M B C NEWSLETTER

# MISSISSIPPI BANKRUPTCY CONFERENCE

**Editors: Robert Byrd and William P. Wessler** **Fall 2011**

## PRESIDENT'S MESSAGE

*J. Thomas Ash, President*

Everybody mark your calendars for our Mississippi Bankruptcy Conference 31st annual seminar on December 15'~ and 16'~. Take note that it is a week later than usual because of scheduling issues at the Hilton-Jackson. We have a stellar list of speakers on tap and it should be a good time for all. Judge Pepper will be back to give a presentation on evidence and Judge Wedoff from Chicago will talk about consumer issues. Our four judges will give their famous "Views from the Bench" and as always, you and I need to pay special attention. Judge Samson has now had a full year on the bench and should have a long list. Those of us in the consumer realm should pay special attention as the Judges discuss a new standing order entered to streamline motions to extend or impose the stay.

Be sure to tell Charlene Kennedy, Paul Ellis and Alan Smith "thank you" for their hard work on the seminar. It is quite an undertaking and they have done a wonderful job. Pat Ken Lefoldt on the back also. He is behind the scenes at all times and makes everything flow smoothly.

The Conference once again hosted the Duberstein Competition and treated the students and sponsors to dinner at Shapley's. We had a good turnout and the students did well in the competition. I'm glad that the Conference continues to encourage these law students and I appreciate the interest and involvement of the Judges. We also gave out several scholarships to high school students who wrote essays for our CARE program. Hopefully we can build this program and influence more young people. I've been told over and over by teachers that they wished they had heard this message at an earlier stage in their own lives.

We moved into the new Federal Courthouse on Court St. in Jackson this past spring and had a dedication ceremony on October 14. If you haven't toured the facility yet you should go by and take a look.

I've enjoyed serving as president this year and hope to see everyone in December.

**SEMINAR NEWS INSIDE**

# 2011 Fifth Circuit Court of Appeals Bankruptcy Decisions

*Submitted by Paul Murphy*

1.

**In the Matter of Northlake Development L.L.C., No. 09-60743; 5th Cir. Decision filed June 14, 2011. Kinwood Capital Group, L.L.C.; George Kiniyalocts, individually and as General Partner of Kiniyalocts Family Partners I, Ltd. v. BankPlus Appeal from the United States District Court for the Southern District of Mississippi.**

Kinwood Capital Group, L.L.C. ("Kinwood") was a member-managed Mississippi LLC formed in March 1998 for the purpose of purchasing and developing an approximately 520-acre tract of land in Panola County (the "Property"). Kinwood was formed by George Kiniyalocts and Michael Earwood, his attorney and business partner, with Kiniyalocts owning 80 percent of the LLC and Earwood owning 20 percent. One month after the formation, Kiniyalocts conveyed his interest in Kinwood to a family limited partnership he controlled, less 5 percent of the LLC, which he conveyed to Earwood, so that Kiniyalocts owned 75 percent of the LLC and Earwood owned 25 percent. Though Kinwood's Certificate of Formation did not contain any limitation on the authority of Kinwood's members to convey Kinwood-owned property, the LLC's Operating Agreement, which was not publicly available, did contain the following limitation:

> All management decisions shall be by a vote of the Members owning a majority of the Membership Interests. Notwithstanding any provision in this Agreement to the contrary, the affirmative vote of Members holding at least Seventy-five percent (75%) of all Membership Interests shall be required to approve the sale, exchange, or other disposition of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single Transaction or plan.

The effect of this limitation was that Kiniyalocts held veto power over any major asset sale.

Kinwood bought the Property at a foreclosure sale for $535,001. Kinwood, and both Kiniyalocts and Earwood in their personal capacities, borrowed a total of $575,000 from Mellon Bank to acquire the Property; all three remained liable for that debt. The plans to re-sell the Property to a golf developer fell apart. Soon afterwards Earwood formed Northlake Development, L.L.C. ("Northlake"), with himself as sole owner, managing member, and registered agent for service of process. Kiniyalocts had no knowledge of Northlake. Without Kiniyalocts's knowledge, Northlake undertook a separate negotiation with the golf developer and entered into a contract. Ultimately, this sale did not close either.

On July 12, 2000, Earwood, on behalf of Kinwood, signed a warranty deed conveying the Property from Kinwood to Northlake (the "Kinwood Deed"). Earwood signed the deed as Kinwood's "Managing Member." The Kinwood Deed was recorded on August 7, 2000. Before recording the deed, Earwood approached BankPlus about borrowing money for Northlake with the Property as collateral. BankPlus agreed to lend Northlake approximately $300,000. In return, Earwood, on behalf of Northlake, executed a deed of trust to the Property in favor of BankPlus (the "BankPlus Deed"). The BankPlus Deed pledged Northlake's interest in the Property as collateral for the loan. BankPlus obtained a title certificate to the Property from Earwood's two-person law firm, signed by Earwood's law partner, on August 10, 2000. Earwood put most and perhaps all of the BankPlus loan proceeds to his personal use.

These facts came to light after Northlake filed for Chapter 11 protection in August 2005. Earwood signed the petition for Northlake and listed the Property as a Northlake asset. After a dismissal and a second bankruptcy filing, the case was converted to a Chapter 7 case, and a trustee was appointed.

The bankruptcy court found that Earwood never had the authority to convey the Property from Kinwood to Northlake and that, as a result, the Kinwood Deed could not pass title of any kind. The bankruptcy court entered judgment for Kinwood, declared the Kinwood Deed and the BankPlus Deed null and void, and required both to be cancelled in the land records of Panola County.

BankPlus appealed to the district court, which affirmed. The district court noted that no Mississippi court had construed Mississippi LLC law on the ability of an LLC member to bind the LLC in a case where the LLC member's action led an innocent third party to purchase an interest in the property. The district court then made an Erie guess that Earwood's signature on the Kinwood Deed was more akin to a void forgery than a voidable transfer --- i.e., one in which a deed is facially valid but induced by fraud. BankPlus appealed the District Court ruling.

The 5th Circuit court noted that the Mississippi statute governing the agency power of LLC members, Miss. Code Ann. 79-29-303, did not directly control the issue in this case. Because Kinwood is a member-managed LLC, three parts of the statute affect Earwood's power to bind the LLC:

> (1) . . . [E]very member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority.
>
> (3) An act of a manager or a member which is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with the limited liability company agreement.
>
> (4) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to

# 2011 Fifth Circuit Court of Appeals Bankruptcy Decisions (continued)

> persons having knowledge of the restriction.

The Court stated that language in 79-29-303(4) ("No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction") did not affect the relationship between Kinwood and BankPlus because the entities did not have any direct contact with one another; rather, the transactions at issue were between (1) Kinwood – Northlake, and (2) Northlake – BankPlus. The court also held that the statute addresses the nature of Kinwood's obligations to Northlake, but does not determine whether a deed that is valid on its face, but that does not bind the grantor to the grantee, becomes valid when passed to an innocent third-party purchaser. Accordingly, the 5th Circuit court certified the following determinative question of law to the Supreme Court of Mississippi:

> When a minority member of a limited liability company prepares and executes, on behalf of the LLC, a deed to substantially all of the LLC's real estate, in favor of another LLC of which the same individual is the sole owner, without authority to do so under the first LLC's operating agreement, is the transfer of real property pursuant to the deed: (i) voidable, such that it is subject to the intervening rights of a subsequent bonafide purchaser for value and without notice, or (ii) void ab initio, i.e., a legal nullity?

The Supreme Court of Mississippi accepted the certified question, and its answer resolves this case.

The Mississippi Supreme Court explained that the deed was neither voidable nor void ab initio, but "void and of no legal effect" because Earwood, as an agent of Kinwood, lacked actual or apparent authority to convey Kinwood's Property and Kinwood never ratified the purported transfer. The Court reasoned as follows:

Under Mississippi law, an agency relationship exists between a member-managed limited liability company such as Kinwood and its members (citing Miss. Code Ann. 79-29-303(1) (Rev.2009)). As a member of Kinwood, Earwood was Kinwood's agent. "Generally, an agent cannot bind the principal to a contract unless the principal clothes the agent with authority, whether actual or apparent." Under Kinwood's Operating Agreement, Earwood lacked actual authority to transfer the Property. Earwood knew that he did not have actual authority to convey the Property, and as Earwood is the sole owner of Northlake, his knowledge is imputed to Northlake. "Because the doctrine of apparent authority is unavailable to one who knows an agent lacks actual authority," and both Earwood and Northlake knew Earwood lacked actual authority, Earwood did not have apparent authority to transfer the Property to Northlake. "[W]here no actual or apparent authority exists to transfer a principal's property, .... the deed is void unless and until later ratified." Kinwood could have ratified the purported conveyance by "manifesting assent that [the conveyance] [would] affect [its] legal relations" or through "conduct that justifie[d] a reasonable assumption" that it had consented to the transfer. (quoting Restatement (Third) of Agency 4.01(2) (2005)). Kinwood never ratified Earwood's purported transfer. "Kinwood's rights in the property are therefore unaffected by the actions of Earwood, Northlake, or any subsequent party."

The Fifth Circuit Court accepted the answer from the Mississippi Supreme Court, and Affirmed.

2.

**In the Matter of Northlake 1. Michael J. Conway v. United States of America, No. 10-40485; 5th Cir. Decision filed July 19, 2011.**
**Appeal from the United States District Court for the Eastern District of Texas.**

The United States sought to recover from National Airlines' former CEO, Michael J. Conway, excise taxes that National collected from its passengers during the former CEO's tenure but did not turn over to the United States. The taxes in question were accrued both pre- and post-National's Chapter 11 bankruptcy filing. The former CEO argued that he was not a responsible person under 26 U.S.C. § 6672 despite the fact that he was the founder, president, and chairman of the board, was one of the largest individual stockholders, had the most individual authority for the airline, and was authorized to sign checks on the airline's accounts. Post-bankruptcy, National paid some excise taxes in the normal course of business. Other excise taxes were deferred by legislation passed after 9-11 to assist the airline industry. The CEO argued that after the legislation, the taxes due were no longer "ordinary course" payments. The CEO never sought court approval to pay the deferred taxes once they came due.

The District Court upheld the bankruptcy Court's granting of Summary Judgment to the United States, holding that the CEO was personally liable to the United States for the excise taxes that National collected from its passengers but failed to pay, because he was a "responsible person" under 26 U.S.C. § 6672.

On Appeal, the Fifth Circuit affirmed the judgment of the District Court, holding that, under 26 U.S.C. § 6672, the CEO of an airline is personally responsible for excise taxes that the airline collected from passengers during his tenure but did not turn over to the United States. The Appellate Court held that the CEO was a "responsible person" as determined by the facts viewed under the six factors enumerated for such analysis, and further noted that the CEO acted willfully in his failure to pay over the taxes collected. The Court further held that the airline's Chapter 11 bankruptcy filing (later converted to Chapter 7) did not change the CEO's status as a "responsible person" because during the bankruptcy proceedings, the airline continued to make some excise tax payments in the normal course of business without needing bankruptcy court approval.

3.

**In the Matter of Carl Mitchell Pierrotti, No. 10-31048; 5th Cir. Decision filed June 22, 2011.**
**Carl Mitchell Pierrotti, also known as Carl Mitchell B. Pierrotti v. United States of America Internal Revenue Service**
**Appeal from the United States Bankruptcy Court for the Western District of Louisiana.**

The debtor attempted to use 11 U.S.C. § 1332(b)(2) to "modify" claims by the IRS for tax deficiencies into a long-term debt payable over a period of fifteen years and then "cure and maintain" that debt under section 1332(b)(5). The tax deficiencies were fully matured and due and payable before the debtor filed for bankruptcy. The IRS objected to the debtor's proposed plan on the ground, among others, that the proposed payment period was longer than the five-year term of the bankruptcy plan and the bankruptcy court agreed and

# 2011 Fifth Circuit Court of Appeals Bankruptcy Decisions (continued)

denied confirmation of the proposed plan. The debtor appealed and the bankruptcy certified the issue for direct appeal to the Fifth Circuit.

The Fifth Circuit ruled that a debt that is already due and payable before a Chapter 13 bankruptcy filing may not be "maintained" under 11 U.S.C. § 1322(b)(5). The court concluded that section 1322(b)(5) applies only to debts for which, by their pre-bankruptcy terms, the final payment is not due until after the end of a Chapter 13 plan's maximum term. Because the tax deficiencies in issue were fully matured and due and payable before the debtor filed for bankruptcy, the debts could not be modified to extend payment past the five-year maximum term for his Chapter 13 plan.

