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This newsletter is produced by the nation's largest statewide bar association for attorneys practicing in the area of creditor's rights.

FROM THE PRESIDENT'S DESK

Dear ICBA Members:

With the new year upon us, we would like to continue to expand the ICBA membership list and provide you with seminars and information that is of value to your practice. During the next week, please take a moment to think about topics that you would like to see discussed in our newsletter and upcoming seminars. E-mail your suggestions to us (preferably by January 8th) so we can discuss them at our next meeting.

Have you ever considered becoming a board member for the association? If you would like more information, please contact me or any of our other board members before the end of February.

Please note that annual membership fees are due by January 31st. The membership invoice is included in this newsletter.

Thanks again for your continued support and have a successful 2001!

Sincerely,

Robert Becker
Rob@beckercollectorlaw.com

WOULD YOU LIKE TO CONTRIBUTE AN ARTICLE FOR THE NEXT NEWSLETTER?

The Illinois Creditor's Bar Association is always seeking articles to include in the bi-monthly newsletter.

If you would like to contribute an article or case discussion that would be of interest to other members, please fax or e-mail the information to: 858-547-0354 or leighann@san.rr.com. If you have any questions, please contact Leigh-Ann Thompson, toll-free, at (877) 724-5504.

JANUARY, 2001

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Have you visited our website lately? Go to www.ilcba.org!

ARTICLES OF INTEREST

REVIEW OF OFFICIAL BANKRUPTCY RELATED WEBSITES

Contributed by Cindy M. Johnson

For Illinois practitioners, there are 5 official bankruptcy related web sites of note. Three for the courts of the Northern, Central and Southern Districts of Illinois and two for the two regional United States Trustees. By way of review, all of the sites are valuable. They contain essential



information, most of them have useful links and they are easy to navigate. The web sites for the courts are generally useful for anyone wanting to find bankruptcy information for that

district. On the other hand, the trustee sites are a little more for “bankruptcy heads”. Following are the web addresses and a summary of what the sites contain.

Northern District of Illinois Bankruptcy Court – www.ilnb.uscourts.gov

This is the most comprehensive of the sites. It includes a searchable case information database (with document imaging), currently for no fee. You can search both the eastern and western divisions. You can image documents as long as you have a “tiff” viewer (which comes standard with most windows operating systems).

It also contains announcements, court locations (and telephone numbers), the court calendar, local bankruptcy rules, general orders, a list of filing fees and court statistics. It further has the national and local bankruptcy forms as well as local form orders which can be downloaded in “pdf” format.

Finally, for each judge in the district it contains, a biography, the court calendar, the motion schedule, standing orders, opinions, location/telephone information, and the judge’s clerks’ names.

Central District of Illinois Bankruptcy Court – www.ilcb.uscourts.gov

Although this sight allows a user access to a searchable database, the user must establish an account in the federal database search system “PACER” for access. There is a nominal fee for the use of this system, with a per page viewed charge. The sight also contains court locations (and telephone numbers), court and clerk hours, and court statistics (back to 1981). Additionally, it has the official bankruptcy forms that can be downloaded in “pdf” format. This sight also has a manual for practitioners answering all questions about how to be admitted in the district, the filing, and setting of motions, the requirements for filing and noticing matters, etc. The user can also view and download bankruptcy pamphlets.

The opinions of the judges in the district are listed for the last 2 years, they are listed by case number, debtor name, subject, and Bankruptcy Code section.

Southern District of Illinois Bankruptcy Court – www.ilsb.uscourts.gov

Although this sight allows a user access to a searchable database, the user must establish an account in the federal database search system “PACER” for access. There is a nominal fee for the use of this system, with a per page viewed charge.

The sight also contains court locations (and telephone numbers), court and clerk hours, and a list of filing fees and payment options. There are also court announcements and a list of hearing dates along with hearing locations and maps of the district. Additionally, it has the official bankruptcy forms that can be downloaded in “pdf” format.

This sight has a very useful feature of an administrative guide for attorneys’ staffs which contains all of the information you need to prepare, notice and set motions in the district. It can be printed and given to office staff or kept at the attorney’s desk for reference.

United States Trustee, Region 10 (central and southern parts of Illinois) www.usdoj.gov/ust/r10/region10.htm

This U.S. Trustee sight contains all of the essential information about office locations (and telephone numbers), addresses for the clerks of the court, addresses for hearing rooms, and names, addresses and telephone numbers for all of the Chapter 7, 12, and 13 trustees in the region.

