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BBA THE BANKRUPTCY BAR ASSOCIATION Southern District of Florida

Get Busy Stripping until the Eleventh Circuit Says Otherwise

By Ashley Dillman Bruce and Ashley Prager Popowitz


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Last year, in *In re McNeal*,[1] the U.S. Court of Appeals for the Eleventh Circuit held that second-priority mortgage liens may be eliminated completely *(i.e.*, "stripped off") in chapter 7 bankruptcy proceedings when the underlying collateral is worth less than the amount of the first-priority mortgage. While this practice has been commonplace in chapter 13 cases since 2000,[2] this ruling in a chapter 7 case represents a significant change in how judges in the Southern District of Florida will view motions to strip off second-priority mortgages.

The facts in *McNeal* were simple and the analysis was concise. The chapter 7 debtor listed her home as subject to two mortgage liens. The first mortgage lien consumed all of the equity in the property, such that the second lien was left completely unsecured. The debtor argued that, because the second-priority lien was wholly unsecured, it was void and should therefore be stripped off pursuant 11 U.S.C. § 506(d).

As noted in the opinion, a majority of other courts faced with this issue have held that a chapter 7 debtor cannot strip off a wholly unsecured junior lien. These courts have relied on the U.S. Supreme Court decision *Dewsnup v. Timm*,[3] which held that a chapter 7 debtor cannot "strip down" a partially secured lien under section 506(d). While a majority of courts have extended the prohibition in *Dewsnup* to situations where chapter 7 debtors try to strip off wholly unsecured second-priority liens, the Eleventh Circuit distinguished *Dewsnup* on that ground that it involved the strip down of a lien that was partially secured. For this reason, the Eleventh Circuit held that *Dewsnup* did not control the facts present in *McNeal*.

> "Practitioners should get busy stripping unsecured liens until the Eleventh Circuit says otherwise."

Instead, the Eleventh Circuit cited *Folendore v. United States Small Business Administration*[4] as the proper controlling authority. In *Folendore*, the Eleventh Circuit determined that an allowed claim that is wholly unsecured is voidable under section 506(d). Since *Dewsnup*, bankruptcy courts in the Eleventh Circuit have treated *Folendore* as abrogated by *Dewsnup*. For example, Judge Karen S. Jennemann held in *In re Hoffman*,[5] that Congress did not intend to provide chapter 7 debtors with the right to avoid an allowed secured claim, even if that claim was not secured by any value in the collateral. Likewise, in *In re Gerardin*,[6] Judges Robert A. Mark, Laurel M. Isicoff, and A. Jay Cristol applied this same reasoning in interpreting *Dewsnup* to prohibit

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How to Prepare to Represent Your Client at a Mediation

By Francis L. Carter

State and federal courts now require mediation before trial in civil cases, and bankruptcy courts increasingly look to mediation as a speedy and cost-efficient alternative method of dispute resolution. Although a mediation is markedly different from a judicial trial, it is similar in one very important respect: the results you obtain at a mediation will in large measure reflect the quality and extent of your preparation.

So when a case is noticed for mediation, what should you do to prepare? To begin with, confer with opposing counsel to select a mediator. Be mindful of a proposed mediator's background, reputation, and experience. Try to select someone with a history of good results both as an advocate and as a mediator. Knowledge of the particular area of law implicated in your case is a plus. When you speak with opposing counsel about selecting a mediator, it is also a good time to ask who will be the client representative for the opposing party at the mediation and to seek assurances that the representative will be physically present and will have full authority to settle the case.

Next, prepare and *timely* submit to the mediator a confidential mediation statement that will supplement the basic pleadings and familiarize the mediator with the case and with your client's position. Shorter is better, but quote or include as highlighted exhibits relevant

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MESSAGE FROM THE PRESIDENT

Building A Foundation

By Jason Z. Jones

Dear Readers,

On behalf of the Board of Directors of the Bankruptcy Bar Association of the Southern District of Florida, I am excited to present to you this year's *Bankruptcy Bar Association Journal*. I thank our contributors and sponsors, and I would especially like to thank Editor in Chief Jesse Stellato and his staff who have put together another great edition of the *Journal*.

The BBA has accomplished a lot over the past year. We co-sponsored events with the Dade County Bar Association, American Bankruptcy Institute, and the Palm Beach County Bar Association. Through our Young Lawyers' Committee, we started new events to provide our young members with additional opportunities to further develop relationships with each other and with other BBA members. More specifically, we now feature a young lawyer's session and dinner at the BBA Annual Retreat, young lawyer happy hours throughout the year, and a "Table of 8" lunch and dinner series that connects young lawyers with leading bankruptcy practitioners throughout our district. In addition to sponsoring professional events and fostering the professional growth of members young and old, we have promoted the BBA's culture of giving back and expanded our collective commitment to pro bono legal representation. In that regard, our Pro Bono Committee initiated an innovative "Modest Means Panel" program for the benefit of those individuals who do not meet the stringent requirements to receive pro bono services, but are nevertheless deserving of a discount.

The BBA also started a number of events that will evolve into annual traditions, including an annual Courthouse Staff Appreciation Luncheon, a toy collection at our Holiday Party, a Miami Marlins baseball event, and a Past-President's Dinner.

Just as the BBA started new traditions over the past year, please consider starting a tradition of your own by making a donation to the BBA Foundation if you have not done so already. The BBA Foundation provides much-needed pro bono services for our community. For example, the BBA Foundation funds a full-time attorney at Put Something Back who works exclusively to assist pro bono clients and to educate law students so that they also can assist pro bono clients. The BBA Foundation has also provided financial literacy education and bankruptcy-related advice to over one thousand individuals since the entity's inception over twenty-five years ago. While the BBA Foundation has relied on the generosity of attorneys who are directed to contribute to the BBA Foundation, such contributions are sporadic and insufficient to fund its annual budget of $70,000. As a consequence, the services that the BBA Foundation provides are at risk of being decreased or eliminated. Accordingly, the BBA Foundation is soliciting donations from BBA members and member firms. Only with your contributions will the BBA Foundation be able to ensure it continues to serve our community. The initial goal is to raise $50,000 by the end of the 2013. Donations are fully tax deductible, and can be made by credit card via the BBA's website, www.bbasdfl.org.

Thank you to all who have contributed to the BBA's success over the past year, and to the many members and firms who have contributed or pledged to contribute to the BBA Foundation. We continue to look for new and exciting ways for you to receive value from your membership. Should you wish to be involved in any BBA committee, please contact me as we would love to have you on board.

