BANKRUPTCY LAW NEWSLETTER

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THE NEW ASSAULT ON ENTIRETIES PROPERTY

By: Jaye M. Bergamini*

True or False? Property held by tenants by the entireties is immune from attachment or lien by the creditors of a single spouse.

If your answer is "true", you have missed important developments in the field of creditors rights. Increasingly, the answer is "false".

Following in the footsteps of the Federal government, which first blazed the trail in drug forfeiture cases, creditors are attacking the sanctity of the entireties tenancy with increasing success. While currently unable to force a sale of entireties property, a creditor may be able to place a lien on the inchoate survivor's interest, effectively preventing many ordinary real estate transactions such as refinancing and sale.

Michigan has long recognized that the quality of a tenancy held by husband and wife is special. "In Michigan real property law, tenancies by the entireties enjoy an ancient and hoary tradition." Rogers v Rogers, 136 Mich App 125, 134. Said the Michigan Supreme Court, in 1885, "The interest William Beamer took with his wife was a peculiar one. It was an entirety. They both took the same estate, the same interest, and it could not be separated. The right of one was the right of the other. Neither could by a separate transfer affect the rights of the other or his own. What would defeat the interest of one would also defeat that of the other. In a portion of these premises the interest of William Beamer was more than that of a joint tenant." Vinton v Beamer, 55 Mich 559, 561 (1885).

In 1939, the US District Court for the Western District of Michigan held that the "peculiar nature" of the entireties estate under Michigan law would defeat the attempt of the IRS to attach and sell such property, in satisfaction of the husband's individual debt. Shaw v United States, 94 FSupp 245 (1939). In 1971, in the case of Cole v Cardoza, the 6th Circuit Court of Appeals voided the lien filed by the IRS against Michigan entireties property, where only the husband was assessed for unpaid taxes. Cole v Cardoza, 441 F2d 1337 (1971).

And even though the policy of Michigan is against recognizing the existence of tenancy by the entirety interest in personalty (In re: Jones, 31 BR 372 [Bankr ED MI 1983]) when an entirety estate is sold, and the proceeds are deposited in either an individual or joint bank account, if the parties intend to reinvest the proceeds in real property which they intend to hold as tenants by the entirety, the proceeds of the sale are exempt from the claims of creditors of one of the parties (See Muskegon Lumber & Fuel v Johnson, 338 Mich 655 [1954]) and In re: Jackson 92 BR 211 (WD MI 1988).

However, recent developments in the law recognize that a party to an entirety interest has

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more than just a joint interest. In addition, each entirety tenant has an inchoate interest, should she or he survive the death of the spouse. That inchoate interest is sufficient to support the lien of the Federal government against one spouse in drug forfeiture cases, and more recently, to support the lien of a judgment in favor of the United States in the face of a bankruptcy and a claim of exemption.

In United States v Certain Property at 2525 Leroy Lane, 910 F2d 343 (6th Cir 1990) the Federal government attached a lien to real property owned by husband and wife, alleging that the husband's interest in the property was forfeit under the Comprehensive Drug Abuse and Control Act of 1970 (21 USC § 881[a][7]). The wife was acknowledged to be an innocent party. The property was sold and the proceeds were escrowed with the lien continued, pending determination of the parties respective interests. The wife claimed an interest in the proceeds as a whole, as the innocent owner. The district court agreed, but the 6th Circuit reversed, stating:

