The Cramdown

The Newsletter of the Tampa Bay Bankruptcy Bar Association

FALL, 2003

Editor, Donald R. Kirk

PRESIDENT'S MESSAGE

"THE TIMES THEY ARE A-CHANGIN"*

By John J. Lamoureux

Progress is impossible without change;
and those who cannot change their minds
cannot change anything.
George Bernard Shaw

As incoming President, I was expecting that there were going to be some changes that would have to be dealt with this year. We have already seen changes with our judiciary. One of our bankruptcy judges recently retired and a nominee has been named who (hopefully) should be appointed to the bench sometime by the end of the year.

Additional changes are in store for us. Our District will jump into the 21st Century and go online with the CM/ECF electronic filing program. The U.S. Trustee's office has completed their training, and CM/ECF training for debtor attorneys is scheduled for September and October of this year. It is anticipated that the Middle District will be fully online by the end of this year.

Technology and change are not something I am comfortable with or tolerate well. I often describe myself as a sixty-five year old man trapped in a fifty-five year old body who is only 41. (No offense to those of our membership over 55.) However, I have come to learn I must either embrace change and new technology or be left behind.

Like many other changes that have occurred in our District, our Association will be assisting the Middle District in implementing the CM/ECF electronic filing program. Each member of our Association needs to fully embrace the CM/ECF program or you, too, will be left behind in an inefficient and more expensive work environment. To assist our membership, our Association will be hosting a CLE seminar on October 7, 2003 on the CM/

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SELECTION OF CHIEF DEPUTY CLERK

It is with great pleasure that I join the Chief Judge in announcing that Ms. Lee Ann Bennett has been offered the position of Chief Deputy Clerk of our Court and has accepted. Lee Ann has an impressive resume and has served the Court in the Jacksonville Division and more recently as the Deputy-in-Charge of the Orlando Division. She brings a wealth of experience and enthusiasm to this important position. We look forward to her joining the administrative staff in Tampa. Please join me in offering her our sincerest congratulations and best wishes as she takes on this new responsibility.

David K. Olivera
Clerk of the Court

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VIEW FROM THE BENCH

DISMISSAL OF A CHAPTER 7 CASE SECTION 707 (a)

by The Honorable Alexander Paskay

Section 707 of the Code provides for dismissal of a Chapter 7 case. The Court has the power to dismiss a Chapter 7 case under Section 707 (a) of the Code for:

(1) unreasonable delay by the Debtor that is prejudicial to creditors (i.e. failure to file the documents required by F.R.B.P. 1007 (schedules and statements, etc.), failure to attend the meeting of creditors, failure to cooperate with the Trustee and furnish income tax returns and the like needed for the effective administration of the Debtor's estate);
(2) nonpayment of fees; and
(3) failure to comply with the requirements of Section 521 of the Code (to file a statement of intention concerning collateral (car, appliances, or furniture securing a consumer debt) either to surrender the collateral or to reaffirm the debt (agree either to remain legally liable for the debt notwithstanding the right to wipe out the debt through the bankruptcy discharge or to redeem the collateral by paying in full the current fair market value of the collateral in question)).

In addition, Section 707 (a) of the Code permits a dismissal of a Chapter 7 case of an individual for "cause," such as unreasonable delay that is prejudicial to the creditor. According to the House and Senate reports accompanying the Section, Section 707 does not contemplate that the ability of the Debtor to repay his debts, in whole or in part, constitutes adequate "cause" for dismissal. H.R. Rpt. 95- 595 (Sept. 8, 1977); Sen. Rpt. 95- 989 (July 14, 1978).

In Huckfeldt v. Huckfeldt, 39 F.3d 829 (8th Cir. 1994), the court held that a Chapter 7 case was properly dismissed for "cause" when the court found that the Debtor filed the Petition for the purpose of escaping a hold-harmless obligation owed to the Debtor's ex-spouse under a divorce decree.

DISMISSAL FOR ABUSIVE FILINGS
Section 707 (b) of the Code

Due to the extraordinary jump in filing by individuals shortly after the Code became effective on October 1, 1979, creditors (primarily credit card issuers) concluded that this increase in filing was attributable to the perception that the Code was heavily pro-Debtor. The creditors prevailed on Congress to change this so-called unfair imbalance, which resulted in the amendment of Section 707 (b) of the Code.

Under revised Section 707 (b), which made it clear that the interest of the Debtor and the creditor should be more balanced, the Debtor's ability to repay all or part of his debts would be a factor which may be considered in conjunction with a dismissal for abusive filing. However, even under this amended version, the Chapter 7 case may be dismissed only on the court's own motion and not on the motion of a party in interest.

Code Section 707 (b) was rarely used for the obvious reason that a Chapter 7 case could only be dismissed for substantial abuse on the court's own motion and not on the request or suggestion of a party of interest. In 1986 Congress, realizing the ineffectiveness of Section 707 (b) of the Code, extended the operation of the U.S. Trustee System by amending Section 707 (b) of the Code to expressly authorize the U.S. Trustee to bring a motion to dismiss a Chapter 7 case of an individual Debtor for "substantial abuse."

Shortly thereafter, an impressive line of cases interpreting Section 707 (b) of the Code concluded that the Debtor's ability to repay all, or at least part, of his debts as they become due was sufficient to warrant a dismissal for "substantial abuse" pursuant to Section 707 (b) of the Code.

In the case of In re Kelly, 841 F.2d 908 (9th Cir. 1988), the court held that the primary factor the court must consider when deciding a Motion to Dismiss under Section 707 (b) of the Code is the Debtor's ability to pay debts when they become due. Accord In re Walton, 866 F.2d 981 (8th Cir. 1989). In the case of In re Booth, 858 F.2d 1051, (5th Cir. 1988), the court held that when applying Section 707 (b) of the Code "primarily" means an overall ratio of consumer to total debts of more than 50%. The court also held that whether a debt is a consumer or a business debt depends on whether the debt was incurred in connection with an undertaking for profit and not for personal or household purposes.

In U.S. Trustee v. Harris, 960 F.2d 74 (8th Cir. 1992), the court held that the Debtor's ability to fund a Chapter 13 Plan that would make a substantial payment to creditors by itself was sufficient to warrant a dismissal under Section 707 (b) of the Code. The case of In re Koch, 109 F.3d 1285 (8th Cir. 1997), also adopted the holding of Harris *supra*.

It appears from the foregoing that the majority of courts which considered a Section 707 (b) motion concluded that the Debtor's ability to repay some or all of his debts warranted a dismissal, especially if the conduct of the Debtor was less than honest in dealing with his creditors.

On the other hand, there are authorities which support the view that the ability of the Debtor to pay his debts is not sufficient to warrant a dismissal. In the case of Taylor v. United States, 212 F.3d 395 (8th Cir. 2000), the court

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dismissed the Debtor's Chapter 7 case based on the finding that the Debtor was able to pay his creditors. The Court's finding was based on the conclusion that in determining the Debtor's disposable income, the Debtor's interest in an ERISA qualified pension fund must be included even though in a Chapter 7 case such interest would not be property of the estate and therefore not subject to liquidation by the Chapter 7 Trustee.

