The Cramdown

The Newsletter of the Tampa Bay Bankruptcy Bar Association SPRING, 2004

Editor, Donald R. Kirk

PRESIDENT'S MESSAGE

Tampa Bay Bankruptcy Bar Association, What Have You Done For Me Lately?

By: John J. Lamoureux

I was recently asked what benefits one receives by joining the Tampa Bay Bankruptcy Bar Association (the "Association"). Without reiterating in detail the stated purpose of the Association as set forth in the Association's Bylaws and Articles of Incorporation, the general purpose of the Association is to improve the practice and procedure of bankruptcy law in our community. How does the Association fulfill that purpose? More importantly, how does the Association benefit our members?

The Association carries out its purpose in a variety of ways that positively impact our members. The Association sponsors programs that educate current and prospective members, supports programs that serve individuals unable to afford legal services, publicizes articles and information about bankruptcy issues, and assists in the administration of legal services to serve the public and the court system.

I believe that each Association member receives a tremendous return on his or her annual $60.00 investment (i.e., annual dues). For example, the monthly CLE programs afford our members the opportunity to keep up to date with topical

(cont. on Page 27)

CLERK'S CORNER

On February 23, 2004, the Clerk's office implemented new procedures for administering Chapter 7 and 13 voluntary petitions that are filed with deficiencies. The first change is a new notice of deficient filing that incorporates all case deficiencies into one notice. Most deficiencies, with the exception of the requirements of Fed. Bankr. R. 1007 and 3015, must be cured within 10 days from service of the notice of deficiency.

Noted changes affect both Chapter 7 and 13 cases. Local Rule 1007-2 requires the submission of a matrix list of creditors on a computer readable disk. If the debtor fails to submit the disk or the disk is not properly formatted, the clerk will not send notice to creditors and the creditors will not be added to the case. It will be the responsibility of debtor's counsel to serve a copy of the Section 341 Meeting of Creditor notice upon creditors, provide proof of such service and submit a proper disk to the court.

For Chapter 7 cases, failure to properly file a proper petition, schedules and statements of affairs or pay the filing fee will result in entry of an order dismissing the case. We will no longer issue an order withholding discharge.

For Chapter 13 cases, the debtor will no longer have until the date of the Section 341 Meeting of Creditors to file the complete schedules, statement of affairs and chapter 13 plan. Failure to file these documents or pay the filing fee will result in the entry of an order dismissing the case after the appropriate time for filing such documents has expired.

Inside This Issue

President's Message 1
Clerk's Corner 1
Officers and Directors 2
A View From the Bench 3
Welcome Judge Rodney May 4
Farewell to Harvey Muslin 7
Professor's Corner 8
Judicial Estoppel: Redux 9
TBBBA Technology Report 10
Recent Supreme Court Cases 11
Highlights from February Lunch 14
Committee Chairs 15
New Members 15
Happy Birthday - CM/ECF 16
Calendar of Events 17
In re Bateman 18
Highlights from January Lunch 21
People On the Go 23
Laptop Computers in the Courtroom 26
U.S. Trustee Program 26
New Dollar Amounts 27

***The Cramdown* can be accessed via the internet at www.flmb.uscourts.gov**

Tampa Bay Bankruptcy Bar Newsletter Advertising Rates

The Cramdown is published four (4) times per year. Advertising rates are as follows:

Full Page	$400/single issue $1,200/4 issues
Half Page	$200/single issue $600/4 issues
Quarter Page	$100/single issue $300/4 issues
Business Card	$50/single issue $150/4 issues

All sizes are approximate and pricing is based on camera-ready or computer generated art being supplied by advertiser.

To print your ad in spot color, add $50 per color, per issue.

For information regarding advertising in *The Cramdown*, contact:

Donald R. Kirk
Fowler White Boggs Banker
501 East Kennedy Boulevard
Suite 1700
Tampa, FL 33602
(813) 228-7411
(813) 229-8313 (Fax)

Layout and printing by
Perfect Impressions
(813) 620-0045

The Tampa Bay Bankruptcy Bar Association reserves the sole and exclusive right to exclude any advertisement from being published in the Newsletter.

THE TAMPA BAY BANKRUPTCY BAR ASSOCIATION 2003-2004 OFFICERS AND DIRECTORS

Officers

Chair/Immediate Past President
Catherine Peek McEwen
Catherine Peek McEwen, P.A.
(813) 248-5852
Fax: (813) 248-3061
Email: Catmcewen@aol.com

President
John J. Lamoureux
Carlton Fields, P.A.
(813) 223-7000 Ext. 4224
Fax: (813) 229-4133
Email: Jlamoureux@carltonfields.com

Vice President/President Elect
Edwin G. Rice
Glenn, Rasmussen, Fogarty & Hooker, P.A.
(813) 259-9900
Fax: (813) 259-9895
Email: Egr@grflaw.com

Secretary
David J. Tong
Saxon, Gilmore, et al.
(813) 314-4500
Fax: (813) 314-4555
Email: dtong@saxongilmore.com

Treasurer
Herb Donica
Herbert R. Donica, P.A.
(813) 259-9900
Fax: (813) 259-9895
Email: donicapa@gte.net

Directors

Shirley C. Arcuri
Shirley C. Arcuri, P.A.
(813) 286-4081
Fax: (813) 286-4168
Email: scapa@ij.net

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

Kelly Petry
Feinberg Isaak & Smith, P.A.
(813) 229-2221 Ext. 1214
Fax: (813) 225-1315

Scott A. Stichter
Stichter, Riedel, Blain & Prosser, P.A.
(813) 229-0144 Ext. 126
Fax: (813) 229-1811
Email: Ssticher@srbp.com

Donald R. Kirk
Fowler White Boggs Banker, P.A.
(813) 222-2022
Fax: (813) 229-8313
Email: dkirk@fowlerwhite.com

F. Lorraine Jahn
The Solomon Law Group, P.A.
(813) 225-1818 Ext. 258
Fax: (813) 225-1050
ljahn@solomonlaw.com

Pat Tinker
Office of the US Trustee
(813) 228-2000
Fax: (813) 228-2303

A VIEW FROM THE BENCH

LOSS OF THE RIGHT TO TRIAL BY JURY IN THE BANKRUPTCY COURT[1]

By: Judge Alexander J. Paskay

It was not until the restructuring of the jurisdiction of the Bankruptcy Courts by BAFJA in 1984, when the right to a trial by jury in bankruptcy court in suits to recover money or property by the trustee was firmly established by the Supreme Court in the case of Granfinanciera SA v. Norberg, 492 U.S. 33 (1989). The Supreme Court held that in a suit by the trustee, who sought to recover a fraudulent transfer when the creditor did not file a proof of claim, the creditor was entitled to trial by jury.

The Supreme Court distinguished its previous case of Katchen v. Landy, 382 U.S. 323 (1966), in which it held that there was no right to trial by jury because the creditor sued for the preference filed a proof of claim. This distinction was reiterated in Langenkamp v. Culp, 498 U.S. 42 (1991).

Neither Granfinanciera nor Langenkamp answered the question of whether and when can the trustee demand a trial by jury. The first Court of Appeals, which dealt with this issue, was in the case of Germain v. Connecticut Nat. Bank, 988 F.2d 1323 (2d Cir. 1993). The court held that in a suit based on lender's liability by the trustee, the trustee retained the right to a trial by jury against the bank, which filed a proof of claim. It should be noted that the trustee's claim involved a post-petition transaction and did not involve an objection to a proof of claim filed by the creditor but was based on the right of set-off asserted by the trustee.

In the case of In re Hallahan, 936 F.2d 1496 (7th Cir. 1991), the court held that the debtor waived his right to trial by jury simply because the debtor filed a bankruptcy petition. The Fifth Circuit in the case of In re Jensen, 946 F.2d 369 (5th Cir. 1991) rejected Hallahan by holding the claims by the debtor against third party non-creditor filed in order to augment the estate still can be tried by jury.

In Capital Associates v. Banc One Leasing, 2003 Bankr. Lexis 931 (Bankr. N.D.Tex. Aug. 6, 2003), the debtor sued Banc One which was not a creditor and which did not file a proof of claim for beach of contract. The court, adopting the holding in Jensen, held that since the suit was filed in order to augment the estate, the debtor was entitled to a trial by jury. The court also held that the counter-claim of Banc One was functionally the equivalent of a proof of claim. Banc One did not waive the right to a trial by jury on its counterclaim.

In the case of In re Dietert, 271 B.R. 499 (Bankr. S.D. Tex. 2002), another Texas court held that the creditor who filed a proof of claim had no right to trial by jury on a counterclaim with respect to a counterclaim which was interposed to an objection to the claim filed by the creditor but had a right to trial by jury on any of the other matters covered by the claim of the creditor. Neither of these cases dealt with the issue of when the issue was entirely unrelated to the proof of claim.

In the case of In re Chiodo, 88 B.R. 780 (W.D. Tex. 1988), the bankruptcy court abstained from hearing the chapter 11 debtor's claim against the bank in order to permit the claim to be tried in the state court by a jury. The court reasoned that no objection had been filed to the bank's proof of claim even though the debtor's only defense to the bank's claim was based on the theory of lender liability.

These Texas cases basically followed the reasoning of Granfianciera and Langenkamp. The court in Jensen suggested that the debtor has no right to trial by jury on a claim for lender's liability, which is coextensive with or effectively is the basis to the debtor's objection to the bank's proof of claim. Several courts have adopted these reasoning. In re Charlotte Commercial Group, Inc., 288 B.R. 715 (Bankr. M.D.N.C. 2003)(debtor was not entitled to a trial by jury who sought the disallowance or subordination or to offset based on a claim of lender liability); In re WSC, Inc., 286 B.R. 321 (Bankr. M.D. Tenn. 2002)(debtor has no right to trial by jury on a claim which involves the same facts which are the basis of the proof of claim filed by the creditor), accord In re Romar Intern. Georgia, Inc., 198 B.R. 407 (Bankr. M.D. Ga. 1996). See also In re Auto Imports, Inc., 162 B.R. 70 (Bankr. N.H. 1993).

In the case of In re Washington Mfg. Co., 128 B.R. 198 (Bankr. M.D. Tenn. 1991), the court held that the trustee was not entitled to a trial by jury on a fraudulent transfer claim that was in essence a basis to object to the secured claim of the lender-creditor. In the case of In re Agent Systems, Inc., 289 B.R. 828 (Bankr. N.D. Tex. 2002), the court did not look to the procedural form of the trustee's claim whether it was presented as an objection to the allowance of the creditor's proof of claim but the substance of the claim, that is the trustee's claim was so intertwined with the proof of claim to make it in essence the adjustment of the debtor creditor relationship clearly a "core" proceeding under 28 U.S.C. § 157(b)(2)(O). Accordingly, the court refused to abstain or remand the conflict to the state court.

