The Cramdown

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

Editor, Donald R. Kirk

PRESIDENT'S MESSAGE

THE YEAR IN REVIEW – "BOY DID IT GO BY FAST"

By John J. Lamoureux

As I prepare my final remarks for the Cramdown, I reflect upon the very busy year the Tampa Bay Bankruptcy Bar Association has enjoyed.

As you are all aware, the year began with the retirement of one of our longstanding Bankruptcy Judges, Honorable C. Timothy Corcoran. We witnessed the appointment of the Honorable K. Rodney May to the bench. Judge May joins the bench after a long and distinguished practice in Orlando.

The Bankruptcy Court for Middle District of Florida finally went online this past year with the much anticipated (and some would say much feared) CM/ECF program. The Middle District of Florida is quickly moving to mandatory electronic filing, and our Association is leading the way. In addition, our members have embraced the laptop pilot program which allows members who are certified CM/ECF program users to bring laptops into the courtroom.

No organization can be successful without the help of numerous individuals. I want to thank (in no particular order) the following individuals for their contribution this past year:

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CLERK'S CORNER

by Chuck Kilcoyne

Hello! At the outset let me extend my thanks to the Bar for allowing me space in this month's newsletter.

Our Court has now completed the transition to CM/ECF. It has been a long hard struggle but we have persevered and succeeded! Though we are still offering attorney training classes, the attendance and requests for scheduling are starting to wane. I expect that we will soon go to having only one or two classes a month here in Tampa or that we will schedule them only as needed. We have trained approximately 241 "students" here in Tampa but thus far we have only 86 registered users. As of May, about 25% of our entries are being made by ECF users which is somewhat short of what we should be having since we've been on the system for over a year. That said, the staff has been able to keep case files current and meet the demands of the remaining "over the counter" (OTC) filers - but that may not be the case in the future.

The Court and the entire Judiciary are facing an overwhelming budget crisis which will affect our staffing this year and most likely for the entire next year. As a result, we will not be able to meet all the demands placed on this Court by the

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PROFESSOR'S CORNER

Supreme Court favors Formula approach for determining Cramdown interest rate

Theresa J. Pulley Radwan[1]

On May 17, 2004, the United States Supreme Court, in a plurality decision, adopted the "Formula approach" for calculating interest to be paid to secured claimants when payment is delayed by a reorganization plan.[2] The issue arises whenever a secured creditor is (1) denied the ability to repossess its collateral as a result of the automatic stay and (2) forced to accept delayed payment under one of the Bankruptcy Code's "cramdown" provisions.[3] To the extent that the creditor's payment on the secured claim is delayed, the creditor is entitled to interest to compensate the creditor for the delay in payment.[4]

In 1999, the Debtors, Lee and Amy Till, filed for chapter 13 bankruptcy protection. As of the filing date, the Debtors owed SCS Credit Corporation almost $5,000. The debt to SCS was properly secured by the Debtors' truck, worth $4,000.[5] Under the Chapter 13 Plan proposed by the Debtors, SCS would be paid $4,000 on the secured claim over the three years of the plan, with interest at a rate of 9.5%. This proposed interest rate represented the prime rate of 8%, plus an additional 1.5% to account for the risk that the Debtors would not pay the $4,000. SCS objected to the plan, asking that a 21% interest rate be applied to the delayed payments. The 21% interest rate represented both the contracted-for interest rate between the Debtors and SCS, and the rate that SCS would charge to other borrowers.[6]

The Bankruptcy Court for the Southern District of Indiana agreed with the Debtors, holding the 9.5% rate of interest to be sufficient.[7] In so doing, the Bankruptcy Court adopted an approach commonly referred to as the "Formula approach" for calculating interest. This approach begins with the prime rate and, in some cases, adds additional interest to compensate for additional risk of nonpayment.[8] The formula approach had been adopted by the Second, Eighth, and Ninth Circuits.[9]

On appeal, the District Court for the Southern District of Indiana disagreed.[10] The District Court found that SCS was entitled to receive interest at the rate that it would have received had it been able to foreclose upon Debtors' truck, sell it, and lend the proceeds to another borrower. Since SCS routinely lends money at a 21% interest rate, that would be the appropriate rate to apply to the loan which, essentially, SCS was forced instead to give to the Debtors through the chapter 13 reorganization process.[11] This approach, commonly known as the "coerced loan approach" because the creditor is essentially forced to make a loan to the debtor, had been adopted by the majority of circuit courts.[12]

On appeal to the Seventh Circuit Court of Appeals, the Circuit Court applied yet another possible interpretation. While agreeing that SCS should be able to obtain a rate of interest that compensates for its inability to foreclose, sell, and lend the proceeds of sale, the Circuit Court adopted the 21% interest rate as merely a presumption. The bankruptcy court could then modify that interest rate as necessary to compensate for the actual risk of nonpayment.[13] Though adopted only by the Seventh Circuit, this "presumptive contract rate" approach combines elements of both the "coerced loan" and "formula" approaches. It begins with the "coerced loan" concept that the creditor would, but for the automatic stay, have been able to collect the secured portion of its debt and loan to a new borrower. But it borrows from the formula approach in that it allows for modification of the rate when necessary.

The Supreme Court considered four different ways to calculate interest on delayed payments under a reorganization plan–"the formula rate, the coerced loan rate, the presumptive contract rate, or the cost of funds rate".[14] The first three of these methods were utilized, respectively, by the Bankruptcy, District, and Circuit Courts. The "cost of funds" rate was not used by any of the lower courts in the *Till* case. Like the coerced-loan approach, this approach recognizes that the automatic stay prevents a creditor from repossessing and selling collateral, and loaning out the proceeds. However, the "cost of funds" approach anticipates that, to the extent that a creditor wants to loan money to a debtor, but does not actually have the cash to do so, the creditor has other means of obtaining the money to loan. The creditor does not actually lose the chance to make the loan, but instead pays more to make the loan because it must borrow money to lend to its own debtor and, of course, pay interest on that loan. Thus, the "cost of funds" approach makes a creditor whole by compensating that creditor for the interest that it must pay to obtain the money to loan to its own debtors.[15]

The Supreme Court, in a plurality decision,[16] adopted the Formula approach, while remanding to the bankruptcy court for a determination of the appropriate amount of interest to tack onto the prime rate to account for the risk that the Debtors would fail to pay the amounts dictated by the Plan. The Court considered the policy of the Bankruptcy Code — to ensure that creditors receive a *fair* distribution, rather than a *complete* distribution. Secured creditors should neither be punished by the inability to foreclose nor rewarded as a result of the bankruptcy filing.[17] Ultimately, the court relied on the simplicity of the Formula approach, finding that the other options are "complicated" and "impose significant evidentiary costs, and aim to make each individual creditor whole rather than to ensure the debtor's payments have the required present value."[18] The Court expressed significant concern that the other approaches allow different creditors to obtain different interest rates, even though they all deal with the same debtor and the same risk of nonpayment.[19] Thus, ultimately, the Court viewed the interest provisions as a means of compensating the debtor for the time-value of money, not as a means to ensure that the creditor receives exactly what would have been received outside of bankruptcy.

