The Cramdown

The Newsletter of the Tampa Bay Bankruptcy Bar Association FALL 2004

Editor, Luis Martinez-Monfort, Mills Paskert Divers P.A.

PRESIDENT'S MESSAGE

By Edwin G. Rice
Glenn Rasmussen, et al., P.A.

I am proud to report that as I take over as president, I find our Association in excellent shape. We are fortunate to be led by a very capable and energetic group of officers and directors, and our immediate past president, John Lamoureux, has been an exceptional steward of the Association's interests. Our finances are strong, and we enjoy an excellent relationship with our bankruptcy judges and clerk's office. We are now approximately 250 active members strong.

This good news reminds me of the old adage, "if it ain't broke, don't fix it." In that spirit, over the next year our Association will focus on continuing and improving the benefits you, our members, have come to expect.

Our monthly meetings and CLE programs will continue to serve as the focal point of our Association's activities. Our programs promise to keep us abreast of the latest topics in bankruptcy law, as well as provide a convenient forum for us to interact socially with our colleagues, judges and the clerk's office. Caryl Delano and Donald Kirk, the co-chairs of our Association's CLE Committee, are doing a great job in bringing us insightful, informative, and sometimes even entertaining CLE programs (many of which are approved for ethics credit). Members who are wondering how to become more involved in our Association are encouraged to serve on Caryl's and Donald's committee.

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CLERK'S CORNER

by Chuck Kilcoyne
Deputy-in Charge

On behalf of the Clerk's office, I want to thank everyone for their patience and understanding during Charley, Frances and Ivan. Hopefully you were able to access our website and received the information you needed. In the future, and if you find yourself without electricity, please remember that you can always call my office directly at (813) 301-5037 and listen to the voicemail message for updated information.

Our CM/ECF trainers have contributed to this issue of the Cramdown. I encourage those of you that have not yet registered for training to do so in the very near future. And those who you that have attended training but not yet requested your login and password - why not?

The PACER Service Center (PSC responds to hundreds of telephone calls and emails daily in support of the judiciary's various public access services, including CM/ECF. Questions ranging from general information about CM/ECF to complex technical setup inquiries are answered. PSC also responds to general electronic filing questions (other than court specific procedural questions). They can address your questions concerning browser issues; troubleshooting connection issues; provide

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Luis Martinez-Monfort
Mills Paskert Divers P.A.
(813) 229-3500
Fax (813) 229-3502
lmmonfort@mpdlegal.com

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Chair/Immediate Past President
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Carlton Fields, P.A.
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Fax: (813) 229-4133
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Fax: (813) 259-9895
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(813) 286-4081
Fax: (813) 286-4168
Email: scapa@ij.net

Directors

Carrie Beth Baris
Bush, Ross, et al. P.A.
(813) 224-9255
Fax (813) 223-9620
cbaris@bushross.com

Caryl E. Delano
Addison & Delano, P.A.
(813) 223-2000
Fax: (813) 228-6000
Email: delano@mcaddison.com

Luis Martinez-Monfort
Mills Paskert Divers, P.A.
(813) 229-3500
Fax (813) 229-3502
lmmonfort@mpdlegal.com

Kelley Petry
Kelley M. Petry, P.A.
(813) 239-0713
Fax: (813) 239-0715
kmpetrypa@aol.com

Alberto Gomez
Morse & Gomez, P.A.
(813) 301-1000
Fax: (813) 301-1001
Email: agomez@morsegomez.com

Donald R. Kirk
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Fax: (813) 229-8313
Email: dkirk@fowlerwhite.com

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Fax: (813) 273-5145
cthompson@grayharris.com

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Fax: (813) 228-2303

VIEW FROM THE BENCH

ENFORCEMENT OF FOREIGN JUDGMENTS IN THE UNITED STATES

Hon. Alexander L. Paskay
Chief Bankruptcy Judge Emeritus
Middle District of Florida, Tampa, Florida

The enforcement of a domestic judgment in a state other then where the judgment was handed down is governed by the "Full Faith and Credit" clause of the U.S. Constitution.
U.S. Const. Art. IV. § 1 provides that:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Congress passed legislation to deal with this clause by enacting 28 USC § 1738 (State and Territorial statutes and judicial proceedings; full faith and credit), and 28 USC § 1738A, (Full faith and credit given to child custody determinations).

PRINCIPLES GOVERNING ENFORCEABILITY OF FOREIGN JUDGMENTS

In the leading case of Hilton v. Guyot, 159 U.S. 113 (1895), 40 L. Ed. 95 (U.S. 1895), 16 S. Ct. 139 (U.S. 1895), the Supreme Court held that where the courts of a particular foreign country would not, under similar circumstances, grant conclusive effect to a valid judgment of an American court, such lack of reciprocity was a valid ground to deny the conclusive effect of a valid judgment of a foreign country.

Notwithstanding, several federal courts granted conclusive effect to a foreign judgment based on the conclusion that the foreign court would give conclusive effect to an American judgment under similar circumstances, and the reciprocity requirement of Hilton would have been satisfied. Harrison v. Triplex Gold Mines, 33 F.2d 667 (1st Cir. 1929). Some federal courts granted extra territorial effect to valid judgments of foreign countries by permitting parties to maintain a suit in the district courts based on the foreign judgments. Aside from permitting parties to rely on a foreign judgment offensively or as a basis of an affirmative relief, parties are also permitted to rely on a foreign judgment defensively. Federal courts have held where the foreign country granted a valid judgment in favor of a particular party, with respect to a particular matter, that matter cannot be relitigated in the district court and therefore the foreign determination is granted a conclusive effect. Lea v. Deakin, 1879 (C.C.Ill.) F. Cas. No. 8154, Perrin v. Perrin, 408 F.2d 107 (C.A. 3rd 1969); Leo Feist Inc. v. Debmar Publishing Co., 232 F. Supp. 623 (D.C. Pa. 1964).

DOES FEDERAL OR STATE LAW CONTROL

As early as 1938 the Supreme Court in the case of Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), 82 L.Ed. 1188 (U.S. 1938), 58 S. Ct. 817 (U.S. 1938), established the general principle that except as to matters governed by the Federal Constitution or by an Act of Congress, federal courts are required in a diversity citizenship case to apply state law in determining issues of substantive law. In Klaxon Co. v. Stenton Electric Mfg. Co., 313 U.S. 487 (1941), 85 L. Ed 1477 (U.S. 1941), 61 S. Ct.1020 (U.S. 1941) the Supreme Court held that in a diversity citizenship case the federal court was required to follow the conflict-of-law rules of the state in which the court was sitting.

Based on the foregoing it is now clear that state law rather than federal law determines whether a valid foreign judgment entered by a foreign court is entitled to an extraterritorial effect in a federal district court.

In Svenska Handelsbanken v. Carlson, 258 F. Supp. 448 (D.C.Mass. 1946) the district court held, based on Erie, *supra*, that the laws of Massachusetts govern the determination of the extraterritorial effect of judgment rendered by a Swedish court. Foreign arbitration awards are subject to the Convention on Recognition and Enforcement of Arbitral Awards (9 U.S.C.§§ 201 et seq.) which involves only enforcement of foreign arbitral awards but not enforcement of foreign judgments confirming arbitration awards. Accordingly, the state law is not pre-empted to the extent that it permits, regulates, and establishes procedures for the enforcement of foreign money judgments. Island of Territory of Curacao v. Solitron Devices Inc., 489 F.2d 1313 (C.A.N.Y. 1973), cert. denied, 416 U.S. 986 (1974), 40 L. Ed. 2d 763 (U.S. 1974), 94 S. Ct. 2389 (U.S. 1974).

COMITY AS BASIS FOR RECOGNITION OF FOREIGN JUDGMENTS

Considering the doctrine of comity in the case of Hilton v. Guyot, *supra*, the Court recognized that comity in a legal sense is neither a matter of absolute obligation on the one hand, nor a matter of mere courtesy and good will upon the other, but it is a recognition of one Nation's due regard both to international duty and convenience, and of the rights of its own citizens.

Notwithstanding, the majority of courts consider comity an indispensable underpinning of recognition of foreign judgments. Burnham v. Webster, 1846 (C.C. Me.) F. Case No. 2179, Ritchie v.

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cMullen, 159 U.S. 235 (1895), 40 L. Ed 95 (U.S. 1895), 16 S. Ct. 139 (U.S. 1895); Harrison v. Triplex, 33 F.2d 667 (1st Cir. 1929), Shikoh v. Murff, 257 F.2d 306 (2d Cir. 1958).

