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001. fax	DOB/Birthplace (Partial) (1 page)	04/26/1994	P6/b(6)

COLLECTION:
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FOLDER TITLE:
Legal Issues: Bankruptcy

2013-0854-S
ms675

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DPC participates in a working group on bankruptcy reform to determine which aspects of the code are troublesome. The working group, led by NEC-Ellen Seidman, has held seminars with outside practitioners and academicians and coordinated the Administrations response to Senate Legislation.

The Senate has passed a bankruptcy reform bill. Heflin is very committed to this bill. There is no accompanying House bill. Karen Hancox is attempting to determine if Brooks has any interest in moving a bankruptcy bill. I have opposed sending letters of support to Brooks for just certain provisions of the Senate bill because if it appears that the Administration is only interested in provisions that benefit the Business community.

Judiciary Chairman Brooks could be offended.

Ellen Seidman asked me to pull together a list of issues and practitioners dealing with environmental claims and mass tort claims in bankruptcy cases.

Environmental claims
lender liability
nature of EPA rulemaking authority in Superfund cases

Robin Phelan
Haynes and Boone
Dallas, TX

Richard Meth--Teaches CLE programs on environmental claims in bankruptcy
Friedman Segalbaum
Roseland, NJ

Katherine Heidt--Authored treatise on environmental obligations in bankruptcy
Wayne State University
Ohio

Thomas Salerno
Meyer Hendricks
Phoenix, AZ
602-640-9000

Mass tort claims
ongoing asbestos industry cases
parallel state and federal actions
need for management of the flow of cases because many issues will be multijurisdictional--early judgement could exhaust the fund

Chuck Tatlebaum
Johnson Blakely
813-461-1818

Charles Vihon
Much, Shelist, Freed, Denenberg, Amant

DOJ-Environmental
Joe Gross
514-4353

EPA-Enforcement
John Wheeler
Steve Herman
260-3056

DOI-Solicitor's Office
Shelly Hall
National Assoc. of Attys General
Karen Cordry
434-8000

In both environmental and mass tort claims in bankruptcy cases, there are issues regarding the nature of a bankruptcy claim i.e. pre-petition claim (priority or unsecured) or post petition administrative expense.

6 pp

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

June 8, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2922

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
COMMERCE - Michael A. Levitt - (202)482-3151 - 324
SEC - Kate Fulton - (202)272-2500 - 291
CFTC - Brian Folkerts - (202)254-6372 - 297
FRS - Donald J. Winn - (202)452-3456 - 299
NEC - Sonyia Matthews - (202)456-6722 - 429
FDIC - Alice C. Goodman - (202)898-8730 - 271

FROM: JAMES J. JUKES (for) [signature] for Jim Jukes
Assistant Director for Legislative Reference

OMB CONTACT: Genevieve SIRI (395-3454)
Secretary's line (for simple responses): 395-3454

SUBJECT: TREASURY Proposed Report RE: S 540, Bankruptcy Amendments Act of 1993

DEADLINE: 12:00 NOON June 10, 1994

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Chris Parker
Alan Rhinesmith
Adrien Silas
Donsia Strong

LRM #I-2922

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Genevieve SIRI
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3454
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: TREASURY Proposed Report RE: S 540, Bankruptcy Amendments Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages __________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

Treasury

The Honorable Jack Brooks
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515-6216

Dear Jack:

As Chairman of the President's Working Group on Financial Markets, I am pleased to transmit a proposed amendment to Section 101 (55) of the Bankruptcy Code, which could be included in S.540. The members of the Working Group believe that the proposed amendment would improve U.S. law concerning netting by clarifying the validity of netting of spot foreign currency transactions under the Bankruptcy Code.

The Bankruptcy Code exempts all "swap agreements" from the provisions of the Code relating to the automatic stay, the ability of the trustee to assume or reject executory contracts, preference provisions, and limitations on set-off. The Bankruptcy Code expressly permits a "swap participant" -- that is, an entity that has a pre-bankruptcy swap agreement with a Bankruptcy Code debtor -- to exercise contractual rights to terminate a swap agreement and to offset or net out any amounts owed under such agreement by the debtor. These provisions, enacted as part of the 1990 Bankruptcy Code amendments, are designed to prevent financial gridlock in times of market stress by allowing numerous market participants to mitigate their losses in the wake of the failure of one market participant. They protect not only financial institutions, but also the end users of products covered by the definition of swap agreement, which include small and large multinational corporations. They also encourage other firms to continue to do business with a financially weakened firm, instead of exacerbating the weakened firm's transactional liquidity needs.

