BANKRUPTCY LAW NEWSLETTER

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REFLECTIONS BY REFEREE CHESTER C. WOOLRIDGE

Chester C. Woolridge served as a United States Bankruptcy Referee for the Western District of Michigan for 25 1/2 years. He was a bankruptcy judge during the good years and the bad--including the Great Depression. The below constitutes an informal interview with him conducted by Bankruptcy Judge Gregg's secretary, Linda Lane.

Question: Please tell us about your early formative years.

I was born in Libertyville, Illinois, in 1896, but my early years were spent in the small town of Pierport on Lake Michigan in Manistee County. I attended grades 1-8 in Pierport. My father was a carpenter by trade, but during the slow months he farmed our land. We had the usual farm animals and chores as did other families at that time. In those days, not everyone had the chance to attend high school. Only those who did well on a state test could attend high school. I went to Arcadia High School and upon completion was given the opportunity to take a teaching preparatory course toward a career in teaching, and that's what I did. My mother taught the 5th and 6th grades, as well as the teaching preparatory course; and I can tell you, when I was taking the teacher's preparatory, I didn't get any soft course just because she was the teacher.

I taught in the rural schools for approximately 5 years, with a brief interruption for service in the Army. I served a 6-month term in Battle Creek and then in Ohio. My rank was private. In 1920, while teaching, I married my wife, Ruth. I had no mode of transportation other than foot to get me back and forth to teach school. It was a 4-mile walk daily.

Question: What caused you to first become interested in the law profession?

As a teenager, I was introduced to a prosecuting attorney in southwestern Iowa. He came to our little house in Pierport with his family, and he wanted fresh milk and sometimes buttermilk and always unsalted butter and so forth. I would go over practically every morning and deliver whatever he wanted. One day he asked me, "Chester, what are you going to do when you grow up?" I said, "I don't know that I really know. I thought at one time the ministry, but I have abandoned that. I thought, well, I could farm, but I have abandoned that. The thing that I like to do is debate. I was one of the leaders of the two teams in Arcadia High School, and I loved it." He said, "Well, tell you what I will do. When I go back to my office, I will take out a complete case for you." (Iowa was what they called a "case law state." Everything was done on a case-by-case basis with no common law.) He sent me a great bundle of stuff and the next year he said, "How did you like it?" I said, "I was fascinated by it." Well, he said, "Strive for it."

Question: How did you obtain your legal education?

The law provided in those days that you could avoid going to college as such by declaring your intention in writing with the Supreme Court of Michigan. There wasn't any Michigan Court of Appeals then at all. I immediately sought a sponsor to whom I would be indentured for 4 years before taking and passing the Bar Examination in September, 1924. The sponsor I chose was the firm of Corwin & Norcross. George Norcross also became an attorney using this "sponsorship" procedure. He was a deputy register down at Grand Haven in the Probate Court, and he came to Grand Rapids and registered to study law to become a practicing attorney. I spent most of my time in the public library (law firms didn't have their own libraries in those days) running down cases and analyzing them and so forth; it was just wonderful training, just wonderful. I do have, I think, quite an analytical mind.

Question: How did you become a bankruptcy referee?

Well, there was a big boom down in Florida--a real estate boom. Benn Corwin was a real estate expert and he went down there and stayed to enjoy that boom and left George Norcross and me up here. After Benn Corwin left, District Judge Raymond was willing to appoint Charles Blair to the bankruptcy referee position. Blair, a Harvard graduate, had an excellent background. Blair said, "Yes, I will take the job, if Chester will come with me." And I did. My duties were varied--law clerk, researcher, bailiff, etc. We worked together for about 10 years. After that period, Blair was tiring and Judge Raymond appointed me in his stead on January 17, 1939.

Question: What were your duties and responsibilities as a bankruptcy referee?

Well, they were really the same as the duties of a district judge, within the bankruptcy statute. As a referee, I conducted court business in an office I maintained in the Michigan Trust Building. I was responsible for my own staff, equipment, etc. I paid the office expenses, including salaries, from my own pocket. In those days, referees were given the filing fee and then were paid on a commission basis. When the filings were up, we did well; when they were down, well, I would have to use my own money to continue operations. We operated in this fashion until 1947, when the laws were changed to include us as part of the U.S. court system.