In the case of International Transactions Ltd. v. Embotelladora Agral Regiomontana SA DE CV, 347 F.3d 589 (5th Cir. 2003) the court held that under the principles of international comity, foreign courts' judgments are conclusive in federal courts when (1) the judgment was rendered by a court of competent jurisdiction; (2) the judgment is supported by due allegations and proof; (3) the relevant parties had opportunity to be heard; (4) the foreign court follows procedural rules; and (5) the foreign proceeding is stated in clear and formal record . See also In re Kmart Corp., 285 B.R. 679 (Bankr. N.D. Ill 2002).

CONFLICT WITH THE PUBLIC POLICY OF THE DOMESTIC COURT AS BASIS FOR REFUSAL TO RECOGNIZE FOREIGN JUDGMENTS

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CASES REFUSING RECOGNITION ON THE GROUNDS OF CONTRAVENTION OF PUBLIC POLICY

In Bank Melli Iran v. Pahlavi, 58 F.3d 1406 (9th Cir. 1995) the Ninth Circuit Court of Appeals held that federal courts should not recognize a judgment of a foreign state if the judgment was entered under a judicial system that does not provide impartial tribunals or procedures compatible with the concept of due process of law.

In the case of de la Mata v. American Life Ins. Co., 771 F. Supp. 1375 (D.C. Del. 1991) the court held that the service of process in the underlying foreign action failed to comport with the American fundamental notions of due process. A service upon the company's former agent was not a notice reasonably calculated to apprise the company of the pendency of the law suit and did not give an opportunity to present a defense. Therefore the court did not recognize the foreign judgement. Decision by an Egyptian court vacating an arbitration award were not given res judicata effect because doing so would violate U.S. policy favoring arbitration of commercial disputes. Chromallo Aeroservices, a Division of Chromally Gas Turbine Corporation v. Arab Republic, 939 F.Supp. 907 (D.D.C. 1996), see also Comment c following §117 of Restatement 2d Conflict of Laws.

PUBLIC POLICY HELD NOT CONTRAVENED

In the case of Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624 (2d Cir. 1976) the Second Circuit Court of Appeals held that a Canadian adjudication in favor of forum selection clauses and against assignments for the purpose of litigation did not violate the public policy of New York, and it would have been a violation of both the public policy of New York and the principle of comity not to recognize the Canadian judgment.

In Perrin v. Perrin, *supra*, the wife filed a complaint and sought custody of the children. Both the husband and wife were Swiss citizens and participated in a Mexican divorce proceeding. The wife actually appeared and the husband was represented through his counsel. The Mexican court entered a divorce decree and awarded custody of the couple's minor child to the husband. After the couple moved to the Virgin Islands, the wife filed a suit in the Federal District Court requesting a divorce and custody of the children. The District Court dismissed the suit recognizing the validity of the Mexican divorce decree.

The enforcement of a foreign judgment based on the law of the foreign jurisdiction does not offend public policy of the forum just because the foreign law upon which the judgment was based was different from the law of the forum, or the foreign law is more favorable to judgment creditors than the laws of the forum. Toronto- Dominion Bank v. Hall, 367 F.Supp. 1009 (D.C. Ark. 1973).

CONCLUSIVE EFFECT OF A FOREIGN JUGDMENT (RES JUDICATA)

In an action involving the same parties as in a foreign jurisdiction and where a valid judgment has been rendered by a foreign court, absent the existence of compelling reasons why the principle of comity should not give a conclusive effect to the foreign judgment, the merits of the case should not be retried based on the mere assertion by one of the parties that the judgment was erroneous in law or in fact. Additionally, the foreign judgment shall be accepted as conclusive unless it was contrary to international law or the principle of comity. Hilton v. Guyot, *supra*, Ritchie v. McMullen, *supra*.

In Gross v. Marchlewski, 8 F.Supp. 85 (D.C.N.Y. 1933) the court denied a motion by the decedent's widow requesting that a Polish official turn over certain moneys to her. The court concluded that it would not override the Polish court's disposition of the decedent's property located in Poland and the Polish decree was binding. When an American creditor invoked the jurisdiction of the Swedish bankruptcy court the judgment of the Swedish court was binding and determinative of certain issues before the Federal court in a bankruptcy case. The court relied on the doctrine of comity and on the doctrine of res judicata. The court concluded that the Swedish court's judgment precluded the creditor from asserting the same claim that was rejected by the Swedish court. In re Aktiebolaget Kreuger& Toll, 20 F. Supp. 964 (D.C.N.Y. 1937), aff'd, 96 F.2d 768 (2d Cir. 1938), In re Carl Zeiss Stiftung v. E/B Carl Zeiss Jena, 293 F. Supp. 802 (D.C.N.Y. 1968), aff'd on other grounds, 433 F.2d 686 (2d Cir. 1970), cert. denied, 403 U.S. 905 (1971); 29 L.Ed 680 (U.S. 1971), 91 S. Ct. 2205 (U.S. 1971).

In a judgment of the West German court in a trademark infringement suit, issues determined by the German court were barred from relitigation by the doctrine of collateral estoppel. See also Leo Feist

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c. v. Debmar Publishing Co., (supra)(collateral estoppel); Flota Maritima Browning, Sociada Anonima v. Motor Vessel Ciudad de Habana, 218 F.Supp 938 (D.C. Md. 1963), aff'd on other grounds, 335 F.2d 619 (4th Cir. 1964).

Recognizing the binding effect of foreign judgments, several courts have relied on the doctrine of res judicata or collateral estoppel to bar relitigation of issues that were already decided by a foreign court. In the case of Ackerman v. Ackermam, 517 F. Supp. 614 (D.C.N.Y. 1981), aff'd, 676 F.2d 898 (2d Cir. 1982) the former husband was collaterally estopped from litigating defenses which he did not raise in the original action in England.

Recognition of foreign judgments entered by a court of competent jurisdiction was not limited by the judgment entered after a full scale trial, but was also extended to decrees entered based on a settlement in the case Zorgias v. SS Hellenic Star, 487 F.2d 519 (5th Cir. 1973). The question of whether a federal court will recognize and enforce a foreign judgment which was based on a claim which would have been barred in New York courts by the statute of limitations, is answered in the negative in the case of Alesayi Beverage Corp. v. Canada Dry Corp., 947 F. Supp 658 (S.D.N.Y. 1996). In this case the court refused to enforce a judgment of a Saudi Arabian court. It should be noted in this connection that under the applicable choice of law the soundness of this decision is questionable because if the relevant nexus with the Saudi court was present the Saudi limitation should have been applicable.

While several courts recognized and enforced foreign judgments, they did not indicate that they relied on American or foreign principles of res judicata or on collateral estoppel. In re Aktiebolaget Kreuger & Toll, 20 F Supp 964 (D.C.N.Y. 1937), aff'd, 96 F.2d 768 (2d Cir. 1938); Petition of Bloomfield S.S. Co., 298 F.Supp. 1239 (D.C.N.Y. 1969). Few early cases held that the effect of a foreign judgment is only prima facie evidence and is not to be given conclusive effect. Burnham v Webster, (supra), Swenska Handelsbanken v. Carlson, (supra). In Carlson, the defendant was permitted to raise defenses that he might have raised in the original action but did not.

There are provisions in some maritime insurance contracts that effectively state that foreign judgments shall not be conclusive but in the case of Maryland Ins. Co. v. Woods, 10 U.S. 29 (1810), 6 Cranch 29 (U.S. 1810), 3 L. Ed. 9 (U.S. 1810) a prima facie affect has been recognized and enforced.

RECIPROCITY AS CONDITION FOR RECOGNITION

The seminal case considering the reciprocity as a condition to recognition and enforcement of foreign judgments was the case of Hilton v. Guyot, *supra*, in which the court held comity did not require courts to give conclusive affect to a judgment rendered by a French court because there was no reciprocity by the French courts, which do not give effect to U.S. judgments.

Harrison v. Triplex Gold Mines, *supra*, relying on Hilton, held the doctrine of comity would be extended to foreign court judgements, but only to the extent the courts of the particular foreign jurisdiction would extend the doctrine of comity to U.S. judgments. In the case of Kohn v. American Metal Climax Inc., 93 S. Ct. 120 (U.S. 1972) the Court expressed its view that since the Zambia court did not recognized the findings of a U.S. District Court, the ruling of the Zambia was not binding in a subsequent litigation in the U.S. District Court. See also Venexulean Meat Export Co. v. U.S., 12 F. Supp. 379 (D.C.Md. 1935).

