



WESTCHESTER COUNTY BAR ASSOCIATION NEWSLETTER

February 2005



President's Message

By Hon. Sam D. Walker

The long awaited move of the County and Family Courts to the Annex has been completed. The move was smooth and without incident; it was well coordinated and I must congratulate the office of

the Administrative Judge of both the 9th District as well as the Criminal Courts. As in any move to a new facility, there are always bugs to be worked out. Workers are addressing the outstanding issues continuously. For the most part, all of the courtrooms are up and running. Some logistical questions will be addressed regarding conducting jury *voir dire* and the movement of in-custody defendants during their trials, but these are not insurmountable. Westchester jurists are resourceful and creative and will adapt to the configuration of the new facilities.

Attorneys and litigants will find Criminal Court Judges DiFiore, Bellantoni, DeBella and Molea on the 3rd floor of the new Annex. Judges Angiolillo, Walker, Zambelli, Alessandro and Adler are located on the second floor. Judges Loehr and Colangelo as well as the visiting judge's court room are located on the first floor. Family Court judges Cooney, Edlitz and Davidson are located on the 3rd Floor. The Support Magistrates are located on the second floor. The Mental Health Legal Services Program and Pace Women's Justice Center are also located on the 2nd Floor. The Clerk's Office for filing petitions is located on the 1st floor. There are no robing rooms in the annex and the judges' chambers are located in an area behind the Courtrooms. As a result, the corridor leading to chambers will be treated as a secure area. Court Officer permission will be required to go beyond the courtrooms to speak to law secretaries, clerks, or to

Continued on page 9

House of Delegates Report

By Ronnie Gouz Berman

The House of Delegates met on Saturday, November 6, 2004 in Albany. Westchester County was very well represented by not only the delegates and vice president selected from the ninth judicial district, but other active members of our bar that are delegates in connection with their positions within the state bar.

Vice President from the ninth judicial district Henry Berman, past presidents of the Westchester County Bar Association Jack Geoghegan and Frank M. Headley, Jr., as well as our Association's President-elect, John S. Marwell, Vice Presidents Hon. Adam Seiden and Anthony J. Enea, Secretary Ira S. Goldenberg, directors Mayo Bartlett, Ronnie Gouz Berman, and Peter Zeltner attended the November meeting.

The Agenda for this meeting was quite ambitious, with issues that were particularly current and relevant. In response to the September announcement of the Board of Law Examiners' plans to raise the passing score, the House of Delegates reaffirmed its opposition to an increase until the relevant studies as to the impact on diversity could be generated as well as making public the record generated from the public hearings held by the Board.

Continued on page 11

The Rights of Nursing Home Residents	3
Risks to Clients of Allowing Delinquent Customers to Return Goods	4
CLE Calendar and Registration Form	7-8
Classifieds	15

WCBA & WCBF UNITE FOR 2005 PACE SCHOLARSHIP AWARD

The Westchester County Bar Association (WCBA) and the Westchester County Bar Foundation (WCBF) have joined forces in creating **The Westchester County Bar Outstanding Law Student Award** that is given each year to a student attending Pace University School of Law. The scholarship, in the amount of **\$3,000.00**, will be awarded in the name of the Westchester County Bar Association and the Bar Foundation, to a Pace law student based upon **outstanding academic excellence, demonstrated leadership and commitment to public service.**

The scholarship award will be presented at the fall 2005 Pace Law School Scholarship Ceremony and at the WCBA Annual Banquet held on May 18, 2005 at the Westchester Marriott.

To be eligible for consideration, applicants must be second year day students or third year night students at Pace University School of Law and must also be a student member of the Westchester County Bar Association. Applications are available through Dean D'Agostino's office or on-line.

All interested students meeting the above requirements should submit a letter of interest with a resume that includes current GPA and class rank along with a brief statement regarding personal goals and commitment to the Westchester Community. Submissions should be sent to Dean Angela D'Agostino, Dean of Law Students. **The 2005 submission deadline is Monday, April 4th 2005.** If you have any questions, please contact Dean D'Agostino at Pace Law School 422-4146, or Executive Director Amy Patterson at the WCBA office (914) 761-3707, Ext. 16.

