



ON THE DOCKET

The Inner Workings of the Court: News and Advice

By: Susan M. Thurston, Clerk of Court

A warm, Happy New Year, to all users of the bankruptcy court system! The Bankruptcy Court is pleased to say that we sailed smoothly into the new century, without any significant system or mechanical problems.

In fact, the year started with a bang, with the launching of our new automated case opening program -- AutoCOP -- on January 3, 2000. The first week was a bit rocky, but we seemed to have worked out the last bugs and are now able to open cases

(including setting the '341 meetings) in less than 5 minutes per case (compared to the 20-30 minutes per case previously required to complete all of the same steps).

Filers will notice several changes when filing new cases. First, the receipt is now in the form of a label and contains information as to the case name and number; the amount of the fee paid; the trustee assigned; and the date, time and place of the '341 meeting. Trustee assignments are handled auto-

matically by the computer by random rotation within the applicable time



AutoCop is Here !!

frames (20/40 days). Cases are assigned to trustees in 6 case intervals. Thus, whether you receive the same trustee for multiple case filings depends upon whether or not the 6 case limit has been met. When filing numerous cases (6 or more), attorneys will likely

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Team Coach:

By: Lucinda Cory, Courtroom Deputy

This column remains devoted to providing helpful hints to the bar on filing and case management procedures. Since our last newsletter, we have seen an increase in the 1998 and later cases being filed without being stapled together, as recommended. Kudos to the filers!

Now, for this quarter's helpful hints:

1. Only *the original* is required for *Notices of Appearance* or *Certificates of Service*. Additional copies are not necessary because these pleadings are not distributed to chambers, as other papers are. However, do remember that with all other pleadings, an original and two copies must be filed;
2. Motions for Relief from

Stay:

(1) *Summons.*

When the summons is returned, *only the original* should be filed with the Court (again, no copies required). Also, please remember to completely fill out the reverse side of the summons and/or attach a

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Raymond Chandler's Examination of the Debtor

By: Holly D'Agostino, Case Administrator

(A Work of Fiction)

It was 3:45 in the afternoon. I was doing my time on the 9th floor when she walked in. Tall, cool and dark with the kind of assets to make any trustee lose his estate where he stood. She walked toward me, slowly, and took the chair in front of my desk. Then she crossed her legs and I felt my automatic stays snap. I fumbled for the tape recorder.



"State your name for the record"

AState your name for the record.@

ALola.@

ALola, what?@

AWho wants to know?@ she hissed.

AI-I ask the questions here, doll@ I barked.

ALola Loveliens.@

She leaned back and gave me a smug smile. I wasn't fooling anyone. She knew my briefs were suffering a major cramdown. I tried to recover.

ARaise your right hand. Do you swear or affirm that the state-

ments you are about to make to be true and accurate?@

AI do@, she cooed.

AState your address and telephone number@

AYou work fast, smart guy@

AListen baby, I don't conduct these oral examinations for the discharge of my pleasure.@

AI'm not interested in your discharge! I've got a finance company after me!@ She began to cry.

AAat first it was small stuff, just for laughs.

Home Shopping Network, QVC. Then I got in deeper.@

AInfomercials?@

AYes.@

ATough luck. Maybe something can be done. Let's take a look at Schedule B. Got any jewelry you can hock?@

ANone...@ she said innocently, fingering a rock on her pinkie large enough to satisfy the adequate protection fantasies of any joe in a Brooks Brothers suit. The dreams of the worsted-wool gang.

I pressed on.

