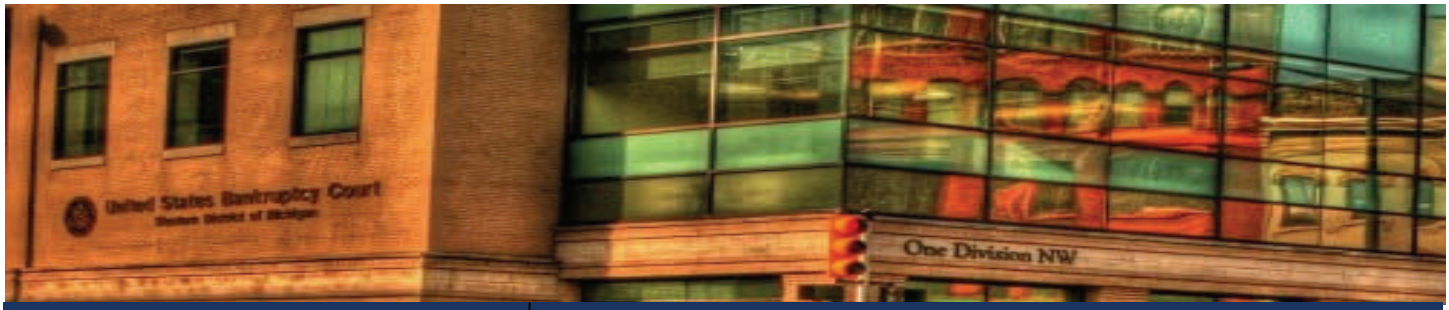
NEW VALUE

FEDERAL BAR ASSOCIATION—BANKRUPTCY SECTION NEWSLETTER

January 2012



BANKRUPTCY SECTION STEERING COMMITTEE

EDITOR'S NOTE

Benjamin M. White

Thomas Edison once remarked "hell, there are no rules here – we're trying to accomplish something." Well, apologies to Mr. Edison, because if there's one thing in this issue, it's ... wait for it ... waaaiit for it ... (que the Star Wars theme song) ... RULES!!! As I'm sure you've read in People magazine, Vogue, The Economist, and other various in-the-know publications, new amendments to the Federal Rules of Bankruptcy Procedure went into effect on December 1, 2011, and proposed changes to our own District's local bankruptcy rules are now available for public comment (But hurry, comments can only be made until Jan. 27th, follow this link for details).

In all seriousness, the federal and local rules serve an extremely important function, establishing procedures to effectuate the Bankruptcy Code, providing the equally important "how" to the Bankruptcy Code's "what." We extend our sincerest thanks to Judge Hughes and the members of the Ad Hoc Committee for all their hard work in reviewing and revising the local rules.

In this issue of *New Value*, we attempt to provide you with a clear analysis of some notable new rules and amendments (both federal and local), and what they might mean for your clients and your practice. So kindly apologize to those around you for the audible display of excitement you just made, fasten your seat belt, and enjoy the read.

As always, members are encouraged to contact me (bwhite@kalawgr.com) with comments, suggestions or articles.

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New Value is published by the Federal Bar Association, Bankruptcy Section, for the Western District of Michigan.

LETTER FROM THE CHAIR

Norman C. Witte

Here we are, on the dark and dreary side of the holidays, but good things are happening in the FBA Bankruptcy Section.

Last year we continued our tradition of hosting holiday parties at all of the Court locations (Marquette's party was held in January due to court scheduling considerations) and those who attended reported these events to be a success. If you haven't attended our social events in the past, please don't be shy about showing up. These mixers are a great way to get to know fellow bankruptcy attorneys better and strengthen the cordial, professional relations that make practicing bankruptcy in the Western District a rewarding and enjoyable experience.

The summer FBA seminar is in the planning stages. This year's event will be held at Crystal Mountain, July 19-21, 2012. We are in the process of firming up the seminar topics. If there is a topic of interest to you or you would like to serve on a panel, please drop Judge Dales or me a note.