United States Trustee, Region 11 (northern part of Illinois) - www.usdoj.gov/ust/r11/rindex_page.htm

This U.S. Trustee sight contains all of the same essential information as the region 10 sight. It also contains a newsletter and a recent decisions section. Sometimes the recent decisions section contains comment from the U.S. Trustee, which can give a practitioner an insight as to what direction or position the trustee’s office will take on a particular matter. This sight also contains Chapter 11 forms, most of which are downloadable in WordPerfect, “pdf” and “html” formats.

BETA TESTERS WANTED

Contributed by Steven Fink

Red Cow Digital, a software company, has been contacting collection attorneys seeking their help in evaluating “DEBTORATOR,” a collection software program under development. Any attorney wishing to test the program and report back to the developer may contact Mark Drexler at (716) 546-7650, or email Red Cow Digital at jav28@cornell.edu.

The program stores information in a database so that a single entry is all that is needed to reuse data. The program contains a ledger and tickler system. It calculates and posts

interests to your accounts. Presently, the program only merges with "WordPerfect" as a word processor, but the "writers" advise that a "Word" version is contemplated.

JUDGE EUGENE WEDOFF LECTURES ICBA

Contributed by Steven Fink



Thirty attendees were present on December 6, 2000 to hear a short talk by Hon. Eugene Wedoff, Judge of the United States Bankruptcy Court for the Northern District of Illinois. The Judge presented the group with a practical guide to analyzing adequate protection questions for the Creditor and to presenting the Creditor's position in motions to lift the automatic stay. Judge Wedoff spoke for about 40 minutes and there was time left over for questions from the floor.

The talk at the Midland Hotel was given over lunch. The Midland offered a convenient seating arrangement by which members could talk among themselves and hear Judge Wedoff. ICBA members appreciated the chance to hear a fine seminar, have a great lunch, and finish in time for afternoon calls and meetings.

The ICBA solicits your ideas for future seminars and brown bag lunch meetings. If you are interested in a topic, chances are good that others are as well. Please forward your ideas to the board (and pass the salt).

RECENT TOPICS ON THE ICBA LISTSERVE

Contributed by Leigh-Ann Thompson

Participation in the ICBA Listserv was at an all time high for the month of December. There were 91 inquiries. Since January of 2000 we have had 643 messages posted.

The listserv is one of our most significant benefits. Members can obtain current advice on civil procedure, State and Federal law, and State and Federal court operation throughout Illinois. Take advantage of the cumulative knowledge of our members. E-mail your queries to our listserv at: creditorsbar@egroups.com. You can also review the history of all of our past inquiries on the listserv website at: www.creditorsbar@egroups.com.

For those of you who do not use this **free** service provided by the ICBA, following are summaries of the "hot" topics and responses for the month of December.

Date: Fri Dec 1, 2000 9:13am

Subject: Daley Center 11th floor update.

Judge Williams is being transferred from 1106 and the 11th

floor may be short handed for the next two weeks. As of right now, there is no word on who will be replacing Judge Williams. Also, Judge Cox has decided against allowing motions to reinstate and enter judgment as routine motions. They will continue to be motions on the 2:00 call.

Date: Fri Dec 1, 2000 7:27am

Subject: Re: Serving a Transient Defendant

My client, a matrimonial law firm, asked me to file a lawsuit against one of its former clients, an individual, who has now re-located to Florida. I filed suit here in Cook County and sent the papers down to Florida for service. The Sheriff was unsuccessful in its efforts to obtain service because defendant was out of state, in his job as a long distance truck driver. It seems that unless I get extremely lucky, serving this guy will be next to impossible. Does anyone have any ideas?

Response # 1:

Move for special service in accordance with 2-203.1 and ask for leave to serve by certified and regular mail or "in any manner consistent with due process". The bigger problem will be collecting the judgment in Florida. Given the nature of Florida law, unless the company he works for has contacts with Illinois and is amenable to service of a garnishment here, judgment may be unenforceable.

Response # 2:

Take a look at 2-203.1 of the Code. It might just be what you're looking for.

Date: Tue Dec 5, 2000 8:31am

Subject: Standard of Review and Burden of Proof in Actions for Attorneys' Fees

Those of you who handle collection actions for law firms, should read Wildman, Harrold, et al. v. Gaylord, No. 1-99-4301 (1st Dist. 11/20/00). In Wildman, plaintiff filed a breach of contract action against defendants to recover attorneys' fees. In affirming Judge Gardner's award in favor of plaintiff after a bench trial, Justice Cohen (finally) addressed the distinction between breach of contract actions for attorneys' fees and fee petition cases. In so doing, she ruled that the proper standard of review in breach of contract actions for attorneys' fees is not an abuse of discretion, but rather, the manifest weight of the evidence. Further, she ruled that in a breach of contract and/or quantum meruit action for attorneys' fees, plaintiff's burden of proof does not include "detailed, contemporaneous time records" with the heightened level of specificity required by Kaiser v. MEPC and Fitzgerald v. Lake Shore Animal Hospital.