In the case of Kestell v. Kestell, 99 F.3d 146 (4th Cir. 1996), the Debtor filed his Chapter 7 case thirteen days after the entry of a divorce judgment ordering the Debtor to pay an award to his ex-spouse. During the pendency of the case the Debtor admitted that he filed his petition in order to avoid payment of the award. In addition, the Debtor failed to disclose all of his assets on his schedules. Based on this the court denied the Debtor's discharge for fraudulent concealment of assets pursuant to Section 727 (a) (2) (B) of the Code. However, on appeal the court held that it would have been more appropriate to dismiss the case pursuant to Sections 707 (b) and 105 of the Code. The court emphasized that honesty of disclosure is essential to the fundamental bankruptcy policy of equitable distribution to creditors and favoritism of one creditor over another is antithetical to the principle of equitable distribution. The use of the Bankruptcy Code as a vehicle for advancing personal antagonisms against an ex-spouse is an abuse of the system and warrants dismissal pursuant to Section 707 (b) of the Code.

In Stewart v. United States, 215 B.R. 456 (B.A.P. 10th Cir. 1997), the Debtor, who was involved in a divorce, quit his private practice and opted for a low paying fellowship servicing needy children and mothers while disregarding his obligation to his own children and his former spouse. When he filed his Chapter 7 case the Debtor justified his action by claiming that he was motivated by humanitarian concern. When the U.S Trustee sought a dismissal of the Chapter 7 case pursuant to Section 707 (b) of the Code, the Debtor contended that the U.S. Trustee was not entitled to file the motion which, according to the Debtor, was pursuant to the request and suggestion of the Debtor's ex-wife.

The court rejected this argument ruling that Section 707 (b) of the Code does not bar the U.S. Trustee on request or suggestion of a party of interest from investigating and reaching an independent determination and, based on those findings, from filing a motion to dismiss pursuant to Section 707 (b) of the Code. Concerning the claim of "substantial abuse," the court held that (1) pursuing a fellowship that paid substantially less than his earning potential and (2) knowing that that he could and would enjoy substantial higher earnings after his bankruptcy filing was a "substantial abuse."

Of course not all courts accept the holding of these cases. In the case of In re Green, 934 F.2d 568 (4th Cir. 1991), the court held that the Debtor's solvency is not by itself sufficient ground to dismiss a Chapter 7 case for "substantial abuse."

A frequent ground asserted for dismissal by the U.S. Trustee is that of a lavish life style of the Debtor. In the case of McDow v. Smith, 15-27 Bankr. L. Rptr. 625 (4th Cir. June 23, 2003), the Debtor, a married father of five, was indebted to the U.S., specifically the IRS, for $5.1 million. His monthly take home pay was $28,843, and his rent was $6,600 per month. The Debtor made monthly minimum payments on his credit cards totaling $6,060 a month, paid private school tuition of $4,900 a month, and had monthly recreation expenses of $1,700.

On appeal from the denial of the Motion to Dismiss alleging abusive filing, the court held that the Debtor's ability to repay his debts, coupled with a lavish lifestyle, was not sufficient to warrant dismissal, but that the court must consider the totality of the circumstances. The Debtor's ability to repay is just one of the factors which may be considered. The court placed great emphasis on the fact that there was no evidence of fraudulent conduct by the Debtor or otherwise any improper motivation seeking relief under Chapter 7 or some wrongful conduct. The court noted that only if the lavish lifestyle were coupled with misconduct, such as misrepresenting assets, concealing assets, or committing fraudulent acts that would harm the creditors would it warrant a dismissal. Citing In re Zick, 931 F.2d 1124 (6th Cir. 1991) (to dismiss a case there must be egregious conduct that entails concealment of sources of income, excessive and continuous expenses, lavish lifestyle, and an intention to avoid a large single debt based on conduct akin to fraud, misconduct, or gross negligence).

It appears that the emerging trend is that the court must consider the totality of the evidence. In re Richard Lamanna, 153 F.3d 1 (1st Cir. 1998); In re Kornfield, 164 F.3d 778 (2d Cir. 1999).

Section 706 of the Code is closely related to an involuntary dismissal of a Chapter 7 case of an individual Debtor for abusive filing. Section 706 (a) of the Code provides that the Debtor may convert a Chapter 7 case to a Chapter 11, 12, or 13 case at anytime if the case has not been converted to a Chapter 7 case from Chapter 11, 12, or 13 case. It generally has been assumed that under this Section the Debtor has an absolute right to convert a Chapter 7 case to a Chapter 13 case. It happens more and more that the Debtor discovers that he or she will lose either the discharge or the benefit of a particular discharge or will have to give up a property to the Trustee because the Debtor failed to exempt the property in question. The Debtor then seeks refuge by filing a Motion to Convert the Chapter 7 case to a Chapter 13 case in which all debts could be discharged except for those of alimony, child support, student loans, and liability for personal injury or wrongful death caused by the Debtor while operating a vehicle under the influence of alcohol, drugs, or other substances. More importantly in Chapter 13, the Debtor will not lose any property because Chapter 13 is not like a Chapter 7 liquidation case.

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The absolute right of the Debtor to convert the Chapter 7 case to a Chapter 13 was challenged by the Trustee in the case of In re Gallagher, 283 B.R. 604 (M.D. Fla. 2002). Gallagher filed his voluntary Petition for relief under Chapter 7 and in due course received his discharge. The Trustee discovered that the Debtor had a pending civil suit against an insurance company filed on behalf of an attorney who was not the Debtor's counsel of record in the Chapter 7 case. The Debtor filed his Motion to Convert his Chapter 7 case to a Chapter 13 case in order to prevent the Trustee from prosecuting the claim on behalf of the estate. The Trustee in fact compromised the claim with the insurance company, the court approved the compromise, and the Trustee paid all allowed unsecured claims substantially in full. The court found that the sole motivation for trying to convert the case was to secure the Debtor's attorney's fees for the attorney that originally filed the suit and that the benefits of a conversion, if allowed, would not have inured to the unsecured creditors, but only to the Debtor's attorney and to the Debtor.

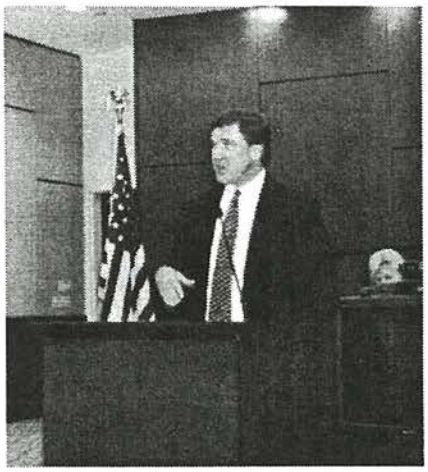
In the case of In re Kelly, 261 B.R. 785 (M.D. Fla. 2001), the court rejected the Trustee's challenge of the Debtor's right to convert his Chapter 7 case to a Chapter 13 case. In this case, the Debtor sought conversion in order to avoid loss of non-exempt property. The Trustee successfully challenged the Debtor's right to exempt certain property and was ordered to turn over the property for liquidation. The Debtor refused; the Trustee filed an adversary proceeding and requested a judgment revoking the discharge previously granted to the Debtor. The court granted the Trustee's Motion for Summary Judgment and revoked the discharge. The Debtor filed his Motion to Convert to a Chapter 13 case in order to obtain the benefits under that Chapter saving his nonexempt property and to get the benefit of the super-discharge of Section 1328 of the Code. The court granted the motion over the Trustee's objection based on the fact that the record failed to show an egregious conduct by the Debtor or improper motivation seeking the conversion.

