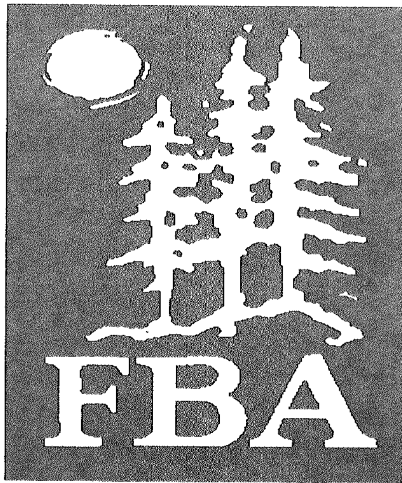


BANKRUPTCY LAW NEWSLETTER

Published by the Federal Bar Association
Western District of Michigan Chapter

November, 1997

OBJECTIONS TO EXEMPTIONS - WHEN ARE THEY REQUIRED, HOW ARE EXEMPTIONS GOING TO BE CLAIMED IN THE FUTURE?

In a recent case, Judge Gregg clarified when Trustees need to file an objection to exemptions and at the same time perhaps changed the way most Debtors' attorneys in this district will prepare the exemption schedule.

FACTS. In the case of Steven Duane Heflin, Case No. GT-96-88579, the Debtor claimed an exemption in certain real property that the Debtor used as his residence. The property according to Schedule A used a market value of $16,000. The only lien against the property was a secured claim of $431.25. The Debtor claimed a $15,000 exemption pursuant to §522(d)(1) and also claimed a catch-all exemption pursuant to §522(d)(5). The meeting of creditors was held and closed. The Trustee did not file any objection to the exemptions. After the meeting of creditors, a developer announced plans to develop land near the Debtor's residence which increased the value of the property from $16,000 to $40,000. The Debtor filed a motion seeking to compel the Trustee to abandon the property contending that because the exemptions exceeded the scheduled value, he was entitled to any post-petition appreciation in the Property. The Trustee countered that since the claimed exemptions were within the statutory maximums provided by statute no objection to exemptions was required. The Trustee argued that the Debtor's exemption was limited to the

specific dollar amount listed and that as long as the property remains in the bankruptcy estate and subject to administration, any increase in value is available to the Trustee and creditors of the estate.

ANALYSIS. Citing Morgan v. K.C. Machine & Tool Co. (In re: K.C. Machine), 816 F2d 238, 246 (6th Cir. 1987) Judge Gregg finds that compelled abandonment is not available where administration of an asset promises a benefit to the estate. Here, the Debtor argued that since the claimed exemptions combined with the existing lien exceeded the scheduled value of the property, the property is of inconsequential value and no benefit to the estate and must be abandoned, notwithstanding any post-petition appreciation. Since the Trustee did not file a timely objection to exemptions (Section 522 and Bankruptcy Rule 4003(b)), the property is fully exempt, and of no benefit to the estate, and must be abandoned.

Judge Gregg reviewed and analyzed the Supreme Court's opinion in Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S.Ct. 1644 (1992). Several facts distinguished the Taylor case from this situation. First, the Court noted that the Trustee had no reason to object to the homestead and catch-all exemptions claimed because the proper statutory provisions were cited and authorized the exemption. Judge Gregg found that none of the red flags present in Taylor were present here, and nothing would have triggered the Trustee to object or request an extension of time to investigate further.

Second, in Taylor, with respect to the amount claimed as exempt, the Debtor stated "unknown". Further, the estimated value of the lawsuit exempted in Taylor was $90,000 and $110,000 in the schedules. Judge Gregg found that the trustee in Taylor had sufficient reason to believe the Debtor was seeking to exempt the entire amount of the lawsuit proceeds. In the Heflin case, the Court found that the Debtor did not intend to claim the entire property as exempt, only the specific dollar exemption amount set forth. Since the amount of the exemptions was in accordance with the statute, the Trustee would have had no reason to object.

