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INSIDER GUARANTEES SINCE DEPRIZIO

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Despite all the fury, distress and scholarly commentary brought on by Deprizio[1] and its progeny[2], there has been a dearth of case law dealing with the precautionary measures being taken by lenders to protect themselves against Deprizio's draconian effect. The district courts in those federal circuits which have not yet faced the issue have created a great chasm: half following Deprizio, half refusing to.

Although the lower courts are divided, the circuit courts have all sided with Deprizio, and, unless the First Circuit holds differently on a case it heard in April, 1992[3], the likelihood is low that the United States Supreme Court will soon visit the issues raised in Deprizio. If it does address the issue, the Supreme Court may very well be asked to clear the air on other issues as well, such as whether an insider-guarantor must be a creditor on the specific antecedent debt in question or whether it will suffice that she is a general creditor of the debtor on collateral loans; whether the antecedent debt on which the payments were made must be owed to the insider/creditor or to the debtor[4]; and whether the focus of § 547(b)(5) should be on the effect of the payment to the insider-guarantor or on the effect upon the non-insider transferee[5]. To date, these issues have not been definitively resolved.

Possible Solutions.

In the absence of cases dealing with the permissible ways to avoid falling into Deprizio's perilous pit, a plethora of law review articles have been written proposing various "solutions" for lenders to consider in attempts to alleviate or at least guard against being caught by the one-year preference period and § 550(a)'s severe payback provision[6]. Most of those "solutions" encourage a lender to structure the loan guaranty or to manipulate the mechanics of the loan transaction, so that the trustee is unable to establish all five requirements of § 547(b), or so that the transaction meets one or more of the seven exceptions in § 547(c).

Waiver as a Possible Solution.

By far the most popular proposed "solution" is for lenders to require guarantors to waive any right of contribution, indemnification or subrogation against the debtor. Such waivers, it is argued, prevent the guarantor from being a "creditor" under § 101(10), and thus the requirement of § 547(b)(1) cannot be met. Other proposed elixirs include the requirement that payments be made in the ordinary course of business in order to meet the § 547(c)(2) exception, structuring the transaction so that the creditor releases collateral periodically in order to constitute new value under § 547(c)(1), or researching the creditworthiness of the insider-guarantor so that, in the

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event of a preferential recovery, the creditor can assure collection from the guarantor directly.

To date, there has only been one reported case dealing with the waiver of a guarantor's right of subrogation, indemnification and contribution. In Fastrans[7], a decision from the Bankruptcy Court for the Eastern District of Tennessee, Judge Stair refused to allow the trustee to recover payments made to a non-insider creditor of the debtor corporation. The loan was guaranteed by an insider. However, unlike the guarantees in Deprizio and its offspring, the guaranty in Fastrans contained a full waiver of any rights that the insider-guarantor may have had against the debtor. Judge Stair held that the trustee did not have standing to raise arguments that such waivers were void on public policy grounds, and, instead, permitted the creditor to rely on the waiver provision which precluded the guarantor from being a "creditor" of the debtor for purposes of § 547(b)(1). Whether the waiver "solution" will also be upheld in other courts remains to be seen.

As Fastrans and law review articles illustrate, such "solutions" also generate additional concerns both for lenders and for trustees. The most threatening concern, although it has not been adjudicated in any published decision, is the fraudulent conveyance provision of § 548[8]. It is maintained that if all § 547 preference attacks fail, trustees can and will turn to § 548 to direct the focus of the inquiry away from the mechanics of § 547 and toward the practical substance and effect of the guaranty in order to uncover true "preferences."[9] Although the trustee in Fastrans did not make any § 548 policy arguments, only time and specific case facts will determine whether courts will be willing to accept such arguments.

Other Problems with Deprizio's Holding.

Following Deprizio, commentators have also discussed other possible scenarios which could create huge consequences if the circuit court cases' holdings are taken to their furthest conclusions. The most oft-discussed fact pattern is the "junior lienholder" postulation, where a senior lien holder would be required to disgorge loan payments made to it by a debtor where the payments have the effect of reducing the exposure of insider guarantors, not on the senior loan, but on junior loans: any payments made to a fully or partially secured senior creditor means additional security for junior creditors, increasing the value of the junior creditor's secured claim and decreasing the guarantor's exposure on the remaining unsecured portion. The result is the same as if the senic creditor had procured the guaranty, only here, the senic creditor is an unwilling participant in the guarant scenario. Fortunately, or perhaps not, courts have not y had to face the challenge of ruling on such "pitfalls."