In the case of Royal Bank of Canada v Trentham Corp, 665 F.2d 515 (5th Cir. 1981) the Canadian judgment debtor who suffered a default judgment in the suit filed against him in Canada was sued by the judgment creditor in a Texas court. Summary judgment was issued in favor of the judgment creditor and was later reversed by the 5th Circuit in which the court held that since Canadian courts would not recognize U.S. default judgments, under the doctrine of comity the U.S. courts did not recognize the Canadian default judgment.

It is interesting to note that as recently as in the last few years the Canadian Supreme Court recognized and enforced a default judgment entered by a Florida Circuit Court. This was a radical change in Canadian law, especially because before this case inter-provincial judgments were recognized only if there were a real and substantial connection in the jurisdiction where the judgment was rendered. Beals v. Saldanha, 3 S.C.R. 416 (Can. 2003).

LACK OF RECIPROCITY HELD NOT TO BE GROUNDS TO DENY CONCLUSIVE EFFECT

In Somportex Ltd. v. Philadelphia Chewing Gum Corp., 318 F. Supp.161 (E.D. Pa 1970), aff'd, 453 F.2d 435 (3rd Cir. 1971), cert.denied, 405 U.S. 1017 (1972), 1 L. Ed. 2d (U.S. 1972), 92 S. Ct. 1294 (U.S. 1972), the District Court concluded that Pennsylvania courts would reject the defendant's argument that the English Judgment should not be recognized. This rejected the concept of reciprocity annunciated by the Supreme Court in Hilton v. Guyot, *supra*. The court noted that the concept of reciprocity was not constitutionally mandated, and the concept of reciprocity has not found favor in the United States. Additionally, the concept of reciprocity has been criticized by commentators and has been expressly rejected by the courts in New York and by Statute in the State of California. The Third Circuit Court of Appeals noted that the Hilton-Guyot Doctrine of Reciprocity had "received no more than desultory acknowledgement" and reciprocity is no longer an essential precondition for the enforcement of foreign judgment.

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Enforcement of Foreign Judgments (Cont. from Page 5)

ENFORCEMENT OF FORGEIGN JUDGMENT BASIS FOR MAINTAINING AN ACTION OR DEFENSE OF AN ACTION

In some cases, federal courts gave extra-territorial effect to the judgment rendered by a foreign country's court by permitting a party to maintain an action based upon a foreign judgement. Sirinakis v. Colonial Bank, 600 F. Supp. 946 (S.D.N.Y 1984). For instance, in the case of Swift v. David, 181 F. 828 (9th Cir. 1910) the court recognized that the *in personam* judgment rendered by a court of a foreign country constituted a good basis for a cause of action in the United States. In the case of Bank of Montreal v. Kough, 430 F. Supp. 1243 (DC Cal. 1977), the California District Court recognized a judgement that was rendered by a court in British Columbia on the basis that the defendant was given adequate notice and an opportunity to appear and defend, the judgement was not precluded by fraud, and the forum was not seriously inconvenient. The holding was fully supported by Uniform Foreign Money-Judgement Recognition Act adopted by California. In the case of Cherun v. Frishmen, 236 F. Supp. 292 (D.C.D.C 1964) the district court recognized the validity of a Canadian judgement in a suit filed by the plaintiff in a federal district court seeking to recover the amount of a Canadian judgment. The holding was based on a doctrine of comity because the court was satisfied that American judgments were given conclusive effect in Canadian courts. In some cases the issue was whether or not it is permissible to raise a defense based on a foreign judgement. Thus, where a court in a foreign country granted a varied judgment in favor of a particular party with respect to particular matters, the same matters can no longer be relitigated against the same party, and the party is entitled to rely upon the foreign judgment as a bar based on the doctrine of res judicata. In the case Perrin v. Perrin, *supra*, as a basis to dismiss a litigation filed in the District Court, the District Court recognized a foreign judgment that dismissed the case on the same basis as the suit involved in District Court. In Leo Feist, Inc. v. Debmar Pub. Co., *supra*, the court, relying on a doctrine of collateral estoppel, recognized a finding of fact by an English court that the defendant had not copied a musical composition on which plaintiff's action was based.

At times there were attempts made to rely on a judgement of a foreign country's court granted against a particular party. Courts generally refuse to accept the foreign judgment as a bar against subsequent litigation in the federal district court based on the original cause of action, when the judgement has not been satisfied. However, where a foreign judgment has been satisfied it may be properly asserted as a defense in subsequent litigation in a federal district court.

FOREIGN JUDGEMENTS WHICH ARE SUBJECT TO SPECIAL TREATMENT - JUDGEMENTS IN ADMIRALTY

As a general proposition, U.S. courts regarded foreign judgments in admiralty as particularly deserving of a conclusive effect in litigation in a federal district court. Notwithstanding this general proposition, there were few instances where the courts held that the party's contractual arrangements in maritime insurance policies, foreign admiralty judgments, were not entitled to conclusory effect, but were merely regarded as prima facie evidence. In the case of Calbreath v. Gracy F., 1805 (C.C. Pa.) F. Case No. 2296, the court held that a sentence of a foreign court of admiralty was only evidence and not conclusive because a new insurance clause intended to remedy the mischief of a sentence in a foreign court judgment. In Applewhaite v. SS Sunprincess, 150 F. Supp. 827 (D.C.N.Y. 1956), the court held that since the admiralty court in Barbados approved the settlements of claims by families of seaman who had died as the result of a collision between two ships, the

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settlements can not later be relitigated and re-examined in a federal district court. The court relied on consideration of the international comity and expediencies. In the case of Petition of Bloomfield S.S. Co., 298 F. Supp. 1239 (D.C.N.Y. 1969), aff'd. 422 F.2d 728 (2nd Cir. 1970), the court held that where English courts had held, in a suit commenced by one ship against another, that both ships were jointly liable for the collision in the loss of one of the ships, the English judgment was entitled to res judicata effect and barred relitigation of the issue of liability.

ENFORCEMENT OF DEFAULT JUDGMENTS

As a general proposition, U.S. courts enforce foreign judgments as valid and binding even though the judgment may be based on a party's default to defend the action in a foreign country. In Ritchie v. McMullen, *supra*, the court held that even if the defendant, failed to appear at the time of the scheduled hearing in a Canadian court for a breach of contract suit, the Canadian judgement was conclusive in a subsequent federal action in the U.S. based on the Canadian judgement and pursuant to the doctrine of comity. In the case of Somportex Ltd. v. Philadelphia Chewing Gum Corp., *supra*, cert. denied 405 U.S. 1017 (1972), the court of appeals concluded that the fact that the English judgment involved was by default was not relevant and it did not dilute its efficacy. In the absence of fraud or collusion, the default judgment was as conclusive as an adjudication of the issues between the parties as if it were rendered by and after an answer in a full-scale trial. In this connection it is interesting to note that as recently as last year the Kennedy Supreme Court in the case of Beals v. Saldanha, *supra* held that the doctrine of comity may be extended to default judgments. In Beals, the Supreme Court of Canada reversed a long standing view of the Canadian courts that only inter-provincial judgments will be granted recognition, but only if there were real an substantial connections with the jurisdiction where the judgment was rendered. In Beals, a Canadian citizen was sued for damages in excess of $5,000 in the United States, and the Plaintiff obtained a judgment for those damages. While the Canadian defendants filed an answer, they failed to appear at the trial. As a result, a jury in Florida awarded to the Plaintiff's $210,000 (U.S. dollars) as compensatory damages, and $50,000 (U.S. dollars) as punitive damages. The defendants neither filed to set aside the default nor appealed the judgment. In the case of Tahan v. Hodgson, 236 F. Supp. 292 (D.C.D.C. 1964), the court held that an Israeli default judgment was valid and conclusive since the principal's inability to read the complaint drawn in Hebrew, after it was personal served in Jerusalem, did not excuse his failed response.

TRADEMARK CASES

In the case of Noone v. Banner Talent Assoc. Inc., 398 F. Supp. 260 (D.C.N.Y. 1975) the former leader of a British rock group sought to prevent the group from using the name Herman's Hermits claiming the name was a false designation under Lanham Act, 15 U.S.C.A§1125(a). The district court held that the determination of a trademark right in the United States is not effected by the determination of trademarks in foreign jurisdiction, especially since there was no registry in the foreign country and the term secondary meaning was determined by each country based on its own laws.