AWhat about the finance company. Have you made any payments to them in the past 90 days?@

AWhat's it to you?@

AI just thought I might be able to get a little preference action.@

AYou're pretty sure of yourself.@

AIIn my line of work, you have to be, angel. Let's take a look at your J Schedule. Your expenses are pretty inflated. More than a handful appear to be excessive. Who told you that you could make a charitable contribution of a C-note a week to the Church of the Holy Donut?@

AA guy I met once. Said it could be done.@

ATall guy, silver hair, knows the Code?@

AThat's the one. Talked so fast I thought he'd run out of breath.@

ANot likely. Listen, honey, I can't allow this. We're gonna have to add it in to your disposable income.@

AYOU can't allow? What kind of a double-cross is this?@

AThis ain't no double-cross, sister. I'm a Chapter 7 Interim Trust-

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A Historical Perspective on Bankruptcy

By: Cindy Cory, Courtroom Deputy

This article is the second of a series.

Credit/Debt Relationship to 1750

The extending of goods or services in return for a promise to pay has been a cornerstone of dealings among people for centuries. It is a simple premise based on the giver's reliance on the good faith of the receiver.

Handshakes, notches in wood and chalk marks on slate have all been used to memorialize the transaction.

When the word *fairness* was used in medieval times, its connotations included personal pride, responsible behavior and fair dealing among parties. Another important word of the time was *liable*, meaning bound to-

gether, and behavior was regulated by these concepts of fairness and liability. Because towns were small and people closely connected, everyone's business was common knowledge in the society of the time and any bad luck or dishonest behavior would be scrutinized by the community. At that time also, breaches were settled among the parties

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Intake Input

By: Susan Flynn, Intake Clerk



HAPPY NEW YEAR!!!! Along with the new year, the Bankruptcy Court has implemented a new system for the intake of new petitions and various other pleadings. The system is called Autocop. While, it may seem a bit cumbersome at first, you will soon realize how Autocop has streamlined our work and made it more efficient for you in the long run. A brief synopsis of Autocop: When a petition is filed, it is immediately opened into our computer system, a Panel Trustee is assigned, a 341 meeting date is assigned, the matrix is scanned, notices of incomplete filings are issued, orders to show cause are issued, and confirmation hearings are set.

While we are making every effort to make the transition from the old to the new, the following are some suggestions for making the new system more friendly to everyone: **PLEASEYYYY**

1. **Be patient.** Not only is the system new to you, it is also new to us.
2. **Try to keep your matrices clean.** Any stray markings or type that is too light



will make your matrix unreadable and require time-consuming corrections.

3. **Remember to put your attorney Rhode Island Bar Code** on the second page of your petition.

4. **If you are filing multiple petitions, you may wish to write separate checks.** Each Autocop station (we have two) allows only one petition to be opened at a time. Therefore, if you have several petitions with separate checks, we can be opening one at each station.

5. **If you don't want to wait,** you are welcome to drop off your petitions and fees and come back later or the next day.

6. **Remember that a Chapter 13 Plan is a separate document** and should not be attached to the Chapter 13 Petition.

7. **Do NOT staple** original documents.

As always, we are available to answer your questions and explain Autocop in further detail. More information is also available at our website www.rib.uscourts.gov.

PLEASE NOTE: Filing fees have increased. Chapter 13 is now \$185.00; Chapter 7 is now \$200.00 and a Motion to Reopen is \$155.00.

FEDERAL RECORDS CENTER (FRC) REQUESTS

Due to space constraints, files that

have been closed for two (2) years or more are stored at the FRC in Waltham, Massachusetts. If you need a copy of a document from such a file or the complete file, you may order it in several ways.

1. The file can be retrieved through the Clerk's office for a pre-paid fee of \$25.00, payable by cash, check, money order, visa or master-card. It takes approximately three to five (3-5) business days for the file to be sent to the Clerk's office. Upon its arrival in our office, we will call you to let you know it is available for you to come in to view and/or copy. The copy machine in the public area costs 20 cents per page. If you wish for us to make the copies, you will be charged a \$15.00 search fee plus 50 cents per page that we copy; or

2. The file and/or documents can be **ordered directly from the FRC by calling or faxing a request to them.** They can fax or mail the documents to you. Before you call or fax the FRC, you must first have the Accession Number, Box Number and Location Number. These can be obtained by calling the Clerk's office or looking up the information through case information on our website www.rib.uscourts.gov. The FRC has fees for requests placed directly to them, which are usually less than the fees the court is required to charge. When you contact them, they will advise you of the applicable fee.

