

# Concurrent Session

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## Assets Wanted: Chapter 7 Trustee Panel

**Basil T. Simon, Moderator** | Simon, Stella & Zingas, PC; Detroit

**James W. Boyd** | Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC; Traverse City, Mich.

**Gene R. Kohut** | Gene R. Kohut, PC,  
Grosse Pointe Farms, Mich.

**Wendy Turner Lewis** | Law Offices of Wendy Turner Lewis PLLC  
Detroit

**Kurt A. O'Keefe** | Law Offices of Kurt A. O'Keefe  
Grosse Pointe, Mich.

## **ASSETS WANTED**

**Prepared By: Kimberly Ross Clayson, Schneider Miller, PC, Detroit, MI**

Not only will thinking like a trustee as you prepare debtors' schedules help the trustee effectively administer your client's case, it will also help your client know what to expect during the process and can lead to better bankruptcy planning.

### **1. Basic Housekeeping**

**1.1.** Accept that not every Chapter 7 Bankruptcy is a "no asset" case and prepare your client accordingly.

**1.2.** File fresh schedules. If filing is delayed for extended period of time, confirm information in schedules is still accurate – most importantly, have vehicles been sold? Have bank account balances increased or decreased? Has your client had a death in the family that could result in possible inheritance? Has a new tax year started?

**1.3.** Properly elect exemptions the first time. In order to prevent unnecessary pleadings by the trustee and to help your client quickly proceed through administration, select the correct exemption and use it in the proper manner intended.

**1.3.1. EXAMPLE:** 11 USC §522(d)(1) is for residential real estate, not for investment property and not for the cabin up north – make sure your software properly selects the exemption election.

**1.3.2. EXAMPLE:** 11 U.S.C. §522(d)(5) has a dollar limit for a reason. Use it. If you know your client is going to have non-exempt property, help the client prioritize personal assets that are important and allocate the proper dollar amount accordingly.

**1.3.3.** Promptly and effectively respond to correspondence from trustee or trustees' counsel. Know who you are dealing with. If counsel has been hired correspond with counsel only.

**1.3.3.1.** The list of documents a trustee requests is not arbitrary. In delivering documents requested, provide detailed explanation as to all records provided as well as the details on documents that were not provided and the reason. Perhaps they do not exist or perhaps they were misplaced. Do not leave the trustee or counsel guessing as to whether documents were intentionally withheld.

**1.3.3.2.** If a document deadline is too short ask for more time, in writing, well in advance of the deadline for such documents.

1.4. Remind your client that discharge does not mean the case is over.

## 2. Typical administered assets

### 2.1. Avoidance actions.

2.1.1. Preferences that cannot be properly exempted.

2.1.2. Fraudulent transfers.

2.1.3. Lien avoidance actions on non-perfected liens in titled personal property and real estate.

2.2. Non-exempt or under-exempt real estate.

2.3. Tax refunds.

2.4. Operational businesses.

2.5. Defunct or recently dissolved businesses.

2.6. Tort claims.

2.7. Inheritance.

2.8. Employer bonuses and commissions.

2.9. Motor vehicles.

2.10. Small assets: jewelry, collections, art objects.

## 3. How the heck can debtor's counsel help the trustee administer these assets?

### 3.1. Avoidance actions.

#### 3.1.1. Preferences:

3.1.1.1. Pre-petition, have your client review bank account records or check ledgers to assist in identifying preferences with specificity on the SOFA.

3.1.1.2. Have readily available at the Sec. 341 meeting a copy of all documents pertaining to payments to a particular creditor within 90 days that meets the criteria of 11 U.S.C. §547. Documents may include bank statements, credit card statements, garnishment pleadings, correspondences or other documents that identify the date of the transaction and the name and address of the preferential creditor.

3.1.1.3. Do not overlook credit card balance transfers, these should also be included on the SOFA.

### **3.1.2. Fraudulent Transfers:**

**3.1.2.1.** Disclose. Disclose. Disclose! Any transfer of any asset within 2 years of the bankruptcy proceeding should be identified at question 10 of the SOFA even if the transfer was for fair value or the debtor had no bad intention in causing the transfer.

**3.1.3. Lien avoidance actions:** Due diligence on whether a lien is perfected should be done before the case is filed. Be sure to get copies of your client's mortgages and certificates of title to verify perfection.