And now the obligatory reminder: we are a section of the Western Michigan Federal Bar Association, so if you haven't yet, please renew your membership. It's easy, it's on-line, and at $35, it's cheap. Renew on-line at https://www.westmichiganfederalbar.org/pay/; if you aren't a member, join at https://www.westmichiganfederalbar.org/FBAApp/. Don't forget to sign up for the bankruptcy section, at no additional cost.

We are always looking for ways to improve the practice of bankruptcy in our district. If there is something you think we can do better, or if you would like to get more involved in the bankruptcy section, please let me know.

Norman C. Witte, Chairman

NEWS & ANNOUNCEMENTS

- The 2012 FBA Bankruptcy Seminar will take place July 19-21 at Crystal Mountain. More details to follow.
- The Grand Rapids Bar Association's Just Lips Celebrity Lip Sync event will take place on February 9th, 2012 at 7:00 p.m. at the Wealthy Theatre in Grand Rapids. The FBA Bankruptcy Section is a sponsor of the event. More information is available on the GRBA website, www.grbar.org.

Personnel

- **Harold E. Nelson** and **Joseph A. Lucas** joined Rhoades McKee, PC.
- **Sandra S. Hamilton** joined Clark Hill PLC.
- **Greg J. Ekdahl** has been named Partner at Keller & Almassian, PLC.
- **Laura J. Garlinghouse** was appointed panel Chapter 7 trustee for the Western District of Michigan.
- **April A. Hulst** joined Chase & Bylenga, PLLC.
- **Jeremy Shephard** joined David Andersen & Associates, P.C.

ARTICLES

Mortgage Proofs of Claim:

Amended Rule 3001(c)(2)(C) and new Rule 3002.1

By Barbara P. Foley
Chapter 13 Trustee, Kalamazoo, Michigan

How many times after completing a chapter 13 has a distressed client called because they received a mortgage default letter? Due to the recent amendments to the Federal Rules of Bankruptcy Procedure (effective December 1, 2011), this not uncommon occurrence may now be resolved. While the rule changes address claims for unsecured and other secured debt, this article is limited to changes affecting mortgage claims.

Under the revised rules, post-petition mortgage liabilities must be disclosed. Further, the amended rules create a process for verifying the balance of a mortgage. Amended Fed. R. Bankr. P. 3001(c)(2)(C) sets forth requirements for an initial mortgage proof of claim, and apply to creditors holding mortgages on the debtor's principal residence regardless of how the mortgage is treated in the plan. The proof of claim must have a statement of principal and interest due from the petition date; a statement of pre-petition fees, expenses and charges; and a statement of the amount necessary to cure any default as of the petition date. Further, if there is an escrow account, the escrow statement must be filed in the prescribed format.

New Fed. R. Bankr. P**.** 3002.1 also applies to mortgages on the debtors' principal residence, but only to those mortgages provided for under Section 1322(b)(5) in the debtor's plan. Section 1322(b)(5) provides that a plan may "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending…." Therefore, new rule 3002.1 only applies to mortgages on a debtor's principal residence where the plan seeks to cure an arrearage or some other default. Mortgages with no arrearage fall outside the scope of rule 3002.1.

Fed. R. Bankr. P. 3002.1(b) requires that creditors file and serve on the debtor, debtor's counsel and the trustee a notice of any change in payment amount, including any change that results from an interest rate or escrow account adjustment, at least 21 days prior to the effective date of such change.

Fed. R. Bankr. P. 3002.1(c) states the holder of the claim shall file and serve on the debtor, debtor's counsel and the trustee a notice, itemizing all fees, expenses or charges, within 180 days of incurring the same. 3002.1(d) states that the notice shall be filed as a supplement to the holder's proof of claim. Subsection (e) allows debtors to contest the fees, expenses or charges up to a year after the notice is filed.