Sincerely,
Jason Z. Jones
President, BBASDFL

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Investors, Users, Cap Rates, and the Income Approach to Commercial Real Estate Valuation

By Matthew Rotolante

The world is awash with capital. It is global and digital. Significant amounts are transferred in a matter of seconds each day. Like weather shifting in the atmosphere, this capital moves in measurable and often predictable ways into various asset classes. As with lightning, tornadoes, and hurricanes, however, these flows can also be fickle and unpredictable, as we have witnessed in the recent recession. The goal, then, is to improve the predictability of these cash flows by creating models that enable us to value the underlying assets in an optimal fashion, and to thereby enable investors and businesses alike to make decisions in a timely and reliable manner. It is the model for valuing commercial real estate on which I focus in this article.

> "In essence, appraisals are necessary to determine value, but when combined with the testimony of a credible broker, a more accurate valuation may be obtained. This is especially important when attempting to prove the legitimacy of a reorganization plan, or deciding whether a 363 sale strategy is feasible."

Methodology

The methodology for calculating the value of commercial real estate is complex and comprises myriad variables. Commercial real estate often competes against stocks and commodities for capital, but there are several large differences between them. While stocks and commodities are standardized contracts that trade more often and have options and future derivatives so that pricing is transparent at any given moment in time, commercial real estate is non-standardized and trades less often. Therefore, the pricing of commercial real estate can be more difficult to verify. I will make the case that if certain methodologies are used, commercial real estate can be priced quite accurately.

Similar to stocks and commodities, commercial real estate is subject to supply and demand. Early in my career I worked on the Chicago Board of Trade (CBOT) Commodities Floor, so I speak from experience when I tell you that many stocks and commodities have supply and demand factors that change drastically over short periods of time which result in large shifts of pricing overnight—or even during the same day. Conversely, many of the supply and demand variables in commercial real estate can be forecasted over longer timelines, and change less often and to a lesser degree. Therefore, the pricing of commercial real estate tends to shift more slowly.

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MESSAGE FROM THE CHIEF JUDGE

So Long, Farewell

By The Honorable Paul G. Hyman

ABOUT THE AUTHOR
The Honorable Paul G. Hyman is Chief Judge of the United States Bankruptcy Court for the Southern District of Florida.

Six and a half years ago, I was privileged to be appointed Chief Judge for the United States Bankruptcy Court for the Southern District of Florida. Since my appointment, there have been significant changes within the District. In addition to rolling out eight major CM/ECF software releases, the court developed a chapter 13 self-calendaring program, implemented the use of telephonic hearings using CourtCall, and recently adopted a Loss Mitigation Mediation Program designed to function as a forum for eligible debtors to explore loss mitigation options with their lenders. Additionally, the court has laid the groundwork for expansion of our self-calendaring program to include chapter 7 and 11 cases, and the transition to electronic court reporting and on-line CM/ECF attorney training. We anticipate that all of these changes will be in place by October 2013. Eighty five percent (85%) of new cases are now filed electronically and more than 65% of the docket entries are made by e-filers.

The court has also undergone several significant space and facilities upgrades. In January 2007, the West Palm Beach bankruptcy court and clerk's office relocated to new leased space in the Flagler Waterview Building. In 2008, construction of a new courtroom in Ft. Lauderdale was completed for Judge Olson and two Miami courtrooms assigned to Judges Cristol and Mark were also renovated. In 2010, another project was initiated to renovate Judge Ray's courtroom and chambers in Ft. Lauderdale, which was completed in 2011. Also, the Miami clerk's office was re-designed and renovated resulting in excess space being returned to GSA, and a cost savings to the judiciary. In 2011, all Miami courtrooms were equipped with new sound systems and evidence presentation technologies. At the end of 2011, the bankruptcy court partnered with the district court to renovate the bankruptcy clerk's office in Ft. Lauderdale to include a new joint training room and video conferencing center. This project was completed in January of this year, and also resulted in release of unused space to GSA. Currently, negotiations are underway to relocate the Miami bankruptcy court and clerk's office to the C. Clyde Atkins United States Courthouse.

During my tenure, the court has experienced immense budget pressures, resulting in a 22% reduction in clerk's office staff. Thankfully, due to the hard work and dedication of all staff and the utilization of technology, the court has been able to absorb these staff reductions.

> "As I approach the end of my tenure as Chief Judge, I want to thank all the attorneys who diligently represent their clients and appear in court well-prepared."

As I approach the end of my tenure as Chief Judge, I want to thank all the attorneys who diligently represent their clients and appear in court well-prepared. You make our jobs much easier. I especially want to recognize and thank those attorneys who take on the representation of pro bono clients. Approximately 10% of our filings are by individuals who cannot afford attorneys to represent them. As you know, it is very difficult for individuals to represent themselves in chapter 7 cases and to successfully obtain a discharge, and it is nearly impossible to obtain confirmation of a chapter 13 plan without the assistance of an attorney. Thus, pro bono services are extremely helpful for those in need. In addition, thanks to efforts by the Bankruptcy Bar, we now offer free pro se clinics in each of our three divisions, and have greatly increased the information available to pro se filers on our court's web site.

I also want to thank my colleagues for their assistance and support during these challenging times. I especially want to recognize and thank Judges Isicoff and Kimball for their invaluable contributions in spearheading the Loss Mitigation Mediation Program and the Local Rules revisions, respectively.

I take no credit for any of these accomplishments. I have benefited by being able to work with very smart, innovative, diligent, and hardworking people in the clerk's office. It has been a great honor and privilege to oversee these efforts, but none of this would have been possible without the herculean efforts of each and every one of our dedicated staff. Thank you.

Finally, none of this could have been possible without Kathy Gould Feldman. She has been a delight to work with these past six and a half years. Kathy has a unique combination of intelligence, toughness, organizational ability, and interpersonal skills that have allowed her to manage the Clerk's office in an efficient and professional manner. The court and the lawyers who practice in this District owe her a huge debt of gratitude! We could not have made it through these trying times without her leadership.

Although my term as Chief Judge expires in October, I know I can continue to count on all of you to give your full and complete support to my successor, which will ensure the continued success of our court. ■

The 2012 BBA Survey

By Jesse Stellato

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There is a moment in every lawyer's life when, under the excitement of a hotly contested case, the simple truths that in non-litigious times form the basis of his proper life and the foundation of his moral satisfaction are apt to be forgotten. Whether this is one of those times for us an association or whether, as I suspect, our "neighbors' fires give us light to see our quietness," I will try to tell.