Collecting these records is not just for the benefit of the Trustee but will also prepare your client for this type of issue and can lead to better pre-bankruptcy planning.

Post-petition, Provide copies of these documents to the Trustee and bring these matters to the trustee's attention. If an avoidance claim is discovered and your client wishes to retain the subject property, prepare your client to make an offer even before the 341 meeting to retain any property subject to a lien avoidance action.

Clients should not complete and execute a reaffirmation agreement until the lien validity can be confirmed. If the lien is invalid, alert the trustee and typically a settlement between trustee and client can be worked out.

## **3.2. Non-Exempt or Under-Exempt Real Estate**

**3.2.1.** Elect proper exemptions to avoid confusion. Under federal law, the only exemption available for non-residential real estate is 11 U.S.C. §522(d)(5).

**3.2.2.** Avoid misuse of the tenancy by the entirety exemption under state law. Any shared debts unrelated to the real estate eliminate the right to such an exemption.

**3.2.3.** Ensure your client will cooperate in the marketing and sale of real estate. Alternatively, prepare your client to make an offer to the trustee to retain the real estate.

**3.2.4.** Be sure to include all documents to support that there are no joint debt claims where state law entirety exemptions are elected.

### 3.3. Tax Refunds

- 3.3.1.** Disclose any possibility of a tax refund for the current tax year – any portion that can be allocated to prepetition months is property of the estate.

EXAMPLE: On Schedule B describe tax refund as “5/12 of 2010 tax refund.” Even if the amount is unknown, exemptions can be used to specify the dollar amount of the 5/12 of refund the client wants to protect.

- 3.3.2.** If a large tax refund was recovered by the Debtors and immediately spent, have your client prepare a detailed accounting of the expenditures and maintain a paper trail.

### 3.4. Operational businesses

#### 3.4.1.

- 3.4.2.** Production of business records. Have most current business records such as tax returns, balance sheets and P & Ls ready for trustee’s review at the §341 hearing.

- 3.4.3.** If there is any question as to value, avoid playing chicken with the trustee. Where the client(s) are sole or majority shareholders a trustee is within his/her right to execute corporate resolutions for liquidation of assets or to take other action. Work with your client and trustee to resolve issues of value or prepare your client for a possible wind-down of the company by the trustee.

- 3.4.4.** If the company is insolvent, provide documentation to the trustee to support such an assertion. Have your client compile and prepare supporting documentation to the financial statements including invoices, loan documents, security agreements or other records for the trustee.

- 3.4.5.** Confirm status of company as in “Active” or “Dissolved.” If client has not protected corporate form prior to filing this could be detrimental to how corporate assets can be administered.

Michigan Department of Labor and Economic Growth Website’s business entity search is the source for this information as to Michigan companies:

[http://www.dleg.state.mi.us/bcs\\_corp/sr\\_corp.asp](http://www.dleg.state.mi.us/bcs_corp/sr_corp.asp)

### **3.5. Business Debtors**

**3.5.1.** Even defunct or recently dissolved businesses should be disclosed.

**3.5.2.** All information pertaining to non-operational businesses should be disclosed on Schedule B and/or the SOFA. On the SOFA specific dates of operation should be provided to give the trustee a basis for understanding the company's and the client's financial affairs.

### **3.6. Tort Claims**

**3.6.1.** With the exception of pending litigation, nothing in the schedules or statements prompts inquiry into personal injury or other tort claims that may not yet have been enforced. Include in client check lists or questionnaires information pertaining to potential tort claims and provide this information in the Schedules and/or Statements. Include any names of counsel clients may have consulted as they may have important documents pertaining to such claims or may be in the best position to represent trustee as special counsel for such claims.

### **3.7. Inheritance**

**3.7.1.** Follow-up correspondence to clients after discharge should include instruction for client to notify bankruptcy counsel of any death in the family within the 6 month period from the petition date. Provide the specific date that such deadline expires to facilitate appropriate time for clients to get back in touch.

### **3.8. Employer bonuses and commissions**

**3.8.1.** Earned but uncollected bonuses and commissions should be disclosed in Schedule B. Understanding a client's commission structure may facilitate better bankruptcy planning.

### **3.9. Motor vehicles**

**3.9.1.** Supply trustee information critical to confirming the value of vehicles.

- 3.9.1.1. Blue book valuations obtained by client are more likely to provide accurate information about vehicle features and condition than leaving a trustee to do guess work.
- 3.9.1.2. Have photographs of vehicles readily available for quick inspection of the mileage, condition and features of the vehicle.
- 3.9.1.3. In schedules identify location of vehicles as best as is practical.