(cont. on pg. 4)

Justice Thomas, concurring, agreed with the plurality's determination of the purpose of providing interest.[20] But Justice Thomas took that policy one step further, finding that, because the sole purpose of the interest is to compensate for the time-delay in payment, the debtor's credit-worthiness and ability to pay under the plan become irrelevant.[21] As a result, Justice Thomas felt that no adjustment above prime rate would be necessary.[22]

Justice Scalia, in a dissent joined by Chief Justice Rehnquist and Justices O'Connor and Kennedy, supported the Seventh Circuit's presumptive contract approach. The dissent focused on the significant failure and conversion rates of chapter 13 bankruptcy proceedings.[23]

The decision of which rate to use is necessarily tied to the purpose for giving creditors interest. Is it merely to compensate for the time-delay in payment, or does it somehow make the creditor "whole" by giving the creditor what it would have received but-for the bankruptcy filing? The difference is critical. In the former, the creditor will be paid only a set interest rate to make up for the fact that money paid a few years from today will not be worth the same as money paid today.[24] But in the latter situation, the creditor receives not only the value of the money today, but also the value of the profit that the creditor would have received on that money had it been paid earlier.[25]

Each of the alternatives for determining interest has problems. No method can provide equality among all of the secured creditors and still compensate each for what is truly lost. The Supreme Court's conclusion does treat all secured creditors equally because they all receive the same interest rate on delayed payments. But it fails to protect creditors who could have loaned at a higher interest rate to another debtor outside of the bankruptcy. Of course, those high interest rates outside of bankruptcy also come with the high risk of nonpayment. That, of course, begs the question of the risk of nonpayment in a bankruptcy proceeding. In theory, a confirmed reorganization plan is "feasible" and, thus, likely to be repaid.[26] This highlights one of the critical problems in this decision. Though the plurality favored the formula approach for its "straightforward, familiar, and objective inquiry [that] minimizes the need for potentially costly additional evidentiary proceedings,"[27] it will be subject to litigation, just like the other approaches. The Court suggested that the prime rate should be supplemented based on "the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan."[28] Now, instead of arguing about what rate of interest the creditor would charge to a different debtor had it been able to foreclose, sell, and lend to a debtor of its own choosing, as under the coerced loan and presumptive contract approaches, or what rate of interest the creditor would be charged if it chose to borrow the money to lend to its debtor, as under the cost of funds approach, the parties will debate what rate of interest a typical creditor would charge to a debtor similarly situated to this debtor in the bankruptcy proceeding.

[1] Assistant Professor, Stetson University College of Law. Thank you to my research assistant, Chad Friedman, for his assistance with the research for this article.

[2] The Supreme Court's decision may be found at http://a257.g.akamaitech.net/7/257/2422/17may20041215/www.supremecourtus.gov/opinions/03pdf/02-1016.pdf. All references to the *Slip opinion* herein are to that decision.

[3] 11 U.S.C. § 1129(b)(2)(A); § 1225(a)(5)(B); §1325(a)(5)(B).

[4] Brief for the Respondent at 13, *Till v. SCS Credit Corp. (In re Till)*, 2002 U.S. Briefs 1016 (Aug. 28, 2003).

[5] *Slip opinion* at 3.

[6] *Slip opinion* at 4.

[7] *Slip opinion* at 5.

[8] *Slip opinion* at 12.

[9] Petitioners' Brief on the Merits, *Till v. SCS Credit Corp. (In re Till)*, 2002 U.S. Briefs 1016 (Aug. 28, 2003) at 10, citing In re Valenti, 105 F.3d 55 (2nd Cir. 1997); United States v. Doud, 869 F.2d 1144 (8th Cir. 1989); In re Fowler, 903 F.2d 694 (9th Cir. 1990). *See also Slip opinion* at 16-17 (J. Scalia, dissenting) (citing In re Fisher, 930 F.2d 1361 (8th Cir. 1991).

[10] *Slip opinion* at 5.

[11] *Slip opinion* at 5; Petitioners' Brief at 4-5. The Debtors highlighted one concern with the coerced loan approach. The Bankruptcy Code only permits a secured creditor to claim post-petition interest to the extent that the creditor is oversecured. 11 U.S.C. §506(b). In the *Till* case, because SCS was actually undersecured, it could not claim any postpetition interest on its claim. Under the coerced loan approach, however, SCS would have received 21% interest, just as contracted for, on its claim postpetition, essentially providing SCS what the Code does not allow. Petitioner's Brief at 20-21. There are some differences. First, SCS would only receive 21% interest on the $4,000 secured portion of its claim. Second, SCS would receive 21% not because it contracted for that rate with the Tills, but because it contracted for that rate with all of its other debtors.

[12] Petitioners' Brief at 10, citing In re Smithwick, 121 F.3d 211 (5th Cir. 1997), cert. denied, 523 U.S. 1074 (1998); GMAC v. Jones, 999 F.2d 63 (3d Cir. 1993); United Carolina Bank v. Hall, 993 F.2d 1126 (4th Cir. 1993); In re Hardzog, 901 F.2d 858 (10th Cir. 1990); United States v. Arnold, 878 F.2d 925 (6th Cir. 1989); Matter of Southern States Motor Inns, Inc., 709 F.2d 647 (11th Cir. 1983), cert. denied, 465 U.S. 1022 (1984). *Cf.* In re Kidd, 315 F.3d 671 (6th Cir. 1997).

[13] *Slip opinion* at 6; Petitioners' Brief at 4-5.

[14] *Slip opinion* at 7.

[15] *Slip opinion* at 6-7; *In re Till*, 301 F.3d 583, 594 (7th Cir. 2002) (J. Rovner, dissenting). *See also* Monica Hartman, Student Author, *Selecting the Correct Cramdown Interest Rate in Chapter 11 and Chapter 13 Bankruptcies*, 47 U.C.L.A. L. Rev. 521 (Dec. 1999).

[16] The opinion was authored by Justice Stevens was joined by

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President's Message *(cont. from page 1)*

Outgoing Chairperson Catherine McEwen, and incoming President Ed Rice have been extremely helpful with their guidance and counsel this past year, and they have assisted the Association on a variety of projects. Their insight has been invaluable.

Herb Donica has done a fantastic job as Treasurer. He helped move the Association into the twenty-first century by actually computerizing the Association's finances and helping the Association better manage the money entrusted to it by its members.

Secretary David Tong took on the thankless task of updating, amending and restating the Association's Bylaws. David searched through over ten years of Association board meeting minutes and notes to amend and restate the Bylaws. We now have one document to which Association members can go to for guidance on how our Association is governed.

Caryl Delano and Scott Stichter did an excellent job as Co-Chairs of the CLE Committee. The CLE Committee is the backbone of our Association, and I thank them (and their committee of volunteers) for preparing and organizing interesting monthly CLE programs and taking on all other special projects that arose this past year.

