



# ON THE DOCKET

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

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## Inner Workings: News and Advice

By: Susan Thurston, Clerk of Court

As the Year 2000 draws to a close, this is an ideal time to reflect on the year in review at the Bankruptcy Court, how it compares with years past, and what we predict for the future. In Rhode Island, we experienced a second year in a row of decreased filings. Our total filings fell by over 11% this year, which were down another 8% from the previous year, resulting in a two year total decline of almost 20%. The most significant filing reduction was in the Chapter 7 and 11 case filings, with the Chapter 13 case filings running almost on point with last year's. As of the date of writing this article, December 20<sup>th</sup>, 4,247 cases have been filed and I predict that we will close the year with about 4,325 total cases.

Thus, Year 2000 will finish as the lowest filing year of the last four years, and should end with practically the same number of cases filed as in 1996. As the *chart on page 9* indicates, Rhode Island's all time high filing years occurred in 1997 and 1998, when we ended with the *exact* same number of cases filed two years in a row: 5,378.

In terms of the types of cases being filed, the Court has steadily experienced a downward spiral in Chapter 11 cases filed. Year 1991 marked our largest Chapter 11 filing year, with 148 cases filed. Since then, each year has seen an increasing decline in Chapter 11 cases, with Year 2000 coming in at a mere 8 cases filed, *see page 10*. In fact,

our current *pending* Chapter 11 caseload totals only 22 cases. This demonstrates how the nature of bankruptcy practice in Rhode Island has shifted from primarily a business type case to now predominantly consumer based. Nonetheless, this year at least, our Chapter 7 caseload also experienced a good size decline, although filings under Chapter 7 tend to run more cyclically than under Chapter 11. The only case types in Year 2000 which either remained even or increased were under Chapter 13 and Adversary Proceedings.

So what's in store for Year 2001? Late this year, many other bankruptcy courts across the country began to experience a rise

*(Continued on page 6)*

Kristen E. Batty, Editor



Inside this issue:

New & Advice	1,6
Team Coach	2
Spotlight on BK Court Em-	3,7
Bankruptcy Trustee's Speak	3,6
Sunshine Committee News	4
Holiday Closings	4
Recent Court Decisions	5
Bankruptcy Basics Crossword	8
Total Yearly filings graph	9
Total Chapter 11 Filings	10





# Team Coach

By: Lucinda Cory, Courtroom Deputy

The Case Manager staff would like to thank all practitioners who have successfully assimilated our new filing requirements into their practice . The unstapled originals, the case name and numbers on signature pages of pleadings, and the motions to lift stay without attachments allow us to process the documents more efficiently (i.e. image and docket them quicker), since we do not need to conform your pleadings. Thank you!

To those of you who may still need help with our filing procedures, please visit our Web site and refer to the back issues of *On the Docket*. The Quarterly Case Manager column, *Team Coach*, is a helpful reference for you. Also under News and Announcements for 9/29/00, we included a checklist of common mistakes, which you can print and share with your support staff.

Schedules filed after a petition has been filed should be thoroughly checked to make sure that

**"In order to add omitted creditors on the petition's matrix, you must file a Motion to Amend to Add Creditors, with a \$20.00 filing fee.**

the creditors contained on the matrix and those listed in the schedules match. See, R.I. LBR 1002-1 (d)(3). If you have omitted creditors on the petition's matrix, you must file a Motion to Amend to Add Creditors, with a \$20.00 filing fee. See, Bankruptcy General Order 00-003. The Clerk's Office procedure is to compare the schedules to the matrix/list of creditors and to issue a notice of defective

pleading where there are differences. A quick comparison of schedules and matrix by the filing office before the schedules are filed with the court will ensure accuracy, eliminate confusion and will avoid the receipt of a defective pleading notice.