Finally, Fed. R. Bank. Proc. 3002.1 (f) outlines the process for a trustee or debtor to provide notice to a mortgage creditor of the final plan payment curing any mortgage delinquency. 3002.1 (h) outlines the mortgage-balance contested hearing process. If the holder of a mortgage claim fails to provide any the information required by 3002.1, the Court may preclude the omitted information as evidence in any contested matter or adversary proceeding in the case, and/or award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. See 3002.1(i).

In summary, amended Fed. R. Bank. Proc. 3001 and new 3002.1 should help debtors avoid post chapter 13 mortgage distress. For principal-residence mortgages that are being cured under 11 USC 1322(b)(5), a process now exists to determine accumulating charges and the mortgage balance upon completion of the chapter 13 plan. These procedures provide new and powerful tools for chapter 13 debtors.

The Also-Rans:

A summary of changes to the federal rules of bankruptcy procedure that do not relate to mortgage claims

By: Benjamin M. White
Keller & Almassian, PLC

Amendments to the Federal Rules of Bankruptcy Procedure went into effect December 1, 2011. The amendments modified rules 2003, 2019, 3001, 4004, and 6003, and added new rules 1004.2 and 3002.1. This article will summarize the changes and additions other than those affecting mortgage claims (3001 and 3002.1), which are addressed by Barbara Foley on page 3.

Rule 1004.2. New Rule 1004.2 requires that a petition for recognition of a foreign proceeding under Chapter 15 of the Code specify the countries in which a foreign proceeding is pending against the debtor, and in which country the debtor has its "center of main interests." The new Rule addresses applicable notice provisions and generally requires that any challenge to a debtor's designation of its "center of main interests" be raised at least seven days prior to the hearing on the petition for recognition.

Rule 2003. The amendment to subsection (e) requires that the presiding official of an adjourned meeting of creditors promptly file a statement specifying the adjournment date and time.

Rule 2019. The amendments to rule 2019 (applicable to Chapter 9 and Chapter 11 proceedings) expand the Rule's disclosure requirements to include all "groups" that consist of or represent creditors or equity security holders who are acting in concert. Such groups must identify their "disclosable economic interests" related to the debtor. The changes are expected to significantly impact ad hoc creditor committees in pre-negotiated and pre-packaged Chapter 11 proceedings.

Rule 4004. Subsection (b) is amended to allow a party in interest, under certain specified circumstances, to seek an extension of time to file an objection to a debtor's discharge after the time for filing has expired but before entry of the discharge order. Such an objection may be filed if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727 (d), and (2) the movant did not have knowledge of those facts before expiration of the original deadline for objecting.

Rule 6003. The amendment clarifies that while courts cannot enter certain orders during the 21-day waiting period at the beginning of cases, absent immediate and irreparable harm, courts can enter orders after the 21 days that are effective as of an earlier date, such as the petition date.

Keep It Local:

A summary of notable proposed changes to the Western District of Michigan's local bankruptcy rules

By Benjamin M. White
Keller & Almassian, PLC

There are many important proposed changes to the local bankruptcy rules. The following are just a sample of the changes. Members are encouraged to read and comment on the proposed local rules. Follow this link for details on how to comment. If you are interested in a more detailed analysis of the proposed local rules, David Andersen has written his thoughts on them, which you may request by emailing him at d.andersen.usa@comcast.net.

LBR 1006(b). This rule is deleted from the proposed rules. The rule required dismissal of a case for failure to pay the filing fee in a previous case. The proposed deletion was caused by concerns about the automatic stay.

LBR 2016-2. The modified rule applies to Fee Applications filed pursuant to FRBP 2016. Some have expressed concern that new subsection (e)(1)(B) may be read to require plan amendments for any fee application beyond the no-look fee.

LBR 3015(d) is modified to mandate the use of the model plan absent exceptional circumstances, but also states that the model plan may be modified so long as the modifications are disclosed in the appropriate plan section or such disclosure has been waived by the Chapter 13 Trustee.

4001-1(d) is deleted. The rule authorized the Chapter 13 Trustee to suspend post-confirmation adequate protection payments pending the resolution of a secured creditor's motion for relief from the automatic stay. After deletion of this rule, the confirmed plan will control the issue.