It appears from the foregoing that the correct approach will require an analysis of the debtor's claim: Is it an objection to a claim filed by the creditor whether it involves the same issue or is intertwined with the issues involved with the controlling issues involved is the

(cont. on pg. 20)

WELCOME JUDGE RODNEY MAY

Carrie Beth Baris
Bush Ross Gardner Warren & Rudy, P.A

It is now official – Tampa has a new bankruptcy judge the Honorable K. Rodney May. Sworn in on February 19, 2004, Judge May officially became the Tampa Division's fifth full-time bankruptcy court judge.

Having moved to Tampa from Orlando to assume his duties, Judge May brings a wealth of experience to the bench. Judge May's experience includes nearly 28 years practicing law as a partner with Foley & Lardner for 16 years and, prior to that, as special counsel for the Securities and Exchange Commission in Washington, D.C. Over the course of his career, Judge May has represented debtors, creditors, creditors' committees, trustees and government agencies in reorganizations, bankruptcy cases and workouts. Judge May attended Duke University for law school and holds undergraduate and graduate degrees from the University of Florida where he earned Phi Beta Kappa honors. Judge May is also past president of the Central Florida Bankruptcy Law Association in Orlando.

Recently, Judge May graciously met with Donald Kirk and I to discuss his thoughts and impressions related to his new career path and to provide some practical insight on how he will run his courtroom. In speaking with Judge May it is hard not to be excited for him and for the Tampa Bay Bankruptcy Bar.

Judge May's decision to apply for the position in Tampa derives from his natural inclination to see both sides of an issue, the ability of his mind to focus on the intellectual part of legal issues and his desire to cut to the chase and reach a fair result in disputes. "Every case is like a jigsaw puzzle," said Judge May, "you have to be practical and combine procedure with the facts." In taking the bench, Judge May was initially apprehensive about thinking and deciding issues in public. However, establishing his own style, thinking out loud and deciding from the bench has become more comfortable to him, and Judge May now feels like he is "just working."

Prior to a hearing Judge May spends significant time preparing so that he is familiar with the legal and factual background of a particular case. "I want to do my own due diligence so I can gauge the attorneys," said Judge May. "I rely on attorneys a lot. Sometimes attorneys are more creative than I can be and I appreciate that."

To date, Judge May has observed a high level of preparation from the Tampa Bay Bankruptcy Bar and is "generally impressed with the bar" including the civility and abilities that its members possess. Pro se debtors pose a special concern for Judge May resulting in efforts by Judge May to try and make sure debtors understand what is occurring and that he cannot always fix their problems.

At his investiture, Judge May recalled a book that he read called "The Four Agreements." Based upon the theme of this book, Judge May created his own commitments that provide insight to his character including the high level of professionalism and respect that Judge May exemplifies and commands.

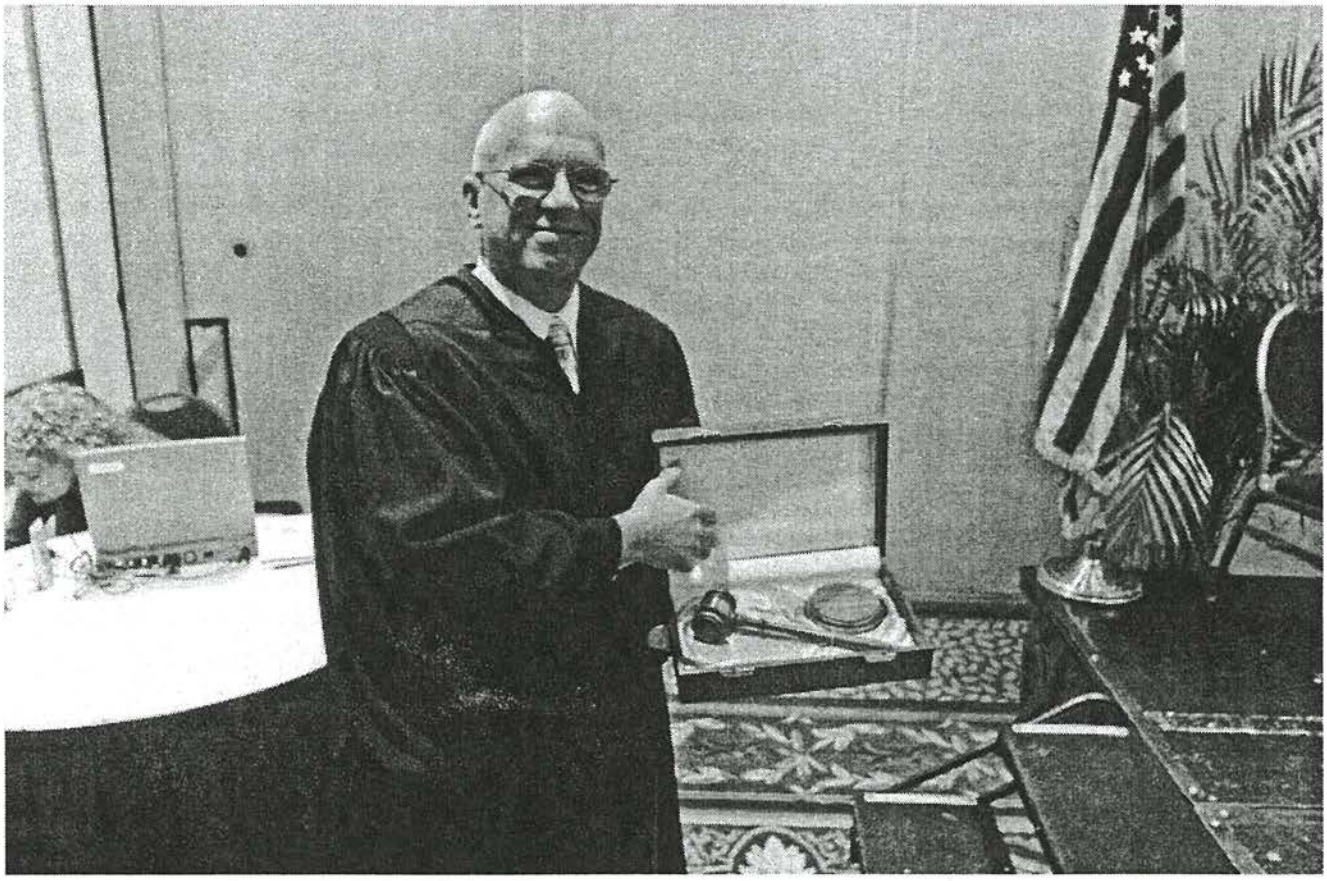
First, Judge May said "I realize I'm apart from the lawyers, but I don't consider myself above the lawyers. We all have a job, we all have roles to play in making sure justice is done for the people." "Remembering every day that the parties and their counsel that come before the Court are stressed by their own struggles. They're not expected to be perfect, and I don't expect them to be perfect. And I will not needlessly add to their stress. I will be firm."

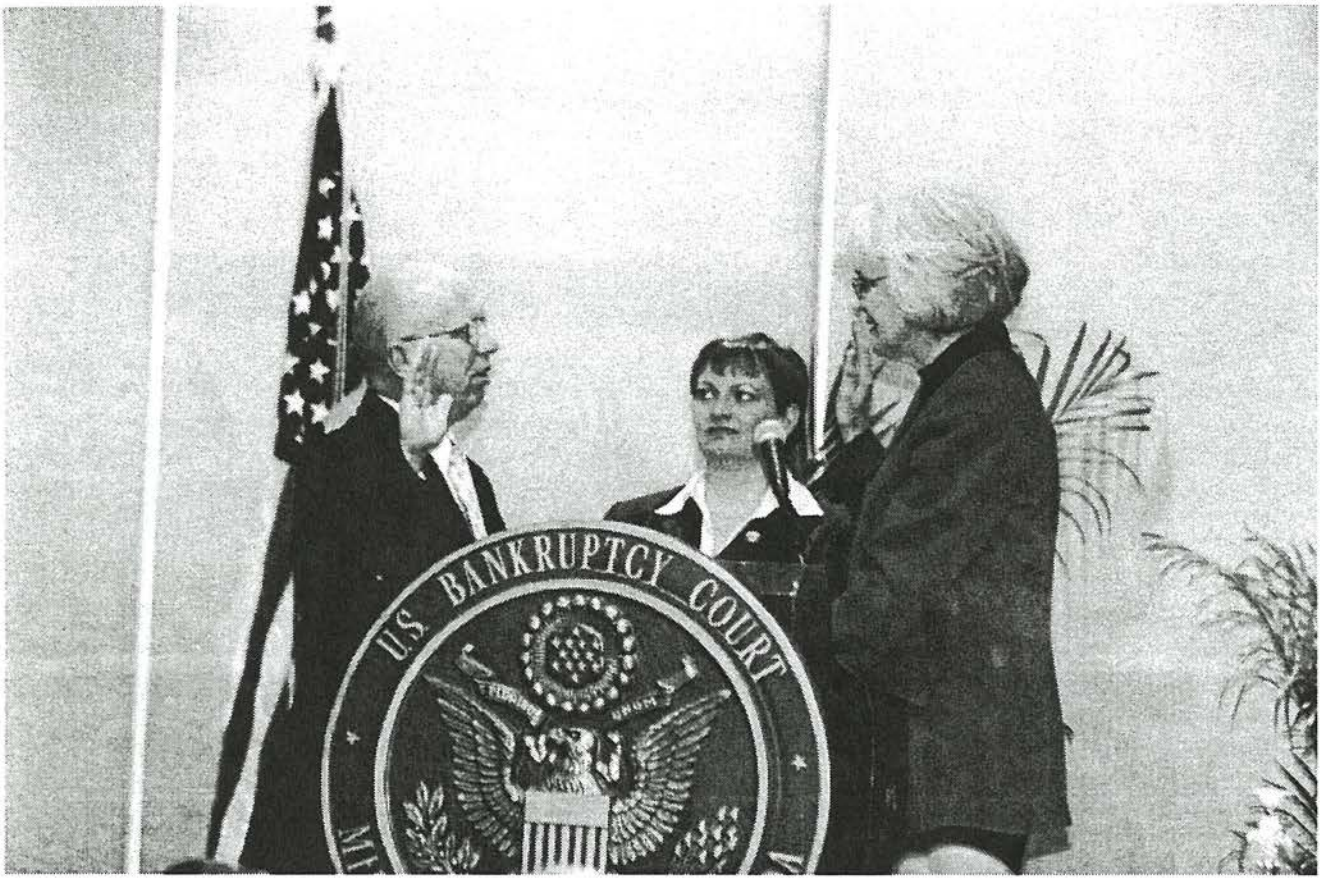
Judge May also said that he will be prompt, endeavor to be completely prepared for each matter that comes before him and will try to rule from the bench whenever possible. "I will strive for excellence, technical excellence. It's apparent to me that doing this job requires me to actually step up from the level of knowledge that I had even as a successful attorney."