4.

**In the Matter of Dorothy Chase Stewart, No. 09-30832; 5th Cir. Decision filed July 22, 2011.**
**Wells Fargo Bank, N.A. v. Dorothy Chase Stewart**
**Appeal from the United States District Court for the Eastern District of Louisiana.**

The Debtor filed for bankruptcy in 2007. Wells Fargo held a mortgage on the Debtor's home and filed a proof of claim for the outstanding amounts due. The Debtor sought a full accounting from Wells Fargo, which Wells Fargo would not immediately produce. Following "two…hearings and four months of research" by the bankruptcy court of the incomplete information and documentation provided by Wells Fargo, "the bankruptcy court was able to unravel Wells Fargo's accounting." Only then did Wells Fargo produce "a full reconciliation of [the Debtor's] mortgage account," which revealed that Wells Fargo's proof of claim on file was "rife with errors…[that] caused Wells Fargo to overstate its claim by more than $10,000." Relying in part on its findings in another case, which findings it incorporated by reference, the bankruptcy court "found that Wells Fargo's mortgage claims exhibit systematic errors arising from its highly automated, computerized loan-administration system." As proofs of claim must be treated prima facie valid pursuant to Section 502(a) of the Bankruptcy Code and Rule 3001(f) and "courts are unable to review or correct erroneous charges except on the rare occasion they are disputed by a debtor," the bankruptcy court perceived Wells Fargo's "systematic errors" to be "a threat to the integrity of the bankruptcy system" and issued an injunction, including a requirement that Wells Fargo audit every proof of claim it filed in every bankruptcy case pending in the Eastern District of Louisiana since April 2007, provide and file a complete loan history for every account, and amend those proofs of claim already filed. Wells Fargo appealed.

The Fifth Circuit Court vacated the injunction entered by the bankruptcy court and affirmed by the district court, because it "exceed[ed] the reach of the bankruptcy court in this case." The bankruptcy court's injunction required Wells Fargo to: (1) "audit every proof of claim it has filed in this District in any case pending on or filed after April 13, 2007"; (2) "'provide a complete loan history on every account' and to file that history with the appropriate court"; and (3) "amend… proofs of claim already on file to comply with the principles established in this case and [In re Jones, 366 B.R. 584 (Bankr. E.D. La. 2007)]." The Fifth Circuit Court found that: (1) the Debtor lacked standing to support the injunction as there was no "'immediate threat that [that she would] again' suffer similar injury in the future" and, therefore, no "case or controversy regarding prospective relief"; and (2) "the inherent power of the bankruptcy court to protect its jurisdiction and judgments and control its docket" did not otherwise demonstrate a need for the injunction. Hence, the bankruptcy court "lacked jurisdiction to order injunctive relief in this case." In vacating the injunction, the Fifth Circuit Court noted that "while justification for the bankruptcy court's frustration is plentiful, its injunction lacks jurisdictional legs."

5.

**Diane G. Reed, Real party in Interest v. City of Arlington, No. 08-11098; 5th Cir. Decision filed August 11, 2011.**
**Appeals from the United States District Court for the Northern District of Texas.**

Kim Lubke obtained judgment against the City of Arlington on a Family Medical Leave Act claim. While the judgment was on appeal, Lubke and his wife filed a Chapter 7 petition, but failed to disclose either the judgment or associated legal fees on their bankruptcy schedules. The Lubkes received a no-asset discharge and their bankruptcy case was closed. After the Fifth Circuit affirmed the FMLA judgment, but remanded to the district court to recalculate damages, the City offered Lubke a Rule 68 judgment. Lubke's FMLA lawyer then learned of the bankruptcy and notified the bankruptcy Trustee about the judgment. The Trustee had the bankruptcy case reopened and the discharge revoked, and then substituted in the FMLA litigation as the real party in interest. The Trustee also attempted to accept the City's offer of judgment. The City had filed a petition for rehearing with the Fifth Circuit two days before receiving the Trustee's acceptance. When it learned of the Lubkes' bankruptcy, the City sought leave from the panel to argue that Lubke should be judicially estopped from collecting the judgment due to his failure to disclose the judgment in the bankruptcy proceedings. The panel denied the City's petition for rehearing on the FMLA judgment, but issued a mandate directing the district court to determine whether judicial estoppel applied. The district court concluded that judicial estoppel did not apply and a panel of the Fifth Circuit reversed. The Fifth Circuit then took the case en banc court to determine "whether judicial estoppel bars a blameless bankruptcy trustee from pursuing a judgment that the debtor—having concealed the judgment during bankruptcy—is himself estopped from pursuing."

The Fifth Circuit Court ruled that, "absent unusual circumstances, an innocent trustee can pursue for the benefit of creditors a judgment or cause of action that the debtor fails to disclose in bankruptcy." The Fifth Circuit Court held that "judicial estoppel must be applied in such a way as to deter dishonest debtors, whose failure to fully and honestly disclose all their assets undermines the integrity of the bankruptcy system, while protecting the rights of creditors to an equitable distribution of the assets of the debtor's estate." The Court concluded that allowing an innocent trustee to pursue claims that the debtor had failed to disclose met this goal.

6.

**In the matter of Ricky Kleibrink, No. 07-11190; 5th Cir. Decision filed September 21, 2010.**
**Ricky Kleibrink v. Ellen Kleibrink; Mid State Trust VII**
**Appeal from the United States District Court for the Northern District of Texas.**

# 2011 Fifth Circuit Court of Appeals Bankruptcy Decisions (continued)

In a prior bankruptcy case, the Debtor objected to creditor Mid State Trust's security interest in Debtor's home. The claim objection did not seek disallowance of Mid State's claim but rather sought to allow Mid State's claim in a zero amount. Debtor's confirmed plan of reorganization provided that Mid State would retain its security interest. Subsequently, Mid State attempted to foreclose on the Debtor's encumbered property. The Debtor then filed bankruptcy again to avoid foreclosure. The Debtor argued that his discharge from prior bankruptcy extinguished Mid State's security interest. The Bankruptcy court disagreed, ruling that the prior bankruptcy proceedings did not extinguish Mid State's security interest, and that the secured creditor holds an enforceable security interest in property of debtor notwithstanding the Debtor's prior bankruptcy discharge. The District court affirmed. The Debtor appealed.

The Fifth Circuit Court affirmed, concluding that Mid State's interest could not be extinguished in a proceeding where notice of same did not satisfy due process requirements. The Court reasoned that the Debtor's claim objection in the earlier bankruptcy proceeding, seeking to allow a zero amount, did not clearly notify the creditor that its secured claim was at risk. The Court went on to state that a proceeding to determine the validity, priority, or extent of a lien or other interest in property is governed under Part VII of the Bankruptcy Rules that provides procedural safeguards, and that an adversary proceeding is ordinarily required under the Bankruptcy Rules to extinguish such a lien.

# Recent Decisions by HONORABLE DAVID W. HOUSTON, III

*Summaries prepared by Che Clay and Jessica Haurylko*

***Thorne, et al. v. Prommis Solutions Holding Corp., et al. (In re Thorne), 2011 WL 2496217 (Bankr. N.D. Miss. June 22, 2011).***

A motion to dismiss was filed by Daniel D. Phelan (Phelan) in an adversary proceeding filed by the debtors and the Chapter 13 trustee. The third amended complaint alleged that corporate entities were engaged in the unauthorized practice of law and illegal sharing of attorney fees through a mortgage servicing scheme. Phelan was accused of being guilty of scandalous behavior by "masterminding" a "corrupt business model" that defrauds the court and debtors in bankruptcy through a web of illicit corporate activities. The plaintiffs argued that the corporate veil should be pierced to expose Phelan's direct liability, and that he was individually liable pursuant to an economic theory known as "control fraud." The court found that Phelan had nothing to do directly with the fundamental claim in this adversary proceeding, which involves the propriety of a $600.00 attorney fee that the debtors agreed to pay in connection with a motion to lift the automatic stay filed in their bankruptcy case. There was no allegation that Phelan made an appearance before the court, submitted a fee application, or had any contact with the plaintiffs. In ruling on the motion to dismiss, the court relied on the standard enunciated by the United States Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). The court held that the complaint failed to state a direct cause of action against Phelan upon which relief could be granted. Additionally, the factual allegations were insufficient to state a plausible claim to pierce the corporate veil of the defendant corporate entities. Therefore, Phelan's motion to dismiss was well taken and a separate order was entered dismissing Phelan from the adversary proceeding.

***Thorne, et al. v. Prommis Solutions Holding Corp., et al. (In re Thorne), 2011 WL 2470114 (Bankr. N.D. Miss. June 16, 2011).***

The third amended complaint filed by the debtors and Chapter 13 trustee in this adversary proceeding alleged two distinct mortgage servicing scenarios, both of which allegedly involve the unauthorized practice of law and illegal sharing of attorney fees. Before the court were: (1) motions to dismiss filed by four defendants; (2) a motion to dismiss, or in the alternative, a motion for summary judgment filed by two defendants; and (3) a motion for protective order and to quash plaintiffs' discovery. The court set forth a narrative outline of each mortgage servicing scenario followed by a schematic diagram drawn exclusively from the matters asserted in the complaint. In ruling on the motions to dismiss, the court relied on the standard enunciated by the United States Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). Construing the complaint allegations liberally and assuming the truth of all pleaded facts, the court held that the third amended complaint stated a cause of action against three defendants upon which relief could be granted. Therefore, the motions to dismiss were overruled as to three of the defendants. The disposition of the fourth defendant's motion to dismiss was address by a separate opinion. In ruling on the motion for summary judgment filed by two defendants, the court found that these defendants had no involvement whatsoever with the debtors' bankruptcy case. Consequently, no genuine issue of material fact remained in dispute, and the motion for summary judgment filed by the two defendants was sustained. The motion for protective order and to quash plaintiffs' discovery was made moot by the court's decision in sustaining the motion for summary judgment.

***Brown v. Miss. Dept. of Revenue (In re Brown), 2011 WL 2160615 (Bankr. N.D. Miss. June 1, 2011).***

The debtor brought an adversary complaint to determine the dischargeability of his tax liabilities to the Mississippi Department of Revenue (MDR) for the 2001 and 2003 tax years. Although the debtor had been granted an extension for both tax years, his income tax returns were filed after both extension dates had expired. The court found that the tax returns for the 2001 and 2003 tax years were not timely filed pursuant to applicable non-bankruptcy law, including applicable filing requirements. As such, they are not considered "returns" as defined in the unnumbered paragraph immediately following § 523(a)(19) of the Bankruptcy Code. Therefore, MDR was entitled to a judgment as a matter of law that the underlying tax liabilities are non-

# Recent Decisions by HONORABLE DAVID W. HOUSTON, III (continued)

dischargeable pursuant to § 523(a)(1)(B)(i) and the unnumbered paragraph following § 523(a)(19).

***Weiland v. Miss. Dept. of Revenue (In re Weiland), 2011 WL 1815058 (Bankr. N.D. Miss. May 11, 2011).***

The debtor brought an adversary complaint for a determination of the dischargeability of his 2002 and 2005 income taxes on the basis that the taxes were due more than three years prior to the date his bankruptcy petition was filed. There was no record indicating that a Mississippi income tax return had been filed for the 2002 tax year. Additionally, the 2005 income tax return was filed on June 4, 2007. Although Mississippi tax payers, such as the debtor, were granted an extension to file their 2005 tax return because of the effects of Hurricane Katrina, the latest date allowed for the 2005 income tax return was April 15, 2007. The court held that the amount owed for the 2002 tax year was non-dischargeable pursuant to § 523(a)(1)(B)(i) of the Bankruptcy Code, and the amount owed for the 2005 tax year was non-dischargeable pursuant to § 523(a)(1)(B)(ii) and the last unnumbered paragraph of § 523(a).