While occasionally anecdotal, most of my evidence comes from a recent survey conducted by this *Journal's* publisher: the Bankruptcy Bar Association of the Southern District of Florida. With the help and guidance of the BBA's president, Jason Jones, BBA member James P.S. Leshaw, the America Bar Association's Division of Bar Services, and many others, the BBA's October 2012 electronic survey gathered information on the emerging issues and changing needs of our district's bankruptcy professionals. The survey contained five parts: demographics, employment, market expectations, well-being, and benefits and services offered by the BBA. So far as I am aware, the BBA has never before attempted such a thorough investigation of its members and their professional lives.

Before describing certain survey results in more detail, I wish to highlight the survey's most significant methodological limitations. First, it is difficult to conclude with absolute certainty that respondents are representative of all bankruptcy lawyers in our judicial district. More than 5,230 individuals are authorized to file cases here. The BBA, in contrast, has slightly over 500 members. Are any groups underrepresented? Has the chapter 13 bar, for example, been left out?

Secondly and similarly, even if one were to conclude that the BBA is representative of bankruptcy lawyers in our district (the BBA remains, after all, the largest voluntary association of bankruptcy professionals in the Southern District of Florida), one may also question whether survey respondents are representative of the BBA. For example, did the survey's distribution via electronic means skew the results away from certain groups who would have been more likely to participate via U.S. Mail?

Finally and most significantly, one must be wary of data-mining bias when interpreting the type of data we collected. One can always find a pattern if one tries hard enough; protecting the integrity of the survey's interpretation by distinguishing between true cause and mere coincidence is not always easy or obvious. Further study of our data, particularly with confidence intervals, is necessary.

Having made these disclaimers, and remembering the adage about the existence of "lies, damn lies, and statistics," let us examine some of the survey's results.

Where is the center of the Southern District of Florida?

Athens was called the "Eye of Greece." Which division—Miami, Fort Lauderdale, or West Palm Beach—may properly be called the "Eye of the Southern District of Florida?" This is an important question for our community, which spans 315 miles from the salt ponds in Key West to the sand dunes in Sebastian. In the recent past, we have gathered almost exclusively in Miami to attend annual events such as View From the Bench, the President's Dinner, and the Holiday Party. Is this fair and equitable? Our survey tells us where we work:

In which county is your principal office?

County	n	%
Miami-Dade	48	51%
Broward	26	28%
Palm Beach	13	14%
Monroe	1	1%
St. Lucie	1	1%
Other	5	5%

In other words, our survey shows that approximately 80% of respondents work in either Miami-Dade or Broward County. Holding annual events in one of these two counties therefore seems sensible.

We can, however, be more precise. Using information from the BBA's online database, which was created in 2011 and 2012 by Ido Alexander and the BBA's Operations and Information Technology Committee, it is now possible to approximate the center of our district through weighted averages. To do this, I assigned each city in the Southern District of Florida a number based on its distance from Miami. To keep things simple, I assumed that each city was located on a single, vertical axis. For example, West Palm Beach was assigned the number 70.5, and Coral Gables was assigned the number -9.1. Then, I multiplied each value by the number of BBA website registrants in that city. To create a weighted average, I summed these values and divided by the number of website registrants in the Southern District

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The 2012 BBA Survey

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of Florida. The result was 17.1, meaning that the center of mass of the bankruptcy bar is 17.1 miles north of Miami, or just south of Hollywood Boulevard.[1]

How much do we bill?

Ninety-five percent of respondents work full-time, defined as working 35 or more hours per week. Part-time work by bankruptcy professionals is rare (4%). The survey also shows the amount of hours we billed over the past year:

Billed Hours	
Mean	1,693
Median	1,850
Mode	2,050

More interesting statistics may be found by comparing the hours billed within subsets of our sample. Below, I examine the relationship between (a) billed hours and work experience, (b) billed hours and firm size, and (c) billed hours for men and women, respectively.

With respect to billed hours and work experience, the data shows a nominal negative correlation ($R^2=0.01$) between years of experience and hours billed. Each decade of experience translates into approximately one less hour of work per week. In other words, it does not appear that practicing bankruptcy professionals work any less as they age: we may get older, and we may retire, but those who stay in the game do not slow down.

With respect to the correlation between firm size and hours billed, those who work in smaller firms bill less than their counterparts in larger firms. That much might have been expected. More surprising, perhaps, is the similarity of billed hours in firms with more than four professionals. While the average number of annual billed hours in firms with four or less professionals is small (1,256 hours) relative to the overall average (1,693 hours), there is not much variation in terms of billed hours among firms with more than four professionals:

Firm Size	n	Avg Hours Billed
1-4 professionals	18	1,256
5-9 professionals	11	1,741
10-19 professionals	14	1,843
20-99 professionals	18	1,778
100-499 professionals	19	1,845
500 professionals or more	8	1,800

Finally, with respect to hours billed by men and women, respectively, women respondents reported billing far less hours than their male counterparts. While the 20 women who responded to the BBA survey reported billing an average of 1,390 hours last year, the 68 men who responded reported billing an average of 1,782 hours. Interestingly, despite the fact that men reported billing, on average, almost 400 hours more per year than women, both men and women reported approximately the same level of satisfaction with the number of hours they billed. If anything, men seemed more enthusiastic than women about billing even more, and women seemed more enthusiastic than men about billing even less.

Are we satisfied with our lives?

Legend has it that asking lawyers and non-lawyers the two questions "What is the national divorce rate?" and "What is the likelihood that you will get divorced?" yields different responses. Non-lawyers are more likely to respond with something to the effect that "the national divorce rate is 50%, but the likelihood that I will get divorced is small, maybe 5%." Lawyers, in contrast, will say: "the national divorce rate is 50%, and the likelihood that I will get divorced is 50%." One interpretation of this phenomenon is that lawyers are jaded and unromantic realists, and the rest of the world is not. Another interpretation, the one I prefer for purposes of this article, is that asking a lawyer a simple question often results in an answer that is demonstrably at odds with the one likely to be provided by normal people.

In our survey, we asked people to imagine a ladder with steps numbered from zero at the bottom to ten at the top. We told them that the "top of the ladder represented the best possible life for you and the bottom of the ladder represents the worst possible life for you." Then, we asked them to indicate which step of the ladder they felt they were presently on.

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Were you satisfied with the number of hours you billed last year?