LBR 4001-3(b) is modified, eliminating the requirement that secured creditors listed on Schedule D be served with LBR 9013(c) motions to approve stay-related agreements in a Chapter 13 case. The modified rule adds a requirement that the United States Trustee receive service of any such notice, motion, agreement, and proposed order.

LBR 5005-2(c) is deleted. The sub-rule authorized the Clerk to reject filings which did not contain an original verified signature, as required (and still required) under FRBP 1008 and LBR 1008. Defective filings lacking the required signature will be accepted but dealt with by a motion or some other action.

LBR 7008 is new. This is the so-called *Stern v. Marshall* rule. Rather than explain the rule and risk misstating its purpose or effect, the rule is stated in its entirety:

> Every party who appears in an adversary proceeding that includes one or more matters designated by 28 U.S.C. 157(b)(2) as a core proceeding shall include in that party's pleading a statement that the party agrees or does not agree to the Court's entering a final judgment or order with respect to the core proceedings pled. The required statement shall be made in the party's original pleading and in any amendment to the pleading that adds a new core proceeding. If the required statement is not included in a party's pleading, that party shall be deemed to have consented to entry of a final judgment by the Court as to every matter pled that is within the scope of 28 U.S.C. 157(b)(2).

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"Page 13" is a new addition to *New Value* . The section will be dedicated to Chapter 13 bankruptcy practice and issues. The columns will be contributed by the offices of Barbara P. Foley and Brett N. Rodgers, the Chapter 13 Trustees for the Western District of Michigan. Brett Rodgers drafted the following column related to

Changes to the Chapter 13 Model Plan:

An explanation of changes made to the Jan. 1, 2012 version of the Chapter 13 Model Plan

By Brett N. Rodgers
Chapter 13 Trustee, Grand Rapids, Michigan

Approximately one year has passed since the Chapter 13 Trustees implemented the new model plan, which has undergone several revisions as a result of input from the Court, Bar and Chapter 13 Trustees. The Chapter 13 Trustees have made a few final changes to the Model Plan dated January 1, 2012. The January 1, 2012 revised model plan will be presented to the Rules Committee as exhibit 8 to proposed LBR 3015 (d) and copy of the model plan will be available in PDF and Word on the Chapter 13 Trustees' websites at rodgersch13.com or 13network.com.

Two things must be made clear about the model plan: first, it should be modified periodically to adapt to changes in the law or to implement improvements as they are presented. Incidentally, the Chapter 13 Trustees would like to see, and be a part of, an annual committee of members of the creditor and debtor bars to meet annually at the FBA Bankruptcy Section Seminar (or some other reasonable time and place) to consider modifications to the Model Plan. If the Plan is modified, the modified version could be submitted to the Court for approval and adoption as an amended exhibit 8 to the local rules.

Secondly, section 1321 requirement that "[t]he debtor shall file a plan" still applies. The model plan was adopted only to make the preparation and review of the plan by the Debtor's Attorney, Staff Members, Creditors, Trustee and the Court more efficient. The substantive provisions of the debtor's plan can be modified by implementing changes conspicuously in Section IV. P.

Now let's cover the most recent changes which are present in the revised January 1, 2012 Chapter 13 Model Plan:

(1) Paragraph III (C) (1) (d) **Real Property Tax Escrow**: Is changed to default to the most common situation, where the debtor is not escrowing their real estate taxes through the plan. If the debtor wants the future real estate taxes escrowed they have to check the box and give details below. The problem was that the debtor had a choice to mark a box to escrow or mark a box not to escrow and neither box was being marked which caused too many technical amendments to be made.

(2) The Pot Plan option in Paragraph III (F) (1) **Unsecured Creditors** was eliminated. It stated:

> ( ) Payment of that amount remaining after payment of superior classes as
>
> set forth above. Payment to this class shall be on a prorate basis for the Applicable Commitment Period (ACP) The estimate base to unsecured creditors is $_____.