> "The Michigan law previously discussed indicates that Leah Marks has an indivisible interest in the whole property held by the entireties. Under Michigan law, the individual interest of a tenant by the entirety is the functional equivalent of a life estate with a right of survivorship. The survivorship interest is in the nature of a remainder triggered by the death of either spouse, and, necessarily, the survivorship of the other spouse. The occurrence of the contingency converts the survivor's life estate to fee simple absolute. Consequently, only if Mrs. Marks were to predecease Mr. Marks would the later realize his survivorship interest.
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> "If the marriage terminates in divorce, the entireties estate is converted into tenancy in common by operation of statute. . . . Here, Mr. and Mrs. Marks are still married and therefore, the entireties estate is still intact under state law, even though by operation of the federal forfeiture statutes, Mr. Marks no longer has any interest in the property. The entireties estate may also be destroyed through a joint conveyance of the property by husband and wife but here, Mrs. Marks has agreed to no such conveyance.
>
> "By acquiring Mr. Marks' interest in the entireties estate, the government is precluded from obtaining Mr. Marks' interest in the property unless and until Mrs. Marks predeceases her husband or the entireties estate is otherwise terminated by dissolution of the marriage or joint conveyance. However, we do not agree with the District Court's finding that the entire property vested in Mrs. Marks by reason of the forfeiture. **Instead, we conclude that the interest acquired by the government is most analogous to the position occupied by a judgment creditor of one spouse under Michigan law.**
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> "The exact nature of the parties' rights would be more readily determinable if the real property here had not been sold. Mrs. Marks would be entitled to live in the house during the duration of the tenancy, and the government would have a lien on the property to the extent of the value of Mr. Marks interest which would prevent Mrs. Marks from obtaining the entire proceeds upon the sale of the property." United States v Certain Real Property/Leroy Lane, *supra*, at 350-352. (Emphasis added)

The 6th Circuit's recognition of the separate survivorship interest of a spouse in entireties property indicates that the foundation of the decision in Cole v Cardoza has been significantly eroded.

Recently, the 6th Circuit has recognized the validity of a judgment creditor's lien against the inchoate survivor's interest of an individual spouse in entireties property. In re: Arango, 922 F2d 611 (6th Cir. 1993), held that under 11 USC § 522(f), a judgment creditor's judicial lien against a debtor spouse did not impair his exemption of his interest in entireties property under Tennessee law. Using analysis factually similar to the Certain Property/Leroy Lane

decision, the court held that the lien did not impair the right of the debtor to the possession or enjoyment of the entireties property, but only operated to encumber his inchoate interest, in the event the entireties tenancy was severed. It should be noted, though, that Tennessee law specifically recognizes the transferability of the survivorship interest in entireties property.

In the Western District of Michigan, US District Judge McKeague issued a memorandum opinion April 25, 1994, in Fischre v United States, (WD Mich) Case #5:93-CV-11, which denied the Plaintiff's demand for quiet title to entireties property, as against the lien of the United States. A judgment had entered against the Plaintiff husband for an unpaid student loan. An abstract of judgment was recorded in Ingham County pursuant to the Federal Debt Collection Act, 28 USC § 3001, *et seq*, in July 1991. At the time, the debtor husband owned an interest in entireties property with his non-debtor wife. Subsequent to the filing of the abstract of judgment, the Plaintiffs sought to refinance their home. The recorded abstract created a cloud on the title such that the title company refused to insure the title until the abstract of judgment was discharged. The Plaintiffs sued in Federal District Court to quiet title, claiming that the lien could not, as a matter of law, attach to or impair the title of entireties property.

The Court stated, "The sole question is whether the United States' lien can legitimately attach to Dr. Fischre's interest in the property without illegitimately encumbering his wife's interest." Fischre, *supra*, at page 2. Recognizing the Plaintiffs' reliance on Cole v Cardoza, the court distinguished the facts before it on two points:

1. In Cole v Cardoza the lien as filed was ambiguous as to the exact identity of the debtor. In Fischre, though, the lien clearly identified only the Plaintiff husband as the party whose interest was encumbered; and
2. Under Certain Property/Leroy Lane, the inchoate interest of the debtor spouse is distinct, cognizable and sufficient to support attachment of a creditor's lien.

The Court thus held that under Michigan law, a judgment lien based on the sole obligation of one spouse may legitimately attach to that spouse's individual survivorship interest in entireties property without illegitimately burdening the entireties estate or the other spouse's interests therein.