Kelley Petry, Chair of our Community Service Committee, in conjunction with Bay Area Legal Services ("BALS"), helped organize a lawyer referral program that facilitates our members volunteering to take bankruptcy cases referred by BALS at discounted rates. Through Kelley's efforts, our Association helps serve those less fortunate members of our community. Any Association member interested in taking a referral of a bankruptcy case from BALS, on a pro bono or discounted rate, please contact Kelly.

Lorraine Jahn and Pat Tinker Co-Chaired the Judicial Liaison Committee. They helped identify issues and concerns to our members, the Judiciary and the Clerk's Office, and presented these issues to the Judiciary in a constructive manner.

Shirley Arcuri did a wonderful job as Chair of the Membership Committee. Under her guidance, membership increased over the last year. Shirley also updated our membership records and distributed the Association directories in a timely manner.

Donald Kirk, Chair of the Publication and Newsletter Committee, did an outstanding job with the Cramdown. This year the Cramdown became far more professional looking, and the content of useful articles and information increased. In addition, Donald showed tremendous patience dealing with me as I was consistently late with my articles and missed every deadline given to me.

As Chair of our Technology Committee, Luis Martinez-Monfort was instrumental in working with the Clerk's Office in obtaining and disseminating information to our members regarding the CM/ECF Program and getting new equipment for the Attorney Resource Room.

David Hicks and Randy Heipe co-chaired our Ad Hoc Consumer Lawyers Committee. Through their efforts, the Association became more aware of consumer lawyer issues and expanded the role of consumer lawyers in the Association. Due to their efforts, the Association's Bylaws were amended to make the Consumer Lawyers Committee a permanent standing committee.

All of the Bankruptcy Judges have been helpful and supportive of our Association this past year. In particular, I would like to thank Judge Michael Williamson and Judge Paul Glenn for their cooperation, assistance and guidance this past year, as well as their continued participation in our CLE programs and social events during the year.

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Professor's Corner *(cont. from page 4)*

Justices Souter, Ginsburg, and Breyer.

[17] *Slip opinion* at 9-10.

[18] *Slip opinion* at 10-11.

[19] *Slip opinion* at 11-12.

[20] *Slip opinion* at 3 (J. Thomas, concurring).

[21] As noted in the Petitioners' Brief, even the prime rate includes some risk calculation. Petitioners' Brief at 4 (discussing testimony that prime rate incorporates "inflation rate", the "time-value of money" and "risk and transaction costs").

[22] *Slip opinion* at 7 (J. Thomas, concurring). Judge Thomas would not have remanded because, under his analysis, the 9.5% would necessarily be sufficient.

[23] *Slip opinion* at 4-5 (J. Scalia, dissenting).

[24] Petitioners' Brief at 11-12.

[25] *Slip opinion* at 5.

[26] *See* Petitioners' Brief at 4-5 (arguing that because the plan has been determined to be feasible, there is little risk of nonpayment); *Slip opinion* at 4-5 (J. Scalia, dissenting) (arguing that the failure rate of chapter 13 bankruptcies undermines this argument). Of course, while there is an argument that feasibility should determine the interest rate, in reality, it may be the interest rate determining the feasibility of the plan. *In re Till*, 301 F.3d at 593 (J. Rovner, dissenting)

[27] *Slip opinion* at 13.

[28] *Slip opinion* at 13.

Update on Recent Supreme Court Cases on Bankruptcy Issues

By: Shuman Sohrn and Jin Liu

Introduction

The Supreme Court recently decided four more cases dealing with bankruptcy issues. The following summarizes those four cases.

U.S. v. Galletti, 124 S. Ct. 1548 (2004).

The Supreme Court granted cert in this Ninth Circuit case (298 F.3d 1107 (9th Cir. 2002)) to determine whether the United States can collect a partnership's unpaid employment taxes from the partners in a judicial proceeding occurring more than three years after the tax return was filed, but within the ten-year extension to the three-year limitations period that attached when the tax was timely assessed against the partnership. The Ninth Circuit held that: (1) the failure of the Internal Revenue Service ("IRS") to assess tax deficiencies against individual partner debtors barred it from collecting the unpaid debts of the partnership directly from them, and (2) debtors who were general partners in the partnership were not obligated to pay tax assessments of the partnership. In a unanimous decision, the Supreme Court reversed the Ninth Circuit's opinion and held that a proper tax assessment against the partnership extended the statute of limitations to collect taxes from general partners who were liable for payment of partnership's debts.

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 and Ninth Circuit affirmed.

In reversing the Ninth Circuit, the Supreme Court first rejected the partners' argument that a valid assessment triggering the ten-year increase in the limitations period must name them individually. The Court held that the partners were not primarily liable for the tax debt because the relevant "taxpayer" was the partnership rather than the individual partners, and the partners' joint and several liability under California law does not mean that the partners are primarily liable. Therefore, the individual partners were not required to be named. Second, the Court found that the Internal Revenue Code ("IRC") does not require the Government to make separate assessments of a single tax debt against persons or entities that are secondarily liable for that debt. Consequently, the extended limitations period applies to judicial collection actions against those persons or entities that are secondarily liable for the partnerships' debts. It is the tax that is assessed, not the taxpayer, and therefore, the statute of limitations attaches to the debt as a whole. Once a tax has been properly assessed, the IRC does not require the IRS to duplicate its efforts by separately assessing the same tax against individuals or entities that are liable for payment of the taxpayer's debt, but are not the actual named taxpayer.

Yates v. Hendon, 124 S. Ct. 1330 (2004).

The Supreme Court granted cert in this Sixth Circuit case (287 F.3d 521 (6th Cir. 2002)) to determine whether the working owner of a business qualifies as a "participant" in a pension plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. The Sixth Circuit held that a sole proprietor or sole shareholder of a business must be considered an employer, and not an employee, for purposes of ERISA. In reversing the Sixth Circuit, the Supreme Court held that if the pension plan covered one or more employees other than the business owner and his or her spouse, the working

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owner may participate on equal terms with other plan participants. Therefore, such a working owner qualifies for the protections ERISA affords plan participants.

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 the plan's trustee. The U.S. Trustee sought to recover, as a voidable preference, a loan repayment made by the debtor to the pension plan three weeks before 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.

In reversing the Sixth Circuit, the Supreme Court held that a working owner may qualify as a "participant" in a pension plan covered by ERISA. The Court found that ERISA's text is adequately informative and there is no cause to resort to common law. The Court noted the legislative history of ERISA and highlighted the fact that by 1962, working owners could contribute to tax-qualified retirement plans. Therefore, Congress' objective in enacting ERISA was to harmonize the Act with longstanding tax provisions. Moreover, ERISA and related IRC provisions contemplate the participation of working owners in covered benefit plans, and under ERISA, a working owner may be both an employee and an employer. In light of the legislative intent, the Court found that the working employer's opportunity to personally participate in and gain ERISA coverage, serves as an incentive for the very creation of such plans that benefit employers and employees alike. Not only does this further ERISA's purpose to promote and facilitate employee benefit plans, but it also avoids the anomaly that the same plan will be controlled by discrete regimes: federal-law governance for the employees and state-law governance for the working owner.