Date: Wed Dec 6, 2000 11:45am

Subject: Service of Social Security Adm

Need to know where some of you have been successful in serving wage deductions on Social Security wage earners. The DC address in the Cohen building does not seem to be usable. Your Thoughts?

Response # 1

Try: Karen Chambers, Social Security Administration, 6401 Security Blvd., Altmeye Bldg, Room 611, Baltimore, MD 21235.

Response # 2

Last address I had for them per their flier was Dept of the Interior, P.O. Box 272030, d2640, Denver CO, 8-227. This is also address service for all Dept of Interior and Securities and Exchange Commission.

Response # 3

Further update to the one I just sent. SSA contact is Pam Wright 303-969-7305, or Steve Phifer 303-969-7306. Baltimore address and others were superseded in Sept of 1999, when Dept. of Interior took over handling for several other agencies under contract.

Date: Fri Dec 8, 2000 9:21am

Subject: A Hypothetical

To the Group: I have a case I could use some creative thought on. I have a client who has a judgment against her ex-husband for child support arrearages. That judgment has been filed with the county recorder of deeds. The ex has purchased a house with new spouse. At some point in time ex re-financed the house with current lender. In between the title commitment and the final closing, my client had recorded her lien so that it is superior to the mortgage. The lender did not catch this. Now the lender has filed a mortgage foreclosure and I have asserted my client's superior lien. The lender has placed the foreclosure on the inactive calendar pending, I am told, a resolution of its rights vis a vis its title company. Also, to make it ever so much more spicy, the ex has filed for BK. My client, to the best of my knowledge did not get any notice or other service of that. The case is now on hold. What, if anything, can I do to get this matter off the fence? Any thoughts will be greatly appreciated.

Response # 1:

Foreclose your lien.

Response # 2:

Follow up w title company. The should have picked up new recording. If not waived, there may be a claim on the title policy. Depending on the company, they may be willing to deal with you. in the past, CT&T and TICOR have been cooperative.

Response # 3:

Someone said foreclose your lien.... but remember if the BK case has not been closed yet, you will need to modify the automatic stay first.

Remember, this is a free service provided to you by the ICBA. Please send your e-mail address to Leigh-Ann Thompson at: leighann@san.rr.com if you would like to participate.

TECHNOLOGY UPDATE

WATCH YOUR BACK! BACK UP DAILY.

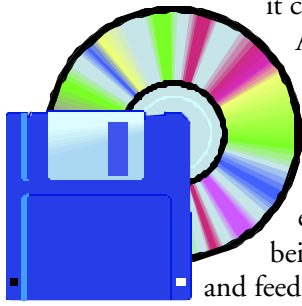
Contributed by Barry Lowe, 312-644-1000

Email: barrylowe@aol.com

Hard Disk Drives (HDD's), the most important long-term memory storage components inside of your computer, are rated by an acronym, "MTBF" (mean time between failures). The measurement is in the hundreds of thousands of hours. Hard disks last a long time. Why worry about them? They are not likely to break and if they do, they are inexpensive to replace. If you do not worry about your hard drive and all of the hard drives in your home and office, eventually, I guarantee, you will experience one of the worst days of your life: The day your first hard drive breaks down. Once you have endured the loss of your first hard drive, you will have learned a difficult lesson the hard way, and I will bet you will not let it happen again. You see, MTBF ratings are not the same as exact predictions of when YOUR hard disk will break. Even if they were reliable, an exact prediction that you could stake your working life on, there is another problem. Yes, friends, computers do things on their own. Not everything is your fault. On occasion, files can become "corrupted" even if you did not do anything, let alone anything wrong. On occasion, new software programs can cause "conflicts" with other programs and cause computer breakdowns. Numerous things can cause the loss of the information contained on your hard drive.