The Chapter 13 Trustee recommends using the second option in paragraph III. F. 1. commonly referred to as the "base to unsecured creditors" which states:

( ) Payment of a pro-rata share of a fixed amount of $_____set aside for creditors in this class or for the ACP, whichever pays more.

The Pot Plan provision was eliminated for several reasons: The estimated amount to be paid to the unsecured creditors has been wrong 85% of the time which causes the Debtor to re-notice the entire matrix with the correct estimate prior to confirmation. The wrong estimated general unsecured dividend may be caused by a math miscalculation, an unscheduled or higher priority tax claim, a higher than scheduled 910 vehicle proof of claim or a secured vehicle claim that is later determined to be 910 claim and mortgage payment changes, etc.

Several other post-confirmation factors can significantly alter the amount to be paid to the unsecured creditors. These factors must be monitored by the Chapter 13 Trustee on a monthly basis to make sure we do not over pay or under pay the general unsecured creditors within the ACP. These factors include additional approved attorney fees, payment of additional disposable income into the plan such tax refunds or bonuses; collection of preference, fraudulent conveyances or post petition transfers; sale or insurance proceeds and additional or amended secured or priority claims. Such variables must constantly be monitored and the amount to the unsecured creditors must be adjusted manually which is a significant administrative burden on the Trustee.

Therefore, unless it is a 100% plan, the second option (Base to Unsecured) should be used particularly if the plan must pay a required unsecured dividend to satisfy the liquidation test or means test amount agreed upon with the Trustee. If there are no means test or liquidation test requirements, the Chapter 13 Trustees suggest that debtors des-

ignate a reasonable but significantly lower unsecured dividend than would actually be paid within the ACP. Stating the lower unsecured dividend prevents the debtor from having to file an amended plan if one of the above variables makes it impossible to pay the confirmed unsecured dividend prior to the end of the ACP.

As an example, let's say no liquidation or means-test problems exist and the debtors believe they can pay exactly $20,000 to unsecured creditors for the 60 month ACP. If a priority claim and a "910" vehicle claim were correctly filed for $5,000 more than scheduled, the debtor would have to amend the plan to pay $15,000 the general unsecured creditors in order to complete the plan within 60 months. If the debtor initially filed the plan with a $12,000 general unsecured dividend, the amendment would not have been necessary.

(3) In the first paragraph of **IV General Provisions A. Disposable Income, Tax Returns & Tax Refunds** it was made clear that if it is not a 100% plan the debtor must turnover their tax returns to the Chapter 13 Trustee during the entire ACP.

(4) Two other previous changes should be mentioned. The first change was **to III Disbursements A. Administrative Claims 3.** which added the word "initial" in front of "attorney" to make it clear to the Debtors that the amount of attorney fees mentioned in the plan are not necessarily the entire fee but just the initial fee. The second prior change was to paragraph **V. Vesting of Estate Property** which defaulted vesting of estate property after confirmation to the Chapter 13 estate and let the debtor pick the option of vesting to the debtor. In a number of cases, under the prior version, the debtor failed to check either option which caused a significant amount of technical amendments. As a result we have defaulted the vesting option to the most popular choice.

Please check the Chapter 13 Trustee's websites mentioned above and download the most recent version of the Model Plan. The Chapter 13 Trustees will be scheduling brown bag lunches on using the 1-1-2012 version of the Model Plan. Debtor and Creditor attorneys and their employees will be welcome. We will prepare a checklist of important points that must be dealt with in the plan and cover each provision so the plan hopefully makes sense to us all. Our goal is 'get her confirmed the first time.'

CASE SUMMARIES AND LEGAL UPDATES

Thanks to Greg J. Ekdahl of Keller & Almassian, PLC for his assistance in preparing the Case Summaries.