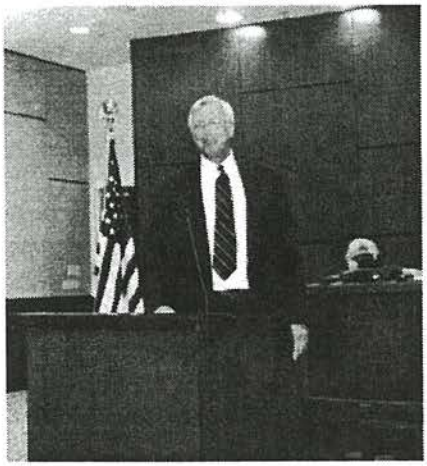
In the case of In re Lupe R. Brown, 293 B.R 865 (Bankr. W.D. Mich 2003), a Debtor filed a Chapter 7 Petition and a Chapter 7 Trustee was appointed. The Debtor failed to appear for both the creditors meeting and the rescheduled hearing and also failed to perform the required acts. The Debtor moved to convert his case from a Chapter 7 case to a Chapter 13 case. The court stated that Bankruptcy courts may deny Debtors their absolute right of conversion if the request is based upon bad faith. The court further stated that "the "absolute nature" of the conversion right does not extend, however, to situations where conversion is sought as a means of thwarting the Chapter 7 Trustee's attempts to administer the bankruptcy estate or escaping unintended consequences of a Chapter 7 petition." Therefore, the Debtor's Motion to Convert from a Chapter 7 case to a Chapter 13 case was denied.

Clearly neither of the two approaches in Section 707 of the Code will remain viable if Congress enacts H.R. 975. H.R. 975 would require Debtors who seek relief under Chapter 7 to pass the so called "means test," which is based solely on the Debtor's ability to fund a Chapter 13 Plan by future earnings over a 60 month time period.

SOUTHWEST FLORIDA BANKRUPTCY PROFESSIONAL ASSOCIATION'S TRIBUTE TO JUDGE PASKAY

On July 17, 2003, the Southwest Florida Bankruptcy Professional Association paid tribute to Judge Alexander Paskay. Numerous members of the bar attended in honor of Judge Paskay, including Chief Judge Fawcett, Bankruptcy Judge Glenn, and District Court Judge Steel, and Magistrate Judge Frazier. During the event, a portrait of Judge Paskay was unveiled. The portrait will hang in the Bankruptcy Court in Ft. Myers. Finally, the Southwest Florida Bankruptcy Bar Association announced their Proclamation in honor of Judge Paskay. All in all, it was a wonderful affair.





SERVICE REQUREMENTS

By Cassy Culley, Esq.

A bankruptcy case is in effect a basket of mini-cases. Certain events during the administration of the bankruptcy case require notice to all creditors of the debtor, while other forms of bankruptcy litigation affect only certain creditors or parties in interest. Part I lists some Bankruptcy Rules and Local Rules which relate to service and notice requirements and Part II provides a chart which identifies common pleadings and the proper party to serve with each pleading.

PART I:

Local Rules of the United States Bankruptcy Court for the Middle District of Florida

Rule	Title of Rule
1009-1	Amendments to Lists and Schedules
7005-1	Proof of Service
9014 – 1	Service and Proof of Service – Contested Matters
9036-1	Notice by Electronic Transmission: Service by Facsimile

Federal Rules of Bankruptcy Procedure

Rule	Title
1003	Involuntary Petition
1004	Partnership Petition
1007	Lists, Schedules and Statements; Time Limits
1009	Amendments of Voluntary Petitions, Lists, Schedules and Statements
1010	Service of Involuntary Petition and Summons; Petition Commencing Ancillary Case
2002	Notices to Creditors, Equity Security Holders, United States, and United States Trustee
4001	Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements
4003	Exemptions
4007	Determination of Dischargeability of a Debt
5005	Filing and Transmittal of Papers
5011	Withdrawal and Abstention from Hearing a Proceeding
6004	Use, Sale or Lease of Property
6006	Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease
6007	Abandonment or Disposition of Property
7004	Process: Service of Summons, Complaint
9013	Motions: Form and Service
9014	Contested Matters

PART II:

This chart is a guide to common service requirements in the United States Bankruptcy Court for the Middle District of Florida. This chart does not address the methods of service proscribed by Rule 7004, including the special rules for service of process upon United States federal officers and agencies, state or municipal governments, and insured depository institutions. Of course, movants are responsible for correct service. Attorneys should not rely on this chart in lieu of consulting the Bankruptcy Code and Rules and the Federal Rules of Civil Procedure.

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KEY
D = Debtor
DA = Debtor's Attorney
AP = Affected Parties (including [a] any entity that has an interest in the property or subject matter of the motion or request and, where represented by counsel, the attorney for the entity and [b] entities or their counsel that have filed a notice or appearance with the Clerk requesting service of all notices in the case).
T = Trustee
UST = United States Trustee
All = All creditors on matrix
20 LUC = 20 Largest Unsecured Creditors
UCC = Unsecured Creditors' committee
Adverse Parties = Plaintiff and defendant in adversary proceeding

Pleading	Parties to serve
Accept/Reject Executory Contract, Motion to	All, AP, T, UST
Accept/Reject Lease, Motion to	AP, UST, T, 20 LUC or UCC
Administrative Expenses, Application for	AP, D, DA, T, UST
Amend Complaint	Adverse Parties
Amendment of Schedules	AP, UST, T
Avoid Lien, Motion to	AP, UST, T
Compensation and Expenses, Application for	All, UST, D, DA, T
Compromise Controversy, Motion to	All, UST, D, DA, T
Consolidate, Motion to	All, D, DA, T, UST,
Continue Hearing/Conference Motion to	AP, UST, D, DA, T
Default Judgment, Motion for FRBP 7055	Adverse Parties
Dismiss chapter 7, 11, 12	All, UST, D, DA, T
Dismiss chapter 13	D, DA, T
Employ Professional Person, Application to	D, DA, T, UST
Examination under 2004, Application for	AP, D, DA, T, UST
Extend Time to File 523 Objection to Discharge	D, DA, T, UST
Extend Time to File 727 Objection to Discharge	D, DA, T, UST
File Amended Document, Motion to	AP, D, DA, T, UST
Modify chapter 11 Plan, Motion to	All, UST, T, D, DA
Modify chapter 13 Plan, Motion to	All, T, UST, D, DA
Objection to Claim	AP, UST, T, D, DA
Objection to Claim of Exemptions	All, UST, D, DA, T
Objection to Disclosure Statement	D, DA, T, UST
Objection to Plan	D, DA, T, UST
Re-open Case, Motion to	All, D, DA, T, UST
Reconsider or Vacate Order, Motion to	AP, D, DA, T, UST
Relief from Automatic Stay chapter 7, 13, Motion for	AP, D, DA, T, UST
Relief from Automatic Stay chapter 11, Motion for	D, DA, T, UST, 20 LUC or UCC
Removal of Civil Action	Parties to removed action, D, DA, T, UST, AP, and Clerk of Court from which the action is removed
Sales, Private and Public, Notice of	All, D, DA, T, UST
Sales, Real Property, Application for	All, D, DA, T, UST
Withdraw as Counsel, Motion to	All, D, DA, T, UST
Pleading	Parties to Serve
Withdraw Motion/Response	AP, D, DA, T, UST

CASE LAW UPDATE

Law Firm Exposed to Claims of Fraud on Client's Creditor

by Andrew T. Jenkins
Bush Ross Gardner Warren & Rudy, P.A.