To avoid the implication that the entireties estate was the subject of the lien, the Court declared that the abstract of judgment lien was "a nullity insofar as it might appear to attach to and encumber plaintiffs' enjoyment of their entireties estate." The Court's declaration to this effect should serve to remove any cloud on the title which the plaintiffs hold by the entirety. It is no less true, however, and must also be declared, that consistent with Certain Property/Leroy Lane, the United States lien does attach to the debtor spouse's individual interest and may remain on record with the Register of Deeds for this limited purpose." Fischre, *supra*, at page 5.

In point of fact, the Court's declaration of the limitations of the lien did not clear the cloud on the entireties title. The title company would not insure the mortgagee and the Plaintiffs have filed an appeal.

The evolution of creditors rights against the inchoate interest of one spouse, in entireties property, raises some very interesting issues in bankruptcy. As a hypothetical lien creditor under 11 USC § 544, can the trustee encumber the inchoate interest of the debtor spouse and thereby create another class of property of the estate? If the debtor fails to declare or exempt the interest, is it forfeit to the trustee? Would such an interest be saleable by the trustee, and if so, would there be a market for the interest, perhaps to investors willing to speculate? If the entireties parties are foreclosed from obtaining title insurance as long as the inchoate interest of one spouse is subject to lien, will the parties be willing to value and then purchase such an interest from the trustee? What would the value of such an interest be? Is it analogous to a dower interest, to be valued on an actuarial basis?

It bears noting that all advances of creditors rights in this area have taken place at the Federal court level. The 6th Circuit observed in Certain Property/Leroy Lane that "...[A]lthough Michigan law precludes a forced sale of property

to enforce a judgment lien, we have found no cases which would **preclude** the attachment of a creditors lien on one spouse's interest which could be satisfied to the extent of that spouse's interest upon the termination of the entireties estate." United States v Certain Real Property/Leroy Lane, *supra*, at 352. (emphasis added)

Apart from dicta which seems to recognize a certain level of individual interest on the part of each spouse in entireties property, the Michigan courts have yet to address the subject of a creditors right to attach the inchoate interest of an individual spouse, with the notable exception of Muskegon Lumber, in 1954. But that was then. This is now.

RECENT BANKRUPTCY DECISIONS

(Western District decisions are summarized by Vicki Young who is reconsidering her rash decision to leave the Newsletter; 6th Circuit and Supreme Court decisions are summarized by John Potter; and Eastern District decisions are summarized by Jaye Bergamini.)

In Re Perlin, 1994 Fed App 0241P (6th Cir. 7/12/94). Mr. and Mrs. Perlin got a divorce in Arizona. The Judgment of Divorce required Mr. Perlin to pay over $72,000.00 of his wife's attorney fees, as well as to pay expert witness fees of $11,000.00. Mr. Perlin moved to Ohio and filed a chapter 7 proceeding, listing his ex-wife, her attorneys and the expert as creditors. The attorneys filed an adversary proceeding in their own name (not on behalf of the ex-wife), claiming that the fees were in the nature of alimony, maintenance or support and therefore non-dischargeable. The Bankruptcy Court accepted this argument, as did the District Court on appeal.

The 6th Circuit reversed. Instead of reaching the merits of whether the fees were in the nature of alimony, maintenance or support, the Court held that the attorneys had no standing to bring the matter. The Divorce Judgment had been granted in the ex-wife's name, not her attorneys, and the Court found no authority under Arizona law which would allow the attorneys to sue Mr. Perlin directly to collect the fees. The Court did not discuss the fact that the attorneys had been listed as a separate creditor on Mr. Perlin's bankruptcy schedules.

It should be noted that Mrs. Perlin had also filed a chapter 7 bankruptcy, listing her attorneys as creditors, and apparently discharging their debt.

