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TIME DEADLINES IN BANKRUPTCY[1]

By Patrick E. Mears[2]

The following is a summary in chart form of important filing deadlines contained in the Bankruptcy Rules. The term "Bar Date" as used herein refers to a date to be fixed by the bankruptcy court by which the act or event must be performed.

Act or Event	Time Deadline
1. File proof of unsecured claim in Chapter 7, 12, and 13 cases.	Not later than 90 days after first date set for §341 meeting with exceptions set forth in Bankruptcy Rule 3002(c)(1)-(6).
2. File proof of claim in Chapter 11 cases.	Bar Date. See Bankruptcy Rule 3003(c).
3. File complaint objecting to debtor's discharge in Chapter 7 cases.	Not later than 60 days after the date first set for §341 meeting or Bar Date. See Bankruptcy Rule 4004.
4. File complaint objecting to debtor's discharge in Chapter 11 cases.	Not later than first date set for confirmation hearing or Bar Date. See Bankruptcy Rule 4004.
5. File complaint seeking determination of dischargeability of debt under 11 U.S.C. §523(c) in Chapter 7 and 11 cases.	Not later than 60 days after the first date set for §341 meeting or Bar Date. See Bankruptcy Rule 4007.

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6.	File complaint seeking determination of dischargeability of debt under 11 U.S.C. §523(c) in Chapter 13 cases.	Bar Date. See Bankruptcy Rule 4007.
7.	File objection to debtor's exemptions.	Not later than 30 days after the conclusion of §341 meeting or Bar Date. See Bankruptcy Rule 4003(b).
8.	File statements and schedules in voluntary bankruptcy case.	Not later than 15 days after petition is filed or Bar Date. See Bankruptcy Rule 1007(c).
9.	File statements and schedules in involuntary bankruptcy case.	By no later than 15 days after entry of order for relief or Bar Date. See Bankruptcy Rule 1007(c).
10.	File list of holders of twenty largest unsecured claims in voluntary Chapter 11 case.	At time petition is filed. See Bankruptcy Rules 1007(d), 9006(b)(2).
11.	File list of holders of twenty largest unsecured claims in involuntary Chapter 11 case.	By no later than 2 days after order for relief is entered. See Bankruptcy Rules 1007(d), 9006(b)(2).
12.	File response to involuntary petition.	By no later than 20 days after service of summons or Bar Date. See Bankruptcy Rule 1011(b).
13.	File election under 11 U.S.C. §1111(b).	By no later than the conclusion of the hearing on the disclosure statement or Bar Date. See Bankruptcy Rule 3014.
14.	File objection to disclosure statement in Chapter 11 case.	At any time prior to approval of disclosure statement or Bar Date. See Bankruptcy Rule 3017(a).
15.	File ballot accepting or rejecting Chapter 11 plan.	Bar Date. See Bankruptcy Rules 3017(c), 3018.
16.	File objections to confirmation of Chapter 11 plan.	Bar Date. See Bankruptcy Rule 3020(b)(1).
17.	File objections to agreements relating to relief from automatic stay, adequate protection, use of cash collateral, and obtaining post-petition credit.	Not later than 15 days after mailing of notice of motion requesting approval of agreement or Bar Date. See Bankruptcy Rule 4001(d)(2).
18.	File objection to proposed use, sale, or lease of property.	Not later than 5 days prior to date set for proposed action or Bar Date. See Bankruptcy Rule 6004(b) and (c).
19.	File objection to proposed sale of nonexempt property having gross value of less than $2,500.	Not later than 15 days after the notice of proposed sale is mailed or Bar Date. See Bankruptcy Rule 6004(d).