Upcoming Office Closings

The Clerk's Office will be closed on Monday, February 21, 2000 in observance of President's Day.



PLEASE USE THE OUTSIDE DEPOSIT BOX FOR ANY FILINGS WHEN THE CLERK'S OFFICE IS CLOSED.

Recent Court Decisions

By: Jonathan C. Calianos, Esq., Law Clerk

The Court relinquished its long winter nap and continued to issue new opinions covering some well traveled ground as well as deciding a case of first impression in Rhode Island. As always, the Court's opinions are available in hard copy at the Clerk's office or on the web at www.rib.uscourts.gov. Here are some noteworthy opinions issued recently:

Domestic Bank v. Johnson, 239 B.R. 255 (Bankr. D.R.I. 1999). The Chapter 7 Debtors filed a third-party complaint against a home improvement company alleging violations of the Rhode Island Door-to-Door Sales Act, R.I. Gen. Laws § 6-28-1, *et seq.* It was uncontested that the company failed to provide the Debtors with the disclosures mandated by the Act. The major point of contention was whether the Debtors could cancel the contract under R.I. Gen. Laws § 6-28-4(d) some two and one-half years after entering into the contract and the work being completed by the home improvement company. The Court found that the contract could be canceled and that the Debtors were entitled to double damages

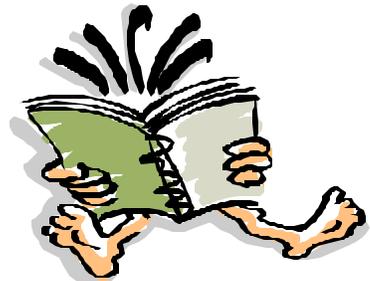
under R.I. Gen. Laws § 6-28-4(d).

Olivieri v. Generali Insurance Co. (In re Olivieri), 238 B.R. 1 (Bankr. D.R.I. 1999). The Chapter 13 Debtor and mortgagee filed an adversary proceeding against an insurance carrier for denying coverage after a fire destroyed a commercial building owned by the Debtor and pledged as collateral to the mortgagee. The Plaintiffs argued *inter alia* that the cancellation of the fire insurance policy by the carrier was ineffective because the carrier failed to send the notice of cancellation to the mortgagee via certified mail, return receipt requested, as required by R.I. Gen. Laws § 27-5-3.4. The Court, deciding this case of first impression, held that the cancellation was ineffective because the insurance carrier failed to comply with Section 27-5-3.4. The carrier, by sending a written notification to the mortgagee via regular mail (at an incomplete address), did not comply with the statute in question.

Adler v. Adler (In re Adler), BK No. 97-13469, A.P. No. 98-1105, (Bankr. D.R.I. January 14,

2000). The Debtor's ex-wife filed a complaint to determine the dischargeability of a debt stemming from a property settlement agreement. The Court discussed the standards for determining a debt to be nondischargeable under 11 U.S.C. § 523(a)(15) and found the instant debt to be nondischargeable.

In re Blue Grotto, Inc., BK No. 96-



12339 (Bankr. D.R.I. January 14, 2000). The Debtor, a popular local Italian restaurant, filed for reorganization under Chapter 11, and less than two months later, converted and a Chapter 7 Trustee was appointed. The Trustee negotiated a carve out for general unsecured creditors and agreed to operate the restaurant and sell it as a going concern for the benefit of the

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certificate of service. Do not attach exhibits to the originally- filed motion as they will be discarded. Exhibits should be attached to the joint pretrial order if the motion proceeds to hearing;