Lawyers Must Report Misconduct

The American Bar Association Standing Committee on Ethics and Professional Responsibility has concluded that lawyers have an ethical responsibility to report misconduct by other lawyers if the misconduct raises a substantial question about the offending lawyer's honesty, trustworthiness or fitness to practice law, even if the conduct is totally removed from legal practice and even if the misbehaving lawyer does not practice law.

However, if reporting the lawyer's misconduct would reveal client confidences, the lawyer considering making the report must first obtain the client's consent. Clients, of course, may have a variety of reasons for refusing their consent.

The misconduct may be criminal, may involve dishonesty, fraud, deceit or misrepresentations, or may be minor. However, the Committee rules that repeated acts of minor misconduct may indicate an indifference to legal obligations. Neglecting to report a colleague can compromise the independence of the profession and the public interest, but the duty of confidentiality "trumps" the reporting obligation.

Computer Headaches?



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The Rights of Nursing Home Residents

By: Anthony J. Enea, Esq.

After enduring the stress of placing a loved one in a nursing home, it is not unusual that many families fail to familiarize themselves adequately with the rights and remedies to which their loved one is entitled as a nursing home resident.

For many years, nursing homes were places where a significant number of residents were over-medicated and subjected to the use of physical and chemical restraints. Sadly, such restraints were often used to control the homes' residents rather than for medical reasons.

Fortunately, the New York Legislature adopted a Bill of Rights for all nursing home residents, which is codified in Public Health Law §2803-C. The Bill of Rights has been declared to be the public policy of the State of New York, and requires all nursing home residents to be treated in accordance with its terms. The Commission of the Department of Health has adopted regulations regarding residents' rights in 10 NYCRR §415.3. Additionally, §544-A of the Executive Law provides for a long time care Ombudsmen to be assigned to, and to act as the representative of, each resident in every nursing home.

As attorneys, we are also being called upon by

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Significant Personal Injury & Medical Malpractice Settlements in 2004

- \$ 6,250,000.00: **Medical Malpractice** - Brain Injury to mother of three (Westchester Cty)
- \$ 1,550,000.00: **Medical Malpractice** - Epidural - Spinal Cord Injury (Stamford Superior Court)
- \$ 900,000.00: **Medical Malpractice** - Severed spinal cord during surgery resulting in death (Westchester Cty)
- \$ 700,000.00: **Motor Vehicle Accident** - Compression fracture L2, ORIF, Scar (Rockland Cty)
- \$ 600,000.00: **Motor Vehicle Accident - Wrongful Death** - 27 y/o single woman, no children (Westchester Cty)
- \$ 490,000.00: **Medical Malpractice**—Unnecessary surgeries resulting in damaged kidney (Westchester Cty)

our clients with increasing frequency to address issues relevant to the care and treatment of nursing home residents. The following is intended to be illustrative of some of the basic rights and remedies to which nursing home residents are entitled. The Bill of Rights provides, *inter alia*, that each resident of a nursing home is entitled to the following:

A. Each resident must be fully informed, as evidenced by a written acknowledgment, of his or her rights, and be provided with an explanation of the rules and regulations of the facility. The resident must also be informed of his or her obligations to respect the personal rights and property of other residents and patients.

B. Each resident must be provided with a written statement of the services available at the home, and any charges related thereto, including any charges not paid by a third party provider (*e.g.* Medicaid or private insurance).

C. Each resident must be informed verbally and in writing, at the time of admission and again at the time of transfer, of the nursing home's bed retention policy a/k/a "bed hold" or reservation policy.

This is perhaps the area that creates the greatest consternation for the resident, his/her family, and the Elder Law attorney representing them. The "bed hold" policy insures that a resident will have a bed to return to if he or she is transferred to a hospital for treatment. Whether or not the resident will be responsible for the cost of the bed during the "bed hold" period is a determination contingent upon a number of factors, including the vacancy rate at the nursing home, whether or not the resident was in the nursing home for more than 30 days prior to the transfer, and whether the resident was absent from the home for 20 days or fewer. If a "bed hold" payment is available from Medicaid, the nursing home must apply for it. The nursing home cannot refuse admission because it did not apply for the

Continued on page 14

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RISKS TO CLIENTS OF ALLOWING DELINQUENT CUSTOMERS TO RETURN GOODS

By Lawrence R. Reich

Commercial clients who have dealt with a troubled business which is delinquent in payment are well acquainted with the conventional wisdom of accepting payment and worrying about returning the payment to a bankruptcy trustee later if the customer files a Chapter 7 (liquidation) bankruptcy case. What they may not know, however, is that they are making the same tradeoff when they allow a delinquent customer to return goods for full credit. Surprising though it may seem, accepting the return of goods shipped within the ninety day bankruptcy preference period set forth in the Bankruptcy Code puts them in the same position as accepting payment on a past due debt.