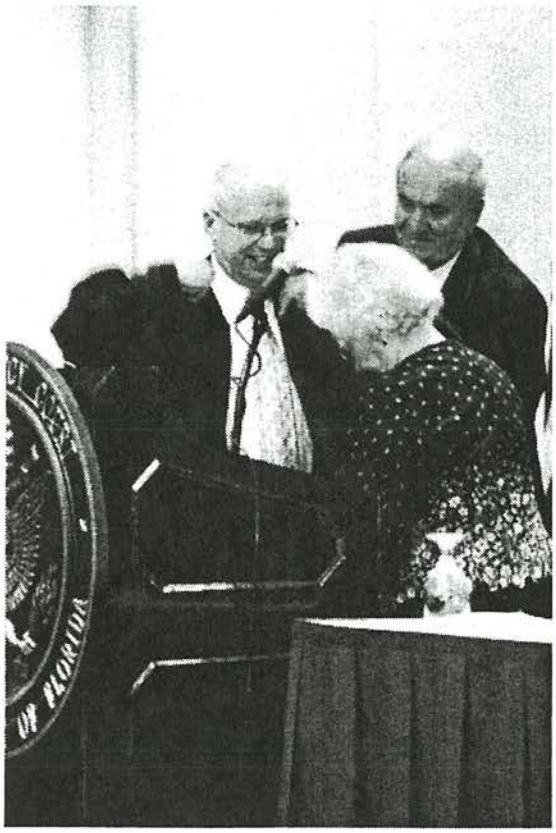
Above all, Judge May said, "I will attempt to be fair and to perform my duties with the spirit, internalized, of being a public servant. Meaning, not just a government employee, meaning somebody who serves the public. And that's what we are in the business of doing, serving the public while impartially administering and fairly administering, and administering with technical excellence, a justice for the people that can't solve their own disputes. And they need us to do that, and we need to do it right."

"I can't think of a better place to be," said Judge May. "I feel like I won the job lottery."

HIGHLIGHTS FROM JUDGE MAY'S INVESTITURE




U.S. BANKRUPTCY COURT



HARVEY SET THE STANDARD

Whether fellow lawyer, family, or client, what people iss most about Harvey Muslin is his warmth, a warmth that emanated from the ever-present optimistic glow he brought to all his endeavors.

"Harvey Muslin set the standard for enjoying good relationships with other members of bar," said one of our colleagues. "Harvey always enjoyed greeting and addressing each lawyer he saw. When he entered the courtroom or the trustees' meeting rooms, he literally lit the place up. His eyes would dart around the room and he would offer each person in the room a wave or a greeting. It was always a simple gesture on his part but you couldn't help but to return the smile. It was personal and he meant it," the colleague said. Indeed, Harvey would make the recipient feel that Harvey valued the person as a friend.

One of our judges echoed that sentiment, almost to a word: "He lit up the court room when he came in. It was always such a pleasure to have him there."

Our colleague Harvey died unexpectedly recently after conquering two serious illnesses in past years – stroke and a cancerous tumor on his carotid artery. Even during those illnesses he made us feel that we should not feel sorry for him, that he was just fine — as if coming to a hearing with big bandage across his neck after cancer surgery was just part of another happy day at the office. The exact cause of his death is not known. He went to sleep and did not get up again. His family surmises he had another stroke.

His wife Adrienne singled out his friendship as what she misses most. "He was so kind and caring. He would give you the shirt off his back," she said.

Similarly, Harvey's clients will miss the personal touch he extended to each of them. Two consistent themes of Harvey's delivery of professional services that we each should strive for are: No. 1 was Harvey's availability, allowing his clients to reach him directly by telephone. No client of Harvey's would ever say, "I haven't been able to get in touch with my lawyer!" No. 2 was the security and hopefulness he gave his clients as their cases progressed. "Harvey's clients left a meeting with him feeling less overwhelmed by their difficulties and more hopeful about their financial futures," said one satisfied client. "He was compassionate in dealing with folks who were down on their luck but forthright with them about potential consequences. He told his clients what to expect, laid out available options, and gave them easy-to-understand advice. He represented them zealously when appropriate, but when it was practical to settle, that's what he did," the client continued.

As Harvey's legacy to our association, we now have a consumer lawyers' committee, one the board recently chose to adopt as a standing committee. When he suggested we form the committee on an *ad hoc* basis to see if it would work, it was Harvey's belief that the consumer lawyers needed their own vehicle for networking and airing and solving common concerns. Bettering relationships — the suggestion was so Harvey.

And who can forget "Santa Harvey"? Only a Jewish man with a love for his bar organization would dress up like Santa for our annual holiday reception. His goal was to bring cheer to his fellow lawyers. And it worked. One cannot visualize Santa Harvey without grinning. Harvey's desire to spread holiday cheer to others even led to his wearing the Santa suit into the courtrooms during the day of the reception — but only after seeking advisory opinions that he would not violate our local dress code rule, of course.

Harvey was a positive person whose optimism was contagious. We should continue Harvey's tradition of meeting and greeting each of our fellow attorneys. We are all better off by the example he set, and we are thankful for what he shared with us, his optimism and his friendship.

-By Cathy McEwen and Herb Donica

The Effect of Uniformity on State Sovereignty in Bankruptcy: The Supreme Court Hears State's Claim of Sovereign Immunity in Dischargeability Proceeding

By: Theresa J. Pulley Radwan[1]

On March 1, 2004, the U.S. Supreme Court heard arguments in what may be the most significant bankruptcy case in recent years.[2] *Hood v. Tennessee Student Assistance Corp. (In re Hood)*, 319 F.3d 755 (6th Cir. 2003) involves the ability of states to be forced into bankruptcy adjudications in light of the sovereign immunity provisions of the U.S. Constitution.

The debtor, Pamela Hood, filed a petition under Chapter 7 of the Bankruptcy Code, and was granted a discharge in June, 1999. In September of 1999, the debtor filed an adversary proceeding[3] against the Tennessee Student Assistance Corporation ("TSAC")[4] claiming that, due to "undue hardship" her student loans should be discharged. Rather than defending under 11 U.S.C. § 523(a)(8), TSAC defended on grounds of state sovereignty. *Id.* at 758. Each of the Bankruptcy Court for the Western District of Tennessee and the Bankruptcy Appellate Panel for the 6th Circuit Court of Appeals held that the state of Tennessee could not claim sovereign immunity in a bankruptcy adversary proceeding.[5] *Id.* at 758-59, citing *Hood v. Tennessee Student Assistance Corp. (In re Hood)*, 262 B.R. 412, 413 (6th Cir. BAP 2001).

The Constitution provides for Sovereign Immunity in the 11th Amendment, prohibiting lawsuits against states by individual citizens or foreign nationals. U.S. Const. amend. XI; *see also Hans v. Louisiana*, 134 U.S. 1 (1890), *Ex parte Ayers*, 9 S. Ct. 164 (1887) (both noting that mere fact that power to enact law is granted to federal government through the Constitution does not abrogate state sovereignty). Perhaps the most significant case dealing with sovereign immunity in recent years has been *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). In the *Seminole Tribe* case, the Court held that Congress could not use the Indian Commerce Clause to abrogate sovereign immunity.[6] *Id.* at 47. In reaching this conclusion, the Court utilized a two-step analysis: First, the Court looked to whether Congress has the authority to abrogate state sovereign immunity, *Id.* at 57-58, and, second, the Court considered whether Congress had expressly done so through the legislation passed, *Id.* at 55. Significantly, the Court decided that, though Congress clearly stated its intent to abrogate sovereignty, *Id.* at 56, Congress did *not* have the authority to abrogate state sovereign immunity with regard to Indian Commerce, even though Article I of the U.S. Constitution[7] granted Congress the power to regulate such commerce, *Id.* at 47. In prior decisions, the Court had recognized that the 14th Amendment and the International Commerce Clause provided Congressional power to abrogate sovereignty. *Id.* at 59, citing *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989) (plurality opinion). Ultimately, however, the Court concluded that:

> In overruling *Union Gas* today, we reconfirm that the background principle of state sovereign immunity embodied in the Eleventh Amendment is not so ephemeral as to dissipate when the subject of the suit is an area, like the regulation of Indian commerce, that is under the exclusive control of the Federal Government. Even when the Constitution vests in Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States. *The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the contitutional limitations placed upon federal jurisdiction.*[8]

Id. at 72 (emphasis added), *cited in* Brief of Petitioner, *Tennessee Student Assistance Corp. v. Hood*, — U.S. — (2004) (No. 02-1606) at 8.

There is little question whether Congress expressly waived the sovereign immunity of the states (assuming that it had the power to do so) via the bankruptcy code. Section 106(a) of the Code clearly states that "sovereign immunity is abrogated as to a governmental unit" with regard to most sections of the Bankruptcy Code. 11 U.S.C. §106(a). But, absent express waiver of sovereign immunity by a state, that Congressional abrogation of sovereign immunity is only effective to the extent that Congress has the power to abrogate the states' sovereign immunity.

Using the two-part test provided by the Court in *Seminole Tribe*, and the Court's express prohibition against the use of Article I powers to avoid the 11th Amendment's restrictions on Article III courts, most circuits considering the issue have held that Congress lacks the power to restrict sovereign immunity in bankruptcy. *Hood*, 319 F.3d at 761.[9] These courts reason that, because Congress's power to regulate bankruptcy stems from Article I of the Constitution, just as did Congress's power to regulate Indian commerce, it cannot overcome the sovereignty awarded the states under the 11th Amendment. *See* footnote 9, *infra*.

The Sixth Circuit disagreed with these circuit courts. The Court found that the states themselves abrogated sovereign immunity, or at least gave Congress the power to abrogate immunity through the Constitutional Convention. *Id.* at 762. The Court distinguished *Seminole Tribe*, holding that Article I's requirement that Congress create "uniform" bankruptcy laws demonstrated an intention of the states that they be subject to those bankruptcy laws. *Id.* at 763. Thus, found the Sixth Circuit, "[g]ranting the federal government the power to make uniform laws is, at least to some extent,

(cont. on pg. 24)

JUDICIAL ESTOPPEL: REDUX

By: Steve Leslie, Esq.

Following up on an article recently penned by the Honorably Timothy Corcoran (retired) in a recent edition of The Cramdown, it appears that the subject of judicial estoppel in bankruptcy continues to be a hot topic. Indeed, the outcome of recently published decisions generally continues to tighten the noose on debtors who fail to initially disclose causes of action in their Schedules and Statement of Financial Affairs, sometimes to the detriment of innocent creditors and the estate.

In the case of *Krystal Cadillac – Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314 (3rd Cir. 2003), the Third Circuit contributed to the pool of judicial estoppel jurisprudence by reaching a decision that ultimately barred prosecution of claims in a Chapter 11 case due to nondisclosure by the debtor. In *Krystal Cadillac*, the Third Circuit affirmed a decision dismissing a complaint filed by a post-confirmation reorganized Chapter 11 debtor seeking to establish sanctions for willful violations of the automatic stay related to the post-petition termination of a franchise agreement. At the time the *Krystal Cadillac* plan was confirmed, the issue of improper termination had been adversely decided against the debtor. The improper termination issue was itself on appeal to the Third Circuit at the time disclosures were made in connection with dissemination of the disclosure statement and plan. Post-confirmation, the Third Circuit ultimately reversed on the improper termination issue, but the debtor reasonably could not necessarily have predicted the result prior to confirmation and the cause of action for damages for stay violations could not have been pursued (due to the adverse ruling) at the time disclosures were made in connection with dissemination of the disclosure statement and plan. The Third Circuit nevertheless affirmed a decision essentially punishing the debtor and creditors by refusing to allow the post-confirmation debtor to pursue stay violations premised upon improper termination.