Further, the Court found that its interpretation of "participant" is echoed by a Department of Labor advisory opinion which found that a self-employed individual qualified for plan participation. Moreover, the Department of Labor regulation that states that an individual and his or her spouse are not deemed to be employees, applies only to the section defining "employee benefit plans." Although ERISA's anti-inurement provision prohibits plan assets from inuring to the benefit of employers, it does not address whether working owners may be participants in ERISA-sheltered plans. Therefore, the Court held that a working owner may qualify as a "participant" in a pension plan covered by ERISA.

Tennessee Student Assistance Corp. v. Hood, 124 S. Ct. 1905 (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 a 7-2 decision, the Supreme Court held that a Bankruptcy Court's discharge of a student loan debt does not implicate a state's Eleventh Amendment immunity. Consequently, the Court did not find it necessary to answer the certified question for review.

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 the complaint for lack of jurisdiction, holding that § 106(a)'s abrogation of state immunity was a valid exercise of Congress' power under the Bankruptcy Clause. The Bankruptcy Appellate Panel for the Sixth Circuit affirmed the bankruptcy court's decision, as did the Sixth Circuit, which held that the Bankruptcy Clause granted Congress the authority to abrogate state sovereign immunity in § 106(a).

In affirming the Sixth Circuit's judgment and remanding the case to the bankruptcy court to determine the issue of undue hardship, the Supreme Court held that because the current case did not implicate *in personam* jurisdiction, the Court need not decide the issue certified for review. Instead, the Court stated that states may be bound by some judicial actions without their consent, like *in rem* admiralty actions. The Court held that a debt's discharge by a bankruptcy court is similar to such an *in rem* proceeding because a nonparticipating creditor cannot be personally liable even if the Court grants a fresh start for the Debtor. As a result, the bankruptcy court's exercise of its *in rem* jurisdiction to discharge a debt does not infringe on a state's sovereignty even if the debtor is granted a discharge. The individualized process by which student loan debts are discharged does not alter the fact that the court's jurisdiction is premised on the *res*, not the *persona*. The Court noted that it had previously endorsed individual determinations of a state's interests within the federal courts' *in rem* jurisdiction in admiralty cases, and there was no reason to distinguish bankruptcy law from admiralty law in this regard. The Court further held that although the issuance of process would normally be an indignity to a State's sovereignty because its purpose is to establish personal jurisdiction, the court's *in rem* jurisdiction would allow it to adjudicate the debtors' discharge claim without *in personam* jurisdiction over the State. Therefore the service of a summons to a state should not be given dispositive weight in this analysis.

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<u>Till v. SCS Credit Corp.</u>, 124 S. Ct. 1951 (2004).

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 the appropriate approach to take in determining the rate on interest was the "presumptive rate" (the original contract rate serves as a presumptive cramdown rate, which the creditor or the debtor can challenge with evidence that a higher or lower rate should apply). In doing so, the Seventh Circuit rejected the "coerced loan" approach (the cramdown interest rate is set at the level the creditor could have obtained if it had foreclosed on the loan, sold the collateral, and reinvested the proceeds in loans of equivalent duration and risk), the "cost of funds" approach (which simply asks what it would cost the creditor to obtain the cash equivalent of the collateral from an alternative source), and the "formula" approach. The Supreme Court held that the proper approach is the "formula" approach, which uses a risk-free number like the Treasury or prime rate and then adjusts that number upwards to reflect the increased risk for the particular borrower under current market conditions.

In <u>Till</u>, 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 and adopted the "formula rate." The district court reversed and upheld the "coerced loan rate." The Seventh Circuit vacated the district court's decision and remanded, holding that the "presumptive rate" should be the appropriate approach.

In reversing the Seventh Circuit, the Supreme Court held that the "formula rate" would best meet the purposes of the Bankruptcy Code. The Court found that three important considerations govern the choice of an interest rate sufficient to compensate the creditor. First, Congress intended bankruptcy judges and trustees to discount a stream of deferred payments back to their present dollar value to ensure that a creditor would receive at least the value of its claim. Therefore, Congress would favor an approach that is familiar to the financial community so as to minimize the need for evidentiary proceedings. Second, bankruptcy courts are expressly authorized by Chapter 13 to modify the rights of a creditor whose claim is secured by an interest in anything other than the debtor's principal residence. Third, the cramdown provision entitles the creditor to property whose present value *objectively* equals or exceeds the value of the collateral, but does not require that the cramdown terms match the prebankruptcy agreement or that the creditor *subjectively* feel indifferent between present foreclosure and future payment. These considerations lead to the conclusion that the "coerced loan," "presumptive rate" and "cost of funds" approaches should be rejected because they are complicated, impose significant evidentiary costs and aim to make each individual creditor whole rather than to ensure that a debtor's payments have the required present value. The Court found that the "formula" approach has none of these defects because it entails a straightforward, familiar and objective inquiry, while minimizing the need for potentially costly evidentiary hearings.

TBBBA TECHNOLOGY REPORT
CM/ECF IS COMING: YOUR COLLEAGUES' VIEW OF THE "PAPERLESS" ERA

By: Elena Paras Ketchum, Stichter, Riedel, Blain & Prosser, P.A.
Luis Martinez-Monfort, Mills Paskert Divers P.A.

What do you get when you cross a group of bankruptcy practitioners with the CM/ECF (Case Management/Electronic Case Filing) system? CM/ECF enthusiasts or miserable attorneys? This was the question posed at the last "Cramdown" committee meeting. It is a particularly timely question since the various districts throughout Florida will be going (or have already gone) "paperless":

Middle District – Tampa Div. – end of 2004 or first of 2005
Middle District – Orlando Div. – September 1, 2004
Middle District – Jacksonville Div. – October 1, 2004
Southern District – January 2005
Northern District – Already Paperless

So, we decided to explore this question by taking a survey of various firms throughout the TBBBA about their experience with CM/ECF. We solicited responses from both large and small firms, debtor firms and creditor firms. Although we were surprised at the number of attorneys who have not converted to electronic filing, the overall consensus on CM/ECF is that users are CM/ECF enthusiasts. Some of the responses received were "It's a great system" and "This is a terrific enhancement to the practice." But to give you the full flavor of how firms throughout our bar have successfully transitioned to CM/ECF, it is important to know: (1) what software and hardware is being utilized; and (2) what procedures have been implemented internally.