## 3.10. Small assets

- 3.10.1. Provide photographs and all available appraisals even if conducted for insurance purposes and that more likely represent replacement rather than resale value.

## 4. Why bother helping the Trustee, isn't this a disservice to my client?

### 4.1. Short answer no.

4.2. Identifying and obtaining information a trustee will need pre-petition may give rise to better timing on the filing or prepare the client for what to expect in the proceeding if filing cannot be held off or will make no difference as to the availability of assets to the trustee.

4.3. Build trust with the panel of trustees. If there is no uncertainty as to whether an asset is property of the estate freely admit that you have filed an asset case. The fewer hoops you make a trustee jump through to get to no-contest assets the more they will trust your representations and advocacy on a client's behalf.

4.4. Look like the hero. Preparing your client for the worst that reasonably could happen but may not actually happen is always better than promising a pot of gold at the end of a rainbow that never appears.

You get all the credit if you prepare a client that a possible asset exists in their case but the trustee decides that it is not beneficial to administer for the estate.

You get all the credit if you fail to prepare your client that a possible asset exists and the trustee decides to administer the asset.

4.5. Prevent the need for 2004 examination motions and subpoenas. Sometimes issues may be resolved without the need for litigation or examinations. Working with the trustee to provide information up front will be less costly for you and your client.

**4.6.** Avoid risking time and expense and uncertainty that comes with litigation of 11 U.S.C. §727 claims.

**4.7.** Balance advocacy of the client with your duties as an officer of the court.

**ATTENTION ATTORNEY(S) FOR DEBTOR(S)  
AND THEIR STAFF MEMBERS**

Due to the increased documentation required in advance of the First Meeting of Creditors, **ALL CHAPTER 7 BANKRUPTCY TRUSTEES** for the Eastern District of Michigan, Northern & Southern Divisions, request that all documents required under §521(e)(2)(a) and L.B.R. 2003-2 (E.D.M.) be provided **AS FOLLOWS ONLY:**

**NOTE RE: TAX RETURNS - please redact all social security numbers and/or bank account information as the Trustee is not responsible for social security numbers and/or bank account information found on his/her harddrive or files.**

**ATTORNEYS: Please bring hard copies of the tax returns and documents forwarded to the Trustee to the §341 meeting in the event that the documents sent are illegible or not received.**

TRUSTEE NAME	PREFERENCE FOR DELIVERY OF DOCUMENTS	
Allard, David	1. First Class Mail; 2. Fax; or 3. Email (include case name, case number & §341 meeting date and time on the subject line)	535 Griswold Suite 2600 Detroit, MI 48226  (fax) 313-961-6142  <a href="mailto:trusteeallard@allardfishpc.com">trusteeallard@allardfishpc.com</a>
Corcoran, Collene	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:ccorcoran@epiqtrustee.com">ccorcoran@epiqtrustee.com</a>
Dakmak, George	1. First Class Mail; 2. Hand Delivery	615 Griswold Suite 600 Detroit, MI 48226
Dery, Fred	1. Email only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:dcloven@fredjdery.com">dcloven@fredjdery.com</a>
Ellmann, Douglas	Email (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:staffee@gmail.com">staffee@gmail.com</a>
Evangelista, Karen	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:341docs@kevangelistalaw.com">341docs@kevangelistalaw.com</a>
Frank, Randall	First Class Mail only	916 Washington Ave. Suite 310 PO Box 2220 Bay City, MI 48707