	Total	%
Female	**22**	
No, I wanted to bill less.	4	18%
No, I wanted to bill more.	7	32%
Yes, I billed just the right amount of hours.	11	50%
Male	**69**	
No, I wanted to bill less.	7	10%
No, I wanted to bill more.	30	43%
Yes, I billed just the right amount of hours.	32	46%

NOTES

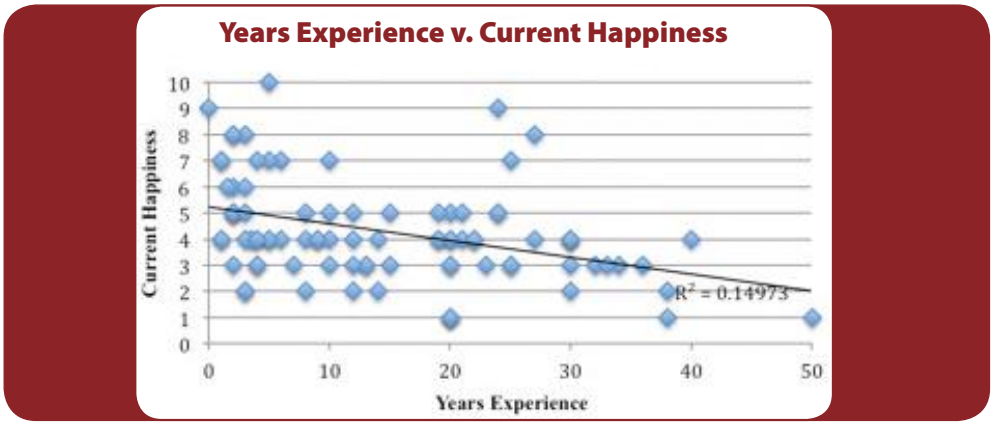
[1] Included in this average is anyone from the Southern District of Florida who registered for any BBA event via the BBA's website. This average therefore includes judges, clerks, accountants, and others, in additional to bankruptcy attorneys.

The 2012 BBA Survey

Continued from page 6

The results were sobering. The average response was 4.3. When Gallup asked a sample from the general population of the United States the same question and provided them with a similar (though not identical) scale, the average response was greater than 7.0[2] Internationally, individuals from countries who reported similar happiness levels to that of bankruptcy lawyers in the Southern District of Florida between 2005 and 2011 include those from Sri Lanka, Rwanda, and Afghanistan.

Our data also suggests that younger bankruptcy professionals are more satisfied than their older peers. The graph below illustrates a slight negative correlation ($R^2=0.15$) between experience and reported current satisfaction. This negative correlation is puzzling, because general studies on the effect of aging on self-evaluations of current happiness in the United States illustrate the opposite result: the older we get, the happier we report that we are.[3]



Governance and Civility of Bankruptcy Lawyers

Before quitting our jobs early in our careers and heading to Denmark, Norway, or Finland, where the average life evaluation score is 7.6 on a 0-to-10 scale — almost double ours — it is worth keeping in mind a number of the survey's bright spots. First, we have a tremendous amount of confidence in our judges, our clerk of court, and the Office of the U.S. Trustee. Asked to provide their level of agreement with the statement "Overall, our bankruptcy judges are effective and do a good job," 98% of respondents (n=89) indicated some level of agreement. Praise for the clerk's office was similarly uniform, with 96% (n=88) of respondents answering the analogous question in the affirmative. While respondents viewed the U.S. Trustee's office with slightly less enthusiasm, the vast majority of respondents (78%, n=71) still agreed that, overall, the U.S. Trustee's office is effective and does a good job.

Finally, the BBA survey confirms the reputation our bankruptcy bar enjoys for having a culture of collegiality. Ninety-eight percent of respondents (n=87) agreed with the statement "Overall, members of the bankruptcy bar are civil to each other." It is significant that in a profession that often requires us to be highly adversarial, and in a legal environment where the highest court in our state recently found it necessary to observe that "concerns have grown about acts of incivility among members of the legal profession,"[4] our bankruptcy bar appears to have kept its civility intact. ■

NOTES

[2] World Happiness Report, Helliwell, Layard, and Sachs, eds. (2012) available at www.earth.columbia.edu (accessed Apr. 9, 2013).

[3] *See* Albert H. Cantril and Susan Davis Cantril, Reading Mixed Signals: Ambivalence in American Public Opinion (Woodrow Wilson Center Press: Washington, DC, 1999), 156, Table A.13.

[4] *In re Oath of Admission to the Florida Bar,* Case No. SC11-1702 (Fla. Sept. 12, 2011) ("In recent years, concerns have grown about acts of incivility among members of the legal profession.")

MESSAGE FROM THE CLERK

By Katherine Gould Feldman

Bankruptcy Case Filing Statistics

Bankruptcy case filings for calendar year 2012 (31,030) were down 13.22% over 2011 (35,757), and continue their downward trend in 2013. For the first three months of 2013, filings are down 8% over the same period in 2012, and for the twelve-month period ending March 31, 2013, they are down 13% (30,404) compared to the same period ending March 31, 2012 (34,844).

Nationally, bankruptcy filings for the twelve-month period ending March 31, 2013, decreased 14.4% (1,170,324) compared to case filings for the twelve-month period ending March 31, 2012 (1,367,006). During the first three months of 2013, consumer and business filings decreased 16% and 23%, respectively, as compared to the first three months of 2012.

Space Update

Negotiations are underway with the district court to relocate the Miami division of the bankruptcy court to the C. Clyde Atkins Federal Building. Of course, how quickly the move takes place depends on funding resources and GSA. At the earliest, we are looking near the end of FY2014. Stay tuned for future updates.

Status of Judiciary Budget for FY2013 and FY2014 Projections

On March 26, 2013, Congress passed and the President signed the Consolidated and Further Continuing Appropriations Act of 2013, which locked in sequestration for the remainder of FY2013, and which provides funding for most federal agencies at 2012 levels. Although there is still much discussion about the impact of sequestration, the federal judiciary believes that the impact will prove to be severe because its budget is so heavily driven by people. The Executive Committee of the Judicial Conference has implemented emergency measures to address sequestration, including: (1) reducing court salary allotment funding by approximately four additional percentage points below full-year requirements, which equates to a 12.0% percent reduction in bankruptcy court allotments; and (2) reducing most discretionary court non-salary formula allotment funding by an additional 9.8% below requirements, which equates to a 34% reduction in non-salary allotment requirements for bankruptcy clerks offices. Two-thirds of court units will face salary shortfalls in FY2013, and will be forced to furlough or lay off staff. Fortunately, our court will not face this predicament in FY2013, but is preparing for additional budget cuts in FY2014 and beyond.

"Although there is still much discussion about the impact of sequestration, the federal judiciary believes that the impact will prove to be severe because its budget is so heavily driven by people."

