BANKRUPTCY LAW NEWSLETTER

Published By Federal Bar Association
Western District of Michigan Chapter

Vol. I, No. 3 **November, 1988**

ALICE IN BANKRUPTCY COURT

By Peter A. Teholiz[1]

As Alice walked into the room, the first thing she noticed was the odd assortment of birds and animals milling about. A few of them were sitting quietly at the rear of the room, but most of them were wearing black gowns and jabbering noisily among themselves. Before Alice could make out what they were saying, they suddenly fell silent and stood at attention ("Like penguins on an ice floe," thought Alice), and an ancient tortoise in a red satin robe entered the room and moved behind the table at the front of the room. "Why, this must be a courtroom and he must be the Judge," thought Alice and when everyone took their seats, Alice sat down in a chair near the middle of the room.

The tortoise cleared his throat and announced, "this case involves. . .," and then started shuffling through the numerous papers scattered on the table. After a long, awkward silence, a black-gowned pigeon stood up and said, "This case involves a lift of stay, your honor."

". . . a lift of stay," finished the tortoise. "You may proceed."

The pigeon then launched into a long oration punctuated by normal words in strange places and strange words in normal places. Alice understood very little of it, except that someone was destitute and was holding hostage a ham sandwich that belonged to the pigeon's client. When the pigeon finished, there was a polite murmur of appreciation from the crowd, and they all looked expectedly at the tortoise.

After a pause, the tortoise abruptly asked, "Why didn't he have baked beans with the sandwich?"

"Er . . . um . . . eh," flummoxed the pigeon, and then he coughed several times as if he was just clearing his throat. "Ah . . . well . . . because . . . he had potato salad!" The pigeon beamed triumphantly and sat down.

A brown woodchuck with spectacles stood up on the other side of the room. His gown was so big that it covered his entire body from his neck to the floor. "Why, he might be standing on a soapbox and no one would know," thought Alice. "Except for the woodchuck himself," she corrected herself.

"I offer Exhibit No. 1," stated the woodchuck.

With that, a whale was brought forward and placed in front of the table where the tortoise sat. Everyone leaned forward to get a better look and a puffin in the back row fell off his chair knocking over the mackerel and the dormouse that had been sitting next to it.

The pigeon leaped to his feet. "I object," he shouted and launched into another unintelligible (to Alice) tirade, finishing with,

"I dispute that this even is a whale!"

"Of course it's a whale," the woodchuck calmly responded.

"Note the ears and the Union Jack on its tail. This is none other than the Prince of Whales - the Heir Apparent."

Before the pigeon could answer, the tortoise blinked his eyes. "Are you saying that this whale is a gorilla?"

The woodchuck stared at the tortoise. "A gorilla?"

"Yes, you said that it was a hairy parent."

"No, no," the vole replied, "I said 'he is the Heir Apparent'."

"Oh, he's an orphan," concluded the tortoise.

The woodchuck stared even harder at the tortoise. "I beg your pardon?"

"An orphan," replied the tortoise, "It's got nary a parent. However, whether it is an orphan or it is not is immaterial. Although I do remember a case I decided several years ago which involved a king's son who cried all the time. I ruled that the wails of a prince were admissible. Still . . ."

The woodchuck quickly interrupted. "Your Honor, everyone is well aware that stays are made of whalebone. Since learned counsel . . ." and the woodchuck nodded towards the pigeon, ". . . wishes the stay to be lifted, the relevancy of this exhibit is obvious."

"Of course." The tortoise brightened. "The exhibit is admitted and counsel may now attempt to lift the whale."

The pigeon spluttered like a teakettle. "Your Honor can't really . . . this is preposterous . . . no precedent . . . actually lift the whale?"

"Now, now," said the tortoise, "This is your motion. Come forward and try to lift the stay."

The pigeon finally pulled himself together and marched over to the whale. He looked at it doubtfully and then put out his wings in preparation. Before he could exert himself, an alarm clock went off.

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1 Mr. Teholiz is an associate with the Lansing, Michigan, law firm of Hubbard, Fox, Thomas, White & Bengtson, P.C. He is a 1982 magna cum laude graduate of Indiana University Law School at Bloomington and primarily represents Farm Credit Services of Mid-Michigan in bankruptcy cases. Mr. Teholiz emphasizes that the characters in this sketch are purely fictional and are not based upon any person living or dead.