The Eleventh Circuit has spoken yet again through its decision in the *Barger v. City of Cartersville*, 348 F.3d 1289 (11th Cir. 2003) case, which follows the trend utilizing judicial estoppel in consumer context in Chapter 7 and Chapter 13 cases to bar claims as held in *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002), and *De Leon v. Comcar Industries, Inc.*, 321 F.3d 1289 (11th Cir. 2003). The debtor in *Bargar* was a city employee who, during the pendency of her employment discrimination suit against the City of Cartersville, sought and obtained relief in a Chapter 7 case without disclosing the pendency of the discrimination action or the existence of the claim in her schedules and statement of financial affairs. Despite the fact that *Bargar* sought refuge premised upon her attorney's failure to list the discrimination dispute, and despite disclosure of the suit to the attorney, the Eleventh Circuit held that "the attorney's omission is no panacea." *Bargar*, 348 F.3d at 1295. Moreover, neither the fact that Bargar informed her trustee about the discrimination suit during her Section 341 meeting nor Bargar's effort to reopen her bankruptcy case to schedule her claim impacted the decision of the Eleventh Circuit. In sum, Ms. Bargar was left only with the opportunity to pursue reinstatement of her position via injunctive relief.

A bit closer to home, in a non-published opinion entered by the Honorable Richard A. Lazzara, United States District Judge, in the case of *V. John Brooks, as Trustee for the Estate of Jerome Witers v. City of Palmetto, et al.*, Case Number 8:01-CV-2430-T-26TBM (M.D. Fla. Dec. 18, 2003), the court granted summary judgment in favor of the defendants on judicial estoppel grounds in a case whose facts virtually parallel those in the Eleventh Circuit's opinion in *Bargar*. The court found that neither reliance on advice of counsel, disclosure to counsel, nor omission by the attorney precluded strict application of the judicial estoppel doctrine.

Consideration of the interests of creditors (who arguably suffer the most impact from intentional or inadvertent nondisclosure of assets by the debtor) is not a strong point in any of the foregoing decisions. A recent decision from a

(cont. on Page 10)

TBBBA TECHNOLOGY REPORT

Attorney Resource Room – Changes Are Coming

By: Luis Martinez-Monfort
Mills, Paskert & Divers, P.A.

Most of you are now familiar with the Attorney Resource Room located on the 10th floor of the Courthouse, just outside Judge Williamson's courtroom. You might have even made a short trip to the Resource Room to call your office, make emergency copies, or to draft and print a last minute stipulation memorializing the classic "courthouse steps settlement." You have probably realized that the Resource Room is a good idea; however, there are certain things that can make it a great idea. Well, we have realized that too.

By the time this article is published, the Resource Room will have a brand new, multi-function, laser jet printer/copier/scanner. In addition, the Resource Room will be equipped with a copy of the CM/ECF Electronic Filing manual, a new 2004 TBBBA Membership Directory, complimentary legal pads, pens, and other office supplies. The Technology Committee is also considering purchasing a wireless cable modem for the Resource Room to allow those attorneys participating in the courthouse laptop program to simply log on to the internet while waiting for their next hearing.

With these changes, members of the Bar must comply with those basic rules we all learned so well in kindergarten. If you borrow it, give it back. If you use it, put it back, and always share with others. If others are waiting, please limit your time on the office equipment and telephones to no longer than 10 minutes.

The improvements being made to the Resource Room are sure to make things easier for you on your next trip to the courthouse.

* If you have any suggestions for the Resource Room, please forward them to: Timothy J. Sierra, Law Offices of Timothy J. Sierra, 118 S. Rome Avenue, Tampa, 33606.

Judicial Estoppel *(cont. from page 9)*

bankruptcy court in the Northern District of Alabama seemingly reaches a compromise position. In the case of *In the matter of Huggins* — B.R. — 2003 WL2319881 (Bankr. N.D. Ala. Jan. 15, 2004), the court adopted a position advocated by the chapter 7 trustee which allowed the estate to proceed with prosecution of a cause of action for the benefit of creditors, albeit limiting the maximum recovery to the amount of debt identified in the schedules plus reasonable costs and expenses incurred by the trustee and special counsel to pursue the claims.

As a teaser of things to come, the *Huggins* decision hints that a case currently pending before the Eleventh Circuit, *Vicki Parker v. Wendy's International, Inc., et al.*, CV-99-N-0038-S (2003), involves the issue of whether a Chapter 7 trustee can be barred by judicial estoppel from asserting a cause of action based upon the debtor's failure to disclose the cause of action. A review of the briefs on PACER reveals that the *Parker* decision involves an appeal by Thomas Reynolds (a Chapter 7 trustee who was substituted as plaintiff) from a District Court order dismissing a race discrimination case premised on non-disclosure by the debtor (prior to the trustee's substitution as plaintiff) and the doctrine of judicial estoppel. Oral argument was scheduled for September 12, 2003. As of the deadline for this writing (February 26, 2004), the *Parker* case appears to remain under submission before the Eleventh Circuit. Stay tuned!

UPDATE AT PRESS TIME

On March 31, 2004, the United States Court of Appeals for the Eleventh Circuit published an opinion in the *Reynolds v. Wendy's International, Inc.* appeal. The Eleventh Circuit reversed the decision of a District Court, thereby allowing Reynolds (as Chapter 7 Trustee) to pursue the discrimination claim that the debtor (Parker) failed to initially disclose in her schedules. The Eleventh Circuit distinguished its earlier opinion in *Burnes* on the grounds that the debtor in *Reynolds* did not wait to disclose her discrimination claim until after the defendant in the discrimination action moved to dismiss the claim based on judicial estoppel, unlike the debtor in *Burnes*. The quick take from the *Burnes/Parker* dichotomy is that a debtor who waits to disclose the omitted claim until after a defendant files a motion to dismiss the claim premised upon judicial estoppel is much more likely to suffer dismissal.

Recent Supreme Court Cases on Bankruptcy Issues

By: Shuman Sohrn (Carlton Fields, P.A.)

troduction

The Supreme Court granted cert to six bankruptcy cases for the 2003-2004 term. The Court announced decisions in two of the cases in January and is reviewing four others. The following summaries discuss the two recently decided cases and the issues raised in the four cases that have yet to be decided.

The Supreme Court announces 9-0 decisions in two bankruptcy cases.

1. Lamie v. U.S. Trustee, Case No. 02-693 (Argued November 10, 2003 and decided January 26, 2004).

The Supreme Court granted cert in this Fourth Circuit case (290 F.3d 739 (4th Cir. 2002)) to determine whether a chapter 7 debtor's attorney, who is not hired by the Trustee pursuant to Code Section 327, could be compensated from the estate under 11 U.S.C. § 330(a), the statute governing compensation of professionals. Specifically, the Court was asked to determine whether Congress's omission of the phrase "debtor's attorney" in the 1994 recodification of 11 U.S.C. § 330 was purposeful and intended to deprive attorneys of compensation, or instead, was an error in drafting (a "scrivener's error"). The Fourth Circuit held that: (1) 11 U.S.C. § 330(a) does not allow a Chapter 7 debtor's attorney to be compensated from the estate, and (2) when a Chapter 11 is converted into a Chapter 7 proceeding, the attorney may only deduct his expenses from a retainer for pre-conversion expenses and fees. In a 9-0 decision, the Court affirmed the Fourth Circuit and held that under the plain language, § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327. Moreover, the Court held that if the attorney is to be paid from estate funds under § 330(a)(1) in a chapter 7 case, he must be employed by the trustee and approved by the court.

In Lamie, the debtor retained John Lamie as its bankruptcy counsel. Initially, they filed a Chapter 11 petition. Lamie secured a $5,000 retainer and earned $1,325 in fees for his Chapter 11 work. Meanwhile, the U.S. Trustee converted the case into a Chapter 7 proceeding. Lamie charged $1,000 during the Chapter 7 proceeding. Although the U.S. Trustee paid Lamie the fee earned for his Chapter 11 work, he refused to pay the $1,000 Lamie earned during the Chapter 7 proceedings. The U.S. Trustee claimed 11 U.S.C. § 330(a) does not allow a debtor's attorney to be paid in a Chapter 7 proceeding due to an omission in the Bankruptcy Code following the 1994 Bankruptcy Reform Act. The bankruptcy court agreed with the U.S. Trustee, but permitted Lamie to receive payment for both services from the retainer because the retainer was supposed to be separate from the estate. The U.S. Trustee appealed to the district court, which upheld the bankruptcy court's ruling. A divided Fourth Circuit reversed, holding that under the plain language of Section 330, Lamie could not be compensated and that the retainer was a part of the estate.

Prior to the Court's decision, the circuits were split on this issue. The Second, Third and Ninth Circuits had held that a debtor's attorney could be compensated from the estate. See In re Top Grade Sausage, Inc., 227 F.3d 123 (3d Cir. 2000) (holding that Chapter 7 debtor's attorneys could be compensated under 11 U.S.C. § 330 because the statute was ambiguous and the legislative history does not suggest a Congressional intent to deny such compensation); In re Century Cleaning Servs., Inc., 195 F.3d 1053 (9th Cir. 1999) (same); and In re Ames Dep't Stores, Inc., 76 F.3d 66 (2d Cir. 1996) (omission of "debtor's attorney" was inadvertent). The Fifth and Eleventh Circuits had sided with the Fourth Circuit in holding the omission was not in error. See In re American Steel Prod., Inc., 197 F.3d 1354 (11th Cir. 1999) (holding that 11 U.S.C. § 330 is not ambiguous and therefore, attorneys cannot be compensated from the estate in Chapter 7 proceedings); In re Pro-Snax Distrib., Inc., 157 F.3d 414 (5th Cir. 1998) (same).

In affirming the Fourth Circuit, the Supreme Court held that the plain meaning of the statute was unambiguous and explicitly denied compensation for chapter 7 debtors' attorneys not hired by a trustee pursuant to § 327. First, the Court stated that the starting point for determining Congressional intent would be the current statute, not its predecessor. Second, the Court reasoned that although the present statute was awkward and ungrammatical, the statute was not ambiguous, and therefore, the proper plain meaning of the statute excluded the compensation of debtor's attorneys not hired by the trustee pursuant to § 327. The Court then addressed Lamie's policy argument of Congressional intent by stating that other avenues were available for a debtor's attorney to receive compensation. Specifically, a chapter 7 debtor's attorney could be compensated by the estate if the trustee engages the attorney under § 327. Moreover, the Court countered that the policy of advancing the trustee's responsibility in preserving the chapter 7 estate would be strengthened by its holding. In refusing to read "attorney" into § 330(a)(1), the Court also emphasized that the legislative history of § 330 did not necessarily support Lamie's position.

