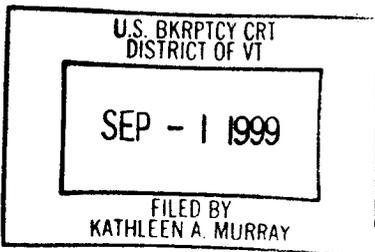


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

IN RE:

EARTH WASTE SYSTEMS, INC.,)	Chapter 11
)	
Debtor-In-Possession)	Case No. 98-11675
)	
*****)	
EARTH WASTE SYSTEMS, INC.,)	Adv. No. 99-01015
)	
Plaintiff)	
)	
-against-)	
)	
ORIX CREDIT ALLIANCE, INC.,)	
)	
Defendant)	
*****)	

#53-1



APPEARANCES:

Jess T. Schwidde, Esq., GLINKA & SCHWIDDE, The Opera House,
67 Merchants Row, Rutland, VT 05701, Counsel for Debtor-In-Possession

James W. Spink, Esq., DINSE, KNAPP & McANDREW, P.C.,
209 Battery Street, Burlington, VT 05402-0988,
Counsel for Orix Credit Alliance, Inc., Creditor

RULING ON DEBTOR'S MOTION TO VACATE

KRECHEVSKY, U.S.B.J.

I.

Earth Waste Systems, Inc., a Chapter 11 debtor-in-possession ("the debtor"),
has moved to vacate an order dated July 14, 1999 ("the order") signed by Francis G.
Conrad, a Bankruptcy Judge whose term expired July 31, 1999.

Judge Conrad, on July 1, 1999, conducted a contested hearing on the request of

order was merely a ministerial act", and (3) that Judge Conrad had the discretion to enter a nunc pro tunc order. (Objection at 3-4.)

III.

The present court has reviewed the transcript of the July 1, 1999 hearing and concludes that the debtor's motion is unpersuasive. Judge Conrad need not have signed the July 14, 1999 order under Fed. R. Civ. P. 58, made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 9021. That rule provides that "upon a decision by the court that a party shall recover only a sum certain ..." the clerk of the court may "sign, and enter the judgment." The court does not find that Judge Conrad's signing of the order was of such consequence that the order should be vacated and a new hearing held. "The judgment is the pronouncement of the court from the bench.... it is not necessary for the court to sign a formal written judgment." Western Union Telegraph Co. v. Dismang, 106 F.2d 362, 363 (10th Cir. 1939); cf. Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 527 (2d Cir. 1994) ("[W]e do not believe that the simple and "ministerial" act of the entry of a judgment by the court clerk constitutes the continuation of a judicial proceeding....). The court further concludes that the debtor's additional argument that the entire sequence of events on and subsequent to July 1, 1999 presents an appearance of impropriety sufficient to support its motion is unconvincing.

IV.

**The debtor's motion to vacate and for a new trial is denied. It is
SO ORDERED.**

Dated this *30th* day of August, 1999.



**ROBERT L. KRECHEVSKY
UNITED STATES BANKRUPTCY JUDGE**