***In re Southeast Waffles, LLC*, 460 B.R. 132 (B.A.P. 6th Cir.2011).**

Chapter 11 debtor brought adversary proceeding, seeking to avoid and recover payments made prepetition to Internal Revenue Service (IRS) as constructively fraudulent transfers. The United States Bankruptcy Court for the Middle District of Tennessee granted IRS's motion to dismiss. Debtor appealed, arguing the Debtor did not receive reasonably equivalent value in exchange for the payment of penalties because the IRS applied payments to penalties and did not reduce the tax. The BAP affirmed the District Court, holding that debtor received reasonably equivalent value in exchange for its prepetition payments that IRS applied against penalty owed and that the bankruptcy court lacked authority to compel IRS to reallocate debtor's prepetition payments. The Court went on to note that Debtor's argument was nothing more than a "back door" route to requiring the bankruptcy court to order the IRS to allocate the payment to tax and interest.

***In re Michalski*, 2011 WL 6415052 (6th Cir. 2011).**

In December 2006, Debtor issued a series of bad checks that were returned for insufficient funds. Police issued a request to make the checks good. Debtor instead he filed a Chapter 7 bankruptcy and listed the check recipients as creditors. Debtor received his discharge and no parties objected to the discharge. Subsequently, the prosecutor indicted Debtor based on the same bad checks. Debtor reopened his bankruptcy and requested an injunction to prohibit the prosecutor from proceeding with the criminal prosecution on the ground that such prosecution violated the automatic stay and discharge injunction. The Bankruptcy Court determined there was no violation of the automatic stay nor the discharge injunction. The 6th Circuit affirmed, holding that upon discharge from bankruptcy, the automatic stay lifted and an injunction entered to prohibit any act "to collect, recover or offset any such debt as a personal liability of the debtor[.]" 11 U.S.C. § 524(a)(2). However, "[t]he mere fact that a debt has been discharged in bankruptcy does not preclude a criminal action from proceeding based on the debtor's alleged criminal conduct in relation to the debt."

***In re Barbee*, -- B.R. --, 2011 WL 6141648 (B.A.P. 6th Cir. 2011).**

Chapter 13 debtor filed adversary proceeding against bank, seeking to avoid bank's interest in his manufactured home. Debtor borrowed funds to purchase real estate, repayment of which was secured by a mortgage in favor of Countrywide. A mobile home was on the property and the record did not indicate that a title was ever produced by either party. Debtor argued that creditor did not perfect its lien on debtor's manufactured home where it did not place a notation of the lien on the certificate of title, and therefore as a hypothetical lien creditor, he has superior title to the manufactured home located on the property, and that any interest the Bank has in the home is avoidable pursuant to 11 U.S.C. § 544 because the Bank failed to perfect its lien on the manufactured home pursuant to Kentucky law.

The United States Bankruptcy Court for the Eastern District of Kentucky granted summary judgment in favor of debtor, and bank appealed. The BAP affirmed, holding that a manufactured home is personal property for which a certificate of title is required and it was undisputed that the Bank's lien was not noted on the certificate of title. Therefore, the Bank did not perfect its lien on Debtor's manufactured home and lien was avoidable.

***Sutter v. U.S. National Bank (In re Sutter)*, -- F.3d --, 2012 WL 5734 (6th Cir. 2012).**

In 2004, after receiving a Chapter 7 discharge, Debtors refinanced their existing mortgage with World Wide. At the closing, the Debtors signed a note payable to World Wide in the amount of $78,000.00, but did not sign the mortgage. World Wide assigned the mortgage to U.S. National Bank, who subsequently initiated a foreclosure action upon the Debtors default. To save their home from foreclosure, the Debtors filed a Chapter 13 proceeding. The mortgage servicer filed a secured proof of claim in the Chapter 13 case attaching the World Wide mortgage, notarized and ostensibly bearing the signatures of the debtors. The certificate of acknowledgment on the mortgage stated that the instrument was acknowledged before the notary by the debtors in Michigan on the date of the closing. The Debtors objected to the proof of claim on the basis that their signatures were forged. The Bankruptcy Court found that the debtors signatures had been forged, but later imposed an equitable mortgage on the property. The District Court also found that the signatures were forged and reversed the imposition of an equitable mortgage. The 6th Circuit held that the district court's factual finding that the mortgage was forged was not clearly erroneous. Further, Michigan case law provides that "parties that take possession of interests granted by the forged instrument, even if they do so innocently, have no rights under the forged document." Michigan courts also "abide by the standard maxim that one 'who comes into equity must come with clean hands . . . .'"