ENFORCEMENT OF OTHER FOREIGN JUDGMENTS

Courts are not uniform in the treatment of foreign judgments in several litigations on different issues and in different countries. For instance, in the case of McCord v. Jetspray International Corp., 874 F. Supp. 436 (D.C. Mass. 1994) the court enforced a Belgian judgment for breach of an employment contract even though the Belgian employment contract was in conflict with the forum's states at-will employment policy, and such contract would not have been enforceable in state court because the contract did not offend the court's sense of justice. In the case of SC Chimexim SA v. Velco Ent. Ltd., 36 F.Supp.2d 206 (S.D.N.Y 1999) the court held that the money judgment entered by the Romanian court was final for purposes of enforcement in New York even though it was still on appeal in Romania.

CONCLUSION

It should be clear from the forgoing that the enforcement of foreign judgments is not new but it is an ever-growing field of litigation. Due to the unprecedented explosion of international commerce, it is safe to predict that we will produce several more interesting and intriguing questions concerning the enforcement by U.S. courts of foreign judgments.

STICHTER RECEIVES FIRST PROFESSIONALISM AWARD

Douglas P. McClurg Professionalism Award recognizes the finest in our bar

Don M. Stichter received the Tampa Bay Bankruptcy Bar Association's Douglas P. McClurg Professionalism Award at its annual dinner meeting on June 10, 2004, at Palma Ceia Golf & County Club.

The TBBBA established the award last year in the memory of Douglas P. McClurg, a prominent and well-liked bankruptcy lawyer, who passed away on November 10, 2002. Stichter is the award's first recipient.

In presenting the award on behalf of the TBBBA, Chief Bankruptcy Judge Paul M. Glenn called Stichter, like the award's namesake, "the finest of lawyers and the finest of people."

The TBBBA board of directors established the criteria for the award as "the demonstration over a period of years of the traits exemplified by McClurg," including:

- outstanding effectiveness in the presentation of matters to the bankruptcy court;
- a reputation for thorough preparation;
- civility and courtesy to opposing counsel;
- appropriate courtroom demeanor;
- ethical conduct and professionalism at the highest level; and
- long-term service to the bankruptcy bar.

"Don Stichter is a lawyer's lawyer, and also a judge's lawyer," Glenn said at the presentation. "He is always prepared, always a gentleman, and always effective," Glenn added.

In addition to making the presentation, Glenn also served on the committee that selected Stichter as the McClurg Professionalism Award's recipient. "For the first award, several people came to mind because there are very good lawyers in Tampa," he said. "But, of course, one person came to everyone's mind – and that was Don."

Glenn concluded the presentation by remarking jokingly that, had Stichter passed away first, the award would be named for him instead of McClurg.

The award is intended to be given periodically to deserving recipients. It is not intended necessarily to be given annually.

Then TBBBA President Catherine Peek McEwen announced the establishment of the award at the TBBBA annual dinner in June 2003, the first following McClurg's death. McClurg's widow, Erika, was present for the announcement.

Chapter 12 Cleared for White House

Chapter 12, H.R. 5167, which restores bankruptcy protections for farmers, was introduced by Reps. Tammy Baldwin (D-Wis.) and Nick Smith (R-Mich.) and passed the House on Friday. S. 2864, a companion bill in the Senate, introduced by Senators Chuck Grassley (R-Iowa) and Patrick Leahy (D-Vt.), passed the Senate on Wednesday. This legislation, cleared for the White House, extends chapter 12 until June 30, 2005, retroactive to Jan. 1, 2004. The retroactive provision would allow some farmers who filed under a different chapter to convert to a chapter 12 filing if their bankruptcy is not yet final.

-From ABI Update

Judicial Conference Rules Committee Circulates Proposed Rule Amendments

David Goch
Washington Legislative Counsel
Commercial Law League of America

A preliminary draft of proposed amendments to the Bankruptcy Rules is being circulated to the bench, bar, and public by the Standing Committee on Rules Practice and Procedure of the Judicial conference of the United States. At present, the Standing Committee has not approved these proposed amendments, except to authorize their publication for comment.

Comments on the proposed amendments are due February 15, 2005. In addition, anyone wishing to comment orally may do so by requesting at least 30 days before the two scheduled hearings: February 3, 2005, in Washington, D.C., and February 7, 2005, in San Francisco. Those wishing to testify should contact the secretary at least 30 days before the hearing.

Synopsis of Proposed Amendments:

Rule 5005(c) is amended to include the clerk of the bankruptcy appellate panel among the persons who can transmit erroneously delivered papers to the clerk of the bankruptcy court.

Rule 9036 is amended deleting the current language requiring the sender of an electronic notice to have received confirmation of receipt of that notice for the notice to be complete. At the time the rule was promulgated, the sender of an electronic communication generally would receive a notification that the recipient of the notice received it.

Rule 1009 is amended to include a provision requiring the debtor to submit a corrected statement of Social Security number when the debtor becomes aware of an error.

Rule 2002(g) is amended by adding a new subdivision (g) (4) that authorizes entities and notice providers to agree on the manner and address to which service may be effected.

Rule 4002 is amended by adding a new subdivision (b), implementing the directives of Bankruptcy Code Section 521, requiring that a debtor bring documentation to the Section 341 meeting to establish current income and ownership to financial accounts, as well as the debtor's most recent federal tax return.

Rule 7004 is amended to revise the method of service of a: summons and complaint on the attorney for the debtor whenever an entity serves the debtor with a summons and complaint.

Rule 9001 is amended to add a definition of notice provider to the rule (to be read in con junction with the proposed amendment to Rule 2002(g)).

Schedule I of Official Form 6 is amended to require the disclosure of the current income of the non-filing spouse of a debtor.

TRUSTEE'S CORNER

Financial Education Outreach

The United States Trustee has placed financial education brochures in the Section 341 meeting areas. The brochure was produced by the Executive Office for U.S. Trustees. The brochure explains the importance of financial education, sets forth some money-management tips, and lists web site addresses for various government agencies that offer information on consumer money management. The brochure with web site links is also posted as an outreach@ feature on the USTP web site, www.usdoj.gov/ust.

New Chapter 13 Standing Trustee

Jon Waage is licensed in the Supreme Court of the United States of America, United States Court of Appeals for the 5th Circuit and the United States Court of Appeals for the 8th Circuit. Jon is also a Member of the Texas Board of Legal Specialization Bankruptcy Law Exam Commission, a 2003 and 2004 Texas Board of Legal Specialization Bankruptcy Law Examiner, Board Certified in Business Bankruptcy Law by the Texas Board of Legal Specialization, and Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization. He is a member of the State Bar of Texas, and the Iowa State Bar Association. Jon graduated from Drake University School of Law with Honors, and served in the United States Navy for six years. Jon is an avid runner and has completed approximately 60 Marathons (including 5 Boston marathons). He also enjoys triathlons and adventure races.

Effective October 1, 2004, all active cases pending in the Tampa and Fort Myers Divisions assigned to the Honorable Alexander L. Paskay and the Honorable Thomas E. Baynes, Jr., shall be reassigned from Terry E. Smith to Jon M. Waage as the Chapter 13 Standing Trustee. His contact information is:

Jon M. Waage
Chapter 13 Trustee
P.O. Box 25001
Bradenton, FL 34206-5001
Tel. (800) 248-2075

Chapter 13 payments, however, should be mailed to P.O. Box 260, Memphis, TN 38101-0260. Any debtors utilizing the automatic debit system will be required to fill out a new form which will be sent to them in the near future.

Prior to the end of the calendar year, it is anticipated that Terry E. Smith, Chapter 13 Trustee, will be moving to a new location. Parties will be notified of new contact information for him at that time.

Modified Operating Guidelines and Reporting Requirements in Chapter 11 Cases

Effective October 1, 2004, all Chapter 11 debtors with cases filed after that date will be required to comply with new Operating Guidelines and Reporting Requirements. The required monthly financial reports are similar to the present version, but more comprehensive and with improved instructions and answers to FAQs. The form of the reports will be uniform throughout Region 21. Feel free to contact the Tampa Office if you would like a paper copy of the new reporting forms. The United States Trustee is working toward inclusion of the forms on an official website, hopefully in a fillable@ format.

INTERNATIONAL SYMPOSIUM ON BANKRUPTCY

Roger Buchanan Curlin, III
Program Attorney, Office for CLE
Stetson University College of Law

Bonjour!

Stetson proudly hosted its Fourth International Bankruptcy Symposium this Summer in the very French-metropolitan city of Montreal in Quebec, Canada. Past destinations have included Varenna, Italy and Budapest, Hungary. The Symposium consists of morning sessions over a three day period, in which a mixture of twelve faculty from the United States and abroad speak about Insolvency and Bankruptcy Issues in an International setting.