.	File objection to proposed abandonment of estate property.	Not later than 15 days after the notice of proposed abandonment is mailed or Bar Date. See Bankruptcy Rule 6007(a).
21.	File answer to complaint in adversary proceeding.	By no later than 30 days after summons is issued or Bar Date. See Bankruptcy Rule 7012(a).
22.	File answer to cross-claim in adversary proceeding.	By no later than 20 days after service of cross-claim. See Bankruptcy Rule 7012(a).
23.	File reply to counterclaim in adversary proceeding.	By no later than 20 days after service of counterclaim. See Bankruptcy Rule 7012(a).
24.	File notice of appeal from bankruptcy court final order or judgment.	By no later than 10 days after judgment or order is entered on docket unless extended. See Bankruptcy Rule 8002.
25.	File motion for leave to appeal interlocutory order of bankruptcy court.	By no later than 10 days after order is entered on docket or Bar Date. See Bankruptcy Rule 8003(c).
26.	File designation of items in record on appeal and statement of issues on appeal.	By no later than 10 days after notice of appeal is filed or after order granting leave to appeal is entered. See Bankruptcy Rule 8006.
27.	File designation of additional items in record on appeal.	By no later than 7 days after appellant files designation of items. See Bankruptcy Rule 8006(a).
28.	File appellant's brief on appeal.	By no later than 15 days after entry of appeal on docket of district court or Bar Date. See Bankruptcy Rule 8009(a)(1).
29.	File appellee's brief on appeal.	By no later than 15 days after service of appellant's brief or Bar Date. See Bankruptcy Rule 8009(a)(2).
30.	File appellant's reply brief on appeal.	By no later than 10 days after service of appellee's brief or Bar Date. See Bankruptcy Rule 8009(a)(3).
31.	File motion for rehearing of judgment entered on appeal.	Not later than 10 days after entry of judgment by district court or Bar Date. See Bankruptcy Rule 8015.
32.	Service of motions and notices of hearing.	Not later than 5 days before hearing date or Bar Date. See Bankruptcy Rule 9006(d).

33.	Filing of petition for removal of civil action pending at time bankruptcy case is commenced.	See periods specified in Bankrupt Rule 9027(a)(2).
34.	Filing of petition for removal of civil action initiated after bankruptcy case is commenced.	See periods specified in Bankruptcy Rule 9027(a)(3).
35.	Filing objections to proposed findings of fact and conclusions of law in noncore proceedings.	Not later than 10 days after service of proposed findings or Bar Date. See Bankruptcy Rule 9033(b) and (c).
36.	Filing responses to objection to proposed findings in noncore proceedings.	Not later than 10 days after service of objection. See Bankruptcy Rule 9033(b).

RECENT BANKRUPTCY DECISIONS:

The following are summaries of recent decisions rendered by the 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 assistance of Larry A. Ver Merris.

Comerica Bank-Hackley, N.A. v. VanTimmeren, Case No. G 88-860 (W.D. Mich. August 18, 1989). In this case, the plaintiff, Comerica, commenced an adversary proceeding against two brothers and their wives for a determination that the debts owed by them to Comerica arising from a check-kiting scheme were nondischargeable because of fraud under 11 U.S.C. § 523(a)(2)(A). After a one-day bench trial, Bankruptcy Judge David Nims entered judgments of nondischargeability in the sum of $1,637,202 against the husbands but entered judgments of no cause of action concerning their wives. Comerica thereafter appealed to the district court from the "no cause" judgments and, on appeal, they were affirmed by District Judge Benjamin F. Gibson.

In his decision, Judge Gibson first stated that section 523(a)(2)(A) requires a finding that the debtor actively participate in the fraud either through an intentional act or one done with "gross recklessness." In this context, gross recklessness "occurs when the debtor makes a materially false representation under circumstances where he has a definite reason to know of the falsehood." Construing recent appellate decisions under section 523(a)(2)(A), Judge Gibson declared that, in order to obtain a judgment of nondischargeability, "it is unnecessary for the creditor to present evidence of direct knowledge of the falsehood if it is able to present clear evidence of a definite reason to know of the falsehood."

In this case, Judge Gibson found that Comerica failed to provide by clear and convincing evidence that the wives were "grossly reckless with respect to the check-kiting activity." The only evidence presented at trial on this issue was the testimony of the wives themselves which the bankruptcy

ourt found both exculpatory and credible.

Parker v. Michigan National Bank, Case No. K 88-309 (W.D. Mich. August 3, 1989). This is an appeal from a decision of Bankruptcy Judge Laurence E. Howard discussed in the December, 1988 issue of the Newsletter and reported at 90 Bankr. 857. On appeal, District Judge Gibson affirmed the decision below refusing under FRCP 60(b) to vacate a replacement lien granted to Michigan National Bank on the debtors' 1987 crops. In his decision, Judge Gibson declared that he was required to determine "as an independent question of law whether the applicable federal regulation, 7 C.F.R. § 770.4(b), prohibits the Bank's security interest in the ASCS payments." Judge Gibson reviewed the applicable federal statutes and regulations and concluded that they did not prohibit the granting of security interests in ASCS payments. According to Judge Gibson,