Surprisingly, in connection with the first, there are relatively few items which firms have had to acquire to make the transition. Almost all firms had to acquire a scanner. One colleague suggests buying a high speed scanner in particular since scanners may vary in how quickly they perform. In addition, the following software packages are being used: Adobe Acrobat, Best Case, EZ Filing, Amicus Attorney and WORLDOX. As one colleague points out, "Importantly, all of this stuff [the hardware and software] is CHEAP! If lawyers haven't already upgraded their technology, CM/ECF presents the perfect opportunity to do so." One word about Adobe Acrobat, the Middle District's website points out that attorneys using version 5.0 of Adobe are having difficulty viewing documents being submitted by those attorneys saving them in version 6.0. The website provides a link on saving version 6.0 documents to viewable version 4.0 and 5.0 documents.

Perhaps the most daunting task associated with the conversion to the new "paperless" era is formulating internal procedures for managing electronically filed documents and incoming CM/ECF emails. Below are some of the ways in which fellow colleagues are dealing with this issue.

"Each attorney still receives filings on own case and 1 attorney on each case is designated to filter all filings and make sure they are sent to appropriate docketing person. Passwords are kept private and no secretary is allowed to file a document with[out] the attorney signing off on the final draft. Incoming filings are sent to mail room to be printed for paper files."

"I save [the documents] in WORLDOX as PDF documents. Each case has a separate folder, and I put them in a subfolder I call Pleadings. I name the document by who filed it and its name as it appears on the docket. I also include the date it was filed and its Docket number. I handle orders and other documents generated or entered by the court in the same way. Daily reports received from CM/ECF are saved [in the same manner]."

(cont. on pg. 10)

TECHNOLOGY REPORT *(cont. from page 9)*

"Finished pleadings ready for filing are accumulated in a new subdirectory, converted to *.pdf and then filed; *.pdf files are then transferred to matter subdirectories. Email notifications are received by one assistant and one paralegal."

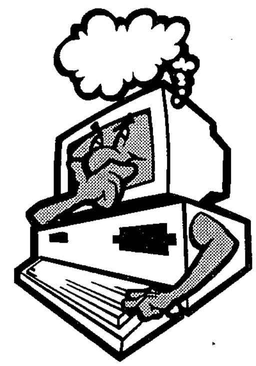
"Set up a separate email address to be checked daily, the email notices and PDF documents are saved in client related folders in our system, and labeled by docket number so they may be referenced later, print out documents for attorney review."

"A separate email address is set up for each attorney to receive the CM/ECF notifications. Secretaries review the daily activity summary emails and print out the documents for attorney review and for calendaring purposes. Only the attorneys can delete the notifications from their CM/ECF email inbox. For filing of documents, the attorney reviews the document indicating it may be filed by either full signature or "/s/". Only then, will the secretary insert the typed signature, convert the document to PDF and file. The file name for the PDF document is changed to include "FILED" at the end of the file name. Then the PDF document is saved in the client directory."

Overall, those who have gone "live" are happy with the results. The benefits noted include: instantaneous filing of documents, immediate notification of documents filed in a case, retrieval of filed documents from PACER and being able to pass these along to the client, not being tied to courthouse runs, immediate assignment of case numbers, fewer copies, lower mailing and copy costs. Some of the negative points noted include: readjustment of in-house procedures, paying with a credit card, need for more space on computer system, fee for viewing and retrieving documents from PACER, duplication of documents by receiving them electronically, by mail and from Bankruptcy Noticing Center, and concern of not receiving all documents being filed electronically. Others noted that they have experienced technological problems with the system, but noted the staff at the court was extremely helpful.

We hope that this article provides insight into how others within our legal community have dealt with the transition to going "paperless" and provides a spring board for those who are just getting started on the system. "Paperless" is the wave of the future and we fully expect that it will lead to us all being CM/ECF enthusiasts.

The Cramdown would like to express its sincere thanks for all who responded to the survey, particularly the following firms: Fowler White *et al.*, P.A., Shirley C. Arcuri, P.A., Law Offices of Timothy J. Sierra, C. Timothy Corcoran, III, P.A., Foley & Lardner, P.A., Berman & Norton Breman, P.A., Hill Ward & Henderson, P.A., Herbert R. Donica, P.A., and Stichter, Riedel, Blain & Prosser, P.A.



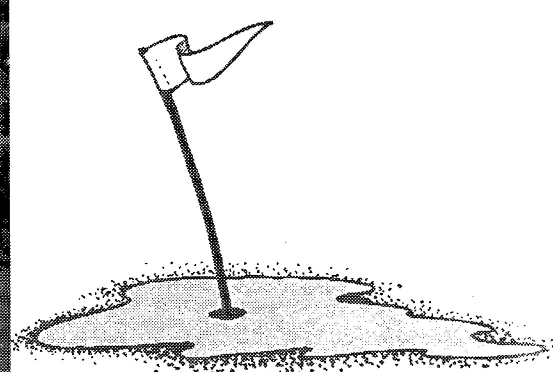
HIGHLIGHTS FROM TBBBA GOLF TOURNAMENT

First Place - Campbell, Crist, Hoffman & Markham
Second Place - Muldrow, Ries, Samarkos & Wikle
Third Place - Judge Glenn, Glenn, Judge Moody & Judge Whittemore

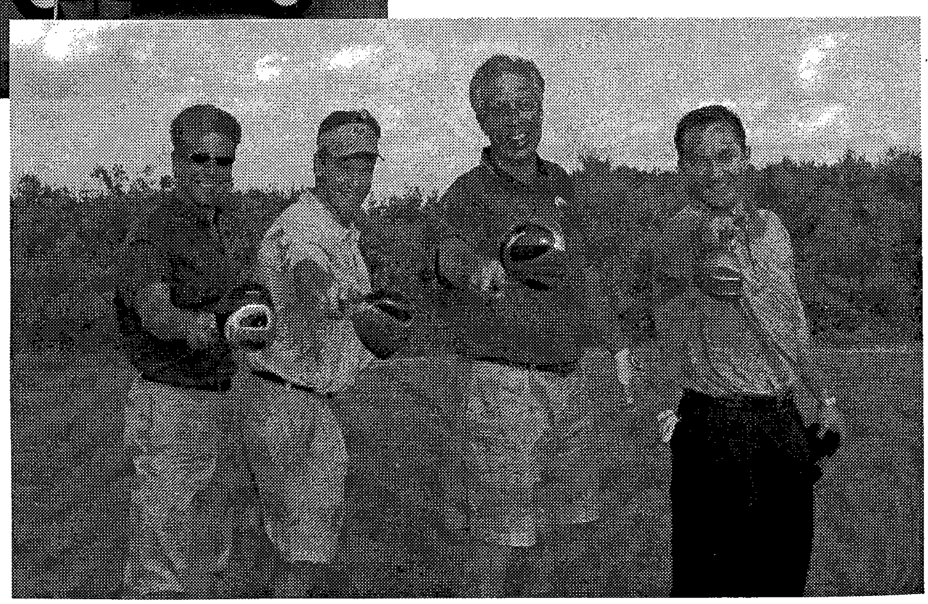
Closest to the pin (Women) - Carol Porter
Closest to the pin (Men) - Jim Sosnowski

Longest drive (Women) - Catherine Glenn
Longest drive (Men) - Scott Rohleder

Judge's Division Winner - Judge Whittemore



FORE!