A New Jersey law firm may be liable for claims of fraud resulting from its vigorous efforts in hindering creditors attempting to execute a judgment against the law firm's client. At a minimum, the mere presence of possible claims against an attorney for assisting clients in their financial endeavors necessitates careful consideration of any resulting fallout.

In *Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C.*, 331 F.3d 406 (3d Cir. 2003), the United States Court of Appeals for the Third Circuit overturned the decision of the United States District Court for the District of New Jersey dismissing the complaint of judgment creditors, the Morganroths, against a law firm, Norris McLaughlin, and the lawyers individually. The complaint brought against Norris McLaughlin alleged that the lawyers conspired to commit fraud, aided and abetted their client in acts of fraud and concealment related to the Morganroths' attempt to execute their judgment against Norris McLaughlin's client, and committed fraud themselves through material misrepresentations and fraudulent concealment.

Originally, the Morganroths had obtained a judgment exceeding six million dollars against one of John Z. Delorean's companies in a Michigan state court. The Michigan court also enjoined Delorean himself from transferring his assets to avoid the judgment. Norris McLaughlin represented Delorean and, engaging in self-styled "adversarial lawyering," took a variety of actions on behalf of Delorean to prevent the Morganroths from executing their judgment against Delorean's assets, which primarily consisted of Delorean's 430 acre Lamington Farm in New Jersey. Among the fraudulent acts alleged by the Morganroths, Norris McLaughlin had allegedly prepared and recorded a deed for Lamington Farm purporting to confirm the conveyance of the property to a company owned by Delorean, even though the conveyance had previously been ruled a fraudulent transfer by the Michigan court. The Morganroths also alleged that Norris McLaughlin subsequently prepared and recorded a "Memorandum of Life Lease" for Lamington Farm that purportedly acknowledged a pre-existing life lease between Delorean (the lessor) and Delorean for life, as the guardian for his children (the lessee).

The complaint had been dismissed by the District Court for failing to allege that the attorneys made misrepresentations to the Morganroths, the Morganroths detrimentally relied on the misrepresentations and the Morganroths incurred damages as a result, the elements necessary for common law fraud. Relying heavily on New Jersey law, the Third Circuit reversed holding that "when a complaint alleges that an attorney has knowingly and intentionally participated in a client's unlawful conduct to hinder, delay, and/or fraudulently obstruct the enforcement of a judgment of a court, the plaintiff has stated a claim."

As recognized by the Third Circuit, this case "raises thorny questions relating to the bounds of legitimate advocacy and transgressive participation by attorneys at law in a client's illegal conduct." While Norris McLaughlin may have gone too far in the representation of its client, which has not yet been decided, an ethical attorney must recognize that at some point aggressive advocacy stops and participation in a client's illegal conduct begins.

THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION
2003-2004
Committee Chairs

The Association is looking for volunteers to assist us this coming 2003-2004 year. If you are interested in getting more involved with the Association or one of the Standing Committees, please contact any one of the Association officers or the Chairpersons listed below.

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*Ad-hoc, non-voting board members

SOUTHWEST FLORIDA BANKRUPTCY PROFESSIONAL ASSOCIATION DINNER

The bankruptcy practitioners of the Fort Myers Division of the Middle District of Florida are pleased to announce their annual dinner at which Alexander L. Paskay, Chief Bankruptcy Judge, Emeritus, will be speaking. The dinner will be at a Heritage Palms Golf & Country Club located at 10420 Washingtonia Palm Way, Fort Myers, Florida 33912, on October 2, 2003. Cocktails will be served at 6:00 p.m. (Cash bar), with dinner at 6:45 p.m. Cost will be $43.50 per person, and reservations will be taken on a first come, first served basis. Checks should be made payable to Southwest Florida Bankruptcy Professional Association, and forwarded to Jeffrey W. Leasure, Esq., P.O. Box 61169, Fort Myers, Florida 33906-1169. The deadline for making reservations is September 25, 2003. Cancellation notices must be received no later than that date. No refunds will be issued for cancellations received after the deadline.

THE CRAMDOWN SURFS THE 'NET

Websites for Bankruptcy Practitioners

By Catherine Peek McEwen

The Cramdown's occasional column on useful internet websites returns in this issue. We welcome your suggestions for topical internet resources that make our practice easier. In this issue's column, we explore some helpful Case Management/Electronic Case Filing-related sites. If you think you can't be bothered with CM/ECF, think again and at least give this column to your legal assistant to check out for you.

CM/ECF compatible software

Okay, so you've passed the Clerk's training program and have your electronic "signature" – your PIN. Now you want to file a case. Software vendors hope to make it easy for you by offering CM/ECF-compatible bankruptcy software. Listed below are just some of the products that have been certified by bankruptcy courts, including ours, as compliant for uploading to their systems. Of course, neither our court nor *The Cramdown* endorses any vendor. However, reliable sources indicate that BestCase and EZ Filing are early favorites among practitioners who've tested those products. Some sites have free demos. Prices vary greatly.

Name	URL
Bankruptcy2003	www.bankruptcysoftware.com/software.shtml
Best Case	www.bestcase.com/
Bankruptcy Plus	www.cornerstone-computer.com/
EZ Filing	www.ezfiling.com/
Fresh Start Seven	www.freshstart.com/martin/fssbody.htm
Collier TopForm	bookstore.lexis.com/bookstore (use search feature to find product)
West Group 7...13	west.thomson.com/product/17598617/product.asp

Our own court has a more expansive list of vendors that also includes phone numbers, contact names, and email addresses. That compilation can be accessed at www.flmb.uscourts.gov/Docs/Software_vend.pdf.

For "dabblers" or those just short of cash right now

For occasional filers or those that do not want to make a large cash investment in a software program right now, there is an online solution: Bankrupter Internet 2.7 Singles. The software can be downloaded for free, and cases can be registered over the Internet without Adobe for $39.95 per case. The website is located at www.nwinds.com/singles.htm.

Bankruptcy court ECF sites

Links to all bankruptcy courts with ECF capability (or which are in the process, as is our court, of implementing ECF) are collected at this site: pacer.psc.uscourts.gov/cgi-bin/cmecf/ecf-links.pl. This web page includes a link to general information and training materials offered by the courts.

Some general background on CM/ECF for the "undecideds"

If you browsed through this article and the term CM/ECF is foreign to you, check out the Unites States Courts' website on CM/ECF. The process is described at the first link below, and a video showing its utility is located at the second link: www.uscourts.gov/cmecf/cmecf_about.html and www.uscourts.gov/CMECFVideo.html.

Our court's website has a comprehensive CM/ECF offering including an online tutorial, training class contents and registration links, user guides, and 40 pages of FAQs. Go to http://www.flmb.uscourts.gov/cm_ecf.htm to find all this information and more.

Lee Ann Bennett, the Clerk's Chief Deputy, is the project manager for CM/ECF in our court. (She takes over for Terry Miller, who left for greener pastures.) She can be reached at 407-648-6365, extension 6855.