A "preference" or "preferential transfer" under 11 U.S.C. §547(b) occurs when a creditor obtains payment on a delinquent account which puts the creditor in a better position than other similarly situated creditors, and the customer files a Chapter 7 case within ninety days. The theory is that all similarly situated creditors should be treated equally.

A "preferential transfer" does not have to be a cash or monetary transaction. Courts have held that the transfer of anything with "debt paying" or "debt securing" power can be a preference if the other criteria for a preference under 11 U.S.C. §547 are met.

Accepting a payment constituting a preference is neither illegal nor unethical. It simply means that your client may later be requested by a Chapter 7 trustee to return all or part of the payment received so as to avoid being sued in a preference action. Under certain circumstances, a client may avoid having to return payments received on account of past due debts on the basis that the payment was made "in the ordinary course of business", that there was a "contemporaneous exchange" or that "new value" was extended to the delinquent customer by shipping additional goods. See 11 U.S.C. §547(c).

Most companies understand the risk undertaken when accepting a payment which may later turn out to be preferential, reasonably concluding that the best course of action is to accept the payment anyway since the worst that can happen is that the payment will need to be returned.

What a client may not understand is that much the same analysis and risk exists when a delinquent customer is simply allowed to return the goods shipped to it some time before for full credit in the amount originally invoiced. When goods are shipped to a customer on an open account or with an invoice to be paid in the days or weeks following delivery, those goods become the customer's property once they are delivered. The fact that the customer is then unable to pay for the goods shipped to it does not affect the customer's ownership of the goods. Rather, the customer now has property with a value arguably equal to the invoiced price.

As a result, when a client convinces a delinquent customer to return the goods shipped and agrees to "call

Continued on P. 12

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Earthquake/Tsunami Relief

The earthquake and subsequent tsunami in South-east Asia has wreaked devastation unlike any known in modern times. The people of the world are reaching out and the United States Congress passed legislation permitting taxpayers who donate to relief agencies by January 31, 2005 to deduct their donations from their 2004 taxes. Although this deadline has now passed, we hope that you will consider making additional donations to what will be an enormous and ongoing effort. Below is a partial list of charities accepting donations.

AMERICAN RED CROSS
International Response Fund
P.O. Box 37243
Washington, DC 20013

CARE
151 Ellis Street
Atlanta, Ga. 30303

DIRECT RELIEF INTERNATIONAL
27 S. La Patera Lane
Santa Barbara, CA 93117
To Donate by phone:
(805) 964-4767, or
Fax: (805) 681-4838
http://www.directrelief.org/sections/our_work/asia_earthquake.htm

DOCTORS WITHOUT BORDERS
P.O. Box 1856
Merrifield, VA 22116-8056
<http://www.doctorswithoutborders.org/>

INTERNATIONAL MEDICAL CORPS
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Attention Members and Affiliates

PT Assistant Staff Editor Wanted

Experienced professional wanted approx. 10-12 hrs/wk. Must be skilled in Word, Photoshop, Acrobat, PageMaker and InDesign and have excellent proofreading and writing skills as well as a good eye for detail and layout; must be able to take direction and produce quality work on a deadline. Office located in White Plains, NY. Candidates may e-mail a letter of interest and a resume to amypatterson@wcbany.org.

Gossip for 2005

By James M. Rose

Gossip Columnist Bjorn Otto Wettloch from the tabloid "New York Daily Voyeur" has lent his services to this Newsletter to let us in on the latest rumors for 2005.