The definition of "swap agreement" includes a "forward foreign exchange agreement," other types of agreements, and "any other similar agreement." There is some definitional ambiguity as to whether spot foreign exchange agreements, which have a maturity date of two days or less, are included in the definition and, thus enjoy the protections afforded forward foreign exchange contracts. A number of market participants have interpreted the phrase "any other similar agreement' to include spot foreign exchange agreements. However, the basic ambiguity remains. Providing more certainty to the spot foreign exchange market is clearly worthwhile.

Daily foreign exchange transactions in the United States total almost $200 billion, of which close to one half represents spot trades. While netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 have reduced the uncertainty with respect to market participants that qualify as "financial institutions," 15 percent of the transactions in the spot foreign exchange market are with parties that are not financial institutions. Clear coverage of spot as well as forward foreign exchange transactions will help ensure that the market operates smoothly, even if certain participants experience financial problems. Deleting the word "forward" in front of "foreign exchange agreement" would confirm that spot foreign exchange agreement are indeed covered in the definition of swap agreement, which is the expectation of both financial institutions and their corporate customers in the large and important spot foreign exchange market.

The Working Group on Financial Markets, which includes Chairman Greenspan of the Federal Reserve, Acting Chair Holum of the Commodity Futures Trading Commission and Chairman Levitt of the Securities and Exchange Commission and Under Secretary of the Treasury Newman, has met and reviewed this proposal. Additionally we have consulted with President McDonough of the Federal Reserve Bank of New York. Each of these individuals endorses this proposed amendment as a useful clarification of current law, and we request that the Judiciary Committee consider its inclusion in S.540.

Sincerely,

Lloyd Bentsen

Enclosure

Amendment of Section 101(55) of the Bankruptcy Code to confirm the inclusion of spot foreign exchange agreements in the definition of "swap agreement"

The proposed amendment to the definition of "swap agreement" comprising Section 101(55) of the Bankruptcy Code is shown below:

(55) "swap agreement" means -

(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, [forward] foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(B) any combination of the foregoing; or

(C) a master agreement for any of the foregoing together with all supplements;

<u>Proposed language for legislative history (report language).</u>

Spot foreign exchange transactions constitute close to one half of the almost $200 billion of foreign exchange transactions that take place in the United States each day. Swap market participants often include spot foreign exchange contracts (together with forward foreign exchange contracts) in master agreements for the netting of swap contracts on the belief that they are "other similar agreements" under the current definition of swap agreement. If a court were to find that spot foreign exchange contract was not a swap agreement, the net counterparty exposure under a master agreement that included such contracts could differ substantially from that calculated by the parties, potentially leading to losses in excess of prudential credit limits. While the netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (which provides for the enforceability of netting arrangements which can include spot foreign exchange contracts) have reduced the uncertainty for market participants that qualify as financial institutions, 15 percent of spot foreign exchange transactions involve parties that are not financial institutions.

The deletion of the word "forward" from the phrase "forward foreign exchange agreement" in the definition of the term "swap agreement" in section 101(55) of the Bankruptcy Code would avoid these potential problems by confirming the market understanding that spot foreign exchange contracts, i.e., foreign exchange contracts with a maturity of two days or less, are included in the term "swap agreement." This change does not affect any contract that is invalid under or precluded by applicable law, including the Bankruptcy Code.

NATIONAL BANKRUPTCY CONFERENCE

(a voluntary organization composed of persons interested in the improvement of the Bankruptcy Code and its administration.)