Loss Mitigation Mediation

Effective April 1, 2013, the court adopted a new Loss Mitigation Mediation Program under Administrative Order 13-01 "Implementation of Loss Mitigation Mediation Program." This Order establishes effective dates for eligible debtors, sets the compensation rate for participating mediators and attorneys for debtors, and adopts Loss Mitigation Mediation (LMM) Program Procedures and forms. A copy of AO 13-1, and the related procedures and new LMM forms, can be accessed via a new LMM link on the court website. To expedite the exchange of information between the debtors and the lenders, the LMM program adopted by the court mandates the use of a secure online portal (the "LMM Portal") and an online program that facilitates the preparation of the debtor's loan modification package (Document Preparation Software). The court hosted live LMM training for attorneys in March. Information and online training is also available via the court website LMM link. Mediators interested in accepting LMM cases were asked to submit the revised local form Verification of Qualification to Act as Mediator (LF 50). Since April 1, 221 motions have been filed and 58 orders or referral have been entered by the court.

Self-Calendaring Expands to Chapter 7 Cases

As of February 1, 2013, the court's self-calendaring feature in CM/ECF has been available for scheduling non-emergency matters in chapter 7 cases assigned to Judges Hyman and Kimball in the West Palm Beach Division. Please refer to the Guidelines for Self-Calendaring which have been updated to reflect these changes and are posted on the court website at: www.flsb.uscourts.gov. It is anticipated that self-calendaring for chapter 7 cases in all divisions will be fully implemented with adoption by all judges by early summer.

ECF Training Moves Online

A CM/ECF Online Training course is being implemented in this court. The course is made up of a series of electronic learning modules (ELMs) customized for those seeking to register as Full Attorney and Limited Filers. Support staff in your office

ABOUT THE AUTHOR
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MESSAGE FROM THE CLERK

involved in the electronic case filing process can also take advantage of these on-line tutorials. Each tutorial provides the option for closed captioning and includes a PDF of the slide notes. The course replaces the classroom training that has been conducted at Florida Southern Bankruptcy divisional offices since the 2005 implementation of CM/ECF.

Fee for Transferring Claims Effective May 1, 2013

At its September 2012 session, the Judicial Conference approved of a new $25 transfer-of-claim filing fee. The Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930) has been amended to include this new fee, effective May 1, 2013. The fee is $25 per claim transferred. The CM/ECF version 5.1 upgrade incorporated this fee into the applicable event.

Digital Audio Recording

Over the next several months, this court will be transitioning to Digital Audio Recording (DAR). Installation of the required hardware and software has been completed in the West Palm Beach divisional courtrooms. Installation in Miami will be done by the end of this fiscal year (September 30), unless it appears likely that the Miami bankruptcy court will relocate to the C. Clyde Atkins Federal Building in FY2014.

Bankruptcy Forms Update

On April 1, 2013, automatic adjustments to the dollar amounts stated in various provisions of the Bankruptcy Code and in one provision of Title 28 of the U.S. Code will become effective. The amended dollar amounts will apply to cases filed on or after April 1, 2013. The revised forms incorporating the changes are posted on the bankruptcy forms pending amendment page on the Judiciary's website at: http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx ■

Get Busy Stripping until the Eleventh Circuit Says Otherwise

Continued from page 1

strip offs in a Chapter 7 case.[7] Thus, notwithstanding contrary authority in several U.S. Courts of Appeals and trial courts in the Eleventh Circuit, the Eleventh Circuit saw it differently. In declaring ***Folendore*** as the governing law, the Eleventh Circuit ignored the majority view and held simply that the debtor could strip off the junior unsecured lien.

The significance of ***McNeal*** can hardly be understated, especially in this depressed real estate market. Practitioners are aware that numerous properties subject to multiple mortgage liens are worth less than the amount of the first-priority mortgage. The ***McNeal*** decision has left courts and practitioners in the Eleventh Circuit without much direction, as the opinion is unpublished and subject to a motion for rehearing ***en banc***. Nevertheless, practitioners have now geared up to file strip off motions in pending chapter 7 cases. Some practitioners have even reopened old cases to file these "***McNeal*** Motions." What the judges in the Southern District will ultimately do remains uncertain. In the meantime, judges have been making decisions while awaiting further direction.

Judge Mark, an advocate of disallowing stripping in chapter 7 cases,[8] has taken the lead on this issue. In a recent case, Judge Mark permitted the debtor to strip off a junior lien but only on the basis that the creditor did not object.[9] It is notable that Judge Mark allowed this after the debtor had received a discharge and after the case had been closed for over two years. In another case, Judge Mark scheduled a final evidentiary hearing and set a briefing schedule.[10] The briefing order stated that if the Eleventh Circuit grants rehearing ***en banc***, then Judge Mark would defer ruling on the motion until an opinion was issued. As such, Judge Mark allowed for the lien to be stripped off because, he reasoned, ***McNeal*** provides a basis for granting the relief requested and the motion proceeded unopposed.

Other judges in the Southern District have followed Judge Mark's lead. Two recent ***McNeal*** Motions have been granted by Judge Raymond B. Ray. The first motion was granted without an evidentiary hearing and without an objection by the lender.[11] In another, Judge Ray set the motion for an evidentiary hearing and has since granted the motion without any objection by the lender.[12] Judge Isicoff has also followed suit. In a recent case, Judge Isicoff allowed a debtor to strip off the junior lien because the creditor failed to raise any objection.[13] Likewise, Judge Paul G. Hyman recently ruled that that a chapter 7 debtor was allowed to strip off a second and third lien on homestead property under the ***McNeal*** decision.[14] He is also of the opinion that the debtor has the right to this relief if the creditor does not object. Judges Erik P. Kimball and John K. Olson have also granted similar requests.[15]

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NOTES

[1] 477 Fed.Appx. 562, 2012 WL 1649853, at *1 (11th Cir. May 11, 2012).
[2] *See Tanner v. FirstPlus Fin., Inc. (In re Tanner)*, 217 F.3d 1357 (11th Cir. 2000).
[3] 502 U.S. 410 (1992).
[4] 862 F.2d 1537 (11th Cir. 1989).
[5] 433 B.R. 437 (Bankr. M.D. Fla. 2010).
[6] *In re Gerardin*, 447 B.R. 342 (Bankr. S.D. Fla. 2011).
[7] *Id.* at 345.
[8] *See id.*
[9] *In re Aragon*, Case No. 09-27916-RAM (Bankr. S.D. Fla. Sept. 17, 2012).
[10] *In re Martin*, Case No. 11-42725-RAM (Bankr. S.D. Fla. Nov. 9, 2012).
[11] *In re Scialabba*, Case No. 12-29829-RBR (Bankr. S.D. Fla. Oct. 9, 2012).
[12] *In re Wollen*, Case No. 12-25993-RBR (Bankr. S.D. Fla. Dec. 11, 2012).
[13] *In re Sasso*, Case No. 08-25034-LMI (Bankr. S.D. Fla. Jan. 11, 2013).
[14] *In re McGunagle*, Case No. 12-26187-PGH (Bankr. S.D. Fla. Oct. 10, 2012).
[15] *See In re Ribeiro*, Case No. 12-22151-EPK (Bankr. S.D. Fla. Nov. 27, 2012) (agreeing with *In re Gerardin* but granting the *McNeal* Motion because the relief requested was unopposed); *In re Froehlich*, Case No. 12-36634-JKO (Bankr. S.D. Fla. March 6, 2013).