> . . . the federal regulations precluding lien claims are to protect the federal agency from conflicting creditors of the debtors and to aid administrative convenience within the federal agencies; the regulations were not adopted in order to eradicate the property rights of secured creditors under the bankruptcy code and state securities law. See In re Harvie, 84 Bankr. at 201. The rules only preempt state law to the extent necessary to achieve the goals of the federal regulations, but do not completely deny giving effect to valid liens under state law. Thus, once the proceeds are distributed to the debtors, they are capable of being subjected to a valid security interest under state law. Similarly, the security interest in the replacement lien in the debtors' crops therefore also is not precluded by the federal regulations.

Cole v. Raitzen, Case No. G 89-30220 (W.D. Mich. August 3, 1989). This appeal, decided by District Judge Gibson, arises from the bankruptcy case of In re Tucker Freight Lines, Inc. (Bankruptcy Case No. HK 83-02391). Here, the debtor operated a trucking company headquartered in South Bend, Indiana. In the face of financial difficulties, Tucker instituted in 1981 a "voluntary contribution" plan under which employees could contribute 6% of their gross earnings to Tucker. In 1982, Tucker adopted a voluntary employee "deferred wage" plan under which Tucker deducted 15% of the gross earnings of participating employees. When Tucker achieved a certain level of profitability, these deducted amounts would be repaid to the employees. In 1983, Tucker deducted additional sums from employees' paychecks without their permission and also instituted a "wage loan" plan. Under this plan, Tucker deducted sums from the paychecks of participating employees with the promise of future repayment. On September 15, 1983, the stock of Tucker was sold to Central Transport, Inc. and, the next day, Tucker filed a voluntary Chapter 11 petition in the Bankruptcy Court for the Western District of Michigan. This Chapter 11 case was converted to Chapter 7 in September, 1984.

In March, 1984, the plaintiffs, Tucker employees, commenced a class action on behalf of the class of similarly situated employees in the United States District Court for the Northern District of Indiana against the former owners of Tucker, its new owner, Central Transport, Inc., and other related entities. The plaintiffs alleged in their complaint that the deferred wage and wage loan plans were fraudulent, violated securities laws and transgressed RICO. Thereafter, plaintiffs filed a class proof of claim in Tucker's bankruptcy case based upon the same claims asserted in the class action. That action was subsequently transferred to the bankruptcy court in this district and assigned to Bankruptcy Judge Laurence Howard. Thereafter, Tucker's bankruptcy trustee was added as a defen-

dant in the class action.

On February 6, 1989, the bankruptcy court entered an order approving a settlement of this class action after a hearing upon notice to all interested parties. Pursuant to this settlement agreement, the amount withheld from Tucker employees were classified as wage priority claims under 11 U.S.C. § 507(a)(3) "as if they were wages or salary without any determination by the Court or by any party whether those amounts are, in fact, securities or wages to the exclusion of any other classification." The claims of each employee would be treated as wage priority claims if withheld within 90 days prior to bankruptcy and only to the extent of $2,000 per employee. Any excess amounts were classified as unsecured claims.

The defendants in the class action appealed from the entry of the order approving the settlement agreement. In his opinion affirming the order approving this settlement, Judge Gibson stated at the outset that a bankruptcy court's decision to approve or disapprove a settlement agreement "lies within the discretion of the court and is accordingly reviewed under an abuse of discretion standard. [Citation omitted]. An abuse of discretion means a clear error of judgment in light of all relevant factors."

Judge Gibson first held that the bankruptcy court did not abuse its discretion in not making a finding that the sums withheld by Tucker from its employees' paychecks were to be classified as wages. Next, Judge Gibson held that the bankruptcy court properly found that the settlement was fair and equitable and in the best interests of the bankruptcy estate. Judge Gibson noted that the settlement was consistent with the provisions of the Bankruptcy Code and benefited the estate by saving it litigation costs.

In re MFI, Inc., Case No. HK 87-1401 (Bankr. W.D. Mich. Sept. 14, 1989). The debtor commenced its Chapter 11 case in 1987 by filing a voluntary petition. In its schedules, the debtor made no mention of any lender liability claims it held against its primary secured creditor, Midwest Commerce Bank. Similarly, the debtor failed to mention any such claims in its disclosure statement and Chapter 11 plan which was later confirmed by bankruptcy Judge Laurence Howard. After confirmation, the debtor filed with the bankruptcy court a motion to supervise a lender liability action that it intended to commence against the bank. Midwest Commerce Bank opposed the motion on equitable estoppel, res judicata, and judicial estoppel grounds. After the hearing on the motion, the debtor's case was converted to Chapter 7 because the debtor was unable to abide by the terms of the confirmed plan.

