

Bankruptcy Judges Feel the Pain

By Ann Farmer

The following article is based on interviews with women bankruptcy judges around the country.

When May closed as the month in which the U.S. jobless rate spiked to its highest level in 26 years, the Honorable Erithe A. Smith, a U.S. bankruptcy judge for the Central District of California, paused to examine her court calendar for the upcoming week. The docket revealed that more than 80 motions were already scheduled for her first morning of hearings in June.

"Sometimes it's a little overwhelming," says Judge Smith, who's serving her second 14-year term on what has become one of the busiest bankruptcy courts in the nation. Her caseload has doubled since the recession took hold. "I'm seeing a lot of

people who did everything right and never ever expected to find themselves in the situation where they were in danger of losing their homes," she says. "Usually everything can be traced back to the loss of a job. And sometimes it's heartbreaking."

Debtors' Sagas

Across the country, bankruptcy judges are being swamped with heavy dockets and debtors' poignant dilemmas. Judge Elizabeth S. Stong of the U.S. Bankruptcy Court for the Eastern District of New York says it's not uncommon for her to end up hoarse after a long day of hearings. And Bankruptcy Judge Mary Grace Diehl of the Northern District of Georgia, where bankruptcies also have been soaring, says, "I've had plenty of hard-working people who will essentially

beg you to give them more time."

Adding to the burden are those debtors who, in less tumultuous financial times, wouldn't bother to show up for a relief of stay hearing (when a creditor asks the court for permission to proceed with a home foreclosure or auto repossession). "They just kind of accepted the inevitable," Judge Smith says. But that's not the case anymore. "What I find," she says, "is people want to tell their story—even if it's not going to end the way they want it to."

For instance, a man recently appeared before Judge Smith who had lost his job and subsequently had fallen behind in two car payments. The auto finance company had filed a motion to pick up the car. "In Southern California, your car is golden," Judge Smith explains. "That's how you get around. That's how you maintain a job."

The man had found new employment and could continue to pay his monthly car payments going forward. But he needed accommodation for the back payments. Judge Smith turned to the lawyer, who represented the auto finance arm of one of the big three automakers, and asked if he could perhaps tack the two payments to the end of the debtor's loan. "No, that's not our policy," the lawyer said.

The debtor pointed out that this was the same automaker that had appeared before Congress asking for billions in bailout money. All he wanted was help with two payments. Still the lawyer didn't budge. Noting that there are few defenses for not granting a relief of stay, Judge Smith says, "Sometimes there's not a whole lot we can do."

How the Process Works

Federal bankruptcy judges have a great deal of authority. They get to decide things like who can file for bankruptcy, who gets a discharge from

their debts, and how to distribute the monies from liquidations. But they must act within the uniform federal bankruptcy code that governs all cases, the primary ones being Chapter 7 filings, which involve the liquidation of assets; Chapter 11 filings, commonly used by commercial enterprises to reorganize; and Chapter 13 filings, which allow debtors who meet certain criteria to formulate a plan to repay their debt.

“A good, fair, productive process is my most important job when I go into the courtroom,” says Judge Stong, who refuses to employ a gavel. “People come to this court at a very low point. I can’t think of any situation in the courtroom where banging things would help.”

Judge Stong, whose background includes 16 years of federal and state civil litigation as an associate and partner at Willkie Farr & Gallagher in New York, says what’s so appealing about being a bankruptcy judge is the diversity of cases, which often meld complex business matters with very human issues. It’s also a fast-moving court that requires consensus-building and problem-solving skills.

On a recent morning, Judge Stong ended her busy docket with a pretrial conference in an adversary proceeding, which she handled by teleconference. The case had been pending for months because the Chapter 7 debtor moved to Arizona and could not afford to return to New York to meet with potential pro bono counsel. Over a speaker phone, the plaintiff creditor’s lawyer, based in Rochester, New York, explained that his client was seeking to have more than \$8,000 worth of credit card items declared nondischargeable in the debtor’s bankruptcy case because she had purchased them within 65 days of getting pre-bankruptcy credit counseling. From the creditor’s perspective, this suggested that the debtor was thinking about filing for bankruptcy when she incurred the charges.

The debtor, however, indicated she purchased the items—including

sheets, towels, a dining set, and a laptop computer—as necessities to settle into her new home and said she always intended to repay the debt. “Like so many cases, there are two sides to every story,” says Judge Stong later in her chambers, after spending considerable time in the courtroom listening to the lawyer’s concerns and the constraints of the debtor, who speaks English as a second language and cannot afford to pay for legal counsel. Judge

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Stong decided to give them more time to move things forward. She also provided the option of enlisting a court-appointed telephonic mediator. “These cases often settle,” she explains.

A Financial Fresh Start

When consumer debtors have valuable assets like a home, they often prefer to file for Chapter 13 bankruptcy. This procedure allows them to create a plan for repaying the creditor with the help of a court-appointed trustee. At the confirmation hearing, the judge decides whether the plan is feasible and meets bankruptcy code standards.

“There are some cases that are very hard,” says Judge Diehl, who’s lately been seeing many people doing everything they can to save their homes, including trying to make payments through unemployment checks. She’s also seen a lot of Chapter 13 cases get reverted to Chapter 7 after the debtor couldn’t find work.