Get Busy Stripping until the Eleventh Circuit Says Otherwise

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Judge Cristol has gone farther. In ***In re Riera-Bertan***[16] Judge Cristol granted the debtors' strip-off motion over the creditor's objection. There, the debtors obtained a $200,000 home equity line of credit on their homestead property from a third mortgagee in 2006. They filed for relief under chapter 7 in September 2008 and were granted a discharge. In July 2012, the debtors reopened their case and filed a motion to determine the secured status of the home equity line. The value of their property was $291,557 and according to the debtors, no equity supported the home equity line. Thus, the debtors wanted to declare the lien wholly unsecured and strip it off pursuant to *McNeal*. The creditor filed an objection, citing Supreme Court precedent and prior decisions by the Southern District. The creditor did not, however, dispute the value of the property or that there was no equity in the property securing the home equity line. Before ultimately following *McNeal*, Judge Cristol recognized that "such a ruling seems to make good sense."[17] He explained that the creditor is not prejudiced because there is no equity in the property.[18] Accordingly, Judge Cristol granted the *McNeal* Motion. The *Riera-Bertan* case is significant because it is the first case in the Southern District of Florida where a judge has granted this type of relief over a creditor's pursued objection.

Another notable decision by Judge Cristol is *In re Lynch*.[19] There, chapter 7 debtors, acting pro se, attempted to strip off a junior lien using the chapter 13 local form.[20] The local form requires that an objection be filed with the court no later than within two business days prior to the scheduled hearing. The creditor filed an opposition based on valuation of the property but the opposition was not timely filed pursuant to the local form. After considering the totality of the circumstances, Judge Cristol found the creditor's objection was timely filed because there was no local form for such a chapter 7 motion. Because the matter involved a disputed property value, the court set the matter for a status conference and may wait for the ultimate *McNeal* outcome.[21]

The impact of *McNeal* is still unclear as we continue to wait for whether the Eleventh Circuit will grant ***en banc*** review. Thus far, the cases being handed down by the bankruptcy judges in the Southern District of Florida seem to imply, but do not state, that *McNeal* was improperly decided. Until *McNeal* is reversed,[22] the judges will continue to find a basis for the relief requested by debtors provided there is no dispute as to a property's value. Accordingly, practitioners should get busy stripping unsecured liens until the Eleventh Circuit says otherwise. ■

NOTES

[16] *In re Riera-Bertan*, Case No. 11-27057-AJC, 2013 WL 216231, at *1 (Bankr. S.D. Fla. Jan. 18, 2013).
[17] *Id.* at *2.
[18] *Id.*
[19] *In re Lynch*, Case No. 12-27731-AJC, ECF No. 9, 35 (Bankr. S.D. Fla. 2012).
[20] Local Form 77 ("Chapter 13 Motion to Value").
[21] The parties entered into an agreed order thus negating the necessity for Judge Cristol to rule on this issue. See *In re Lynch*, Case No. 12-27731-AJC, ECF No. 82.
[22] The most recent developments in *McNeal* started on January 30, 2013, when the Debtor asked the Eleventh Circuit to publish its opinion. On February 22, 2013, the Eleventh Circuit entered an order staying the proceedings due to lender's ongoing bankruptcy proceedings. The order states in pertinent part:

> In this appeal, Lorraine McNeal challenged the district court's affirmance of the bankruptcy court's denial of her motion to "strip off" a wholly unsecured second-priority lien on her home. After we announced a decision and opinion reversing the district court's decision and remanding for additional proceedings, [GMAC] filed voluntary petitions for Chapter 11 bankruptcy. Subject to exceptions not applicable here, the filing of a bankruptcy petition operate as an automatic stay of the "continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was . . . commenced before" the bankruptcy petition was filed. 11 U.S.C. 362(a)(1). So, this case must stand still for a while, and we will not rule on motions or substitutions of parties while the stay exists. It is therefore confirmed and ORDERED that all proceedings in this appeal are stayed. The parties are directed to inform the court when the bankruptcy court either grants relief from the automatic stay or when the automatic stay expires.

How to Prepare to Represent Your Client at a Mediation

Continued from page 1

portions of critical documents, statutes, or testimony. Also, include highlighted copies of cases you believe are controlling. Advise the mediator of the current status of negotiations, your thoughts on why the case has not yet settled, and what you believe it will take to settle the case. Point out significant weaknesses in your adversary's case.

Although neutral and impartial, a mediator is not a judge. There is no prohibition against ***ex parte*** contact, so if after receiving your confidential submission the mediator does not contact you, then you should contact the mediator. Help the mediator prepare to help the parties negotiate a settlement. Advise the mediator how far discovery has progressed, and whether you consider the case ripe for mediation. Let the mediator know whether a hearing or a ruling on a dispositive motion is pending. Provide the mediator with not just your position on legal and factual issues, but also point out any significant differences in the parties' understanding of the material facts and controlling law. Point out the flaws in the other side's arguments.

Let the mediator know whether any party may believe that setting a judicial precedent is more important than obtaining a negotiated settlement. Alert the mediator where collectability of a judgment may be an issue. Also, make the mediator aware of important non-legal issues which may be obstacles to settlement. For example, personality clashes, emotional issues, difficulties resulting from a party's history or institutional culture, any concerns you may have as to whether the opposing client representative really has the necessary authority to settle the case, or any problems

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How to Prepare to Represent Your Client at a Mediation

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you may have in dealing with or influencing your own client.

Next, select and prepare the individual who will appear at the mediation as your client's representative. Assuming you want to settle the case, select someone who has the necessary authority to settle as well as a reasonable demeanor and personality. In some cases the client representative may also be a good witness whom you may wish to present by means of a speaking role in the opening statement. There is one trap to beware of, however: if possible, avoid bringing a representative who is personally implicated in alleged fraud or wrongdoing. Such an individual may have a personal agenda at odds with the best interest of his or her employer, your corporate client, which could leave you to deal with an unwieldy conflict of interest at the mediation.

Prepare the client representative for the mediation. Go over the facts, explain the law, and describe the mediation process. Remind your representative that you are there to provide expert legal and negotiating advice, but that the client is the ultimate decision maker, who will reap the benefits of a settlement or continue to bear the cost, risk, and other consequences of a failure to settle.