For example, he posits that the reason that the new Family Court annex does not have any offices for the court clerks is that the Office of Court Administration plans to outsource all of their jobs to India and Pakistan. If it works, they'll cut down on the expense of actual courthouses by creating CyberCourt, requiring all cases to be tried by email...DA Pirro's book has been optioned to Disney who plans a full length animated feature based upon it, to be released in its own recognition in 2006... Which attorney recently served an EBT notice to take a vow of silence?... and which judge plans to leave the bench with his family?...Title Companies will begin offering Mad Cow Disease insurance to insure your metes...The same company, which claims to be growing by metes and bounds, reminds us that a truly happy person is someone who is content with his lot -- even if it is less than an acre... What prominent elected official has sworn to give up press releases for Lent?...Which Westchester attorney brought a Med Mal case against a heart surgeon for a failed cookie transplant?...The Democrats swept the recent local judgeship elections, but their cases may still be monitored for quality control assurance by the Department of Homeland Security. Finally, remember, if you can't say something nice about someone -- talk to me!

Read more about Bjorn Otto Wettloch and the "Daily Voyeur" in Jim Rose's recently released book The Supreme Court Jester, available at www.xlibris.com, or at a slightly higher price at amazon.com and [Barnes and Noble BN.com](http://BarnesandNoble.com). Many of the ninety-eight pieces in the book appeared in this Newsletter or the *Westchester Bar Journal*.

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Plaintiffs' Windfalls a Myth

Media misrepresentation of awards in employment discrimination lawsuits has created an exaggerated perception of how often and how much plaintiffs win, according to a recently published American Bar Foundation study which appears in "Media Misrepresentation: Title VIII, Print Media, and Public Perceptions of Discrimination Litigation", Stanford Law and Policy Review, 2004. The study found that, in a sample drawn from 10 major newspapers and periodicals, the plaintiff win rate of 85 percent was more than two and a half times the actual data's 32 percent. The median reported award was more than seven times the actual: \$ 1.1 million, compared with \$150,000.

Study quoted with permission from the author.

THE PACE WOMEN'S JUSTICE CENTER
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If you are interested, please call the Pace Women's Justice Center at (914) 422-4069.

Lien Law Explained

The Construction Law Committee met on January 12, 2005 to welcome in the new year with a sizable crowd of attendees to listen to Hon. Michael J. McDermott speak about the mechanics of Construction Law Lien Law at Dooley Mac's in White Plains. With the generous support of sponsor First American Title Insurance Company, members learned about the contents of liens for public and private improvements, calculating the amounts of liens and time periods for filing liens, methods of discharging liens and foreclosing liens. Condominium law also was discussed.



R to L: Nancy Scovotti, Sponsor, with Hon. Michael J. McDermott, Speaker.



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WCBA CLE CALENDAR OF EVENTS

Unless otherwise indicated, approved New York CLE credit types for each seminar will be determined as seminar materials are prepared. If you have any questions please call (914) 761-3707 ext. 13. (T) indicates program which qualifies as Transitional for newly admitted attorneys.

FEB 07, MON. TRUST and ESTATES SECTION

Chair: Gary E. Bashian, Esq.

Topic: **“Estate Planning For The Small to Mid-Size Estate: To Credit Shelter or Not to Credit Shelter: Renunciation” (DISCLAIMER) Trusts; Gift Giving Powers in Powers of Attorney; Health Care Proxies; Living Wills; and General Medicaid Rules- (T)**

Speakers: Susan Brown, Esq., Howard Krooks, Esq., Lisa Newfield, Esq., Karen Walsh, Esq

Place: Hudson Valley Bank

21 Scarsdale Rd., Yonkers

Time: 5:30 PM – 8:00 PM.

Price: \$35.00 Mem./ \$50.00 Non-Mem

2 Credits of Professional Practice (Includes Supper)

Sponsor: Hudson Valley Bank

*****LAWYERS MUST ATTEND BOTH SESSIONS*****

FEB 9, WED ADULT GUARDIANSHIP COMMITTEE

FEB 10, THUR. Chairs: Patricia Bave-Planell, Esq. and Allison Guthrie Fischer, Esq.

Topic: **Part 1 & 2: LAWYER TRAINING for Guardians, Court Evaluators & Attorneys for Alleged Incapacitated Persons (T)**

Speakers: Charles F. Devlin, Esq., Bernard A. Krooks, Esq., Hon. John M. Perone, Lisa Herman, Esq., Colleen Lundwall, Esq., Eileen Songer McCarthy, Esq., Frances Pantaleo, Esq.

