United States Bankruptcy Court
Eastern District of Michigan

State of the Court

Steven Rhodes
Chief United States Bankruptcy Judge

October 2, 2007

Introduction

In my last state of the court address on November 2, 2006, I expressed the hope that sometime soon we get a year of stability in our operations and I could give a really *brief* state of the court address. Once again, maybe next year. . .

Statistics and New Judgeships

Last year I announced that our district had become the highest filing district in the country in the first two calendar quarters of 2006. We have maintained that record in each of the 4 quarters since then - the last 2 quarters of 2006 and the first 2 quarters of 2007. In the 12 months ended June 30, 2007, we had 31,744 bankruptcy filings. Our adversary proceedings were also very high compared to other districts. Our 613 dischargeability complaints were second highest in the country and our 1,658 other adversary proceedings were fourth in the country.

Not only is our total filing the highest in the country, so is our filings per authorized judgeship - 6,349. Of greater significance is our weighted caseload. That is 15,845 for the Court and 3,169 per authorized judgeship. The average bankruptcy judge in the country has a weighted caseload of 946. Our weighted caseload is therefore 3.3 times the average. Stated another way, in order for us to have the average judge's case load, we would need 16.4 bankruptcy judges in our district!

Not to be greedy however, we have instead asked for 3, and that request has again been approved by the Judicial Conference of the United States. It also has strong and powerful support in Congress. The Administrative Office of the United States has advised us to begin the process of planning space for these new judges and we will begin that process shortly. I am optimistic that the Court will get the judgeships it needs to better serve the people of the Eastern District of Michigan.

As in past years, our court has done remarkably well in meeting the dual challenges of increasing caseloads and decreasing resources.

The average age of our pending chapter 7 cases is 4 months less than the national median - 11 months for us, compared to 15 months for the national median.

The average age of our pending chapter 11 cases is 10 months less than the national median - 21 months for us, compared to 31 months for the national median.

The average age of our pending adversary proceeding is 5 months less than the

national average - 8 months for us, compared to 13 months for the national median.

We judges may deserve a bit of the credit for this, but only a bit. Most of the credit belongs to Katherine and her staff in the clerk's office, and to you, the members of our bar. It is an outstanding record that we should all be proud of.

Speaking of Katherine, she recently completed her first year as our new clerk, and what an outstanding job she has done! She has brought renewed energy, fresh ideas, and a sense of community to her office, and we look forward to her continuing leadership.

I now turn to the subjects that have become mainstays of my annual address to you - undisclosed assets and the chapter 13 discharge rate.

Undisclosed Assets

Recall that 1999 study of undisclosed assets revealed that debtors had failed to disclose 38% of administered assets. Last year I advised you that I was resurrecting that study for chapter 7 asset cases filed in the one year after October 17, 2005, the date that BAPCPA became effective. At this point, I have looked at every asset administered by our chapter 7 trustees in these cases that I could find in ECF through about one month ago.

The percentage of undisclosed assets in our district in the new study is a 37%.

That's 112 of 305. This is virtually identical to the 1999 study.

The biggest undisclosed assets in our district are preferences, tax refunds and fraudulent transfers.

For preferences, it's 41 of 56 undisclosed - that's 73%.

For tax refunds, it's 18 of 27 undisclosed - that's 67%.

For fraudulent transfers, it's16 of 17 undisclosed - that's 94%.

Other significant categories include contract claims - 47% undisclosed, and damage claims - 40% undisclosed. The study even found 6 pieces of real property that were undisclosed!

Last year I advised you that I intended to investigate how our district compares with other districts around the country. I have since done similar studies in 13 other districts. The average of those other 13 districts is a somewhat lower 30% - 305 undisclosed assets of 1,141 administered assets. The range of those other districts is from a low of 18% in the Northern District of Texas (Dallas) to a high of 48% in the Northern District of Ohio.

All of this means of course that nothing in the new law or its enforcement is working to reduce the rate of undisclosed assets. Certainly a 30% or a 37% rate of undisclosed assets is unacceptable. And remember, these are minimum numbers. My studies only recorded the assets that our trustees found and administered. There are

without doubt additional undisclosed assets that the trustees found and decided not to administer, and yet more undisclosed assets that the trustees never found.