I would handle a typical business reorganization a bit different than the judges do today. First I would give notice to all the scheduled creditors and

bring the case on for hearing. I would listen to everybody talk--and everybody did talk as a rule--and when they got through I would take a deep breath and say, "Well I think we can reorganize this." Then we would get the debtor to file a plan of reorganization and go back and vote on it with respect to those creditors who had provable claims and had proved them. If payments were made on schedule, a discharge was granted and the business would then go on as usual; if payments were not made, I would issue a show cause notice and, if necessary, liquidate the estate.

If my memory serves me correctly, I would say we had 1,100 filings a year when I took the bench. That's quite a few. Most of them were what I called "potboilers." I could take care of two of them at 10 a.m., two at 11 a.m., two at 2 p.m., and two of them at 3 p.m. Most of the cases were no asset cases. I would analyze the insurance policies and if they were payable to the wife or the family, or both, they were exempt. If they were payable to the estate, however, then I would make an order giving him or her 30 days within which to pay the cash surrender value; otherwise, I would send it in to the company, cancel the policy, and take the money for its cash value.

Question: Who did you work with at the court when you were a referee?

During my tenure, the district court judges were Judge Raymond W. Starr, Judge Wallace Kent, and Judge Noel P. Fox. Prior to his appointment as district judge, Judge Starr was the Attorney General for the State of Michigan and a Justice of the Michigan Supreme Court. He loved being a judge. He said the finest job that the Federal Government has to offer is the district judgeship.

The clerk of the district court, Howard Ziel, was also my clerk; so there was no new relationship there. The District Court and Bankruptcy Court were one court. And I had a wonderful relationship with them. At first, court was held only in Grand Rapids. Lansing was added in 1954, and Kalamazoo in 1955. When Dave Nims was appointed in 1955, he took the Kalamazoo and Lansing cases and I would take the Grand Rapids calendar. When he was on vacation, I would handle all the cases, and vice versa.

Question: What were the Bankruptcy Court facilities at that time?

There almost weren't any. In 1947, they gave us the storage rooms on the fourth floor of the old Federal Building for our offices and courtroom. We had a main office where the public would file cases, a clerk's office, and one judge's office. When Judge Nims joined us, there was no office for him; so they cleaned out another small room which had no windows under the eaves. We attempted to have air-conditioning installed, but they told us we didn't have enough air circulation to accommodate it. You can image how hot it got up there in the summer months. The courtroom had a huge post right in the middle of it, and when it was time to hold court, I would have to ask the court reporter if anyone was present, because I could not see around the post. Every time it rained we had to put some pots down to catch the leaks, and it was a distressing situation. And they seemed to think they couldn't do anything. I knew what to do about it--all they had to do was to get up there with some hot tar. But they never did. In the courtroom, we had a table and chairs for the plaintiff and the defendant, so forth. They were just "pickup" facilities until I invested my own money and had prepared a nice table and chairs for counsel, and one for the reporter too. Our library consisted of only one set of books--Collier on Bankruptcy, and then later Remington on Bankruptcy (now Lawyers Co-op). I had no personal secretary, but had the clerks in the front office do my typing, etc. The reporter we had was Wallace Webster. When I would get through a motion day and needed to prepare an opinion, I would dictate the whole thing to Webster. That man's work would come back on my desk in a couple of days and you could almost hear me breathe in the opinion because it was so accurate. I conducted all my own first meetings of creditors, did the final auditing, and closed my files. We did not have calendar clerks, audit clerks, or law clerks to help us.

I made all the decisions of every kind and there was a 10-day period when creditors could object to orders and "review" them. They didn't say "appeal." And if the judge upheld me, then we could go to the Circuit Court of Appeals which we did once or twice.

Question: How and what were you paid as a referee?

While I was a referee, I was paid under the folio order--by how many one hundred-word orders I signed. And I had to keep a book on that. After we moved to the old Federal Building, one of my responsibilities was handling the court budget. There were several occasions when, at the end of the year, I had money left over. I returned the money to Washington and they didn't know what to do about it. They wanted me to buy a huge computing machine, and I told them all I really needed was a simple adding machine.

Question: What was the effect of the depression upon the economy and the Bankruptcy Court?

