



AMERICAN
BANKRUPTCY
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Midwest Regional Bankruptcy Seminar

Case Law Update

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MIDWEST REGIONAL
BANKRUPTCY SEMINAR

September 27, 2023

Case Law Update

J. Michael Debbeler, Esq.



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- In Re Pochron, 2022 WL 1085459 (2022) (Judge Humphrey) (S.D. Ohio)
- In Re Spear, 636 B.R. 765 (2022) (Judge Humphrey) (S.D. Ohio)
- In re Nidhart, Case No. 21-3155 (2022) (Judge Humphrey) (S.D. Ohio)
- In re Henson, 637 B.R. 13 (2022) (Judge Humphrey) (S.D. Ohio)
- In re Spurlock, Case No. 2022 WL 3041256 (8/1/2022) (Judge Humphrey)
- In re Brandon C. Bucholz, Case No. 22-30584 (9/1/2022) (Judge Humphrey)
- In re Combs, Case No. 22-30644 (1/25/2023) (Judge Humphrey)



- **Right:**

1. Increased debt limit - \$7,500,000 (sunset in 2024).
2. Reduced expenses
3. Only debtor can file plan
4. No absolute priority rule
5. Modification of certain mortgages
6. Discharge easier
7. Motor vehicle leases modifiable
8. No committees
9. Subchapter 5 trustees



10. Broad eligibility
11. Liquidation plans are ok
12. Retainers allowed both pre-petition and post-petition
13. Can obtain extensions for plan filing
14. Prompt timeline
15. Section 1111(b) election possible
16. More confirmations and less dismissals than “regular” Chapter 11



- **Wrong:**

1. Increased debt limit too low
2. Debt limit applied to all payments due under a lease
3. Eligibility limited
4. Limits on use of cash collateral
5. Accelerated confirmation schedule
6. Projected disposable income included
7. Third party releases available
8. Need more interpretations



In re Digital Media Solutions (Dugan v. University of Ohio, LLC)

Case No. 21-4014 (Feb. 7, 2023) (Sixth Circuit)

In re Dow Corning Corp.

280 F.3d 648 (6th Cir. 2002)

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287 B.R. 396 (E.D. Mich. 2002)





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SEPTEMBER 27, 2023

CASE LAW UPDATE

J. Michael Debbeler, Esq., Moderator

Panel:

Patricia J. Friesinger, Esq.

Eric W. Goering, Esq.

Matthew T. Schaeffer, Esq.

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Introduction to Judge Humphrey's cases on attorneys' fees

In the last eighteen months or so, Judge Guy Humphrey, Bankruptcy Judge for the Southern District of Ohio, Western Division at Dayton, has issued a series of decisions on attorneys' fees. Summaries of 7 of these decisions follow in these materials. Many of them addressed the "no look" fee provided for in Chapter 13 cases for debtor's attorneys who choose not to itemize their fees. The panel will discuss the cases and the implications that arise from those cases.

In re Pochron

2022 WL 1085459 (2022) (Judge Humphrey) (S.D. Ohio)

Facts/Procedural Posture:

Counsel filed an application for \$15,593.50 for attorneys' fees in Chapter 13 including pre and post confirmation work. Chapter 13 trustee responded to application.

Issue:

Should entire amount be awarded?

Analysis:

No. Record keeping and other issues lead to reduced fee. Court reviewed concept of "in connection with" as opposed to "in contemplation of." The court approved \$7,731.50.

In re Spear

636 B.R. 765 (2022) (Judge Humphrey) (S.D. Ohio)

Facts/Procedural Posture:

Counsel filed fee application for \$19,046.50 for attorneys' fees for Chapter 13 case through confirmation of plan. Court reviewed fees.

Issue:

Are fees appropriate?

Analysis:

No. Court allowed \$10,166.25. Court found almost \$5,000 to review "catfishing scam" was excessive. Hourly rates were appropriate.

In re Nidhart

Case No. 21-31155 (2022) (Judge Humphrey) (S.D. Ohio)

Facts/Procedural Posture:

Chapter 13 filed for debtors with small trucking business. Fourth Amended Plan confirmed. Disclosure of compensation showed \$7,000.00 in fees, \$300.00 of which was paid in advance. Four amended plans increased fees to \$11,000.00. Application for compensation showed \$11,000.00, amended application asked for \$9,002.50.