In re Union Security Mortgage Company, Debtor, Larry Stewart, Trustee v East Tennessee Title Insurance Agency, Inc., ____ F3d ____, 25 BCD 1146, BLR P 75, 921, 1994 U.S. App. Lexis 12760, 1994 WL 232327 (6th Circuit, 6/1/94). In 1989, Debtor Union Security Mortgage Company, agreed to loan buyer $72,867 to purchase a home. Debtor arranged to have the closing handled by Defendant, East Tennessee Title Insurance Agency, Inc. ("ETT"). On December 29, 1989, buyer and seller met at ETT's offices to close the transaction. The closing did not take place because Debtor had yet to provide ETT with a check for $72,867 to fund the transaction. ETT, however, had seller sign a warranty deed and buyer sign a $72,867 promissory note and a deed of trust securing the note. On January 3, 1990, Debtor gave ETT a $72,867 check. ETT then deposited the check in its bank account, gave seller a check for $72,867, delivered the warranty deed to buyer, and gave the note and deed of trust to Debtor.

On January 9, 1990, Debtor's check was dishonored by the bank and returned to ETT. On January 11, 1990, ETT sued Debtor in Tennessee state court, seeking a writ of possession for the note and deed of trust. Debtor responded by assigning the note and deed to ETT. In February 1990, Debtor was subject to an involuntary Chapter 11 petition. Plaintiff, Trustee Stewart, then commenced an action against ETT to avoid the assignment as a preference under 11 USC § 547. The Trustee moved for summary disposition and the bankruptcy court issued an order voiding the assignment. ETT appealed and the district court reversed, holding that the assignment was not a

preference. The Trustee then appealed the district court decision.

The Court of Appeals reversed the district court. First, ETT argued that under Tenn. Code Ann. § 47-3-802(b), one who "takes an instrument for an underlying obligation" can maintain an action "on either the instrument or the obligation" if the instrument is dishonored. Also, Tennessee law allows for the rescission of a contract if a "failure of consideration . . . defeats the objection of the contract". Consequently, ETT's right of recourse on the underlying obligation included a right to rescind. Accordingly, ETT had equitable title to the note and deed of trust. Thus, the assignment did not cause it to receive more than it would have received in a Chapter 7 liquidation. The Court disagreed with this argument because Debtor did not agree to give ETT $72,867 as consideration for transferring the note and deed of trust. ETT was merely an escrow agent performing a service for a small fee.

The Court then dismissed ETT's next argument that it was a seller of goods, and as such, it had a right to reclaim the goods under Tenn. Code Ann. § 47-2-702(2). ETT was not a "seller" of the documents because it did not have title to them prior to the assignment. See also Tenn. Code Ann. §§ 47-2-105, 47-2-103(1)(d), and 47-2-106(1).

The Court discounted ETT's final argument that the assignment should not be seen as a preference because it did not result in a depletion of Debtor's estate. Absent the assignment, the purchaser's monthly payments would be credited to Debtor's estate.

In re Cheesman, Cheesman v Tennessee Student Assistance Corporation, ____ F3d ____, 63 USLW 2015, 1994 U.S. App. Lexis 12774, 1994 WL 23397 (6th Cir., 6/2/94). On August 2, 1991, the Debtors, Sallas and Margaret Cheesman, filed a Chapter 7 Petition. They then had $30,000 in debt of which $14,267 were student loans guaranteed by Defendant, Tennessee Student Assistance Corporation (TSAC). On November 20, 1991, the Cheesmans commenced an adversary proceeding to have their student loans discharged on hardship grounds pursuant to 11 USC § 523(a)(8)(B).

After hearing, the bankruptcy court held that the student loans imposed an undue hardship on the Debtors. However, in view of their potential for employment and financial improvement, the court placed the case on its docket to called up for review in 18 months. The court would then determine whether discharge was still appropriate at that time. TSAC appealed to the district court. The district court construed the bankruptcy court's order as a stay of its decision that the loans were dischargeable. It also held that 11 USC § 105(a) authorized the bankruptcy court to impose the 18 month stay and affirmed the holding that exception from discharge would impose an undue hardship on debtors.