"It's teatime," announced the tortoise. "We are now adjourned."

With that, all of the black-gowned figures stood up and the tortoise quickly exited from a door behind his table. In a wink, the animals all turned towards the doors at the back of the room and started pushing and shoving to get out. Alice was caught in the crowd and felt herself getting dizzier and dizzier from the crush. "Its only just a dream," she kept telling herself, "It's only just a dream," before things faded into blackness.

* * * * *

When Alice awoke, she noticed that the room was filled again and that everyone was intently watching the activities at the front. A large badger in a black velvet robe now sat at the table and in a small chair next to him sat a small pig sonorously reciting prices for Concord grapes. Alice leaned over to the gryphon that she was sitting next to, and whispered, "What's going on now?"

"This is a cash collateral hearing," whispered the gryphon in reply. "The Judge is hearing testimony as to how many concord grapes the debtors have."

"If this is a cash collateral hearing, why shouldn't the Judge be hearing testimony on how much cash the debtors have?" asked Alice.

"Because if the debtors had any cash, they wouldn't be here!" snapped the gryphon.

Alice was just about to ask why the hearing wasn't called a Concord grape collateral hearing when the pig stopped his monotone and announced in a loud voice, "And in my expert opinion, the value is approximately $501,195.83." Two other pigs that were sitting in the audience snorted with disapproval and one of them stifled a laugh.

"What value is this?" questioned the badger in a petulant tone.

"The value of the Concord grapes," replied the pig.

"Is this the value to a buyer willing to purchase the Concord grapes?" continued the badger.

The pig reddened slightly. "Well, of course . . ."

"Or is it the value to the debtors if their Concord grapes were eaten by a hungry zebra?" continued the badger.

The pig reddened even more. "If you put it that way . . ."

The badger mercilessly continued. "Or is it the value to someone else who happened upon these Concord grapes in the middle of the road and wished to dispose of them as swiftly as possible?"

The pig collapsed in his chair, shaking his head mutely. At that, one of the two pigs in the audience jumped to his feet and applauded wildly. The badger turned and stared at him, roaring "SIT DOWN AND BE QUIET." The pig sat down in a hurry, knocking over his chair, along with the weasel who was sitting behind him.

In a few minutes, order was restored, and Alice noticed that all three pigs were now sitting together in the audience, jostling and pushing each other as if they were related (they were, in fact, brothers). The badger glared at them and commenced:

"Concord grapes hold an illustrious place in our nation's heritage. From the very first, the early settlers made vast fortunes with their Concord grape plantations. Indeed, evidence suggests that the noble aborigine cultivated the wild forebear of this hardy plant centuries before farming was invented. Archaeological findings confirm . . .," and the badger launched into a short, if pointless, dissertation upon the subject.

"In any event," the badger concluded finally, "I rule that in order to preserve the grapes and prevent a jam" - at this the badger chuckled at his cleverness - "the grapes will be made into wine."

A small field mouse stood up, cleared his throat nervously, and stammered, "B-b-but t… anybody any good, sir."

"Yes it will," replied the ba… are you presuming that I mig… wrong?" The badger cocked his h… slightly and a malevolent gleam shone i… his eyes.

"Er, no sir," replied the field mouse and sat down with a plop.

As the next case was being called, Alice turned back to the gryphon and asked, "I still don't understand - why is this a cash collateral hearing?"

"Because now the wine can be cached in a strategic spot while it properly ages," replied the gryphon.

"But what happens then?"

The gryphon looked questionably at Alice. "We drink it, of course. It's the only way any of this makes any sense."

LEVERAGED BUYOUTS AND FRAUDULENT CONVEYANCES

By Patrick E. Mears[2]

Leveraged buyouts ("LBOs") have captured the imagination of Corporate America. According to the Wall Street Journal, "LBOs were rare before the late 1970s, but last year 259 buy-outs totalling $35.6 billion were completed."[3] Although LBOs may take many forms, a typical LBO involves the target company incurring or guaranteeing bank debt, the proceeds of which are used by the acquiror (normally senior management of the target company and outside investors) to purchase the outstanding shares of the target's stock. In most LBO's, the banks that finance the stock purchase advance 90% or more of the purchase price and receive in return liens in the target's assets to secure repayment of that debt. The level of bank debt carried by the target after closing the LBO is significantly higher than the debt levels predating the LBO.