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	(813) 223-2000	(813) 228-6000
	Donald R. Kirk	(813) 228-7411	(813) 229-8313
Community Service	Kelley Petry	(813) 229-2221	(813) 225-1315
Court, U.S. Trustee, and Clerk Liaison Committee	Alberto Gomez	(813) 301-1000	(813) 301-1001
	Patrick Tinker	(813) 228-2000	(813) 228-2303
Membership and Elections	Carrie Beth Barris	(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

WELCOME NEW MEMBERS TO THE TBBBA!

Kathryn Bergeron

Louis Brunoforte

Gary Butler

Sherry Ellis

Larry Heinkel

Sue-Helen Motley

Bay Area Legal Services reports that the following members have participated in the pro bono intake sessions coordinated with our association since October, 2003 (through May 7, 2004):

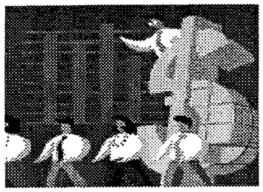
Carol Lawson
Harvey Paul Muslin (RIP)
A.J. "Stan" Musial
Amy Denton Harris
Barbara Rodriguez
Timothy Sierra
Kelley Petry
Barbara Hart
Cathy McEwen
Luis Martinez-Monfort
Scott Stichter
Walter Sanders
John Lamoureux
Kathy McLeroy

The association salutes these members for serving others in need!

CALENDAR OF EVENTS

EVENT	DATE	LOCATION
ABI Southeast Bankruptcy Workshop	July 28-31, 2004	Greensboro, Georgia
9th Annual Business Law Section Retreat	August 19-22, 2004	Manalapan, Florida
TBBBA Lunch Program	September 21, 2004	Downtown Hyatt
View From the Bench	November 4, 2004	Tampa

CREDITOR'S CORNER



By Catherine Peek McEwen

Erase the phrase "lift stay" from your vocabulary and save your client money?

Why pay a filing fee to seek stay relief when you know all you want or are going to get for your secured creditor client at the outset is an adequate protection order? As one of our former chief judges is fond of observing, "your client doesn't want its collateral back; your client just wants to get paid!" There is no filing fee for seeking an adequate protection order, and usually that's all it takes to get a debtor back on track making periodic payments.

You can avoid the filing fee – now $150 — for a motion for relief from the automatic stay if you cleanse your current form for seeking such relief by removing all references to section 362 of the Bankruptcy Code and the words "stay" and "lift" or "modify" or "annul" (and don't forget rule 4001, Federal Rules of Bankruptcy Procedure). Instead, substitute sections 361 and 363(e) as the bases for the relief you seek, and speak in terms of "adequate protection."

Motions for adequate protection may be made pursuant to section 363(e) when the trustee or debtor in possession "uses" a secured creditor's collateral. In that event, the court "shall prohibit or condition such use ... as is necessary to provide adequate protection of [the creditor's] interest." Such a motion is a natural for a chapter 11 case. In a chapter 13 case, pursuant to section 1303, a secured creditor may seek adequate protection if the *debtor* uses the collateral. A motion for adequate protection thus seems very well suited for secured creditors of chapter 13 debtors. The utility of a motion for adequate protection in a chapter 7 case is probably limited to the rare occasions when a chapter 7 trustee wants to sell or use a creditor's collateral — and fails to provide adequate protection for that privilege.

A motion for adequate protection should include a request that any order granting adequate protection incorporate an appropriate enforcement mechanism to maximize the prospect of the debtor's compliance with the order. A mechanism that one could suggest at the hearing on the motion is one that provides a path to relief from the automatic stay, similar to the current "drop dead" procedure employed in most of our Court's stay relief orders. For example, the adequate protection order could permit the entry of an *ex parte* order providing relief from the stay upon the filing of an uncontroverted affidavit demonstrating the debtor's noncompliance with the adequate protection order. Whether the clerk will require payment of the $150 filing fee at that time might depend on the wording of the legislation authorizing the court to exact fees and how artfully the order is drawn.

Seeking adequate protection will not serve the client's purpose in the situation of a no-asset chapter 7 case where the client really does want its collateral back. In that event, stay relief is what the client wants, but even that can come for free (including attorneys fees) if the creditor is willing to wait the relatively short time it usually takes for all applicable stays to terminate by operation of law under section 362(c), rather than pay to obtain an order that usually takes effect not much earlier.

Critical vendors: the issue is reviewed critically

In *In the Matter of Kmart Corporation*, 359 F.3d 866 (7th Cir. 2004), the Seventh Circuit Court of Appeals recently cast doubt on the viability of the "doctrine of necessity" that has been used to obtain court approval for a chapter 11 debtor's payment of pre-petition debts to "critical" vendors. In affirming the district court's reversal of a bankruptcy court ruling that gave Kmart great discretion to pay critical vendors, the Court described the doctrine as being "just a fancy name for a power to depart from the Code," and criticized both the doctrine as well as use of section 105 to justify an override of the Code's priority and distribution scheme.

Nonetheless, *in dicta*, the Court appeared poised to agree, without deciding, that section 363(b)(1) of the Code might support court approval of non-ordinary course use of property of the estate "to keep 'critical' supplies flowing," provided that certain showings are made. The Court indicated that a critical-vendor order cannot pass appellate scrutiny absent a record showing that (i) "the disfavored creditors were at least as well off as they would have been" without the critical-vendor order; (ii) "the critical vendors would have ceased deliveries if old debts were left unpaid while the litigation continued," and (iii) "discrimination among creditors was the only way to facilitate reorganization." The Court further indicated that if critical vendors would continue post-petition delivery on a COD basis, the provision of a letter of credit, or promise of current payment, then preferring them over other unsecured creditors by paying the critical vendors' pre-petition claims should not be authorized.

To suggest topics for future Creditor's Corner columns, or to volunteer to write a column, please contact Luis Martinez-Montfort at lmmonfort@mpdlegal.com

Clerk's Corner *(Cont. from page 1)*

ever-increasing case load. As we reduce our staffing, we will likely be forced to reduce the services we provide to you and the rest of the citizens of the Middle District of Florida. For those of you still filing OTC, expect delays at the intake counter and expect that we may have to resort to shorter operating hours by the end of the fiscal year. While we are doing our best to maintain the staffing of the intake sections, the reality of the situation is that, with the implementation of CM/ECF, this is one area where a reduction in staffing should be possible.