***Hamilton v. Green Tree Servicing, LLC (In re Hamilton), 2011 WL 182861 (Bankr. N.D. Miss. Jan. 20, 2011).***

The Chapter 13 debtor filed an objection to the claim of UM Capital to which said creditor failed to file a response. UM Capital filed an amended proof of claim prior to the response deadline for the debtor's objection to its original claim. The debtor did not file a separate objection to the amended proof of claim. An order was entered granting the debtor's objection to the original proof of claim and the debtor's plan was subsequently confirmed. After being notified that UM Capital's claim had been transferred to Green Tree, the trustee began making payments to Green Tree. The plan payments were completed and, no response having been filed to the trustee's motion, an order was entered declaring the long term debt to Green Tree current and all defaults cured. Because a dispute over the amount of the claim erupted again, the debtor filed a motion to reopen her case and thereafter, initiated an adversary proceeding alleging misapplication of payments made by the Chapter 13 trustee and improper charges to her loan account. The court denied the debtor's motion for summary judgment due to the complexities underpinning the factual and legal issues involved in this proceeding. The court held that there were numerous factual issues remaining in dispute and that allowing the parties to proceed to trial to more fully develop the record was the best course of action.

***In re Boscaccy, 442 B.R. 501 (Bankr. N.D. Miss. 2010).***

The Chapter 13 trustee objected to confirmation of plans filed by the debtors in three separate Chapter 13 bankruptcy cases on the basis that the plan proponent separately classified an unsecured student loan debt and proposed to treat the debt more favorably than the claims of other general unsecured creditors. The trustee argued that the debtors' proposals constituted unfair discrimination prohibited by § 1322(b)(1) of the Bankruptcy Code. The debtors argued that they were allowed to separately classify and treat their student loans as proposed pursuant to the "cure and maintain" provision of § 1322(b)(5). In each of the three cases, the court compared the debtors' proposed distribution to general unsecured creditors to the differential treatment had the student loan payment been included to pay all unsecured creditors. In addition, the court considered several other factors, including the likely distribution to unsecured creditors if these had been Chapter 7 cases instead. In two of the three cases, the court found that although there would be discrimination against the general unsecured creditor class under the debtors' proposals, considering the totality of the circumstances, the proposals did not constitute "unfair" discrimination. The trustee's objection to confirmation was overruled in those cases. In the third case, however, the court found that if the proposed student loan payment was allocated to all unsecured creditors, the student loan payment would only be reduced by 20%, while the distribution to general unsecured creditors would increase by 80%. Because of the resulting discrepancy in treatment, the court held that the debtor's proposal did indeed constitute unfair discrimination. The trustee's objection to confirmation was sustained in that case. In each of the three cases, the court adopted the guidance provided by In re Harding, 423 B.R. 568 (Bankr. S.D. Fla. 2010), where the court concluded that the automatic stay prohibited the student loan creditor from assessing penalties for payment shortfalls occurring while the Chapter 13 debtor was in bankruptcy.

***In re Cothern, 442 B.R. 494 (Bankr. N.D. Miss. 2010).***

Before the court was the debtors' objection to the secured claim of American Home Mortgage Servicing, Inc. (AHMSI), as well as, AHMSI's objection to confirmation of the debtors' Chapter 13 plan. When the debtors refinanced their home in January 2007, they agreed to pay directly the annual real estate taxes and provide homeowners' insurance coverage. As a result, the mortgagee waived the requirement that an escrow account be established in connection with the loan transaction. The debtors timely paid insurance premiums, real estate taxes, and the monthly installments due until AHMSI, the mortgage servicer, refused to accept their payments. Despite the fact that the debtors' insurance coverage never expired and the debtors, on numerous occasions, provided information and proof relative to insurance coverage, AHMSI obtained force placed insurance and established an escrow account for the debtors' loan. As a result, the debtors' regular monthly mortgage payments were placed in suspense, late fees were assessed, an arrearage began to build, and eventually, AHMSI refused to accept the debtors' monthly payments. After receiving information from the insurer that the debtors had continuous coverage since October 2005, AHMSI "refunded" the force placed insurance premiums and through accounting entries, created a surplus balance in the escrow account. Contrary to the escrow waiver agreement, AHMSI continued to maintain the escrow account, and made one disbursement for insurance premiums to the debtors' insurer in October 2009. Ultimately, foreclosure proceedings were initiated, and consequently, the debtors filed their voluntary Chapter 13 bankruptcy petition to halt foreclosure proceedings. AHMSI filed a proof of claim with an arrearage amount of $15,005.23. The debtors filed an objection to the secured claim of AHMSI. After an evidentiary hearing, the court found that AHMSI diverted the debtors' payments to suspense and to escrow long after it had knowledge that the insurance coverage was a non-issue, and further, there was no reasonable justification for servicing the loan in such a manner. The court also found that there was no doubt that the unrelenting actions of AHMSI drove the debtors into bankruptcy as they were not delinquent on any other debt when they filed the bankruptcy as an "eleventh

# Recent Decisions by HONORABLE DAVID W. HOUSTON, III (continued)

hour" mechanism to prevent the loss of their home. The court noted that AHMSI's conduct represented the most callous and egregious effort to collect an indebtedness that was never owed that the court has been called upon to review. Succinctly stated, AHMSI's incompetent servicing tactics converted a loan transaction that was being paid like "clockwork" to a loan that was virtually impossible to pay, particularly for the modest income borrowers. The court concluded that AHMSI must: (1) recalculate the loan giving the debtors credit for all payments placed in suspense; (2) consider the one disbursement for the annual insurance premium paid by AHMSI from the escrow account as if the debtors personally paid the premium; and (3) immediately dissolve the escrow account. AHMSI's objection to confirmation was overruled, and likewise, the debtors' objection to AHMSI's proof of claim was sustained.

***Angles, et al. v. Flexible Flyer Liquidating Trust (In re FF Acquisition Corp.), 438 B.R. 886 (Bankr. N.D. Miss. 2010).***

On September 9, 2005, the debtor, a manufacturer, filed for relief under Chapter 11 of the Bankruptcy Code. On that same date, the debtor terminated all manufacturing activities and issued a notice pursuant to the Worker Adjustment and Retraining Notification Act ("WARN Act") that it was ceasing its business operations. The debtor-manufacturer's employees brought an adversary proceeding seeking to hold the debtor liable under the WARN Act for failing to give a sixty day written layoff notice. The debtor asserted as affirmative defenses for its failure to give the sixty day notice, to wit: 1) unforeseen business circumstances; 2) the faltering company exception; and 3) that it gave as much notice as it possibly could under the circumstances. For approximately five years, the debtor's primary sources of operating funds had been obtained through a lending arrangement with an entity that purchased the debtor's account receivables, plus infusions of capital from the debtor's parent company. Although the debtor experienced unusual financial operation problems, there was an attempt to rectify them through several remedial measures, including an orderly downsizing over time. However, an immediate shutdown was not contemplated until the lending arrangement was effectively terminated and the parent company refused to infuse additional capital into the business, both of which occurred immediately prior to the bankruptcy filing. The court found that based on past experiences, it was completely unforeseeable that the debtor's over-secured lender would not extend additional credit under the lending agreement, and that the parent company, which had never done so prior to September 2005, would refuse to provide an essential capital infusion. These events were completely unanticipated and led to the abrupt unavailability of operating funds, which in turn, caused the layoffs. Therefore, the mass layoffs were not planned, proposed, or foreseeable. The court also noted that the employees had been paid in full for all work that they performed, and also had received any employee benefits to which they were entitled. The court concluded that both the unforeseen business circumstances, as well as, the faltering company exception to the WARN Act's notice requirement were applicable. The debtor disseminated a WARN Act notice on the same date that it filed its bankruptcy petition, which was the earliest practical date that such notice could be provided. A separate order was entered dismissing the plaintiffs' complaint.

***Cincinnati Insurance Co., as subrogee of Faye Bridges v. Deeds, et al. (In re Deeds), 2010 WL 3448616 (Bankr. N.D. Miss. Sept. 1, 2010).***

In an adversary proceeding, plaintiff insurance company, as subrogee of an insured, sued defendant, a voluntary Chapter 7 debtor, and sought a nondischargeable judgment pursuant to 11 U.S.C. § 523(a)(9). The insurance company moved for summary judgment and the debtor did not file a response. The debtor was convicted of the crime of driving under the influence causing injury pursuant to Miss. Code Ann. § 63-11-30(5) by the Circuit Court of Desoto County beyond a reasonable doubt, a much stricter standard than the preponderance of the evidence standard the bankruptcy court must apply in a non-dischargeability cause of action. On appeal to the Mississippi Supreme Court, debtor alleged that the Circuit Court's admission of his blood alcohol test was error, but the Mississippi Supreme Court disagreed. Finding that the insurance company proved all elements of the § 523(a)(9) discharge exception, the court held that there were no genuine issues of material fact remaining in dispute and granted summary judgment as to the issue of non-dischargeability. In so holding, the court noted that it was aware that the debtor filed a Petition for Writ of Certiorari with the United States Supreme Court in June 2010. Should the United States Supreme Court reverse the Mississippi Supreme Court with a decision negating the admissibility of the blood alcohol test, the court reserved the right to reexamine its decision on the issue of the non-dischargeability of the insurance company's claim against the debtor.

***Vardaman v. Schwartz, et al.; Douglas v. Schwartz, et al. (In re Douglas), 2011 WL 832501 (Bankr. N.D. Miss. Mar. 2, 2011).***

The debtor was the victim in a motor vehicle accident, and she and the Chapter 13 Trustee separately filed adversary actions against defendant attorneys, one of whom the debtor retained for representation in her personal injury case, and the second who was hired by the retained attorney to handle bankruptcy issues. Plaintiffs each moved for partial summary judgment. The debtor retained the first attorney to represent her in a personal injury suit stemming from the car accident and he successfully negotiated a settlement for $500,000 total. The second attorney was then employed by the first attorney to assist in obtaining approval of the settlement by the bankruptcy court. The second attorney obtained orders to distribute funds and pay expenses from the court, and he disbursed $172,414.68 to the first attorney. However, he failed to distribute the balance of the settlement proceeds of $327,585.32 to the trustee and on February 24, 2011, pled guilty to one count of embezzlement from a bankruptcy estate in the United States District Court for the Northern District of Mississippi. The court found that a more accurate picture of the business relationship between the two attorneys could be developed through additional discovery. Because the legal relationship between the two attorneys and whether it was implicated by communications between the parties was unclear, the court overruled the motions for partial summary judgment without prejudice.

***In re Hurdle, 2011 WL 2413324 (Bankr. N.D. Miss. June 7, 2011).***

A chapter 13 debtor filed an objection to the Mississippi Department of Revenue's ("MDR") proof of claim in her bankruptcy case that questioned both the methodology of the tax assessment and the efficacy of the mailing of the notice of such assessment. The debtor objected to the filing status

# Recent Decisions by HONORABLE DAVID W. HOUSTON, III (continued)

utilized by MDR in the tax assessment, but did not appeal the assessment within the three year time frame of Miss. Code Ann. § 27-7-49(5), nor had she actually even filed a return for the tax years in question. The court held that notice of the assessment was proper as the certified delivery was signed for by debtor's husband. Therefore, the court overruled debtor's objection to the proof of claim.

***In re Jacobsen; In re Ja-Co Foods, Inc., 2011 WL 482828 (Bankr. N.D. Miss. Feb. 7, 2011).***

The chapter 11 debtor-in-possession moved to assume six leases and license agreements for Sonic franchises he owned located in Mississippi. The creditor franchisor, Sonic Industries, LLC, filed a motion to dismiss or for summary judgment on the motions to assume. The debtor or related debtor entities had sold the majority of his 23 Sonic restaurants and the court entered an order granting the debtor's motion to sell certain property. The individual debtor and/or his corporation moved to assume license agreements and to assume the sign leases. Sonic relied on § 365(c)(1) and argued that the Lanham Act, 15 U.S.C. § 1051 et seq., was the "applicable law" which excused it from accepting performance from or rendering performance to an entity other than the debtor-in-possession. However, the court found that there was no assignment of a Sonic trademark even contemplated in this instance. Sonic relied on the "hypothetical test," enumerated in In re West Electronics, Inc., 852 F.2d 79, 83 (3rd Cir. 1988), which effectively prevents the assumption of an executory contract if applicable law would preclude the assignment of such, even when no assignment was intended or contemplated. The court held that this test has been rejected by numerous courts, and relied on In re Mirant Corporation, 440 F.3d 238 (5th Cir. 2006) to reject the hypothetical test in this proceeding as well. The court agreed that per § 365(b)(1), before any debtor entity could assume the license agreements or the sign leases, the debtor entity must cure all of the existing defaults or provide adequate assurance. However, the court found that there was no basis to dismiss the debtor's motions at this time and overruled Sonic's motion to dismiss.