What can you do about it? There is only one solution. You can and must "back up" your hard disk drives on a daily basis. I have been trying to get this message out for the past fifteen years. Unfortunately, I still receive calls from friends and acquaintances asking, with a prayer on their lips, what they can do when their hard disk dies without a backup. The sad answer, is somewhere between little and nothing. In order to provide real protection, a backup must be taken "off site" each day in order to protect against loss by fire, theft or otherwise. You can choose from many backup methods. There are vendors who will allow you to backup your hard disk drive(s) across the Internet and store your data on the vendor's equipment. Other vendors do the same thing over the telephone lines or over dedicated data transmission lines. This serves the purpose of getting a copy of your data off site in case of emergency. There are security and speed concerns with this method, but it is available, it does work, it can be set up to happen in the evening after you close and for some, it might be economical. For small amounts of information, you can back up onto a variety of different kinds of removable disks. This is one of the fastest methods but it is limited to the size of the disk. There are removable disks available up to two gigabytes in size and given the market, by the time you read this, there will probably be even larger removable disks available. Beware, two gigabytes sounds like a lot of

space, but in today's world of Windows programming, it can be used up quickly.



Additionally, the disks (media) that are used in removable disk drives are very expensive so using multiple disks to create a "backup set" will work, but it is expensive and requires a human being to stand by the backup device and feed it disks as needed. Another method of backing up is to use a read /

write Compact Disk drive. These drives are somewhat expensive and they too have storage space limitations. There are many more methods of backing up, but the most common method is to use a tape drive.

Tape drives have several benefits. Tapes come in a variety of sizes and inexpensive tape drives can store as much as 8 gigabytes of information on a single tape. No one has to attend to the procedure. It can be totally automated. I make two backups each day. One backup is designed to copy only those files I have created or modified during the day. The second backup is designed to backup my entire system, all program files, all data files, and all system files. It takes less than ten minutes for the backup of the new and changed files. This is done at the end of each work-day and is taken home by my office manager on a daily basis. The second tape requires several hours to run and I have programmed the tape drive software to run the second tape in the middle of the night. Since I do not change programs and system files on a daily basis, a one-day-old program and system file backup is perfect. If I do make a change in a program or add a new program, I back it up right away and take the backup home that first night. Subsequently, the program for the full system backup is modified to include the new software automatically. The previous day's full system backup is taken home nightly along with the daily new and changed file backup. I also keep a hard copy of my backup software off site. This way, if I wake up to a burned out office (G-d forbid), all I need to do is purchase off the shelf hardware from the nearest computer store, load my backup software on the new hardware, insert my backup tapes into the new tape drive, restore the data from my backup tapes, and I am back in business. Now, imagine what would happen if your hard disk drive broke without a backup. It happens every day. People call me many times each year to ask what they can do when their hard disk drives self-destruct. In some cases, it is possible to recover some or all of the information on a disk drive. IF this can be done (it depends on what went wrong with the drive to begin with), it is a VERY expensive and VERY

time-consuming project. If it can be done at all, it can take days or weeks to accomplish. It can cost thousands of dollars. There is no guarantee it will work.

It is wise to use "sequential backups" no matter what type of backup system you employ. This means that you have a complete set of backup media (tapes or disks) for each day of the week. Each day's set is used for that day only. Therefore you will have at least five redundant sets. Why bother to do this? Nothing made by human beings is perfect. It is possible that the day you will finally need to use a backup to restore a file you accidentally erased but did not intend to, or in the worst case, to restore an entire system, the backup copy will fail. This is rare and unlikely, but it does happen. If you have a set of sequential backups, you can go to an earlier set of backup media and restore from that. This will limit the loss of data to an absolute minimum. The full system backup I make every night is "verified." This means that after the tape drive records the information on the tape, it goes back and compares the recorded copy with the original. Only if the copy checks out as a perfect copy will the tape drive then go on to the next piece of data and perform the same procedure until the entire hard disk drive is copied. This takes much longer than merely making an unverified backup – twice as long at a minimum. This is the safest method to follow, but it takes the most time.

If I have failed to convince you of the importance of backing up, I owe you an apology. When using a computer, NOTHING is more important than backing up.

That is why I do it on an automated basis in the middle of the night. In the morning, we check the "log" of the previous night's full system backup to be certain there were not many errors. Tapes do wear out. True, they last a very long time, but not forever. When the log shows a large number of errors, it is time to replace the tape. This is not the place to be "penny wise."

There are other important issues related to the choice and installation of a tape drive or any other type of backup device. I cannot go into all of the detail on every available tape drive and tape drive software program. You should consult an experienced technician for such an important issue. Steve Protter, the ICBA consultant, offers discounted assistance to ICBA members. He can be contacted by email through our web site (ILCBA.ORG); just click on the banner at the bottom of the home page. Steve is the only knowledgeable and experienced consultant who is offering a discounted hourly rate to ICBA members.