The Court affirmed the lower court decision. In its decision, the Court found that the loans were dischargeable under any undue hardship test. There was no indication that Debtors were capable of paying the loans while maintaining a minimal standard of living. There was no indication that the Cheesmans' financial situation would improve in the foreseeable future. And, there was no evidence that Debtors did not act in good faith.

Finally, the Court disagreed with TSAC's assertion that the bankruptcy court did not have the authority to postpone making a final determination of dischargeability under 11 USC § 105(a). Section 105 provides that the bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title". The bankruptcy court has broad equitable powers to protect debtors pursuant to 11 USC § 105(a).

Circuit Judge Ralph B. Guy, Jr., offered a compelling dissent to the majority opinion under his view. Postponing the repayment of a nondischargeable debt is not the same as postponing the initial determination of whether the debt is dischargeable. Neither party benefits from the Court's decision. TSAC was foreclosed from taking any action and Debtor's were left with the uncertainty of whether they will be responsible for having to pay the debt.

In re Isaacman, Nicholson v Isaacman, ____ F3d ____, 1994 U.S. App. Lexis 13070, 1994 WL 236308 (6th Cir., 6/3/94). On March 19, 1992, Defendant/Debtor filed a Chapter 7 Petition in the Northern District of Georgia. The clerk's office for the Northern District of Georgia issued a "Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code". The notice provided, *inter alia*, that a meeting of creditors was scheduled for April 28, 1992, and that the deadline for determining the dischargeability of certain debts was June 29, 1992.

The case was later transferred to the Western District of Tennessee. The clerk's office for the Western District of Tennessee issued another Notice of Commencement.. This notice provided for a July 22, 1992, first meeting of creditors, and a September 21, 1992, deadline for determining the dischargeability of debts. A copy of the Notice of Commencement issued by the Western District of Tennessee was mailed to Plaintiff, J.E. Nicholson, Jr., on June 25, 1992, four days before the June 29, 1992, bar date set by clerk's office for the Northern District of Georgia. Plaintiff's attorney then called the clerk's office for the Western District of Tennessee and was also told that a new claims bar date had been set.

On September 21, 1992, Plaintiff filed a nondischargeability complaint in the Western District of Tennessee. Plaintiffs complaint alleged that the debt of $629,000 was obtained by false pretenses, false representations and actual fraud. Defendant then filed a motion to dismiss the complaint since it was not timely filed under 4007(c). The bankruptcy court granted Debtor's motion and the district court affirmed this decision.

The Court of Appeals reversed and remanded the matter back to the bankruptcy court. The Court held that where a bankruptcy court erroneously sets a second bar date for the filing of complaints to determine dischargeability of a debt before the first bar date has expired and where a creditor, reasonably relying on that second date, files a complaint before the expiration of the second bar date, the bankruptcy court abuses its discretion as a matter of law if it fails to exercise its equitable powers and permit the complaint to proceed. The bankruptcy court in this case abused its discretion.

PHI Financial Services, Inc. v Stover (In re Stover), Case No. 1:94-CV-216 (WD Mich, 6/16/94). Judge Bell denied Debtors' Motion for leave to appeal Judge Gregg's order denying their Motion for Summary Judgment and held that Debtors did not demonstrate special circumstances which would justify an interlocutory appeal.

PHI Financial Services, Inc. filed an adversary proceeding against Debtors to determine dischargeability of its debt. Debtors moved for summary judgment claiming that PHI's complaint was untimely filed under FRBP 4007(c). Judge Gregg denied Debtor's motion finding that PHI relied on an erroneous notice/order from the Bankruptcy Court indicating the deadline for filing complaints to determine dischargeability of debts. Debtors moved for leave to appeal the interlocutory order arguing that the issue was purely legal and, if the court determined in their favor, they would avoid the costs and expenses of trial.