Place: Wachovia Offices at 360 Hamilton Ave.
White Plains, NY

Time: 4:00 p.m. – 7:00 p.m.

Price: \$60.00 Mem./ \$90.00 Non-Mem **Includes BOTH**

6 Credits 1.5 CLE Credits of Ethics &

Sponsor: Wachovia

4.5 CLE credits of Professional Practice (Includes Supper)

*****Lawyers MUST attend both sessions*****

FEB 16, WED. FAMILY LAW SECTION

Chairs: Neil Fredman, Esq. Program Chairs: Neil Kozek, Esq. and Mitchel Cohen, Esq.

Topic: **“Dealing with Mental Health Witnesses, Reposts and Testimony in Contested Custody Cases” (T)**

Speakers: Timothy Tippins, Esq., Jeffrey P. Wittmann

Place: Whitby Castle
Rye, NY

Time: 5:30 p.m. – 8:00 p.m.

Price: \$70.00 Mem./ \$90.00 Non-Mem

2 Credits of Skills (Includes Supper)

Sponsor: Lexis Nexis (500 co-sponsorship)

MAR. 3, THUR. BANKRUPTCY COMMITTEE

Chairs: Sidney Turner, Esq.

Topic: **“Intersection of Bankruptcy and Matrimonial Law” (T)**

Speaker: Adlai S. Hardin USBJ, SDNY, Melanie Cyganowki USBJ, EDNY, Mark Dillion JSC NY

Place: Whitby Castle
Rye, NY

Time: 11:00 a.m. – 2:00 p.m.

Price: \$50.00 Members \$75.00 Non-members

Credits: 2 Credits Professional Practice (Includes Lunch)

Co-Sponsor: Citibank, NA

MAR. 10, THUR. LABOR & EMPLOYMENT COMMITTEE and ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Chairs: William D. Frumkin, Esq., Edward F. Beane, Esq. Ruth Raisfeld, Esq.

Topic: **“Mediation of Employment Discrimination Suits” (T)**

Speaker: Michael Bertty: Director of the EEOC Mediation Program New York District Office

Place: Laguna Restaurant
189 E. Post Road, White Plains

Time: 5:30-7:30 p.m.

Price: \$35 Mem/ \$50 Non-Mem

Credits: 2 Credits Skills

MAR. 14, MON ELDER LAW COMMITTEE

Chairs: Anthony J. Enea, Esq. & Antonia Martinez, Esq.

Topic: **“SSI, SSD, and Community Medicaid” (T)**

Speaker: Joan Lensky Roberts, Esq., and Fran Pantaleo, Esq.

Place: Berkeley College, Rm. 315
99 Church St., White Plains

Time: 8:00 a.m. – 10:00 a.m.

Price: \$25.00 Mem/ \$35.00 Non-mem

Credits: 2 Credits Professional Practice (Includes Breakfast)

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file pleadings. The Tower and Annex share a new lobby area. As you pass through security, the entrance to the County Court is to the left and to the Family Court is to the right. There is stair and elevator access to each floor.

The entire Courthouse staff will be assigned new telephone numbers, and the 995 exchange will be replaced with 824. A directory will be published as soon as possible. Until a new directory is published, you may access the Court through the Calendar Clerk's Office. The number for the Criminal Calendar Clerk is (914) 824-5400 and the Civil Calendar Clerk can be reached at (914) 824-5300.

As a final note and on a different subject, I must remind you that The Westchester County Bar Association has a long-standing tradition of protecting its membership from unnecessary intrusion through the unauthorized use of its mailing list. It has been and will continue to be our policy to limit the use of our mailing list for the following purposes: announcement cards for address changes, formation of firms, partnerships/associations, or when a member is pursuing an elected position. The WCBA membership list and its contents are proprietary and may not be reproduced in any manner from any source, including but not limited to: labels, our desk book, or website.

We have made our list available to the members of the Association with the understanding that its use will be for authorized purposes only. Accordingly, we require the requesting member to sign a statement that the list [label] will be used "... only once for an authorized purpose and not for any personal or commercial purpose.."

The misuse of our mailing list will not be tolerated. We have a duty to protect our membership, including law firms. In order to do so we must strictly enforce these rules.