I call upon the United States trustee's office and the United States attorney's office to enforce the laws requiring full disclosure of assets. To assist in enhanced enforcement, one of our new proposed local rules would require the trustee to file a report whenever the trustee discovers an undisclosed asset after the debtor testifies at the meeting of creditors that the schedules are accurate. Another of our proposed local rules would require the debtor to provide additional documents at the meeting of creditors. More on the proposed local rules in a moment.

I also call upon the national Bankruptcy Rules Committee to revise the Official Forms to put them into plain English, so that the least sophisticated but literate debtor might have a chance to actually comprehend them. The current forms were obviously written by lawyers for lawyers. In their function to facilitate the debtors' compliance with the disclosure requirements of the law, the forms are a failure, as my data demonstrates.

Chapter 13 Discharge Rate

For the past 3 years, I have complained to you about our sinking chapter 13 discharge rate. It has sunk again to a new low. In 2004, it was 31%. In 2005, it

dropped to 29%. In 2006, it dropped to 27%. This year it dropped again to 26%. Our ranking on this performance measure has slipped from 74th in 2004, to 79th in 2005, to 80th in 2006, and now to 81st this year. This was unacceptable then and it is unacceptable now.

To address this, the Court convened a committee to recommend solutions. Three concrete actions are about to be implemented. First, when wage orders are not available, the trustees are about to implement some form of Electronic Funds Transfers for debtors' plan payments. Second, we have been advised that the IRS is working on a national procedure to pay tax refunds directly to chapter 13 trustees. Third, the proposed local rules require postconfirmation review in certain circumstances.

To continue this discussion of our chapter 13 discharge rate, I am pleased that the next Shapero Symposium will address this very subject. On October 17, Prof. Scott Norberg from Florida will be here to discuss with us his empirical research into chapter 13 discharge rates. I encourage you to attend this very timely symposium. Prof Norberg's data and his results are very interesting and on some points surprising.

This year's Shapero Symposium is actually in two parts. To address our business bankruptcy bar, next winter, Prof. Stephen Lubben will be in our community to discuss with us his fascinating empirical research into chapter 11 attorney fees.

This has been a multi-year, $300,000 study funded by the American Bankruptcy Institute. Prof. Lubben will first publicly present his results in December at the ABI Winter Leadership Conference, and we will be on his presentation schedule very shortly after that. As a member of his research steering committee, I have seen his methods and his data, and it too is very interesting. We are quite fortunate to get his commitment. We will announce the date shortly and you should plan to attend.

Local Rules

Ten days ago the Court published proposed new local rules with a request for your comments. Thanks to those of you who have already submitted comments. This request for comments is a serious request and we encourage everyone to take the time to review the proposed rules and submit comments. Each comment will be distributed to each judge and will be seriously considered before a final decision is made about our new local rules. If you think a proposed rule needs clarification or revision, it would be most helpful to us if you would please submit your own proposed alternative or additional language. We will all have to live with the rules that will be end result of this process for a long time, and so we all have an interest in the final product.

As we said in the request for comments, three things motivated this revision of the local rules - ECF, BAPCPA and the sunset of the chapter 11 local rules

experiment. In addition, we looked for rules we could eliminate as no longer necessary and we also made some stylistic revisions to improve clarity. We also had to renumber some of the rules in order to comply with the F.R.R.N.P. - the Federal Rules of Rule Numbering Procedure - which really do exist, though they may not be named precisely that. You can actually find them on the federal court's website, if you are not fortunate enough to be participating in our onslaught of cases.

The district court has extended the sunset of the chapter 11 rules to January 1, 2008, so our goal is to have this revision effective by then. The deadline for you to submit your comments is October 24, 2007.

A word about process: This effort to promulgate new local rules actually began well over a year ago when the Court asked the local rules subcommittee of the Court's advisory committee to propose revised local rules and the committee accepted that challenge. The committee divided its work among four subcommittees, which met on numerous occasions and solicited the bar for input. The full subcommittee submitted its report and recommendations to the Court in March of this year. Since then the Court has met regularly to discuss and further revise these rules.