Not all LBOs are successful. Due to their large debt load, target companies

2 Partner in the law firm of Warner, Norcross & Judd, Grand Rapids, Michigan. Mr. Mears graduated from The University of Michigan Law School in 1976.

3 "With Leveraged Buy-Outs in Spotlight, Here Are Answers to Common Questions," Wall Street Journal, October 29, 1988, p. B1.

/ sensitive to a rise in
es. An article in the
/, 1988, issue of the Wall
urnal highlighted the problem:

> ome economists have warned that the U.S. could see a heavy wave of bankruptcies among debt-burdened companies in the next recession.... [T]he portion of earnings that U.S. corporations need, on average, to finance their debt has risen to more than 50% today from about 16% in the 1950s and 1960s, and about 33% in the 1970s. The growth of corporate debt since 1980 has been so fast that corporate-debt payments remain at record levels despite the decline in interest rates....[4]

If the target of an LBO becomes the subject of a bankruptcy case after the transaction closes, it is likely that the LBO will be closely scrutinized by a bankruptcy trustee and/or a creditors committee. Depending upon the particular facts involved, the trustee or the committee may attempt to characterize the LBO as a fraudulent conveyance under section 548(a) of the Bankruptcy Code or the Uniform Fraudulent Conveyance Act as adopted in Michigan.[5] The nature of this challenge was recently described as follows:

> Other creditors of the Target may argue that the Target has received little or no consideration in return for the LBO financing that it provides. If the Target, either at the time of the LBO or as a result of entering into the LBO transaction (including the incurrence of LBO-related debt), is insolvent, intends to incur debts "beyond [its] ability to pay as they mature" or has "unreasonably small capital," these other creditors may be unable to collect from the Target the full amount of their claims. In such a case, and depending upon the structure of the LBO, such creditors (or a bankruptcy trustee... of the Target) may, under the relevant fraudulent conveyance laws, seek to have the payments to the former shareholders of the Target... returned to the Target. Alternatively, such creditors (or the Bankruptcy Trustee) may seek to have the Banks' LBO-related debt and liens avoided or assert a right of recovery against participants in the LBO Group, perhaps even the nonparticipating directors and officers of the Target.[6]

One of the earliest instances of a bankruptcy court applying fraudulent conveyance law to an LBO occurred in this federal judicial district. In In re Anderson Industries, Inc., 55 Bankr. 922 (Bankr. W.D. Mich. 1985), Bankruptcy Judge Laurence E. Howard denied a summary judgment motion filed by the Chapter 11 debtor's former shareholders in an adversary proceeding commenced by the debtor and the creditors committee to recover money damages from those shareholders. In denying that motion, Judge Howard rejected the defendants' argument that fraudulent conveyance law was inapplicable to leveraged buyouts:

> The court is aware that a ruling that the UFCA covers leveraged-buyouts could set a precedent for the recovery of any size amount paid to any number of shareholders should the leveraged-buyout of a large publicly held corporation cause that corporation's insolvency and failure. Yet that precedent has already been set in a case not exactly on point, Spanier v. United Stated Fidelity, 127 Ariz. 589, 623 P.2d 19 (1981). And although such an operation would be difficult, the court cannot characterize that as a patently absurd result. If this holding is too broad in the light of the present marketplace, it is the legislature, not the courts, that must narrow the statute.

55 Bankr. at 926.[7]

Although the focus of the fraudulent conveyance claim in Anderson Industries was the selling shareholders, banks that finance LBOs may also appear as defendants in these actions. The Third Circuit Court of Appeals recently held, inter alia, that mortgages granted to a lender in connection with a LBO were fraudulent conveyances under Pennsylvania's Uniform Fraudulent Conveyance Act and would be avoided where, at the time the secured loan was made, the lender knew that the LBO would cause the target and related companies to become insolvent and that no member of that corporate group received "fair consideration" as a result of the LBO. United States v. Tabor Court Realty Corp., 803 F.2d 1288 (3d Cir. 1986), cert denied, 107 S.Ct. 3229 (1987).[8]

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4 "Fed Tells Banks to Weigh How Loans for Buyouts Would Fare in a Recession," Wall Street Journal, October 27, 1988, p. A8. In July, 1988, Revco Drug Stores, Inc., a highly leveraged target company suffering cash flow problems, filed a Chapter 11 petition in Cleveland, Ohio. For background on this Chapter 11 case, see "Revco: Anatomy of an LBO that Failed," Business Week, October 3, 1988, p. 58.