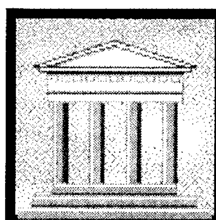
The Court narrowed the Debtor's argument to the contention that when the amount of the claimed exemptions exceeds the amount of the scheduled fair market value of the property, then the entire value of the Property is totally exempt, even if the initial value is understated or if the property subsequently appreciates in value. Relying on precedent from the Ninth Circuit, particularly Hyman v. Plotkin (In re: Hyman), 967 F2d 1316 (9th Cir. 1992) and Alsberg v. Robertson (In re: Alsberg) 68 F3d 312 (9th Cir. 1995), Judge Gregg quickly dismisses the Debtor's argument, finding that where the Debtor claims a specific dollar amount for his exemptions, he is limited to the amount claimed. The Trustee therefore was not required to object to the scheduled value.

IMPACT ON PRACTICE. Had the Heflin opinion ended there, it is unlikely that the practice in this district would have changed much. Most debtors

exempt specific dollar amounts and usually those amounts track the amounts authorized by statute. However, the Heflin opinion goes on to indicate that if a Debtor wants to fully exempt property, regardless of its value, then this intention should be unambiguously expressed in the schedules. Where this intention is expressed, then the Trustee is on notice and can either object or request an extension of time to further investigate. If no objection is filed or extension obtained, the Trustee can not challenge the validity of the exemptions. I assume that Debtor's counsel will now claim an exemption for the "entire" residence or other property being exempted. Trustees are not usually prepared, at the meeting of creditors, to make a final determination on the value of the property scheduled. Often this information comes to light from creditors, neighbors or other parties in interest. Trustees may have to object to exemptions as a matter of routine or least routinely request extensions of time to do so. The practice and procedure for handling exemptions may fundamentally change.

IMPORTANT NOTICE:

The Consumer Bankruptcy Coalition will hold its next meeting on Friday, January 16, 1998. Please RSVP to Chris Raber at Huntington Banks, 616-355-9680 and remember to bring $3.25 for breakfast.



FROM THE COURT

by Mark VanAllsburg

Videoconferencing Link Coming Soon: The U.S. District Court, the Bankruptcy Court and the Office of Probation and Pretrial Services have recently received a grant from the Administrative Office of the U.S. Courts to buy videoconferencing equipment. The three court units have agreed that the best use for this technology will be to create a link between Grand Rapids and Marquette. The distance between Marquette and Grand Rapids has always diminished the services which are available to the Upper Peninsula of Michigan. Videoconferencing is a tool which may be able to enhance both the quality and quantity of services offered.

One of the conditions for funding this project is a requirement that we have the technology in place by the end of this year. Therefore, it is likely that a fully operational system will be established very shortly after the beginning of the year. It is our intention to wire two rooms in each of the locations – at least one of which will be a courtroom. Therefore we will have the capability to use the system for a variety of administrative functions [i.e. staff meetings, educational programs, automation troubleshooting, and the like] and judicial functions [conferences and hearings]. In addition, we hope to make this system available to both the trustees and the U.S. Trustee for holding first meetings and other activities.

The introduction of a new technology always raises both great expectations and great fears. This pattern has certainly been true of videoconferencing when introduced in other courts. The technology offers exciting possibilities for valuable innovations: First, it offers the possibility of holding conferences and hearings at almost any time that the judge wishes to schedule such matters. Unlike telephone conferences, videoconferencing permits the presentation of documents and testimony during emergency hearings, and it permits the court to maintain an exact record of the proceeding. Therefore, it provides for flexibility by expanding the judge's calendar. Second, videoconferencing need not take place in Marquette. Any videoconferencing center which is available to the public and which uses standards-based equipment can be used to provide a link. This means that attorneys who practice in Sault Ste. Marie or Houghton may be able to schedule matters from Michigan Tech or from Lake Superior State University. Thus the technology will expand services by making them available from new locations. Third, videoconferencing has the potential for eventually decreasing the costs associated with a bankruptcy and will make bankruptcy available to people who could not afford it in the past.

However, the introduction of videoconferencing technology typically brings with it the fear that the quality of services will be diminished by eliminating the traditional face to face meetings in the courtroom. Experience in other courts which have been using videoconferencing for court hearings would indicate that after an initial adjustment period, the benefits of the technology surpass the problems in relative importance. The Bankruptcy Court for the Western District of Texas provides a good example. A link was created between Austin and Midland in 1995. After resolving initial problems with the equipment, videoconferencing has become a well accepted alternative to live hearings. Based on user evaluations, the practicing attorneys have become increasingly positive about this innovation particularly since the court continues to hear complex contested matters in person and uses videoconferencing for decision of routine cases and issues. As a result, videoconferencing equipment has now been installed in El Paso, Austin, San Antonio and Waco. The program is expanding.