(Left to Right) Jan Majewksi, Bruce Leonard, Judge Alexander Paskay, Marc Mayrand, Vern DaRe, Roger Curlin

This year Stetson was honored to have the top Bankruptcy official in Canada, the Superintendent of Bankruptcy, Marc Mayrand, on its speaking faculty. Other speakers from Canada were practitioners including Bruce Leonard, who helped found both The Insolvency Institute of Canada and the International Insolvency Institute. The U.S. speakers included the Honorable Paul M. Glenn, Hans C. Beyer, Roberta A. Colton, and Paul S. Singerman. The driving force assembling such a distinguished speaker group is the program chair, the Honorable Alexander L. Paskay, Chief Judge Emeritus of the U.S. Bankruptcy Court for the Middle District of Florida, and Stetson Adjunct Professor.

Judge Paskay commented that, "this year's conference is the most collegial group I have had the pleasure to work with." Both the Judge and his wife, Rose Paskay, were among many couples who attended the symposium. Attendees and speakers at the international symposia regularly bring their spouses, family, or guests to partake in a second component of the foreign destinations - the afternoon group excursions and tours to local points of interest. This year attendees enjoyed a guided tour of Montreal andOld Towne, had a wonderful time at the Botanical Gardens and even made the eco-trip to the BioDome.

Attendees, speakers, and their guests mix and socialize freely through-out the symposium, with impromptu group dinners and outings to such sites as the centuries old restaurant, Gibby's, the immense five-story Montreal Casino, and various walking/shopping opportunities surrounding the host location at Le Centre Sheraton. Stetson was also pleased to have several Canadian attendees in the audience, two of which are working as author and editor on a book for LexisNexis on the subject matter of U.S./ Canadian Insolvency.

Highlighted in the adjacent picture, the Opening Night Welcome Reception is always a well-received social event during the symposium. The Reception kicks the conference off and is a compliment to the Gala Farewell Dinner on Friday, which had a special flavor this year as Canadian faculty speaker, Robert Klotz, excited the attendees with two hours of "Entertainer"-style piano playing and sing-alongs. The symposium group, which encompassed attendees, speakers, family and guests, totaled sixty-six, with next year's international symposium in Freiburg, Germany expected to be even larger. Stetson thanks everyone who participated in this year's symposium, and we look forward to our annual offering of local, state-wide, national, and international programming.

The annual Primer on Bankruptcy: *How to Not Get Lost in a Bankruptcy Court*, will be hosted for the first time at Stetson's new Tampa Law Center on Saturday, November 13th, 2004. The 29th Annual Seminar on Bankruptcy Law and Practice, December 3rd – 4th, 2004, continues its tradition of beachside learning at the Sheraton Sand Key Resort in beautiful Clearwater Beach, Florida.

Auf Wiederschauen

Plans are being finalized for the upcoming 2005 Int'l Bankruptcy Symposium, set for early next Summer in Freiburg, Germany. Freiburg is a beautiful university-city in the middle of the scenic Black Forest region of Southern Germany. It is close to Switzerland, France, and the beautiful Lake Constance - and is easily accessible by train from Frankfurt. If you are interested in more information please call Stetson's Office for CLE at 813-228-0226, or email them at (cle@law.stetson.edu). As soon as the agenda, speakers, and conference site have been finalized, Stetson will have the information posted on their Web site at www.law.stetson.edu/cle

(Left to Right) Back row - Judge Paul Glenn, Paul Singerman, Doug Menchise, Suzanne Menchise, Pauline Rabinowitz, Brucie Waltemyer, Roger Waltemyer, Patrick Tinker; Front row – Jan Majewski, Roberta Colton, Rose Paskay, Judge Alexander Paskay, Nicholas Scheib, Roger Curlin

(Left to Right) Back row – Patrick Tinker, Robert Wahl, Donald Giffin; Next Row – Richard Burnette, Cynthia Burnette, Malka Isaak, Sam Isaak; Next Row – Asher Rabinowitz, Suzanne Menchise, Doug Menchise; Front Row – Kim Johnson, Roberta Colton, Judge Alexander Paskay, Rose Paskay

THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION
2004-2005
Committee Chairs

The Association is looking for volunteers to assist us this coming 2004-2005 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.

COMMITTEE	CHAIR(S)	TELEPHONE	FACSIMILE
CLE Programs	Caryl E. Delano Donald R. Kirk	(813) 223-2000 (813) 228-7411	(813) 228-6000 (813) 229-8313
Community Service	Kelley Petry	(813) 239-0713	(813) 239-0715
Court, U.S. Trustee, and Clerk Liaison Committee	Alberto Gomez Patrick Tinker	(813) 301-1000 (813) 228-2000	(813) 301-1001 (813) 228-2303
Membership and Elections	Carrie Beth Baris	(813) 224-9255	(813) 223-9620
Publications and Newsletter	Luis Martinez-Monfort	(813) 229-3500	(813) 229-3502
Technology	Cheryl Thompson	(813) 273-5000	(813) 273-5145
*Consumer Lawyers	Randall Hiepe	(727) 898-2700	(727) 898-2726

*Ad-hoc, non-voting board members

President's Message *(Cont. from Page 1)*

Our quarterly newsletter, *The Cramdown*, just keeps getting bigger and better. This year, Luis Martinez-Monfort takes over the leadership of our Publications Committee. This quarter's *Cramdown* is a jam-packed 24 pages. Way to go, Luis. Members interested in publishing bankruptcy-related articles or that have bankruptcy-related news worthy of publication should contact Luis. Of course, Luis will always remind you that *The Cramdown* is also the best source of advertising your bankruptcy services and expertise.

We plan to maintain and improve on our attorney resource room on the 10th Floor of the Federal Courthouse. This year we will add a scanner to the mix of equipment in the resource room to assist our members to e-file documents. Members that have questions or ideas regarding the attorney resource room are encouraged to contact Cheryl Thompson, who heads our Technology Committee this year and who is responsible for the attorney resource room.

Our Association will also continue to serve as a medium for the exchange of ideas and discussion of issues concerning our bankruptcy practices among the Bar, the Bench, and the clerk's office. Historically, our Association's relationship with our judges and the clerk's office has been one of the strengths of our organization. Since the inception of the Association, our judges, and the clerk's office have been instrumental to our success. Our Association will continue to maintain these vital relationships through the good work of Al Gomez and Pat Tinker, who co-chair our Judicial Liaison Committee.

Over the last couple of years, the consumer lawyers of our Association have become more active and energized. Randy Hiepe is doing a great job leading our Consumer Law Committee this year. Randy is responsible for, among other things, coordinating regular monthly meetings for our consumer bankruptcy practitioners. At these meetings, issues facing the consumer bankruptcy practitioner and ideas for improving the practice are discussed. Our judges are frequent participants in these meetings. Consumer bankruptcy practitioners wanting to learn more should contact Randy.

With the help of these strong and dedicated leaders, I am looking forward to another great year for our Association. Please call me if you ever have any ideas of how to strengthen our organization or how the Association may become more relevant or helpful to your practice. That is, after all, my primary goal for seeing this Association through another successful year.

P.S. If you haven't renewed your membership, please contact Carrie Baris, who heads our Membership Committee, at 224-9255. She will be pleased to help you renew your membership.

CASE LAW UPDATE

FLORIDA COURT DENIES DEBTOR'S ATTEMPT TO GET AROUND THE "KALTER" DECISION

By Dennis LeVine, Dennis J. LeVine & Associates, P.A.

In 2002, the Eleventh Circuit ruled in In re Kalter, 292 F.3d 1350 (11th Cir. 2002), that the debtor's ownership interest in a vehicle passes to the secured creditor automatically at the time of repossession. As such, the debtor's remaining right to redeem the vehicle (the debtor's only remaining legal right at the time of a bankruptcy filing following repossession) was insufficient to render a car property of the bankruptcy estate under §541, or to compel its turnover back to the debtor under §542 of the Bankruptcy Code.

In Kalter, the Eleventh Circuit pointed out that the debtor proposed to cram down and value the creditor's secured claim, which would not result in full payment of the balance due. The Kalter case potentially left open the issue of whether a debtor who proposed to fully pay the car lender's secured claim through a Chapter 13 plan could compel turnover of a car lawfully repossessed pre-petition. This issue was addressed by Judge Hyman in In re Menasche, 301 B.R. 757 (Bankr. S.D. Fla. 2003), who ruled that such plan treatment did not change the effect of Kalter.

In Menasche, the debtors proposed to exercise their right of redemption by paying the balance due on their vehicle loan in full, plus interest, costs and attorneys fees, over the course of their Chapter 13 Plan. The debtors, however, did not offer to immediately redeem by tendering the balance due in a lump sum payment. According to Judge Hyman, redemption under Florida Statute 679.623 requires the immediate tender of full payment. The Bankruptcy Court ruled that the debtors could not regain possession of their vehicle unless they redeemed the vehicle in an immediate lump sum payment, as provided by Florida Statute 679.623. Payment over time did not equal a tender of the entire balance as required by Florida Statute 679.623.