Just for fun

As usual, we conclude with some stress busters, some mental exercises to break the monotony as you transition from billable task to billable task. The first site has more than 700 riddles to test your gray matter: www.riddlenut.com/show.php. We don't advise conquering this site all at one sitting or you'll never get to the next billable task. The second site is billed as "the Internet's most popular and entertaining IQ test" and even includes a practice test: www.iqtest.com. The "real" test is only 13 minutes, a mere ".3!" Have fun. *The Cramdown* will not ask to publish your scores.

Eleventh Circuit Adopts Standard for "Undue Hardship"

by Adam Lawton Alpert
Bush Ross Gardner Warren & Rudy, P.A.

The Eleventh Circuit Court of Appeals recently adopted a standard for the dischargeability of student debts under § 523(a)(8) of the Bankruptcy Code. *Hemar Ins. Corp. v. Cox (In re Cox)*, 2003 U.S. App. LEXIS 14710 (11th Cir. July 23, 2003). For student loans to be dischargeable under the "undue hardship" provision of § 523(a)(8) of the Bankruptcy Code, a court in the Eleventh Circuit must find "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans." *Hemar*, 2003 U.S. App. LEXIS 14710 at *7 (quoting *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)).

Prior to seeking Chapter 7 relief, debtor Ronald Jay Cox was a practicing lawyer in Georgia. *See Hemar*, 2003 U.S. App. LEXIS 14710 at *7. Cox had obtained his undergraduate degrees, his law degree and an LL.M. in taxation with financial assistance in the form of student loans in excess of $114,000. *See id.* However, as a result of his failed tax law practice in Georgia, Cox took a job doing landscaping for his brother's business and instituted his Chapter 7 bankruptcy case to discharge, among other debts, his student debts under the "undue hardship" provision in § 523(a)(8). *See id.* The Bankruptcy Court held that excepting the student loan debt from discharge would not be an "undue hardship" but nevertheless granted the debtor a partial discharge of the debts by reducing the amount due and altering the repayment terms thereof. *See id* at *8. Upon appeal of Cox's creditors, the United States District Court reversed the decision of the Bankruptcy Court. Cox appealed and the Eleventh Circuit Court of Appeals affirmed the District Court's decision. *See id.* at *13.

Student loans are generally excepted from discharge in a Chapter 7 case, unless the debtor can show that an "undue hardship" will be caused by excepting such debts from discharge. *See* 11 U.S.C. § 523(a)(8). While the majority of Circuit Courts have adopted the standard of the Second Circuit as set forth in *Brunner*, this case provided the Eleventh Circuit its first opportunity to adopt a standard for discharge of student loans under the "undue hardship" provision of §523(a)(8). In *Hemar*, the Eleventh Circuit specifically held that "the *Brunner* test is the appropriate test for determining 'undue hardship.'" *Hemar*, 2003 U.S. App. LEXIS 14710 at *7. After adopting *Brunner*, the Eleventh Circuit affirmed the District Court's decision that Cox had not established "undue hardship" under *Brunner*. *See id.* at *13.

In affirming the District Court's decision and adopting the *Brunner* test, the Eleventh Circuit refuted several arguments put forth by Cox. First, inasmuch as § 523(a)(8) was amended in 1998 to remove the ability for student loan indebtedness older than seven years to be automatically discharged, leaving "undue hardship" as the only means of discharging student loans, Cox argued that the *Brunner* test imposed too high a standard. The Eleventh Circuit reasoned that, while it was true that Congress made it more difficult for debtors to discharge student loans, it was the borrower's choice to take out the student loans and the burden of repayment should be borne by the borrower and not the taxpayers. *See Hemar*, 2003 U.S. App. LEXIS 14710 at *8. Moreover, the Eleventh Circuit reasoned that the *Brunner* test will not be satisfied by "a mere inability to pay" at the time of the debtor's bankruptcy filing; rather, the *Brunner* test will only be satisfied when the facts of a case show that the inability to repay will persist for a significant time and, thus, an *undue* hardship actually exists. *See id.*

Next, the Eleventh Circuit addressed the Bankruptcy Court's granting of a partial discharge to Cox. In holding that the partial discharge was improper, the Eleventh Circuit relied upon the plain language of § 523(a)(8) which provides that "undue hardship" is a preliminary factor that must be satisfied before *any* discharge of student debts could be granted, whether in whole or in part. *See id.* at *9. Cox, however, asserted that the court's interpretation of § 523(a)(8) violated the fundamental principle of providing the post-bankruptcy debtor with a "fresh start." *See id.* at *10. However, the Eleventh Circuit noted that it was clear that Congress intended to make it more difficult to discharge student liabilities under § 523(a)(8) and that Congress did not intend for judicial exceptions to this section under a "fresh start" theory. *See id.* at *10-11. Lastly, Cox asserted that a partial discharge could be granted under the Bankruptcy Court's equitable § 105 powers even when an "undue hardship" has not been shown by the debtor. *See id.* at *11. In dismissing Cox's assertion, the Eleventh Circuit stated that "[b]ecause the specific language of § 523(a)(8) does not allow for relief to a debtor who has failed to show undue hardship, the statute cannot be overruled by the general principles of equity contained in § 105(a)" and that for a court to do so would be "tantamount to judicial legislation." *Id.* at *12 (quoting *In re Mallinckrodt*, 260 B.R. 892 (Bankr. S.D. Fla. 2001), *rev'd*, 274 B.R. 560 (S.D. Fla. 2002) (internal quotation marks omitted)).

Thus, in the Eleventh Circuit, to discharge student loan indebtedness under § 523(a)(8), in whole or in part, a debtor must show (1) that the debtor has made a good faith attempt to repay student loans, (2) that the debtor cannot maintain a minimal standard of living if forced to repay such loans and (3) that the debtor's inability to repay is likely to continue for a significant amount of time. The following summarizes the tests applied in other Circuit Courts:

(cont. on pg. 14)

Eleventh Circuit (cont. from pg. 13)

- The First Circuit does not appear to have adopted a standard.

- The Second Circuit promulgated the *Brunner* test. *See Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987).

- The Third Circuit has adopted the *Brunner* test. *See Brightful v. Penn. Higher Educ. Assistance Agency*, 267 F.3d 324 (3d Cir. 2001).

- The Fourth Circuit has adopted the *Brunner* test. *See Ekanasi v. Educ. Res. Inst.*, 325 F.3d 541 (4th Cir. 2003).

- The Fifth Circuit does not appear to have adopted a standard.

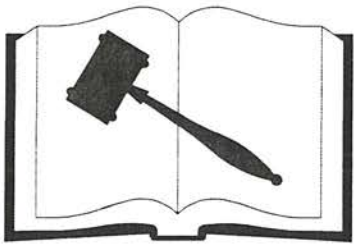
- The Sixth Circuit has followed the *Brunner* test without specifically adopting it. *See Hornsby v. Tenn. Student Assistance Corp.*, 144 F.3d 433 (6th Cir. 1998).

- The Seventh Circuit has adopted the *Brunner* test. *See Roberson v. Ill. Student Assistance Comm'n.*, 999 F.2d 1132 (7th Cir. 1993).

- The Eighth Circuit has adopted a "totality of the circumstances test" with special attention to debtor's current and future financial resources, debtor's necessary living expenses and other circumstances unique to the debtor. *See Long v. Educ. Credit Mgmt. Corp. (In re Long)*, 322 F.3d 549 (8th Cir. 2003); *Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews)*, 661 F.2d 702 (8th Cir. 1981).