On the more positive side, we are looking for ways to improve the use of CM/ECF and to give attorneys a greater degree of access while in the Courthouse. We recently placed a computer in one of the small conference rooms outside Judge Williamson's Courtroom which will allow attorneys to access CM/ECF and access a program we call Q-docs. Q-docs is a program which operates outside CM/ECF but, using the Judge's Court calendar for the day, pulls all the necessary dockets and documents from CM/ECF and places them in a single file. Originally designed for use by the Judges on the bench, we believe the attorneys will also find having access to it to be very useful. We will monitor the use of the computer and the amount of access to the files to determine if we should expand this program to all the courtrooms. Thus far, we have been hesitant to put computers at the counsel tables in the courtroom as we believe they will likely be more of a distraction than an aid but we continue to look at that idea. In order to help us consider and explore these and other ideas about using the system, Judge Williamson will soon be chairing a Attorney Advisory Committee which will be composed of members of my staff as well as attorneys from the Bar associations with whom we work. We look forward to the ideas and suggestions that will come from this group.

Finally, I continue to be very grateful for the great relationship that this Court and in particular my office shares with the Tampa Bay Bankruptcy Bar Association. Together we have accomplished a great deal in the last year and I hope you share the pride I routinely feel in not only what we have accomplished but what we have overcome.

Accelerate your life.... Got ECF?

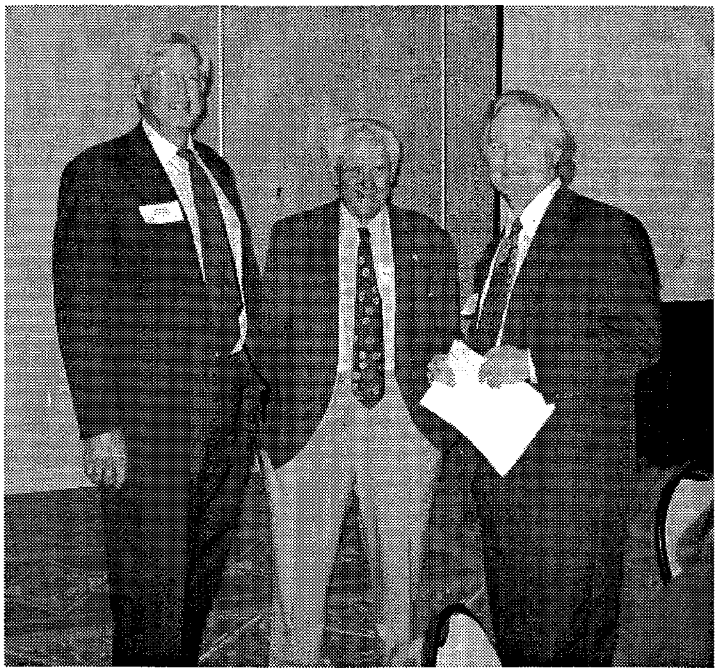
President's Message *(cont. from page 5)*

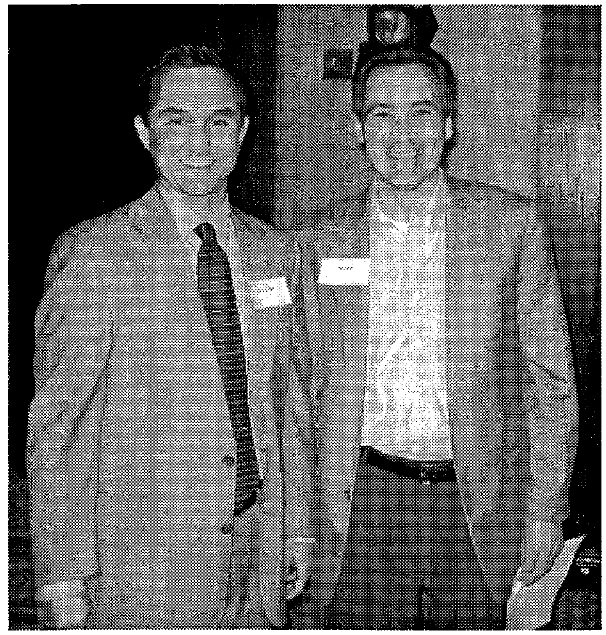
David Olivera and Chuck Kilcoyne have been incredibly helpful in identifying issues and concerns regarding the Clerk's Office and Judiciary. They were especially helpful in providing information to our members regarding the CM/ECF Program.

My partners at Carlton Fields, P.A. have been very supportive of my efforts on behalf of the Association. I thank them for their continued support.

To all of our members who volunteered this year, thank you for your time and talent. Our Association is only as strong as our members who actively support it. I would encourage all Association members to get involved and volunteer their time on behalf of this Association. It has been my pleasure to serve as President of this Association, and I wish every one of our members a safe and enjoyable summer.

HIGHLIGHTS FROM MARCH TBBBA LUNCHEON





LAPTOPS IN THE COURTROOM

Colleagues,

As some of you are aware, Chief Judge Paul M. Glenn has supported a pilot program to allow attorneys to bring laptop computers into the courtrooms in Tampa and Ft. Myers. The program was announced at the end of December and has been active since January of this year. At present, the program is open only to those who are ECF users. The pilot program is scheduled to conclude at the end of June at which time the Chief Judge of the Bankruptcy Court and the Chief Judge of the District Court will consider its merits for continuation. Since its inception, only thirteen members of our Association have registered with the Clerk to use this program. Of those who have registered, it appears that only a couple are taking full advantage of the program. As a result, the program will likely be discontinued at the conclusion of the current test period if a significant number of ECF users do not sign up for the program. The District Court is scheduled to implement ECF in June, intends to make the use of ECF mandatory, and therefore has considerable interest in the utilify of this pilot program. Given that the use of ECF is mandatory in the Bankruptcy Court of the Northern District of Florida and that the Southern District has announced its intentions to make using ECF mandatory, it is only a matter of time before the Middle District follows suit. Though some of us may be slow at moving in that direction, ECF is here to stay, and electronic filings are going to become the norm. The utility of laptop computers is going to increase.

While this may not seem like a big issue, I know from talking to the Clerk of the Bankruptcy Court, David Oliveria, that considerable effort went into convincing the District Court Security Committee and courthouse security personnel to permit the pilot program. I encourage members who are ECF users and have considered moving toward using a laptop computer in the courtroom, to register and participate in this important program. You can do so by going to the Court's web page (www.flmb.uscourts.gov) and clicking the "Notices" tab on the left. Click "Laptop Pilot Program" and follow the instructions provided. If we let this program die, it will be extremely difficult to resurrect in the future.

John J. Lamoureux
President
Tampa Bay Bankruptcy Bar Association

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

Barbara A. Hart has joined **Ruden, McClosky, Smith, Schuster & Russell, P.A.** in St. Petersburg. Her practice concentrates in all aspects of bankruptcy law.

Marsha Griffen Rydberg of **The Rydberg Law Firm, P.A.** has been appointed as a member of MacDill Federal Credit Union's Supervisory Committee.

John J. Lamoureux of **Carlton Fields** has been recognized by the Hillsborough County Bar Association for exceptional pro bono Service to the community by the committee for the 13th Judicial Circuit's pro bono program, H.A.V.E. A HEART.