Congressional Relief in Sight?

To its credit, Congress has proposed amendmen both to § 547 and to § 550 to rectify the Deprizio conu drum. Under early versions of Senate Bill No. 1985, 547(c) was to contain an eighth exception which wou preclude a trustee from avoiding a transfer "on account goods or services sold and delivered to the debtor in ordinary course of business and [where] the transferee deemed to be an insider under section 101(31) sol because the transferee holds a guaranty of payment performance from another insider of the debtor." March, 1992, however, that proposal was nixed in fa of amending § 550. After several changes, the la version of § 550, proposed in June, 1992, provides t

> "The trustee may recover under subsec [550](a) a transfer avoided under section 54 from a first transferee or an immediate or me transferee of a first transferee only to the e that-
>
> (1) all the elements of section 547(t satisfied as to the first transferee; a
>
> (2) the exceptions in section 547(not protect the first transferee." (Er sis added.)

As of the date of this article, that version No. 1985 is still being considered. The proposed tions would require a trustee to establish all of 547(b) elements as to the creditor from whom repa is sought, thus alleviating the seeming harshn Deprizio. Although it is unlikely that any resoluti be reached prior to the outcome of the Novembe tions, a legislative solution is certainly foreseeabl

Conclusion.

For the past three years, the wide im Deprizio which was predicted by many has not er expected. Courts remain divided, of course, repercussions are not as abominable as anticipa now, lawyers and bankers are in a holding waiting for the next case to come down the pip

any luck, Congress will amend the Code to provide some certainty.

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1. Levit v. Ingersoll Rand Financial Corp., (In re V.N. Deprizio Construction Co.), 874 F.2d 1186 (7th Cir. 1989). In Deprizio, the Seventh Circuit held that a trustee in bankruptcy can recover avoidable payments made to non-insiders during the extended one-year preference period, instead of the 90-day preference period generally applicable to non-insiders, when those payments benefit insider creditors or guarantors. In doing so, the Seventh Circuit read § 550(a) literally.

2. Including the other federal circuits following Deprizio's holding: Ray v. City Bank & Trust Co., (In re C-L Cartage Co.), 899 F.2d 1490 (6th Cir. 1990) and Manufacturers Hanover Leasing Corp. v. Lowey (In re Robinson Bros. Drilling, Inc.), 892 F.2d 850 (10th Cir. 1989).

3. Travelers Ins. Co. v. Cambridge Meridian Group, Inc. (In re Erin Food Services, Inc.), No. 91-2175 (1st Cir., argued April 8, 1992).

4. See, In re T.B. Westex Foods, Inc., 950 F.2d 1187 (5th Cir. 1992).

5. See, In re C-L Cartage Co., supra.

6. See, Sarb, C-L Cartage and the Conventional Wisdom: A Word of Caution in the May, 1990 Bankruptcy Law Newsletter for a discussion of the problems with the proposed solutions.

7. In re Fastrans, Inc., 142 B.R. 197 (Bankr. E.D. Tenn. June 3, 1992).

8. See, Borowitz, Waiving Subrogation Rights and Conjuring Up Demons in Response to Deprizio, 45 Bus. Law. 2151 (1990).

9. Id.

RECENT BANKRUPTCY DECISIONS

The following are summaries of recent court decisions that address important issues of bankruptcy law and procedure. These summaries were prepared by Joseph M. Ammar with the assistance of Larry VerMerris.

In re Magness, Case No. 91-4041 (6th Cir. August 17, 1992). This case involved a Chapter 7 trustee's motion to assume and assign a golf membership in a country club, pursuant to § 365. The Sixth Circuit affirmed the rulings of the lower courts that the trustee's motion be denied. The Sixth Circuit held that a golf club membership was a personal service contract which could not be assigned under § 365(c)(1) absent the golf club's consent.

In addition, the relationships created by the various contracts between the club and its members created a type of property interest. Section 363 (e) directs that when the trustee sells property, the court shall prohibit or make conditions necessary to protect other persons having an interest in the property to be sold. The rights of those on the waiting list for golf memberships would not be protected in any manner except by prohibiting the assignment of the membership.

Sanders Confectionery Products, Inc., v. ***Heller Financial, Inc.***, Case Nos. 90-2039/2040 (6th Cir. August 17, 1992). After the debtor's Chapter 11 plan was confirmed, plaintiffs, shareholders and officers of the Debtor, sued defendants for lender liability, RICO violations and securities violations. The Sixth Circuit affirmed the district court's dismissal of the claims based on res judicata.