- The Ninth Circuit has adopted the *Brunner* test. *See Rifino v. United States of America*, 245 F.3d 1083 (9th Cir. 2001); *Pena v. United Student Aid Funds*, 155 F.3d 1109 (9th Cir. 1998).

- The Tenth Circuit does not appear to have adopted a standard, however, the Tenth Circuit B.A.P. has applied the *Brunner* test. *See Garrett v. Nebhelp, Inc. (In re Garrett)*, 292 B.R. 711 (10th Cir. B.A.P. 2002).



STETSON UNIVERSITY COLLEGE OF LAW TO HOST ITS 28TH ANNUAL SEMINAR ON BANKRUPTCY LAW AND PRACTICE

Stetson University College of Law is proud to announce its Twenty-Eighth Annual Bankruptcy Seminar, to be held at the Sheraton Sand Key Resort, Clearwater Beach, Florida, December 12-13, 2003. The seminar is designed for all practitioners who desire to maintain bankruptcy as their field of expertise as well as general practitioners who encounter bankruptcy issues in their practice.

The seminar faculty includes nationally known experts in the field of bankruptcy and is chaired by The Honorable Alexander L. Paskay, Chief Bankruptcy Judge Emeritus, Middle District of Florida. This year's conference will feature the following topics: Recent Developments in Chapter 13; Civil Enforcement of Section 707(b); Dischargeability Issues; Recent Developments of Fraudulent Transfers; Ethics; Eligibility for Relief, Co-Debtor Stay, Plan Preparation; Financial Duties Representing Chapter 11 Debtors; Cash Collateral, Stay Litigation in Chapter 11; Multiple Jurisdictional Practice; Chapter 13 Confirmation, Best Interest Test, Good Faith Issues, Confirmation Problems, Lien Stripping; Special Role of the U.S. Trustee in Chapter 11 Cases; and more.

As a pre-cursor to the bankruptcy seminar, Stetson will also host its annual Primer on Bankruptcy on the law campus, Saturday, November 8, 2003, from 9:00 a.m. until 1:00 p.m. This basic level workshop is a "must attend" for attorneys, paralegals, and legal assistants who would like to become familiar with the operation of the bankruptcy court.

A brochure with additional information and a registration form will be available soon. For current information about the Primer or the Annual Conference, please call the Office for Continuing Legal Education at (727) 562-7830 or visit the CLE Web-site at: http://www.law.stetson.edu/cle.

CALENDAR OF EVENTS

EVENT	DATE	LOCATION
Seminar of Assignments for Benefit of Creditors	September 19, 2003	Tampa Hilton
TBBBA Lunch program CM/ECF	October 7, 2003	Downtown Hyatt
View From the Bench Reception	November 5, 2003	TBA
View From the Bench Program	November 6, 2003	TBA
Stetson seminar "Primer on Bankruptcy"	November 8, 2003	Stetson Law School
TBBBA Lunch program Offshore Accounts	November 18, 2003	Downtown Hyatt
ABI Leadership Conference	December 3-7, 2003	La Quinta, California
Bankruptcy Conference Golf Outing	December 11, 2003	Belleview Biltmore, Belleair, FL
Stetson University College of Law's Seminar on Bankruptcy Law and Practice	December 12-13, 2003	Sheraton Sand Key Resort, Clearwater Beach

COURT EXTENDS SECTION 105 PROTECTION TO WHOLLY OWNED SUBSIDIARY

Electric Machinery Enterprises, Inc.
Chapter 11 Case No. 03-11047-8W1
Adversary Number 03-00485

The old adage "everything old is new again" was proved recently by Judge Michael G. Williamson's bench ruling using Section 105 to enjoin the destruction of a Chapter 11 debtor-in-possession's subsidiary and the consequent harm to the debtor's reorganization effort. The much overused and maligned Section 105 really can be an effective remedy under the right circumstances.

THE FACTS

Electric Machinery Enterprises, Inc. ("EME") filed its Chapter 11 case on May 29, 2003. EME is a 70-year old, minority-owned electrical contracting company that employs over 300. EME's filing was triggered by a number of factors, most prominently suffering a substantial judgment in connection with one of its jobs.

At the time of filing, EME had two wholly owned subsidiaries. These subsidiaries did not seek relief in the Bankruptcy Court. One of the subsidiaries, E.M. Enterprises General Contractors, Inc. ("EMEGC"), ran EME's Tower Division, which contributed $8 million of EME's $50 million in gross sales in 2002, and almost $2 million to EME's overhead and generated a net profit of $150,000 to EME's operations last year.

About a month before the filing, pursuant to an agreement reached in March, 2003, EME's Tower Division's assets and liabilities were transferred to EMEGC. The transfer was the result of a compromise reached between EME and the EME officer that was running the division, who had the right to pull out all Tower Division assets and start a separate business under the terms of his employment agreement. This officer had originally contributed certain assets and contracts to EME to form the Tower Division a few years before. The assets transferred from EME to EMEGC in April, 2003, were only about 5 percent of EME's total assets.

All EME's accounts receivable, inventory, and equipment were subject to a blanket lien to secure a $7.2 million revolving line of credit. The transfer of assets to EMEGC was made expressly subject to the bank's lien.

EME had not disclosed the formation of the subsidiary and the transfer of the assets to the bank prior to the transaction, and it is disputed whether applicable loan documents required notification. However, EME had disclosed EMEGC's existence to the bank, commencing in June of 2003, through monthly internally prepared financial statements and monthly borrowing base reports. The Court found that the disclosure of EMEGC to the bank was buried in these financial disclosures, but that the transaction was certainly not hidden from the bank.

In a meeting at EME's premises in mid-August, 2003, the bank's workout officer began to question the EMEGC transaction. The next day, the officer accelerated all of the bank's obligations from non-debtors and offset bank accounts owned by EME's president and his wife. The evidence was undisputed that the bank in writing stated that it was going to take action against EMEGC. Efforts to negotiate a resolution failed.

SECTION 105 COMPLAINT

In a novel approach, EMEGC's counsel, Anthony Battaglia, filed an adversary proceeding in EME's bankruptcy, suing EME, the bank, and the EMEGC officer having the right to, in effect, take over EMEGC because EME could no longer fund it. The complaint sought declaratory relief as to all defendants' rights to EMEGC and its assets and a separate count for Section 105 injunctive relief to preserve EMEGC as an operating business and because EMEGC could contribute materially to EME's reorganization. The thrust of the request for injunctive relief was that any action by the bank affecting EMEGC or its assets would destroy the value of EMEGC's accounts receivable and work in progress and could cost EMEGC, EME, and the bank more than $1 million.

STANDING

Judge Williamson, initially, questioned EMEGC's standing to use Section 105 to obtain injunctive relief. The judge asked Don Stichter, EME's counsel, if this could be resolved by EME's intervening as a party plaintiff. The standing issue was resolved by EME's agreement to intervene as a party plaintiff.

THE RULING

Judge Williamson applied the classic factors in determining whether the request for a 105 injunction should be granted.