Work with the client representative to perform a case valuation analysis. Decide what monetary or other concessions the client is willing to make to settle the case, taking into account the cost, risk, and time required to obtain a final judicial resolution, collectability issues, publicity and reputation issues, and best and worst available alternatives to a negotiated, consensual resolution.

Once the client has determined what the case is worth, i.e., what total, bottom-line concessions it is willing to make to achieve a consensual resolution, work with the client representative to formulate a negotiating plan. It will almost never make sense to start the negotiation by saying, "This is our final offer; take it or leave it!" Who would believe you? Instead, plan what you will offer initially, as well as how much you will improve that offer in each successive round of bargaining. By bringing to the mediation a well thought out negotiating plan, you are better able to send a clear, consistent message concerning your view as to the proper range in which a settlement might be possible, and better able to avoid the unproductive pattern of emotional, reactive bargaining into which mediating parties can so easily fall.

Mediation is an exercise in faith and optimism. Most cases settle, so prepare and bring to the mediation a draft settlement agreement. This will save you time and give you control of the drafting process. Without a prepared agreement, after a long day of negotiating it is often difficult to remember and to craft skillfully all the boilerplate and special provisions you will need to protect your client.

"A mediation is often described as an informal proceeding, a term that accurately reflects its procedural flexibility, but which vastly understates its importance as a means of achieving a cost-efficient resolution of your client's cause."

Finally, you must prepare and rehearse your opening statement. Rarely should you waive the opportunity to give an opening statement. Your client's major goal in litigation is to see justice done—which nearly always means to see its position vindicated. Your client wants its story to be told, heard, and understood—to have its day in court. Your client hired you as its advocate to tell its story convincingly to the judge and jury. Telling your client's story, forcefully but tactfully, to the mediator and to the other side in your opening helps your client to vent and to jettison some of the emotional baggage blocking its ability to make a rational business decision. Although your client may harbor feelings of great hostility toward adverse parties, remember that your purpose at the mediation is to achieve a consensual agreement, so be hard if you must on the facts and the law, but try to go easy on the people.

Another reason to give a well prepared opening is that so few civil and bankruptcy cases now go to trial that your client may otherwise never have the opportunity to see you in action. In addition to giving your client emotional satisfaction, a well prepared opening showcases your advocacy skills and demonstrates to the client that you are devoted to its cause and worth the fees you are charging for your services.

The opening also affords you the rare opportunity as a trial lawyer to speak directly to the opposing client representative, so tell your client's story as effectively as you can. Where appropriate, enhance your oral presentation with visual aids, such as a PowerPoint presentation, handouts, or poster boards containing graphs, charts, tables, and key portions of transcripts of testimony, pleadings, contracts, letters, email messages, statutes, case law, and other relevant documents.

That the allegations you have pled may be offensive to adverse parties is no reason to forego an opening statement at a mediation. They must know that they—and the court—will hear worse if the case goes to trial. The art of advocacy lies in the ability to articulate and explain difficult issues to neutral or hostile parties effectively and without giving needless offense. You would not likely waive giving an opening statement to a jury where your case requires broaching difficult issues. Neither should you forego the opportunity to speak directly to the opposing decision maker at a mediation. Keep in mind that your client wants its story to be told and acknowledged. So don't phone it in. Instead, make the effort necessary to prepare and deliver a thoughtful and effective presentation in person.

A mediation is often described as an "informal" proceeding, a term that accurately reflects its procedural flexibility, but which vastly understates its importance as a means of achieving a cost-efficient resolution of your client's cause. You would not go to trial without being fully prepared. Neither should you represent your client at a mediation with less than thorough preparation. ■

Investors, Users, Cap Rates, and the Income Approach to Commercial Real Estate Valuation

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APPLICATION

To begin to understand the true value of commercial real estate, one must understand the dynamics behind supply and demand. At the core of this dynamic is the existing NOI (Net Operating Income) or the potential NOI that the property will provide. In the same way that stocks and companies are valued based on their EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization), commercial real estate relies on NOI for valuation. Commercial properties with long-term leases containing fixed terms have NOI that is very predictable. These properties are typically the most reliable and standardized assets among commercial real estate. They trade similar to bonds, and are often called "Coupon Clippers." However, not all properties have long-term, stable leases, and this is where commercial estate valuation gets tricky. It is not simply the property's current NOI that affects its value, but rather what the market believes will happen to this NOI in the future. Even if there is a long-term lease in place with fixed terms, the lessee may go bankrupt and reject the lease as part of its reorganization plan. It may also choose to cram down the lease if the market allows it to do so. In some cases, a zoning law change or simply the path of progress will provide the opportunity for redevelopment to the highest and best use, which will in turn generate a higher exit sale strategy, such as with a condo tower, or potentially an alternative use as we saw with Merrick Park in Coral Gables converting from industrial use to high-end, retail mixed-use. In some cases, redevelopment is not even necessary in order to capitalize on a higher NOI,and one simply needs to find a new tenant that can make more money in the specified location and therefore pay more rent.

The use of the NOI to derive value involves one other variable, which is the Capitalization Rate or "Cap Rate." Different asset classes involve different risks and therefore two properties with the same NOI will likely trade at different prices based on the Cap Rate investors will apply to the property. The Cap Rate calculation is the inverse of the Price/Earnings ratio many investors monitor when dealing with stocks. Earnings are the equivalent of NOI. Instead of Price/Earnings, it is Earnings/Price or NOI/Price. Cap rates tend to vary by geography and the type of asset. The highest quality assets in core markets with the most upside and/or the least amount of risk will trade at lower cap rates, and vice versa for assets that are located in non-core markets which may have less upside and/or carry more risk.

THE TROUBLE WITH APPRAISALS

The most difficult factor in commercial real estate is that no property is exactly like another, so the potential NOI can be a moving target. Every property stands on its own two feet. For this reason, appraisers are often employed to derive value for tax and legal purposes. While appraisers will use comparable sales, cap rates, and rental rate trends to value the property, these factors are typically backward-looking. Highest and best use is something that appraisers often cannot accurately include in their report, if only because they are not working with the current buyers in the market who may be setting new trends. Appraisers may not always account for the possibility of variances and/or public hearings to change the zoning laws to allow for larger development or alternative uses. They also may not be aware of new tenants in the market that can pay higher rates, or existing users that are willing to pay more for the real estate.