Endowment. . . (Continued from Page 8)
of Law in St. Louis. This grant will partially underwrite expenses for the Washington University Interdisciplinary Conference on Bankruptcy and Insolvency Theory scheduled for February 25-26, 1994. Approximately 17 leading scholars in the fields of law, finance, and economics will present papers covering a remarkably broad range of topics. The papers will be published in a symposium edition of the Washington University of Law Quarterly. Among the participating scholars are Professors Jack Ayer, Doug Baird, Douglas Boshkoff, Ted Eisenberg, Karen Gross, Kathryn Heidt, Michelle White, and William Whitford. Conference commentators will include Professors Alan Schwartz, Elizabeth Warren, Jay Westbrook, and James J. White. The goals of the conference are to promote interdisciplinary communication on bankruptcy issues and to explore the theoretical frontiers of bankruptcy scholarship through group discussion.

Pro Bono Representation Project

Providing assistance for the development of *pro bono* consumer bankruptcy legal aid projects is one of the Endowment's priorities. The Endowment's latest *pro bono* grant was approved in September 1993, when the Board approved a $10,000.00 grant request from the Consumer Bankruptcy Assistance Project ("CBAP") in Philadelphia, Pennsylvania to fund its Fresh Start Clinic. Founded in 1992, CBAP is a joint undertaking by Philadelphia's community legal services programs, the Young Lawyers Section of the Philadelphia Bar Association local law schools, as well as the local bankruptcy judges and prominent members of the bankruptcy bar.

The NCBJ Endowment grant will be used to help CBAP create model training programs, computer software, and resource materials for *pro bono* representation of low income consumer debtors. The grant will also aid CBAP in developing its systems for recruiting volunteer attorneys and maintaining quality control. The resulting materials and systems will then be made available to assist other *pro bono* efforts that are beginning to spring up around the country.

Russian Arbitration Judges' Education

The Endowment Board has approved preliminary funding for an educational program about American bankruptcy and commercial law for Russian judges. In March 1993, Bankruptcy Judges Sidney Brooks of Denver and George Paine of Nashville were invited to visit Moscow for a series of lectures, meetings, and workshops with the judges of the Russian High Arbitration Court organized by the United States Department of State and the American Embassy. The Endowment provided a grant to cover Judge Paine's expenses. Judge Brooks is currently working to finalize a proposal for an exchange visit to bring the Russian judges to the United States for further educational seminars and site visits to several bankruptcy courts. An initial grant of $750.00 was approved to pay for telephone and related organizational expenses. Upon the presentation of a full formal proposal at its October meeting, the Endowment Board gave preliminary approval for a $30,000.00 grant to cover the expenses of conducting an American exchange program for Russian judges in the spring of 1994 under the leadership of Judge Brooks.

Minority Law Student Scholarships

During the 1992/93 and 1993/94 academic years, the Endowment provided $39,000.00 per year to fund scholarships for between six and ten economically disadvantaged minority law students. All of these scholarships are part of the Endowment's continuing partnership with the Council on Legal Education Opportunity program, which is a joint effort of the American Bar Association, the Association of American Law Schools, and national minority bar associations.

1993 AWARDS

The Endowment's annual Excellence in Education award was presented to retired Judge Asa Herzóg in recognition of his pioneering work developing educational programs for bankruptcy judges at the Federal Judicial Center. A silver bowl and a $2,500.00 check were personally delivered to Judge Herzog at his Florida home by Judge Jay Cristol.

The American Bankruptcy Law Journal Editor's Prize went to Professor Douglass Boshkoff of Indiana University for his article, "Bankruptcy-Based Discrimination," published in Volume 66 of the Journal, analyzing the scope of protection provided by Bankruptcy Code Section 525 and leading Supreme Court cases. The award and a check for $1,500.00 were presented to Professor Boshkoff during the NCBJ Conference in Orlando.

1993 PROGRESS REPORT ON PRIOR GRANTS

The Consumer Bankruptcy Study

Professors Warren, Westbrook and Sullivan recently completed the data collection phase of their ten-year follow-up report on their Consumer Bankruptcy Study, which was funded in part by the Endowment pursuant to a 1991 grant of $25,000.00. The purpose of this project was to develop data about 1991 consumer filings that could be compared to the 1981 data analyzed in *As We Forgive Our Debtors*. Several preliminary papers reporting the second phase results have been presented to various sociology conferences. A comprehensive article reflecting the researchers' economic analysis of the data is scheduled for publication in early 1994 in the American Bankruptcy Law Journal.