Judge Howard in his decision denied the motion on the ground that the Chapter 7 trustee, and not the debtor, was now the proper party to commence a lender liability action against the bank. This denial was "without prejudice to the Chapter 7 trustee to bring a similar action."

In re Underwood, Case No. 88-02988 (Bankr. E.D. Mich. 1989). In this decision, Bankruptcy Judge Ray Reynolds Graves permitted a Chapter 13 debtor to avoid a judicial lien on exempt property under 11 U.S.C. § 522(f)(1). In his decision, Judge Graves declined to follow former Bankruptcy Judge Stanley Bernstein's decision to the contrary in In re Berry, 30 Bankr. 36 (Bankr. E.D. Mich. 1983). Judge Graves stated that his decision followed the majority view as expressed in other Michigan decisions such as In re Slykerman, 29 Bankr. 82 (Bankr. E.D. Mich. 1983)(Brody, B.J.); In re Fisk, 36 Bankr. 924 (Bankr. W.D. Mich. 1984) (Howard, B.J.); and In re Lincoln, 26 Bankr. 14 (Bankr. W.D. Mich. 1982)(Nims, B.J.).

In re Rockefeller, 100 Bankr. 874 (Bankr. E.D. Mich. 1989). The debtors, husband and wife, proposed a Chapter 12 plan providing for payment of $9,000 to their unsecured creditors. The Trustee objected to confirmation of the plan on the ground

that it failed to satisfy the "best interest of creditors" test contained in 11 U.S.C. § 1225(a)(4). At the confirmation hearing held before Bankruptcy Judge Arthur Spector, it was established that the husband held an annuity with a present value of $415,000, which he received as a settlement of a personal injury claim. The husband had lost a leg in a farming accident in 1985 when he was 42 years old and the accident left him permanently disabled. In their schedules, the debtors claimed that the entire annuity was exempt under 11 U.S.C. §§ 522(d)(1)(D) and 522(d)(11)(E). In his opinion denying confirmation of the plan, Judge Spector concluded upon reviewing the evidence that the non-exempt value of the annuity was $54,333.34 and the total value of non-exempt assets was $71,035.94. Since the plan proposed to distribute only a fraction of this amount to unsecured creditors, Judge Spector denied confirmation under 11 U.S.C. § 1225(a)(4).

FROM THE BANKRUPTCY COURT:

REJECTION OF PLEADINGS

By Mark Van Allsburg

The clerk's office is now rejecting pleadings based on a proposed court rule which will soon be published for comment. Copies of this proposed rule are available by calling the clerk's office at 456-2693.

The most common reasons for returning pleadings and other documents are the following:

1. The pleadings are not originally signed - for some reason, attorneys often forget to sign petitions or neglect to have their clients sign the petitions originally. It is very common to receive schedules and statement of affairs which are not originally signed.

2. Insufficient copies - we frequently receive insufficient copies of a pleading or document. In most cases, we will call the attorney to ask permission to make the copies and bill him/her for the additional copies.

3. Failure to provide necessary information - the bankruptcy court rules require specific information to be included in the petition, statement of affairs and schedules. If information is omitted or questions not answered, we may return the documents for completion.

4. Failure to pay a fee - we often receive new cases with unsigned checks or with no check at all. Personal checks from the debtors or debtors-in-possession will not be accepted. Furthermore, a $20.00 fee for amending the list of creditors is required in most cases.

5. Matrix in old format - because of the computerization of the Bankruptcy Court, we must have the matrix in a form which can be scanned into the computer system. Detailed instruction sheets are available at the clerk's office.

6. Closed cases - we receive many documents for filing in cases which are already closed. We will not accept adversary complaints, reaffirmation agreements or other documents in closed cases unless accompanied by a petition to reopen the case and the fee required by 28 U.S.C. §1930(b).

The decision of the clerk's office to reject a document for one of the reasons stated in the proposed court rule is subject to judicial review. However, this proceeding will require additional paperwork which will be totally unnecessary if the paperwork is sent in properly in the first instance.