(cont. on pg. 17)

The judge initially found that there was a substantial likelihood of reorganization, particularly at this early stage of EME's case, and based on his knowledge, found that there is "no reason that this case can't be successfully reorganized." Next, the judge dealt with the question of whether irreparable injury and no adequate remedy at law existed. Judge Williamson found that in light of EMEGC's being a general contractor, most certainly its receivables would be worthless if operations were impacted by the bank and that in liquidation the inventory and goodwill of EMEGC would be lost. The Court then balanced the interests of the parties. He found that it was in everybody's interest that the subsidiary remain intact and that this would impose no hardship on the bank. This was particularly true because EMEGC's officer, the party having the right to effectively cause EMEGC to be removed from EME, had stipulated to the entry of an injunction against him prohibiting the officer from invoking his rights and mandating that he would operate EMEGC in the ordinary course of business, only taking his regular salary and not transferring any assets out of EMEGC pending further order of the Court. Finally, with regard to the public interest, the Court found that the interest in reorganizing EME and preserving its value for creditors was a substantial public interest that could only be accomplished by preserving the subsidiary.

Based on these factors, Judge Williamson granted a temporary injunction binding EMEGC's officer as noted above and preventing the bank from commencing litigation or taking other action that might interfere with the operation of EMEGC.

IMPORTANCE OF THE RULING

A review of applicable case law suggests that Judge Williamson's opinion is one of only a few (and likely the first in a very long time) in which Section 105 has been extended to preserve the business of an operating subsidiary*. Section 105 has been used successfully to protect key officers for a brief period of time when they either contribute financially to the reorganization, or when their being burdened with litigation early in a case is harmful to the debtor's chances of reorganization. Typically, courts have suggested that the subsidiary merely file its own Chapter 11 case.

The facts in this case suggest that EMEGC's being forced to seek relief would, in and of itself, cause the damage that was feared from the bank. It should be noted that the loss of value in accounts receivable and work in process may not apply to every kind of debtor and may limit the ruling in this case. However, there can be no question that Judge Williamson's ruling opens the door, in appropriate situations, for a debtor's subsidiaries' business to be preserved without the need for a Chapter 11 filing.

Most Chapter 11 debtor and creditor lawyers have seen Section 105 get overused and abused to the point where judges will openly scoff at its mention and point out that when nothing else fits or the litigant cannot figure out the appropriate basis for relief, Section 105 is a last-resort catch all.

This ruling demonstrates the flexibility and breadth of Section 105 — when it is creatively applied to compelling facts. It just goes to show that even "old, worn out" bankruptcy concepts can sometimes be recycled into a shiny new tool to help reorganize a debtor. We are all reminded by this decision to "keep our thinking caps on."

-Compiled/edited by Leon A. Williamson, Jr. (no relation to the judge) and Catherine Peek McEwen, based on the transcript of proceedings

(Footnotes)

See In re Stadium Management Corp., 95 B.R. 264 (D. Mass. 1988); *In re N-Ren Corp.*, 64 B.R. 773 (Bankr. S.D. Ohio 1986); *see also* In re Equity Funding Corp. of America, 396 F. Supp. 1266 (C.D.Cal.1975); *but see In re Florida Bay Banks, Inc.*, 156 B.R. 673 (Bankr. N.D. Fla. 1993) (Judge Killian sanctioned a Chapter 11 debtor and its counsel for attempting to obtain section 105 injunction to protect subsidiary that was not eligible to file bankruptcy).

11th ANNUAL FALL CLE SEMINAR

Jacksonville Bankruptcy Bar Association
Marriott at Sawgrass Resort
Friday, October 31, 2003

If you are interested in additional information, please contact Jay Brown at 904-798-3700 or via email at jabrown@akerman.com

Interested in Public Speaking?

A joint effort by the Hillsborough County Bar Association and Chief Judge Manuel Menendez of the Thirteenth Judicial Circuit of the State of Florida has produced the Speaker's Bureau. The Speakers Bureau provides speakers to schools and civic organizations on law-related topics. If you would like to volunteer to speak on bankruptcy law issues, please call the HCBA's Melissa Fincher at 221-7777.

PEOPLE ON THE GO

Amy L. Denton has joined the law firm of **Stichter, Riedel, Blain & Prosser, P.A.** as an associate. She is a graduate of the University of Florida Law School graduating with honors in December 2002. She obtained her Bachelor of Science and Master of Accountancy from the University of South Florida and is licensed in Florida as a Certified Public Accountant.

Lori A. Heim has joined Tampa's **Hinshaw & Culbertson** law firm as a partner concentrating in commercial litigation, real estate, bankruptcy and creditor's rights.

Lara Fernandez, law clerk for **Judge Paskay**, delivered a baby girl, Emma Josephine, on July 11, 2003. Congratulations Lara!

Richard Oliver of **Buchanan Ingersoll** has been appointed to serve a three-year term on the Florida Bar's committee on the unauthorized practice of law.

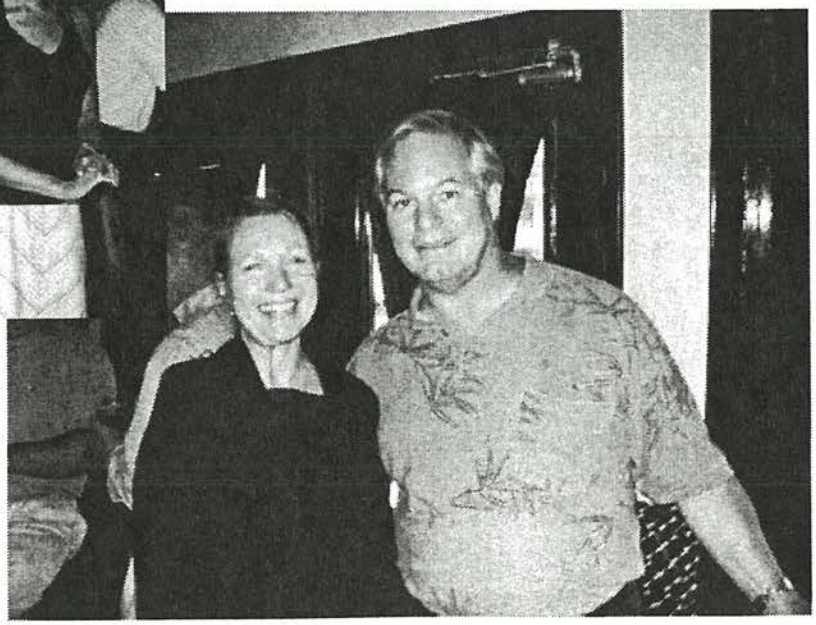
Jules Cohen of **Akerman Senterfitt** has been named the first recipient of the Central Florida Bankruptcy Law Association's Professionalism Award, which is now named after its first recipient: The CFBLA Jules Cohen Professionalism Award.

If you have any news for this column, please email the Cramdown at dkirk@fowlerwhite.com or ajenkins@bushross.com.

WELCOME NEW MEMBERS TO THE TBBBA!

Angela Morton Armstrong
Jennifer Aycock
Kelly M. Ballard
Sabrina Beavens
Edward B. Carlstedt
Amy L. Denton
Amy Drushal
Daniel Hitchcock
Peter Lanning
Anthony C. Loretto, Jr.
Brigid A. Smith Merenda
Scott D. Stamatakis

HIGHLIGHTS FROM RECENT CONSUMER COMMITTEE HAPPY HOUR AT MANGROVES



FINALLY, ONE TO GROW FROM

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HYPERPHRASE TECHNOLOGIES, LLC
and HYPERPHRASE INC.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

ORDER

02-C-647-C

Pursuant to the modified scheduling order, the parties in this case had until June 25, 2003 to file summary judgment motions. Any electronic document may be e-filed until midnight on the due date. In a scandalous affront to this court's deadlines, Microsoft did not file its summary judgment motion until 12:04:27 a.m. on June 26, 2003, with some supporting documents trickling in as late as 1:11:15 a.m. I don't know this personally because I was home sleeping, but that's what the court's computer docketing program says, so I'll accept it as true.