Res judicata, or claim preclusion, has four elements: (1) a final decision on the merits in the first action by a court of competent jurisdiction; (2) the second action involves the same parties, or their privies as the first; (3) the second action raises an issue actually litigated or which should have been litigated in the first action; and (4) an identity of the causes of the action.

An order confirming a plan constitutes a final judgment on the merits by a court of competent jurisdiction. The Sixth Circuit also found that the remaining three elements of res judicata were met after analyzing the rather involved facts in this case. According to the Sixth Circuit, decisions in bankruptcy cases can act as a res judicata ban to both core and non-core proceedings.

In re Rexplore Drilling, Inc, Case No. 91-6145 (6th Cir. August 5, 1992). In this decision, the Sixth Circuit held that the bankruptcy trustee properly avoided transfers under the Kentucky preference statute. According to the Sixth Circuit, a bankruptcy trustee may seek to avoid transfers under state law, as permitted by § 544(b).

In re R & S Supply, Inc., Case No. 1-92-CV-144 (W.D. Mich. August 20, 1992). In this decision by Judge Bell, the district court affirmed the bankruptcy court's granting of the trustee's motion for summary judgment in a preference action. The creditor obtained a judgment against the debtor for a trade debt. In May, 1990, the creditor served a writ of garnishment on the debtor's bank. The bank disclosed a zero balance in the account. The creditor then served a second writ of garnishment on the bank in July, 1990. On August 17, 1990, the court issued a check to the creditor, paying it in full, after the bank deposited monies with the court. On that same day, the debtor filed its bankruptcy petition. The issue was whether a lien was created upon issuance of the first writ in May, 1990, which was outside the 90-day preference period.

A payment which occurs within the preference period cannot be avoided as a preference when the lien giving rise to the transfer was created outside the preference period. Under Michigan law, the liability of the garnishee defendant and the corresponding garnishment lien are fixed on the date the garnishment writ is served. For the garnishee defendant to be liable, it must either owe a debt to the debtor or have property of the debtor in its possession or control at the time the writ is served. The district court held that the bankruptcy court correctly concluded that there was no question of fact that the bank did not have assets of the debtor subject to garnishment at the time the first writ was issued, and that the payment under the second writ constituted a voidable preferential transfer in accordance with § 547(b).

In re Oakland Care Center, Inc., Case No. 91-73884 (E.D. Mich. May 14, 1992). In this decision by Judge Edmunds, the district court, in a reversal of the bankruptcy court's decision, held that only the trustee and debtor in possession have standing to surcharge a secured creditor's collateral under the plain language of §506(c). According to the district court, administrative claimants do not have standing to assert a claim under §506(c) to compensate them for expenses incurred for the disposal or preservation of collateral.

In re Mount Pleasant Limited Partnership, Case No. SL 91-86763; ***In re Grand Traverse Development Company Limited Partnership***, Case No. ST 92-83818; ***In re Grand Traverse Development Company, Inc.***, Case No. ST 92-83820 (Bankr. W.D. Mich. September 1, 1992). This important consolidated opinion by Judge Stevenson involved the relative rights of secured creditors and debtors in rents subject to an assignment of rents.

Under Michigan law, the chronology of events that would lead to complete enforcement of an assignment of rents is (1) execution of the assignment of rents; (2) recording of the assignment of rents; (3) default under the mortgage; (4) recording of notice of default with the register of deeds; and (5) service of the recorded notice of default and the instrument creating the assignment of rents upon the tenants by the mortgagee ("service requirement").

According to the bankruptcy court, no further action need be taken by the creditor for the assignment to become binding upon the debtor once the debtor defaults. The assignment of rents becomes valid as to third parties upon its recording with the register deeds; at this point it is "perfected". The service requirement is not related to perfection, but to enforcement of the assignment. The right to collect rents passes from mortgagor to mortgagee upon satisfaction of the service requirement. However, the debtor has the ability to avoid the transfer of rents to the creditor when the service requirement has not been met. Under §542(a), the debtor may compel a party to turn over property it holds which the debtor may use under §363. Subject to certain restrictions, §363 provides that the debtor may use property of the estate. Under § 541(a)(1), property of the estate encompasses all legal and equitable interests of the debtor. As long as the recording of the notice of default and service steps have not been taken, the debtor has at least the bald legal right to collect the rent. However, where the notice and service procedure has been completed, the debtor loses the legal right to collect the rents. Therefore, the rents cease to be property of the estate. If the rents are not property of the estate, they are not cash collateral, which is a form of property of the estate.

