

November 24, 2009 www.orb.uscourts.gov

Recent Opinions

In re McIntyre, Case No. 08-34900-tmb13

November 13, 2009

11 USC §§1306(a)(1) and 1327(b)

The court allowed debtors to pay fees incurred in prosecuting an adversary proceeding for violation of the automatic stay directly to their lawyer rather than to the trustee for distribution under the plan. The funds for the payment came from settlement of the adversary proceeding. The court agreed with debtors that the controlling provision is §1327(b), which provides that plan confirmation vests property of the estate in the debtor. Here the plan contained nothing to the contrary, so the trustee was not entitled to receive any portion of the settlement funds.

Concretize, Inc. v. Fireshield, Inc., Adv. No. 09-3312-rld

11 USC §§105(a) and 362(k); corporate debtor, willful violation of stay

November 18, 2009

The court agreed with defendants in an adversary proceeding brought by corporate debtor that damages were not available against them for willful violation of the automatic stay. Section 362(k) applies only to an individual injured by violation of the stay, and §105(a) does not create a private right of action where one was not otherwise provided for in the Code. A corporate debtor's remedy is through a motion for contempt filed in the bankruptcy case pursuant to FRBP 9014 and 9020.

In re Matrix Development, Corp., Case No. 08-327980-tmb11, Appellate No. 09-CV-225-BR

July 17, 2009

Dragnet clause

The district court reversed the bankruptcy court's October 2008 ruling that a dragnet clause in loan documents did not secure future advances. The district court held that language about future advances was ambiguous and extrinsic evidence was required to determine the parties' intent; it remanded the case for a hearing on that issue.

Click on [Opinions](#) (the last item in the column headed **Information for Attorneys**), for two search options. Clicking on [To view a list of all current opinions](#) takes you to a list of opinions organized by date, most recent to oldest. Entering a search term in the box on the [Opinions](#) page produces a list of results. Search logic for opinion searches appears on the [Opinions](#) page.

NEW ITEMS:

Court Closure

The bankruptcy court will be closed Thursday, November 26, for the holiday.

Proposed Updates to Local Rules - omission corrected

LBR 4003-2, Lien Avoidance Under §§506(d), 1322 or 522(f), was inadvertently omitted from the proposed rule amendments posted November 10.

To see the now-complete draft of LBRs, click on "11/10/09 - Proposed Updates to Local Bankruptcy Rules (LBRs)" - under **Court News and Announcements** on the home page, for details. The proposed amendments incorporate changes to the rules made by General Orders 09-1, 09-2, and 09-3, and propose some additional changes. Comments on the proposed changes must be made by **December 10, 2009**. The effective date of the new local rules will be January 1, 2010.

Local Form Updates

Several local forms have been updated per federal rule changes. LBFs dated 12/1/09 are mandatory as of that date and may not be used before that date. Click on "11/16/09 - Local Form (LBF) Updates" - under **Court News and Announcements** on the home page, for details.

PACER User Survey

PACER users may participate in a short survey on satisfaction with current services and suggestions for improvement. The survey is available for about 30 days after November 17. Click on "11/17/09 - PACER User Survey" - under **Court News and Announcements** on the home page, for more details and to take the survey.

PREVIOUSLY PUBLISHED ITEMS:

The following is a summary of items added in the past several weeks.

ECF Training

Currently scheduled training dates for Eugene and Portland are: December 10, 2009, and January 13, February 25 and March 17, 2010. Lawyers get 4 CLE credits for ECF training. Sessions run from 8:30 am to 12:30 pm. **The Clerk's office will add ECF classes if there is sufficient demand.**

New Chief Clerk

Charlene Hiss, currently the court's Chief Deputy Clerk, will become Clerk of the Court in January, 2010, upon Terry Dunn's retirement. Congratulations Charlene!

Chief Deputy Clerk

The position of Chief Deputy Clerk will be open January 4, 2010. Details about the position are set forth on the website; click on "11/05/09 - Chief Deputy Clerk" - under Court News and Announcements on the home page. To ensure consideration, apply by **November 26, 2009**.

Notices to Oregon Employment Department

The Oregon Employment Department asks that you use the correct address for notices and payments. The correct addresses can be found on the Debtor-Creditor Section website at <http://osb-dc.org/index.htm>.

Award of Merit

Congratulations to Dick Slottee , who received the Section's William N. Stiles Award of Merit at the Section's Annual Meeting/CLE. The Award of Merit plaque now hangs on the wall outside Courtroom #3 on the 8th floor at the Bankruptcy Court in Portland.

Message from Clerks Office

Please **do not modify** the fixed text in a local bankruptcy form (LBRs 1001.1.F. and G.)! If adequate room does not exist in any area, attachment pages may be added to the end of the form for inclusion of essential text.

Debtor-Creditor Section Website

An archive of these court updates is maintained on the Debtor-Creditor Section website at <http://osb-dc.org/orb.htm>.