(2) Filing Fee Required? A \$75 fee is required for filing a motion for relief from stay with the Court. Routinely, these motions are served on interested parties, the objection period expires, and the motion is either endorsed or an order entered. Only a small percentage of these motions actually proceed to hearing. An alternative procedure for obtaining an order with respect to relief from stay, *without paying the filing fee*, is for the parties to agree in advance to the terms of an Agreement or Stipulation with respect to the automatic stay. Then, instead of filing a motion for relief from stay, the creditor and debtor jointly file a Motion for Court Approval of an Agreement or Stipulation to any type of relief from the automatic stay. No filing fee is required for this type of motion. The Motion for Court Approval should have the proper certificate of service and Local Rule 1005-1(d) language. Additionally, the agreement or stipulation must accompany the motion for approval;

(3) Signature Page: All pleadings should include the case number, page number and caption on the signature page (usually the last page). Without this information,

case managers cannot enter an endorsement order (i.e., we cannot put the Judge's signature on a blank page!) and counsel will be instructed to file a proposed order instead;



(4) Motions to Appear Pro Hac Vice: Please be sure R.I. Bankruptcy Form T is fully completed, including paragraph two on page 2, Attorney Certificate of Pro Hac Vice Admission. Counsel must advise the Court of all other cases

pending in this Court. If there are none, please so indicate. A Notice of Defective Pleading will be issued if any information is left blank;

(5) Reaffirmations. Please ensure that the creditor's address is clearly indicated on the reaffirmation agreement. Creditors' reaffirming debts are added to the data base using their street address. Also, please be advised that a new reaffirmation form, R.I. Bankr. Form U, will soon be in effect and required for all reaffirmations;

(6) Required Notice Language, LBR 1005-1(d) must also include the Court's address and telephone number. Recently, we have noticed that many papers being filed with the LBR 1005-1(d) language do not include the Court's address or telephone number to notify respondents of where to file their papers. Failure to include this information will result in the issuance of a Notice of Defective Pleading and will delay action on the paper. The correct language is as follows:

(d) Required Response

Time Language Must Be Included on All Papers.

(1) Usual Papers. In order to provide adequate notice to interested parties of the time to respond, every motion (except motions for relief from stay and those set forth in paragraph (2) below), application, petition (not including bankruptcy petition), objection to claim or objection to exemption filed with the clerk's office shall contain language substantially similar to the following, in single or double space and must appear in at least 11 point type:

Within ten (10) days after service as evidenced by the certification (twenty (20) days for U. S. Government officers and agencies thereof), and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Bankruptcy Court Clerk's Office, 380 Westminster

New Reaffirmation Agreement Form, R.I. Bankr. Form U, will soon be in effect and required for all reaffirmations.

Mail, 6th Floor, Providence, RI 02903, (401) 528-4477. If no objection or other response is timely filed within the time allowed herein, the paper will be deemed unopposed and will be

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find that they are assigned to two different trustees. Also, when fil-



ing a large number of cases at once, counsel will experience a longer wait, since more functions are now performed at this stage. Due to this time delay, we recommend that filers bring other work with them, grab a cup of coffee in the lobby snack bar, come back later to pick up their receipts or bring a self-addressed stamped envelope to mail the receipts. Another suggestion is to handle the entire process through the mail or by using the outside night deposit box.

Our case filings in 1999 (4,964) fell by 7% from our 1998 figures (5,383), although our chapter 13 filing rate grew 5%. The filing rate for Chapter 11 cases ran about the same. In this publication, we have listed the local bankruptcy rules and forms proposed to be amended, including Appendix IV concerning attorney fees in Chapter 7 and 13 cases. The maximum fee that will be allowed without fee application in Chapter 13 cases is increasing from \$1,500 to \$2,000. This increase may spur more attorneys to take on Chapter 13 cases, and continue last year's increase in filings.

Please take the time to review the proposed local rule and form amendments as there are several substantive changes, *see list of rules and forms to be amended on page 8 infra*. Copies of the proposed amendments are available at

the Clerk's Office or on our website. We welcome your comments, which should be submitted no later than March 1, 2000. Also, for those who haven't filed any cases in the last month, be advised that the filing fee for Chapter 7 and 13 cases was increased on December 29, 1999 to \$200 for a Chapter 7 and \$185 for a Chapter 13 case.