### **Amendments to Bankruptcy Rules, effective 12/1/2000**

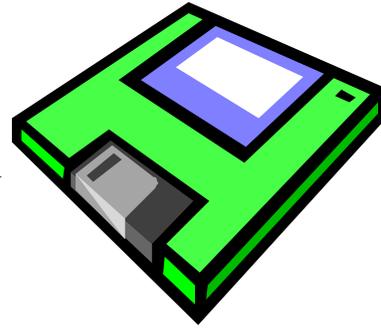
### **Pretrial Conferences**

As of December 1, 2000, pursuant to amended FRBP 7016 (a), we will commence conducting pretrial conferences in all adversary proceedings, approximately 60 days after the filing . The Court has designated alternate Wednesdays at 2:00 p.m. as pretrial dates. The summons has been redrafted to include the pretrial conference date and time (please make sure you obtain copies of the new summons and throw away your old ones.) Pursuant to FRBP 7026(f) and LBR 7026-1(b), a discovery plan is due in the Clerk's Office no later than the Friday prior to the pretrial conference. Failure to file this discovery plan will result in an Order To Show Cause (why sanctions should not be imposed) hearing at the pretrial conference. After hearing from the parties at the pretrial conference, the Court will enter a

scheduling order, setting deadlines for discovery, pretrial and dispositive motions and the trial date.

Copies of the order will be given to the participants at the conclusion of the conference.

Objections to Exemptions may now be filed by any party in interest in a case, where formerly only the trustee and creditors were allowed to object to the claimed exemptions.



Disks accompanying cases filed at the counter will be returned immediately.

### **Matrix/List of Creditors**

As of 12/1/00, your matrix/list of creditors must be filed on a 3 2" computer disk, Microsoft compatible, named matrix.txt. Disks submitted with mailed cases or cases dropped off in the overnight box will be returned if you provide the Court with a self-addressed stamped envelope. Disks accompanying cases filed at the counter will be returned immediately. Attorneys for debtors are requested to check the 341 meeting notice they receive to make sure that all creditors are listed correctly. It is the responsibility of the attorney filing the case to ensure that all creditors receive notice. Complete instructions can be obtained from the Clerk's office or from our Web site under News and Announcements, 2/3/00.



Alternate Wednesdays at 2:00 pm for pretrial conferences.



# Spotlight on Bankruptcy Court Employees

By: Ann McGloshen, Chief Deputy Clerk

The purpose of this article is to highlight some of the extra-curricular professional activities employees of the Bankruptcy Court participate in that allow the court to be on the cutting edge of innovative ideas and technologies in addition to broadening the personal perspective of the participants. This is the first of a two part-article.

**Michelle Torres, the Management Analyst** in the clerk's office, would like to introduce you to the **Resource Clearinghouse for the Courts**. Did you ever wonder how federal courts exchange information and resources? It is a common stereotype held by the public that bureaucracy and red tape control many government agencies, but in the judiciary it is exactly the oppo-

"See what Michelle Torres, Lucinda Cory, Joseph Wilkicki, and Kristen Batty have been up to."

site. Just about a year ago, the Federal Judicial Center, (FJC), the research and education agency for the federal judiciary, initiated an advisory committee to develop an interactive web-site of court resources and local practices and procedures.

In order to get a cross-section of judiciary employees throughout the country, different bankruptcy courts were asked to select an employee for participation in the project.

Michelle was chosen as our court representative on this exciting new project.

As a result of the Advisory Committee's efforts, the Court Operations Exchange web-site emerged, and went **Alive@** on June 2, 2000. Its mission is to provide a forum for court employees to share

information and ideas about court operations. Participation allows employees to obtain information about court operations at one national site without having to research multiple court web sites. This site is intended to be an open forum to encourage dialogue between the national court family.

**Work Measurement Formulas. Cindy Cory, Courtroom Deputy/Calendar Clerk**, was nominated to serve on the **Work Measurement Team** by the Clerk in early 1997. Cindy attended her first training session in Washington, DC, and soon after, traveled to Bangor, Maine for her first field assignment. The Work Measurement Office is responsible for developing staffing formulas for the federal courts. Based on these formulas, annual allotments are pro-

*(Continued on page 7)*

# Bankruptcy Panel Trustees Speak

By: Lucinda Cory, Courtroom Deputy

As a follow-up to the last column, which traced the history of our panel trustees, we asked them to describe their experiences serving as a trustee in bankruptcy in Rhode Island. In this issue, we spotlight attorneys Louis Geremia and Avram Cohen.