You never saw an economy go into such shambles. Nobody had any money; nobody wanted to buy anything. Everybody had a warehouse full of wonderfully fine stuff; nobody wanted it. An illustration--Berkey & Gay of Grand Rapids made the finest dining room furniture in the world for years. And when the depression came, they filed for bankruptcy and asked me for authority to give receivers certificates to raise money. When I asked them what they were going to do with the money, they said they were going to manufacture more furniture. I said, "My friend, you've got furniture running out of your eyes now and nobody wants to buy it." I would not give them authority. We had a hearing on Berkey & Gay as to whether or not we would close it and liquidate it and I ordered they be liquidated. And then we had an auction sale and that beautiful dining room furniture just went for next to nothing--the people didn't have any money. People were trying to find a way out of this thing to survive, but there wasn't any way out because the buyers weren't there. The depression overloaded the Bankruptcy Court's workload immediately. The amount of cases during the depression doubled, but I had to let some of my staff go because there was not enough money. I used to cart the files home nights to work on cases that "went to briefs."

Question: Could you tell us about a few of your memorable cases?

Ivory soap says it is 99 44/100ths percent pure. And these three cases have to

do with the balance of the so-called "not so pure."

The first case involves a successful butcher on the south end of Grand Rapids. Ed Benson was attorney for the trustee. Upon close examination of the bankrupt's (under the old Bankruptcy Act, a "debtor" was denominated a "bankrupt") assets, the trustee discovered four equal deposits in Old Kent Bank under the butcher's four sons' names. I might add that the boys didn't know that they had the accounts. I issued a show cause, the bank turned over the money, and the creditors received payment on their claims.

The second case involved a woman attorney in town whose tenacity is one of her main characteristics. She filed a bankruptcy petition on behalf of a woman in Grand Rapids who had normal exemptions--homestead, etc. I noticed the statement of affairs showed a place of business in the Canadian Soo. I demanded a deed to the Canadian property; this was refused. A show cause on turnover was issued and the U.S. Marshall was to put the bankrupt in jail when she came to Grand Rapids because she would not turn the deed over to the court. Just before Christmas that year, Judge Starr called me and stated that he did not want to put the bankrupt in jail over Christmas and that he would jail her after Christmas. And I said to him, "Well, Judge, of course, this is something that is kind of a punishment. You can wipe it out if you want to." He said, "I don't want to do that. I will put her in after Christmas." After the bankrupt received the notice, she turned over the property and the jail term was not necessary.

The third case was probably one of my most interesting. It involved a sausage maker on Stocking Avenue whose sole product was kielbasa sausage. All of a sudden this man filed for liquidation in bankruptcy. There was no apparent reason for his doing so. His only assets consisted of butcher equipment. A final meeting was held and a reasonable dividend to creditors was paid. About a year and a half later, Sigmund Zamorowski, who was the attorney in the first case, called and asked to see me. During our conversation he disclosed that the former bankrupt sausage maker had a falling out with a good friend, with whom the bankrupt had exchanged confidences. In his anger, the friend betrayed the debtor and told Mr. Zamorowski that the bankrupt had hidden assets under a cement floor in the cellar of his old business establishment. The Trustee, Frank Dean, discovered some relatively new cement in a small area, tapped it with a hammer and discovered several two-quart mason jars stuffed with a large amount of currency. I reopened the case, reappointed the trustee whoever he was, and reappointed Zamorowski. After we had counted the money--and there was a lot of money--they filed a first and final report on the reopened case and I allowed the trustee a generous finder's fee and Zamorowski a generous creation of estate fee which I could do of course. I called a final meeting on the reopened estate, and when the smoke all cleared away, I paid all the creditors who had not been paid in full in the first estate in full; and since there was money left over, I had no alternative except to turn it over to the deceitful bankrupt.

Lastly, there is the "fish story." I won't recount it here because it has been told many times before. [Editor's note: See Federal Bar Association Bankruptcy Newsletter, January, 1989, for Harold Sawyer's retelling of the "fish story" in "Bankruptcy Practice in the 'Olden Days'"].

Question: Are there any particular bankruptcy attorneys that you especially respected?

The best bankruptcy trustee and attorney in Lansing was C. LaVerne Roberts, a man who was completely blind. And I don't know who coached him, but he would stand right there and he would make just as plain a presentation as anyone could make. And I loved him.

Question: What do you do with your spare time?

I go up to my cottage in Newaygo almost every weekend to swim and relax. I enjoy the home repair work involved with the cottage. I just treat it as a retreat where I can get rid of the annoyances and pressures of telephone and people coming in the door here at the office. [Editor's note: Judge Woolridge has served in an "of counsel" capacity for many years at Varnum, Riddering, Schmidt & Howlett, and one of its predecessor firms.]

Question: What advice do you have for current judges and bankruptcy practitioners?