Regardless, appraisals play a very necessary role in and lie at the heart of the value discovery phase in a SARE (Single Asset Real Estate) bankruptcy case. They facilitate a push and pull process with each side attempting to provide expert witnesses and data that allow them to anchor value in a manner that will support their respective positions. Strategies vary and can include a 363 sale, cramdown, reorganization, relief from stay, and more. The stakes can be high and will often hinge on the ultimate value assigned to the asset and/or the legitimacy of plans to increase that asset's value, so it is often worthwhile to leverage as much expertise as possible to support the correct value. As part of an appraiser's research and in order to verify the data and ensure an arms-length transaction, appraisers will spend a large amount of time calling the commercial real estate brokers who sold or leased the properties referenced in their reports. In such a case, an active, veteran commercial broker will be more in tune with the value of a property than an appraiser, and also will be more aware of the inherent variables that affect that value. This is not to say that a commercial real estate broker will always know the exact value, but rather that that broker receives empirical feedback daily on active listings and is on the front end of the market and can therefore more accurately read the pulse of the market. In essence, appraisals are necessary to determine value, but when combined with the testimony of a credible broker, a more accurate valuation may be obtained. This is especially important when attempting to prove the legitimacy of a reorganization plan, or deciding whether a 363 sale strategy is feasible.

ACTIVE LISTINGS AS A TOOL

The truth of the matter is that an active listing itself is the ultimate test of true value. The FDIC has guidelines in place for assets in receivership, also known as "Loss Share Banks." FDIC guidelines recommend the use of an experienced and knowledgeable broker for every REO property, and that reductions in price only take place after a certain amount of time has passed, in most cases three months. Simply listing a property, however, does not guarantee results. In order to ensure that this live testing of the market is truly indicative of value, the bankruptcy estate must hire a commercial real estate broker who employs methodologies that consider all possible uses, and perhaps most importantly, who helps ensure that every possible purchasing group has the opportunity to review the

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Investors, Users, Cap Rates, and the Income Approach to Commercial Real Estate Valuation

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property. While it may appear to be common sense that a broker should enlist the entire market, including other brokers, to sell the property, one must consider the human motives inherent in such a process in the same way that a creditor must consider the motives of the debtor and vice versa. As the price of a property falls below the market value, the pool of buyers increases significantly. In many cases, if a property is priced below market value, the broker will not need to spend any money marketing the property, and neither will that broker need to solicit cooperating brokers to bring their customers to the table and thus be forced to split the commission. One must also consider that in such a case the property will sell faster.

So in fact, we see that brokers are often incentivized to manipulate a price to be lower than market value in order to save on marketing fees, to pocket both sides of the commission, and to spend less time on the property. Of course, a good and ethical broker will rise above such tactics and take the time to add value to the asset through creative property management techniques that will lower expenses, while at the same time bringing tenants to lease up the property. If capital expenditures, such as tenant improvements, must be made to implement these strategies, then each instance must be measured on its own merits based on a present value analysis. A good commercial broker, such as those with the CCIM (Certified Commercial Investment Member) designation, can advise on the benefits and disadvantages with a break-even analysis of such an expenditure on a present value basis using IRR (Internal Rates of Return) and NPV (Net Present Value). Both the reduction of expenses and the increase in rental income will enhance NOI in the short term. This increase can then be leveraged at the market capitalization rate for that specific asset class, thus exponentially increasing the value for the bankruptcy estate.

A REAL-LIFE EXAMPLE

An example of such a scenario might be spending $90,000 in tenant improvements to land a good credit tenant in a retail center who will sign a 5-year net lease (expenses paid by tenant) with a total value of $720,000, or $144,000 per year for a 6,000 sq. ft. retail space at a rate of $24/ft2. If we assume the cap rate of comparable retail space is 8.5%, then we can calculate that the increased income of $144,000 per year will yield an increase in price of the asset by $1,694,117 ($144,000/8.5% = $1,694,117). Therefore, the $90,000 spent to attract this tenant results in a return of over 1,800% to the bankruptcy estate when the property is sold—a tidy profit, to say the least. Not all scenarios are so easily calculated or so handsomely profitable, but you get the idea.

ADDITIONAL CONSIDERATIONS

As a final note, many properties in bankruptcy are owner-operated. While there is always capital readily available to purchase income property that is occupied, owner-operated vacant properties such as manufacturing facilities can be more problematic to sell. An investor who is willing to purchase a vacant, single-tenant property will often pay less, because the investor is discounting for the lease up period, the tenant improvements, and the risk associated with owning such a property. On average, there can be up to a 20-30% premium in the value that a user can afford to pay above and beyond that of an investor. In addition to the discounts previously mentioned, this 20-30% premium is due to what I call the "Five Pillars of a User Purchase Decision." These five pillars are (1) Interest Deduction on the Mortgage, (2) Depreciation (which can include accelerated depreciation), (3) Paying down the Principal, (4) Appreciation of the Asset, and (5) the ability to employ subsidized financing by the Small Business Administration. Often, a bankruptcy estate sale is not willing to entertain such financing, but the small business loan program allows qualifying participants to purchase a property with as little as a 10% down payment with fixed terms as long as 10 years, and at a very competitive rate. This possibility may drive up the value of a property significantly. In addition, the underwriter will look to the EBITDA and cash flow of the company to service the debt, and so as long as the property appraises, the deal can be struck at an even higher price than what market rents might support. It is plausible, then, that a bankruptcy estate might receive subsidies on both sides of a 363 sale with a cramdown on the existing SBA loan and a higher value provided by the financing of a new SBA loan.

FINAL REMARKS

The key in all cases is finding the right user or investor for the property. A user who can purchase "off the rack" as if the property is tailored to fit that user's operations will often pay more than another user who must make significant improvements to the property. An investor who is willing to pay today for the pro forma of higher cash flows in the future will often pay more than an investor who is only willing to pay for current cash flows. A broker who is familiar with the property's market and already knows the users and investors in the community will be instrumental in assuring that the maximum value is obtained for the bankruptcy estate. ■

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Re: BBA Foundation – Online Donations Accepted

Dear Member,

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The BBA Foundation has relied on the generosity of attorneys who are directed to contribute to the BBA Foundation. However, such contributions are sporadic and insufficient to fund the BBA Foundation's annual budget of $70,000.

As a consequence, the services that the BBA Foundation provides are at risk of being decreased or eliminated. Accordingly, the BBA Foundation has started a **fundraising drive** to have BBA members and member firms contribute to the BBA Foundation to ensure it continues to serve our community. The initial goal is to raise **$50,000** by the end of the year.

The BBA Foundation has established varying levels of contributions which are listed below:

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If you have any questions about the BBA Foundation, please contact one of us. Thanks in advance for your support of the BBA Foundation.

Sincerely,

Patricia A. Redmond
BBA Foundation Trustee

Jason Jones
BBA President

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