Historical Business Cases

The Bhandari/Weiss study on comparative interstate filing rates is a follow-up to their recently completed study, "An Historical Analysis in Bankruptcy Filings," which was published in the American Bankruptcy Law Journal in early 1993. Funded in part by a 1992 Endowment grant of $4,000.00, the historical study examined the relationship of debt and income levels, and the rate of consumer and business bankruptcy filings. It concluded that, for both consumer and business cases, the increase in bankruptcy filings experienced since 1979 his attributable to the increased level of debt as a percentage of income, rather than the changes in the bankruptcy law under the Code.

Women Debtors

Professor Karen Gross of New York Law School is in the process of completing her study of women in debt in 19th Century America. Her Endowment grant of $10,000.00 was approved in 1991.

Pro se Filing Patterns

An April 1992 Endowment grant of $15,000.00 has enabled the National Consumer Law Center to undertake a study of *pro se*, consumer bankruptcy filings. Preliminary results of that study were reported by Gary Klein during the program on *pro bono* bankruptcy issues at the 1993 Orlando NCBJ Conference. Chapter 7 *pro se* filers appear to be reasonably successful in completing their cases, but the Chapter 13 *pro se* fallout rate is very high. Across the board, *pro se* filers said that they could not afford to hire lawyers because they were too expensive. A final report is anticipated shortly.

Ninth Circuit Gender Bias Task Force Bankruptcy Survey

In 1992 the Endowment gave a grant of $8,920.00 to the Ninth Circuit Conference to fund a survey of bankruptcy attorneys on issues relating to gender bias in the federal court system. This specialized bar survey was part of the Circuit's pioneering Gender Bias Task Force. The bankruptcy survey results were included in the final report of the Task Force, which was published in August 1993. They were also analyzed in the Report on Bankruptcy Law and Practice, prepared by the Task Force's Advisory Committee on Bankruptcy Law, which has been distributed as an appendix to the final report. Consistent with the results of the Task Force's survey of the general federal bar, the bankruptcy survey showed that women in the bankruptcy practice face both overt and subtle gender bias that affects their professional opportunities and daily life.

FUTURE PLANS

The Endowment Board has been pleased with the diversity and high quality of the research and education projects that it has been able to sponsor during its first three years. It welcomes new grant proposals. Anyone interested in learning more about the specific projects described above may contact the researchers directly or any member of the Endowment Board. The judges who currently serve on the Endowment Board are: Chair, Thomas Small; Secretary, Keith Lundin; Treasurer, James Goodman; Members, Lloyd King, Lisa Fenning, Mary Scott, and David Coar. The Board also thanks its outgoing chair, Charles Clevert, for his outstanding leadership, and its outgoing member, Mark McFeeley, for all of his hard work over the years.

The National Conference of Bankruptcy Judges Endowment for Education Approves Major Grants

By Lisa Hill Fenning

The National Conference of Bankruptcy Judges created the NCBJ Endowment for Education in 1990. Its mission is to fund bankruptcy research and education. During the past three years, the Endowment has supported research on both consumer and business bankruptcy issues, aided *pro bono* bankruptcy projects, provided scholarships for minority law students, and financed programs to educate foreign judges about bankruptcy and commercial law. In the process of becoming the premier source of funding for major empirical research in the bankruptcy field, the Endowment has been able to stimulate a broad range of projects that would otherwise have been impossible to undertake. 1993 marked the launching of the Endowment's most ambitious projects to date.

1993 GRANTS

The Business Bankruptcy Study

During 1992, Michael Bradley and Michael Rosenswelg rocked the bankruptcy world with their controversial article, "The Untenable Case for Chapter 11." Responses to their article included many challenges to their methodology and data. The ensuing academic and legislative debates have revealed the paucity of hard data about the kinds of businesses that file under Chapter 11 and the success rates of their cases.

To address that lack of data the Endowment Board has approved an initial grant for the development of a comprehensive study of business bankruptcies to be conducted by Professor Elizabeth Warren of the University of Pennsylvania Law School, Professor Jay Westbrook of the University of Texas Law School, and Professor Teresa Sullivan of the University of Texas Department of Sociology. This research team is best known as the co-authors of the leading empirical study of consumer bankruptcies, *As We Forgive Our Debtors*.