First of all, when I was a referee, I would send the schedules back to the attorney and tell the attorney I was not about to spend my time on plans that would not work. I am quite sure the current judges feel the same way. My advice to bankruptcy practitioners would be to suggest an attorney take the time to completely assess a debtor's situation to determine if he is able to viably reorganize under a Chapter 11, 12, or 13 plan. Many reorganization cases are not viable and should probably be in liquidation. And when the attorney gets done adding up all of the debtor's expenses, is there any money left for him to pay creditors? If there is not, they should not file for a reorganization proceeding.

My advice to current judges is: Make plain ordinary decisions not only based upon the statute but also on the basis of common sense.

NOTICE TO UNITED STATES BANKRUPTCY COURT, PRACTITIONERS, AND OTHER INTERESTED PARTIES

The United States Trustee for Region IX (Michigan and Ohio), pursuant to the "Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986," assumed responsibility on Wednesday, April 5, 1989, for all bankruptcy cases filed in the region's judicial districts before November 26, 1986, under Chapters 7, 11, 12, and 13 of Title 11 of the United States Bankruptcy Code.

Accordingly, as of April 5, 1989, the United States Trustee is to be furnished in such cases with such notices and pleadings as provided for in Bankruptcy Rule X-1008. The address of the Office of the United States Trustee in the Western District of Michigan for this purpose is:

Office of the United States Trustee
190 Monroe, N.W., Suite 200
Grand Rapids, Michigan 49503
Telephone: (616) 456-2002

Conrad J. Morgenstern
United States Trustee
Michigan/Ohio Region IX

STEERING COMMITTEE MEETING MINUTES

A meeting was held on April 21, 1989, at noon at the Peninsular Club. The following committee members were present: Brett Rodgers, Robert Sawdey, Larry Ver Merris, Jeffrey Hughes, Ted Baehler, Perry Pastula, James Engbers, and William Barrett.

The following matters were discussed:

1. Retired Bankruptcy Judges' Portraits. Bob Sawdey and Jim Engbers formed a committee to organize a hanging ceremony for the judges' portraits. This committee will work with Linda Lane to place name plates on the picture frames. It was suggested that this ceremony be conducted along with the August seminar.

2. August Seminar Update. Jeff Hughes will chair the education program and Colleen Olson will handle the hotel accommodations, events, registration, and general administration of the seminar. It was proposed to have early registration Thursday night (August 24); Friday, August 25, have four workshop groups, 9 a.m. to noon; Friday afternoon, recreational events; Friday night, annual cocktail hour and banquet; Saturday, 9 a.m. to noon four workshop groups. Saturday afternoon and rest of weekend is yours!

Educational topics for the Seminar will include: Effects of Timbers case, Chapter 13, professional fees in bankruptcy, Section 363 sales, tax liens, environmental considerations, bankruptcy rules, rules of evidence and trial tactics in bankruptcy, and highlights of Sixth Circuit and District Court cases. Your input is still needed and should be directed to Jeff Hughes.

3. Bankruptcy Appellate Panel Survey. Perry Pastula reported on the Bankruptcy Appellate Panel project in Tom Schouten's absence. Apparently, Judge Hillman never performed a survey regarding the merits of implementing a Bankruptcy Appellate Panel for the 6th Circuit. Tom Schouten and Jim Engbers will go forward with their survey.

4. Lansing Filing Window. This matter was tabled. Steve Rayman may join forces with Joe Mansfield in requesting the establishment of a filing window in Kalamazoo.

5. Local Bankruptcy Rules. The Bankruptcy Section's Local Rules Committee has delivered its comments regarding the proposed local rules and attorney fee guidelines to the bankruptcy judges for their review.

6. Public Sale of Newsletter. Regarding sales of the Newsletter to credit institutions, it has been determined that the Federal Bar Association can generate up to $1,000 in unrelated income after expenses. The Executive Committee for the Federal Bar Association still needs to know if there is sufficient interest by credit institutions in purchasing the Newsletter and how the recordkeeping will be handled. Brett Rodgers will attempt to satisfy the Executive Committee's concerns at its June 6, 1989, meeting.

7. Next Meeting. The next Steering Committee Meeting will be held at noon on Friday, May 19, 1989, at the Peninsular Club in Grand Rapids. General members are welcome and encouraged to attend. If attending, please inform Brett Rodgers so he can make proper reservations.