Before sitting on the bench, Judge Diehl worked for 27 years at

Atlanta-based Troutman Sanders LLP, mainly dealing with financially troubled businesses. She says most Chapter 13 bankruptcy cases result from insurmountable medical bills, job loss, or divorce. In some cases, parents may just want to hold on for a couple more years until their children finish up in a good school district. “And you’ll talk about ways to make that happen,” Judge Diehl says.

Sometimes, though, it’s not feasible. “Usually I try to take some time and talk to the debtors about what the real situation is,” Judge Diehl continues. “If they are truly in a house they can’t afford, you can usually get them to realize that.” Often, she adds, “you’re better off starting over. That’s what bankruptcy’s supposed to give you the opportunity to do.”

Bankruptcy, which appears in article 1, section 8 of the U.S. Constitution, is designed to provide debtors with a financial fresh start. A 1934 Supreme Court decision states that “it gives to the honest but unfortunate debtor . . . a new opportunity in life.”

Bankruptcy also enables businesses to make mistakes and move on. “If there was no bankruptcy that allows businesses to reorganize, there wouldn’t be any risk,” says Chief Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware.

Judge Walrath, who specializes in Chapter 11 cases, has adjudicated through other economic downturns, including in March 2000 when the dot-com bubble burst. What’s different now, she says, is how the crisis is hitting businesses across the board, including construction companies, real estate developers, tire manufacturers, and a growing number of retailers, such as Filene’s Basement, which filed for bankruptcy protection in her Delaware court in early May. “When you start seeing the discounters filing bankruptcy,” Judge Walrath says, “you know that retail really is in trouble.”

Currently she’s presiding over 50 corporate reorganization cases

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For more information about federal bankruptcy court, go to www.uscourts.gov/bankruptcycourts/bankruptcybasics/process.html.

SURVIVING JOB LOSS

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gets a job,” Joyce says. “The [online] job boards are overrated. People expect them to perform miracles.”

Work Your Plan

Get up every morning at the same time as you would for a job outside the home. Some experts encourage job seekers to get dressed for work. Set goals for the day. Make a schedule and check off each task as you complete it. Tackle difficult projects at the beginning of the day “when you have your highest level of energy so that it doesn’t loom over you all day long,” Duran says. Having projects hanging over your head often leads to depression, she notes.

Budget your time. “Otherwise, you will spend all of your time on e-mails and watching *Oprah*,” Kurow says.

Attend meetings, continuing legal education seminars, and programs at bar associations. Answer questions and get noticed. Talk meaningfully to a few people. “Offer to help them and they will help you later,” Duran says.

Introduce yourself at these meetings in a positive way. Joyce once

introduced herself at a meeting when she was unemployed and said she was “nothing.” It was a learning experience and a missed opportunity to tell people about her 10 years of experience negotiating contracts with the federal government—something that was in demand.

Although continuing legal education (CLE) courses and bar association memberships can be expensive, experts say you should retain your bar memberships. Most bar associations offer free programs and others provide scholarships or reduced rates for unemployed lawyers. For example, the State Bar of Georgia hosts a free monthly lunch-and-learn session, and the Texas Bar Association offers free continuing legal education programs.

Some agencies such as the Idaho Volunteer Lawyers Program provide free CLE courses in exchange for pro bono services. Continue to learn about the developments in the law online or at law libraries. Many bar associations nationwide offer unemployed members free access to case materials and other legal resources

to keep skills sharp.

Seek unemployment insurance payments. Not only do unemployment benefits provide cash, but most state unemployment agencies require that you provide a detailed account of your job search.

Watch your pennies. “This is not the time to be spending your money. You need to take care of your basics,” Duran says.

“Start thinking about what you can downsize,” Kurow says. “Do you really need the 85 premium channels?”

Future employers are looking at how you handle your finances and stress. They conduct credit checks. Either bad credit or bankruptcy can cost you a job, Duran says.

Do contract work to make money. Employers would rather see you proactive in caring for your finances and your family than faced with problems, Duran says. “The job of an attorney is to be responsible. People are looking to see how responsible you are.”

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pertaining to very large companies. Each debtor group additionally involves two or three, or perhaps a hundred, related debtor companies. But whereas the businesses can be quite complex, the bankruptcy issues are similar. “Take any case I have and subtract three or four zeros on any number, and it’s really like any other case,” says Judge Walrath, explaining that the reorganizing issues tend to follow along the lines of: (1) Do I have too many stores or locations? (2) How do I cut employees but not lose the key employees I need to reorganize? (3) How do I effectuate a sale?

Judge Walrath, who practiced

bankruptcy law for 17 years, says she loves the process. “[Bankruptcy court] is probably the only court where trials and negotiations are going on,” she says, explaining that in Chapter 11 cases, the debtor has to arrive at a solution that the creditors agree on. She listens to all the parties, including a creditors’ committee appointed by a U.S. trustee. “If I feel that the parties can resolve this or should resolve this on a business basis, I feel my job is to push them towards that,” Judge Walrath explains. “But I’m ready to make a decision based on the evidence they present if they cannot agree.”

She disagrees with those people who say that bankruptcy judges tend to favor debtors. “I don’t think we’re debtor friendly,” Judge Walrath says. “But there is some satisfaction in knowing that a company survives—that a company reorganizes and is going to continue in business and people will continue to be employed and it will continue to serve its community. There is some satisfaction in that.”

Ann Farmer is a Brooklyn, New York-based freelance journalist who covers breaking news for The New York Times and contributes stories on culture, law, crime, and other topics to publications including Emmy, DGA Quarterly, Budget Travel, and others.