Court independently reviewed fees requested.

Issue:

Were requested fees appropriate?

Analysis:

No. Court used lodestar method to review. Rates were reasonable. .No look fee is \$4,350.00. Application seeks 43.1 hours. One mortgage, few unsecured creditors and three liens to be avoided. Court believed total of 30-32 hours were appropriate- approximately \$6,000.00. Court found time was excessive as billed. Court allowed \$6,294.00 and disallowed \$2,708.50.

In re Henson

637 B.R. 13 (2022) (Judge Humphrey) (S.D. Ohio)

Facts/Procedural Posture:

Counsel filed application for attorneys' fees for \$700 for post confirmation services performed in connection with debtor's Chapter 13 case.

Issue:

Were fees allowable?

Analysis:

Yes, in reduced amount. Court must review fees independently of any objection. Courts use lodestar method. Many factors to consider (11 in fact). Counsel did not utilize paralegals. Court found rate of \$350 for 6-year lawyer was too high - \$250 was better.

In re Spurlock

Case No. 2022 WL 3041256 (8/1/2022) (Judge Humphrey)

Facts/Procedural Posture:

Attorney sought \$4,350 as “no look fee” in Chapter 13. Chapter 13 involved a secured debt on vehicles – no other significant assets or secured or priority debt.

Issue:

Does “No Look Fee” rule entitle attorneys to receive an identical fee in every case or eliminate the requirement that a fee be reasonable and tied to actual and necessary work for the estate and debtor?

Analysis:

No. The value here was \$3,660 not \$4,350. Debtor’s attorney was compensated for \$660 for time spent preparing confirmation statement.

In re Brandon C. Bucholz

Case No. 22-30584 (9/1/2022) (Judge Humphrey)

Facts/Procedural Posture:

Debtor's attorney filed to disqualify judge from ruling on fee application due to Judge's past rulings on issues on no look fees.

Issue:

Can a judge be disqualified based on prior rulings in unrelated cases?

Analysis:

No. Judge Humphrey issued the Spurlock decision where he questioned whether the "no look" fee in Chapter 13 cases of \$4,350.00 was presumptively reasonable in all cases, even where not much work was done. Judge's position in Spurlock is not enough to disqualify him.

In re Combs

Case No. 22-30644 (1/25/2023) (Judge Humphrey)

Facts/Procedural posture:

Chapter 13 debtor's counsel sought approval for a \$4,350 "no look" maximum fee. Case involved a secured vehicle claim and not much else. Court held a hearing. Chapter 13 trustee did not take a position.

Issue:

Was counsel entitled to the full "no look" fee?

Analysis:

No. Burden of proof is on counsel. Court needs to determine the lodestar amount. No distribution to non-priority unsecured creditors was provided. Court will not take into account that some cases are more difficult and it should "average out." Court reduced fee to \$4,010.00.

What is right, and what is wrong, with Subchapter 5 cases

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View of Sixth Circuit Court of Appeals on third party releases in light of Purdue

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Faculty

J. Michael Debbeler is a partner with the Cincinnati law firm of Graydon Head & Ritchey LLP and chairs the firm's Executive Committee. He practices in the areas of bankruptcy, banking, commercial loan and real estate workouts. Mr. Debbeler serves on ABI's Midwest Regional Bankruptcy Seminar advisory board and was is a former chair. He also is a member of ABI, ABLF, TACR (for which he served as past president) and the CBA Bankruptcy Committee (for which he is a former chair). Mr. Debbeler is a frequent lecturer on a wide variety of topics, including annual case law updates for many years for the CBA (real estate and bankruptcy), NKBA (bankruptcy) and SWOLTA (real estate). He was selected by his peers for inclusion in *The Best Lawyers in America* for his work in Banking and Finance Law, Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization, Litigation-Banking & Finance and Litigation-Bankruptcy from 2005-16. He also has been selected as *The Best Lawyers in America* "Lawyer of the Year" for his work in Litigation-Bankruptcy in 2013, Litigation-Banking and Finance in 2014 and Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law in 2015. Additionally, Mr. Debbeler has been named an *Ohio Super Lawyer* since 2004 for his work in Banking Law and Bankruptcy and Creditor/Debtor Rights Law, and he was named a Cincinnati Leading Lawyer in 2013. He is AV-rated by Martindale-Hubbell. Mr. Debbeler received his B.A. *cum laude* from the University of Kentucky and his J.D. from the University of Cincinnati College of Law, where he was a member of Order of the Barrister.