5 MCLA 566.11, et seq. Under 11 U.S.C. 544(b) these provisions may be employed by a trustee (or debtor in possession) to avoid fraudulent conveyances involving the debtor. See In re Anderson Industries, Inc., 55 Bankr. 922, 925 (Bankr. W.D. Mich. 1985).

6 King et al., Fraudulent Conveyance Law: Taking the Fun Out of LBOs? (March 21, 1988). This monograph, authored by attorneys in the New York law firm of Wachtell, Lipton, Rosen & Katz, was included in the 1988 Report of the Subcommittee on Leveraged Buyouts presented by the Association of the City of New York, Committee on Bankruptcy and Corporate Reorganization.

7 This adversary proceeding was subsequently settled by the parties.

8 For articles discussing this case, also known as "Gleneagles," see Murdoch, et al., Leveraged Buyouts and Fraudulent Transfers: Life After Gleneagles, 43 Bus. Law 1 (Nov. 1987); Kirby, et al., Fraudulent Conveyance Concerns in Leveraged Buyout Lending, 43 Bus. Law 27 (Nov. 1987). Not all courts have applied fraudulent conveyance law to avoid the liens held by banks financing an LBO. See, e.g., In re Greenbrook Carpet Co., Inc., 722 F.2d 659 (11th Cir. 1984).

The lesson to be learned from cases like Anderson Industries and Gleneagles is that attorneys representing lenders and the selling shareholders in LBOs should carefully analyze the transaction in light of fraudulent conveyance law. If the transaction will render the target company insolvent or severely weaken its capital structure, counsel should carefully explain to his client the risks involved in going forward with the LBO and should document that advice in his files.

RECENT BANKRUPTCY DECISIONS

The following are summaries of recent decisions rendered by the Sixth Circuit Court of Appeals and bankruptcy courts in Michigan that address important issues of bankruptcy law and procedure. These summaries were prepared by Patrick E. Mears with the able assistance of Larry A. Ver Merris.

In re Kentucky Lumber Co., Case No. 86-6153 (6th Cir., November 2, 1988). In this case, the Sixth Circuit held that unsecured creditors were not entitled to post-petition interest on their claims under the terms of a confirmed Chapter 11 plan when the plan did not provide for payment of those amounts. At the time the Chapter 11 case was commenced and when the confirmation hearing was held, the debtor was insolvent. However, the debtor held an unliquidated claim against Ralston-Purina Company. The debtor's plan provided that unsecured creditors would receive a 30% distribution on the plan's effective date. These creditors could receive more monies under the plan if the debtor was successful in its litigation against Ralston-Purina. After the plan was confirmed, the debtor and Ralston-Purina agreed to a long-term structured settlement of that claim. The Sixth Circuit noted that, at present, "it is at least possible that some money may remain in excess of the unsecured creditors' claims and hence be available to the debtor or its shareholders." In reversing the decision of the district court, the Sixth Circuit held that since the confirmed plan provided for no payment of post-petition interest to unsecured creditors, they were bound by the terms of the plan under 11 U.S.C. 1141. The court noted that, when the plan was confirmed, it satisfied the "best interests of creditors test" and that there was no "abuse of the bankruptcy process" present.

In re Bauer, Case No. 87-5617 (6th Cir. October 20, 1988). In this decision, the Sixth Circuit dismissed an appeal by two Chapter 7 debtors for lack of appellate jurisdiction. The order appealed from substituted their bankruptcy trustee as the proper party plaintiff in a lender liability civil action commenced by the debtors. The claims asserted in their complaint were prepetition causes of action that constituted property of the estate. In its opinion, the Sixth Circuit cited with approval Bankruptcy Judge Gregg's recent decision in In re Tvorik, 83 Bankr. 450 (Bankr. W.D. Mich. 1988). The opinion also contains a brief discussion of the trustee's authority to compromise claims.