2. Kontrick v. Ryan, Case No. 02-819 (Argued November 3, 2003 and decided January 14, 2004).

The Supreme Court granted cert in this Seventh Circuit case (295 F.3d 724 (7th Cir. 2002)) to determine whether Bankruptcy Rule 4004's 60-day time limit for filing objections to discharge is jurisdictional or subject to equitable defenses. The Seventh Circuit held that: (1) the 60-day time limit for filing objections is not jurisdictional, and thus subject to equitable defenses; (2) a debtor waives his ability to object to the timeliness of judgment creditor's amended complaint by not raising the issue in responsive pleadings; and (3) summary judgment denying a discharge to a debtor is

(cont. on pg. 12)

appropriate when the debtor deposits his paycheck into a family account, over which he has no control, with the intent to hinder, delay or defraud creditors within one year of bankruptcy. In a 9-0 decision, the Supreme Court affirmed the Seventh Circuit and held that a debtor forfeits the right to rely on Rule 4004 if the debtor does not raise the Rule's time limitation before the bankruptcy court reaches the merits of the creditor's objection to discharge.

In Kontrick, the debtor filed for bankruptcy in 1997 after he and his business partner, Robert Ryan, had dissolved their partnership. Ryan listed himself as a creditor in Kontrick's case within the 60-day guideline. Later, more than three months after the deadline, Ryan filed an amended complaint without a court-approved extension, alleging that Kontrick was depositing his paychecks into his wife's bank account to stifle creditors. Kontrick did not raise an objection as to the timeliness of Ryan's actions in his responsive pleadings. The bankruptcy court granted summary judgment for Ryan. Kontrick appealed to the district court, arguing that the 60-day time limit was jurisdictional and therefore, the deadline could not be waived and the new arguments presented in the amended complaint were void. The district court affirmed the bankruptcy court's decision. Kontrick then appealed to the Seventh Circuit, which unanimously held that Rule 4004 was subject to waiver and that Kontrick had waived his objection to the timeliness of Ryan's amended complaint by not raising his objection in his responsive pleadings.

Although the Seventh Circuit's position was consistent with similar holdings in the Second and Fourth Circuits, several bankruptcy courts were divided on this issue. See In re Benedict, 90 F.3d 50 (2d Cir. 1996); Farouki v. Emirates Bank Int'l, Ltd., 14 F.3d 244 (4th Cir. 1994); In re Santos, 112 B.R. 1001 (BAP 9th Cir. 1990) (holding that Rule 4004 are subject to waiver); In re Steiner, 209 B.R. 281 (Bankr. E.D.N.Y. 1996) (same); In re Walker, 195 B.R. 187 (Bankr. N.H. 1996) (same); In re Begue, 176 B.R. 801 (Bankr. N.D. Ohio 1995) (same), with In re Glover, 212 B.R. 860 (Bankr. S.D. Ohio 1997) (holding that time limits are jurisdictional and not subject to waiver); In re Ham, 174 B.R. 104 (Bankr. S.D. Ill. 1994) (same); In re Kirsch, 65 B.R. 297 (Bankr. N.D. Ill. 1986) (same).

In affirming the Seventh Circuit, the Supreme Court focused on the fact that the time constraints applicable to objections to discharge are contained in the Bankruptcy Rules prescribed pursuant to § 2075, and that the filing deadlines prescribed in Rules 4004 and 9006(b)(3) are claim-processing rules that do not delineate what cases bankruptcy courts are competent to adjudicate. Therefore, such rules are not jurisdictional, and can be waived if the party asserting the rule waits too long to raise the point. Additionally, the Court stated that no reasonable construction of complaint-processing rules would permit a litigant situated like Kontrick to defeat a claim, as filed too late, after the litigant has litigated and lost the case on the merits. This case involved no issue of equitable tolling or any other equity-based exception in favor of Kontrick. Therefore, in order to impose such rules, time bars must be raised in an answer or responsive pleading. The Court also noted that Kontrick also had failed to raise the time bar issue in his amended answer and subsequent motions. The fact that Kontrick waited until the suit was decided on the merits was terminal because only subject-matter jurisdiction objections are preserved post-trial.

The Supreme Court will decide four other bankruptcy-related cases this term.

1. Till v. SCS Credit Corp., Case No. 02-1016 (Argued December 2, 2003).

The Supreme Court granted cert in this Seventh Circuit case (301 F.3d 583 (7th Cir. 2002)) to determine the appropriate approach in calculating the proper cramdown rate of interest for confirmation of a Chapter 13 plan over a secured creditor's objection. The Seventh Circuit held that: (1) the appropriate approach to take in determining the rate on interest is the "coerced loan," as opposed to the "cost of funds" or "formula" approach; and (2) in the absence of a stipulation regarding a creditor's current rate for a loan of similar character, amount and duration, it is proper for bankruptcy courts to accept contract rate of interest as a presumptive measure of the creditor's current rate for similar loans.

(cont. on pg. 13)

Recent Supreme Court Cases *(cont. from page 12)*

In Till, a secured creditor objected to confirmation of the debtors' proposed Chapter 13 plan for not providing it with an appropriate rate of interest for cramdown. The creditor sought to impose a 21% contract rate of interest, the interest it would earn on a loan if it had foreclosed on the collateral and then had used the proceeds to issue a new loan. The bankruptcy court overruled the creditor's objection. The district court reversed. The Seventh Circuit vacated the district court's decision and remanded. Although all the circuit courts agree that the rate should compensate the creditor for its delay in receiving the value of the collateral, the circuits are split as to the formula for calculating the rate of interest. Several lower courts, as well as *Collier on Bankruptcy* advocate the "cost of funds" approach. The Second, Eighth and Ninth Circuits apply the "formula method." See In re Valenti, 105 F.3d 55 (2d Cir. 1997); In re Fowler, 903 F.2d 694 (9th Cir. 1990); U.S. v. Doud, 869 F.2d 1144 (8th Cir. 1989). The Third and Fifth Circuits agree with the "coerced loan" approach used by the Seventh Circuit. See GMAC v. Jones, 999 F.2d 63 (3d Cir. 1993); In re Smithwick, 121 F.3d 211 (5th Cir. 1997). The Court will finally provide authoritative guidance on the proper determination of cramdown rate of interest for confirmation of Chapter 13 repayment plans.

2. U.S. v. Galetti, Case No. 02-1389 (Argued January 12, 2004).

The Supreme Court granted cert in this Ninth Circuit case (298 F.3d 1107 (9th Cir. 2002)) to settle a tax-related issue in a bankruptcy context. The Ninth Circuit held that: (1) the failure of the IRS to assess tax deficiencies against individual debtors barred it from collecting the unpaid debts of the partnership directly from debtors, and (2) debtors who are general partners in partnership are not obligated to pay tax assessments of the partnership.

In Galletti, the debtors filed a Chapter 13 petition. The IRS filed proofs of claim against the debtors for unpaid unemployment taxes assessed against the partnership in which the debtors were general partners. The bankruptcy court disallowed the IRS' claims. After the IRS appealed, the district court affirmed. Subsequently, the IRS appealed to the Ninth Circuit which also affirmed the lower court's decision.

3. Yates v. Hendon, Case No. 02-0458 (Argued January 13, 2004).

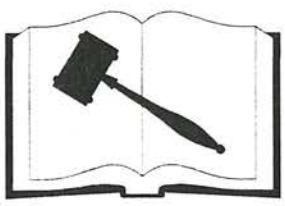
The Supreme Court granted cert in this Sixth Circuit case (287 F.3d 521 (6th Cir. 2002)) to determine whether a retirement plan's spendthrift clause was enforceable by the debtor under ERISA or Tennessee state law. The Sixth Circuit held that: (1) a retirement plan's spendthrift clause was not enforceable by the debtor under ERISA and (2) a retirement plan's spendthrift clause was not enforceable under Tennessee law either.

In Yates, a Chapter 7 U.S. Trustee filed an adversary complaint against a profit sharing / pension plan of the debtor's wholly-owned corporation and against plan's trustee. The U.S. Trustee sought to recover, as a voidable preference, a loan repayment made by the debtor to the plan three weeks before the petition date. Previously, the debtor had taken out a personal loan from the plan and had delayed repayment until three weeks prior to the petition date. The bankruptcy court entered summary judgment in favor of the U.S. Trustee and the District Court affirmed. After appeal, the Sixth Circuit affirmed the bankruptcy court's ruling as well. The significance of this case lies in the fact that the Supreme Court's earlier decision in Patterson v. Shumate, 504 U.S. 753 (1992) held that the proceeds of ERISA-qualified pension plans did not constitute property of the estate under 11 U.S.C. § 541(c)(2). Moreover, the Court must grapple with the issue of whether a plan is ERISA-qualified where a self-employed debtor is both the employer and employee under the plan.

4. Tennessee Student Assitance Corp. v. Hood, Case No. 02-1606 (Oral argument scheduled for March 1, 2004).

The Supreme Court granted cert in this Sixth Circuit case (319 F.3d 755 (6th Cir. 2003)) to determine whether Congress has the authority to abrogate the state sovereign immunity in bankruptcy cases pursuant to the Bankruptcy Clause. The Sixth Circuit held that Congress could abrogate state sovereign immunity in bankruptcy cases under the Bankruptcy Code because the Constitution included the Bankruptcy Clause and conferred on Congress the power to make uniform laws regarding bankruptcy.

In Hood, Hood signed promissory notes for student loans that were guaranteed by a Tennessee governmental corporation (TSAC). In 1999, Hood received a discharge on her no-asset Chapter 7 petition. Because 11 U.S.C. § 523(a)(8) prohibits the discharge of student debts held by a government body unless there is a showing of undue hardship, Hood filed an adversary proceeding seeking discharge of her student loan debts. The bankruptcy court denied TSAC's motion to dismiss, holding that 11 U.S.C. § 106(a)'s abrogation of state immunity was a valid exercise of Congress' power under the Bankruptcy Clause. The BAP for the Sixth Circuit affirmed the court's decision. The Sixth Circuit's holding conflicts with other circuit decisions that follow the Supreme Court's holding in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996). See In re Sacred Heart Hosp. of Norristown, 133 F.3d237 (3d Cir. 1998); Schlossberg v. Maryland, 119 F.3d 1140 (4th Cir. 1997); In re Fernandez, 123 F.3d 241 (5th Cir. 1997); In re Nelson, 301 F.3d 820 (7th Cir. 2002); and In re Mitchell, 209 F.3d 1111 (9th Cir. 2000). The Court's decision will finally determine whether states and their various bodies may be required to participate in adversary proceedings under the Bankruptcy Code.



HIGHLIGHTS FROM FEBRUARY LUNCH MEETING

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.