Patricia J. Friesinger is an attorney with Coolidge Wall Co., L.P.A. in Dayton, Ohio, and has more than 20 years of experience helping business and corporate clients preserve assets and overcome financial challenges. She handles complex business disputes, asset-protection, out-of-court debt restructurings, creditor/debtor rights and bankruptcy. Ms. Friesinger represents clients in the purchase and sale of distressed assets through Article 9 sales, foreclosures, receiverships and § 363 bankruptcy sales. She also handles traditional corporate matters (such as acquisitions, dispositions, recapitalizations and finance transactions) and complex financial restructuring, which she accomplishes through negotiation and litigation. In her practice, Ms. Friesinger represents chapter 7 bankruptcy trustees, unsecured creditors' committees, secured and unsecured creditors in chapters 7, 11, 12 and 13, and debtors in chapters 7 and 11 of the U.S. Bankruptcy Code. She is rated AV-Preeminent by Martindale-Hubbell, and in January 2019, she became a chapter 7 panel trustee. Mr. Friesinger is a member of ABI and the American Bar Association's Bankruptcy Court Structure and Insolvency Process Committee, Thomas F. Waldron American Bankruptcy Law Forum, Dayton Bar Association, Ohio State Bar Association and the Inn of Court. She also is an advisory board member of ABI's Midwest Regional Bankruptcy Seminar. Ms. Friesinger received her B.A. in 1997 from the University of Toledo and her J.D. in 2000 from the University of Toledo College of Law.

Eric W. Goering is partner with Goering & Goering, LLC in Cincinnati and has more than 20 years of experience in bankruptcy law. His practice concentrates in business and consumer bankruptcy, including loan workouts and commercial loan restructuring for the large business client. He handles an average of 100 cases per month as trustee and debtor's counsel. Mr. Goering was appointed in 2003 as a chapter 7 trustee in the Southern District of Ohio. He is a past president of the Cincinnati Bar Association, a member of the Judicial Liaison Committee, Bankruptcy Local Rules Committee and Volunteer Lawyers, and an executive committee member of ABI's Midwest Regional Bankruptcy

Seminar. He is also a frequent lecturer throughout the country regarding chapter 7, 11 and 13 bankruptcy issues. Mr. Goering received his B.A. in economics from Denison University in 1989 and his J.D. from Salmon P. Chase College of Law in 1992.

Matthew T. Schaeffer is Of Counsel with Bailey Cavalieri LLC in Columbus, Ohio, where his practice focuses primarily on corporate reorganization and workouts, debtor/creditor rights, bankruptcy, commercial litigation and commercial matters. He has experience representing chapter 11 debtors, financial institutions, trustees, and a variety of secured and unsecured creditors in bankruptcy proceedings, litigation and workouts. Mr. Schaeffer is a member of the independent panel of chapter 11 subchapter V bankruptcy trustees and the panel of chapter 7 trustees for the Southern District of Ohio. He also has experience representing businesses in a variety of nonbankruptcy matters. Mr. Schaeffer previously was with an Am Law 100 firm. He was named a “Rising Star” in the *Journal of Law & Politics*, recognized as “Top Lawyer” by *Columbus CEO Magazine* in 2016, and listed as a *Super Lawyer* in 2018, 2019, 2020, 2021 and 2023. Mr. Schaeffer has been a member of the Local Rules Committee, Pro Bono Project, Judicial Liaison Committee and Mediation Subcommittee of the U.S. Bankruptcy Court for the Southern District of Ohio. He also is a member of the Columbus Bar Association’s Bankruptcy Committee, Ohio State Bar Association, Champaign County Bar Association, Thomas F. Waldron American Bankruptcy Law Forum and the Columbus Bar Association’s Military Assistance Task Force. Mr. Schaeffer received his B.A. in political science from Ohio State University and his J.D. cum laude from Capital University School of Law, where he was admitted to the Order of the Curia and served as managing editor of the *Capital University Law Review*.