

NEW MEXICO STATE BAR BANKRUPTCY SECTION NEWSLETTER

May, 2001

NEW CLERK OF COURT



Norman H. Meyer, Jr. is the new clerk of the bankruptcy court and joined the court on April 23. He received his B.A. from the University of New Mexico and comes to us from Virginia, where he served as the clerk of court for the United States District Court for the Eastern District of Virginia (since 1996). He also worked with the United States District Court in Arizona as a deputy in charge and chief deputy clerk from 1989-1996 and in judicial administration positions in Oregon and Wisconsin state courts. Mr. Meyer introduced himself via video at the Bankruptcy Annual Year in Review program in March.



U.S. TRUSTEE WEBSITE

For those of you who haven't looked at the Internet lately, there are more and more useful web sites being established. Our local U.S. Trustee's office has a website: www.usdoj.gov/ust/r20/albuquerque.htm. The web page includes the office address, staff information, phone numbers, Chapter 7, 12 and 13 trustee information, and creditor meeting room locations and rescheduling policies. The United States Trustee Program's web page is located at www.usdoj.gov/ust.

LEGISLATIVE UPDATE

The fate of the bankruptcy legislation is still undecided, as it is at an impasse as discussions continue on the format for taking bills to conference because of the power-sharing issue in the Senate. A conference is necessary because the Senate version contains some significant differences from the House version, including a \$125,000 nationwide homestead exemption cap. Congress just recently returned from its two-week recess. Texas Senator Kay Bailey Hutchison said that she will use every parliamentary procedure available to her to prevent enactment of a bill that abolishes Texas' unlimited homestead exemption, and Representative Dick Armey said that the Senate provisions on the homestead exemption are not acceptable to the House.

STATE BAR CONFERENCE

The State Bar of New Mexico Annual Convention is set for June 14-16 in Durango, Colorado. Tom Walker, Gerry Velarde, and Alice Nystel Page will be speakers for the Bankruptcy Section's presentation on changes in bankruptcy law. For more information on the convention, see the *Bar Bulletin*.

golf outing



The New Mexico State Bar Bankruptcy Section's Second Annual Golf Outing will be held at the Four Hills Country Club on May 11, 2001 at 12:30 p.m. The cost is \$65 per person and includes a round of golf, cart, hors d'oeuvres, and a cash bar. For those individuals who prefer not to play golf, please join us for hors d'oeuvres and drinks at 5:00 p.m. We hope to see you there!



CASE HIGHLIGHTS

Mason v. Young (In re Young), No. 99-6355, ___F.3d ___, 2001 WL 37709 (10th Cir.) (January 16, 2001)

The Tenth Circuit held that a Chapter 7 debtor's conversion to Chapter 13 (a "Chapter 20" conversion) is permitted and proper, subject to the bankruptcy court's evaluation of the debtor's good faith. The court applied the eleven element Flygare v. Boulden factors to affirm the lower court's decision that the debtor's plan had been submitted in good faith. The court also held that an order converting a case to a Chapter 13 is not final until the Chapter 13 plan has been confirmed.

Morris v. Vulcan Chemical Credit Union (In re Rubia), BAP No. KS-00-008, ___B.R. ___, 2001 WL 8328 (10th Cir. BAP) (January 3, 2001)

The BAP affirmed the bankruptcy court's dismissal of the trustee's motion to compel turnover of post-petition payments made by the debtor to a lender whose security interest had been avoided. In so doing, the court issued an opinion clarifying the nature of the lender, debtor, and trustee's interests after lien avoidance with respect to the underlying debt, the collateral securing the debt, and the security interest. After avoidance, the lender retains its claim against the debtor but only on an unsecured basis and subject to discharge. The debtor may recover post-petition payments made on an unsecured and dischargeable or discharged debt. While the trustee succeeds to the lender's security interest to the extent enjoyed by the lender pre-petition, the trustee does not succeed to any right to payment on debt originally secured by the lien. Instead the trustee holds rights in the collateral up to the amount of the debtor's obligation as of the petition date.

continued on page 3



**case highlights
continued from page 2**

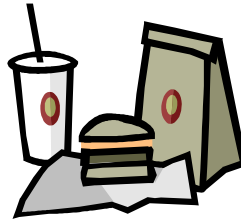
Chavez v. Mercury Finance (In re Chavez), __B.R.__, 2001 WL 33143 (Bankr. D.N.M.) (January 16, 2001)

The Bankruptcy Court held that garnishment payments made during the preference period on a writ of garnishment issued prior to the preference period are avoidable preferences. This is contrary to the approach taken by the Second,



Note from the Editor:

My apologies to the members of the section for my long delay between issues of the newsletter. I have been working for Sun Healthcare Group handling collections and customer bankruptcy cases since January, 2000 and have had my hands full, as you might imagine. I also have a son who just turned 2, and he keeps me very busy. In the interim, the clerk's office has done a great job of keeping the section members informed of news and events that affect all section members. My thanks to Margaret Grammer Gay for her efforts in this regard. My fellow Bankruptcy Section Board of Directors members have also included certain news items in the *Bar Bulletin* during this period, such as news of brown bag lunch programs. I still invite section members to send story ideas or requests to me at Alice.Page @sunh.com or 505-468-4304.



**BROWN BAG LUNCH
PROGRAMS**

A tax program (date to be announced, most likely a date in July) is scheduled for the second-floor training room in the Bankruptcy Court building in Albuquerque. Speakers will be Manuel Lucero, Don Harris, Rebecca Wardlaw, and possibly an IRS representative or two.

A program on changes to UCC Article 9 is scheduled for June 8 at noon in the Bankruptcy Court building's second floor training room in Albuquerque. The speaker will be Jack Burton of Rodey, Dickason, Sloan, Akin & Robb. Mr. Burton is a member of the National Conference of Commissioners on Uniform State Laws and a member of the National Drafting Committee to Revise UCC

Articles 2, 2A, 5 & 9.