Louis Geremia began serving as a trustee in 1970 and is still going strong 30 years later! Lou emphasizes that many times patience was the virtue that saved him. He points out that, these days, the

easy availability of credit has had a negative effect on many peoples' lives. Because such debtors truly require a "fresh start," Mr. Geremia has been happy to help them through his trustee service.



What do Louis Geremia and Avram Cohen have to say?

*(Continued on page 6)*



## Sunshine Committee News



*Members of the 2000 Sunshine Committee: Kristen, Flo, Susan, Joe, Christine, Dana, Patrice, Carolyn, and April.*

For Thanksgiving, 2000, the U.S. Bankruptcy Court Clerk’s Office donated 5 Thanksgiving baskets with turkey vouchers to an area charity. Starting at the beginning of the year, employees brought in miscellaneous thanksgiving items to add to the boxes.

**“Keeping the spirit of ‘giving’ during this holiday season.”**

Participation was high and we were able to fill 5 boxes with: stuffing, onions, rolls, potatoes, veggies, pie fillings, pie shells, cookies, turkey pans, and other misc. food items. Thanks to the whole Bankruptcy Court for donating.

Keeping with the spirit of “giving” during these holidays, the Sunshine Com-

mittee, along with the entire Bankruptcy Court, also participated in an “Adopt A Family” Christmas program. We “adopted” a single mother with 3 children ages 11, 9, & 7, who lost all of their personal belongings due to a fire in their home. The court rallied together to make this a great Christmas for the family. See our gifts below!!

## Holiday Office Closings



The Clerk’s Office will be **CLOSED** on: Monday, **December 25, 2000** in observance of Christmas, Monday, **January 1, 2001** in observance of New Year’s Day, Monday, **January 15, 2001** in observance of M.L. King’s B-Day, AND Monday **February 19, 2001** in observance of President’s Day.

Please use the outside night deposit box for any filings during these holidays.

# Recent Court Decisions

By: Jonathan Calianos, Esq., Career Law Clerk

Here is a short digest of some noteworthy opinions and other newsworthy items from the Court. As always, the full text of Court opinions are available at our web site [www.rib.uscourts.gov](http://www.rib.uscourts.gov).

## **The Court Finds the First Circuit's Holding in *Weinstein* Controlling and Partially Avoids a Judicial Lien as Impairing the Debtor's Exemption Claimed Under the Rhode Island Homestead Act**

**I**n *re Strandberg*, 253 B.R. 584 (Bankr. D.R.I. 2000). The Debtor filed a Chapter 7 bankruptcy petition and sought to avoid a \$97,634 judicial lien on her residence, claiming that the lien impaired her exemption claimed under R.I. Gen. Laws 9-26-4.1. The lien creditor argued that the Rhode Island Homestead Act should not apply because his lien pre-dates the Act and the Debtor's acquisition of an estate in homestead by several years. The creditor also argued that applying the Homestead Act retroactively would be unconstitutional. The Court, relying on *In re Weinstein*, 164 F.3d 677 (1<sup>st</sup> Cir. 1999), found that Section 522(d) allows for the exemption claimed notwithstanding the fact that the Homestead Act was enacted after the lien came into existence. The Court further found that even

though the Homestead Act excepts debts contracted prior to the estate in homestead, the exception is preempted by Section 522(c) of the Bankruptcy Code. The Court stated that exceptions listed in the state statute were inconsistent with those listed in Section 522(c)(1)-(3), and the state provisions had to give way to the federal, thereby making exempt property liable only for those debts listed in Section 522(c)(1)-(3). In ruling on the constitutional challenge, the Court followed the holding of the Bankruptcy Appellate Panel for the First Circuit in *In re Leicht*, 222 B.R. 670 (B.A.P. 1<sup>st</sup> Cir. 1998), finding no violation of the lienholder's constitutional rights. The Court reasoned that the Debtor's right to avoid the judicial lien arises from federal bankruptcy law, specifically Section 522(f). As long as the judicial lien came into being after the enactment of Section 522(f), the Debtor's avoidance of the lien in bankruptcy does not constitute a "taking".