COMMITTEE	CHAIR(S)	TELEPHONE	FACSIMILE
CLE Programs	Caryl E. Delano Scott A. Stichter	(813) 223-2000 (813) 229-0144	(813) 228-6000 (813) 229-1811
Community Service	Kelley Petry	(813) 229-2221	(813) 225-1315
Court, U.S. Trustee, and Clerk Liaison Committee	F. Lorraine Jahn Patrick Tinker	(813) 225-1818 (813) 228-2000	(813) 225-1050 (813) 228-2303
Membership and Elections	Shirley C. Arcuri	(813) 286-4081	(813) 286-4168
Publications and Newsletter	Donald R. Kirk	(813) 228-7411	(813) 229-8313
Technology	Luis Martinez-Monfort	(813) 229-3500	(813) 229-3502
*Consumer Lawyers	David E. Hicks Randall Hiepe	(813) 253-0777 (727) 898-2700	(813) 253-0975 (727) 898-2726

*Ad-hoc, non-voting board members

WELCOME NEW MEMBERS TO THE TBBBA!

Cheryl Thompson

Victoria D. Critchlow

HAPPY BIRTHDAY – CM/ECF

February 18 is just another day to many people. To the employees of the United States Bankruptcy Court for the Middle District of Florida, it's the day that changed how we operate as a court; it's the day that we began our journey to a paperless court. CM/ECF replaced NIBS on this day last year. We've come a long way since February 18, 2003. We started with no external filers and today have a total of 171 external filers. We've conquered Version 2.2 and 2.3 and soon will have Version 2.4. Our IT staff has enhanced the system with Case Upload, CourtWatch, Q-docs, E-checks, and conditional logic to make docketing easier for Court Users and External Users. We have seen our external docket entries grow from 7% in December to 15% in January. An external transaction report run for the month of February reflects 2092 external entries made in Tampa cases, 1841 external entries made in Jacksonville cases, and 1069 external entries made in Orlando cases. In just a few short years we will not remember NIBS or what a case file looks like. Our Court will treat this day as a day of celebration and hope that those of you who are not External Filers will soon also benefit from the system as well by becoming an External Filers. Our trainers are waiting for your call.

CALENDAR OF EVENTS

EVENT	DATE	LOCATION
Nuts and Bolts Seminar on Chapter 13 Practice	April 13, 2004	Downtown Hyatt
ABI Spring Meeting	April 15-18, 2004	Washington, D.C.
TBBBA Lunch program	May 11, 2004	Downtown Hyatt
Annual Dinner	June 10, 2004	Palma Ceia Golf & Country Club
The Florida Bar Annual Meeting	June 23-26, 2004	Boca Raton Resort and Club
Florida Bar Business Law Section Bankruptcy/UCC Meeting	June 24, 2004, 9:00	Boca Raton Resort and Club
ABI Southeast Bankruptcy Workshop	July 28-31, 2004	Greensboro, Georgia

In re Bateman[1]
"The War Between Claims and Plans"

By: Larry Foyle

Historically, courts have been divided over what takes precedence in a Chapter 13 case: an allowed claim or the provisions of a confirmed plan. Some courts give paramount weight to claims while others give greater weight to the binding effect of confirmed Chapter 13 plans which purport to determine the amount and classification of claims as well as the manner in which these claims will be paid. In Bateman, the 11th Circuit unraveled a part of the procedural knot that bankruptcy courts have tied on this issue.

The 11th Circuit Court of Appeals stated that Bateman was a "first impression" case. The facts in Bateman were quite simple. The Debtor proposed a plan that was to pay a disputed home mortgage arrearage amount of $21,600.00. Universal American Mortgage Company (holding the mortgage on the Debtor's home) timely filed its arrearage claim for $49,178.80, but otherwise did not participate in the case. Universal did not attend the meeting of creditors, did not object to the plan, did not attend the confirmation hearing, did not seek rehearing, and did not appeal the order confirming the plan. More than one year after the court's order on confirmation, the Trustee noticed a $28,000.00 discrepancy between the plan amount to be paid to Universal and Universal's proof of claim. The Debtor, therefore, objected to Universal's timely filed proof of claim on the basis that the confirmed plan bound Universal to the $21,600.00 arrearage amount that the plan provided in full satisfaction of the arrearage claim.

The outcome in Bateman, based upon the 11th Circuit's due process concerns, shows what can happen when conflicting provisions of the Bankruptcy Code collide. From a policy standpoint, the issue is whether the due process protections that are afforded to creditors under Rules 3007 and 7001 should be enforced and whether those concerns outweigh the res judicata effect of an order confirming a Chapter 13 plan. Should a debtor be allowed to propose creditor treatment in the plan and bind the creditor without ever directly confronting the creditor by filing a contested matter or adversary proceeding? But for these due process protections, the Chapter 13 plan process would permit a debtor to propose a plan which can default and ambush the creditors.[2]

In Bateman, the bankruptcy court determined that the Chapter 13 plan controlled and the timely filed claim could not trump the plan's preclusive effect. The Bankruptcy Court found that the plan itself constituted a constructive objection to Universal's secured claim for arrearages. The bankruptcy court held that

> Universal's lien passes through the bankruptcy proceeding, however the amount of the arrearage is res judicata. Upon successful completion of the Chapter 13 plan or upon earlier payment of the arrears in the sum of $21,600.00, the mortgagee must as a matter of law provide that the mortgagor is current in her mortgage account. Her principal sum owed on the mortgage, the date the sum of $21,600.00 has been paid to the mortgagee must be the same as if no delinquency had ever occurred. The mortgagee may not seek at any future time to charge back against the debtor or any successor any portion of the difference between the $21,600.00 and the claimed amount of $49,178.80. The mortgagee waived its rights to contest the amount of the arrearage and is bound by the confirmed plan.

Id. at 4. (emphasis added). In essence the bankruptcy court was forced to rewrite the home mortgage between the two parties.[3]

The District Court affirmed the Bankruptcy Court's decision on the basis that Universal never objected to the plan and therefore could not collaterally attack the plan. The District Court concluded that the claim did not have preclusive effect under §§502 and 1322(b)(2) over the provisions of a confirmed plan.

On appeal, the 11th Circuit affirmed in part and reversed in part. The Circuit Court stated that it was deciding the issue based upon its narrow reading of §1322(b)(2).[4] Thus, the Circuit Court was concerned with what happens under §1322(b)(2) to a mortgagee whose timely filed secured claim, conflicts with the terms of a Chapter 13 plan which is then confirmed without addressing the conflict between the claim and the plan's terms.

The 11th Circuit sent a clear indication that its decision may not be limited to §1322(b)(2) issues and may have broader application to all secured claims.[5] Thus, any secured creditor should be able to make the argument that its timely filed claim takes precedence over a conflicting plan provision as in Bateman.[6] It is clear that, therefore, if the Debtor did not agree with the claim, it was incumbent upon the debtor to object to the claim as a condition precedent to confirmation. When the debtor waited more than one year after confirmation before filing the objection to the claim, it was simply too late. The Circuit Court found that Universal's lack of participation in the case beyond filing the proof of claim was irrelevant as the Court found Universal did not, through its inaction, accept the plan.

The 11th Circuit writes a veritable primer on several Bankruptcy Code sections and Rule 3007, but in the end the result is that the various code sections simply do not relate well to each other.

The 11th Circuit reiterates the legal proposition that a confirmed Chapter 13 plan is binding upon the debtor, the

(cont. on pg. 19)

In re Bateman *(cont. from page 18)*

editors and the court. The Bankruptcy Court should have addressed the timely filed arrearage claim and harmonized it with the plan prior to confirmation. The 11th Circuit determined that the mistake could not be corrected on appeal.[7] In essence the Bateman court tells future litigants to be more vigilant and to clean up their own messes because the 11th Circuit is not going to do so.

The 11th Circuit glosses over a key legal principle in its decision that is critical to the appeal's resulting irony. The 11th Circuit only cites one case and then only briefly discusses the fact that long term mortgage debt is not subject to the discharge under §1328(a)(1). As a result, irrespective of the plan's language, the Debtor does not have the right to do anything with a home mortgage in the plan beyond curing the arrearage. Ultimately, at the end of the plan, the Debtor is at the mercy of the lender and the state court if the actual arrearage is higher than provided for in the plan. As the 11th Circuit concludes:

> We hold that . . . Universal's secured claim for arrearage survives the plan and it retains its rights under the mortgage until Universal's claim is satisfied in full. If that satisfaction is not forthcoming, after the automatic stay is lifted, Universal will be entitled to act in accordance with the rights as provided in the mortgage to satisfy its claim.

The 11th Circuit correctly states that once a claim is filed, it is deemed allowed in the absence of an objection. The 11th Circuit further states that, even though there is no time limit for filing objections to claims under the Code and Rules, all objections are to be dealt with prior to confirmation of the Chapter 13 plan. In some jurisdictions, Bankruptcy Courts routinely confirm Chapter 13 plans well before the claims bar date has passed. Obviously, if the 11th Circuit's pronouncement is to be taken seriously, some local practices will have to be changed. The Tampa and Ft. Myers Divisions of the Middle District of Florida, however, have always had confirmation well after the claims bar date has passed. Local Rule 3007-1 does not have an objection bar date, however, the Middle District judges do impose an objection bar date in the Chapter 13 pre-confirmation order and require claims objections be filed no later than 30 days after the bar date for filing claims has expired.

In the final analysis, the 11th Circuit holds that the confirmed plan is res judicata, but cannot not trump the

(cont. on pg. 22)

A View From the Bench *(cont. from page 3)*

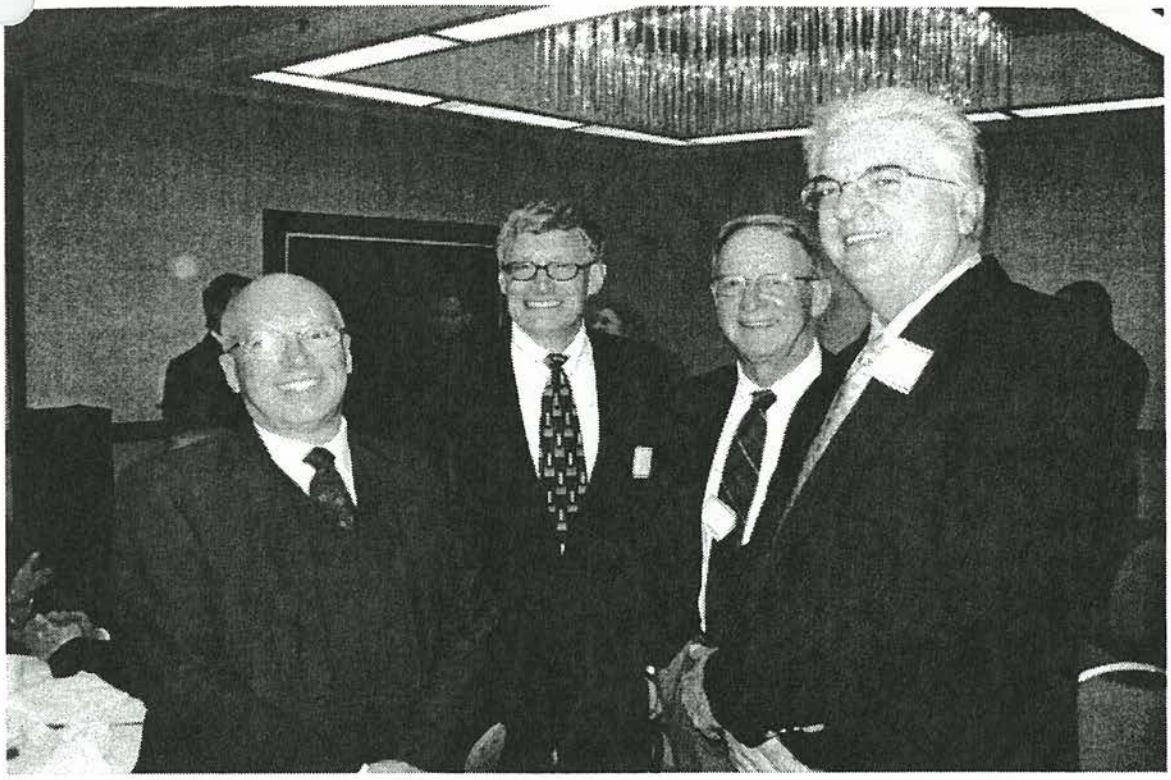
proof of claim of the creditor against whom the trustee can assert a claim and demand a trial by jury.

