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President's Corner

The Tidewater Bankruptcy Bar Association is off to another wonderful year. Our first luncheon was held at the new and luxurious Renaissance Hotel. Judge Adams was our featured speaker and enlightened us on the federal rules changes and the impact these changes have had on our local bankruptcy practice and procedures. If you missed this important lecture, you should take Judge Adams' recommendation and carefully review the federal rules in order to acquaint yourself with the particularities of the rule changes. Judge Adams has published an article which discusses the impact of these rule changes on bankruptcy practice. His article can be found in the "Judges Corner" of the Spring 2001 issue of the Bankruptcy Law News.

The Association next brought its members and other local bankruptcy practitioners a practical seminar with good suggestions for improving our practice before the Court. The seminar featured skits, which were designed not only to be entertaining, but also to point out the mistakes that are being made by some attorneys in our local practice. By our estimates, over two hundred bankruptcy practitioners attended the seminar. We are hopeful the seminar provided the opportunity for everyone, regardless of experience level, to reflect on his or her own practice before the Court.
The Association has several upcoming programs which you will not want to miss. The next luncheon is being held on July 20, 2001 at 12:00 at Hits at the Park. We anticipate an informative program on appraising commercial and residential real estate. A reservation form is included with the newsletter. Please return it as soon as you can.

The Association is also sponsoring a night out at the Tides on August 9, 2001 for all Association members and their families. We will book one of the picnic areas at Harbor Park and eat, drink, socialize, and watch the game. What could be better than that? We look forward to seeing everyone at this enjoyable event.

Efforts are already underway for the 10th Annual Seminar to be held on December 7, 2001. Jeff Marks is close to having the speakers all lined up. A separate announcement concerning this seminar will be mailed this summer, so keep alert for all the details In the meantime, mark your calendars now for this quality seminar. Also, please consider volunteering to help Jeff and the rest of us put this seminar together. If you feel the urge, give Jeff or me a call.

I hope to see everyone at the upcoming events.

For Your Consideration

MUST A CREDITOR TURNOVER POSTPETITION A VEHICLE THAT WAS REPOSSESSED PREPETITION?
All consumer bankruptcy practitioners should be familiar with Judge Teel's opinion

in In re Young, 193 B.R. 620 (Bankr. D.D.C. 1996). In the Young case, Judge Teel held that the automatic stay provisions of 11 U.S.C. §362(a)(3) did not mandate affirmative acts on a part of a creditor that properly repossessed the Debtor's automobile prepetition. Rather, Judge Teel held that the automatic stay is intended only to prohibit postpetition affirmative acts by creditors and thus acts as a freeze of the status quo at the petition date. Therefore, a creditor that properly repossessed the Debtor's automobile prepetition was not automatically required by §362(a)(3) to turn over the vehicle postpetition prior to a decision on the creditor's entitlement (or lack thereof) to adequate protection.

However, creditor's attorneys need to be aware of Chief Judge Tice's opinion in In re Brown, 237 B.R. 316 (Bankr. E.D. Va. 1999). In Brown, Judge Tice addressed the same issue as in the Young case, but concluded that the creditor in Brown did violate the automatic stay by refusing to return the Debtor's vehicle without justification and after adequate protection had been provided to the creditor. Judge Tice concluded that the result in the Brown case would not be any different under the standards set forth in the Young decision. Accordingly, attorney's representing both debtors and creditors in consumer cases involving the prepetition repossession of vehicles need to be familiar with both the opinions in Young and Brown. Although Judge St. John and Judge Adams do not appear to have published opinions on this subject, they both have advised the bar at the recent TBBA "Critical Issues" seminar that they have in fact have followed the standards set forth in the Young decision in the past.

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From the Office of U.S. Trustee

Just a reminder - - -the Office of the U.S. Trustee has concluded that it must restrict the availability of telephonic 11 U.S.C. § 341 meetings.

For this reason, telephonic hearings will only be considered in those instances when the debtor is in the armed services and will be away from the area when his or her case is scheduled for the 11 U.S.C. meeting or in other exigent circumstances such as severe illness or incarceration.

The following are not considered good reasons:

1. Debtors have moved and coming back will be expensive or inconvenient.

2. Debtors have purchased or been given non-refundable travel tickets and will be out of the area on the date of the meeting.

3. Debtors have to go to work that day.

4. It would be easier for the debtors to call on the telephone than to attend the meeting.

In addition, all requests for telephonic meetings must be received by the Office of the U.S. Trustee at least 48 hours prior to the date and time of the meeting. A request received after that deadline will not be considered.

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