It is the intention of the bankruptcy judges in this court to phase videoconferencing in slowly. There is agreement that time is needed to test the capabilities and to acquaint users with the system. We are hoping, therefore, to find those applications which will give both the court and the bar the greatest benefits and to concentrate on improving court services. Initially the system will be used for emergencies and for routine matters and we will then progress to more complex hearings as the comfort level of the court and users permits. Flexibility will certainly be one of the hallmarks of our implementation efforts.

On **December 15**, Judge Stevenson and I will meet with interested persons at the Bankruptcy Court in Marquette at **4:00 p.m.** to discuss in greater detail the

implementation of the videoconferencing system. At this meeting we hope to share information with the legal community about our expectations and to ask for input from the bankruptcy bar about how this innovation can best be used to provide greater services to the community. Please try to make this meeting if you have any interest in the videoconferencing system.

United States Case/Party Index: The National Bankruptcy Review Commission recently made the recommendation to Congress that a national database of bankruptcy information be created to store basic case information about all federal cases in a single location. In fact, the PACER Service Center has created a database called the United States Party/Case Index which combines the records of 183 federal courts, including 8 appellate courts, 85 district courts and 89 bankruptcy courts in one location. The system acts as a locator index for people who are searching for records on PACER. It is now possible to do a nationwide search for an individual either by name or social security number and to find any bankruptcy or civil listings for that person. If a match is made, you will get the case number and court where the case is filed, and more information will be available through the PACER access at that specific court.

Accessing court records through PACER requires only a computer, modem and standard communications software. If you have not yet signed up for PACER you may call the service center at (800) 676-6856 to be given a login and password and to set up your PACER account. You will then be charged 60 cents per minute for access time.

JUDICIAL CONFERENCE APPROVES AMENDMENTS AND NEW FORMS.

Pursuant to a Memorandum dated October 1, 1997, the Judicial Conference approved amendments to nine current Official Bankruptcy Forms and approved two new Official Bankruptcy Forms. The new versions of the forms are effective immediately. However, the Judicial Conference has provided for a phase-in period during which both the new and old versions are acceptable. Starting **March 1, 1998**, use of the new versions will be mandatory.

The two new forms are intended to provide uniform, plain English to parties regarding what they need to do to respond in certain contested matters. Form 20A is a Notice of Motion or Objection, and clearly set forth time deadlines, response requirements, and service directions for a party served with a motion or objection. Form 20B provides similar information regarding objections to claims.

The amendments affect nine current Official Bankruptcy Forms. Those Forms and the nature of revisions are as follows:

Form 1 (Voluntary Petition). A simplified format, deletion of the "In re" language, rewritten ranges for estimated assets and liabilities, and need for a debtor to sign the petition only once are among the revisions.

Form 3 (Application and Order to Pay Filing Fee in Installments). This form has been reorganized and the paragraphs renumbered.

Form 6 (Schedule F). A co-reference to community liability has been added with regard to the parties that may be liable on each claim.

Form 8 (Individual Debtor's Statement of Intention). This form has been revised to more closely conform to the Code, and make clear that the form takes no position on whether the options set forth in the form are the only choices available to the Debtor.

Form 9 (Notice of Bankruptcy Case). The forms providing notice of a bankruptcy filing, meeting of creditors and deadlines for Chapter 7, 11, 12 and 13 cases have been revised to make them easier to read and understand.

Form 10 (Proof of Claim). This form has been clarified, and explanatory definitions and instructions have finally been added.

Form 14 (Ballot for Accepting or Rejecting a Plan). This form has been revised, simplified and hopefully easier for creditors to complete correctly.

Form 17 (Notice of Appeal). This form has been revised to provide the information required by Bankruptcy Rule 8001(a).

Form 18 (Discharge of a Debtor - Chapter 7). The discharge order has been greatly modified and simplified. The back of the order, in plain English, explains the effect of a discharge.

While use of the new versions is not mandatory, practitioners would be well served to modify their forms in advance. March 1, 1998 will be here sooner than we wish!

LOCAL BANKRUPTCY STATISTICS

CHAPTER	OCTOBER 1997	YTD - 1997
Chapter 7	747	6,868
Chapter 11	11	66
Chapter 12	1	11
Chapter 13	271	2,543
TOTALS	1,030	9,488

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