In the Mount Pleasant case, the assignment of rents provision did not provide that the mortgagee immediately became entitled to rents upon default, but instead stated that the mortgagor was authorized, until such authorization was revoked by the mortgagee, to collect, receive and dispose of the rents. This language provided for an additional affirmative act out by the mortgagee after default to divest the debtor of its ownership in the rents. Such revocation never occurred pre-petition. Therefore, the rents were Mount Pleasant's property at the time of filing. However, under § 552(b) the perfected security interest in the rents continues post-petition. According to the court, the filing of the motion to prohibit the use of rents served the same function as a revocation of the debtor's authorization to collect rents. Accordingly, all rent payments made after the filing of

the motion constituted the cash collateral of the secured creditor and could not be used by Mount Pleasant in the absence of adequate protection of the secured creditor's interests.

The court then noted that adequate protection could pose a problem for Mount Pleasant. A debtor is obligated to pay adequate protection for each rent payment it receives. Where the creditor is under- secured, it is probable that the only way the secured creditor may be adequately protected is by dollar for dollar payments (less any properly chargeable costs under § 506(c)) because post-petition rents will also be subject to the assignment. Therefore, current rents cannot be used to provide adequate protection for previous payments because the mere act of doing so would make it impossible to provide adequate protection for current payments. According to the court, this should hold true in every case unless the creditor is over secured, or is in some other way assured of receiving either recovery of the full mortgage balance or surrender of the property.

In the Grand Traverse cases, the secured creditor completed the service requirement. Based upon the bankruptcy court's interpretation of the statute, the court held that once the service requirement was met, Grand Traverse lost any interest in the rents under Michigan law.

In re Markey, Case No. SL 87-03200 (Bankr. W.D. Mich. September 14, 1992). This case involved "the most egregious series of violations of the automatic stay ever witnessed by [Judge Stevenson.]" The case was commenced by the filing of an involuntary Chapter 7 petition against the debtor in January, 1987. In January, 1988, the debtor filed a voluntary Chapter 11 petition. The debtor then requested the conversion of the case to Chapter 7 in December, 1989. The debtor and his wife were vendees in a land contract to purchase their home. The home was exempted as entireties property under Michigan law.

In October, 1990, after bankruptcy proceedings had been initiated, the debtor had been in default under the land contract for six months. The land contract vendor, an elderly widow, retained an attorney to assist her. The vendor informed her attorney of the bankruptcy when she retained him. The vendor's attorney filed a motion for relief from stay in October, 1990. The attorney was advised by the court clerk that the matter could not be set for hearing because the filing fee was not paid. However, since the filing fee never was paid, a hearing was never scheduled. The vendor's attorney testified that the trustee's attorney indicated an intent to verify whether the property was held solely by the debtor. Apparently, the trustee's attorney told the vendor's attorney that if this were the case, the property would be administered through the bankruptcy estate and the vendor would be paid upon sale.

Based upon this conversation, the vendor's attorney stopped pursuing the motion for relief from stay. The vendor's attorney later learned from the trustee's attorney that the estate would not be asserting an interest in the property. The attorneys apparently discussed In re Terrell, 892 F.2d 469 (6th Cir. 1989), as to the effect of the possible deemed rejection of the land contract. The vendor's attorney testified he did not read the Terrell decision. He also did not recommence lift of stay proceedings. Instead, he assumed that an order of abandonment would soon be entered.

The court noted that Terrell merely holds that a land contract is an executory contract subject to §365. According to the court, Terrell does not hold that upon rejection of the land contract the property is abandoned. In the usual case, when an executory contract is rejected, any residual rights the debtor would have had in the breached contract remain property of the estate. For example, a redemption right remains property of the estate which the trustee could protect by intervening in state court or by obtaining a purchaser. In this case, the property was exempt, and therefore the residual rights of possession and redemption in any foreclosure remained the debtor's exempt property.

The court then stated that if the trustee had abandoned the estate's interest, the debtor and his wife still would have retained their interest in the property. Pursuant to §362(a)(5), foreclosure could not proceed until the vendor obtained a lift of stay as to the debtor. The court noted that the vendor's attorney erroneously assumed that abandonment of the property alone would terminate the automatic stay. However, termination of the estate's interest in property is not the equivalent to a wholesale termination of the automatic stay. Even though a creditor's collateral may no longer be property of the estate, without an order terminating the stay, it is still prohibited until one of the conditions of §362(c)(2) have been fulfilled. Section 362(c)(2) provides that the stay of any other act under subsection (a) of §362 continues until the earliest of the time the case is closed; the time the case is dismissed; or if the case is a case under Chapter 7 concerning an individual or a case under Chapter 9, 11, 12, or 13, the time a discharge is granted or denied.