In re Shaw, Case No. G 88-615 (W.D. Mich. October 4, 1988). This is an important decision addressing the issues of standing to appeal and timeliness of appeals. In Shaw, the bankruptcy court approved the trustee's sale of a Chapter 7 debtor's stock interest in a closely held corporation to two unsecured creditors. The purchase price was $300,000 in new money. In addition, the creditors waived a portion of their unsecured claims against the estate. The corporation also appeared at the sale and bid $305,000 in fresh cash. The trustee recommended that the unsecured creditors' bid be accepted, which the bankruptcy court did over the objection of the corporation. Within ten days after the order was entered confirming the sale, the corporation filed a motion for reconsideration. This motion was denied by the bankruptcy court after a hearing. The corporation thereupon appealed from the order denying its motion for reconsideration and requested that the district court enter a stay of the stock sale pending disposition of the appeal. In his decision, District Judge Richard Enslen held that the appeal and the motion for a stay pending appeal were timely. The motion for reconsideration effectively extended the corporation's time to appeal. However, Judge Enslen denied the motion for a stay on the ground that the corporation, as a disappointed bidder, had no standing to appeal; it was not a "person aggrieved" by the order appealed from.

In re Watkins, Case No. K 87-381 (Bankr. W.D. Mich. July 1, 1988). In Watkins, District Judge Enslen vacating a prior order of Bankruptcy Judge Nims directing that the Chrysler-UAW Pension Plan pay a portion of a Chapter 13 debtor's monthly benefits to the Trustee to fund a confirmed plan. Judge Enslen declared that the debtor's interest in this pension plan constituted a trust" under Michigan law an fore not property of the estate U.S.C 541(c). Consequently, the could not require that the mo benefits be used to fund payments un the plan.

In re U.S. Truck Co., 89 Bankr. 618 (E.D. Mich. 1988). In U.S. Truck, Chief District Judge Philip Pratt affirmed the decision of Bankruptcy Judge Steven Rhodes allowing the wage claims of union members that arose from the debtor's rejection of a collective bargaining agreement. Judge Pratt declared that the Teamster Union's National Freight Industry Negotiating Committee had standing to assert claims of the union's individual members in the Chapter 11 case. Judge Pratt also held that these claims included the future wages that would have been earned by union members had the labor contract not been rejected. The district Court also concluded that the limitation of damages arising from "termination of an employment contract" contained in 11 U.S.C. 502(b)(7) does not apply to claims arising from rejection of a collective bargaining agreement.

In re Culp, Case No. SK 88-02420 (Bankr. W.D. Mich. October 26, 1988). In a brief opinion, Bankruptcy Judge JoAnn Stevenson held that Chapter 13 trustees were not prohibited from making pre-confirmation adequate protection payments to secured creditors and that the trustees could collect their statutory fees on those payments. In support of her conclusions Judge Stevenson cited a recent unreported decision of Bankruptcy Judge Steven Rhodes entitled In re Ingle, Case No. 88-01627-R (Bankr. E.D. Mich., September 23, 1988).

In re Pianowski, Case No. GK 87-01965 (Bankr. W.D. Mich. October 25, 1988). In this Chapter 12 case, Bankruptcy Judge Gregg framed the issues as follows: (i) may Chapter 12 debtors make direct payments to secured creditors in a Chapter 12 case rather than funnelling them through the trustee; and (ii) are debtors required to pay to the trustee his commission and expense percentage fee if these direct payments are made. Judge Gregg first noticed that there is a conflict in the case law on these issues. After reviewing this case law, Judge Gregg concluded that direct payments to secured creditors may be authorized in a Chapter 12 plan and that the trustee cannot charge his commissions and fees against those payments.

debtor has no absolute direct payments; each plan considered on its own merits. Gregg did not decide whether payments may be made to other classes of creditors under a plan although he stated, in dicta, that "it is extremely unlikely that direct payments will be authorized to an unsecured creditor or a class of unsecured creditors." Judge Gregg then enumerated 13 "nonexclusive" factors that the Court will consider in deciding whether to confirm a plan that provides for direct payments to creditors and applied those factors to the plan before him.