## **Valuation issues in Lien Avoidances Cases Involving Property Owned as Tenants by the Entirety**

In the *Standberg* decision, the Court also had to determine how to value the Debtor's interest in the real estate to properly apply the formula contained in Section 522(f). The Debtor owned the home as tenants by the entirety with her non-debtor spouse. The Court looked to Rhode Island law

and determined that the law gave each spouse an equal right to the whole property. The Court following *In re Snyder*, 249 B.R. 40 (B.A.P. 1<sup>st</sup> Cir. 2000), reasoned that valuing the Debtor's interest in the property at 100% (rather than some reduced percentage like 50%) was more in keeping with Rhode Island law. In applying the formula under Section 522(f), the Court valued the Debtor's interest in the property at 100% and found the lien should be partially avoided.

## **Employers should seek Court authority before charging any administrative fee for implementing a wage deduction order in a Chapter 13 proceeding**

The Chapter 13 Trustee recently asked the Court if employers could charge an administrative fee to debtors for implementing the Court mandated Wage Deduction Orders in confirmed Chapter 13 cases. The Court believes that any such request should be raised by the Employer through a motion and the Employer should not impose a fee upon a debtor without first obtaining Court approval of such fee.





*(News & Advice Cont. from page 1)*

in filings in November and December, and many national sources expect that this trend will continue in 2001. In fact, many financial experts and economists are forecasting a general slow down in the economy and even possible recession, which conditions historically have resulted in increases in bankruptcy filings, especially during the last decade in Chapter 7 consumer filings. Another factor that would certainly influence filing rates is whether or not next year's Congress passes bankruptcy reform

legislation to require a means test be satisfied before filing. This year as we all know, President Clinton exercised his pocket veto power over the proposed legislation. Under President Bush and the new Congress, it's a whole new ball game. And lastly, what's to become of the Chapter 11 caseload?. While we hear that financial institutions have eased their lending practices, which may give rise to new filings if the economy experiences a downturn and result in the Chapter 11 caseload rebounding, it is extremely unlikely that any possible increases will approach the volume experi-

enced by the Court in the early 1990's. Furthermore, if the last decade serves as any type of track record, Chapter 11 may be on the road to extinction, with Rhode Island possibly becoming the first district in the nation to see the virtual end of Chapter 11 filings altogether. However, no matter which way things ultimately go **B** relax and be assured that the staff at the Bankruptcy Court will continue to be here to assist in any way we can, and to make the ride as interesting as possible.

Happy Holidays to all  
and a Blessed New Year! Susan

*(Panel Trustees cont.. from page 3)*

One of Mr. Geremia's most memorable cases was the *Roberts Toy* case. The principal of the company decided to liquidate it and chose to hide the money so that he wouldn't have to pay unsecured creditors anything. A suspicious bank teller alerted the FBI, which trailed the principal and uncovered the money. This successful action resulted in the unsecured creditors receiving an unexpected dividend from the estate thanks to the efforts of the trustee and the FBI. For his dishonesty, the principal of the company was sentenced to Federal prison. Most of Mr. Geremia's cases, however, have not been so colorful but were of a more routine nature, helping misfortunate debtors emerge from bankruptcy. The Clerk's Office remembers and was quite agog at, the diamond ring Mr. Geremia auctioned off as a fallout from the credit union crisis.

Avram Cohen was appointed Chapter 7 trustee on January 1, 1979, and served until 1990. He remarks that

being a trustee is a great learning experience with hands-on training in all aspects of bankruptcy law. Because "issues from nearly every field of law enter into bankruptcy cases at one time or another, the bankruptcy community is often faced with Constitutional issues arising out of the Federal-State dichotomy in the United States." Mr. Cohen was in college in the 1960's, a high point in the Civil Rights Movement, and one of his favorite courses in law school was Federal Jurisdiction. While none of his bankruptcy cases ever had issues arise relating to Civil Rights, there were other cases where Federalism and Federal-State jurisdiction arose. According to Avram, "my own experience, which is only in a small portion of this body of law, would certainly provide enough examination questions for several semesters of this course."