If I have failed to convince you of the importance of backing up, I owe you an apology. When using a computer, NOTHING is more important than backing up. For added security, I backup every keystroke in real time. I do this with "duplexed" hard disk drives. Utilizing special software,

I operate two hard disk drives in tandem. All information is recorded simultaneously on both drives. If one drive fails, I will get a message on the screen that a failure has occurred, but the system will keep right on running off of the second drive. Cost? A second drive, (under \$175.00 for 20 gigabytes), a second disk drive controller (under \$100.00) and installation and setup (approximately \$300.00). Between the duplexed drives and the sequential backups, I can honestly say I do not lose any sleep over data security. What is it worth to you?

CASE OF NOTE

HEALTH CARE'S OPPOSITION TO BURRELL REPEAL 92-7

Contributed by Michael Matek

Health Care supports the right of negligently injured persons to receive full and fair compensation for their injuries. This proposal is to be commended to the extent it promotes that right. Nonetheless, the proposal to limit the amount that health care providers might receive after filing liens may not necessarily enhance, and might even diminish, the recoveries of injured plaintiffs. The effect of the proposal is to shift the risk of full economic recovery in part to the health care providers who have delivered a valuable medical service to the plaintiff. This could occur even though verdict forms provide a line item recovery for past known medical expense.

It is possible that a physician or hospital would cause these health care providers to reduce debts owed for unpaid medical services to judgement and then enforce these judgements rather than rely on their limited lien rights in the plaintiff's negligence action to obtain recovery. Thus, the proposal may serve as a mechanism to increase satellite litigation on unpaid medical bills to the disadvantage of the insured person and unnecessarily increase court case loads. Similarly, the reduction in lien rights might provide a disincentive to health care providers to accept non-emergency patients unless pre-payment or some other mechanism of ensuring payment is available.

Proposed Statutory Solution To: Burrell v. Southern Truss, 176 Ill. 2d 171 (1997)

770 ILCS 1/1 *Limitation on Liens or Other Claims against Bodily Injury or Wrongful Death Act Proceeds.*

In all cases wherein a person or entity is seeking to assert a Lien or claims a rights of recovery against a recovery of monies, arising out of the bodily injury or death to a person, the maximum amount of all liens or claims against any such recovery, whether Statutory or Contractual, or otherwise, that can be asserted against any such funds recovered, shall not exceed one-third of the Net amount of monies recovered by that person, in accordance with the allocation set forth in 770 ILCS 1/2.

770 ILCS 1/2 *Allocation of Settlement Among Liens.*

In allocating which lien holder or claimant is to receive what amount of money or consideration, the Circuit Court shall first determine the Gross amount recovered by means of settlement or judgment. The Gross Amount shall mean and include all monies and other consideration received by means of settlement or judgment, less any costs awarded by the Court. The Court shall then calculate the net amount of monies recovered which is defined to mean the Gross Amount defined above less all costs of collection, exclusive of attorney fees, the Court shall thereafter calculate one-third of that Net Amount and then allocate that one-third Net Amount to the various Lien holders and claimants on the basis of that Lien holder's or claimant's percentage of the total amount owed to all of the various Lien holders and claimants. As used herein, the term Costs of Collection includes any expenditure, excluding attorney fees, that the court determines to have been reasonably necessary to the successful prosecution of the action resulting in the recovery, without regard to those costs allowed by the Court as a part of any judgment.

770 ILCS 1/3 *Adjudication of Liens*

Any party to an action or any Lien Holder or claimant shall have the right to Petition the Circuit Court for a Hearing to adjudicate any lien(s) or claims being asserted against a Bodily Injury Claim only after a settlement or judgment has been reached. Each person or entity seeking to have a lien or other claim adjudicated must give notice of the Hearing to all interested persons to that lien or claim by Certified Mail/Return Receipt Requested and addressed to that person or entity's last know address.

770 ILCS 1/4 *Loss of Lien Rights*

In the event that a party who asserts a Lien or other claim cannot upon reasonable inquiry be located and if a Notice to Adjudicate that party's lien or other claim has been sent to that party's address listed on their lien and to any other last known address by Certified Mail/Return Receipt Requested and the mailing is returned "Unable to Deliver" or delivery is refused by the Lien Holder or other claimant then the Court may determine that the lien holder or other claimant no longer has a valid lien or claim against the proceeds and the Court shall extinguish that lien holder's lien or claimant's claim against the proceeds of recovery.

770 ILCS 1/5 *Non-application to Judgment Liens, Attorney's Fees or Attorney's Liens.*

This act does not apply nor shall it limit: the rights of any judgment creditor nor any attorney's rights to costs and fees collected or to be collected from any bodily injury or Wrongful Death Act claim, nor any Attorney's Lien asserted against any bodily injury or Wrongful Death Act claim in accordance with 770 ILCS 5/1.

This Act shall become effective immediately upon its passage.