In re Reef Petroleum Corp., Case No. NT 83-02437, Adversary Proceeding No. 86-0224 (Bankr. W.D. Mich. October 21, 1988). This adversary proceeding was commenced by two governmental units to recover unpaid, prepetition personal property taxes assessed against an oil rig of the Chapter 7 debtor. During the pendency of the bankruptcy case, the rig was sold under 11 U.S.C. 363(b) and the proceeds were thereafter paid over to the debtor's primary secured creditor. Thereafter, the governmental units sought to recover the unpaid personal property taxes from that secured creditor in an adversary proceeding. The parties to that action submitted this matter to Bankruptcy Judge David Nims for decision on stipulated facts. After reviewing those facts, Judge Nims held that the personal property tax liens were senior to the consensual liens held by the secured creditor. Judge Nims also concluded that the tax liens were not waived by the taxing authorities nor were they displaced during the course of the bankruptcy case. Consequently, Judge Nims entered judgment against the secured creditor for the amount of the unpaid personal property taxes plus interest.

In re Witte, Case No. HK 85-2474 (Bankr. W.D. Mich. October 21, 1988). In this decision, Bankruptcy Judge Laurence Howard considered the issue of whether the commencement of a Chapter 7 case by an individual doctor "disqualified the debtor's profit-sharing plan which was formerly qualified under ERISA." In the Chapter 7 case, the debtor sought to exempt his interest in the plan and the trustee objected to the claimed exemption. This objection was settled by the turnover of $225,000 of plan assets to the trustee for distribution to the debtor's sole creditor. The Internal Revenue Service contended that the bankruptcy court lacked jurisdiction to determine whether the plan still qualified under ERISA. Alternatively, the IRS argued that the court should abstain from deciding this issue under 28 U.S.C. 1334(c)(1) so that the IRS could rule on the matter. Judge Howard rejected these two arguments but declined to rule on the issue presented due to an inadequate factual record. Accordingly, Judge Howard scheduled an evidentiary hearing on the qualification issue.

In re Shreve Steel Erection, Inc., Case No. SL 83-00091 (Bankr. W.D. Mich. October 11, 1988). In Shreve Steel, Bankruptcy Judge Stevenson denied the Chapter 7 debtor's objection to the IRS' claim for unpaid prepetition taxes. Certain of the taxes were trust-fund taxes arising from the debtor's failure to withhold those sums from its employees' paychecks. The debtor argued that the IRS failed to follow its instructions to apply certain tax overpayments against the unpaid trust-fund taxes. In her opinion, Judge Stevenson applied the Sixth Circuit's recent decision in In re Ducharmes & Co., 852 F.2d 194 (6th Cir. 1988) and overruled the debtor's objection. Judge Stevenson held that the debtor's payments to the IRS are "involuntary" and, therefore, the IRS may allocate those payments as that agency sees fit.

In re The Vogue, Case No. 88-11142 (Bankr. E.D. Mich. October 19, 1988). In this Chapter 11 case, a creditor of the debtor objected to the allowance of the debtor's attorneys' fees. The creditor first argued that much of the work performed by counsel was "ministerial" in nature and conferred no benefit upon the estate. After reviewing the particular work performed by counsel, Bankruptcy Judge Arthur Spector denied this objection. However, Judge Spector sustained the creditor's second objection, viz., counsel may not be compensated for preparing fee petitions and in defending against objections to its fee requests.

In re Nahas, Case No. 87-03976-R, Adversary Proceeding No. 87-0845-R (Bankr. E.D. Mich. November 3, 1988). In this Chapter 7 case, a bank commenced an adversary proceeding against the individual debtor requesting that debts arising from overdrafts on the debtor's bank account be deemed nondischargeable under 11 U.S.C. 523(a)(2)(A). According to Bankruptcy Judge Steven Rhodes, the decision turned upon whether the bank established "by clear and convincing evidence" that the debtor intended to deceive the bank in issuing the NSF checks that created the overdraft. After reviewing the evidence presented at trial, Judge Rhodes held that the bank failed to satisfy its burden of proof on this element and dismissed the complaint. Judge Rhodes found that "in order to pay his debts, [debtor] intended to keep his business going and to sell franchises. Therefore, when [debtor] wrote the NSF checks, his expectations were neither hopeless nor so unrealistic that the Court can conclude that he did not reasonably entertain them."