The Business Bankruptcy Study is designed to generate basic demographic and performance information about the system to provide a solid basis for all those who seek to evaluate its effectiveness and determine whether changes are needed to accomplish the system's policy objectives. The Study will examine the full range of business bankruptcies, including Chapter 7 liquidations, and Chapter 11 and Chapter 13 reorganizations. Data will be collected from bankrupt businesses of all sizes, from sole proprietorships to multinational corporations, and from businesses in a variety of industries, including manufacturing, transportation, retail trade, and personal services. The cases will be sampled from about twenty federal judicial districts, with at least one from each appellate circuit in the United States. Within each surveyed district, a representative sample of business cases will be selected. Altogether the Business Bankruptcy Study will encompass a sample of about 3,000 cases filed during 1994.

The Business Bankruptcy Study will follow each sample case from its filing in 1994 until 1999. The researchers will begin by collecting the data filed with the courts in the bankruptcy case and by examining other publicly available information about the debtor businesses. Through telephone interviews with the debtors' management, additional information will be gathered about each business and the progress of its reorganization, including the causes and the results of the bankruptcy filing.

The wide scope of the study and its five-year longitudinal design will permit analyses that have never before been undertaken. For example, the data should offer insights into the early signs of failure in Chapter 11 reorganizations and of the impact of early versus delayed termination of failing businesses. The data collected will show how the businesses fare after filing and the impact of the bankruptcy on different parties, including unsecured creditors and the company's employees. The study design will also permit comparison of different forms of judicial case management techniques, and should yield insights into the types of businesses that do well or badly in reorganization.

The initial grant approved by the Endowment will provide $220,000.00 for the ground-breaking empirical study, which should fund the completion of a pilot study and the first phase of the project. The researchers have already contacted experts in the Administrative Office of the Courts, the Federal Judicial Center, and the General Accounting Office to assure maximum coordination of ongoing research and data collection efforts. Formal approval of the project by the researchers' universities is anticipated shortly, with data collection to be in early 1994.

The project is also being sponsored by University of Texas Law School through its newly endowed Arthur L. Moller Chair in Bankruptcy Law and Practice. Other co-sponsors will be invited to participate, with the expectation that substantial funding will be forthcoming from a variety of sources. The Endowment is committed to assuring that the necessary funding will be available to complete the entire five-year study as proposed in the grant request.

Large Chapter 11 Cases

Although the Business Bankruptcy Study is undoubtedly the largest project ever undertaken in the empirical study of business bankruptcies, the Endowment is also active in funding other studies of Chapter 11.

Most notably, during 1993 the Endowment provided supplemental funding to Professors Lynn M. LoPucki and William C. Whitford of the University of Wisconsin Law School to complete their research on Chapter 11 reorganizations of publicly-held corporations. The results have just been published as "Patterns in the Reorganization of Large, Publicly Held Companies," 78 *Cornell L. Rev.* 597 (1993). This study of 43 of the largest corporate filings concludes that Chapter 11 enabled some companies to correct the operational problems that caused the filing. The most striking conclusion, however, is that 32% of the surviving entities refiled within a few years, with the data suggesting that these refilings resulted from confined plans that burdened the companies with heavily overleveraged balance sheets.

The Consumer Choices Study

The Endowment Board approved a new consumer bankruptcy research project designed to explore the economic, demographic and cultural factors that lead consumers to elect to file under Chapter 7 as opposed to Chapter 13, and consumers' comparative degree of satisfaction with the outcomes they achieve under the two chapters. The grantee is Professor Tahira Hira of Iowa State University Law School. The initial grant of $11,000.00 will increase to $55,000.00 upon the successful completion of a pilot study. The study will examine a random survey of consumer bankruptcy filings, using court data as well as interviews with debtors and trustees.

Study of Variations in Interstate Filing Rates

In January 1993, the Board approved a $14,350.00 grant to Professor Jagdeep Bhandari of Duquesne University Law School and Professor Lawrence Weiss of Tulane University School of Business for their study entitled, "An Analysis of the Variations in Interstate Bankruptcy Filings." The study will examine what characteristics of the legal and economic environments in the various states can explain the significant differences in their respective bankruptcy filing rates. The goal of the study is to develop an econometric model which can be used to predict future trends in filing rates. Such a model might suggest the desirability of changes in state law or local customs and practices, as well as aid in the allocation of future bankruptcy judgeships. The study is expected to be completed by the end of 1993.