None of the conditions of §362(c)(2) had been fulfilled and an abandonment order had not been entered when the vendor's attorney in February, 1991, served a notice of foreclosure on the debtor in direct violation of the automatic stay. The debtor responded to the notice of foreclosure by tendering a check for arrearages and also offered to pay the vendor $400.00 to compensate her for her legal costs if she dismissed the proceeding. As the court noted, because the stay was still in effect, the vendor was under a duty to dismiss the foreclosure without compensation from the debtor. On the advice from her attorney, however, the vendor rejected the debtor's offer and the debtor's check was returned.

In March, 1991, the vendor's attorney commenced a foreclosure suit against the debtor. One affirmative defense was the assertion of the automatic stay. The vendor's attorney continued pursuit of the foreclosure action after receiving the renewed assertion of the stay. In response to an interrogatory, the debtor again contended that the automatic stay was still in effect. In December, 1991, the vendor's attorney filed a motion for summary disposition in the state court action, and asserted that the stay had been lifted. The debtor's wife subsequently filed her own bankruptcy petition and the case was assigned to Judge Gregg. Despite the imposition of another automatic stay, the hearing on the motion for summary disposition went forward, but the state court judge refused to grant the motion based upon the stay in the debtor's wife's case. The vendor's attorney then informed Judge Gregg in the hearing on a motion for relief from stay that Judge Stevenson granted relief from stay on the merits in the debtor's case. However, such a hearing never took place before Judge Stevenson. The debtor then filed a motion to hold the vendor and vendor's attorney in contempt for violation of the automatic stay.

The court found that it was undisputed that the numerous acts taken by the vendor's attorney were in violation of the stay. Although the court found that the attorney's acts were willfully in violation of the stay, the vendor herself did not willfully violate the stay since the only act she took was to consult with her attorney. Therefore, a judgment of no cause for action was entered against the vendor. The court then awarded the debtor damages in the amount of $5,750.00 for the attorney fees incurred by the debtor because of the stay violations and also awarded $1,400.00 to compensate the debtor for his lost wages for work missed due to attendance at court hearings. The court also awarded punitive damages of $12,500.00 to the debtor. In addition, the court ordered that all actions taken in violation of the stay were void ab initio. The State Bar of Michigan Attorney Discipline Board was also sent a copy of the opinion.

In re Grand Valley Sport & Marine, Inc., Case No. 90-82664 (Bankr. W.D. Mich. August 10, 1992). This case, authored by Judge Gregg, involves issues pertaining to post-petition lending by a creditor to a debtor-in-possession. The lending occurred during the objection period established in an interim order which provided notice to interested parties of the proposed post-petition financing agreement. However, all loans were made prior to the court's subsequent disapproval of the agreement.

The creditor first argued that since the interim order authorized lending under §364(c)(2), the safe harbor provisions of §364(e) barred denial of post-petition financing. The court rejected this argument, finding that the interim order was a conditional order which did not authorize any post-petition lending by the creditor. Since the post-petition lending was never authorized pursuant to §364(c), the creditor could not obtain the comfort of the good faith safe harbor provisions of §364(e).

The creditor then asserted that nunc pro tunc approval of the post-petition financing was appropriate. The court noted that certain extraordinary factual situations may dictate authorization of nunc pro tunc approval of post-petition financing. However, even assuming extraordinary circumstances existed, the court found that the creditor did not establish the threshold requirements for nunc pro tunc approval. The court also rejected the creditor's arguments that post-petition financing should be approved based on the general equities of the case and on the law of the case.

The creditor finally argued that if the court did not grant its other requested relief, it was entitled to a Chapter 11 administrative priority claim pursuant to §364(a). The court stated that the insufficiency of the record made it unable to determine whether the creditor's post-petition lending was in the ordinary course of business under §364(a). Therefore, the court denied the creditor's motion for summary judgment.

ANNOUNCEMENT FROM THE OFFICE OF THE U.S. TRUSTEE

The United States Trustee's Office is pleased to announce the appointment of Mr. Daniel S. Ebright as a Bankruptcy Analyst at the United States Trustee's Office for the Western District of Michigan. Mr. Ebright fills a newly created second Bankruptcy Analyst position. Among other duties, he will be involved in monitoring trustees, monitoring Chapter 11 matters, closing Chapter 7 cases, as well as conducting appropriate audits. Mr. Ebright holds a Masters in Accounting from Ferris State University and has had experience at a Big Six Accounting firm as well as experience in accounting for a manufacturing concern and a large non-profit institution. He will enter duty at the United States Trustee's Office on September 21, 1992. He will greatly assist the United States Trustee in performing its statutory duties and is certainly a welcome addition to the office.