Lawyers on the Move

Susan L. Pollet, Executive Director of the Pace Woman's Justice Center and former WWBA President recently published the following articles: "The Juvenile Death Penalty", New York Law Journal, October 13, 2003, p. 4, and "To Seal or Not To Seal - The Open Adoption Records Debate", New York Law Journal, January 4, 2005, p. 4.

WCBA member Lisa Solomon was recently featured in the "Success Stories" column at www.JDBliss.com.

*You are Cordially Invited
to the
WCBA 2005 Annual Meeting for Member*

March 17, 2005 at 6:00 p.m.
at the Scarsdale Golf Club in Hartsdale, NY

Cocktail Reception with passed hors d'oeuvres, complimentary beer, wine & soda

Dinner Meeting starts at 7:00 p.m. and features:

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The Election of Officers and Directors

Election of Members of the Nominating Committee

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House of Delegates Report, Cont'd from page 1

An honor was bestowed on Past President of the New York State Bar and colleague from the Ninth Judicial District, Robert L. Ostertag of Poughkeepsie. He was congratulated for receiving the Donald C. Rikli Lifetime Achievement Award from the American Bar Association's General Practice Solo and Small Firm Sections.

The Chair of the Committee on By-Laws made a presentation which provided for various amendments to the by laws of the association which had been approved in a special Association meeting and which, in short, provided for additional seats in the House and representation on the Executive Committee to further racial and ethnic diversity.

The Nominating Committee Report was presented by President Standard. Elections will take place in January. From the Ninth Judicial District, Henry S. Berman was nominated to continue as Vice President, Glenn Lau-Kee to one of the newly added at large positions to the Executive Committee, and Arlene Antoinette Gordon Oliver, Michael S. Markhoff and Thomas H. Welby were nominated as delegates.

The House approved not only the operating budget but also an increase in dues categories for 2005. Dues, which have not been raised in 10 years, would include an increase of \$15 for in-state attorneys admitted nine years or more, as well as for those in the seven to

eight-year category; an additional \$10 for those admitted five to six years, and a decrease of \$20 for two to four year admittees. Frank M. Headley Jr., the Chair of the Finance Committee, presented the report to the House.

Finally, each of us received what can only be described as a treatise on the rights and obligations that flow from marriage. The report, entitled: Report and Recommendations of the Special Committee to Study Issues Affecting Same-Sex Couples, is the result of thousands of lawyers hours of the Committee appointed by the Past President, Thomas Levin in 2003 to study the legal issues affecting same-sex couples. The report spans 380 pages and is extremely impressive. A member of our association, Lucille A. Fontana, was a member of the Special Committee that was charged with this task. The extensive report reviewed the legal treatment of married and same-sex couples in the U.S. and elsewhere, and an analysis of constitutional issues at the state and federal levels, followed by the Committee's findings and recommendations. The House adopted a scheduling resolution to govern the consideration of the report and recommendations of the Special Committee. The resolution calls for comments and proposed amendments in writing by March 1 and formal consideration of the report and all amendments at the April 2 House meeting.



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it even” at that point, it may in fact not be the end of the transaction. By returning the goods, the customer which later files a Chapter 7 case within the ninety day preference period is depriving other creditors of something that could otherwise be used to satisfy the claims of all creditors, not just that of the company accepting the returned goods. From the perspective of a Chapter 7 trustee, the effect is no different than if the delinquent customer had actually paid the company months after the original due date.

Unfortunately for the client, returning the “preferential transfer” may be more difficult and more expensive when physical goods are involved. The actual goods returned may have long since been reshipped to other customers. Indeed, the resale of the returned goods simply underscores the fact that your client has received something of value on an “antecedent” (i.e., past due) debt. [See 11 U.S.C. §547(b)(1)]. Also complicating matters is the likelihood that the Chapter 7 trustee does not want the goods anyway; he or she will seek monetary payment in the amount of the credit given the delinquent customer. This makes the matter unlike the typical preference situation where the client might merely have to return money it received. When returned goods are involved, the client may actually have to pay the preference amount from its own funds.

One might think that crediting the customer’s account would allow the client to invoke the “contemporaneous exchange” or “new value” exceptions to the preference rule. [See 11 U.S.C. §547(c)(1) and (3)]. However, since the receipt of a credit on the customer’s books provides nothing which can be used to satisfy claims of other creditors, this is likely to be an untenable argument.