Bankruptcy Law Symposium

At its October 1993 meeting, the Endowment Board approved a $7,500.00 grant request by Professor Lynn LoPucki on behalf of his new academic home, Washington University School

(Continued on Page 9)

STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
3699 Wilshire Boulevard, Suite 900
Los Angeles, CA 90010-2739

TELEPHONE (213) 251-5100
TELECOPIER (213) 251-5288

FAX TRANSMISSION

FROM: Robert A. Greenfield

DATE: April 26, 1994

Number of pages: 4
(including this page)

TO:	COMPANY/PHONE:	FAX NUMBER:
1. Ms. Ellen Seidman		202-456-2223
2. The Honorable Howard Berman	202-225-4695	202-225-5279

Sender's Comments:

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STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
3699 WILSHIRE BOULEVARD
SUITE 900
LOS ANGELES, CALIFORNIA 90010-2739

TELEPHONE (213) 251-5100
FACSIMILE (213) 251-5288
WRITER'S DIRECT NUMBER:
(213) 251-5130

April 26, 1994

VIA TELECOPIER

Ms. Ellen Seidman
Special Assistant to the
President for Economic Policy
The White House
Washington, DC

Dear Ms. Seidman:

I have practiced law for the past 27 years, specializing in bankruptcy and corporate reorganization. My emphasis is in debtor representation. I am a member of the National Bankruptcy Conference (the "Conference") which is composed of approximately 60 law professors, judges and practitioners located throughout the United States who are interested in the improvement of the bankruptcy system. I am Chairman of the Conference's Committee on the Court System. I have enclosed my resume for your information. The Conference was instrumental in the enactment of the present Bankruptcy Code in 1978 and has been very involved in the legislative process both before and after the Code was enacted. Enclosed for your information is the Conference's letterhead which includes its membership.

I am advised that the White House National Economic Counsel (the "Counsel") is hosting a series of working groups with invited professionals and academics to better understand the bankruptcy process and, in particular, chapter 11. Congressman Howard Berman has suggested that I contact you with respect to my interest and the interest of selected members of the Conference in attending such working groups so that our views may be expressed to the Counsel. Thank you for your consideration.

Sincerely,

ROBERT A. GREENFIELD

RAG/di

cc: The Honorable Howard Berman

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[001]

BIOGRAPHICAL SKETCH

ROBERT A. GREENFIELD, [redacted] admitted to bar, 1967, California. Education: University of California at Los Angeles (B.S., 1963); Harvard University (J.D., cum laude, 1966). Fraternity: Phi Beta Kappa. Author: "Lines v. Frederick: The Effect of Bankruptcy on a Bankrupt's Accrued Vacation Pay and Other Forms of Deferred Compensation," 47 Los Angeles Bar Bulletin 1971; "Alternatives to Bankruptcy for the Business Debtor," Los Angeles Bar Bulletin 135, 1975; "The Bankruptcy Code and Article 9 Secured Creditor," The Business Lawyer, April, 1978; "The National Bankruptcy Conference's Position on the Court System Under the Bankruptcy Amendments and Federal Judgeship Act of 1984, and Suggestions For Rules Promulgation," 23 Harvard Journal on Legislation, Summer 1986; Adjunct Professor of Law, Loyola University School of Law, 1978-1983 (Corporate Reorganization)). Member, National Bankruptcy Conference, 1974 to present, and Chairman, Committee on Procedure and Courts System (1983 to present); Member: Los Angeles County (Editor, Bankruptcy Law Matters, Commercial Law and Bankruptcy Digest, 1973-1975) and American (Member, Subcommittee on Secured Transaction, Section on Business Law, 1974 to present; Business Law Section) Bar Association; The State Bar of California (Member, Committee on Uniform Commercial Code, 1977-1979, Business Law Section). Frequent lecturer for California Continuing Education of the Bar, Prentice Hall and American Law Institute/American Bar Association.