The rules committee plans to continue to assist the Court in this process by reviewing the proposed and making comments. The committee is chaired by Michael Baum and Wally Handler, and Judy Calton serves as its reporter. If anyone would

prefer to submit comments through the committee rather than to the Court directly, you may do so by writing or emailing any of them.

The Court expresses its sincere gratitude and appreciation to each of the 48 members of the committee, and especially to the leadership of the committee, for their hard work and dedication to this important project.

One more thing on the subject of rules. As the Supreme Court does every year, it has promulgated some amendments to the Federal Rules of Bankruptcy Procedure that will be effective on December 1 of this year. They are available on the federal court's website. I encourage you to become familiar with them..

On the other hand, the Judicial Conference has approved revisions to most if not all of the Official Forms, including the petition, the schedules and the statement of financial affairs, to conform with BAPCPA. The revised forms will become effective on December 1 of this year, so please use them. The usual consequences will result if outdated forms are used. There is also a revised means test form, which as of now, will be effective sometime in 2008. Apparently, it is still subject to some last-minute discussion and tinkering.

Upcoming Continuing Education Opportunities

Here is my view on continuing legal education, which will come as a surprise

to precisely no one here: Continuing legal education ought to be mandatory, and not just because the law changes at an accelerating pace. The practice of law is a business, yes, but more than that, it is a profession. Continuing legal education promotes professionalism, by fostering the very relationships of respect and cooperation among the bar that make the law work as well as it does. And that is especially important in bankruptcy because it facilitate serving the needs of the interested parties, especially the many with limited resources.

The response of our bar to continuing legal education opportunities is very gratifying and loudly demonstrates your commitment to your profession. I know that many of you attend the ABI conference in Traverse City each June at some substantial expense, and it isn't just to see the Indubitable Equivalents either. And the numbers of you who attended the local seminars on the new law is very impressive, as is the willingness of so many of you to participate in planning or speaking at these seminars.

Looking ahead, everyone who practices in consumer bankruptcy law in our district should attend the ABI Consumer Conference on Veterans Day, November 12, at the Troy Marriott. It is an outstanding conference - perhaps our best ever. We owe big thanks to the committee that planned that conference - Marcy Ford, Stuart Gold, Richardo Kilpatrick, Lisa Mulin, Yuliy Osipov, and Brian Small.

At this conference, Judge Wedoff will be back to review with you the latest

decisions on means test issues, especially those which are hot in our district. He also will introduce us to the revised means test form. There will be panels on 707(b) litigation, secured creditors, and case management. Perhaps the highlights will be the mock appellate argument on "projected disposable income" before 3 district judges; new options when facing foreclosure; and our lunch speaker, Elise Bean, general counsel for the U.S. Senate Permanent Subcommittee on Investigations, to discuss unfair credit card practices. There will also be the obligatory judges panel, but I will leave it to you decide whether that's a highlight or not. As ususal I want to see at least 400 of you there and I am of course prepared to use all means available under law to accomplish that goal.

In addition, in the winter or spring, we are also planning for the return of our trial advocacy program, in which participants actually try a mock case to learn trial skills. We have not done this in some years and it is time to resurrect it. Judge Shefferly is leading that effort with the bar. It is extremely popular, and if you are at all interested, you should sign up early because the number of available spots is limited and will be taken very quickly.

Mediation

Before I close, I want to say a word or two about mediation. First, we have an

outstanding mediation panel, to whom we all owe a great debt of gratitude. The work they do, virtually pro bono, to advance the cause of bankruptcy justice in our district is truly extraordinary. Their success rate exceeds 50%, and that's in the cases that have not already settled. The Court strongly encourages the bar to use our mediation service to resolve your clients' disputes more quickly and less expensively.

Our mediation process has clearly been an important factor in allowing the Court to maintain its record of prompt service in the face of our caseload and resource challenges. Let's acknowledge their contribution now.

Conclusion

Finally, on a personal note, in the year ahead, I look forward to returning to the Sixth Circuit Bankruptcy Appellate Panel in January. It was a wonder ful experience the first time. I am especially excited this time because now 6 of the 9 districts in the Sixth Circuit are in the BAP.

I am also looking forward to finishing the new local rules. That has been a huge project for the Court.