Clearly, there is a difference between the amount invoiced (and credited) to the customer and the actual value received by the client when it accepts the returned goods. Because the client is likely to be better situated than the delinquent – now bankrupt – customer to dispose of the returned goods, there will also be a difference in the value of the goods to the bankruptcy estate and the value of the goods to the company.

The question then becomes how to value the preferential transfer for the purposes of determining what the client must pay to the bankruptcy estate. The resolution of the matter may be expensive and time consuming. The Chapter 7 trustee will probably contend that the provision of full credit for the returned goods demonstrates that this is the correct value of transfer.

Continued on page 13

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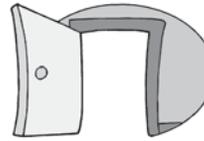
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Risk, Cont'd.

Therefore, it may be asked whether a client should ever refuse to accept the return of shipped goods? Of course not, if for no other reason than the fact that not every customer will file a Chapter 7 case and trigger the issue. Understanding the risk and hedging against losses is important, however. One thing clients can do to protect themselves is keep careful records of the amount for which the returned goods were ultimately sold, as well as any savings experienced by the customer as a result of the company being willing to accept the return of the goods. Clients should also make very clear to customers that giving them full credit on the outstanding invoice is being done solely for business reasons as good customer relations and does not necessarily reflect the value of the goods when returned.

Allowing delinquent customers to return goods previously shipped them is often the best or only way for a client to recover a bad debt. With careful planning, clients can minimize the risks associated therewith to their financial advantage.



Welcome New Members!

The WCBA would like to welcome new attorney members: Robert F. DiSiena, of White Plains, Samuel D. Friedlander, of White Plains, Judith A. Kaufman, of White Plains, Jennifer L. Schibilia, of Pearl River, Geoffrey D. Smith, of White Plains, Robert Windham, of White Plains, Daniel P. Zwerner, of Somers. The WCBA Also welcomes new affiliate members: Thomas Coulson, of White Plains, Jesse B. Hoffman, of White Plains, and Ellen Shapiro, of Scarsdale.

We look forward to seeing you at CLE and other WCBA events soon!

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D. Each resident must be assured adequate and appropriate medical care. The resident is entitled to be fully informed of his or her medical condition and is entitled to be given the opportunity to participate in his or her care plan and treatment, including refusing treatment.

Each resident is also entitled to select a primary physician from a list provided by the nursing home, and to discharge the physician selected if he or she is dissatisfied with the treatment being provided. Many residents, unfortunately, are not aware of their right to discharge the attending physician.

E. Each resident is entitled to be free from mental and physical abuse, and free from chemical and physical restraint, unless authorized by a physician in writing for a specified period. The use of chemical and physical restraints, while not totally eliminated, has been significantly reduced in recent years.

F. Each resident must be informed of the procedures for the filing of complaints verbally and in writing, and must be provided with the name, address and telephone number of the office established to receive complaints as well as with the State Office for Aging Ombudsmen Program. One of the first steps in remedying a perceived or real wrong on behalf of a nursing home resident is to contact the assigned Ombudsmen.

G. Each resident must be assured security in the storage of his/her personal possessions and confidential treatment of personal and medical records. The resident is entitled to retain and use his/her own clothing and possessions as space permits, unless it affects the rights of other patients or is medically contraindicated. It is well documented that allowing residents to retain personal possessions and mementos, such as photographs, will help the residents transition into their new homes and help with the overall mental

health and well being of the residents.

H. Each resident must be treated with consideration, respect and full recognition of his/her dignity and individuality.

I. Each resident may meet with and participate in activities of social, religious and community groups at his or her discretion, unless medically disapproved by the physicians.

J. Each resident and patient is assured the right to exercise his or her civil and religious liberties, which the nursing home shall encourage and assist. In keeping with religious beliefs, if a resident chooses to observe a kosher diet, or requests food products in accordance with Jewish Orthodox religious requirements, the nursing home must assure that those regimens are complied with.

In further recognition of the alternative housing arrangements that many seniors are utilizing, and to provide protections for seniors, the New York Legislature recently adopted a new "Assisted Living Facility Law", codified in Article 46-B of the Public Health Law, which becomes effective February 23, 2005. Familiarity with these statutes is essential for those advising seniors.

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