***Moore v. Regions Bank (In re Moore), 2011 WL 2457343 (Bankr. N.D. Miss. June 10, 2011).***

Chapter 12 debtors filed a complaint to determine the validity of a lien held by the creditor, Regions Bank. An answer including affirmative defenses was filed by the creditor and a trial was conducted on the merits. Debtors requested a determination that the creditor had no lien on the balance of proceeds remaining from debtors' 2010 crop. In addition, they sought to use these proceeds to begin planting their 2011 crop. The first question was whether the creditor held a perfected security interest in the balance of funds remaining from the 2010 crop. The financing statements had neither lapsed nor been terminated and would therefore remain effective until June and August, 2014. The court pointed to Miss. Code Ann. § 75-9-102(34), which expressly contemplated a crop "to be grown" sometime in the future, and Miss. Code Ann. § 75-9-204(a), which provides that a security agreement may create or provide for a security interest in after-acquired collateral. The court relied on those statutory provisions to conclude that the creditor's lien, perfected through security instruments executed by the debtors prior to 2010, did extend to the balance of proceeds remaining from the 2010 sweet potato crop. The court also held that debtors' proposed "roll over" scenario for 2011, without the consent of the creditor, provided no discernible adequate protection for the creditors' interest in the 2010 crop proceeds, as required by 11 U.S.C. § 363(e).

***In re Parkerson, 2011 WL 5155150 (Bankr. N.D. Miss. Dec. 13, 2010).***

Creditor filed a motion seeking relief from the automatic stay. The creditor appealed the court's prior decision denying such motion to the U.S. District Court for the Northern District of Mississippi. That court remanded the proceeding, instructing the court to enter an opinion providing further clarification of the legal and factual bases of the decision which had been appealed. The Chapter 7 debtor had earlier disputed the creditor's worker's compensation claim, which was never adjudicated or liquidated in a state court proceeding. In the instant proceeding, the creditor contended that he held a statutory lien against debtor and that debtor should have filed a complaint to avoid his lien while the bankruptcy case was being administered. The court confirmed that its earlier decision refusing to lift the automatic stay was appropriate. The court found multiple flaws in the creditor's position. One problem was that debtor disputed that the creditor was entitled to compensation under the Worker's Compensation Act. Additionally, because there was never an adjudication that the creditor was entitled to compensation under the Worker's Compensation Act, he had no lien against any of the debtor's assets. Further, the debtor owned no unencumbered, non-exempt assets to which a judgment lien could attach. Thus the court held that creditor's assertion of a statutory lien was without merit. The court concluded that even if the creditor had obtained a pre-petition judgment against debtor in a liquidated amount, the debt would have been dischargeable in debtor's bankruptcy case. Any complaints were now time barred, per Rule 4007(c) or Rule 4004(a), Federal Rules of Bankruptcy Procedure. Since any debt which might have been owed to the creditor had been fully discharged in debtor's bankruptcy case, the court held that the creditor was precluded from taking any action against debtor per § 727(b). The court further held that the creditor was precluded from taking any action against debtor to collect this debt even though the automatic stay had then been lifted by operation of law.

***In re Oxford Expositions, LLC, 2011 WL 1135923 (Bankr. N.D. Miss. Mar. 25, 2011).***

Debtor Oxford Expositions, LLC ("Oxford Expo") filed an emergency motion for authority to enter into a joint venture with an LLC under which they sought to host an "appointment-based" event. Questex Media Group, LLC ("Questex") purchased all stock of the debtor's related entities via a 2007 stock purchase agreement. Questex opposed relief to debtor on various grounds, including that a Delaware bankruptcy court had retained exclusive jurisdiction over related matters. It also asked for relief from the automatic stay to allow its suit against Oxford Expo, previously removed from state court, to go forward. The 2007 stock purchase agreement's noncompete provisions bound various executives from competing with the purchaser, previously known as Questex Media Group, Inc. ("Old Questex"). When Old Questex and its affiliates filed Chapter 11 in 2009, they sold all of their assets (including the stock purchase agreement) via an asset purchase agreement to QMG Acquisition, LLC, which later changed its name to Questex Media Group, LLC, the party that was involved in this proceeding. Oxford

# Recent Decisions by HONORABLE DAVID W. HOUSTON, III (continued)

Expo's proposed joint venture raised issues regarding the non-compete provisions as to former executives of a debtor-related entity. The court found that the exclusive jurisdiction claim was disingenuous and lacked merit as the same counsel was representing Questex in both forums. Lastly the court concluded that because the proposed joint venture event was an "appointment-based" event and not a "trade show," which would have been precluded by the non-compete provision, the debtor's participation therein did not violate the non-compete provision. The court granted the emergency motion and allowed the joint venture to go forward, and overruled Questex's motion for relief from the stay, which it also found to be temporarily mooted due to an order referring the suit to the bankruptcy court for adjudication.

***Oxford Expositions, LLC, et al. v. Questex Media Group, LLC, et al. (In re Oxford Expositions, LLC), 2011 WL 3510907 (Bankr. N.D.*** Miss. Aug. 8, 2011).

As counterdefendants, debtor company Oxford Expositions, LLC ("Oxford Expo") and the two individuals integral to its ongoing operations filed a motion to dismiss a counterclaim of Questex Media Group, LLC ("Questex"). The counterclaim sought injunctive and declaratory relief against the debtor on four counts: (1) breach of contract; (2) intentional interference with prospective business relations; (3) defamation; and (4) civil conspiracy. The initial complaint sought injunctive and declaratory relief against counterclaimant to permit Oxford Expo to operate as a going concern. The court treated the motion to dismiss as one filed pursuant to Fed. R. Civ. Proc. 12(b)(6). Oxford Expo asserted that the counterclaim failed to state a claim as a matter of law because it did not pass the tests established by the United States Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). Those cases provide: (1) that a claim for relief may not rest on mere conclusions, but must assert specific facts; and (2) that a claim for relief must be plausible. The court granted the motion to dismiss as to the defamation and civil conspiracy counts, but denied it as to breach of contract and intentional interference with prospective business relations. The court held that the counterclaim stated causes of action upon which relief could be granted as to counts (1) and (2) because the conclusory allegations therein were supported by other factual recitals. As to counts (3) and (4), the court held that Questex failed to allege sufficiently specific facts and did not meet the Twombly or Iqbal standards. Thus, the court dismissed the defamation and civil conspiracy counts without prejudice and gave Questex 30 days from entry of the opinion to amend its counterclaim, if it chose to do so.

***Oxford Expositions, LLC, et al. v. Questex Media Group, LLC (In re Oxford Expositions, LLC), 2011 WL 4074028 (Bankr. N.D. Miss. Sept. 9, 2011).***

Defendant Questex Media Group, LLC ("Questex") filed a motion to determine whether claims by plaintiffs, debtor Oxford Expositions, LLC ("Oxford Expo") and two non-debtor individuals, to conduct certain trade show activities, as well as whether defendant's own counterclaim were core proceedings as defined in 28 U.S.C. § 157(b)(2). In a prior proceeding before the court, plaintiffs filed a complaint for injunctive and declaratory relief after defendant accused them of violating certain non-compete agreements. Defendant filed a counterclaim and also filed a proof of claim in the debtor's bankruptcy case that was related to the counterclaim. The court discussed at length the implication of the recent United States Supreme Court decision in Stern v. Marshall, 131 S.Ct. 2594 (2011) and noted that while many are concerned that Stern impacts the subject matter jurisdiction of the bankruptcy court, Justice Roberts expressly concluded in his majority opinion that § 157(b)(5) is not jurisdictional. Rather, § 157 "allocates the authority to enter final judgment between the bankruptcy court and the district court . . . That allocation does not implicate questions of subject matter jurisdiction." Stern, 131 S.Ct. at 2606-07. Thus, the court concluded that the Stern language confirms that a party can consent to the bankruptcy court's entering a final judgment in a non-core matter as contemplated by § 157(c)(2), which expressly permits parties to consent to entry of a final judgment by a bankruptcy judge in non-core cases. In the absence of such consent, the bankruptcy court has subject matter jurisdiction to consider a non-core proceeding, but may only make proposed findings of fact and conclusions of law which are to be submitted to the district court for the entry of a final order after reviewing de novo those matters to which a party has timely and specifically objected. The Supreme Court thus instructed that state law counterclaims, which would not necessarily have to be resolved in the process of ruling on a creditor's proof of claim, are no longer core proceedings simply by virtue of being statutorily listed in § 157(b)(2)(C). Id. at 2620. Thus, the court concluded that the converse should also be true: The Stern opinion did not abrogate the authority of a bankruptcy court to enter a judgment on a state law counterclaim that by necessity must be resolved in the process of ruling on the creditor's proof of claim. Where the two are inextricably tied, the counterclaim could conceivably still be a core proceeding. Consequently, if a state law counterclaim must be determined in the process of ruling on a creditor's proof of claim, pursuant to §§ 501 and 502 of the Bankruptcy Code, and Fed. R. Bankr. Proc. 3007, then it arises both under the Bankruptcy Code and in the bankruptcy case. If the state law counterclaim does not need to be determined in the process of ruling on a creditor's claim, as in Stern, then it does not and should not be considered a non-core proceeding. The claims against the debtor were for pre-petition and post-petition damages in addition to a remedial claim for injunctive relief which would effectively terminate the debtor's ability to operate as a going concern. The court held that the claims between the debtor and defendant were core proceeding claims as defined in § 157(b)(2)(A), (B), and (O) because defendant's counterclaim had to be determined in the process of ruling on its proof of claim. The court further held that the causes of action between defendant and the two non-debtor individuals, who were plaintiffs and counter-defendants but not debtors in bankruptcy, were inextricably related to the debtor's bankruptcy case. However, as these parties were not debtors and would not be in bankruptcy court at all but for the Chapter 11 filing of the debtor, in an abundance of caution, the court held that the claims against the non-debtor parties were non-core proceedings.

# Selected Opinions by JUDGE EDWARD ELLINGTON

*Submitted by Mimi Speyerer, Law Clerk*

**IN RE FISH & FISHER, INC;**
Case Case No. 09-2747EE; Chapter 11; December 17, 2010 §§ 327(a), 101(14) Fed. R. Bank. P. 2014

**FACTS**: The issue before the Court was whether Horne LLP was qualified for employment as the accounting firm for the Debtor. Horne had filed a proof of claim in the case for unpaid invoices for general accounting services. Horne had also joined in a motion to convert the Debtor to a Chapter 7. In settlement of the motion to convert, a Chapter 11 Trustee was appointed. The Trustee chose Horne to provide post-petition accounting services. In an attempt to remove Horne's creditor status, Horne arranged to sell its prepetition claims to Argo Partners. The UST objected to Horne being hired because the transaction between Horne and Argo was not an irrevocable transfer of the claim in its entirety as was stated in Horne's affidavit. The UST asserted that the transfer did not remove Horne's creditor status because Horne retained, albeit indirectly, a financial interest in the Debtor's estate. In addition the UST asserted that Horne's active involvement in the case prior to the appointment of a trustee disqualified it from employment by the estate.

**HOLDING**: The Court found that under § 327(a), a professional may be employed if he/she does not hold or represent an interest adverse to the estate and that he/she is a disinterested person. Section 101(14) defines a disinterested person. The Court found that holding an interest adverse to the estate for purposes of § 327(a) and § 101(14) means to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate and that would create either an actual or potential dispute in which the estate is a rival claimant. The Court found that Horne clearly held an economic interest that is adverse to the estate and that this interest disqualified Horne from employment.

The Court further addressed whether the affidavit submitted in support of the application to employ met the disclosure standard under Rule 2014(a). The Court found that the affidavit was not sufficient under Rule 2014 standards because it characterized the claims transfer in such a way as to make it difficult for the Court and the UST to gauge Horne's lack of disinterestedness.

**IN RE GREEN HILLS DEVELOPMENT COMPANY, LLC (Alleged Debtor);**
Case No. 10-3274EE; Involuntary Chapter 7; February 17, 2011. § 303(a), (b) & (h).

**FACTS**: CULS filed an involuntary petition against Green Hills. Green Hills had obtained funds from CULS to acquire and develop approximately 403 acres of real property in Brandon, Rankin County, Mississippi. Litigation later ensued between the parties in state court in Texas. CULS then filed the involuntary petition against the Debtor. The Debtor filed a motion to dismiss the involuntary. CULS filed a response and a motion for summary judgment. The issues before the Court were whether Green Hills was eligible to file a Chapter 7; did CULS have standing to file the petition; and may an order for relief under § 303(h) be entered.