***Richardson v. Citimortgage, Inc. (In re Emerson)*, -- B.R. --, 2011 WL 4634225 (B.A.P. 6th Cir. October 7, 2011).**

Mortgage holder erroneously executed a certificate of discharge of its mortgage. Upon discovering the error, the mortgage holder recorded a rescission of the certificate of discharge. The rescission explained that the discharge had been executed in error, that the mortgage remained unsatisfied or unpaid, and that the release of mortgage was thereby withdrawn, cancelled, and declared of no force or effect. The Debtor filed a voluntary chapter 7 bankruptcy more than one year after the rescission was recorded. The Chapter 7 trustee initiated an adversary proceeding to avoid mortgagee's interest pursuant to the strong-arm provision of 11 U.S.C. § 544(a)(3). The Bankruptcy Court held for the mortgagee. The BAP addressed "whether a bona fide purchaser under Michigan law could avoid the Mortgage and whether the Trustee would be considered a bona fide purchaser of the Property under Michigan law." The BAP held that under Michigan law an erroneously discharged mortgage can have priority over a subsequent lienholder, even one without notice, and found that under the facts and circumstances of the case, a Michigan state court, in equity, would recognize the efficacy of a mortgagee's rescission of the erroneously filed discharge and give the mortgagee priority over holders of liens arising after the rescission was recorded.

***In re Bailey*, -- F.3d --, 2011 WL 6141644 (6th Cir. 2011).**

Debtors entered into two reaffirmation agreements with their Bank, one for an a vehicle loan and the other a purported mortgage on the Debtors' home. Debtors defaulted. The Bank attempted to repossess the vehicle, but it had been stolen. The Bank filed a wholly unsecured claim for the vehicle. The Chapter 7 trustee sued the Bank to avoid the mortgage on the real property. The suit was settled by entry of an agreed judgment providing that the real property would be sold at auction, and if sold to a third party, the proceeds would go to the estate. The Bank purchased the home at auction, resold it for a profit of $33,400.00, and filed an unsecured claim with the bankruptcy estate for the full balance of the mortgage. After the bankruptcy case, the Bank sued the Debtors in state court. As dispute arose about whether the Bank had perfected security interests in either the vehicle or the real property. The Debtors responded to the state-court suit by moving the bankruptcy court to reopen their case under Rule 60 of the FRCP (via FRBP 9024) and to declare the reaffirmation agreements void based on mutual mistake. The bankruptcy court and the district court held that the reaffirmation agreements were unenforceable due to mutual mistake. The 6th Circuit affirmed, holding that reaffirmation agreement entered into upon the assumption that the lender held properly perfected mortgage and vehicle lien (which later proved to be a false assumption) was unenforceable under Kentucky law.

Legal Updates

Proposed Bill to Allow Discharge of Private Student Loans

H.B. 2028, the "Private Student Loan Bankruptcy Fairness Act of 2011," has been referred to the House Judiciary Committee and the House Subcommittee on Courts, Commercial, and Administrative Law. The bill would modify the exception to discharge for certain educational loans, i.e., private student loans. The bill also would limit the exception to discharge for programs funded by nonprofit institutions, excepting them from discharge only where "substantially all of the funds" were provided by the nonprofit institution.

Bankruptcy Filings Down in 2011

There were just over 1,379,000 bankruptcy filings in 2011. A decline of 11.7% from 2010.

New Venue Law

On December 7, 2011, President Obama signed the Federal Courts Jurisdiction and Venue Clarification Act of 2011. Although it does not amend 28 U.S.C. 1408, the venue provision for bankruptcy cases, it largely rewrites 28 U.S.C. 1391, which governs venue for federal actions. The law may provide a stronger basis for arguments against a debtor's place of incorporation as the correct venue for administering a bankruptcy proceeding.