The Court noted that 28 USC § 158(a), which allows interlocutory appeals from the bankruptcy court, does not provide a standard or procedure to assist courts in deciding whether or note to grant appeals. The Court therefore looked to the standards for determining whether to grant an interlocutory appeal from the district court to the court of appeals under 28 USC § 1292(b). Under 28 USC § 1292(b), the court should consider (1) whether the issue involves a controlling issue of law; (2) whether there is substantial ground for difference of opinion on the issue of law; and (3) whether an immediate appeal from the order will materially advance the ultimate termination of the litigation. The Court, citing In re Executive Office Centers, Inc., 75 BR 60, 61 (ED LA, 1987), noted a second standard whereby the district court does not consider the merits of the order of the bankruptcy court, but rather determines whether the bankruptcy court stated some rational or reasonable basis for its decision or whether the applicant has shown that the bankruptcy court

acted arbitrarily or capriciously or abused its discretion.

The court held that Debtors failed to present any basis for granting leave to file the interlocutory appeal. Debtors did not cite any law in support of their position or show that the order involved a question of law on which there is substantial ground for difference of opinion. Finally, Debtors did not show that the Bankruptcy Court acted arbitrarily or capriciously or abused its discretion in this matter.

U.S. v Greenwood, Case No. 1:94-CR-22 (WD Mich, 6/29/94). Judge Quist denied Defendant's motion for judgment of acquittal and upheld the jury verdict finding Defendant guilty on two counts of bankruptcy fraud under 18 USC § 152: (1) concealing an asset of his estate and (2) material false declaration as to the accuracy of his summary and schedules.

Defendant filed a voluntary petition for bankruptcy. Defendant did not disclose a so-called "rebate account" on his bankruptcy schedule. The rebate account was a bank account maintained in the name of a corporation of which Defendant was the president and sole director of. The government argued that the rebate account, even though maintained in the name of corporation, was actually Defendant's property and that Defendant committed fraud by not listing the account on his bankruptcy schedules.

After the jury verdict was announced, the Court questioned whether the issue of whether the rebate account was property of Defendant's personal bankruptcy estate should have been submitted to the jury as a question of fact as opposed to being decided by the Court as a question of law. The Court therefore extended time for Defendant to file a motion for judgment of acquittal and asked the parties to brief this issue.

After finding no law on point, the Court held that the general rules that the jury makes factual determinations applied in this case. Therefore, whether the rebate account was property of Defendant's bankruptcy estate was properly a question for the jury to determine.

The Court also tested the sufficiency of the evidence to support a guilty verdict under Defendant's motion for judgment of acquittal under FRCP 29. The Court noted that to a great extent, the question of the person to whom the rebate account belonged revolved around Defendant's intent at the time he filed his bankruptcy petition. The Court held that a reasonable jury could find beyond a reasonable doubt that the rebate account was property of Defendant's bankruptcy estate at the time that he filed this petition, even though Defendant maintained the account in a corporate name. Defendant was a sole shareholder and president of the company. Defendant has the absolute right to open the account in the corporate name and to deposit and withdraw the corporate funds from the account. Defendant was the only person who had authority over the account, and he kept the account secret from his employees and started a new post office box in order the receive the bank statements relative to the account. The money deposited into the account never showed up on the books and records of the corporation and was never used for the benefit of the corporation. The account was with a bank that the corporation did not regularly use and knowledge of the account was kept from the creditor with the security interest in the bank accounts of the corporation. Defendant wrote checks from the account to his wife and deposited these checks into his personal account. The check written to his wife carried false descriptions for the purposes of his checks. The Court held that this evidence was consistent with government's theory that, from the time that the account was created, Defendant was hiding the money in the rebate account from the corporation and his own creditors so that, at some time in the future, he could siphon off the money for his personal use.