The court will also have to consider whether the claim of the trustee or the debtor implicates the major or the principal asset of the debtor and the resolution of the claim is central to the adjustment of the creditor debtor relationship and implicates the very relief sought by the debtor for filing bankruptcy.

(Footnotes)

[1] This article is a summary and analysis of the article written Deborah Deitsch-Perez of Lackey Hershman, L.L.P, entitled "When Does a Debtor Lose the Right to a Jury Trial on Lender Liability Claims?" 12 Norton Bankruptcy Law Adviser, December 2003.

HIGHLIGHTS FROM JANUARY LUNCH MEETING



secured creditor's deemed allowed claim. As a result, the 11th Circuit was powerless to revoke confirmation or to dismiss the bankruptcy case. In that regard, Ms. Bateman won and Universal lost. In the more important battle, however, the 11th Circuit decided that the secured claim and the mortgagee's rights remained unimpaired by the bankruptcy and survived the contrary plan provisions. These rights could be enforced after the plan is completed if not properly dealt with inside the plan. If Ms. Bateman wanted a different result, due process under Rule 3007 meant the Debtor had to timely file a separate objection to the secured claim and could not short cut due process via the plan's language concerning the claim.

The bottom line is that the Bateman debate is not over. Open questions remain concerning what happens to secured claims that do not involve 1322(b)(2) protections. If the secured creditor does not file a claim, what happens if the Debtor files an erroneous claim on behalf of the secured creditor. Other issues remain concerning whether plans which purport to deal with lien avoidance, valuation of property and the like should have any res judicata effect when the Debtor has taken none of the due process steps necessary to complete the processes set forth in the plan's language.[8] Finally, what happens when plans contain provisions that run afoul of §1322(b)(10).[9] Should such plan provisions be given res judicata effect. While the Bateman case could have answered these questions, the 11th Circuit chose not do so. The Bateman Court's opinion may be a bit unsatisfying to the reader in this respect because the final result does not promote finality.

Special thanks to Wendy Parker and Brad Hissing, Esq. who assisted in the preparation of this submission.

(Footnotes)

[1] 331 F. 3d 821 (11th Cir. 2003)

[2] If debtors are permitted to unilaterally propose plans containing "trap door" provisions that determine treatment of claims, strip liens, value collateral, or discharge co-debtors and are not required to observe the notions of due process as contemplated in the Bankruptcy Code and Rules, then bankruptcy becomes a game of default and ambush. Due process minimums in the Bankruptcy Code and Rules contemplate that proposed debtor actions must be implemented by either a contested matter or adversary proceeding and not be hidden in plan language.

[3] Under §1322(b)(2), courts are prohibited from modifying the rights of a mortgagee who holds a claim secured only by a security interest in real property that is the debtor's principal residence.

[4] *See* note 3.

[5] Because the Circuit Court relied upon the reasoning of Simmons v. Savell, 765 F.2d 547 (5th Cir. 1985), which was decided on §502(b) and not §1322(b)(2) grounds, it seems likely that the Bateman decision will be extended to other types of secured claims.

[6] While it is clear that §1322(b)(2) gives a mortgagee of a debtor's principal residence very favorable treatment in that a secured claim cannot be modified, the equally strong and legally correct argument is that a timely filed claim is deemed allowed if there is no objection. *See* 11 U.S.C. §502(a).

[7] The 11th Circuit reminds us that there is no basis to revoke a confirmation order, except upon a request made within 180 days of the order and only then if the order confirming the plan was procured by fraud. *See* 11 U.S.C. §1330(a).

[8] It could be argued that §506(a) concerning secured status requires an adversary proceeding under Rule 7001, but see Rule 3012 which provides for valuation by motion practice (after a hearing on notice), which suggests to the reader that valuation cannot be accomplished by a plan provision.

[9] It could be argued that attempts to discharge a co debtor by placing such a provision in the plan would be a nullity because it clearly conflicts with §524(e) and would violate the provisions of §1322(b)(10). There are of course other instances in which the same logic and arguments can be made. Still it often seems that courts are slaves to the proposition that the plan is the grail and its binding effect is res judicata irrespective of the potential absurdity for the proposition being urged.

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

Gregory P. Brown has become a shareholder with the law firm of **Hill, Ward and Henderson, P.A.** His practice concentrates in the areas of civil trial work, business bankruptcy and creditor's rights litigation.

Suzanne E. Gilbert has become a partner in the Orlando office of **Holland & Knight**. She practices in the areas of commercial litigation, bankruptcy and creditor's rights.

Paunece "Neecie" Hodgerson is Judge May's new law clerk. She is a Florida native, born and raised in Orlando, Florida. She graduated *Magna Cum Laude* from the University of South Florida with a B.A. in Psychology and a B.A. in Criminology. She graduated *Cum Laude* from Stetson University College of Law in December 2003. Neecie began clerking for Judge May in January 2004.

Timothy J. Sierra bought and renovated an old home in Hyde Park. His new office address is 118 S. Rome Avenue, Tampa, Florida 33606.

Fowler White Boggs Banker, P.A. attorney **Edward M. Waller, Jr**. was selected the Tobias Simon Pro Bono Service Award from Chief Justice Harry Lee Anstead. The award is Florida's highest public honor conferred by the Supreme Court on a private lawyer.

inconsistent with states retaining the power to make laws over that issue." *Id.*, citing *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193-94 (1819).

In making its decision, the Sixth Circuit turned to the Federalist Papers for guidance from the drafters of the Constitution. In particular, the court noted that *Federalist Paper No. 32* provided that a power to create uniform laws necessarily granted Congress the power to abrogate state lawmaking power in that area. *Id.* at 764, citing *The Federalist No. 32*, at 155 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001). In a sense, this requirement of uniformity was an express abrogation by the states of their own sovereign immunity because the states enacted the Constitution, and did so to allow for a workable bankruptcy system:

> [A]ny lesser grant would have defeated the grant's original purpose. The bankruptcy system before 1789 was marked by chaos. Because each state had different laws, the discharge of a Pennsylvanian's debts might have no effect on his debts in Maryland, and the interests of out-of-state creditors could be subordinated to in-state creditors. This system was not only ineffective, in that it did not allow debtors the fresh start that bankruptcy policies seek, but also ripe for manipulation, in that it would give the Pennsylvania creditor an incentive to assign his interest in the debtor's estate to someone in Maryland, making the debtor no better off after bankruptcy than before. However, the justification for the grant of exclusivity was not a mere desire to have *one* system, but a system that rose above individual states' interests.

Hood, 319 F.3d at 764. The Court also considered the effect of *The Federalist No. 81*, discussing state sovereignty, and found that Hamilton expressly referred to provisions in Federalist No. 32, indicating that state sovereignty is waived when the constitution provides the federal government with the authority to govern an area of law. *Id.* at 765-66; *see also Respondent's brief* at 10-11. "Thus," concluded the Court, "*The Federalist No. 81* and *No. 32* suggest that the states ceded their immunity by granting Congress the power to make uniform laws." *Id.* at 766.[10]

Though not extensively considered by the Sixth Circuit, the Respondent focused on bankruptcy as a proceeding "in rem" because it deals with the distribution of property of the bankruptcy estate. The Supreme Court has recognized that at least some "in rem" proceedings are not subject to state sovereign immunity. *Respondent's brief* at 38, *citing California v. Deep Sea Research, Inc.*, 523 U.S. 491 (1998), *cf. United States v. Nordic Village, Inc.*, 503 U.S. 30 (1992).[11] The Petitioner responded that the court has "in personam" jurisdiction because the judgment involves the payment of money. *Reply Brief of Petitioner*, *Tennessee Student Assistance Corp. v. Hood*, – U.S. – (2004) (No. 1606), at 8.

The opinion of the Sixth Circuit and the briefs filed provide a fascinating glimpse into the history of sovereign immunity. But there can be little doubt of the future significance of the decision to be made by the Supreme Court. While is it clear that Congress has the power to create uniform bankruptcy laws, that power is not necessarily inconsistent with state sovereignty. *Petitioner's reply brief* at 2. The problem presented before enactment of the Constitution was of differing bankruptcy laws in different states. That has been solved through the enactment of a uniform bankruptcy Code. *Id.* Even if the states are not forced to play in the bankruptcy game, the game can continue as to other creditors. *Id.* at 3. Even the potential problem of assigning claims to a state entity not generally subject to the bankruptcy scheme can be dealt with by declaring that a state-assignee's acceptance of the claim from a non-state serves as an express waiver of sovereign immunity. Yet, though precedent favors immunity, there are significant differences between the Indian Commerce Clause and the Bankruptcy Code, particularly in the significance given to uniformity by the framers of the Constitution. A finding of sovereign immunity might "enable the states and all of their entities to opt out of federal bankruptcy proceedings" and frustrate the fresh start of debtors. *Respondent's brief* at 4; *Amici Brief of Professors*. Fairness dictates that one creditor should not receive preferential treatments over other creditors, and practicality dictates that some state claims may significantly affect the bankruptcy's success. *Respondent's brief* at 22-25. It is this protection of the states through sovereign immunity and protection of the debtor's fresh start that the Court must balance.

(Footnotes)

[1]Assistant Professor of Law, Stetson University College of Law. Professor Radwan thanks her research assistant, Chad Friedman, for gathering research for this article.

[2]The importance of this case is demonstrated by the amicus briefs filed in the case. Included in the amicus briefs are two noteworthy briefs. Forty-eight states joined in TSAC's brief, as did the Council of State Governments. Brief of Respondent, *Tennessee Student Assistance Corp. v. Hood*, — U.S. — (2004) (No. 02-1606) at 1. Additionally, an amicus brief was filed by notable bankruptcy and constitutional law professors in support of Ms. Hood. Brief in Support of Respondent for Amici Curiae Professors Susan Block-Lieb, Erwin Chemerinsky, Margaret Howard, Kenneth N. Klee, Jonathan C. Lipson, Bruce A. Markell, Lawrence Ponoroff

(cont.on page 25)

and Elizabeth Warren, *Tennessee Student Assistance Corp. v. Hood*, — U.S. — (2004) (No. 02-1606) at 1. A total of ten amicus briefs were filed. <http://www.supremecourtus.gov/docket/02-1606.htm>.