RICHARD JACKSON RETIRING

On December 31st of this year, after 25 years of service with the United States Bankruptcy Court for the Western District of Michigan, Richard Jackson will retire from his position as Clerk of the Court. Dick Jackson was born in Grand Rapids in 1932 and was appointed Distribution Clerk by Bankruptcy Judge (then Referee) Nims on October 14, 1963. On October 1, 1979, the effective date of the Bankruptcy Reform Act of 1978, Dick was appointed Clerk of the Court. After retirement, Dick plans to spend his free time at his cabin in Baldwin and with his son who is graduating from Michigan State's School of Veterinary Medicine.

STEERING COMMITTEE ACTIONS

On October 27, 1988, the Steering Committee of the Bankruptcy Section conducted its regular monthly meeting. The following are the minutes of that meeting as prepared by Brett Rodgers:

1. Present: Brett Rodgers, Judge Gregg, Tom Schouten, Jim Frakie, Peter Teholiz, Pat Mears, Scott Hogan, and Jeff Hughes.

2. (a) Brett Rodgers will contact Judge Stevenson regarding the Bankruptcy and District Court case summaries she is working on, in hopes they can be made available to the F.B.A.

   (b) Pat Mears will write the Bankruptcy Judges in the Eastern District of Michigan to request a system be established to report Eastern District cases to us.

3. There was discussion about having the Bankruptcy Section send out Bankruptcy opinions to the Bar. Because of the cost involved the Clerk's office may have to discontinue this practice. The committee will contact the Bankruptcy Clerk regarding this matter.

4. Tim Curtin will endeavor to obtain oral interviews on the history of Bankruptcy in the Western District from Judge Woolridge and other bankruptcy persons who were active in the early years. Jim Frakie offered to have his firm transcribe the interviews. Linda Lane, Judge Gregg's Secretary, will be obtaining quotes on the retired Bankruptcy Judge's photos later this month.

5. Judge Gregg indicated slow but sure progress on the local rules. The local rules will make a good topic for the annual seminar.

6. Tom Schouten, Chairman of the Bankruptcy Appellate Panel Committee reported that John Piggins will contact the estate administrator in the 9th Circuit to determine how the B.A.P. is working there. Jim Engbers will contact the 1st Circuit to obtain feedback on why the B.A.P. was discontinued there.

7. Scott Hogan gave a report on the Debtor-Creditor Law Committee meeting he attended for the State Bar. The Committee's new chairperson is Jonathan S. Green. The Bankruptcy Section will be contacting Mr. Green to determine if the Debtor-Creditor Law Members would be interested in attending our seminar to be scheduled in Traverse City.

8. The next Steering Committee luncheon will be at noon on Monday, December 5, 1988, at the Penn Club, 4th Floor, Rose Room.

EDITOR'S NOTEBOOK

John Porter and Gerald Lindquist have recently been appointed to the panel of private trustees for this judicial district. John Porter is a former partner of the Grand Rapids law firm of Day, Sawdey & Flaggert and resides in East Grand Rapids. He was born in 1941 and received his law degree from Wayne State University Law School in 1967. Gerald Lindquist resides in Spring Lake and was most recently the owner of a travel agency and an actuary for an insurance company. Mr. Lindquist was born in 1925 and graduated from the University of Michigan.

In the September issue of the Newsletter, I summarized the district court's decision rendered in In re Delbridge, Case No. 86-CV-40441-FL (E.D. Mich. 1988). In that summary, I stated that Bankruptcy Judge Spector's decision was affirmed by District Judge Newblatt and that Judge Spector's decision set forth "a complicated formula under 11 U.S.C. 552(b) to determine the extent of a secured creditor's interest in milk produced by cows." By letter addressed to me and dated September 28, 1988, one of the attorneys involved in that case, Peter Teholiz, questioned my reading of Judge Newblatt's decision. The relevant portions of this letter are as follows:

> Although Judge Spector's decision was affirmed, the validity of his opinion was either criticized or reversed. The continued viability of Spector's formula for determining cash collateral is problematic. Hence, the synopsis in the newsletter was misleading, though technically correct.

Patrick E. Mears

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United States Bankruptcy Court for the Western District of Michigan during the period from January 1, 1988, to October 31, 1988. These filings are compared to those made during that same period one year ago.

	1/1/88 to 10/31/88	1/1/87 to 10/31/87
Chapter 7	2,288	2,039
Chapter 11	75	75
Chapter 12	31	76
Chapter 13	979	1,088