Microsoft's insouciance so flustered Hyperphrase that nine of its attorneys, namely Mark A. Cameli, Lynn M. Stathas, Andrew W. Erlandson, Raymond P. Niro, Paul K. Vickrey, Raymond P. Niro, Jr., Robert Greenspoon, Matthew G. McAndrews, and William W. Flachsbart, promptly filed a motion to strike the summary judgment motion as untimely. Counsel used bolded italics to make their point, a clear sign of grievous iniquity by one's foe.

Copy of this document has been
provided to: All Counsel
BBC
this 1st day of July 20 03
by CAKorth
C.A. Korth, Secretary to
Magistrate Judge Crocker

(cont. on pg. 22)

True, this court did enter an order on June 20, 2003 ordering the parties not to flyspeck each other, but how could such an order apply to a motion filed almost five minutes late? Microsoft's temerity was nothing short of a frontal assault on the precept of punctuality so cherished by and vital to this court.

Wounded though this court may be by Microsoft's four minute and twenty-seven second dereliction of duty, it will transcend the affront and forgive the tardiness. Indeed, to demonstrate the even-handedness of its magnanimity, the court will allow Hyperphrase on some future occasion in this case to e-file a motion four minutes and ***thirty*** seconds late, with supporting documents to follow up to ***seventy-two*** minutes later.

Having spent more than that amount of time on Hyperphrase's motion, it is now time to move on to the other Gordian problems confronting this court. Plaintiff's motion to strike is denied.

Entered this 1st day of July, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge

President's Message (cont. from pg. 1)

ECF electronic filing program at which Judge Williamson and Chuck Kilcoyne are scheduled to speak. In addition, we have invited vendors to display software and hardware so that our members can obtain information relating to hardware and software needed to participate in the CM/ECF program.

For those members looking to participate in future changes in our District (or direct how future changes will be adopted), the Association provides many avenues for involvement. The CLE Program Committee is looking for members to assist in planning upcoming CLE lunches. Those who are interested should contact Scott Stichter or Caryl Delano about their next planning meeting. The Ad Hoc Consumer Lawyer Committee chaired by Randy Hiepe and David Hicks holds monthly meetings in the Fifth Floor Training Room at the Federal Courthouse to discuss pressing consumer issues. All members interested in consumer issues should contact Randy and David about participation. Further, the Publication Committee is always looking for volunteers to draft articles relating to issues of importance to our members or important case law developments. Please contact Donald Kirk to get involved with the Publication Committee. For those looking to carry out our Association's long standing commitment of service to the community, please contact Kelley Petry, who is working with Bay Area Legal Services to implement bankruptcy-related programs for those less fortunate individuals in our community. Finally, Luis Martinez-Monfort welcomes all input and assistance relating to technology issues, including implementation of the CM/ECF program. Remember, "There is nothing permanent, except change." Embrace the change or be left behind.

*Bob Dylan, 1963

WANT A HIGH-POWERED ASSISTANT?

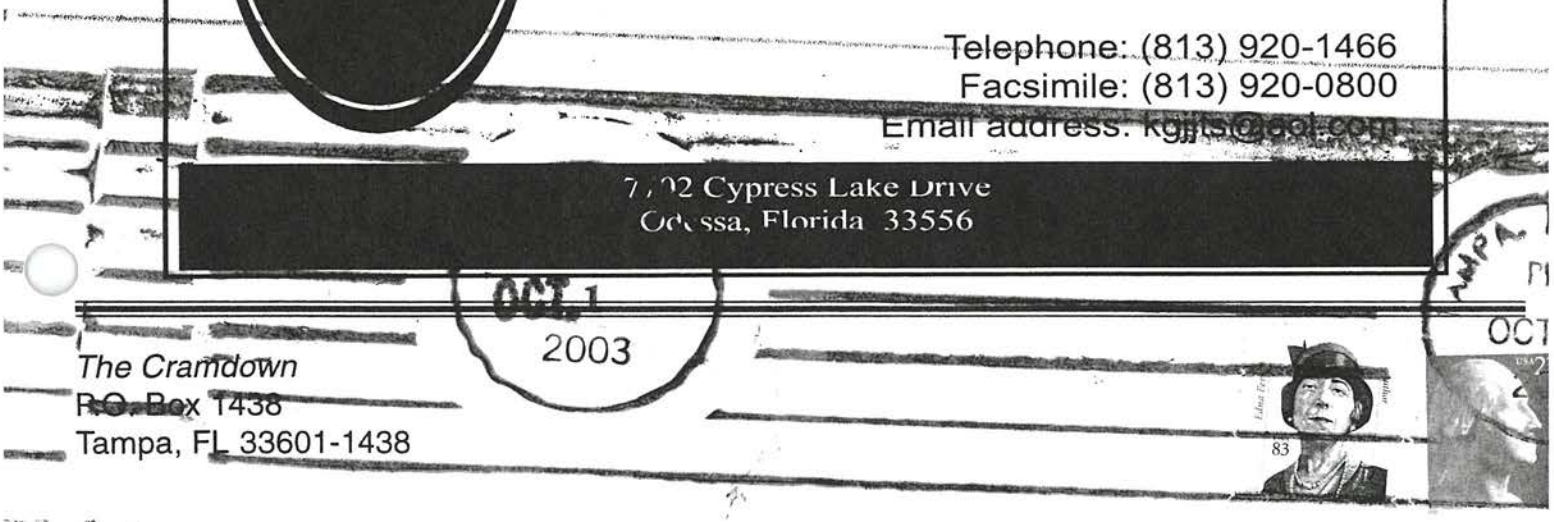
Certified Bankruptcy Assistant Program Offered by ABJA

The Association of Bankruptcy Judicial Assistants is a national association comprising bankruptcy judges' judicial assistants/ secretaries and Certified Bankruptcy Assistants. Tampa's own Mary Morrison, Judge Paskay's J.A., is the president of the ABJA this year. The ABJA's annual CBA program was developed to enable secretaries/assistants, paralegals, and individuals in the legal profession to keep pace with new developments in bankruptcy law and to be an effective quality improvement mechanism for employers.

This year's program will be held October 8-9, 2003, at the Francis Marion Hotel in Charleston, S.C. For more information go to www.abja.org. Topics to be covered include the Bankruptcy Code and Rules, legal research, legal writing and grammar, and ethics.

A skilled, efficient legal assistant can make a big difference in one's practice. "Our staff has shown definite improvement in their legal research and writing as a result of their attendance and participation in this program," said David Jennis, who has sent two staff members to the past programs.

-Compiled by Cathy McEwen



The Cramdown
P.O. Box 1438
Tampa, FL 33601-1438

HONORABLE PAUL M. GLENN
UNITED STATES BANKRUPTCY JUDGE
801 N. FLORIDA AVENUE
TAMPA, FL 33602