Lastly, we remain committed to improving and updating our website and are continuing to work on new features. A search for unclaimed funds is now available online! Also, the billing feature is now in place for accessing the case lookup section. In order to do so, users must be registered with the Pacer Service Center. The same password works for either Pacer or our website. Please call the Pacer Service Center at 1-800-676-6856 to register, or you may register online on our website: www.rib.

(Credit/Debit cont. from page 2)

guided by a code of conduct without governmental interference .

Guilds, unions based on a trade or craft, were created in the Middle Ages and were essentially monopolies to uphold standards of production and protect workers. They ensured that workers received a fair wage and buyers bought at a fair price, keeping stability in the marketplace. Shortness of supply was not a reason to raise prices and the guilds operated on

the concept of fairness to all parties, suppliers, workers, and consumers.

Because extension of credit and repayment were essentially two-party transactions, a debtor could choose which debts to repay. There was no system by which creditors could collectively claim for repayment; thus, the strongest or loudest of the creditors would be paid first. The idea of creditors being paid equally had its roots in the reign of Henry VIII, when Henry Brinklow, a London merchant, complained



“the strongest or the loudest of the creditors would be paid first.”

to the king. His complaints resulted in a statute passed in 1542, which is often represented as the first step in the establishment of a bankruptcy system. It was also the beginning of the differentiation between debt arising from bad luck or arising from fraud. (34,35 Henry VIII cap 4).

In 1570, during the reign of Henry's daughter, Elizabeth, bankruptcy law was refined to the point where a commissioner was appointed to oversee a bankrupt estate to ensure equal distribution of assets and to encourage parties to agree among themselves on methods of repayment

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(Credit/Debit cont. from page 6)

of debt. (13 Elizabeth cap 7). Appointed commissioners could to some extent force creditors to accept partial payments and, interestingly, could be sued if they acted wrongly. A further refinement came during the reign of James I, (21 Jac I cap 19 of 1623) where punishment was inflicted on a debtor who committed fraud by having him set upon the pillory in some public place for the space of two hours and having one of his or her ears nailed to the pillory and cut off. Sensible debtors would make arrangements with creditors to avoid public humiliations and painful punishments.

By the 1600's imprisonment for debt was the norm as creditors (often the educated merchant class) were able to have statutes enacted that favored them. However, in 1649, Parliament began to extend some relief to debtors. A statute passed in 1649 allowed debtors to be released from prison after swearing that their assets were worth less than L5 and that no assets had been fraudulently transferred.



Statutes passed as late as 1671, while offering debtors a chance to prove their insolvency, still allowed debtors to be imprisoned at the demand of a single creditor. A man released from prison did not have his debts discharged and could be sued again by creditors. Government became more involved in debt/credit disputes in the second half of the 17th century, allowing debtors the right to jury trials in debt disputes, limiting the amount of time debtors could be imprisoned and trying to balance the complexity of debtor and creditor relationships.

Prison conditions were miserable and people put in prison for debt were treated the same as those put in prison for criminal acts. The Debtors Act of 1730 was passed in response to a report made to the government investigating the treatment of debtors and especially the abuses carried on by prison wardens and bailiffs. This report was made at the insistence of a reformer, James Oglethorpe, who after having had a (debtor) friend die in prison, took up the cause of debtors. The Act allowed debtors to petition the courts to prove they were insolvent; however, creditors

(341 Exam Continued from page 2)

tee, empaneled by the U. S. Department of Justice. I've got a Code to uphold and Local Rules to live by. I'm sending you up the river.@

AYou mean..?@

AThat's right. 707(b). Hl be waiting for you, baby.@

at this time had to agree to accept payment or the debtor could not be released. The Act, therefore, did more to protect debtors in prison from their jailers than change the system of justice and take steps to free those imprisoned for debt.