The Kalter issue recently was examined by the Eleventh Circuit in a Georgia case. In In re Rozier, 348 F.3d 1305 (11th Cir. 2003), the Eleventh Circuit had before it a lawfule pre-petition repossession, the precise issue as Kalter. The Eleventh Circuit found Georgia law was not clear on this issue. Instead of ruling, however, the Eleventh Circuit certified the issue to the Georgia Supreme Court. In June, the Georgia Supreme Court found that the state statute in Georgia regarding vehicle titles differed from the state statute in Florida, thus distinguishing Kalter. As a result, Kalter is not effective in Georgia bankruptcy cases.

CALENDAR OF EVENTS

Event	Date	Location
29th Annual Bankruptcy Law & Practice Seminar	December 3-4, 2004	Sheraton Sand Key Resort Clearwater Beach, Florida
TBBBA Holiday Party	December 16, 2004	Spain Restaurant
Case Law Update Seminar & Luncheon Program (1/2 day)	January 18, 2005	Hyatt Downtown
TBBBA Tennis Tournament	January 28, 2005	Harbor Island Athletic Club
Judge Baynes Retrospective	February 15, 2005	Hyatt Downtown
Florida Bar Evidence and Appeals Seminar & Luncheon Program (1/2 day)	March 16, 2005	Hyatt Downtown
CLE Luncheon Program	April 13, 2005	Hyatt Downtown
CLE Luncheon Program	May 12, 2005	Hyatt Downtown

TBBBA TECHNOLOGY REPORT

CM/ECF: VIEWS FROM THE TRENCHES

By: Cheryl Thompson, GrayRobinson, P.A.

The Technology Committee asked the folks over at the Bankruptcy Court for a list of the most common errors made by CM/ECF filers, the most popular questions directed to the help desk, and hints to facilitate CM/ECF filing. The Training Coordinator/Data Analysts (who conduct the CM/ECF training and man the help desk) pooled their own experiences and polled various groups within the Bankruptcy Court, including the judges, and came up with the following responses:

Common Errors

1. Associating the wrong PDF image with docket entry when filing a document.
2. Using the wrong event when filing a document.
3. Paying and assessing fees without reviewing them first.
4. Hitting the "submit" tab twice.
5. Failing to upload creditors when filing a new case or amendment to schedules.
6. Docketing the Statement of Social Security Number with the Voluntary Petition.
7. Failing to change the division code when filing a new case.
8. Failing to add debtor aliases when filing a new petition.
9. Failing to include specific information in docket entries.
10. Failing to update attorney's physical addresses.
11. Using punctuation and abbreviations in addresses or docket entries.
12. Failing to or incorrectly associating attorneys with parties.
13. Failing to attach exhibits to a document.

Questions to Help Desk

1. Can I use my District Court CM/ECF password to file papers or pleadings in the Bankruptcy Court?
Answer - No, each court has its own separate and individual training and authorization programs. After satisfactory completion of a Bankruptcy training class and training assignment the Bankruptcy Court will issue a long in and password to the live database.
2. Do attorneys have to attend the Bankruptcy training class?
Answer – Yes, all attorneys who wish to participate in electronic filing are required to attend class and must also be admitted to the Bar of the U.S. District Court for the Middle District of Florida. Logins and passwords are issued to the attorneys and not to their staff. Please refer to the Administrative Order posted at usbankruptcycourt/flmb/uscourts.gov.com for further details.
3. Can an attorney obtain more than one login?
Answer – Yes, but only if you periodically represent a member of the panel of Chapter 7 Trustees.
4. What happens if the system is down or the attorney's computer crashes?
Answer – There will be times when the system is not available, for example, when it is being maintained or upgraded. Whenever possible, the Bankruptcy Court website posts notices of the scheduled unavailability of the system several days before the schedule maintenance, so that advance planning can occur. If an emergency situation occurs during hours in which the clerk's office is closed, the after hours filing procedure may be utilized. That procedure is more fully described in the court's website under the heading "After Hours Filing Procedures: All Divisions."

5. Can documents that have been filed in error be deleted?
Answer – No, an electronically filed paper or document is immediately available upon filing and transmitted simultaneously to all electronic filers. An amended document must be filed.
6. What are acceptable means of paying filing fees for electronically filed documents?
Answer – The only acceptable means for paying filing fees for electronically filed documents is credit card. All major credit cards are accepted.
7. What are the software and hardware requirements to participate in CM/ECF?
Answer - A personal computer, Internet access via Cable modem, DSL or T1 line, an Internet Service Provider, an Internet Browser (Explorer or Netscape Navigator), a PDF converter program, a PDF-compatible word processing program (Microsoft Word or WordPerfect) and a scanner.
8. What action should be taken if an adversary proceeding is filed without attaching the cover sheet and summons or if alias summons are needed?
Answer – Send the documents to ecfhelp.tpa@flmb.uscourts.gov. and they will be forwarded to the appropriate case manager for processing.
9. What is the difference between Acrobat Reader and Writer?
Answer – The Acrobat Reader program is free and can be downloaded from the web, but it only allows viewing of pdf documents. In addition, some information may be missing, like the Judge's signature. Acrobat Writer is available only by purchase and it converts word processing documents into pdf documents.
10. What procedure should be followed to obtain a refund of a duplicate fee payment?
Answer – A credit for duplicate fees may be requested by filing a Motion for Refund that sets forth the facts and circumstances of the duplicate payment. The granting or denying of the Motion for Refund is within the discretion of the Judge.

Tips

1. Clear cached images, internet files, and cookies on a regular basis.

(Cont. on Page 22)

information on installing and using Adobe Acrobat; provide information on creating documents using Adobe Writer; help users while navigating the CM/ECF sites; and inform users about chargeable items. Since most of the membership are PACER users, please take advantage of these services.

A Memorandum of Agreement between the United States District Court and United States Bankruptcy Court concerning the administrative processing of appeals will be finalized very soon. The purpose of the memorandum is to delineate the procedures for the administrative processing of all appeals and the transmission of the record in an electronic format rather than paper (unless both District Court and Bankruptcy Court agree to the transmission of the record on appeal in a paper format). For ECF cases, it will be imperative that both the appellant and appellee file the designation of the items to be included in the record on appeal by specifically referring to the document number as reflected on the docket sheet. This will enable the case manger to download the document in order to transmit it electronically. Parties to an appeal will no longer have the burden of providing a copy of the items designated for transmission to the District Court.

However, in non-ECF cases, the documents designated will need to be furnished so that they can be scanned, saved as a .pdf image and transmitted electronically to the District Court.

Oh by the way, some of the judges have mentioned to me the failure of counsel to attach exhibits to motions being filed electronically. Continued failure to attach exhibits, may result in the motion being denied rather summarily. Please pay attention when filing electronically, but most of all, keep filing electronically.

TBBBA Announces the Formation of Historian Committee

The Tampa Bay Bankruptcy Bar Association this year celebrates its 17th year and has many reasons to take pride in its achievements, not the least of which is its members and their contributions to the Association. As time passes, we run the risk that our collective memory will dim and we will forget about the events and people that have formed the backbone of this Association as it has grown to its present level. In the words of A. Whitney Brown, "The past actually happened, but history is only what someone wrote down."

In recognition of this, the Tampa Bay Bankruptcy Bar Association has created a committee to compile and collate the records and recollections of the Association's former officers. If you would be interested in delving into the past and preserving it for the future, please contact Cheryl Thompson at cthompson@gray-robinson.com <mailto:cthompson@gray-robinson.com> or call 273-5076.

To prevent this from happening, the Tampa Bay Bankruptcy Bar Association Board has formed a new committee dedicated to organizing and preserving the history of our Association so that it can be handed off to and maintained by a Historian. We are looking for volunteers who are interested in working on the committee.

Florida Bar Requests Comments on Advertising Changes

The Advertising Task Force 2004 of The Florida Bar has requested comments on draft changes to the attorney advertising rules, 4-7.1 through 4-7.11, Rules Regulating The Florida Bar, before it makes final recommendations to The Florida Bar Board of Governors. The Task Force is charged with recommending changes to clarify the meaning of the rules. The Task Force's draft changes to the advertising rules can be found on line at www.flabar.org under Organization, Committees, Special, Advertising Task Force. Written comments should be mailed to Elizabeth Clark Tarbert, Ethics Counsel, The Florida Bar, 651 East Jefferson St., Tallahassee, FL 32399 (or by email to eto@flabar.org) by no later than December 31, 2004. Requests to address the Board in person at its meeting on January 20, 2005 (in Miami), can be made by contacting Ms. Tarbert.