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425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

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COLUMBUS

WRITER'S DIRECT DIAL NUMBER
(212) 455-7355

May 6, 1994

Ms. Ellen Seidman
Special Assistant to the President
for Economic Policy
Room 233
Old Executive Office Building
17th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Ms. Seidman:

I am reading in various publications, particularly Bankruptcy Court Decisions, of the work of the National Economic Council's Bankruptcy Working Group. The articles identify you as the lead member of the Working Group. I am writing to offer our firm's assistance to your project in any way that you may perceive useful. Our firm, as you know, is a large "Wall Street" firm. We have a diversified client base and thus no particular agenda in bankruptcy reform save the general improvement of the process.

We have played a significant role in most of the major business reorganizations of the past few years, representing debtors, creditors (secured and unsecured, domestic and foreign, bank, trade, etc.), mediators, unions, purchasers of assets, *pro bono* clients and so on. If we can serve as an additional sounding board or contribute our views on any topic, we would be pleased to do so as the public service expected of our profession. I believe no less than 4 former partners or associates of this firm are presently serving in the Administration and would, no doubt, serve as references as to any of the foregoing.

The most recent issue of Bankruptcy Court Decisions referred to a number of topics the Working Group is examining. I assume the topics you are actually examining exceed those reported, but I want to call to your attention a couple of topics not mentioned in that article that I think you should be considering:

> Have the recent emergence of an active secondary market in "distressed" securities (and bankruptcy claims that may not be securities) and the activities of the principal players in that market been a positive or negative development for business reorganizations? Should that market be regulated in any fashion?
>
> Should recent *ad hoc* experiments in alternative dispute resolution in business reorganizations be encouraged and, if so, regularized in some fashion?

In the event you wish to contact me concerning any of the foregoing, my business card is enclosed. We are available at your convenience.

Sincerely,

Mark Thompson

Mark Thompson

Enclosure

LAW OFFICES
HASKELL SLAUGHTER YOUNG & JOHNSTON
PROFESSIONAL ASSOCIATION
1200 AMSOUTH/HARBERT PLAZA
1901 SIXTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
FACSIMILE (205) 324-1133
TELEPHONE (205) 251-1000

MONTGOMERY OFFICE
BAILEY BUILDING, SUITE 375
400 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36104
MONTGOMERY MAILING ADDRESS
POST OFFICE BOX 4660
MONTGOMERY, ALABAMA 36103-4660
FACSIMILE (205) 264-7945
TELEPHONE (205) 265-8573

WRITER'S DIRECT LINE: (205) 254-1435

PLEASE REPLY TO: BIRMINGHAM

May 5, 1994

Ms. Ellen S. Seidman
Special Assistant to the President
for Economic Policy
National Economic Council
The White House – NEC, Room 233
Old Executive Office Building
Washington, D.C. 20500

Dear Ms. Seidman:

I wanted to compliment you and articulate my appreciation for your participation in the recent ABI conference conducted in Washington, D.C. I believe your participation in the panel discussion on the government's role in bankruptcy was extremely helpful and insightful. Although we had the opportunity to only briefly meet, I wanted to more formally introduce myself and offer any services or insights that I might have to the legislative process. As you may know, I was formerly Senator Heflin's bankruptcy counsel and was largely responsible for the initial drafting and work that took place during the course of the 102nd Congress on Senator Heflin's bankruptcy reform legislation. To that end, I have particular insight and point of view as to how the government can help Congress coordinate and develop policy as it relates to bankruptcy questions.

Specifically, as was noted during the panel discussion, it is vital for the various interests who may have concerns about bankruptcy issues as they affect the economy to coordinate and provide a coherent view to Congress. However, this view must be timely and coherently communicated. Last minute efforts to participate in the policy debate as has taken place both in the 102nd and 103rd Congresses' consideration of bankruptcy reform legislation results in a substantial waste of efforts.

I believe a number of very wise and thoughtful persons who understand bankruptcy policy are currently in government service in Washington and could also be of service to your group. Most notably, Jerry Patchen, who is the lead bankruptcy counsel for the Resolution Trust Corporation, is an outstanding individual who I would suggest to you would have the knowledge, expertise and experience as a resource as you seek to coordinate bankruptcy policy for the federal government.