**HOLDING:** The Court found Green Hills was otherwise eligible to be a debtor under Chapter 7.

In order to have standing, CULS, as the sole petitioning creditor, had to show that Green Hills had less than 12 creditors; that CULS's claim was not contingent as to liability; that CULS's claim is not the subject of a bona fide dispute as to liability or amount; and that CULS' claim totals at least $14,425. The Court found that CULS met its burden under § 303(b) to bring the petition against Green Hills. Once § 303(a) and (b) have been met, the Court must then determine whether to enter an order for relief pursuant to § 303(h). The Court dismissed the petition because it found that CULS did not prove by a preponderance of the evidence that Green Hills was not generally paying its debts and that the debts were not subject to a bona fide dispute as to liability or amount.

**Note:** CULS has appealed this ruling.

**GERALD BUTLER V. JAMES STEPHEN WRIGHT & JANE ANN WRIGHT (IN RE WRIGHT);**
Case No. 10-1246EE; Adversary No. 10-41; Chapter 7; June 24, 2011. § 523(a)(2)(A) Fed. R. Bank. Pro. 7056

**FACTS:** Butler filed suit against the Debtors, his ex-brother and sister-in-law, in District Court in Florida. A jury returned a verdict in favor of Butler. Once the Debtors filed bankruptcy, Butler filed an adversary objecting to the discharge of the amount awarded by the jury.

**HOLDING:** The Court found that issue preclusion applied if the issue at stake was identical to the one involved in the prior action; if the issue was actually litigated; and if the determination of the issue in the prior action was a necessary part of the judgment. In order to meet its burden, the movant must provide an adequate record from the prior action. The Court found that Butler had submitted an adequate record for the Court to apply issue preclusion to prevent relitigation of the facts decided in the Florida litigation. The Court then held that Butler had shown by a preponderance of the evidence that those facts supported his claim that the debt should not be discharged under § 523(a)(2)(A).

**Note:** The Debtors have appealed this ruling.

**FRANKLIN CREDIT MANAGEMENT CORP. V. EMMIT WOODS, JOHN DAVIS, PIKE COUNTY CHANCERY CLERK, DOUG TOUCHSTONE, JOE B. YOUNG, TAX ASSESSOR/ COLLECTOR PIKE COUNTY (IN RE EMMIT WOODS);**
Case No. 03-2885EE; Adversary No. 10-16; Chapter 13; July 15, 2011. § 362(a)(3), (4) & (5); § 362(b)(18) Fed. R. Bank. P. 7012

**FACTS:** Debtor executed a promissory note and deed of trust on his home. Debtor subsequently filed a Chapter 13. While his bankruptcy was pending, the property sold for delinquent ad valorem taxes. Davis purchased the property at the tax sale at the tax sale. The Debtor completed his plan. Several years later, Pike County issued a document conveying the property to Davis. Several more years passed, then Franklin Credit reopened the Debtor's bankruptcy case and filed an adversary requesting the Court to declare the tax sale void. Davis filed a motion to dismiss alleging the Court lacked subject matter jurisdiction. Franklin Credit filed a motion for summary judgment.

# Recent Decisions by HONORABLE EDWARD ELLINGTON (continued)

**HOLDING:** First, the Court held that Davis' request to retroactively annul the stay contained in his memorandum was not properly before the Court. The Court then held that the property was clearly property of the bankruptcy estate when the tax sale occurred, therefore, the Court has subject matter jurisdiction. As for the tax sale, the Court found that the automatic stay was not lifted to allow the tax sale to occur, consequently, the tax sale is voidable as a violation of the stay. The Court granted Franklin Credit's request to declare the tax sale void *ab initio* and held that the chancery clerk's conveyance of title to Davis was improper and should be set aside. The Court did note that pursuant to § 362(b)(18), the automatic stay does not stop a lien for post-petition ad valorem taxes from attaching to property of the estate. However, in order to conduct a tax sale, the automatic stay must be lifted.

**O & G LEASING, LLC AND PERFORMANCE DRILLING CO. LLC V. FIRST SECURITY BANK, AS TRUSTEE, AND DOE DEBENTURE HOLDERS 1-5000 (IN RE O & G LEASING, LLC, ET. AL.);**

Case No. 10-1851EE; Adversary No. 10-54; Chapter 11;
August 26, 2011.
§ 574 Miss. Code §§ 75-9-102(73); 75-9-108; 75-9-203; 75-9-310(a).

**FACTS:** In order to finance the purchase and/or construction of drilling rigs, the Debtor issued a series of debentures (a total of 5). First Security served as the indenture trustee for all of the debentures. The debentures were secured by the five drilling rigs. In 2009, the Debtor negotiated an Exchange Offer with First Security. As a result, all of the prior debentures were consolidated into one debenture, and the Debtor entered into a new security agreement. The one debenture was secured by all five of the drilling rigs. The Debtor filed bankruptcy and filed an adversary seeking to have the validity, priority and extent of First Security's lien determined. The Debtor alleged that First Security was not secured because the 2009 security agreement lacked an adequate description of the collateral–the Debtor alleges that when it signed the security agreement, the exhibit with the detailed description of the collateral was not attached. The Debtor further alleged that the filing of the UCC-1 financing statements constituted a preference and that the 2009 Debenture was a complete novation of the prior debentures.

**HOLDING:** The Court found that under Mississippi law, a description of collateral is sufficient so long as it reasonably identifies what is described–enough to put a reasonably diligent person on notice that there may be a security interest in the collateral. The Court further held that even without the exhibit with the detailed description of the collateral being attached to the security agreement when the Debtor signed it, the security agreement was valid because the security agreement satisfied all of the elements under Miss. Code § 75-9-203. As long as elements of § 75-9-203 are met, it does not matter what order they were completed. The Court also found that since the estate had not been diminished or depleted by the filing of the UCC-1 financing statement, it was not a preference. Finally, the Court found that the 2009 Debenture was not a novation under Mississippi law since the Debtor was never released of its obligation to First Security and no new parties were added.

**KIMBERLY R. LENTZ, TRUSTEE V. RICK MYERS, ET. AL. (IN RE RICK AND TINA MYERS),**

Case No. 00-53489EE; Adversary No. 10-5014; Chapter 7; September 1, 2011.

**FACTS:** This is another opinion in the continuing litigation between the Debtors, Liberty Mutual Insurance Co. and the Chapter 7 Trustee. The Trustee filed the adversary in order to have the Court adjudicate whether the Debtor converted from a Chapter 13 to a Chapter 7 in bad faith, which would make certain causes of action in District Court property of the Debtors' bankruptcy estate, and for a determination as to whether a corporation created post-petition (Infinity) is the successor in interest to the Debtors and another corporation. [Earlier in 2011, the Court had denied motions to dismiss the adversary filed by the Debtors and Infinity.] The Debtors and Infinity then filed a motion for summary judgment alleging that the causes of action did not accrue until Liberty Mutual denied claims, which was after the Debtors received their discharge and their case was closed. Therefore, the Debtors/Infinity contend that the District Court causes of action were not property of the estate and the issue of whether the Debtors converted in bad faith was moot.

**HOLDING:** The Court held that the *Order* entered by Judge Wingate in the District Court litigation clearly held that the causes of action accrued prior to the time the Debtors converted their Chapter 13 to a Chapter 7; and therefore, Judge Wingate ruled that if the conversion is found to have been in bad faith, the causes of action would be property of the Debtors' bankruptcy estate. Applying the *Law of the Case Doctrine* and the *Doctrine of Stare Decisis*, the Court held that Judge Wingate's rulings controlled and would not be overturned.

# Selected Opinions by JUDGE NEIL P. OLACK

*Prepared by Rachael Lenoir and Brooke Trusty. These opinion summaries are designed to provide general educational information and should not be considered as a substitute for the actual test of the cases.*

**Kinwood Capital Group, LLC v. Northlake Development, LLC**
*(In re Northlake Development, LLC), Adv. Proc. 06-00171-NPO*
Kinwood Capital Group, LLC ("Kinwood") is a Mississippi limited liability company formed in 1998 by George Kiniyalocts and Michael Earwood ("Earwood") to acquire and develop about 520 acres in Panola County (the "Panola Property"). In 2000, Earwood formed Northlake Development, LLC ("Northlake"), also a Mississippi limited liability company. Earwood, while purportedly acting on behalf of Kinwood, executed a warranty deed conveying the Panola Property to Northlake. Then, while acting on behalf of Northlake, Earwood executed a series of promissory notes to BankPlus, all purportedly secured by deeds of trust on the Panola Property.
The Court found that Earwood had no actual or apparent authority to convey the Panola Property to Northlake. Therefore, the deeds of trust executed by Earwood on behalf of Northlake did not create a valid security interest in the Panola Property. The Court declared the deed null and void, as well as the deeds of trust to BankPlus.
BankPlus appealed to the district court, which affirmed this Court in BankPlus v. Kinwood Capital Group, LLC, 430 B.R. 758 (Bankr. S.D. Miss. 2009). On further appeal, the Fifth Circuit certified the voidable/void ab initio question to the Supreme Court of Mississippi. *See* In re Northlake Dev., LLC, 614 F.3d 140 (5th Cir. 2010). The Mississippi Supreme Court, in turn, found that the deed was "void and of no legal effect." See In re Northlake Dev., LLC, 60 So. 3d 792 (Miss. 2011). Accordingly, the Fifth Circuit in In re Northlake Dev., LLC, 643 F.3d 448 (5th Cir. 2011), held that Kinwood's rights in the property were unaffected by the actions of Earwood, Northlake, or any subsequent party.

**Premier Entertainment Biloxi LLC v. U.S. Bank National Assoc.**
*(In re Premier Entertainment Biloxi LLC, 2010 WL 3504105 (Bankr. S.D. Miss. Sept. 3, 2010)*
To raise capital to finance the construction of the Hard Rock Hotel & Casino (the "Hard Rock") along the Mississippi Gulf Coast, Premier Entertainment Biloxi LLC and Premier Finance Biloxi Corp (the "Debtors") issued notes in the amount of $160 million pursuant to the terms of a Trust Indenture. The casino and hotel operations were scheduled to open on August 31, 2005. However, Hurricane Katrina on August 29, 2005, destroyed the casino and severely damaged the hotel and parking garage.
The Indenture Trustee recovered about $181 million in insurance proceeds but refused to release these proceeds to the Debtors on the ground that they could not meet the requirement in the Indenture that the Hard Rock open by December 31, 2005. The Debtors filed voluntary petitions for relief under chapter 11. During the course of the bankruptcy case, the Court ordered the progressive release of the insurance proceeds, which allowed the Debtors to rebuild the Hard Rock. The Court later approved a plan of reorganization that provided payment of the notes at par value. In this adversary proceeding, the holders of the notes (the "Noteholders") claimed that they were entitled to a prepayment penalty in the amount of $10,750,000 plus default interest of $3,284,125 under § 506(b). In the alternative, the Noteholders argued that they were entitled under § 502(b) to damages under non-bankruptcy law. The Court found that the Indenture itself did not grant the Noteholders a penalty or liquidated damages and denied them payment under § 506(b). The Court also found that the Noteholders were entitled under § 502(b) to damages for the Debtors' breach of the Indenture. The Court awarded the Noteholders an allowed unsecured claim in the amount of $9,574,123, reflecting the Noteholders' actual loss, measured by the present value difference between the market interest rate and the contract interest rate at the time the notes were paid.

**Sherman v. Beneficial Financial I, Inc.**
(In re Sherman), Adv. Proc.10-05020-NPO
Beneficial Financial I, Inc. ("Beneficial"), a creditor in the prior chapter 13 bankruptcy case of Larry Dale Sherman and Trudy Renee Sherman (the "Shermans"), mailed the couple a letter seeking to collect certain pre-petition fees and expenses related to their mortgage. A second letter followed in which Beneficial stated, "[t]his is an attempt to collect a debt by a debt collector." The Shermans filed suit, alleging that Beneficial violated the Fair Debt Collection Practices Act (the "FDCPA"), 15 U.S.C. § 1692 et seq., and the discharge injunction under § 524. Beneficial sought dismissal of the Shermans' FDCPA claim.
The Court held that the language in the second letter, which the Shermans had attached as an exhibit to their complaint, sufficiently alleged that Beneficial was a "debt collector" within the meaning of the FDCPA. The Court also held that the Shermans could bring claims under both the Bankruptcy Code and the FDCPA.