RECENT BANKRUPTCY DECISIONS

The following are summaries of recent decisions rendered by the Sixth Circuit Court of Appeals and federal district 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 Fulghum Construction Corp., Case No. 87-5532 (6th Cir. April 14, 1988). This decision is the end result of the Sixth Circuit's earlier opinion bearing the same title and reported at 706 F.2d 171 (6th Cir.), cert denied, 436 U.S. 935 (1983). This earlier decision held that the subsequent value defense to preference claims contained in 11 U.S.C. § 547(c)(4) did not incorporate the old "net result" rule of section 60 of the Bankruptcy Act of 1898. In this action, the trustee commenced an adversary proceeding against persons in control of the debtor to recover alleged preferences, viz. repayments of short-term loans made by the control persons to the debtor. On remand from the Sixth Circuit's earlier decision, the bankruptcy court entered judgment against defendants for $197,432, which was thereafter affirmed by the district court. The district court's opinion is reported as Waldschmidt v. Ranier, 78 Bankr. 146 (M.D. Tenn. 1987). On appeal, the Sixth Circuit reversed the judgment below and remanded the case to the district court for the entry of a judgment for defendants. Upon a review of the record, the Sixth Circuit held that the advances and repayments were transactions made in the ordinary course of business and therefore immune from a preference attack under 11 U.S.C. § 547(c)(2). These short-term advances were "not unusual but mandated by [the debtor's] business, i.e., by the slow payment practices of the pipeline companies with which it had contracted." The Sixth Circuit noted that these recurring loan and repayment transactions were "a paraligmatic example of the type of transaction promoted by section 547(c). The primary purpose of that section was to encourage 'short term credit dealings with troubled debtors in order to forestall bankruptcy.'"

In re Brown Family Farms, Inc., Case No. 88-3349 (6th Cir. April 6,1989).

The Sixth Circuit affirmed the decision of the district court dismissing an appeal for failure to contest effectively the only truly appealable issue involved in the action. Citing to Bankruptcy Rule 8010, which governs the form and length of bankruptcy appellate briefs, the Sixth Circuit declared that appellants "have not adequately argued their 'contentions ... with respect to the issues presented' and included 'the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.'" Consequently, the Sixth Circuit held that the district court did not abuse its discretion in dismissing the appeal.

United States v. Safeco Ins. Co. of America, Case No. 88-5203 (6th Cir. March 16, 1989). In this case, the Sixth Circuit held that a former standing Chapter 13 trustee possessed an interest in a fund consisting of collections of his statutory fees sufficient to permit the attachment of a federal tax lien to those moneys. The Sixth Circuit declared that federal, not state, law determined whether the federal tax lien could attach to the fund, citing to section 6321 of the Internal Revenue Code and cases decided thereunder. Under federal law, a federal tax lien "attaches to a taxpayer's interest in property regardless of whether that interest is less than full ownership or is only one among several claims of ownership." Even though the trustee here could not have disbursed any of these moneys to himself without the bankruptcy court's prior approval, his interest in the fund was sufficient to permit the attachment of the federal tax lien.

United States v. Overmyer, 867 F.2d 937 (6th Cir. 1989), and United States v. Connery, 867 F.2d 929 (6th Cir. 1989). In these two related cases, the principal of a bankruptcy company and his attorney were adjudged guilty by jury verdicts of filing a false proof of claim, a crime under 18 U.S.C. § 152. The district judge, however, granted the defendants' motions for acquittal. On separate appeals by the government, the Sixth Circuit reversed the acquittal judgments on the ground that the issue of guilt or innocence was for the jury alone. Reviewing the record below, the Sixth Circuit concluded that the government presented sufficient evidence at trial to support the jury verdicts.

In re Jutila, Case No. G 88-852 (W.D. Mich. April 25, 1989). In this appeal from an order confirming a Chapter 13 plan, District Judge Richard Enslen held that the bankruptcy judge properly required the debtor to amend her plan to provide that all payments to creditors be disbursed by the Chapter 13 trustee. The debtor's original plan provided that her employer would make direct payments to the holder of the mortgage lien on the debtor's principal residence. Judge Enslen declared that, while a debtor may be permitted under some circumstances to make plan payments to creditors "outside" the plan, the bankruptcy court here did not abuse its discretion in denying the debtor's request to permit her employer to make these payments directly to the mortgagee.