As I previously mentioned, I want to compliment you on both of your participation at the ABI conference and your and the President's recognition that bankruptcy policy is important enough to be considered and coordinated on a national scheme. To the extent I can ever be of service, please do not hesitate to call upon me.

Very truly yours,

R. Scott Williams

RSW:ra:111334.1

CHAMBERS OF LISA HILL FENNING
kruptcy Judge
Roybal Building
255 East Temple Street, Suite 1682
Los Angeles, California 90012
(213) 894-2553
FAX: (213) 894-3731

May 5, 1994

Ellen Seidman, Esq.
Special Assistant to the President
National Economic Council
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

RE: Bankruptcy Study Followup

Dear Ellen:

Thank you for taking the time to meet with us on Monday. We appreciate your thoughtful interest in the bankruptcy process, and hope that our comments were helpful.

I have spoken with Judge Louise DeCarl Adler, the President-Elect of the National Conference of Bankruptcy Judges, about possible NCBJ funding for those bankruptcy judges whom you may wish to invite to Washington to participate in your on-going series of bankruptcy seminars with the Bankruptcy Working Group. She was receptive to the general idea and will be expecting your call to learn more about what you have in mind. Her telephone number in San Diego is 619/557-5661.

As promised, I enclose the most recent volume of the American Bankruptcy Journal which contains the article we mentioned by Daniel Skolar about the interaction of bankruptcy with social security and aging. Also enclosed is a summary of the empirical research and other projects currently being funded by the National Conference of Bankruptcy Judges Endowment for Education. The Endowment is currently the primary source of funding for bankruptcy research on an on-going basis. The ABI, of course, also funds specific projects on a periodic basis, like the Professional Compensation study, and now the Statistical Study.

In connection with our discussion about <u>stare decisis</u> and the bankruptcy appellate structure, you may find helpful the thoughtful letter from Nate Feinstein that launched the American Bar Association's Joint Litigation and Business Law Section Task Force on Bankruptcy Court Structure. As we mentioned, that Task Force is in its early organizational phase and will next convene at the ABA's Annual Meeting in New Orleans this August. My enclosed

Jen. CC.

HAYNES AND BOONE, L.L.P.
ATTORNEYS AND COUNSELORS AT LAW

1300 BURNETT PLAZA
FORT WORTH, TEXAS 76102-4706
TELEPHONE 817/347-6600
FAX 817/347-6650

AUSTIN
DALLAS
FORT WORTH
HOUSTON
SAN ANTONIO

WRITER'S DIRECT DIAL NUMBER:

817/347-6610

May 3, 1994

Ms. Ellen S. Seidman
National Economic Council
The White House - NEC
Room 233 OEOB
Washington, D.C. 20500

Re: Bankruptcy Reform

Dear Ellen:

I appreciated your participation in the discussions during ABI's meeting last week. While ABI has always enjoyed good lines of communication with Congress, we have not always been able to nurture that relationship with the executive branch of government.

I wanted to take you up on your offer for volunteers to assist the working groups within the administration discussing various bankruptcy issues and possible reforms. If I can be of any assistance, whether by phone or in person, please feel free to call.

Additionally, I am a member of an ABI task force working on a project that will conduct a national survey in the near future to identify specific areas for improvement. If you would like to suggest some specific areas where empirical data would assist your working groups, I would like to hear from you. The next meeting of our task force will be in early June and I would appreciate some input from you before then.

I look forward to hearing from you in the near future.

Sincerely,

John D. Penn

John D. Penn

JDP
f-0022561.01

article about "Litigation by Other Means" may give you a better feel for the nature of the interaction of bankruptcy court decisions and state commercial law on a practical level.

I also enclose a copy of an analysis of last year's version of S. 540 by the Commercial Law and Bankruptcy Section of the Los Angeles County Bar Association. Its commentary on the draft language of the bill focused on the need for careful drafting and an understanding of how proposed legislative changes can be implemented in the courts, whatever policy choices are made.

Please do not hesitate to contact me if I can be of further assistance to you or the Working Group as you continue your examination of the bankruptcy system.

Very truly yours,

Lisa Hill Fenning

Lisa Hill Fenning
United States Bankruptcy Judge

Encl.

cc: Hon. Leif M. Clark (w/o encl.)
Hon. Louise DeCarl Adler (w/o encl.)