STEERING COMMITTEE MEETING MINUTES

A meeting of the Steering Committee of the Bankruptcy Section of the Federal Bar Association for the Western District of Michigan was held on September 18, 1992 at the Peninsular Club. Present: Mark Van Allsburg, Dan Casamatta, Peter Teholiz, Brett Rodgers, Julia Goatley Moreno (for Pat Mears), Janice Kittel Mann, Steve Rayman, Jim Engbers, Marcia Meoli, Tom Schouten, and Tom Sarb.

1. Judge Nims' Retirement Dinner. As of September 18, 259 people had sent in reservations for the dinner in honor of Judge Nims' retirement at Egypt Valley Country Club on Wednesday, September 30, 1992. Approximately 300 people are expected to attend.

2. Bankruptcy Mediation Rule. Tom Schouten discussed the possibility of recommending adoption of a mediation rule in certain types of bankruptcy adversary proceedings. Tom Schouten and Peter Teholiz will discuss a proposed recommendation and present that to the Steering Committee at its next meeting.

3. Bankruptcy Fraud Task Force. Janice Kittel Mann of the U.S. Attorney's office reported on the establishment of the Bankruptcy Fraud Task Force. The purpose of the Bankruptcy Fraud Task Force is to coordinate the activities and investigations that were formerly split between the FBI, the Postal Inspector's Office, the Trustees, and the U.S. Attorney's Office. Janice Kittel Mann reported that, before the establishment of the Bankruptcy Fraud Task Force, the office had eight cases under investigation. At the present time, there are twenty-five cases under investigation. Janice Kittel Mann will work with the editor of the Bankruptcy Law Newsletter and the chairperson of the educational program for the 1993 Bankruptcy Seminar to coordinate an article and a presentation on these issues.

4. Proposed Local Bankruptcy Rules. The proposed new Local Bankruptcy Rules were discussed. Anyone who has not received a copy of those rules can obtain a copy by contacting the clerk's office. Comments are due on the proposed rules on or before October 31, 1992.

5. Financial Report on 1992 Bankruptcy Seminar. Brett Rodgers distributed the financial report for the 1992 Bankruptcy Section Seminar at Traverse City. Income via registrations totalled approximately $16,200.00. Expenses were approximately $9,300.00, with net income of approximately $6,900.00.

6. Planning for 1993 Seminar. Brett Rodgers agreed to obtain quotes from several locations for hosting the 1993 seminar. He will obtain quotes for both a summer meeting, and a September meeting time. Steve Rayman volunteered to chair the 1993 educational program.

7. Election of Steering Committee Members. An election of Steering Committee Members will take place at the next meeting of the Steering Committee to be held on October 16, 1992 at 12:00 noon. Persons who are interested in serving on the Steering Committee should notify Brett Rodgers of their interest, on or before October 15, 1992. There will be five seats on the Steering Committee that will need to be filled.

There being no further business to come before the Committee, the meeting was adjourned. The next regular meeting of the Steering Committee will take place on Friday, October 16, 1992 at 12:00 noon at the Peninsular Club.

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 (Lower Peninsula) during the period from January 1, 1992 through August 31, 1992. These filings are compared to those made during the same period one year ago and two years ago.

	1/1/92-8/31/92	1/1/91-8/31/91	1/1/90-8/31/90
Chapter 7	3,705	3,416	2,210
Chapter 11	89	113	63
Chapter 12	19	20	9
Chapter 13	1,075	1,177	809
	4,888	4,726	3,091

EDITOR'S NOTEBOOK

Many thanks to Tim Curtin and Bob Sawdey for organizing the dinner in honor of Judge Nims' retirement. The dinner was a wonderful tribute to his service to the court.

The clerk's office for the United States Bankruptcy Court for the Eastern District of Michigan has announced that it will be going on line on the BANCAP computer system on or about October 1, 1992. At that time, matrix requirements will change and separate motions and orders resolving all multi-part pleadings will be required, as they have been in the Western District of Michigan since it went on BANCAP. If you need any further details, please contact Mary G. Turpin, Clerk of the Bankruptcy Court in Detroit.

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