The Lords= Act of 1759 again attempted reform to help debtors escape imprisonment, but in the late 1700's, creditors sought and were successful in preventing further amendments to the Lords= Act. Creditors were suspicious of those debtors they perceived as taking advantage of the system and



were determined to prevent any further loopholes in the law.

The simple relationships between lenders and receivers of the middle ages had become more complex as the world became more complex. As always, it was a struggle for the law to evolve and

She got up out of the chair and gave me a look that bore right through to my core proceedings. Then she walked through the door and out of my life. I buried my face in my hands. When I looked up, the silver-haired guy was standing there, grinning.

***(Recent Court Decisions cont.
from page 4)***

senior secured creditor. Before the Court were applications for compensation filed by the various professionals in the case, which were presented without objection. The Court, considering the dismal results in the case and the excessive time expended by professionals, set aside the sum of

\$20,000 for all administrative expenses and left the task of apportioning that sum to the professionals.

Connell v. Sheehan (In re Sheehan), BK No. 91-13024, A.P. No. 97-1107 (Bankr. D.R.I. December 17, 1999). The Plaintiffs filed an adversary proceeding entitled "Action on Guaranty" and appeared to be seeking a determination that their debt was non-dischargeable under some section of 11

U.S.C. ' 523. The Plaintiffs failed to specify any sub-section of ' 523(a) in their Complaint. After the close of the Plaintiffs' case, the Defendants moved for judgment in their favor. The Court ruled that the Defendants' request for judgment should be considered under Fed. R. Civ. P. 52(c) made applicable in bankruptcy by Fed. R. Bankr. P. 7052. Applying the standards under the rule, the Court found that the Plain-

NOTICE OF PROPOSED LOCAL RULES

Pursuant to 28 U.S.C. ' 2071, Fed. R. Civ. P. 83, Fed. R. Bankr. P. 9029 and the November 11, 1990 Order of the U.S. District Court Authorizing Promulgation of Local Bankruptcy Rules, the U.S. Bankruptcy Court for the District of Rhode Island hereby provides notice that it proposes to amend the Local Rules and Forms as follows:

Local Bankruptcy Rule 1005-1 (amended)
Local Bankruptcy Rule 1006-1 (amended)
Local Bankruptcy Rule 1007-1 (amended)
Local Bankruptcy Rule 2016-2 (new)
Local Bankruptcy Rule 2083-1 (new)
Local Bankruptcy Rule 3015-2 (new)
Local Bankruptcy Rule 4008-1 (amended)
Local Bankruptcy Rule 5005-2 (new)
Local Bankruptcy Rule 5007-1 (new)
Local Bankruptcy Rule 5011-1 (amended)
Local Bankruptcy Rule 5072-1 (amended)
Local Bankruptcy Rule 9010-1 (amended)
Appendix IV (amended)
Local Bankruptcy Form O (amended)
Local Bankruptcy Form R (amended)
Local Bankruptcy Form U (new)
Local Bankruptcy Form V (new)



Pursuant to 28 U.S.C. ' 2071(b), **the U.S. Bankruptcy Court for the District of Rhode Island invites public comment** on Proposed Local Rules 1005-1, 1006-1, 1007-1, 2016-2, 2083-1, 3015-2, 4008-1, 5005-2, 5007-1, 5011-1, 5072-1, 9010-1 and Local Forms O, R, U and V. **Comments on the proposed rules and forms should be received by March 1, 2000 and addressed to:**

Susan M. Thurston, Clerk
U.S. Bankruptcy Court for the District of Rhode Island
380 Westminster Mall, 6th Floor
Providence, RI 02903

**COPIES OF THE PROPOSED AMENDMENTS TO THE LOCAL RULES AND FORMS ARE
AVAILABLE AT THE CLERK'S OFFICE OR ON OUR WEBSITE.**