[3]The debtor was obligated to bring an adversary proceeding to seek discharge of the student loan debt. *Hood*, 319 F.3d at 759 (citations omitted).

[4]Though the debtor owed the student loan debt to TSAC, she had originally taken out the loan from Sallie Mae, guaranteed by TSAC; the loan was assigned to TSAC after the debtor filed her bankruptcy petition. The debtor eventually argued that, because Sallie Mae had submitted a proof of claim, it had waived sovereign immunity and, because TSAC guaranteed the loan and Sallie Mae assigned the loan to TSAC, sovereign immunity was waived for TSAC as well. The courts agreed that Hood waived the argument by failing to timely raise it. *Hood*, 319 F.3d at 760. However, the argument was accepted by Judge Kennedy, concurring in the decision of the 6th Circuit. *Id.* at 768 (J. Kennedy, concurring).

[5]The Court of Appeals showed obvious disdain for the State's argument: "Having received the benefit of a special adversary proceeding that makes it more difficult for debtors to discharge their student loan debts, TSAC here seeks to exploit that benefit by asserting its sovereign immunity and preventing discharge altogether. In other words, TSAC asks if it can have its cake and eat it, too. We conclude that it cannot." *Hood*, 319 F.3d at 759.

[6]Specifically, Congress passed the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d), which allowed an Indian tribe to sue a state that failed to negotiate with the tribe as required by the Act. *Seminole Tribe*, 517 U.S. at 47.

[7]U.S. Const. art. I, § 8 cl. 3. Congress's power to create uniform bankruptcy laws is also found in article I of the Constitution. U.S. Const. art. I, §8 cl. 4.

[8]Chief Justice Rehnquist wrote the opinion for the majority, and was joined by Justices O'Connor, Scalia, Kennedy, and Thomas. *Seminole Tribe*, 517 U.S. at 46. Justice Stevens dissented individually, *Id.* at 76; Justice Souter dissented as well, joined by Justices Ginsburg and Breyer, *Id.* at 100. The composition of the Court today remains the same.

[9]*Hood* cites *Nelson v. LaCrosse County Dist. Attorney (In re Nelson)*, 301 F.3d 820, 832 (7th Cir. 2002); *Mitchell v. Franchise Tax Bd. (In re Mitchell)*, 209 F.3d 1111,1121 (9th Cir. 2000); *Sacred Heart Hosp. Of Norristown v. Pa (In re Sacred Heart Hosp. Of Norristown)*, 133 F.3d 237, 244 (3d Cir. 1998); *Fernandez v.PNL Asset Mgmt. Co. LLC (in re Fernandez)*, 123 F.3d 241, 246 (5th Cir. 1997); *Schollsberg v. Maryland (In re Creative Goldsmiths of Washington, D.C.)*, 119 F.3d 1140, 1145-47 (4th Cir. 1997).

[10]Other sections of *The Federalist Papers* also indicate concern by the framers of the Constitution regarding the debtor-creditor relationship. Respondent's brief at 8, citing The Federalist Nos. 6, 10, 21 (Alexander Hamilton) (J. Cooke ed. 1961).

[11]*See also Amici Brief of Professors*, citing *Hanover Bank v. Moyses*, 186 U.S. 181 (1902); *Bailey v. Baker Ice Mach. Co.*, 239 U.S. 268 (1915); *Garner v. New Jersey*, 329 U.S. 565 (1947); *Katchen v. Landy*, 382 U.S. 323 (1966); *California Deep Sea Research*, 523 U.S. 491 (1998); *New York v. Irving Trust Co.*, 288 U.S. 329 (1933).

LAPTOP COMPUTERS IN THE COURTROOM

The Bankruptcy Court of the Middle District of Florida announces the launching of a pilot program to allow certain trustees and attorneys to routinely transport laptop computers into our Tampa, Ft. Myers and Jacksonville Courthouses and allow their use during routine hearings and proceedings. Currently, there are no restrictions on the use of laptop computers in our Orlando courtrooms. Attorneys wishing to bring laptop computers into our Orlando courtrooms should consultthe Court's General Order 96-00003-ORL. This pilot program will run from January 1, 2004 until June 30, 2004.

At the conclusion of the pilot program, its effectiveness and utility will be reviewed and an assessment will be made as to the future of the program. The pilot program is open to those trustees and attorneys who are active users of the Court's Electronic Case Filing (ECF) system. An active user is defined as one who uses the ECF system to the maximum extent possible to file documents with the Clerk's Office.

This program is subject to the following restrictions:

1 - Only attorneys and court appointed trustees who have successfully completed the ECF training and have been assigned ECF passwords and who are actively using the system may participate.
2 - Those desiring to participate in this program must request and receive authorization in the form of a court order from the Presiding Judge. (See below procedures)
3 - Participating attorneys must present a Bar Identification Card which reflects their current Bar Identification Number to the security personnel as they enter the Courthouse. Trustees who are not attorneys must present their DOJ Credentials in lieu of Bar Identification Card. All must also have a photo ID as normally required.
4 - Computers will be subject to routine security screening as they are brought into the Courthouse.
5 - Computers may not contain audio or video recording devices and the speaker must be muted while the computer is in use in the Courtroom.
6 - Computers may not be connected to the Court's network.
7 - A Judge may suspend or terminate authorization to use laptop computers in his/her courtroom at any time.

Procedures for Court Ordered Authorization are available on the Middle District of Florida website.

U.S. TRUSTEE PROGRAM

Public Notice - Appointment
Of Chapter 13 Standing Trustees

The following United States Trustee Office(s) seek resumes from persons wishing to be considered for appointment as a standing trustee to administer cases filed under chapter 13 of the Bankruptcy Code. The appointment is for cases filed in the United States Bankruptcy Court for the district(s) listed below. Standing Trustees receive compensation and expenses pursuant to 28 U.S.C. § 586. Compensation depends on disbursements. Maximum compensation including benefits is now $154,457 annually. In addition, the trustee operation receives payments for certain necessary and actual expenses.

The minimum qualifications for appointment are set forth in Title 28 of the Code of Federal Regulations at Part 58 (28 C.F.R. Part 58). To be eligible for appointment, an applicant must possess strong administrative, financial and interpersonal skills. Experience and/or training in management is desirable. Fiduciary experience or familiarity with the bankruptcy area is not mandatory.

A successful applicant will be required to undergo an FBI background check, and must qualify to be bonded. Although standing trustees are not federal employees, appointments are made consistent with federal Equal Opportunity policies, which prohibit discrimination in employment.

Forward resumes to the applicable addresses listed below. All resumes should be received on or before the due date(s) indicated below.

Region 21 FLORIDA Due Date: April 30, 2004
Location: Middle District of Florida

Forward resumes to:

Office of the United States Trustee
Attn: Jackie Dale Mannheim
Reference: Chapter 13 Standing Trustee Appointment
75 Spring Street, S.W., Suite 362
Atlanta, GA 30303

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.

legal issues and procedures relating to bankruptcy practice, while at the same time obtaining necessary CLE credit. Regularly attending the Association's monthly CLE lunches and co-sponsored programs enables our members to obtain sufficient CLE credits without the need for expensive CLE programs sponsored by other bar associations or legal organizations. Further, the pricing of most of our CLE programs is structured in such a way so that the Association only "breaks even." As a result of properly managing funds that the Association has been able to accumulate over the years, this year the Association provided a significant subsidy to a CLE lunch in the Fall (the CM/ECF Program), and the Association will most likely subsidize another CLE lunch for the May program. These subsidized lunches are done in an effort to give back to our members, "some return on their investment."

The Association provides a social component for our members that promotes the quick and efficient administration of justice (as well as cost effective services to our clients). Where else can you attend a regularly scheduled consumer bankruptcy committee "after work" get-together and the first drink is paid for by the Association? The Association hosts an annual golf tournament, and the proceeds help subsidize or fund programs and activities conducted by the Association. In addition, the end of the year dinner is subsidized by the Association so that the event is affordable for all our members. These social functions make it possible for our members to interact with each other in an informal atmosphere that fosters a collegial working relationship, which in turn assists in the efficient resolution of disputes. I know from experience that the personal relationships and friendships I have developed from these social activities have helped resolve potential contentious litigation. I have been able to simply call opposing counsel (many of whom I have met at various Association-sponsored functions) to discuss issues and potential resolutions. By resolving these disputes quickly or at least narrowing disputed issues, I was able to minimize the cost and expense of legal services for my clients. A client who is happy with prompt service and the price of legal representation is a client who is more likely to return for additional legal services and refer future clients to you. Such "marketing" is invaluable.

The Association also provides a vehicle by which our members can serve our community. The Association sponsors intake night at Bay Area Legal Services. This year, the Association and Bay Area Legal Services developed a referral network. Less fortunate members of our community may be referred by Bay Area Legal Services to Association lawyers who have agreed to accept these bankruptcy cases at a reduced rate. These types of programs make a difference in our community.

The Association publishes the newsletter you are reading, *The Cramdown*, on a quarterly basis. *The Cramdown* prints articles relating to current bankruptcy issues. Almost every issue of *The Cramdown* contains an article written by one of the Tampa Bankruptcy Judges about a bankruptcy procedural or legal issue. The Association also publishes a directory with the contact information for court personnel, clerk personnel, panel trustees, and our members.

Finally, the Association is committed to fostering positive relationships with the judiciary, court personnel, and the bankruptcy attorneys of tomorrow. This year the Association hosted a lunch reception to thank the Bankruptcy Clerk's staff for the work they perform "behind the scenes." The Association also hosts a Christmas party and co-sponsors The View From The Bench seminar and reception where our members can meet the bankruptcy judges in a more informal setting. Over the years, the Association has contributed money to fund scholarships for law students at Stetson University. Such activities, I believe, help foster good will among our members, the Court, the Clerk's Office staff, and the community.

So, as you can see, you really do receive a good return on your $60.00 investment by being a member of the Association. The tangible benefits such as CLE luncheons, copies of *The Cramdown*, and a membership directory are extremely helpful. The intangible benefits such as friendships and better working relationships with fellow Association members are immeasurable.

New Dollar Amounts for Code Sections

By Catherine Peek McEwen

As mandated by the Bankruptcy Reform Act of 1994, every three years on April 1st the dollar amounts used in certain Code sections are adjusted. This year's April Fool's Day marks the beginning of a new three-year cycle and new dollar amounts. Here are some of the most oft-used Code sections where the dollar amount is an issue (cut this out and keep it with your Code):

-Section 109(e) eligibility for Chapter 13: $307,675 in unsecured debt and $922,975 in secured debt.

-Section 303(b) eligibility to be a petitioning creditor in an involuntary case: $12,300 unsecured.

-Section 507(a) priority claim limits: $4,925 for subsections (3), (4), and (5) and $2,225 for subsection (6).

-Section 523(a)(2)(C) dischargeability exceptions for luxury goods and services or cash advances: $1,225.

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