In re Barkman (Barkman v Granger), Case No. 92-21400 (Bankr. ED Mich 7/5/94). In this case, Judge Spector upheld the validity of an arbitration provision in a construction contract to which the Debtor was a party.

While in a chapter 11 proceeding, the Debtor filed an adversary proceeding against Granger Construction Co. claiming damages in

excess of $200,000. Granger brought a Motion to Enforce Contractual Provisions and to Dismiss, relying on a provision in the construction contracts between the parties that required arbitration for disputes between the parties. Although the Debtor implicitly conceded that the dispute was covered by the arbitration agreement, it argued that the 1981 6th Circuit decision of Cuvrell v Mazur mandated against the enforceability of the provision.

Judge Spector held that the federal Arbitration Act and the Supreme Court case of Shearson/American Express v McMahon, 482 U.S. 220 (1987) created a strong federal policy in enforcing arbitration provisions under almost any circumstance. Consequently, a party opposing opposition of an arbitration provision in the bankruptcy context has the burden of showing that the text, legislative history, or purpose of the Bankruptcy Code conflicts with enforcement of the provision. To the extent that the earlier 6th Circuit case was in conflict with this principle, McMahon overruled it. In the present case, the Debtor did not claim that it could not adequately represent creditors' claims in the arbitration proceeding, nor could it offer any exception to the federal Arbitration Act which would make the arbitration provision void. The arbitration agreement was therefore enforced.

EDITOR'S NOTEBOOK

By the time you are reading this, the annual bankruptcy seminar will be over. I believe that it was as successful and educational as in the past. Slowly and surely, through a lot of hard work and effort, we have brought the seminar to regional prominence, at least. This year, kudos should go to Steve Rayman and Denise Twinney, the chairs of the educational and social committees, respectively. Additional thanks go to the panelists and out-of-town speakers, as well as the many other people who helped in this year's seminar. Three cheers for all involved!

It is not to early to start planning for the 1995 seminar, tentatively scheduled for Mackinac Island. If anyone has any ideas for topics or speakers or is interested in helping to organize the seminar, please contact Bob Wright or Steve Rayman. It is only through the efforts of the entire bankruptcy bar in the Western District of Michigan that we have created the seminar and allowed it to flourish. Every effort, no matter how small, is always appreciated.

Similarly, if anyone has any suggestions as to how this Newsletter could be improved, please feel free to give me a call. And, as always, I am on the lookout for articles to publish.

Supplementing his article in the June edition, Joe Chrystler reports that the Gullatt decision of Judge Lundin from the Middle District of Tennessee, has been overturned on appeal. As a result, Judge Paine's decision in Sullins, from the same district, has been reversed also. Thus, further paraphrasing "Casey at the Bat", the score is now 13-2 in favor of Zimmerman over Hausladen. Joe also reports that an appeal to the 6th Circuit is likely in the Gullatt case.

Legal Definitions -- nolo contendere: In 1879, in the wilderness of Northern Ontario, a group of robbers held up a passenger train. To make their getaway, they unhooked the steam engine and coal car and took off in them. After being stranded in the passenger cars for several hours, the passengers were found by an old trapper, who exclaimed "No loco, tender, eh?" (sorry about this one folks -- it's been a long summer)

Peter A. Teholiz, Editor

STEERING COMMITTEE MINUTES

There was no meeting of the Steering Committee in July. The next meeting is scheduled for August 19, 1994, at the Peninsular Club in Grand Rapids.

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 through June 30, 1994. These filings are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	June 30, 1994	Percent Increase (Decrease)	June 30, 1993	Percent Increase (Decrease)	June 30, 1992
Chapter 7	2153	(10.5%)	2406	(15.8%)	2858
Chapter 11	47	(20.3%)	59	(6.3%)	63
Chapter 12	10	(44.4%)	18	28.6%	14
Chapter 13	805	11.3%	723	(12.8%)	829
	3015	(5.9%)	3206	(14.8%)	3764

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