## DETROIT CONSUMER BANKRUPTCY CONFERENCE

Gold, Stuart	1. First Class Mail; 2. Email (include case name, case number & §341 meeting date and time on the subject line)	24901 Northwestern Hwy. Suite 444 Southfield, MI 48075  <a href="mailto:kbrown@glmipc.com">kbrown@glmipc.com</a> <b>or</b> <a href="mailto:Stuart.gold@7trustee.net">Stuart.gold@7trustee.net</a>
Himmelspach, Daniel	First Class Mail only	916 Washington Ave. Suite 305 Bay City, MI 48708
Kohut, Gene	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:ecftrustee@gktrustee.com">ecftrustee@gktrustee.com</a>
Lewis, Wendy	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:brandy@lewistrustee.com">brandy@lewistrustee.com</a>
Lim, K. Jin	1. Email (include case name, case number & §341 meeting date and time on the subject line); 2. First Class Mail	<a href="mailto:kjinlim.documents@comcast.net">kjinlim.documents@comcast.net</a>  176 S. Harvey St. Plymouth, MI 48170
Mason, Michael	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:mm9117@sbcglobal.net">mm9117@sbcglobal.net</a>
McClarty, Homer	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:trustee@morganmcclarty.com">trustee@morganmcclarty.com</a>
Miller, Timothy	1. First Class Mail; 2. Email (include case name, case number & §341 meeting date and time on the subject line)	64541 Van Dyke Suite 101B Washington, MI 48095  <a href="mailto:trustee@schneidermiller.com">trustee@schneidermiller.com</a>
Nathan, Kenneth	First Class Mail only	260 Franklin Center 29100 Northwestern Hwy. Southfield, MI 48034
Shapiro, Mark	1. Email (include case name, case number & §341 meeting date and time on the subject line);	<a href="mailto:hcraig@steinbergshapiro.com">hcraig@steinbergshapiro.com</a>
Simon, Basil	Email Only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:Lbauer@sszpc.com">Lbauer@sszpc.com</a> <b>or</b> <a href="mailto:trusteesimon@sszpc.com">trusteesimon@sszpc.com</a>
Stevenson, Michael	Email only (include case name, case number & §341 meeting date and time on the subject line)	<a href="mailto:faye@sbplclaw.com">faye@sbplclaw.com</a>
Sweet, Samuel	1. Email (include case name, case number & §341 meeting date and time on the subject line);	<a href="mailto:tsweet@trusteesweet.us">tsweet@trusteesweet.us</a>

Taunt, Charles	1. Email (include case name, case number & §341 meeting date and time on the subject line); 2. First Class Mail	<a href="mailto:teetaunt@tauntlaw.com">teetaunt@tauntlaw.com</a> 700 East Maple Road 2 <sup>nd</sup> Floor Birmingham, MI 48009
Wells, Charles	1. Email (include case name, case number & §341 meeting date and time on the subject line); 2. Fax; 3. First Class Mail	<a href="mailto:johnniest10@sbcglobal.net">johnniest10@sbcglobal.net</a> (Fax) 248-276-0675 903 N. Opdyke Road Suite A1 Auburn Hills, MI 48326

**The following documents are not required 7 days prior to the First Meeting of Creditors but are requested and would be appreciated if delivered to the Trustee’s office at the time the required documents are delivered:**

- Recorded Mortgage(s)
- Recorded Deed(s)
- Mortgage Payoff(s) and/or Current mortgage statement(s)
- Current real estate tax statement(s)
- Vehicle/Boat title(s)
- Bank statements for 3 months prior to filing date through and including the filing date
- Divorce Judgments and/or Property Settlement Agreements
- Information for DSO notification

**RULE 2003-2**  
**DOCUMENTATION AT THE MEETING OF CREDITORS**

In cases under chapters 7, 12, and 13, and in individual cases under chapter 11, to the extent they are in the debtor's possession and are applicable to the case, the debtor shall have available at the meeting of creditors, neatly arranged, all of the following:

- (a) documents to support all entries on Schedule I, including wage stubs, tax returns or other proof of earnings;
- (b) documents to support all entries on Schedule J, including canceled checks, paid bills, or other proof of expenses;
- (c) certificates of title (originals if available, otherwise copies) for titled assets, including vehicles, boats and mobile homes (regardless of when acquired);
- (d) A current statement from each secured creditor stating the amount owed;
- (e) originals of bank books; check registers; bonds; stock certificates; bank, brokerage and credit card statements;
- (f) copies of leases, recorded mortgages, recorded deeds and land contracts;
- (g) copies of life insurance policies either owned by the debtor or insuring the debtor's life;
- (h) current property tax statements;
- (i) asset appraisals;
- (j) keys to non-exempt buildings and vehicles;
- (k) divorce judgments and property settlement agreements;
- (l) Casualty insurance policies;
- (m) Documents establishing the schedules amounts of joint debts, if the debtor claims an entireties exemption;
- (n) The name, address and telephone number of each holder of a Domestic Support Obligation; and
- (o) Any other specific document requested by the Trustee relating to the schedules or statement of financial affairs, if requested in writing at least 7 days before the first meeting of creditors.