**KeyBank USA, N.A. v. Kimberly R. Lentz, Trustee** *(In re Guess), Adv. Proc.10-05006-NPO*
Andrew Wayne Guess (the "Debtor") enrolled in flight school at Vortex Helicopters, Inc. ("Vortex") as an initial step toward obtaining his commercial helicopter pilot's license. The Debtor borrowed the tuition from KeyBank USA, N.A. ("KeyBank"). The Debtor did not finish his training within the ten-month program, and, therefore, borrowed additional funds, via the Internet, from KeyBank to continue his flying lessons.
The Debtor sued Vortex in state court, alleging that Vortex unnecessarily required him to repeat courses in order to prolong his enrollment there. The Debtor then filed his bankruptcy case. While his case was pending, Vortex settled the lawsuit. KeyBank initiated this adversary proceeding, alleging that the settlement proceeds made up a constructive trust and did not constitute property of the Debtor's estate under § 541(d). The Court found that KeyBank failed to show that it was the victim of "substantial overreaching or fraud" committed either by (1) the Trustee, the individual who currently holds the settlement funds, (2) the Debtor, the individual who borrowed the funds, or (3) Vortex, the entity who eventually received the funds. The Court held that the proceeds should be distributed on a pro rata basis among all of the unsecured creditors.

**B.H. Homes, LLC v. Wilson**
*(In re Wilson), Adv. Proc. 10-05022-NPO*
Prior to filing a voluntary chapter 7 petition, Dean R. Wilson ("Mr. Wilson") transferred his interest in two real properties in Biloxi (the "Biloxi Properties") to his wife Lavetta E. Wilson ("Mrs. Wilson"). A creditor of the bankruptcy estate filed a complaint alleging Mr. Wilson's transfers were

# Opinion Summaries by JUDGE NEIL P. OLACK (continued)

fraudulent under Miss Code Ann. §§ 15-3-107 and 15-3-111. In response, Mr. Wilson and Mrs. Wilson argued that the creditor lacked standing to bring the avoidance action. The Court held that although it is the trustee who traditionally brings an avoidance action, an action may be brought by a creditor of the bankruptcy estate under exceptional circumstances.

**BankPlus v. Wood**
*(In re Wood), 2010 WL 4366486 (Bankr. S.D. Miss. Oct. 28, 2010)*
Before filing a petition for relief under chapter 13, Charles Steven Wood, Sr. and Janice A. Wood (the "Debtors") entered into a construction and purchase agreement with a condominium complex in Orange Beach, Alabama. To finance the purchase of the condominium unit (the "Condo"), the Debtors obtained a letter of credit from BlankPlus secured by a first priority lien on the Condo. In their proposed chapter 13 plan, the Debtors sought to reject the letter of credit and avoid the lien on the Condo. The Court held that the undisputed facts established that BankPlus had a valid, first priority mortgage lien on the Condo.

**Blakeney v. Jasper County, Mississippi**
*(In re Blakeney), 2010 WL 4386928 (Bankr. S.D. Miss. Oct. 29, 2010)*
The Debtor, Danny Joe Blakeney ("Blakeney"), alleged he was not paid in full by Jasper County for debris removal work he performed after Hurricane Katrina. Jasper County propounded requests for admissions, which Blakeney failed to answer. The Court deemed the requests as admitted and awarded Jasper County summary judgment.

**In re Inn on the Hill Hattiesburg, LLC,**
*Case No. 10-50289-NPO*
In this chapter 11 bankruptcy case, Ramada Worldwide, Inc. ("Ramada") sought an administrative expense claim under § 503(b)(1)(A) for certain fees and charges incurred under a License Agreement as a result of the post-petition operation of its hotel facility by the debtor-in-possession, Inn on the Hill Hattiesburg, LLC ("Inn on the Hill"). The Court disallowed Ramada's claim on the ground that Ramada failed to present evidence that Inn on the Hill derived any discernible benefit from the License Agreement.

**Whitney National Bank v. Phillips**
*(In re Phillips), 2010 WL 5093388 (Bankr. S.D. Miss. Dec. 8, 2010)*
James Todd Phillips and Shelly M. Phillips (the "Phillipses") borrowed $800,000 from Whitney National Bank to finance the purchase of a lot on which they planned to build a home in Louisiana. Later, the Phillipses borrowed another $303,000 from Whitney National Bank for their business as operating capital. They pledged their Louisiana property as collateral for both debts. Approximately one year later, at the closing on the sale of the property, only one mortgage was included in the HUD-1 settlement statement. As a result of that purported error, the sales proceeds were applied only to the home mortgage and approximately $1 million was delivered to the Phillipses. Whitney National Bank asked that the debt owed on the business loan be excepted from discharge under §523(a)(4) or §523(a)(6). The Court found that Whitney National Bank failed to show the requisite intent on the part of the Phillipses and also failed to demonstrate that the business loan was the proximate cause of its damages because, inter alia, it voluntarily released some of the collateral securing the loan.

***In re Ingrum, Case No. 10-02015-NPO***
John Osker Ingrum (the "Debtor") sought relief from an Agreed Order that set forth the terms of a settlement reached between the Debtor and Community Bank of Mississippi. As grounds, the Debtor alleged that he received inadequate legal advice from his prior counsel. For various reasons, the Debtor regretted having filed his petition for relief under chapter 13, rather than under chapter 12. The Court denied the Debtor any relief from the Agreed Order under Fed. R. Civ. P. 60(b)(1), as made applicable by Fed. R. of Bankr. P. 9024, on the ground that such relief is not available when the reason asserted is the purported mistake of counsel or where the purpose is to relieve a party from his own deliberate choices.

**Rivers v. Green Tree Servicing, LLC** *(In re Rivers), 2010 WL 5375950 (Bankr. S.D. Miss. Dec. 22, 2010)*
Rosie Ann Rivers ("Rivers") purchased a mobile home from Custom Manufactured Homes, Inc., Homes of Philadelphia ("Horton"). To finance the purchase of the home, Rivers executed a Manufacturer Home Retail Installment Contract and Security Agreement in favor of Horton, which was later assigned to Green Tree Servicing, LLC ("Green Tree"). The contract contained a "class action waiver." Rivers asked the court to re-open her chapter 13 case so that she could file a complaint against Green Tree regarding Green Tree's handling of plan payments during her bankruptcy case. Green Tree countered that Rivers was barred from litigating this claim because of the "class action waiver" in her contract. The Court held that the "class action waiver" applied only to arbitration, and not to litigation. Further, the Court held that even if the waiver did apply to litigation, it would not be relevant to this case as this was a core bankruptcy proceeding and not a claim arising from or relating to the contract.

***In re Edwards, 2011 WL 148117 (Bankr. S.D. Miss. Jan. 18, 2011)***
Clay Young ("Young") co-signed a note with Douglas Wade Edwards (the "Debtor") to finance the purchase of a vehicle. After the Debtor filed his chapter 13 petition, Young paid the debt in full and filed a proof of claim as a secured creditor. In what appears to be an issue of first impression, the Court held that Young was a secured creditor based upon the subrogation right of an accommodation party under Miss. Code Ann. § 75-3-419, as discussed in Murray v. Payne, 437 So. 2d 47 (Miss. 1983). Because the original creditor was secured, Young stepped into the shoes of the original creditor and became a secured creditor himself after he paid the debt.

***In re Johnston, Case No. 10-04143-NPO***
Leon Major Johnston and Frances Lynn Johnston (the "Johnstons") filed a petition for relief under chapter 13. Prior to that date, Frances Lynn Johnston ("Mrs. Johnston") had entered into a rental contract with Graceland Rentals, which was later assigned to Gold Capital, to lease a portable storage shed. The contract, commonly known as a rent-to-own contract, stipulated that if Mrs. Johnston renewed the lease for 36 months (for a total payment of $4523.04), she would own the shed outright. In their chapter 13 plan, the Johnstons proposed to keep the shed and pay Gold Capital $200, its fair market value. Gold Capital objected on the ground the plan failed to make any provision for the assumption of the contract or for the cure of the default under § 365. In response, the Johnstons argued § 365 did not apply because the rental contract was more like a security agreement than a "true" lease. The Court found that the

# Opinion Summaries by JUDGE NEIL P. OLACK (continued)

rental contract was a lease governed by § 365.

**Realty Mortgage Corp. v. First American Title Ins. Co.**

*(In re Realty Mortgage Corp.), 2011 WL 1134461 (Bankr. S.D. Miss. March 25, 2011)*

*In con*nection with the purchase of real property in California, First American Title Insurance Company ("First American") issued two title insurance policies to Realty Mortgage, LLC, a business entity formed in California. Realty Mortgage Corporation, a Mississippi corporation, was the sole member of Realty Mortgage LLC. After Realty Mortgage, LLC ceased to do business, Realty Mortgage Corporation claimed it became the beneficiary of the policies. Realty Mortgage Corporation filed an adversary proceeding against First American, alleging breaches of the title policies. The Court found that Realty Mortgage Corporation and Realty Mortgage LLC were separate entities; thus, to show it was a beneficiary of the policies, Realty Mortgage Corporation had to show it was a successor or assign of Realty Mortgage, LLC. Because it failed to provide any competent evidence as to that issue, the Court awarded summary judgment in favor of First American.

**Soisson v. Hillebrandt**

*(In re Hillebrant), 2011 WL 2447738 (Bankr. S.D. Miss. June 15, 2011)*

In 2006, Scott Soisson ("Soisson") filed suit against Michelle Hillebrandt ("Mrs. Hillebrandt") and her former husband Ernest P. Hillebrandt (together, the "Hillebrandts") in Texas state court for fraud. According to Soisson, the Hillebrandts embezzled money from the their jointly owned pay-day loan business. Following a trial, the Texas court entered a default judgment against the Hillebrandts, who had filed an answer but who had otherwise not defended the action. After Mrs. Hillebrant filed a petition for relief under chapter 7, Soisson filed an adversary complaint arguing that the Texas judgment was non-dischargeable under § 523(a)(4) or § 523(a)(6). After applying the doctrine of collateral estoppel to the factual findings in the Texas judgment, the Court found that the Texas judgment was not excepted from discharge because there was insufficient evidence to establish a fiduciary relationship between Soisson and Mrs. Hillebrandt or to establish Mrs. Hillebrandt's fraudulent intent.

# Opinion Summaries by JUDGE KATHARINE SAMSON

*Prepared by Constance Brewster, Law Clerk*

***In re Dixon, No. 10-51214-KMS (Bankr. S.D. Miss. Mar. 31, 2011).***

The primary issue before the Court was whether Debtor's Chapter 13 plan proposed to pay her unsecured creditors at least as much as they would be entitled to receive in a Chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). The answer to that question hinged upon the determination of the amount to which Debtor's homestead was exempt from the bankruptcy estate.

Debtor argued that under Mississippi law, her homestead was owned as tenants by the entirety with her non-debtor spouse and was fully exempt from the bankruptcy estate under 11 U.S.C. § 522(b)(3)(B). Alternatively, Debtor argued for a homestead exemption calculation that resulted in no homestead value included in the estate. The Chapter 13 trustee argued that the Debtor was prohibited from making the tenants by the entirety argument because it was raised for the first time during the hearing and post-hearing briefs requested by the Court and that Debtor's schedules reflected only the traditional state homestead exemption. Additionally, Trustee suggested an alternative method for calculating the homestead exemption, contrary to Debtor's formula.

Relying on Bankruptcy Procedural Rule 1009, allowing for the amendment of a voluntary schedule as a matter of course any time before the case is closed, the Court allowed and addressed Debtor's tenancy by the entirety argument, the result of which rendered the issue of the homestead exemption calculation moot. Reviewing Mississippi common law and statutes, the Court held that property owned as a tenancy by the entirety, which is an estate in which no action taken by one of the two spousal tenants in entirety can terminate the rights of the other to their full right in the estate, is exempt from process and thus fully exempt from the bankruptcy estate under 11 U.S.C. § 522(b)(3)(B). Thus, because the entire value of Debtor's homestead was exempt from the bankruptcy estate, Debtor's proposed Chapter 13 plan was permissible.

***In re Grind Coffee & Nosh, LLC, No. 11-50011-KMS, 2011 WL 1301357 (Bankr. S.D. Miss. Apr. 04, 2011).***

Creditor First Bank and Trust ("First Bank") filed a motion requesting relief from the automatic stay and abandonment and, in the alternative, adequate protection as to certain real property and improvements. The parties also requested the Court to determine the value of the real property and improvements. In response to the Motion, the Debtor contested First Bank's valuation asserting that the bank had obtained two appraisal reports with substantially different valuations. Both appraisers testified at the hearing on the Motion, one valuing the property at $250,000 and the other valuing the property at $565,000.

