A RIDDLE FOR OUR READERS:

How Is The Bankruptcy Code Like Mammy Yokum?

The Hatter in Lewis Carroll's *The Adventures of Alice in Wonderland* perhaps posed the most difficult riddle of all time when he asked, "How is a raven like a writing desk?" Unfortunately, unlike your editor, Mr. Carroll's mad character never answered his own riddle, thereby frustrating generations of solution seekers.

Mammy Yokum and the Bankruptcy Code have this in common: They both possess a "triple whammy." Those of our readers old enough to remember Al Capp's comic strip, "Li'l Abner," and the many colorful denizens of his fictional Dogpatch, will certainly remember his Mammy Yokum and her famous "triple whammy," a powerful punch with three times the strength of her celebrated "single whammy."

The Bankruptcy Code contains its own "triple whammy" at 11 U.S.C. Section 547—the dreaded "avoidable preference" section.

In theory, preference litigation against creditors is meant to make bankruptcy more equitable for all. The theory behind preference litigation is that any creditor who was preferred by the debtor via a payment within 90 days of the bankruptcy petition date should have to give up that payment because it represents the amount by which it was thus preferred over other creditors who received nothing during the same period of the debtor's insolvency.

In practice, however, preference litigation does not seem very equitable to the creditor who therefore gets sued by a trustee or Creditors' Committee, or in some cases, a Chapter 11 debtor/trustee.

The three parts of the "triple whammy" hit such a creditor in rapid succession. The "single whammy" hits the creditor in question if, as is frequently the case, it loses an important customer when the debtor bankrupts. In some cases, the loss of this customer can even mean the demise of the creditor, or at least the termination of a relationship going back for many years which had been mutually profitable for both.

The "single whammy" becomes a "double whammy" if the creditor, despite having received some payment, is also still owed a large balance—a balance which it will never collect in full, and for which it will probably only collect a puny dividend pursuant to a reorganization or trustee's distribution after waiting years for it.

Finally, this "double whammy" evolves into an even more ferocious "triple whammy" when an adversary proceeding is filed to force the already reeling creditor to regurgitate whatever funds it had managed to extract from the debtor within the 90 days prior to the petition.

Thus, the three elements of the Bankruptcy Code's "triple whammy" are: 1) the initial loss of a customer through insolvency; 2) the loss of the account balance the customer still owed at the time of the petition; 3) the loss of the funds the creditor must pay back as a result of an adversary proceeding founded upon 11 U.S.C. Section 547—the so-called "preference section."

Those unlucky enough to have suffered a sizeable "triple whammy" know whereof we speak. Those who have not at least now know how the Bankruptcy Code resembles Mammy Yokum.

By C. Joseph Greene

is incorporated, and if not, what individual uses that trade name. It is also surprising to see the number of guaranty agreements that creditors take from, for example, "Mary Appleseed," guaranteeing the debt of "Appleseed Orchards," which is merely the assumed name under which Mary Appleseed does business. The filing of financing statements under the trade names only of both individuals and corporations is also an all too common practice. Experience teaches us that the fundamentals of such matters deserve occasional reiteration.