-Compiled by Catherine Peek McEwen

DON M. STICHTER

A Profile

Who is the man called the "Dean" of the Tampa bankruptcy bar?

By C. Timothy Corcoran, III, C. Timothy Corcoran, III, P.A.

Don M. Stichter is frequently called the "Dean" of the Tampa bankruptcy bar. He is known as the letterhead founder of a nationally-recognized bankruptcy law firm. Stichter and his partners have been involved in every major bankruptcy case in Tampa since anyone can remember. Stichter, who turns 75 in December, continues to be fully engaged in the practice. On any given day, he can be found in bankruptcy court winning victories for his debtor clients with his familiar and disarming "ah shucks" manner.

So how is it that this "Dean" got involved in bankruptcy work in the first place?

"I started out representing trustees," Stichter said during a recent interview. "It was the early 1960s, and I was practicing with Sam Bucklew and Maynard Ramsey. They had a balanced practice, but mostly litigation. We did everything then," Stichter said. "About 25 percent of my work was bankruptcy, and the other paying work allowed me to represent trustees who couldn't pay until the bankruptcy case was closed. But back then, doing only about 25 percent bankruptcy put me in the inner circle of bankruptcy practitioners," he added.

"Representing trustees was good because you didn't have to know much bankruptcy law," Stichter joked. "The litigation that trustees needed you to do was typically preference or fraudulent conveyance recoveries. It was discrete work that I could get my arms around without having a broad bankruptcy background. Most of the lawyers doing bankruptcy work then were mainly collection lawyers and not litigators, so I concentrated on litigation."

"Bankruptcy and domestic relations were not well thought of, and few lawyers did that work. So I did both. Acceptable lawyers could expect referrals, and I began to get referrals, especially from outside Tampa," Stichter said.

Stichter came to private practice in the early 1960s in Tampa after working for almost three years as an Assistant United States Attorney, where he acquired his trial skills. "Ninety percent of the work there was criminal prosecutions. The criminal cases were very different from the ones the feds prosecute now. Our cases were typically tax evasion, moonshine, stolen cars, bank robberies, and false statements where someone would make a false statement when applying for a job at the Cape. I'd try maybe five cases a month."
Stichter explained that he would "ride circuit" where he would be the only prosecutor, and the judge and the whole court family would move to Orlando to try a calendar of cases. "We'd stay at the old Travelodge, and I'd try them all – one after another until we were done."
"We were part of the Southern District of Florida then," Stichter said. "There was no Middle District yet. We had just one judge in Tampa – Judge Whitehurst – and Judge Simpson was in Jacksonville."

Stichter had come to the U. S. Attorney's Office in Tampa after working for two years with the Antitrust Division of the U. S. Department of Justice in Washington, his first job out of law. In Washington, Stichter "did research and looked at documents" in a big Sherman Act case involving fats, tallows, and the soap industry giants, Colgate Palmolive and Lever Brothers. "I became an expert in soap fats and tallows. But by then, they had stopped using fats and tallows in soap. I figured there was not much of a future in that for a young lawyer," Stichter grinned.

"I wanted to go south toward the ocean and sailing," Stichter noted. "There was an opening in the Tampa U. S. Attorney's office. The U. S. Attorney, Jim Gilmartin, was a Republican from New York with no ties to Florida. So I applied, and he hired me. That's how I got here. Had there been an opening in San Diego, I would have gone there," Stichter grinned again.

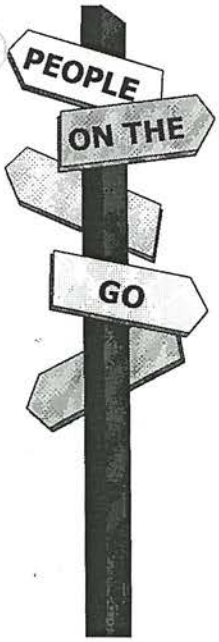
In the days before Judge Paskay became the Referee in Bankruptcy, the referee in Tampa was John W. B. "Buck" Shaw. "I remember prosecuting a guy who forged Buck Shaw's signature on a bunch of distribution checks in the Bruce's Juices case. Back then, the judge signed the checks. That was the only bankruptcy involvement I had while working in the U. S. Attorney's Office."

When he was leaving the government to begin private practice, people would ask Stichter what kind of law he wanted to practice. "Just about any kind of law except bankruptcy," Stichter says he said. "Bankruptcy was kind of a jungle then. No one looked well prepared. The procedure was sloppy. The quality of the bar didn't measure up the bar as a whole," Stichter said. "I ended up there because clients took me there."

"There were no bankruptcy seminars then. We had to learn on our own. The first bankruptcy seminar I remember attending was Judge Paskay's first one. That was 28 or 29 years ago," Stichter mused.

Stichter practiced with Bucklew and Ramsey for nine years, and then practiced by himself for two years. "Then Harley came with me," Stichter said, referring to Harley E. Riedel. "We've been partners ever since, and we've never had a cross word." Despite the generational difference – Reidel is 55 – Stichter refers to Reidel as his "best friend."
"By the time Harley came, maybe 40 percent of our work was bankruptcy," Stichter recalls. "Larry Stagg, Brooks Hoyt, and Mike Fogarty also joined us. In 1980 they decided they needed the support of a big firm for their practices. Harley and I weren't interested in going to a big firm, so Larry and Mike joined Holland & Knight, and we became exclusively a bankruptcy shop," Stichter said.

(Cont. on Page 21)



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

Cissy Skipper has joined the **Honorable Alexander L. Paskay** as his law clerk. Before joining Judge Paskay, Ms. Skipper was in private practice as a state court mediator.

Lara Fernandez, former law clerk of the **Honorable Alexander L. Paskay,** has joined the law firm of **Trenam Kemker** as an associate. Ms. Fernandez's practice will concentrate in the areas of bankruptcy and creditor's rights.

Victoria D. Critchlow has joined **Glenn Rasmussen Fogarty & Hooker, P.A.** in Tampa as an associate in the firm's bankruptcy and insolvency practice group. Her practice areas include bankruptcy, creditors' rights and controversies, and general commercial litigation.

Don M. Stichter of **Stichter Reidel Blain & Prosser, P.A.** was awarded the first ever Douglas P. McClurg Professionalism Award by the Tampa Bay Bankruptcy Bar Association at the association's annual installation dinner held on June 10, 2004.

Sacha Ross of **Berman & Norton Breman** was recently admitted into the United States District Court for the Northern District of Florida. **Sacha Ross** and **Erika Nikla Quartermaine** of **Berman & Norton Breman** were also extended invitations to guest speak at the upcoming American Bankruptcy Institute's Winter Leadership Conference and the National Business Institute's seminar in December.

Fowler White Boggs Banker, P.A. is pleased to announce **Donald Kirk** has been elected a shareholder of the firm.

On September 1, 2004, **GrayRobinson, P.A**. proudly announced two of its newest shareholders, **Stephenie Biernacki** and **Scott Lilly.**

* Please send any information that you think should be included in the "People on the Go" section of the *Cramdown* to Drew Jenkins by email to ajenkins@bushross.com or by facsimile to (813) 223-9620.

DON M. STICHTER (Cont. from Page 19)

Stichter talked about the changes he has seen in the bankruptcy practice over the years, especially in business reorganizations. "Chapter 11s today are much more complex than they used to be. The dollars are much greater. The financing is more complicated – both the starting financial structures and the exit strategies," he said. "We had never heard of LBOs before," he added.

"Under the old Bankruptcy Act, the bankruptcy court's summary jurisdiction was very limited. You couldn't deal with tax issues in the bankruptcy court. If you had a tax problem, you couldn't confirm the case unless you had the IRS' consent. The IRS was a much bigger gorilla then than it is now because of that," Stichter recalled.

"There's also been a big change in the quality of the lawyers practicing in the bankruptcy field. In the old days, the big firms didn't have anyone doing bankruptcy work. Now some of the top new recruits going to big firms are doing bankruptcy."

"It used to be commonplace for Judge Paskay to be conducing hearings on Saturdays. If you needed a three day trial, Judge Paskay would schedule it to begin on Friday, and we'd go to the end. Hopefully, we wouldn't be there on Sunday," Stichter said with a smile.