Donald Kirk of **Folwer White Boggs Banker, P.A**. was recently awarded an AV rating by Martindale-Hubbell.

Liability for Aiding and Abetting a Fraudulent Transfer

By Lynn Welter Sherman (Hill, Ward & Henderson, P.A.)

Earlier this year, in Freeman v. First Union National Bank, 865 So.2d 1272 (Fla. 2004), the Florida Supreme Court held that a creditor does not have a cause of action for damages under Florida's Uniform Fraudulent Transfer Act against a third party, such as a bank or an attorney, for aiding and abetting a fraudulent transaction, where the third party is not a transferee. The Freeman decision provides some comfort to banks, brokerage firms and lawyers who, as deep pocket defendants, are being sued with increasing frequency in connection with collapsed ponzi schemes and other fraudulent investment ventures. In a footnote, however, the Freeman court noted that its opinion is limited to causes of action based on Florida's Uniform Fraudulent Conveyances Act, and does not address the question of "whether relief is available under any other theory of liability or cause of action." Id. at 1275, n.4. The footnote in Freeman cites to the dissenting opinion in Bankfirst v. UBS Paine Webber, Inc., 842 So.2d 155 (Fla. 5th DCA 2003) (Harris, Senior Judge, dissenting)[1].

In Bankfirst, the Fifth DCA affirmed the trial court's order dismissing with prejudice a creditor's complaint against the debtor's broker and lawyer for their alleged assistance and participation in fraudulent transfers by the debtor. The complaint in Bankfirst alleged causes of action against the defendants for fraudulent asset conversion in violation of Florida Statutes Section 222.30, violations of Florida's Uniform Fraudulent Transfer Act, and civil conspiracy. In a one-paragraph opinion, the Fifth DCA affirmed the dismissal of all three counts, holding that "neither section 222.30 nor chapter 726, Florida Statutes, creates a cause of action against a party who allegedly assists a debtor in a fraudulent conversion or transfer of property, where the person does not come into possession of the property." Id. at 155. In his dissenting opinion, however, Senior Judge Harris argues that both attorneys and financial advisors should be liable for civil conspiracy if it can be proven that they knowingly and willingly participated in the wrongful transfers. Id. at 156. Courts in other states have recognized a cause of action for civil conspiracy against non-transferees that assist a debtor in making fraudulent conveyances. See e.g., Morganroth & Morganroth v. Morris, McLaughlin & Marcus, P.C., 331 F. 3d 406 (3d Cir 2003) (reversing trial court's dismissal of civil conspiracy claim against debtor's attorneys).

The Florida Supreme Court's opinion in Freeman insulates banks, brokerage firms, attorneys and other non-transferees from liability under Florida's fraudulent transfer act. Attorneys and financial institutions should be forewarned, however, that civil conspiracy and other claims may still be available against them for assisting clients or customers in making fraudulent transfers.

(Footnotes)

[1] For additional discussion of this topic, see Denis Kleinfeld and Jonathan Alper's article "The Florida Supreme Court Finds No Liability for Aiding and Abetting a Fraudulent Transfer" in the June 2004 issue of the Florida Bar Journal.

PAST TBBBA PRESIDENTS

1988-89	Leonard H. Gilbert (Chairman)
	Don M. Stichter (President)
1989-90	Douglas P. McClurg
1990-91	Richard C. Prosser
1991-92	Robert B. Glenn
1992-93	Thomas B. Mimms, Jr.
1993-94	Edward M. Waller, Jr.
1994-95	Harley E. Riedel
1995-96	Roberta C. Colton
1996-97	Jeffrey W. Warren
1997-98	Michael P. Horan
1998-99	Dennis J. LeVine
1999-00	Russell M. Blain
2000-01	John D. Emmanuel
2001-02	Zala Forizs
2002-03	Catherine Peek-McEwen
2003-04	John Lamoureux

THE BANKRUPTCY BLUES

Got my first credit card
Just turned 18
Never knew money could look so green
But then the interest kicked in
And the bills came due
I didn't know what I was going to do
I thought I was history, but I wasn't through
I just started singing the
Bankruptcy Blues

With my good credit
Other credit cards came
Seemed like every card company
Now had my name
My minimum payments held my creditors at bay
Nothing new here it happens every day
I created wealth where none had been before
Now I was fighting a credit card war

(Instrumental blues)

Got my first student loan
Still in my teens
Stuffed the money in my new blue jeans
Went off to college
Why stick around home
With all that cash from my student loan
The repayment game was defer and defer
No need to repay
That's what I prefer

Lots of people de—fault
It happens every day
Student loans are the American way
But I started thinking
What was I gonna do?

Just sing another verse of the
Bankruptcy Blues?
I created wealth where none had been before
Now I was fighting a Student Loan war

(Instrumental blues stuff)

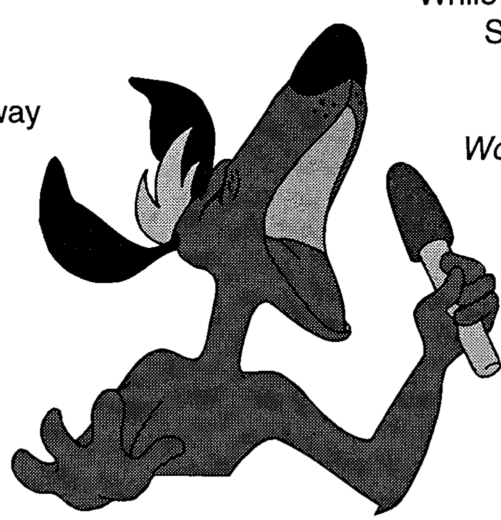
Found another new thing
A signature loan
They let me apply
Right on my cellular phone
With my good credit got a pager too
When you have credit
Nothin you can't do
Called up my old friends
And some that were new
They told me
I'd better start singing
The Bankruptcy Blues

Taking trips to places far and near
My grades slipped
I wasn't thinking too clear
Then they told me I'd have to drop school
I just said man I am nobody's fool
For I created wealth where none had been before
Now I was fighting a signature loan war

Music to tag line

While Tyco and Enron made the big news
Small — town — America – sang —
the bankruptcy Blues.... Oh Yeah"

Words and music © 2003 Larry Foyle



THANK YOU

The Cramdown is the result of the hard work and dedication of many people. If you get a chance, please thank the following people for their contributions to this past year's editions of the Cramdown.

Judge Paskay
Adam Alpert
Carrie Baris
Stephenie Biernacki
Cassandra Culley
Jan Donica
Larry Foyle
Brad Hissing
Drew Jenkins
Elena Ketchum
Chuck Kilcoyne
Steve Leslie
Cathy McEwen
Luis Martinez-Monfort
Brigid Merenda
Denis LeVine
David Olivera
Professor Teresa Radwin
Tim Sierra
Shuman Sohrn
Cheryl Thompson
Lori Vaughan

The Cramdown also thanks Trudy McKean and Perfect Impressions for the great job they have done in publishing this newsletter.

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.

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