In re Hazelton, 96 Bankr. 111 (E.D. Mich. 1988). The decision of the bankruptcy court denying the motion for relief from the stay filed by the Farmers Home Administration is reported at 85 Bankr. 400. The Farmers Home Administration ("FmHA") appealed to the district court from this order entered in the debtor's Chapter 12 case and the debtor thereafter filed a cross-appeal. However, the debtor failed to file a brief in opposition to the appeal or in support of its cross-appeal. Consequently, District Judge Horace Gilmore entered an order reversing the bankruptcy court's order denying the FmHA's motion and remanded the matter to the bankruptcy court with directions to enter an order consistent with his order.

Hazel v. Internal Revenue Service, 95 Bankr. 481 (E.D. Mich. 1988). In this case, District Judge Patrick Duggan affirmed the order of the bankruptcy Court denying confirmation of the debtor's Chapter 13 plan on "good faith" grounds. The language of this decision is similar to that employed by Judge Duggan in his earlier decision entitled Schaffner v. Internal Revenue Service, reported at 95 Bankr. 62 (E.D. Mich. 1988) and discussed in last month's Newsletter.

Reef Petroleum Corp. v. United States, Adversary Proceeding No. 86-0665 (Bankr. W.D. Mich. April 24, 1989). This decision involves a series of complex facts arising from the Reef Petroleum bankruptcy case. When the Internal Revenue Service discovered that it had mistakenly paid the debtor twice for the same refund, the IRS set off the amount of the overpayment against other refunds due the debtor. In 1986, after this setoff was accomplished, the creditors committee and the Chapter 11 debtor commenced this adversary proceeding against the IRS to recover this setoff. The debtor's reorganization plan was confirmed in 1985 but was never completed. This Chapter 11 case was thereafter converted to one under Chapter 7 in 1988.

In his opinion which granted the IRS' motion for summary judgment in this adversary proceeding, Bankruptcy Judge David Nims first addressed the plaintiffs' argument that the terms of the confirmed Chapter 11 plan bound the IRS and prohibited the offset. The plan granted a lien on all of the debtor's assets to the creditors committee, as agent for the unsecured creditor class, to secure the installment payment obligations of the debtor owing to that class under the plan. Judge Nims first engaged in a long discussion on the finality of confirmation orders and the effect of a subsequent conversion of the case on those orders. Judge Nims concluded that the plan must be read in a manner consistent with the distribution scheme of Chapter 7. Therefore, since the plan was not completed, the priority granted by statute to tax claims over unsecured claims cannot be nullified by the terms of the plan. Judge Nims next dismissed the plaintiffs' argument that the IRS' setoff violated the automatic stay. The debt offset by the IRS was a post-petition debt not subject to the stay. Finally, Judge Nims held that, even if the liens granted to the committee in the plan were to be sustained, he would subordinate those liens to the tax claim under sections 105 and 510(c) of the Bankruptcy Code. Judge Nims remarked that "it has become abundantly clear that the plaintiffs have no right to this money, but merely claim 'finders keepers.'"

EDITOR'S NOTEBOOK

The Local Rules Subcommittee of the Steering Committee of the Federal Bar Association's Bankruptcy Section has prepared and submitted to the four bankruptcy judges the Subcommittee's comments on the draft local bankruptcy rules and fee guidelines. The judges will now review these comments and may thereafter make changes to these drafts before submitting them for public comment.

On March 27, 1989, Mark Van Allsburg, the former Assistant United States Trustee and now Clerk of the United States Bankruptcy Court for the Western District of Michigan, transmitted to all private trustees a copy of a letter addressed to the Deputy Assistant Attorney General for the Department of Justice's Tax Division sent by an Associate Chief Counsel of the Litigation Section of the Department. This letter addresses the tax ramifications of abandonments and sales of property by Chapter 7 trustees. In his memorandum, Mark summarized the "basic proposition" of the letter as follows:

> An abandonment does not create any tax liability for an estate, but a sale may--even if the trustee then abandons the proceeds of the sale.
>
> The practical implication of this ruling is just as clear. If you have the choice between selling and abandoning property, you had better consider the tax implications of doing so. A trustee who sells property which is fully secured runs the risk that the estate will be assessed taxes because the property has a lower basis than the sale price and may create unintended tax liability for the estate. You should not sell any property unless you consider the tax consequences of doing so.

Finally, the number of last month's Newsletter was incorrectly identified on page 1 as "No. 7" when it should have been labeled as "No. 8."

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, 1989, to April 30, 1989. These filings are compared to those made during that same period 1 year ago.

	1/1/89-4/30/89	1/1/88-4/30/88
Chapter 7	1,110	985
Chapter 11	42	37
Chapter 12	4	11
Chapter 13	469	412