When asked about his most memorable case, he reported, "every bankruptcy case was

memorable." However, the one that stands out in his mind the most is the same that the Clerk's Office would have chosen for him — "The Sorority Shop" case. This bridal salon was filed at the height of the wedding season in June, and unfortunately, Mr. Cohen was appointed trustee on a Friday morning. As you can imagine, many weddings were scheduled for that weekend and the subsequent weekends. All of the assets were secured by the Small Business Administration and it took possession of the gowns when Mr. Cohen arrived at the shop. There was tremendous television coverage at the time — the line of brides, mothers of brides, grandmothers of the brides, and bridesmaids that went down the stairs and around the block, with everyone worried and terribly upset that they wouldn't get their dresses. Fortunately, most of the gowns needed for that weekend were in the store and Mr. Cohen and the SBA were able to collect the gowns at purchase price and send the brides off to what they hoped was the beginning of happily ever after!



*(Court Employees Cont. from Page 3)*

vided to each individual court through the budget process for staffing and operational purposes. The bankruptcy formula had not been updated for almost 10 years, and thus the Work Measurement Team was formed to conduct a revision.

Last summer, Cindy traveled to Lexington, Kentucky to measure that Bankruptcy Court for inclusion in this updated national formula. In March, Cindy is scheduled to measure the Colorado Bankruptcy Court in Denver.

Cindy is enjoying being a part of this team and her extensive knowledge of the bankruptcy system is a great benefit to the Work Measurement Team in the development of these national formulas. For her part, Cindy has had an opportunity to visit other bankruptcy courts to see how things are done and has gained a better understanding about formula methodologies and the allocation of personnel resources in the courts.

***New Courtroom Technology.*** As our last edition of *On the Docket* reported, the U.S. Bankruptcy Court for the District of Rhode Island is the first federal court to install digital sound recording in the courtroom using BCB Voice Systems. The purchase, installation and training were executed with precision, and the daily usage of the equipment has exceeded our expectations.

To further elaborate on the success of this purchase, ***Joe Wilkicki, Procurement and Property Administrator/Court Trainer***, was invited to speak at the BCB Voice Systems Court-Flow Dealer Meeting on November 16<sup>th</sup> in Atlanta, GA describing our court's BCB procurement process.

Thereafter, in September, Joe, together with Michelle Torres, also traveled to Tampa, Florida to attend a national courtroom technology conference. While there, Joe and Michelle viewed evidence presentation systems, video conferencing, and other electronic courtroom features to assist our court in its strategic planning of future courtroom technology enhancements. Their experiences during the conference and the information they obtained will serve as the basis for this year's decisions concerning upgrades to our courtroom automation program.

***Ambassador of the Combined Federal Campaign.*** The A2000 Rhode Island Area Combined Federal Campaign is under way. The CFC was established in 1961 by President John F. Kennedy to respond to the needs of the homeless, the hungry, the elderly and the handicapped. The CFC is the only authorized solicitation of employees in the Federal workplace

on behalf of charitable organizations. Civilian and military personnel volunteer their time to conduct the annual workplace campaign, making it a cost-effective way for federal employees to help others. It continues to be the largest and most successful workplace fund-raising model in the world. Volunteers in the 1999 campaign raised \$625,628 LOCALLY to help people worldwide.

***Kristen E. Batty, Administrative Specialist***, is serving as Ambassador of the Combined Federal Campaign for the second year in a row. Her duties include being the liaison between the Director of the CFC and the local federal agencies based at The Federal Center, 380 Westminister Street; dissemination of the annual election materials; answering questions of the local agency representatives; helping annual campaign kickoffs get started by coordinating CFC speakers to assist in the presentation; and collection of the completed campaign materials. The campaign kicked off in September and will conclude by the end of December raising substantial money for our local and national charities. What a wonderful way to end this holiday season.