After reviewing the appraisal reports and testimony of the witnesses and analyzing the various methodologies utilized by the appraisers, the Court held that neither experts' appraisal reports reflected an appropriate value of the property because of a lack of reliable comparables due to a decline in the market conditions in the area. The Court rejected the appraisers' sales comparison approach analysis reasoning that the downturn in the market (no recent restaurant sales), dissimilar location (historic coastal town with friendly shopping versus a commercial district located directly off of Interstate 10) and condition (damaged property) were not comparable to the property at issue. The Court also rejected the income approach analysis reasoning that vacant rental properties in the immediate area weighed against the probability of a purchase for rental income. Ultimately, the Court held that the most reasonable estimate of market value under the particular circumstances of the case and in the current market was an estimate that utilized a value established by a cost approach analysis, which amounted to $350,000.00.

# Opinion Summaries by JUDGE SAMSON
## (continued)

***In re Hennis, No. 11-50044-KMS (Bankr. S.D. Miss. Mar. 4, 2011)***

Debtor and his wife executed four promissory notes in favor of Trustmark secured by deeds of trust on various properties. Debtor filed a district court action seeking to nullify the promissory notes, release the liens, and award damages in the amount of $4,000,000 for various injuries. In the district court action, Trustmark counterclaimed for judicial foreclosure of the deeds of trust. Trustmark filed a Motion for Summary Judgment ("MSJ"), which the district court granted in part and denied in part, due to the failure of Trustmark to attach a copy of one of the promissory notes to the motion, and recognized Trustmark's right to judgment on three of the four promissory notes. On August 2, 2010, Trustmark filed a second MSJ with a copy of the missing note attached. On August 6, 2010, the district court entered a final judgment regarding Trustmark's first MSJ, awarding Trustmark damages and appointing a special commissioner to conduct a foreclosure sale. On August 16, 2010, while Trustmark's second MSJ was pending and the foreclosure sale was being arranged, Debtor initiated a Chapter 13 bankruptcy case. On November 17, 2010, the bankruptcy court dismissed Debtor's bankruptcy case for failure to comply with court orders and failure to file the initial documents required by the bankruptcy code. On November 18, 2010, the district court entered an order granting Trustmark's Second MSJ. On November 30, 2010, the district court entered a judgment awarding Trustmark additional damages and authorizing the appointed special commissioner to foreclose on the deed of trust. On January 7, 2011, the scheduled foreclosure sales date, the Debtor filed another bankruptcy case.

Trustmark filed a motion seeking dismissal of the case or termination of the automatic and co-debtor stay. Again, Debtor failed to file the initial documents with the bankruptcy court, even after being granted an extension of time and receiving notice that failure would require him to appear at the hearing on Trustmark's motion and to show cause why his case should not be dismissed. Debtor neither filed the initial documents by the deadline established by the bankruptcy court nor appeared at the hearing on the Show Cause Order and on Trustmark's Motion.

The Court granted Trustmark's request to lift the co-debtor stay of 11 U.S.C. § 1301 because Debtor's wife, a co-debtor on the notes but a non-debtor in the bankruptcy case, failed to respond to Trustmark's motion. The Court reasoned that although Debtor responded to the motion, he proceeded pro se, thus only representing himself. The Court further reasoned that notice was mailed to both Debtor and his wife stating that if no response was filed, the court may decide "you do not oppose the Motion" and enter an order granting the relief requested in the motion.

The Court also granted Trustmark's request to terminate the automatic stay of § 362 reasoning that the Debtor's repeated failure to file initial documents in disregard of Court notices and orders, failure to appear, and efforts to stall the district court's order for foreclosure constituted a lack of good faith under § 362(d)(1). The Court also reasoned that Debtor's multiple bankruptcy filings were part of an attempt to delay, hinder, or defraud Trustmark from selling its collateral, thus, warranting termination of the automatic stay under § 362(d)(4).

The Court dismissed Debtor's case for "cause" under § 1307(c) barring any re-filing for a period of one year pursuant to § 105(a) and § 349(a), reasoning that the totality of the circumstances in the case constituted a sufficient pattern of abuse of the Chapter 13 process to necessitate dismissal. Because the case was dismissed, the Court denied Trustmark's remaining requests as moot.

**Knesel v. Davis**

*(In re Davis), No. 10-05046-KMS, 2011 WL 1791342 (Bankr. S.D. Miss. May 10, 2011)*

Knesel, representing that he was a secured creditor by virtue of a default judgment that he secured against Debtor in Mississippi state court prior to Debtor's filing Chapter 7 bankruptcy, initiated an adversary matter seeking a determination that Debtor's obligation to him was nondischargeable under 11 U.S.C. § 523(a)(2)(A). Debtor responded to Knesel's complaint. Several months later, Debtor filed a Motion to Strike Pleadings and Dismiss Adversary with Prejudice alleging that Knesel's adversary complaint was void for lack of proper attorney certification. After the hearing on the motion, the Court took the matter under advisement and ultimately denied Debtor's Motion.

Federal Rule of Bankruptcy Procedure 9010 and 9011 require that pleadings submitted by a party represented by an attorney or attorneys must be signed by at least one of the party's attorneys who is authorized to practice in the court. Of the two attorneys listed on the complaint, only one attorney's name, Proxmire, bore the signature required under Rule 5005-1(a)(2)(A) of the Local Rules. Because Proxmire neither was a member of the bar of the district court nor complied with the requirements for admission under the local rules, the Court held that Proxmire was not authorized to practice law in the Court and the complaint did not satisfy Rule 9011.

Emphasizing the ambiguity and vagueness in the Local Rules regarding the requirements for general practice in the court and the fact that the problem was not called to the attention of Knesel or Proxmire until the hearing, the Court granted Knesel's request to amend, as opposed to strike the complaint, pursuant to the remedial section of Rule 9011.

Addressing the issue of lack of notice of appearance in the docket, the Court held that the names and addresses at the end of the adversary complaint notified the Court of the attorney's intent to appear on behalf of Knesel sufficient to satisfy Rule 9010(b).

The Court further rejected Knesel's argument that Debtor waived his right to point out the Rule 9011 defect under Rule 12(h)(1)(B)(ii) of the Federal Rules of Civil Procedure, as adopted by Bankruptcy Rule 7012, when he failed to raise the issue in his answer to the complaint. The Court reasoned that Rule 9011 defects are not included in the enumerated list of waivable specific defenses listed in Rule 12(b)(2)-(5).

***In re S. White Transportation, Inc., No. 10-51137-KMS, 2011 WL 2292317 (Bankr. S.D. Miss. June 7, 2011).***

Prior to filing bankruptcy, Debtor was involved in state court litigation with Acceptance Loan Company, Inc. ("Acceptance") regarding whether Debtor was bound by the terms of a deed of trust securing a promissory note. Upon filing for relief under Chapter 11 of the bankruptcy code, Debtor listed Acceptance in the Matrix of Creditors and on Schedule D, while noting that it disputed Acceptance's claim. Debtor also noted the claim in the Chapter 11 plan as a disputed claim upon which no payment would be made unless the court ordered otherwise. Acceptance, without filing a proof of claim, attending the meeting of creditors, or objecting to plan confirmation, filed an adversary complaint requesting a declaratory judgment stating that its lien was not affected by the Chapter 11 plan and a determination of the extent, validity, and priority of its lien. Acceptance alleged that under Fifth Circuit case law, specifically Elixir Indus., Inc. v. City Bank & Trust Co. (In re Ahern Enters.,

# Opinion Summaries by JUDGE SAMSON (continued)

Inc.), 507 F.3d 817 (5th Cir. 2007) ("Ahern"), "lienholder participation is required as a condition for avoiding a lien through the Chapter 11 plan Confirmation process" and that because it did not file a proof of claim, Acceptance had not "participated" such that its lien remained intact.

Reviewing recent court authority and legislative history, the Court concluded that all that is required under Ahern's participation analysis is notice sufficient to satisfy due process and that it was undisputed that Acceptance received adequate notice throughout the bankruptcy proceedings, including notice of the plan and the plan confirmation hearing. Applying the remaining three of the four conditions outlined in Ahern, the Court held that Acceptance's alleged lien was voided through the Chapter 11 plan confirmation process.

Dispensing with Acceptance's alternative request to amend the confirmation order, the Court noted that Acceptance's request was, in substance, a motion to amend or modify the terms of a confirmed plan, which is governed by 11 U.S.C. § 1127(b). Reviewing Fifth Circuit case law, the Court denied Acceptance's request reasoning that it did not have standing to move for modification because, under § 1127(b), only the reorganized debtor or a proponent of a plan may seek modification of a confirmed plan.

Finally, the Court denied Acceptance's alternative request for modification of the automatic stay to allow the state court to determine lien rights of the parties. The Court reasoned that "cause" under § 362(d) did not exist because the "lien rights of the parties" were already determined through the confirmation of the plan.

***In re Martin, No. 08-50871-KMS (Bankr. S.D. Miss. Sept. 30, 2011).***

Debtor asserted that Creditor Stanton, her supervisor once-removed, violated the stay imposed by 11 U.S.C. § 362 and the Court's order confirming Debtor's Chapter 13 plan by forcing her to continue making payments on a prepetition debt not scheduled to be paid under the terms of her confirmed Chapter 13 plan by threatening to terminate Debtor's employment. At the hearing, Debtor and Stanton provided contradictory testimony as to whether Stanton took any action to coerce Debtor to continue paying prepetition debt owed to Stanton outside of the Plan or whether Debtor's payment was voluntary. Weighing the credibility of the witnesses, the Court determined that Debtor's testimony was reliable and held that Stanton actions violated the automatic stay under § 362(a)(3) and § 362(a)(6). Pursuant to § 362(k), supplemented by the Court's equitable authority under § 105(a) and civil contempt powers, the Court awarded Debtor actual damages and the costs and attorneys' fees.

**CDP Corp. v. Cahaba Disaster Relief, LLC**

*(In re CDP Corp.), No. 11-05025-KMS, 2011 WL 2982625 (Bankr. S.D. Miss. July 22, 2011).*

Equipment Leasing, LLC ("Equipment") filed suit in the United States District Court for the Eastern District of Louisiana asserting that Interstate Truck and Equipment, Inc. ("Interstate") was in possession of a barge, which Equipment allegedly bought free and clear at an auction approved by the bankruptcy court in connection with the CDP Corporation, Inc. ("CDP") bankruptcy case. Interstate filed a third-party claim against two non-debtors, the auctioneer hired by the Trustee to sell the barge and the initial purchaser of the barge at the bankruptcy auction. The Chapter 7 trustee filed an adversary proceeding in the CDP bankruptcy case requesting that the Court: (1) preliminarily enjoin the Louisiana district court from further adjudicating issues related to the Louisiana action and/or the barge; or (2) preliminarily enjoin the parties from further litigation in the Louisiana district court regarding the barge "pending transfer and referral of the [Louisiana action] to [this Court];" and (3) issue a declaration that the automatic stay imposed by 11 U.S.C. § 362(a) protected an auctioneer retained by the Trustee to sell the assets of the debtor.

The Court denied the Trustee's request to enjoin the Louisiana district court emphasizing the lack of binding authority explicitly empowering the bankruptcy court to enjoin an Article III court. Turning to the Trustee's request to preliminarily enjoin the parties, the Court analyzed the requirements for issuing a preliminary injunction holding that the circumstances of the case warranted a twenty-one day stay against Equipment from prosecuting the Louisiana action. In its analysis, the Court emphasized that the Louisiana action appeared to be a collateral attack on the bankruptcy court's sale order, undercutting the orderly process of the law. The Court denied the Trustee's request to invoke and extend the automatic stay of § 362(a) on a non-debtor, reasoning that that under the plain terms of § 362(a)(1), the stay does not apply to lawsuits arising out of post-petition activity, such as the activity in this case. Because of the denial of the motion to enjoin the Louisiana district court and considering that a motion for summary judgment was under advisement in the Louisiana action, the Court urged the Trustee and/or the auctioneer to present any arguments they deemed necessary and appropriate to the Louisiana district court.