Going from not intending to do any bankruptcy work to making it an exclusive diet, Stichter talked about what he has liked about doing bankruptcy work. "The relationship among lawyers in the bankruptcy bar is something special," Stichter answers. "I like the way litigation moves in the bankruptcy court. Lawyers have to move fast. To make it work, everyone has to be easy to get along with," he adds.

"I attribute this special relationship among the bankruptcy lawyers to the judges," Stichter says. "There is universal respect for the judges. The way they handle the volume, their high standards, and the high dollar issues they deal with. The lawyers have to keep up with the judges, and you have to get along to keep up. Therefore, you need to trust your fellow lawyers. We're a small group," he says.

What about Rambo tactics? "They're not any good. Rambo tactics just don't work," he says.

When asked what he tries to teach young lawyers, Stichter says it's to do quality work. "Do quality work, even for people who can't necessarily pay. That means being adequately prepared," he says. "I also want our young lawyers to treat other attorneys fairly. And we can't tolerate those who don't or those who cut corners with the court," Stichter adds.

"I think we have to teach these things by example," Stichter says. "There aren't any crash courses offered in dealing with your fellow man. If the next generation of lawyers is going to hold the same values we hold, we have to show them by our example."

Looking back over his career, Stichter says he receives the most satisfaction in his debtors' bankruptcy practice when he recognizes a problem, implements action to solve the problem, and achieves a satisfactory result. "I like to see any kind of business survive and get back on its feet, knowing that, but for our help, the business would not have survived. I have that same satisfaction when I help individuals whose concerns may be emotional as well as financial."

Stichter offers some tips for dealing with difficult creditors: "Refuse to get into the Rambo mentality, even if it is natural to do so. Get along. Try not to let personality be involved. Wear them down. Take their Ramboisms in stride. Keep looking for solutions. Ask yourself what makes the other guy tick. Try to accommodate the other guy's concerns."

Stichter also says he sees some common errors that bankruptcy litigants make. "Often debtors have unreal expectations. Chapter 11 is a magic wand that cures a lot, but it doesn't cure underlying business problems," Stichter says.

"I also see creditors who are too demanding or aggressive hurt themselves. Their tough positions become counterproductive. Their overly aggressive mindsets ignore what's needed to keep the value of their collateral," Stichter adds.

Stichter expresses optimism about the bankruptcy process. "You know, the bankruptcy system really does work," Stichter says. "Even if a business doesn't make it, the creditors are generally better off with more than they would have had if bankruptcy had not been employed in the first place. Creditors see a lot of plusses, even for those businesses that don't linger very long in bankruptcy. All Chapter 7s are disfavorable for creditors because values take precipitous drops. Every Chapter 11 is a success in some sense. We're always able to do something to help," he adds.

Along the way Stichter got involved in doing bar work. He served as president of the Hillsborough County Bar Association in 1972-73. He was one of the founders of the Tampa Bay Bankruptcy Bar Association and served as its first president in 1988-89. In 2001, Stichter received the Hillsborough County Bar Association's Outstanding Lawyer Award.

Stichter grew up in Toledo, Ohio, as one of four sons of an insurance defense lawyer. His father followed Tampan Cody Fowler as president of the American College of Trial Lawyers. All four sons became lawyers. "I don't know what my father did wrong," Stichter joked.

Stichter went to Colgate University on a full scholarship. He played football and marched in the band between football game halves.

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THE CRAMDOWN SURFS THE 'NET

Websites for Bankruptcy Practitioners

By Catherine Peek McEwen, Catherine Peek McEwen, P.A.

The Cramdown's occasional column on useful Internet websites returns in this issue. We welcome your suggestions for topical 'net resources that make our practice easier. In this issue's column, we reintroduce you to two old but updated friends — a practice resource newly converted to electronic form and a site to keep you on the cutting edge of new case law, and we provide you a time- and expense-saving tip on obtaining default judgments against individuals in adversary proceedings. Best of all, all three resources are free!

Marc Wites' Free, Online Florida Litigation Guide Provides Elements of Causes of Action/Defenses

ALERT! This new find is alone worth the price of Association membership: The slick, widely used *Florida Litigation Guide* published by Marc A. Wites is now available for *free* and *online*. Yes, the nifty pamphlet we told you about four years ago that once cost a bargain $45.00 is now offered electronically at www.flalit.com.

The Servicemembers Civil Relief Act precludes the entry of a default judgment against an individual unless proof of non-military service is shown, such as a statement from the Department of Defense or from each branch of the armed services. The old-fashioned way of obtaining non-military certificates is to write each branch by snail mail and pay $5.20 per defendant. Only the old fashioned should keep doing it that way. For those in the web age, now a statement covering all branches is available from the Defense Manpower Data Center at no charge, online, 24 hours a day – but you have to become an approved user to have that privilege.

The Defense Manpower Data Center allows verification of non-military status for defense branches of armed services by providing access to a secure website for approved users. Potential users must call Genny Brooks at 703-696-6762 for information on how to obtain the necessary personal identification numbers and match codes from the Center. Ms. Brooks will fax you an online approved user application, which is returned to her by fax. There is an old-fashioned twist to obtaining approval, however. To fill out the form, one must use a typewriter, a drawback for those who discarded such relics. Once approved, users have 24-hour access to the site to search for information regarding military status. Documentation is provided electronically in a form with the seal of the Department of Defense and the signature of the Center's Director.

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TECHNOLOGY REPORT *(Cont. from Page 16)*

2. Invest in a good scanner, PDF converter program and a bankruptcy software program.
3. Refer to your User Event Guide for help in locating the correct event for your pleading.
4. Don't wait until the last minute to file time sensitive documents and do not file obscure or new documents after office hours.
5. Limit the amount of text inserted in the free text box. Less is more.
6. Visit the court website frequently for updated information about electronic filing.
7. Remember to view all images before associating the document with the docket entry.
8. If you experience difficulty in paying filing fees contact the help desk before attempting to remedy the situation yourself.
9. If you want to practice filing a document, the Training database is always available.
10. When in doubt, call the help desk!

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If you are interested in participating in the Technology Committee, please contact Cheryl Thompson at cthompson@gray-robinson.com.

DON M. STICHTER (Cont. from Page 21)

Upon graduation, he joined the Navy and went to Officer Candidate School. After being commissioned, he served six or seven months in an Attack Transport ship, the kind featured in the movie, *Away All Boats*, which starred Jeff Chandler. Not liking sea duty and "to get off the ship," Stichter volunteered for the Navy's Underwater Demolition Teams ("UDT"), the forerunner of the Navy's SEALs – a much more arduous assignment than service on any ship. UDT's mission was to go ashore before an amphibious invasion to prepare the harbor and the beach for the invading troops. "I always liked the beach so I thought I'd like UDT," Stichter joked. He was sent to Japan in the closing months of the Korean War.

Completing three years of active duty in the Navy, Stichter "drifted" into law school. "I figured a legal education couldn't hurt, even if I didn't practice law," he says. Stichter entered law school at the University of Wisconsin. "I wanted to go to a California school, but they wanted me to wait until September. I could start in February at Wisconsin, so that's where I went," Stichter explains. At Wisconsin, he was a member of the law review and was graduated Order of the Coif. He also met his future wife, Ellen, and they were married two years after his law school graduation.

The Stichters have four children – two sons and two daughters. All the children except Scott live away from Tampa. Scott practices law with his father's firm.

Although Stichter no longer plays football, he swims daily and plays golf weekly. "You know, my golf game just never gets any better," he says with a smile. He also dives regularly at the Tampa Aquarium where he cleans fish tanks as a volunteer. "The Navy did teach me something," he grins.

Stichter keeps up with his music, playing the double bell euphonium in the Tampa Community Band and the slide trombone in the Old Smoothies. Look for him playing in retirement homes and at the Kate Jackson Community Center on Rome in Old Hyde Park.

So what does the M in Don M. Stichter stand for? "Oh, that's Mason. That's my mother's maiden name," he answers.

HAVE YOU RENEWED?

Don't forget to send in your TBBBA Membership Renewal!

THE CRAMDOWN SURFS (cont. from Page 22)

Just for fun

As usual, we conclude with something fun to clear the mind of your last task's clutter before moving on to a new task. This time we offer two tricks involving phone numbers. The first is a mathematical stumper: Grab a calculator. Key in the first three digits of your phone number (not the area code). Multiply by 80. Add 1. Multiply by 250. Add the last 4 digits of your phone number. Add the last 4 digits of your phone number again. Subtract 250. Divide number by 2. Gasp with amazement!

The second trick is two sites that convert a phone number into easy to remember mnemonics: *www.phonespell.org* and www.phonetic.com. What does your number spell?