FEE REQUIRED TO REOPEN BANKRUPTCY CASES

The clerk's office is frequently presented with petitions to reopen bankruptcy cases which have been closed. Practitioners who find it necessary to reopen a case should be aware that the clerk's office is expected to collect a fee for reopened cases in certain instances.

Section 1930 of Title 28 of the U.S. Code states that the Judicial Conference of the United States may prescribe fees under Title 11. The Judicial Conference has established a "Bankruptcy Court Fee Schedule" which contains the following provision:

> "Filing fees prescribed by 28 U.S.C. §1930(b) must be collected when a bankruptcy code case is reopened, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. If a bankruptcy code case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening."

It is the position of the clerk's office that the filing fee must be paid in every reopened case unless the judge waives the payment of the fee by order. Therefore, an attorney who files a petition to reopen a case should either pay the fee with the petition to reopen the case or should ask the court to waive the fee based on the exemption stated in the schedule. If the waiver is granted, a provision waiving the fee should be inserted in the order reopening the case. If no request is made in the petition to reopen the case or in a separate petition, we will ask the judge not to sign the order reopening the case until the fee is paid.

Practitioners should also be aware that the clerk's office will be returning attempted filings in closed cases (e.g., adversary complaints, reaffirmation agreements, amendments to schedules) unless the case is reopened. If an adversary filing fee or other fee is paid at the time of such filing, it may be difficult, if not impossible, to refund the fee even if we return the documents to you because the case is closed. When in doubt, check with the clerk's office to determine whether a bankruptcy case has been closed before filing such documents.

Mark Van Allsburg

EDITOR'S NOTEBOOK

From all reports the Bankruptcy Seminar held at Shanty Creek in Bellaire on August 25 and 26, 1989 was very well received. With over 100 persons in attendance we had more than one-third of our section members present. Kudos especially should be extended: to Jeff Hughes in coordinating the compilation of the educational material; to Brett Rodgers and Colleen Olson in making the accommodation arrangements; and to Wally and Susan Tuttle for the fantastic breakfast on Friday. It looks like this will become an annual event.

On Thursday, October 12, 1989, at 11:00 a.m. there will be a presentation ceremony of portraits of the former Bankruptcy Judges for the Western District of Michigan, Charles Benton Blair, Benn M. Corwin, Edward H. Benson, Chester C. Woolridge, and Marvin L. Heitman. The ceremony, to which members of the Bar are invited, will be held in the Courtroom of the Honorable Laurence E. Howard, Room 758, Gerald R. Ford Federal Building, 110 Michigan Street, N.W., Grand Rapids, Michigan.

Larry A. Ver Merris

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 through August 31, 1989. These filings are compared to those made during that same period 1 year ago.

	1/1/89-8/31/89	1/1/88-8/31/88
Chapter 7	2,210	1,871
Chapter 11	63	61
Chapter 12	9	25
Chapter 13	809	790

STEERING COMMITTEE MEETING MINUTES

A meeting was held on September 21, 1989, at noon at the Peninsular Club.

1. Discussion was had regarding the recently concluded Bankruptcy Seminar and comments received as to how it could be improved. A financial report was also submitted by Brett Rodgers, which showed the Seminar to finish "in the black", although all requests for reimbursement may not be in. Preliminary arrangements for next year's Seminar are already being made, with the following persons agreeing to help organize the following portions of the Seminar:

   a. Academics - Robert W. Sawdey, Ellen Ritterman, and Steven Carpenter.

   b. Facilities and monetary matters - Brett Rodgers.

   c. Social events - James Engbers and Thomas Schouten.

If you are willing to assist any of the above individuals with next year's Seminar, please contact Mr. Rodgers.

2. Tom Schouten indicated that the Bankruptcy Appellate Panel (BAP) is a dead issue in this Circuit.

3. The Bankruptcy Court is just about completed with the final draft of the local rules, a copy of which we hope to include in a future issue. There will be a public comment period of at least 30 days per Mark Van Allsburg, Clerk of the Court.

4. Brett Rodgers indicated that he is tentatively planning to put on a seminar in the Spring of next year on Debtors' rights in a Chapter 13. This would include a handout with suggested forms, plans, pleadings and other useful documents.

5. The next Steering Committee meeting will be held at the Peninsular Club on Tuesday, October 17, 1989, at noon.