***In re Mims, No. 10-52281-KMS, 2011 WL 1749809 (Bankr. S.D. Miss. May 6, 2011)***

Trustee filed an objection to confirmation of Debtor's Chapter 13 plan based on lack of feasibility and a supplemental objection to confirmation asserting, among other things, that the Debtor's plan was not filed in good faith pursuant to 11 U.S.C. § 1325(a)(7) because certain income, expenses, and ownership of two properties were not disclosed in the petition. Debtor responded asserting that: (1) the failure to list one of the properties was unintentional and that she and her attorney believed the error had been corrected; (2) although the remaining property was not listed on Schedule A, the debt obligation on the property was listed on Schedule D; and (3) she would abandon the two properties, utilized by her adult son for income and shelter, in order to retain her own residence. The Debtor further alleged that she filed bankruptcy to prevent foreclosure of her homestead and that she disclosed her income and assets to her attorney but her attorney's staff made a clerical error. After the hearing on the objection, the Court considered whether the bankruptcy case and Chapter 13 plan were filed in good faith under § 1325.

Section 1325(a)(7) states that the court is to confirm the plan if "the action of the Debtor in filing the petition was in good faith." Section 1325(a)(3) provides that a plan is to be confirmed if "the plan has been proposed in good faith and not by any means forbidden by law." This determination of "good faith" must be made on a "case by case basis." Considering the totality of the circumstances, the Court was convinced that Debtor's main purpose in filing the bankruptcy petition was to save her home and that the omissions or inaccuracies in the schedules were not sufficient to establish a lack of good faith.

# News from the SOUTHERN DISTRICT

*Danny L. Miller, Clerk of Court*

The Bankruptcy Court moved into the long awaited and much anticipated new Jackson Federal Courthouse in April of this year. It is an amazing facility with modern technology that will serve the courts, the Bar and the public well for many years to come. The formal dedication of the new courthouse was held on October 14, 2011.

In addition to planning and coordinating a very complex move to a new courthouse during 2011, the Bankruptcy Court has been working on a number of initiatives to improve and enhance our delivery of services to the Bar and the public:

- **February** – Began holding hearings in Hattiesburg to reduce the burden on the Bar and other parties.
- **July/August** – Provided a series of one day seminars on filing procedures for 151 legal staff from around the Southern District, including 53 attorneys that earned CLE.
- **September** – Issued Standing Order Regarding Motions to Extend or Impose the Automatic Stay which should reduce the number of hearings necessary for such motions when there are no objections and certain conditions are met.
- **October** – Welcomed new law clerks to the chambers of Judge Olack (Brooke Trusty) and Judge Samson (Constance Brewster).
- **November** –

Equipped Jackson bankruptcy courtrooms with wireless internet access, subject to any restrictions imposed by the respective judges.

Implemented a major upgrade to the Court's electronic case filing system.

Established a Bankruptcy Court page on Facebook to facilitate additional public access to important court announcements and enhance the court's ability to distribute announcements in an emergency situation.

Completed renovations on Bankruptcy Court space in Hattiesburg including a video conferencing area.

- **December** – Equipped Jackson and Gulfport Clerk's offices with video monitors to display helpful court information for filers.

As always, we sincerely appreciate user input on ways to improve the efficiency and effectiveness of Bankruptcy Court operations. If you have a suggestion or comment, please email us at feedback@mssb.uscourts.gov.

# News from the NORTHERN DISTRICT

The clerk's office held its biennial "mini" seminars across the District (Greenville, Oxford and Tupelo) in August. The combined attendance was 139 for these free seminars which are open to attorneys, paralegals and office staff. Refreshments at each location were provided by the MBC. The court acknowledges and thanks the MBC board and membership for its generous assistance in making the seminars a success.

Judge Houston's career law clerk, Hal Barkley, resigned in July, 2011 in order to accept an appointment as an Administrative Law Judge with the Social Security Administration. The new career law clerk is Che Clay. Ms. Clay is a 2010 graduate of the University of Mississippi Law School and comes to the court from the bankruptcy department of a regional bank. The court has also hired a temporary law clerk, Jessica Haurylko. Ms. Haurylko is a 2011graduate of the University of Mississippi Law School. Contact information for these new law clerks is as follows: Che Clay- (662) 319-3576, Jessica Haurylko- (662) 319-3542.

Judge Houston has announced that he will close his distinguished 28 year career on the bench effective December 31, 2012. The process to secure his successor should begin in April or May of 2012. A vacancy announcement with application instructions will be posted on the court's website, and on the website of The Mississippi Bar, at that time.

## NEW BANKRUPTCY FEES EFFECTIVE NOV. 1, 2011

| | *Old Fee* | *New Fee* |
|---|---|---|
| **Certification** | $9.00 | $11.00 |
| **Exemplification** | $18.00 | $21.00 |
| **Audio Recording** | $26.00 | $30.00 |
| **Amended Schedules Filing Fee** | $26.00 | $30.00 |
| **Record Search** | $26.00 | $30.00 |
| **Adversary Proceeding Filing Fee** | $250.00 | $293.00 |
| **Document Filing/Indexing** | $39.00 | $46.00 |
| **Title 11 Administration Fee*** | $39.00 | $46.00 |
| **Record Retrieval Fee** | $45.00 | $53.00 |
| **Returned Check Fee** | $45.00 | $53.00 |
| **Notice of Appeal Fee** | $250.00 | $293.00 |
| **Direct Appeal Fee**** | $200 | $157.00 |
| **Motion to Lift Stay Filing Fee** | $150.00 | $176.00 |

* *The increase in the Title 11 Administration Fee will increase the filing fee for original petitions filed under all Chapters of the Bankruptcy Code by $7.00.*

** *The increase in the notice of appeal fee necessitates that the supplemental direct appeal fee be reduced to ensure that the total fee for filing a direct appeal does not exceed the established appellate filing fee of $450.00.*

# 31st Annual Seminar

# PROGRAM

**THURSDAY - DECEMBER 15, 2011**

**7:45 - 8:15 REGISTRATION**

**8:15 - 8:30 WELCOME AND OPENING REMARKS (Salon A & B)**
J. Thomas Ash, President, Mississippi Bankruptcy Conference

8:30 - 10:00 **BUT I NEED TO GET IT IN JUDGE! EVIDENCE FOR THE BANKRUPTCY LAWYER**
Honorable Pamela Pepper, Chief U. S. Bankruptcy Judge
Eastern District of Wisconsin, Milwaukee, WI

**10:00 - 10:15 BREAK**

10:15 - 10:45 **CASE LAW UPDATE: MISSISSIPPI AND 5TH CIRCUIT**
Jeffrey R. Barber, Watkins Ludlum Winter & Stennis, PA
Jackson, MS

Christopher R. Maddox, Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Ridgeland, MS

10:45 - 11:45 **LIFE AFTER (BANKRUPTCY) DEATH**
Deborah D. Williamson, Cox Smith
San Antonio, TX

G. William McCarthy, Jr., McCarthy Law Firm
Columbia, SC

**11:45 - 1:00 LUNCH ON YOUR OWN (Lunch provided for speakers)**

**1:00 - 1:45 LITIGATIONS SKILLS IN BANKRUPTCY: PRACTICAL TIPS FOR THE BANKRUPTCY PRACTITIONER**
R. Scott Williams, Haskell Slaughter Young & Redliker, LLC
Birmingham, AL

**1:45 - 2:30 MORTGAGE SECURITIZATION: ASTROPHYSICS, ALCHEMY OR SOMETHING ELSE . . .**
Nicholas H. Wooten, Nicholas H. Wooten & Associates
Auburn, AL

**2:30 - 3:15 VIEWS FROM THE CLERK'S OFFICE INCLUDING A REVIEW OF THE CHANGES TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**
David J. Puddister, Clerk, U. S. Bankruptcy Court
Northern District of Mississippi
Aberdeen, MS
Danny L. Miller, Clerk, U. S. Bankruptcy Court
Southern District of Mississippi
Jackson, MS

**3:15 - 3:30 BREAK**

**3:30 - 4:00 VIEWS FROM THE U. S. TRUSTEE'S OFFICE**
Henry H. Hobbs, Jr., U. S. Trustee, Region 5
New Orleans, LA

**4:00 - 5:00 HOT TOPICS IN CHAPTER 11**
Robert A. Byrd, Byrd & Wiser
Biloxi, MS

Craig M. Geno, Harris Jernigan & Geno
Ridgeland, MS

Stephen W. Rosenblatt, Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Ridgeland, MS

Walter Newman IV, Newman & Newman
Jackson, MS

**5:00 - 6:30 COCKTAIL PARTY (Salon C)**

**FRIDAY - DECEMBER 16, 2011**

**7:45 - 8:15 REGISTRATION**

**8:15 - 8:30 MBC ANNUAL MEETING**
J. Thomas Ash, President, Mississippi Bankruptcy Conference

**8:30 - 10:00 CONSUMER ISSUES**
Honorable Eugene R. Wedoff, U. S. Bankruptcy Judge
Northern District of Illinois, Chicago, IL

**10:00 - 10:15 BREAK**

**10:15 - 11:15 BANKRUPTCY ETHICS UPDATE: NEW CASES ON DISINTERESTEDNESS, COMMITTEE REPRESENTATION AND MORE**
Susan M. Freeman, Lewis and Roca, LLP
Phoenix, AZ

**11:15 - 11:45 STUDENT LOAN DEBT: HARDSHIP DISCHARGE, ADMINISTRATIVE REMEDIES, AND FORGIVENESS**
W. McCollum Halcomb, Halcomb & Wertheim, P.C.
Birmingham, AL

**11:45 - 1:00 LUNCH ON YOUR OWN (Lunch provided for speakers)**

**1:00 - 2:30 VIEWS FROM THE BENCH**
Honorable David W. Houston, III, Chief U. S. Bankruptcy Judge
Northern District of Mississippi, Aberdeen, MS

Honorable Edward Ellington, U. S. Bankrutpcy Judge
Southern District of Mississippi, Jackson, MS

Honorable Neil P. Olack, U. S. Bankruptcy Judge
Northern & Southern District of Mississippi, Jackson, MS

Honorable Katharine A. Samson, U. S. Bankruptcy Judge
Southern District of Mississippi, Jackson, MS

**2:30 - 2:45 BREAK**

**2:45 - 3:15 ULTIMATE FIGHTING – SECURED CREDITORS AND FEDERAL TAX LIENS**
Richard P. Carmody, Adams and Reese, LLP
Birmingham, AL

**3:15 - 3:45 THE TAX MAN COMETH: RECENT DEVELOPMENTS IN BANKRUPTCY TAXATION**
Dennis D. Bean, Bean Hunt & Company
Fresno, CA

H. Kenneth Lefoldt, Jr., CPA, Lefoldt & Company, P.A., CPAs
Ridgeland, MS

**3:45 - 4:30 TIPS FOR A BETTER CONSUMER PRACTICE**
Robert Gambrell, Gambrell & Associates, PLLC
Oxford, MS

**4:30 ADJOURN**

# LOCATION

**Hilton-Jackson & Conference Center • 1001 E. County Line Road • Jackson, Mississippi 39211**

A block of 40 rooms has been reserved at the Hilton at the rate of $119.00 per night (plus taxes). For reservations, contact the reservations department at the Hilton at (60 I) 957-2800 or (888) 263-0524. To receive the special rate, you must identify yourself as a participant in this seminar. The group code is "BANKIO." The block of rooms will be released after November 20, 2010.

# REGISTRATION

**CLE Credit:** This course has been approved by the Mississippi Commission on Continuing Legal Education for a maximum of 13 hours credit including one ethics hour for the commercial session and 1.5 ethics hours for the consumer session.

**Materials:** Written seminar materials will be distributed to all those in attendance.

**Legal Assistants:** On Friday, December 10, 2010, Legal Assistants are invited to attend VIEW FROM THE CLERK'S OFFICE and the CONSUMER BREAK OUT SESSION at no charge. Materials will be provided for these sessions only.

**EARLY REGISTRATION**

**Discount:** A $20.00 early registration discount may be deducted from the registration fee for any registration postmarked on or before November 24, 2010.

**Cancellations:** A full refund will be given for cancellations made by 5:00 p.m., December 3, 2010. After that date, no refunds will be given. To cancel, notify the Mississippi Bankruptcy Conference, Inc. at Post Office Box 2848, Ridgeland, Mississippi 39158-2848 or by telephone at (601) 956-2374.


MBC
**Mississippi Bankruptcy Conference, Inc.**
Post Office Box 3409, Jackson, Mississippi, 39536-3409